



February 28, 2011

By facsimile: 608-267-3842

Mike Huebsch, Secretary
Jodi Jensen, Executive Assistant
Wisconsin Dept of Administration
PO Box 7864
Madison, Wisconsin 53707-7864

Re: Rules for protesters and members of the public in Capitol Building

Dear Secretary Huebsch & Ms. Jensen:

Until today, the Capitol Police and other law enforcement agencies have exercised admirable restraint and professionalism in responding to the recent protests in Madison in a way that both protects public safety and permits peaceful protest. It now appears that the Department of Administration has taken over from professional law enforcement in dictating security rules. We are concerned that the newly emerging directives impose unwarranted content-based restrictions on those visiting the Capitol Building.

According to a Department of Administration press release, "No additional protesters will be allowed into the building until this situation is resolved." "This situation" appears to refer to the presence of some protesters in areas outside of a "designated area" within the building. We understand from press reports and other sources that no protesters are being allowed into the Capitol, but that other persons with "business" in the building are being allowed in. We also understand that only a small number of protesters, probably fewer than 100, remain in the building and that all are located in the rotunda. Thus, it would appear that any purportedly problematic "situation" has been resolved. We also understand that crews cleaned the Capitol last night, and that no obvious cleaning is going on in the building at this time. There are rumors that despite the lack of any ongoing

“situation” or need to clean the building, that DOA will continue to deny access to the Capitol Building to protestors, even during normal business hours.

These severe restrictions on access to the Capitol, which has traditionally been open to the public during regular working hours and while legislative business is being conducted, do not appear to be justified by any legitimate interest in security or public health. The Capitol is, at a minimum, a designated public forum. In such a forum, regulation of speech is subjected to strict scrutiny, so that “content-based restrictions must be narrowly drawn to effectuate a compelling state interest.” *Perry Educ. Ass’n v. Perry Local Educators’ Ass’n*, 460 U.S. 37, 45-46 (1983). Prohibiting protestors on either side of the debate from entering the Capitol during normal business hours or during legislative hearings or sessions, while allowing other persons with “business” in the Capitol to enter, is manifestly content-based and, hence, presumptively unconstitutional.

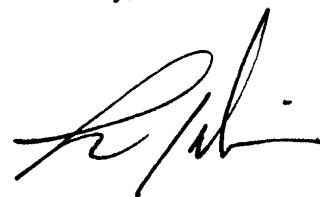
Pursuant to Wis. Stat. §§ 19.31 *et seq.*, and on behalf of the American Civil Liberties Union of Wisconsin Foundation, I hereby request that you provide any correspondence, emails, memoranda, directives or other communication reflecting current or future rules pertaining to persons protesting in the Capitol.

If any material responsive to this request is deemed to be exempt from disclosure, identify the material withheld and specify the asserted basis for the exemption. Please release all segregable portions of otherwise exempt material.

Please fax any responsive materials to me at (414) 272-0182. Please contact me as soon as possible about your plans to permit the peaceful protests to continue in the Capitol. I can be reached at (414) 272-4032, extension 12, or by email at ldupuis@aclu-wi.org.

Thank you very much.

Sincerely,

A handwritten signature in black ink, appearing to read 'L. Dupuis', with a stylized flourish at the end.

Laurence J. Dupuis
Legal Director