

Honorable: _____

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

RONALD WESSELIUS,

Plaintiff,

v.

SANDY DESHAW AND RENEE TOMMILA, in
their individual capacities and their official
capacities as employees and agents of the state
of Washington; GOVERNOR CHRIS GREGOIRE,
in her official capacity as Governor of the
State of Washington,

Defendants.

CASE NO.

**VERIFIED COMPLAINT FOR
TEMPORARY RESTRAINING ORDER,
PRELIMINARY AND PERMANENT
INJUNCTIVE RELIEF, AND DAMAGES**

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Local Counsel for Plaintiff

1 Comes now the Plaintiff, Ronald Wesselius, by counsel, and for his Complaint,
2 respectfully states as follows:

3 INTRODUCTION

4 1. This suit seeks relief from the clear and purposeful deprivation of the Plaintiff's rights
5 to free speech, free exercise of religion, equal protection of the laws, and his freedom from
6 government hostility toward religion, by the Defendants, acting under color of state law.

7 2. The Plaintiff is an individual citizen of Washington State residing in Tumwater,
8 Washington, who seeks declaratory and injunctive relief from the Defendants' illegal and
9 unauthorized prohibition of religious expression within a designated public forum, brought
10 about by Defendants' willful and intentional acts.

11 3. Defendants have denied Plaintiff's request to have a nativity scene displayed in a forum
12 designated for private speech within the rotunda of the Washington state capitol building.

13 4. Defendants' actions, individually and collectively, have resulted in the deprivation of
14 Plaintiff's constitutional rights to free speech, free exercise of religion, equal protection of the
15 laws, and his freedom from government hostility toward religion.

16 5. The Plaintiff brings this action pursuant to 42 U.S.C. §1983, the First and Fourteenth
17 Amendments to the U.S. Constitution, and Article I, §§ 3, 5, 11 and 12 of the Washington State
18 Constitution. If successful, the Plaintiff is entitled to costs and attorneys' fees under 42 U.S.C.
19 § 1988.

20 JURISDICTION AND VENUE

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22 6. This Court has jurisdiction under 28 U.S.C. § 1331, in that the claims are asserted under
23 the laws of the United States, and under 28 U.S.C. § 1343(a), in that the claims are asserted
24 under laws providing for the protection of civil rights. This Court has supplemental jurisdiction
25 over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367. Plaintiff also seek declaratory
26 relief pursuant to 28 U.S.C. § 2201 and 2202.
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1 7. Venue is proper in this Court under 28 U.S.C. § 1391(b) because a substantial part of
2 the events or omissions giving rise to Plaintiff's claims occurred in this district.

3 PARTIES

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5 8. Plaintiff, Ronald Wesselius, is a private individual who seeks to observe the Christmas
6 holiday through public religious expression in a forum for expressive activity. Plaintiff resides
7 in Tumwater, Washington. As such, Plaintiff is entitled to access the rotunda of the state
8 capitol building on the same terms as other citizens and residents.

9 9. Defendant Sandy DeShaw (DeShaw) is a natural person and at all times relevant to this
10 action was the Visitor Services Manager for Washington State Capitol Visitor Services, a
11 division of the Department of General Administration. Ms. Tommila is sued in her individual
12 and official capacities.

13 10. Defendant Renee Tommila (Tommila) is a natural person and at all times relevant to
14 this action was the Events Coordinator for Washington State Capitol Visitor Services, a
15 division of the Department of General Administration. Ms. Tommila is sued in her individual
16 and official capacities.

17 11. Defendant Chris Gregoire (Governor) is a natural person and at all times relevant to this
18 action was the Governor and chief executive for the State of Washington, including the
19 Department of General Administration. Governor Gregoire is sued in her official capacity.

20 12. Defendants, DeShaw, Tommila, and Governor Gregoire are sued in their official
21 capacities for prospective relief; to enjoin the further denial of Mr. Wesselius' civil rights.

22 13. Defendants, DeShaw and Tommila, are sued in their individual capacities for
23 prospective relief and damages caused by their past and current conduct violating Mr.
24 Wesselius' civil rights.

25 FACTUAL BACKGROUND

26 14. All relevant events to this action took place at the Washington State Capitol building,
27 located at 416 14th Ave., SW, Olympia, WA, 98504.

1 15. Within the state capitol building is the rotunda, a large, high and circular hall capped by
2 a dome. (See Ex. A-001.)

3 16. The rotunda is generally open to the public during regular business hours for
4 government business, tours and other events. (Ex. H-013.)

5 17. During the holiday seasons of Christmas and Chanukah, songs related to the holidays
6 are sung in the rotunda. (Ex. F-008.)

7 18. As evidenced by the menorah and holiday tree, holiday exhibits may be displayed in the
8 rotunda during the traditional holiday seasons of Chanukah and Christmas. Department of
9 General Administration Policies, Procedures & Task Outlines (the CCF policy) allow a broad
10 array of public access and expression on the capitol grounds, including private exhibits on and
11 within the capitol building. The relevant GA policies are attached as (Ex. H.)

12 19. Persons wishing to exhibit a holiday display must submit a request to Tommila, which
13 she reviews and relays to DeShaw for review and approval.

14 20. Permission to access the rotunda for expressive purposes, including permission to
15 exhibit a holiday display lies within the discretion of Tommila, DeShaw, and the Governor; and
16 their decisions carry the force of law.

17 21. On or about December 18, 2006, DeShaw, Tommila, and Gregoire permitted Rabbi
18 Elazar Bogomilsky to exhibit a menorah sponsored by the Jewish Organization, Chabad
19 Lubvitch of Seattle. (See photographs , attached as Ex. B-002; C-003; D-004.)

20 22. Specifically, the Governor authorized the menorah display. (See Costello to Babione
21 letter, page 1, Dec. 22, 2006. attached as Ex. I).

22 23. The menorah sits on a base approximately 2-feet by 4-feet and is approximately 8-feet
23 tall.

24 24. On the afternoon of December 18, 2006, Governor Chris Gregoire participated in the
25 lighting ceremony of the Menorah.

26 25. Upon information and belief, at the ceremony, Governor Gregoire stated, "I am
27 especially proud that in the Capitol we celebrate the diversity of Washington, proudly
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1 displaying a homegrown noble fir tree next to the light of the menorah. Both are reminders of
2 the spirit of the season.” (See Ex. F-008.)

3 26. The menorah is on the third floor of the rotunda, and the fir tree is on the second floor
4 of the rotunda.

5 27. Also upon information and belief, the Menachem Mendel Seattle Cheder School choir
6 sang during the ceremony. (Ex. F-008.)

7 28. According to DeShaw, the menorah will be reclaimed by Rabbi Bogomilsky on or about
8 Tuesday, December 26, 2006.

9 29. A menorah symbolizes the Jewish religious holiday of Chanukah.

10 30. Chanukah celebrates the Maccabean rededication of the Temple of Jerusalem, which
11 housed a seven-branch menorah candelabrum. According to the Jewish religious text, the
12 Talmud, even though there was only enough oil to keep the menorah lit for one day, by a
13 miracle, the oil lasted for eight days. The Talmud teaches that maintaining a lamp with eight
14 lights during Chanukah, along with reciting certain blessings each night, is a ‘mitzvah’, a
15 religious command to be obeyed by performing a religious act.

16 31. Chanukah is a holiday with a significant religious meaning. The menorah, which has
17 been incorporated into the rotunda holiday display, is a religious symbol, used to observe a
18 religious holiday. As such, it is the only religious aspect of the display, and Judaism is the only
19 religion recognized in the display.

20 32. Throughout most of the month of December, state officials have also permitted the
21 exhibition of a “holiday tree”, a homegrown noble fir tree, in the rotunda.

22 33. Upon information and belief, the tree is donated by private parties for display in the
23 rotunda during the holiday season.

24 34. Upon information and belief, this year’s “holiday tree” was donated by private citizens,
25 the Association of Washington Business. (See Ex. F-008.)

26 35. The holiday tree communicates a specific secular message from a particular viewpoint
27 embraced by state officials.

1 36. The rotunda is an area where individuals may gather, congregate and display exhibits
2 for various expressive purposes. (Ex. H-008; 015.)

3 37. The rotunda is a public forum for various expressive activities as recognized by the
4 Supreme Court of the United States.

5 HISTORY OF DISPUTE

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7 38. On December 19, 2006, Mr. Wesselius read an article in the *Olympian*, written by
8 Adam Wilson, entitled, “Menorah at Capitol ducks airport’s fuss,” which described the display
9 of the “holiday tree” and the lighting ceremony of the menorah, in which Governor Gregoire
10 participated. (*See* Ex. F-008; Ex. G-010.)

11 39. The same day, on December 19, 2006, Mr. Wesselius went to the rotunda to observe the
12 displays and make a request that he be able to exhibit a nativity “crèche” in rotunda to be
13 displayed along with the holiday tree and menorah.

14 40. Upon observing the holiday tree and the menorah in the rotunda, Mr. Wesselius went to
15 the Lieutenant Governor’s office to find out who he should see about exhibiting a nativity
16 crèche.

17 41. Mr. Wesselius was directed to Tommila at the Visitor Services Center, and asked her if
18 he could display a nativity scene in the rotunda.

19 42. When Tommila asked how long he wanted the nativity scene displayed, he told her,
20 “until after the first of the New Year”, January 1, 2007.

21 43. Tommila asked about the details of the display, and Mr. Wesselius told her that it would
22 not take up more than a 4-foot by 8-foot area of the floor, but that he would take any size space
23 they would allow him. She also asked where he would like it displayed. Mr. Wesselius told
24 her he would like it near the bust of President George Washington, but would display it
25 elsewhere if that space was not available.

26 44. Tommila wrote down Mr. Wesselius’ answers to these questions.
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1 45. At that time, Tommila did not tell Mr. Wesselius that his request had to be in writing or
2 instruct him that any further requirements were needed to process his request.

3 46. Tommila told Mr. Wesselius that she would refer his request to DeShaw to decide if he
4 could exhibit the nativity crèche and that DeShaw would get back to him that same day,
5 December 19, 2006.

6 47. At 9:00 a.m. on December 20, 2006, Mr. Wesselius telephoned Tommila. Tommila
7 said that DeShaw was in a meeting until 10:00 a.m. and that she would have her call him.

8 48. At about 11:00 a.m., Mr. Wesselius telephoned the Visitors Center at the Capitol and
9 was told by Tommila that DeShaw would call him at 3:00 p.m. that afternoon.

10 49. Later that day, at about 3:00 p.m., DeShaw telephoned Mr. Wesselius and told him that
11 his request was denied on the advice of the Attorney General's office because the nativity scene
12 was religious and there was not enough time to do the legal research necessary to determine
13 whether it could be allowed. In fact, when Mr. Wesselius asked DeShaw if his request was
14 being denied because it was religious, she said, "Yes." When Mr. Wesselius asked why the
15 menorah was allowed to be displayed, DeShaw told him that there were two types of menorahs,
16 a secular menorah and a religious menorah. DeShaw said that the menorah in the rotunda was
17 a secular menorah.

18 50. DeShaw's denial of Mr. Wesselius' request to exhibit the crèche in the rotunda was
19 done under color of law.

20 51. On December 21, 2006, at about 11:00 a.m., Mr. Wesselius returned to the Capitol to
21 speak with DeShaw about the denial of his request since the menorah was allowed to be
22 displayed. At that time, Mr. Wesselius once again observed the holiday tree and menorah
23 displayed in the rotunda.

24 52. Mr. Wesselius asked DeShaw if there were any policies governing the display of an
25 exhibit in the rotunda.

26 53. DeShaw said that there were no special procedures for exhibiting a display within the
27 rotunda, and that the process was simple and informal.

1 54. DeShaw told Mr. Wesselius that there were no written policies or rules for exhibiting a
2 display in the rotunda, but there were guidelines for group visits to the capitol. At that time,
3 DeShaw did not show or provide Mr. Wesselius with any policies or procedures governing the
4 display of holiday exhibits.

5 55. But in fact there are guidelines covering exhibits on capitol grounds, which DeShaw
6 faxed to Mr. Wesselius' attorneys at approximately 2:45 p.m. on December 22, 2006. (*See*
7 CCF policy, Ex. H.)

8 56. DeShaw also told Mr. Wesselius that no particular government form was required to
9 exhibit a display, but could be made by writing a letter.

10 57. DeShaw then surprised Mr. Wesselius by asking him if he was making a formal request
11 to display his nativity scene.

12 58. Mr. Wesselius told her that he thought he had made a formal request since she had
13 formally denied it: DeShaw had received and considered his request, consulted the Attorney
14 General's office about it, and then telephoned him the day before to say that his request had
15 been denied because it involved religion. Until that moment, neither Tommila nor DeShaw had
16 said that his request was not being processed because it was formally deficient or vague. On
17 the contrary, they both addressed his request as if they fully understood what he was asking for
18 and were seriously considering it.

19 59. Mr. Wesselius asked DeShaw if his writing a letter would make a difference to which
20 she responded, "No."

21 60. And in fact, Mr. Wesselius had observed Tommila recording the specifics of his request
22 in writing on December 19, 2006.

23 61. During the December 21, 2006 conversation, DeShaw also explained that a menorah
24 that used an oil and wick for light was a religious menorah and that because the menorah on
25 display in the rotunda used electric lights, it was a secular symbol.

1 62. Mr. Wesselius told her that he wasn't trying to have the menorah removed as it was
2 appropriate for the holiday season, but that he should also be allowed to exhibit the nativity
3 scene.

4 63. When Mr. Wesselius asked whether the Governor was aware of his request to exhibit
5 the nativity scene, DeShaw told him only that the Governor's office had been notified of his
6 request.

7 64. On December 21, 2006, on or about 3:15 p.m., Mr. Wesselius, through his attorneys,
8 sent a letter demanding that state officials cease violating Mr. Wesselius' constitutional rights
9 and to again request that the state officials allow him to display the crèche. The letter requested
10 that the Defendants immediately respond as time was and is of the essence. (See Babione to
11 DeShaw, Combo and Gregoire letter, December 21, 2006, attached as Ex. E).

12 65. Mr. Wesselius' attorneys telephoned the state Attorney General's office at about 11:15
13 a.m., on December 22, 2006. Assistant Attorney General, Mary Ellen Combo telephoned Mr.
14 Wesselius' attorney, Byron J. Babione, at about 12:00 p.m. and told him that several meetings
15 about the letter were held in the Attorney General's office the previous day and that a written
16 response would be forthcoming from the Attorney General's office by the end of the day.

17 66. Later, in the evening, at about 5:05 p.m., Deputy Attorney General Rob Costello, by
18 fax, affirmed the denial of Mr. Wesselius' crèche display on the grounds that it was extremely
19 late, the form and vagueness of the request, and because of the legal complexity of the
20 Establishment Clause issues involved. (See Costello to Babione letter, page 1, Dec. 22, 2006,
21 attached as Ex. I).

22 67. On December 23, 2006, Mr. Wesselius, through his attorneys, sent a reply detailing that
23 the State had treated Mr. Wesselius request to exhibit a crèche as a formal request, that the
24 State had denied the request because it was religious, not because it was vague, and made
25 another plea that the State reconsider its unlawful denial. (See Babione to Costello letter, Dec.
26 23, 2006, attached as Ex. J).

27 68. The Defendants have failed to identify any authority to justify their unconstitutional
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1 actions.

2 69. Defendants have denied Mr. Wesselius access to the rotunda because the exhibit is
3 religious, and therefore denied his right to free expression through the erection of the nativity
4 scene, in violation of Plaintiff's constitutional rights.

5 70. As a result of the Defendants' refusal to allow Mr. Wesselius to display his nativity
6 scene in the rotunda, he has suffered and will continue to suffer irreparable harm to his
7 constitutional rights to free speech, free exercise of religion, equal protection of the laws, and
8 guarantee of freedom from government hostility toward religion for which there is no adequate
9 remedy at law. Vindication of Plaintiff's constitutional rights is in the public interest for the
10 common good of the community. Therefore, injunctive relief is justified in these
11 circumstances.

12 AS AND FOR A FIRST CAUSE OF ACTION

13 42 U.S.C. § 1983; U.S. Constitution, Amendments I,

14 Free Speech

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16 71. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as if fully set
17 forth herein.

18 72. Defendants have violated the Plaintiffs free speech rights under the First Amendment to
19 the United States Constitution by prohibiting Plaintiff's religious speech in a forum opened for
20 seasonal holiday expression without any legal justification.

21 73. Defendants have engaged in view-point based discrimination without a compelling state
22 interest.

23 74. Defendants have engaged in content-based discrimination without a compelling state
24 interest.

25 75. Defendants have implemented unreasonable time, place and manner restrictions which
26 are unrelated to any legitimate government interest.

27 76. Defendants have engaged in an unconstitutional prior restraint on speech.
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1 77. Defendants have implemented an unconstitutional licensing scheme by engaging in a
2 policy and practice of vesting its officials with unbridled discretion to prohibit expressive
3 activity.

4 78. As a direct result of Defendants illegal acts, Plaintiff has suffered and will continue to
5 suffer irreparable harm to his constitutional rights.

6 AS AND FOR A SECOND CAUSE OF ACTION

7 42 U.S.C. § 1983; U.S. Constitution, Amendments I,

8 Free Exercise of Religion

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10 79. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as if fully set
11 forth herein.

12 80. Defendants have deprived and continue to deprive Plaintiff of his right to the free
13 exercise of religion, as secured by the First Amendment to the United States Constitution, by
14 prohibiting Plaintiff from demonstrating his sincerely held religious beliefs through religious
15 expression.

16 81. Defendants' policy and acts have deliberately targeted Plaintiff's nativity scene for
17 exclusion because it is a Christian religious symbol.

18 82. Defendants' discrimination is unrelated to any legitimate government interest.

19 83. As a direct result of Defendants illegal acts, Plaintiff has suffered and will continue to
20 suffer irreparable harm to his constitutional rights.

21 AS AND FOR A THIRD CAUSE OF ACTION

22 42 U.S.C. § 1983; U.S. Constitution, Amendment XIV

23 Equal Protection of the Laws

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25 84. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as if fully set
26 forth herein.

1 85. Defendants have deprived and continue to deprive Plaintiff of equal protection of the
2 laws, as secured by the Fourteenth Amendment to the United States Constitution, by
3 discriminating against Plaintiff because of his religious beliefs and viewpoint, a fundamental
4 constitutional right, and by excluding his religious expression while including and allowing
5 other similarly situated persons and/or entities to convey secular and religious viewpoints
6 within the forum.

7 AS AND FOR A FOURTH CAUSE OF ACTION

8 42 U.S.C. § 1983; U.S. Constitution, Amendment I

9 No Establishment of a Religion

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11 86. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as if fully set
12 forth herein.

13 87. Defendants have deprived and continue to deprive Plaintiff of his right to be free from
14 government hostility toward religion, as secured by the Establishment Clause of the First
15 Amendment to the United States Constitution, by excluding his religious symbol, beliefs and
16 expression, while including and allowing secular and religious symbols within the forum.

17 AS AND FOR A FIFTH CAUSE OF ACTION

18 Washington Constitution, Article I, Sections 5 and 8

19 Freedom of Speech and Due Process

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21 88. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as if fully set
22 forth herein.

23 89. Defendants have violated the Plaintiffs free speech rights under the Washington
24 Constitution Article I, §§ 5 and 8, by prohibiting Plaintiff's religious speech in a forum opened
25 for holiday symbols without any legal justification.

26 90. Defendants have engaged in view-point based discrimination without a compelling state
27 interest.

1 91. Defendants have engaged in content-based discrimination without a compelling state
2 interest.

3 92. Defendants have implemented unreasonable time, place and manner restrictions which
4 are unrelated to any legitimate government interest.

5 93. Defendants have engaged in an unconstitutional prior restraint on speech.

6 94. Defendants have implemented an unconstitutional licensing scheme by engaging in a
7 policy and practice of vesting its officials with unbridled discretion to prohibit expressive
8 activity.

9 95. As a direct result of Defendants illegal acts, Plaintiff has suffered and will continue to
10 suffer irreparable harm to his constitutional rights.

11 AS AND FOR A SIXTH CAUSE OF ACTION

12 Washington Constitution, Article I, Section 11

13 Freedom of Worship; Religious Liberty

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15 96. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as if fully set
16 forth herein.

17 97. Defendants have deprived and continue to deprive Plaintiff of his right to the free
18 exercise of religion, as secured by the Washington State Constitution Art. I, § 11, by
19 prohibiting Plaintiff from demonstrating his sincerely held religious beliefs through religious
20 expression.

21 98. Defendants' policy and acts have deliberately targeted Plaintiff's religion for exclusion
22 because his speech is a Christian symbol and have imposed a substantial burden on Plaintiff's
23 religious beliefs.

24 99. Defendants' discrimination is unrelated to any legitimate government interest.

25 100. As a direct result of Defendants illegal acts, Plaintiff has suffered and will continue to
26 suffer irreparable harm to his constitutional rights.

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Dated: December 26, 2006.

Respectfully submitted,

s/Byron J. Babione, *Lead Counsel*

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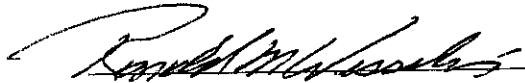
Local Counsel for Plaintiff

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VERIFICATION

I, Ronald Wesselius, a citizen of the United States and a resident of the State of Washington, have read the foregoing Verified Complaint for Temporary Restraining Order, Preliminary and Permanent Injunctive Relief, and Damages and declare under the penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this 26th day of December, 2006.



Ronald Wesselius