

THE HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

THOMAS MCCARTHY, PHAN
NGUYEN, ELIZABETH RIVERA
GOLDSTEIN, LEAH COAKLEY,
PATRICK EDELBACHER, and
CHARLES BEVIS,

Plaintiffs,

vs.

JAMES BARRETT, individually and in his
Official Capacity as a SERGEANT of the
TACOMA POLICE DEPARTMENT;
HANNAH HEILMAN, individually and in
her Official Capacity as an OFFICER of the
TACOMA POLICE DEPARTMENT;
ALAN ROBERTS, individually and in his
Official Capacity as a LIEUTENANT of

Case No. 3:09-cv-5120-RBL

**FIRST AMENDED COMPLAINT FOR
DAMAGES, DECLARATORY AND
INJUNCTIVE RELIEF FOR CIVIL
RIGHTS VIOLATIONS**

JURY TRIAL DEMANDED

FIRST AMENDED COMPLAINT -- 1
Case No. 3:09-cv-5120-RBL

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the TACOMA POLICE DEPARTMENT;
 TODD KITSELMAN, individually and in
 his Official Capacity as a SERGEANT of
 the TACOMA POLICE DEPARTMENT;
 BARRY PARIS, individually and in his
 Official Capacity as a SERGEANT of the
 TACOMA POLICE DEPARTMENT;
 THOMAS STRICKLAND, individually
 and in his Official Capacity as a CAPTAIN
 of the TACOMA POLICE
 DEPARTMENT; MICHAEL MILLER,
 individually and in his Official Capacity as
 a CAPTAIN of the TACOMA POLICE
 DEPARTMENT; ROBERT SHEEHAN,
 individually and in his Official Capacity as
 an ASSISTANT CHIEF of the TACOMA
 POLICE DEPARTMENT; DONALD
 RAMSDELL, individually and in his
 Official Capacity as the CHIEF of the
 TACOMA POLICE DEPARTMENT;
 CITY OF TACOMA (TPD);

Defendants.

I. INTRODUCTION

1. This suit challenges the constitutionality of unlawful arrests and other restrictions imposed on anti-war demonstrators by the City of Tacoma through the Tacoma Police Department (the "City") in March 2007 at the Port of Tacoma in order to discourage and prevent Plaintiffs and other individuals from engaging in peaceful and lawful demonstrations. Specifically, Plaintiffs challenge the City's arbitrary policy of prohibiting demonstrators carrying backpacks or large containers from entering into fenced-off designated protest zones.

2. Plaintiffs seek damages for the Defendants' violations of their rights of free speech and association, to be free from unreasonable searches and seizures, and to equal protection. Defendants' conduct violated Plaintiffs' rights protected under the United States and Washington State Constitutions. Plaintiffs seek a declaration that the City's policy prohibiting demonstrators carrying backpacks from entering designated protest zones was unconstitutional both facially and as applied to Plaintiffs, and that Defendants' unjustified and unauthorized surveillance of Plaintiffs is an unconstitutional disturbance of their lawful private affairs in violation of Article 1, section 7 of the Washington State Constitution. Plaintiffs also seek injunctive relief enjoining Defendants from intruding on Plaintiffs' constitutionally protected private affairs and from interfering with Plaintiffs' right to free speech and association.

II. JURISDICTION

3. This is an action for money damages, and for declaratory and injunctive relief, brought under 42 U.S.C. § 1983 and 28 U.S.C. §§ 2201-02.

4. This Court has original jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343.

5. This Court has supplemental jurisdiction over related claims arising under state law pursuant to 28 U.S.C. § 1367(a).

6. Venue is proper in this District under 28 U.S.C. § 1391(b)(1)-(2) because the relevant facts giving rise to plaintiff's claims occurred in this District and Plaintiffs are

1 informed and believe, and on that basis allege, that each of the named Defendants reside in
2 this judicial district.

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7 **III. PARTIES**

8 7. Plaintiffs Thomas McCarthy, Phan Nguyen, Elizabeth Rivera Goldstein, Leah
9 Coakley, and Patrick Edelbacher are residents of the State of Washington and are all actively
10 engaged in the peace and anti-war movement in Washington state. They all have
11 participated in demonstrations and actions protesting the militarization of the ports in the
12 Puget Sound area as part of the movement known as Port Militarization Resistance. They
13 have continued to participate in anti-war and other demonstrations and events, and intend to
14 do so in the future, but they fear that they have become targets of unjustified and
15 unauthorized surveillance of their private affairs by Defendants and others, and as such, fear
16 that they will be targeted for unlawful stops, arrests and prosecution at future
17 demonstrations.

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21 8. Plaintiff Charles Bevis is a resident of the state of Minnesota and participated in
22 peace and anti-war demonstrations in the Puget Sound Area, including in the City of
23 Tacoma when he lived in Washington state. Defendants' actions at the Port of Tacoma
24 caused Mr. Bevis to be more frightened of police and the potential for arbitrary and
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1 unjustified police actions, and as a result, Mr. Bevis did not participate in demonstrations for
2 approximately two years after the unlawful arrest by Defendants.

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4 9. Defendant City of Tacoma, Washington is a municipal corporation.

5 10. Defendant Donald Ramsdell is, and was at all times pertinent to this suit, the Chief of
6 the Tacoma Police Department, (the "TPD") acting within the scope of his duties. The chief
7 of police has authority to create municipal policy for the City of Tacoma regarding law
8 enforcement responses to political demonstrations. Defendant Ramsdell is sued in his
9 individual and official capacities. Defendant Ramsdell approved and ratified the "no
10 backpack" policy and approved and directed the City's practice of engaging in unjustified
11 and unauthorized surveillance of lawful demonstrators and implementing tactics to
12 discourage anti-war protesters from demonstrating in the City of Tacoma.
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15 11. Defendant Robert Sheehan is, and was at all times pertinent to this suit, the Assistant
16 Chief of the Tacoma Police Department acting within the scope of his duties. On
17 information and belief, the assistant chief of police has authority to create municipal policy
18 for the City of Tacoma regarding law enforcement responses to political demonstrations.
19 Defendant Sheehan is sued in his individual and official capacities. Defendant Sheehan
20 participated in the development of, and approved the "no backpack" policy and participated
21 in and directed the City's practice of engaging in unjustified and unauthorized surveillance
22 of lawful demonstrators and implementing tactics to discourage anti-war protesters from
23 demonstrating in the City of Tacoma.
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1 12. Defendants James Barrett and Barry Paris are, and were at all times pertinent to this
2 suit, Tacoma Police Sergeants and acting within the scope of their duties. Defendants are
3 sued in their individual and official capacities. Defendant Barrett was the Assistant Tactical
4 Commander of the Disorder Response Team and assisted as on scene commander for the
5 law enforcement officers at the Port of Tacoma designated protest area. Defendant Barrett
6 recommended the adoption of the no backpack policy. Defendant Paris instructed other
7 Tacoma Police officers to implement the no backpack policy on March 9, 2007, and directed
8 the arrest of individuals who failed to comply, including the arrest of Plaintiff Thomas
9 McCarthy.
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12 13. Defendant Alan Roberts is and was at all times pertinent to this suit, a Tacoma
13 Police Lieutenant and acting within the scope of his duties. Defendant Roberts is sued in his
14 individual and official capacity. Defendant Roberts was an on-scene commander for the law
15 enforcement officers at the Port of Tacoma designated protest area and participated in the
16 development and approval of the no backpack policy.
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19 14. Defendants Michael Miller and Thomas Strickland are and were at all times pertinent
20 to this suit, Tacoma Police Captains and acting within the scope of their duties. Defendants
21 are sued in their individual and official capacities. Defendants Miller and Strickland were on
22 scene incident commanders during the March 2007 port protests. They participated in the
23 development and approval of the no backpack policy, and directed its implementation
24 resulting in the unlawful arrests of Plaintiffs.
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1 15. Defendant Todd Kitselman is, and was at all times pertinent to this suit, a Tacoma
2 Police Sergeant and acting within the scope of his duties. Defendant Kitselman is sued in
3 his individual and official capacities. Defendant Kitselman directed the arrests of Plaintiffs
4 Nguyen, Goldstein, Coakley, Edelbacher and Bevis on March 11, 2007.
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6 16. Defendant Hannah Heilman is and was at all times pertinent to this suit a Tacoma
7 Police Officer and acting within the scope of her duties. Defendant Heilman is sued in her
8 individual and official capacity. Defendant Heilman arrested Plaintiff McCarthy.
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10 IV. FACTS

11 The Plaintiffs

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13 17. Plaintiff Thomas McCarthy was born on the Fort Lewis military base and his father
14 was a career military officer. He became involved in the anti-war movement in part because
15 he sees the brunt of the war hitting soldiers and their families the hardest. He has been
16 involved in United for Peace in Pierce County and other groups in the Tacoma area. He has
17 participated in and helped organize various peace and anti-war efforts, including Port
18 Militarization Resistance events and a large peaceful demonstration marking an anniversary
19 of the war in Iraq.
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22 18. Plaintiff Phan Nguyen is an active member and organizer of various peace and anti-
23 war groups in the Puget Sound area. Plaintiff Nguyen has participated in the Port
24 Militarization Resistance movement since its inception, testifying at Port Commission
25 meetings and assisting with a phone campaign to express objection to the use of the Port of
26

1 Olympia for deployment of military equipment. Mr. Nguyen has encouraged others to
2 participate in lawful demonstrations protesting the militarization of the ports.

3 19. Plaintiff Elizabeth Rivera Goldstein is an active participant in peace and anti-war
4 demonstrations and efforts locally and internationally. She is the founder of an organization
5 called Teen Peace Project, which does counter-recruiting work and provides education about
6 conscientious objector status. In February 2007, Plaintiff Goldstein helped organize rallies
7 and protests outside of the Fort Lewis Military Base. She has also worked with the National
8 Network Opposing the Militarization of Youth and was recently given a "Woman of Peace"
9 award from an Italian peace organization.
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12 20. Plaintiff Leah Coakley lives in the City of Tacoma and is an active participant in the
13 peace and anti-war movement. She has attended events supporting Port Militarization
14 Resistance and has been involved with the Industrial Workers of the World. She became
15 interested in activism in college. The March 2007 Port protests were the first time Plaintiff
16 Coakley had participated in a port action.
17

18 21. Plaintiff Patrick Edelbacher is a resident of the City of Tacoma and an active
19 participant and organizer of peace and anti-war actions in the area. He became involved in
20 peace activism in high school and initiated a Students for Democratic Society chapter at the
21 University of Puget Sound upon relocating to Tacoma.
22

23 22. Plaintiff Charles Bevis presently resides in Minnesota. He first got involved in
24 activism by participating in a "School of the Americas" protest. He came to the Puget Sound
25 area in 2006 and participated in various peace and anti-war actions. He was surprised at the
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1 aggressive and arbitrary law enforcement response to the lawful protests at the Port of
2 Tacoma.

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5 **Preparations for the March 2007 Anti-War Protests at the Port of Tacoma**

6 23. Upon information and belief, sometime in late 2006 or early 2007, the U.S. military
7 decided to deploy Fort Lewis Stryker Brigade vehicles to the war in Iraq, using the Port of
8 Tacoma in Tacoma, Washington.

9
10 24. At least as early as February 2007, the U.S. Military provided information and a
11 "Threat Assessment" to local law enforcement, including the Tacoma Police Department,
12 regarding expected anti-war and anti-military protests in response to the shipment of
13 military equipment.

14
15 25. A February 23, 2007 "Threat Assessment," provided by the U.S. Military to the TPD
16 explained that anti-war and anti-military recruiting efforts, including large scale
17 demonstrations, were continuing in the Pacific Northwest. It stated that "Olympia based
18 anti-war and anti-port militarization groups and individuals are planning peaceful civil
19 disobedience actions" in the event the Stryker Brigade was deployed through the Port of
20 Olympia.

21
22 26. The February 23, 2007 Threat Assessment identified "An anti-war or anti-military
23 event staged to gain media attention (i.e. banner hanging, signage, demonstration)" as the
24 "Most likely Threat COA [Course of Action]." The assessment included a section titled
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1 “Anti-war Protests Mitigation,” which included the statement: “(4) Consider early morning
2 and late night operations.”

3 27. In the weeks and months prior to the deployment of military vehicles, and at least as
4 early as February 2007, the Tacoma Police Department began sharing information about the
5 expected deployment of military vehicles during “Homeland Security Committee
6 Meetings.”

7
8 28. On information and belief, at TPD Homeland Security Committee Meetings and at
9 other meetings, strategies were devised by TPD officials, and in collaboration with other law
10 enforcement agencies, to spy on the individuals and groups involved in planning, organizing
11 and participating in protests against the use of the Port for military shipments with the intent
12 of anticipating and suppressing the planned expression and with the intent and effect of
13 chilling the First Amendment Rights of those individuals and groups.

14
15 29. At least as early as February 2007, the TPD learned that the Stryker vehicles would
16 be deployed through the Port of Tacoma on March 2 – 9, 2007, during the hours of 11 p.m.
17 to 5 a.m. On information and belief, those hours were chosen in part to deter individuals
18 from engaging in lawful demonstrations against militarization of the Port.

19
20 30. Upon learning that individuals planned to engage in anti-war demonstrations at the
21 Port of Tacoma, the TPD established a policy and practice of deliberately driving peaceful
22 and lawful protests out of the Port of Tacoma. They did this by using deliberately excessive
23 and unnecessary force, instituting unduly restrictive “designated protest zones,” arbitrarily
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1 adjusting the limits and rules for the protest zones, and implementing a policy prohibiting
2 demonstrators carrying backpacks from entering the designated protest zones.

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5 **The Port Protests and Police Response: March 3 through March 14, 2007**

6 31. On Friday, March 2, 2007, several individuals involved in the Port Militarization
7 Resistance movement, including Plaintiffs Edelbacher and Coakley, gathered at a coffee
8 house near Fort Lewis in order to discuss plans for expressing their opposition to the use of
9 the Port of Olympia for the deployment of military equipment to the war in Iraq. Plaintiffs
10 and others believed the military would be deploying Stryker vehicles through the Port of
11 Olympia as had been done in 2006.

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13 32. Sometime on Friday, March 2, 2007, Plaintiffs Edelbacher, Coakley and others
14 learned that the military was transporting the Stryker vehicles to the Port of Tacoma, not the
15 Port of Olympia.

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17 33. On Friday, March 2, 2007, a small number of demonstrators gathered at the Port of
18 Tacoma to protest the militarization of the Port.

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20 34. After learning that the military equipment would be deployed through the Port of
21 Tacoma, on March 3, 2007, Plaintiff Nguyen and others contacted various peace and anti-
22 war activists and groups and encouraged individuals to participate in lawful demonstrations
23 at the Port of Tacoma.

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25 35. On Saturday, March 3, 2007, approximately 30 demonstrators participated in protests
26 at the Port of Tacoma. Demonstrators were able to park their cars in available parking areas

1 along Milwaukee Way and nearby streets, but Defendants restricted expressive activities to a
2 designated area on the east side of Milwaukee Way.

3 36. On Saturday night, Defendants restricted demonstrators to the area behind the white
4 painted fog line on the east side of Milwaukee Way across from the entrance to the holding
5 area where the Strykers were temporarily parked. The demonstrators stood on the shoulder
6 of the road, cabined between the fog line and a permanent chain-link fence bordering the
7 east side of the road. A line of police dressed in riot gear advanced and stood directly in
8 front of the protesters each time a Stryker vehicle approached from either the north or the
9 south. The vehicles proceeded along the road behind the police and entered the holding area
10 located opposite the designated protest zone without incident. There were no arrests of
11 protesters on Saturday night.

12 37. In late evening on Sunday, March 4, 2007, demonstrators returned to the Port of
13 Tacoma to continue the protests against the military shipments. Upon arriving at the Port,
14 demonstrators learned that they were no longer permitted to park along Milwaukee Way.
15 Defendants had put up "no parking" signs prohibiting parking on Milwaukee Way between
16 Lincoln Avenue and East 11th Street.

17 38. Approximately 40 people participated in demonstrations on Sunday evening and into
18 the early hours of Monday, March 5, 2007. They were again restricted to a designated area
19 on the East side of Milwaukee Way behind the fog line. The demonstrators' movement north
20 and south along the side of Milwaukee Way was also restricted. The south edge of the
21 designated protest zone was marked by a row of Tacoma police officers on bicycles. Each
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1 time a Stryker vehicle approached from the south, the bicycle officers stood their bicycles on
2 their back wheels and used the wheels of their bicycles to push demonstrators further north,
3 out of the sight of the persons driving the Stryker vehicles.
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5 39. In the early morning hours of Monday, March 5, 2007, three individuals who were
6 caught in the corner wedge between the line of police in riot gear and the bicycle officers
7 were arrested by Defendants. At the same time as Defendants were arresting the three
8 individuals, Defendants deployed tear gas and rubber bullets against all assembled
9 demonstrators, driving them out of the area.
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11 40. Demonstrations continued on Monday, Tuesday, Wednesday and Thursday nights at
12 the Milwaukee Way protest area. The number of participants varied each evening, with
13 approximately 100 participating on Monday evening, and approximately 12 participating on
14 Thursday evening.
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16 41. During demonstrations on Wednesday and Thursday nights, Defendants' restricted
17 individuals' ability to participate in demonstrations by imposing the arbitrary and unjustified
18 restriction on persons carrying backpacks and large containers.
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20 42. In the afternoon on Friday, March 9, 2007, Plaintiffs Nguyen, Edelbacher, Coakley,
21 Goldstein and others attended a meeting at the University of Puget Sound where hundreds
22 gathered to express their opposition to the use of area ports for deployment of military
23 equipment to the war in Iraq. During the meeting, individuals discussed plans to engage in
24 lawful demonstrations at the Port of Tacoma that night.
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1 43. When demonstrators returned to the Port on the evening of Friday, March 9, 2007,
2 they found that Defendants had barricaded off Milwaukee Way at the intersection of
3 Milwaukee Way and Lincoln Avenue, preventing demonstrators from approaching the
4 previously designated protest zone, even on foot.

5
6 44. Defendants had created a new designated protest zone near the corner of East 11th
7 Street and Thorne Road. Defendants also posted no parking signs on both sides of Thorne
8 Road between East 11th Street and Lincoln Avenue, preventing individuals from parking
9 their cars near the entrance to the designated protest zone.

10
11 45. On Friday night, the designated protest zone at East 11th Street and Thorne Road was
12 approximately one block long and the width of the street. It was enclosed by a temporary
13 fence and barricades set up by Defendants across East 11th Street, marking the western
14 border of the zone. The zone was bordered on its northern edge by a permanent chain-link
15 fence coinciding with the north side of East 11th Street, which was extended by a temporary
16 fence erected by Defendants. The zone was closed off on its eastern side by police cars
17 blocking East 11th Street and several police officers. The south side was bordered by the
18 edge of East 11th Street. Law enforcement officers dressed in riot gear stood behind the
19 fences and barricades on the western and northern edges of the zone. Additional law
20 enforcement officers were located on East 11th Street on the south side of Thorne Road.
21 Plaintiffs and others could see snipers with weapons pointing toward the demonstrators
22 posted on buildings on the south side of East 11th Street. The entire designated protest zone
23 area was flooded by stadium lights that had been temporarily set up by Defendants.
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1 46. The demonstrators in the designated protest zone were not visible by individuals
2 involved in loading the military vehicles onto the ship for deployment to the war in Iraq. A
3 loading area, a wide parking lot, several trees and a chain-link fence lay between the ship
4 and the designated protest zone, obstructing any view of the demonstrators.
5

6 47. The only entry and exit point for the designated protest zone was at the intersection
7 of East 11th Street and Thorne Road, where Defendants had established a backpack
8 checkpoint.
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10 48. On Friday night, the checkpoint at East 11th Street and Thorne Road consisted of two
11 police cars set up across the street and was manned by Tacoma Police Officers.

12 49. During the Friday evening protest and into Saturday morning, approximately 300
13 people participated in the demonstrations.
14

15 50. Plaintiffs Thomas McCarthy, Phan Nguyen, Liz Goldstein, Patrick Edelbacher, Leah
16 Coakley, Charles Bevis and others went to the Port on the evening of March 9, 2007 in order
17 to participate in a peaceful and lawful demonstration.

18 51. Plaintiffs Nguyen, Goldstein and others were permitted to enter the designated
19 protest zone only after they had found a place to store their backpacks.
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21 52. Plaintiff Goldstein had brought her asthma medication but was forced to leave it in
22 the car because backpacks were not permitted.
23

24 53. As Plaintiff McCarthy approached the checkpoint at East 11th Street and Thorne
25 Road in order to enter the designated protest zone, he was instructed that he could not enter
26 unless he surrendered his backpack, which contained food, water, and medical supplies.

1 54. When he objected to surrendering his property without legal justification, and
2 attempted to continue into the protest area with his backpack, Plaintiff McCarthy was
3 arrested by Tacoma Police Officer Hannah Heilman, at the direction of Defendant Paris.

4 55. Defendant Paris had instructed Officer Heilman and other officers earlier that day
5 that any person carrying any backpack or large bag was not permitted in the designated
6 protest zone, and that any person who failed to comply with an order to surrender his or her
7 backpack was to be arrested for obstructing a public servant.
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9 56. Upon information and belief, the policy to prohibit persons carrying backpacks from
10 entering the designated protest zone was made by Defendants Roberts, Strickland, Barrett,
11 Miller, Kitselman, and others and was ratified and approved by Defendants Sheehan and
12 Ramsdell.
13

14 57. The policy prohibiting any person carrying a backpack or large bag from entering the
15 fenced off designated protest zone was later "justified" based on a claim that the police had
16 found an abandoned backpack near the original designated protest zone on Milwaukee Way
17 containing locks and chains, which were described by the police as materials that would
18 allow participants to lock themselves to a fence.
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20 58. After his arrest, Plaintiff McCarthy was taken to the Pierce County Jail, held until the
21 following afternoon and released only after he posted bail.
22

23 59. Upon information and belief, sometime after Plaintiff McCarthy was arrested and
24 taken away, the police stopped enforcing the backpack ban and other demonstrators were
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1 allowed to bring backpacks into the area freely for the rest of the evening of March 9, 2007
2 and into the morning of Saturday March 10, 2007.

3 60. In or around the early morning hours of Saturday, March 10, 2007, Plaintiffs
4 Coakley, Edelbacher, Nguyen, Bevis and other demonstrators left the designated protest
5 zone and walked in a group south on Thorne Road toward Lincoln Avenue, and then west on
6 Lincoln Avenue toward the intersection of Milwaukee Way and Lincoln Avenue.
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8 61. As they approached the intersection of Milwaukee Way and Lincoln Avenue,
9 Plaintiffs Edelbacher and Coakley saw other demonstrators sitting and singing in the road in
10 front of barricades that blocked access to Milwaukee Way. Large numbers of law
11 enforcement officers dressed in riot gear were standing behind the barricades. After about
12 twenty-five minutes, Plaintiffs heard officers arresting some individuals and then heard
13 shots fired and saw tear gas canisters and rubber bullets flying toward them and the other
14 demonstrators.
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16 62. Plaintiffs Coakley and Edelbacher ran south on Milwaukee Way back to their car to
17 escape the tear gas and rubber bullets. They waited in their car until officers permitted them
18 to leave the area.
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20 63. Plaintiff Nguyen was near the end of the group of demonstrators as they approached
21 the intersection of Milwaukee Way and Lincoln Avenue. He heard and saw tear gas and
22 rubber bullets being fired at the demonstrators in front of him. He continued forward to see
23 if anyone needed help, and was standing nearby when a second round of tear gas was fired.
24 He did not leave immediately because the tear gas was being shot over his head, blocking
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1 his way out of the area. When he saw tear gas come directly at him, Plaintiff Nguyen ran
2 east on Lincoln Avenue together with other demonstrators to escape the gas and bullets. Mr.
3 Nguyen and others were blocked by officers coming west on Lincoln Avenue. Mr. Nguyen
4 asked permission of the officers to return to the parking area on Milwaukee Way south of
5 Lincoln Avenue in order to find the person he had carpooled with that night. Plaintiff Bevis
6 was also separated from the people he shared a ride with when he ran to escape the tear gas,
7 and had to wait for a long time to be reunited with them.
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10 64. Demonstrators returned to the Port on Saturday night, in much smaller numbers.

11 65. On the afternoon of Sunday, March 11, 2007, a group of approximately 50 to 100
12 demonstrators, including Plaintiffs Nguyen, Goldstein, Coakley, Edelbacher and Bevis, went
13 to the Port of Tacoma to continue the demonstration against the militarization of the Port.
14

15 66. Plaintiffs Nguyen, Goldstein, Coakley, Edelbacher and Bevis and the other
16 demonstrators were stopped by Defendants at a checkpoint, set up this time near the
17 intersection of East 11th and Thorne Road.
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19 67. Defendant Kitselman had directed officers to arrest any person carrying a backpack
20 who attempted to cross the checkpoint.

21 68. Plaintiffs and other individuals who attempted to enter the protest zone with their
22 backpacks were carrying articles necessary to them and the demonstration, including food,
23 water, and medical supplies, along with articles of a specifically symbolic nature including
24 copies of the U.S. Constitution and a teddy bear.
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1 69. Plaintiff Goldstein's backpack, in addition to the above mentioned teddy bear,
2 contained legal documents related to a military case relevant to why she was there, Maalox
3 and vinegar soaked rags to protect herself in the event the police again used tear gas, and
4 medicine, including her asthma inhaler and her Doctor prescribed thyroid medicine.
5

6 70. Plaintiff Coakley offered to allow the police to search her backpack and was told that
7 they could not search it because it would be "illegal" to search her backpack without
8 probable cause. Her backpack contained a plastic unicorn, bandaids, medical supplies and
9 political buttons and also functioned as her sign for the day, with anti-war messages written
10 on the outside of the pack.
11

12 71. Plaintiff Bevis's backpack contained a few books, a water bottle, and some writing
13 utensils. These materials were things that he carried for school, were related to work he
14 needed to do that day, and were too heavy to carry by hand.
15

16 72. Plaintiff Goldstein, Nguyen, Coakley, Edelbacher and Bevis were arrested by
17 Tacoma Police officers at the direction of Defendant Kitselman pursuant to the unlawful no
18 backpack policy.
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20 73. All of the individuals arrested on March 11, 2007, including Plaintiffs Goldstein,
21 Nguyen, Coakley, Edelbacher and Bevis, were held at the scene on a bus and taken to a
22 police station for booking. This process took approximately four hours. They were then
23 transferred to Pierce County Jail and held approximately another eight hours without access
24 to food or medical attention before being cited and released at approximately 3:00am.
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1 74. Upon information and belief, Plaintiffs and others were held longer than necessary
2 during booking and at the jail at the direction of Defendants in order to prevent them from
3 returning to the Port and participating in the demonstrations which had continued into early
4 morning hours on several occasions.
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6 75. Plaintiff Nguyen's keys and wallet were taken at the time of arrest, and his keys were
7 never returned to him; Plaintiff Goldstein's driver's license was taken and was never
8 returned to her; and Plaintiff Bevis's keys, wallet and phone were taken and not returned for
9 three days, causing each considerable difficulty.
10

11 76. On information and belief, the police had no consistent guidelines for determining
12 what types of packs, purses and other containers were subject to the arbitrary prohibition on
13 persons carrying backpacks. The arbitrariness of the rule and its implementation disoriented
14 demonstrators who were unable to predict whether they would be permitted to enter the
15 designated protest zones on any given day or at any particular time. There were no written
16 policies, regulations or guidelines which set forth the rule or which guided the officers
17 applying the rule.
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20 77. On Thursday, March 8, 2007, Plaintiff Nguyen approached a checkpoint established
21 by Defendants at the intersection of Milwaukee Way and Lincoln Avenue carrying only an
22 umbrella and was directed by an officer to open it and demonstrate that nothing was hidden
23 inside before he was permitted to enter the designated protest zone then located on
24 Milwaukee Way.
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1 78. On information and belief, on Friday night and early Saturday morning, some of the
2 bags that were stored by demonstrators in the area outside the checkpoint were confiscated
3 by Tacoma Police.

4
5 79. The police arbitrarily refused to look inside backpacks when individuals attempted to
6 demonstrate that their packs contained no threatening, unlawful or dangerous items.

7 80. In the arrest reports from these specific incidents, and in an "Antiwar Protest Report"
8 from Defendant Chief Ramsdell to the Tacoma City Manager, Defendant Ramsdell noted
9 that the articles contained in the prohibited backpacks were legal and could be brought in,
10 only the bags could not, despite the fact that it would be extremely difficult, if not
11 impossible, for the demonstrators to carry all of their necessary and symbolic items without
12 a container.
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15 81. The police have never reported that anyone tried to bring any sort of weapon or
16 dangerous article of any kind into the fenced off designated protest area at East 11th Street
17 and Thorne Road, in any manner, let alone in a bag or backpack.

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19 82. There was never any evidence that any of the backpacks that individuals attempted to
20 carry with them into the fenced-off designated protest zone contained illegal items of any
21 kind.

22 83. There was no individualized suspicion that any of the individuals who were
23 prohibited from entering the designated protest zone with a backpack were carrying
24 anything dangerous or illegal.
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1 84. On March 12, 2007, approximately 60 individuals returned to the Port to
2 demonstrate and were again hit with tear gas and chased away from the protest area by
3 Defendants.

4
5 85. The arrests of Plaintiffs and others during the protests at the Port, and the
6 justifications for them were arbitrary and unpredictable.

7 86. The changes in tactics over the course of the protests were made by Defendants, in
8 the words of Defendant Barrett, "to take the opposition by surprise, it's like a football game,
9 you want to keep the other side off balance."
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11 87. Defendants Miller, Strickland, Roberts, Barrett, Kitselman and others made the
12 changes on the ground in direct consultation and with the approval of Defendants Sheehan
13 and Ramsdell.
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15
16 **The Charges and Prosecution of Plaintiffs**

17 88. When Plaintiffs were arrested, they were told they were being arrested for
18 obstructing a law enforcement officer. The arrest reports for Plaintiff McCarthy, dated
19 March 9, 2007, and for Plaintiffs Goldstein, Nguyen, Coakley, Edelbacher and Bevis, dated
20 March 11, 2007, state that Plaintiffs were arrested for "Obstruction Or/Hinder Public
21 Servant."
22

23 89. Plaintiffs later received notice that they were being prosecuted for Disobeying a
24 Police Officer with Authority to Direct, Control or Regulate Traffic in violation of RCW
25 46.61.015(1).
26

1 90. On motion by counsel for then-defendants McCarthy, Goldstein, Coakley,
2 Edelbacher and Bevis, and by Mr. Nguyen, acting pro-se, the charges were dismissed
3 against each Plaintiff with prejudice by the Tacoma Municipal Court.
4

5 91. The City of Tacoma appealed the dismissals to the Pierce County Superior Court.
6 The Superior Court affirmed the dismissal of the charges but reversed and remanded with
7 instruction that the dismissal be without prejudice to file again if another charge was
8 applicable.
9

10 92. The City of Tacoma did not file new charges against any of the Plaintiffs based on
11 the arrests at the Port during March 2007.

12 93. In the meantime, however, the prosecution and appeal had dragged on for more than
13 a year causing Plaintiffs to lose income and expend a significant amount of time and money
14 to vindicate their rights.
15

16
17 **Continuing Pattern of Attempts to Chill Plaintiffs' Association and Speech**

18 94. On information and belief, following the March 2007 protests at the Port of Tacoma,
19 Defendants engaged in even more extensive and pervasive surveillance of Plaintiffs and
20 other anti-war activists and shared information about Plaintiffs and others with various other
21 entities, including other state, local and federal law enforcement agencies, and branches of
22 the U.S. military.
23
24
25
26

1 95. On information and belief, Tacoma Police officers and others, including Retired
2 Sergeant Richard Caron, Lieutenant Corey Darlington and Regional Intelligence Group
3 Analyst Gary Smith, engaged in, and directed others to engage in, unauthorized surveillance
4 of Plaintiffs' and others' lawful private affairs based on Plaintiffs' involvement in, and
5 association with lawful anti-war activities. On information and belief, this surveillance
6 included attendance at activist planning meetings, monitoring activist listserves and
7 websites, and collecting and monitoring license plate and other personally identifying
8 information.
9
10

11 96. On information and belief, this surveillance was conducted without any reasonable
12 suspicion of criminal activity by Plaintiffs, and the information collected in this surveillance
13 was shared with other state, local and federal entities and was used as a basis for imposing
14 unjustified and unconstitutional restrictions on Plaintiffs' free speech at the Port of Tacoma
15 and other demonstrations.
16

17 97. On information and belief, relying in part on the information gathered about
18 Plaintiffs and others, Defendants planned and implemented increasingly restrictive
19 limitations on lawful demonstrations at the Port of Tacoma in 2008 and 2009.
20

21 98. Prior to a deployment of military vehicles and equipment through the Port of Tacoma
22 in July 2008, Defendants gathered and shared information about individuals planning to
23 engage in anti-war demonstrations, and without justification, Defendants planned to "disrupt
24
25
26

1 pre-protest activities by conducting high profile patrols, stops and contacts in the offload and
2 protest areas prior to the actual offload events.”

3 99. Plaintiff McCarthy fears that he has been identified as an “organizer” by local law
4 enforcement and as such, is targeted for unjustified police interference and arbitrary and
5 unlawful arrest in order to discourage him from participating in and organizing anti-war
6 demonstrations.
7

8 100. Plaintiff Nguyen fears that he has become the target of law enforcement surveillance
9 and that information about his involvement in organizing and participating in anti-war
10 demonstrations is shared by Tacoma Police Department and other local, state and federal
11 entities. He fears that he will be the target of future unjustified arrests and other attempts to
12 discourage his participation in lawful demonstrations.
13
14

15 101. In July 2008, Plaintiff Nguyen wanted to protest the militarization of the Port, but
16 decided not to return to site of deployment at the Port because he heard that Defendants
17 were again restricting and searching backpacks and things carried by demonstrators. In light
18 of Defendants’ actions during the 2007 protests, Plaintiff Nguyen feared that Defendants
19 would do whatever they wanted to do in order to deter demonstrators, including conducting
20 unlawful searches, stops and arrests, and/or restricting the location and manner of speech in
21 an arbitrary and unpredictable manner.
22

23 102. In February 2009, when military equipment was again deployed through the Port of
24 Tacoma, Plaintiff Nguyen decided not to return to the Port of Tacoma to engage in protests
25 because he believed that the Defendants’ unjustified restrictions on demonstrations made it
26

1 nearly impossible for him to express his intended message against the use of the Port for
2 deployment of military equipment.

3 103. Plaintiff Nguyen would like to organize future demonstrations against the
4 militarization of the ports at the Port of Tacoma and would do so if he believed Defendants
5 and others would abide by lawful, reasonable and predictable rules in maintaining the safety
6 of demonstrators and others.

7
8 104. Plaintiff Goldstein fears she has become the target of law enforcement surveillance
9 and fears that she has been and will be subjected to additional arbitrary and unjustified stops,
10 arrests and prosecutions by Defendants and others acting on information gathered and
11 shared by Defendants in light of their pattern and practice of constantly changing tactics and
12 unreasonable restrictions imposed on lawful demonstrations.

13
14 105. In July 2008, and in the spring of 2009, Plaintiff Goldstein wanted to demonstrate
15 again her opposition to the militarization of the Port of Tacoma, but decided not to return to
16 the Port because she feared, based on Defendants' actions during the 2007 protests, that it
17 was not a safe place to go.

18
19 106. Plaintiffs Coakley and Edelbacher went to the Port of Tacoma in July 2008 to
20 participate in the anti-war demonstrations. On information and belief, on their way home
21 from the demonstration, Plaintiffs Coakley and Edelbacher were followed by a Tacoma
22 Police Officer with no legal justification and with the intent and effect of discouraging them
23 from returning to the protest area.
24
25
26

1 107. In April 2009, Plaintiffs Coakley and Edelbacher went to the Port of Tacoma but
2 were stopped by Tacoma Police Department officials before they could enter the port area
3 and told that the area was closed off to any person who did not have a permit.

4 108. Plaintiff Coakley fears that she has become a target of unjustified law enforcement
5 surveillance and that she may be subjected to future unjustified and arbitrary arrests because
6 of Defendants' pattern and practice of unjustified aggressive responses to anti-war
7 demonstrators.
8

9 109. Plaintiff Edelbacher fears that he is also a target of unjustified law enforcement
10 surveillance and may also be subjected to additional unjustified arrests and other intrusions
11 on his rights of association and expression based on the Defendants' pattern and practice of
12 discouraging and suppressing lawful anti-war demonstrations.
13
14

15 **V. CAUSES OF ACTION**
16 **FIRST CAUSE OF ACTION**

17 **Violation of Civil Rights --- 42 U.S.C. § 1983**

18 110. Plaintiffs incorporate by reference, as if fully set forth herein, the allegations set forth
19 in paragraphs 1 through 108 above.

20 111. The Defendants' actions as related herein violated Plaintiffs' rights to free speech
21 and to participate in peaceful and lawful demonstrations, to petition the government and to
22 freely assemble with others to do so, to be free of unreasonable searches and seizure, to due
23 process and to equal protection of the law, as set forth in the First, Fourth and Fourteenth
24 Amendments of the Constitution of the United States.
25
26

1 112. At all times herein mentioned, Defendant City of Tacoma and individual Defendants
2 acted with deliberate intent to harass, disrupt, impede, and prevent intended participants in
3 the demonstrations in question from doing so, and to have them arrested, jailed and
4 prosecuted and participated in the creation of specific plan and policy to do so in order to
5 suppress Plaintiffs' lawful expression.
6

7 113. Defendants acted deliberately and in concert with each other and others to carry out
8 the campaign of chilling, disrupting and repressing the free speech rights of Plaintiffs.
9

10 114. In addition to ratifying and approving the unlawful arrests and unconstitutional
11 policy prohibiting backpacks, Defendants City of Tacoma, Ramsdell and Sheehan as well as
12 other police supervisors and command personnel failed to properly train, supervise, and
13 discipline officers who engaged in this conduct. The City's policy and failure to train and
14 supervise directly resulted in the harm to and arrest of Plaintiffs.
15

16 115. By restricting the area in which Plaintiffs could engage in anti-war demonstrations
17 and by preventing Plaintiffs from entering the designated protest zone, Defendants imposed
18 unconstitutional time, place and manner restrictions on speech in a traditional public forum
19 in violation of Plaintiffs' rights.
20

21 116. Plaintiffs and other demonstrators at the Port were targeted because their message
22 was disfavored by Defendants; the restrictions imposed were not narrowly tailored and did
23 not support any legitimate governmental interest and failed to leave ample alternative
24 channels for Plaintiffs and others to communicate their message of opposition of the use of
25 the ports for military shipments.
26

1 117. By arbitrarily enforcing the policy prohibiting demonstrators carrying backpacks
2 from entering into the fenced-off designated protest zones against each Plaintiff without any
3 legitimate governmental interest, Defendants imposed unconstitutional burdens and
4 restrictions on speech in a traditional public forum in violation of Plaintiffs' rights.
5

6 118. By arresting plaintiffs without probable cause and detaining them after arrest,
7 Defendants' violated Plaintiffs' right to be free of unreasonable searches and seizures.
8

9 119. By knowingly arresting Plaintiffs without probable cause and providing information
10 to prosecutors to induce them to prosecute Plaintiffs, Defendants acted to maliciously
11 prosecute Plaintiffs in retaliation for their expressive activity in violation of Plaintiffs' right
12 to free speech.
13

14 120. As a direct and proximate result of the violations of their Constitutional rights by
15 Defendants, and each of them, Plaintiffs suffered general and special damages as alleged in
16 this complaint.
17

18 121. The conduct of Defendants was willful, malicious, oppressive, and/or reckless, and
19 was of such a nature that punitive damages should be imposed in an amount commensurate
20 with the wrongful acts alleged herein.
21

22 **SECOND CAUSE OF ACTION**
23 **Declaratory Relief – Unconstitutional Backpack Policy**

24 122. Plaintiffs incorporate by reference, as if fully set forth herein, the allegations set forth
25 in paragraphs 1 through 120 above.
26

1 123. Plaintiffs are entitled to a declaration that the Defendants' policy prohibiting
2 demonstrators carrying backpacks from entering the designated protest zones was an
3 unconstitutional time, place and manner restriction on free speech in a traditional public
4 forum in violation of the First Amendment of the U.S. Constitution and Article 1, section 5
5 of the Washington State Constitution. It was not content neutral, and was not narrowly
6 tailored to support any legitimate government interest. The policy also vested
7 unconstitutional, unbridled discretion in City officials to determine what backpacks, bags
8 and other items were subject to the prohibition and when the prohibition would be enforced,
9 and was an unconstitutional search or seizure in violation of the First and Fourth
10 Amendments of the U.S. Constitution and Article 1, sections 5 and 7 of the Washington
11 State Constitution.
12
13
14

15 **THIRD CAUSE OF ACTION**

16 **Violation of the Washington State Constitution – Article 1, section 7**

17 124. Plaintiffs incorporate by reference, as if fully set forth herein, the allegations set forth
18 in paragraphs 1 through 122 above.

19 125. By engaging in unjustified and unauthorized surveillance of Plaintiffs' lawful private
20 affairs, including associations and meetings with others relating to peaceful and lawful anti-
21 war demonstrations, and by sharing the information obtained in surveillance with other state,
22 local and federal entities, Defendants' violated Plaintiffs' rights to be free from
23 governmental disturbance of their private affairs under Article 1, section 7 of the
24 Washington State Constitution.
25
26

1 126. Plaintiffs are harmed and their right to freely associate and assemble is chilled by
2 Defendants' actions.

3 127. Plaintiffs are entitled to a declaration that Defendants' continued surveillance
4 unsupported by any reasonable suspicion of criminal activity and motivated by Plaintiffs'
5 protected expression and association violates their rights under Article 1, section 7 of the
6 Washington State Constitution.

7
8 128. Plaintiffs are entitled to an order enjoining Defendants from engaging in surveillance
9 of their private affairs without reasonable suspicion to believe Plaintiffs are engaged in
10 criminal activity.
11

12
13 **FOURTH CAUSE OF ACTION**
14 **Tortious Conduct**

15 129. Plaintiffs incorporate by reference, as if fully set forth herein, the allegations set forth
16 in paragraphs 1 through 127 above.
17

18 130. By arresting and detaining Plaintiffs without probable cause and in order to chill or
19 suppress Plaintiffs' lawful, protected expression and by inducing prosecutors to charge
20 Plaintiffs for lawful actions without probable cause in order to chill or suppress their speech,
21 Defendants committed the torts of false arrest, false imprisonment, battery, assault,
22 intentional infliction of emotional distress, and malicious prosecution.
23

24 131. Defendants' tortious conduct caused Plaintiffs harm, including general and special
25 damages as alleged in this complaint.
26

1 132. Defendants' unlawful arrests of Plaintiffs in retaliation for their protected expression
2 caused Plaintiffs to suffer severe emotional distress, anxiety, fear, loss of sleep and other
3 physical harm.

4
5 133. As a direct and proximate result of Defendants' tortious conduct, Plaintiffs suffered
6 general and special damages as alleged in this complaint and had to expend personal
7 resources to hire counsel to vindicate them as well as expend a great deal of time and
8 disruption to their lives. The prosecution also further exacerbated the emotional distress,
9 anxiety, fear, loss of sleep and other physical harm to Plaintiffs and further disrupted their
10 lives.
11

12 134. The conduct of Defendants was willful, malicious, oppressive, and/or reckless, and
13 was of such a nature that punitive damages should be imposed in an amount commensurate
14 with the wrongful acts alleged herein.
15

16 135. Plaintiffs McCarthy, Edelbacher, Coakley, Nguyen and Bevis complied with state
17 tort claim procedures by submitting claims which were rejected or received no response.
18 This action was filed more than sixty days after presentation of the claims.
19

20 VI. JURY TRIAL DEMAND

21
22 136. Plaintiffs hereby demand a jury trial in this matter.
23
24
25
26

VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against the Defendants as follows:

- A. For general damages including pain and suffering together with special damages for Plaintiffs' reasonable and necessary legal expenses, bail, and medical expenses both past and future, and lost or converted property, the exact amount of all of which will be established at the time of trial;
- B. For punitive damages in an amount to be proven at trial pursuant to Federal law;
- C. For actual attorney's fees and litigation costs pursuant to 42 U.S.C. § 1988;
- D. For statutory attorneys fees and costs; and
- E. For a declaration that the Defendants' policy prohibiting demonstrators carrying backpacks from entering the designated protest zones was an unconstitutional time, place and manner restriction on free speech in a traditional public forum and vested unconstitutional, unbridled discretion in City officials in violation of the First Amendment of the U.S. Constitution and Article 1, section 5 of the Washington State Constitution;
- F. For a declaration that Defendants' continued surveillance unsupported by any reasonable suspicion of criminal activity and motivated by Plaintiffs' protected

1 association rights violates Plaintiffs' rights under Article 1, section 7 of the
2 Washington State Constitution;

3
4 G. To enjoin Defendants from conducting surveillance on individuals based on their
5 involvement in or association with others relating to protected expressive activities,
6 without reasonable suspicion of criminal activity;

7
8 H. For court supervised training and regulations requiring Defendant City of Tacoma
9 not to adopt procedures and policies and/or take actions designed to suppress First
10 Amendment activity and target participants therein, and not to target individuals and
11 groups based on political affiliations or perceptions thereof.
12

13 I. For such other and further relief as the Court deems just and proper.
14

15 DATED this 23rd day of September, 2009.

16 By: /s/ Evan L. Schwab

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