

Bennet D. Zurofsky
Attorney at Law
17 Academy Street, Suite 1010
Newark, NJ 07102
973-642-0885
bzurofsky@zurofskylaw.com

David Perry Davis
Attorney at Law
112 West Franklin Avenue
Pennington, NJ 08534
609-737-2222

Edward Barocas, Esq.
Jeanne LoCicero, Esq.
AMERICAN CIVIL LIBERTIES UNION OF NEW JERSEY
P.O. Box 32159
89 Market Street, 7th Floor
Newark, NJ 07101
(973) 642-2084

Co-Counsel for Plaintiff

OCCUPY TRENTON (an unincorporated
organization) and ALEXANDER HIGGINS,

Plaintiffs,

v.

RAYMOND L. ZAWACKI (in his official
capacity as Deputy Commissioner for Veterans
Affairs in the Department of Military and
Veterans Affairs), COL. RICK FUENTES (in
his official capacity as the Director of the New
Jersey State Police), JOHN DOES 1-11 (in
their official capacities), DEPARTMENT OF
MILITARY AND VETERANS AFFAIRS, and
NEW JERSEY STATE POLICE,

Defendants.

)
) SUPERIOR COURT OF NEW JERSEY
) MERCER COUNTY
) CHANCERY DIVISION
)
) Docket No.
)
) CIVIL ACTION
)
) **VERIFIED COMPLAINT AND**
) **DESIGNATION OF TRIAL COUNSEL**

Plaintiffs, through their undersigned attorneys, state their Complaint as follows:

PRELIMINARY STATEMENT

1. Plaintiffs bring this action under the New Jersey Constitution and through the New Jersey Civil Rights Act and other authority, to vindicate rights protected by the New Jersey Constitution and to enjoin the imposition of unlawful restrictions on the use of a public forum.

2. Specifically, Plaintiffs bring this suit: (1) to enjoin the enforcement of invalid *ad hoc* restrictions on the use of a public forum that were neither passed in compliance with the Administrative Procedures Act nor adopted by statute or ordinance or other proper authority but were created from whole cloth and imposed without authority by Defendants in response to Plaintiffs' use of the forum for their chosen speech activities, and (2) to challenge the unlawful seizure and confiscation of Plaintiffs' property, including among other items political signs, media equipment, food and small medical supplies by Defendants pursuant to those invalid policies.

VENUE

3. Venue is proper in Mercer County pursuant to R. 4:3-2(a) because Defendants are located in Mercer County and the events giving rise to the claims in this Complaint occurred in Mercer County.

PARTIES

4. Plaintiff OCCUPY TRENTON is an unincorporated organization that seeks to bring attention to the imbalance in our financial system and to ensure that politicians are as concerned about and responsive to citizens of our country without means or with moderate means as they are to those with the most. It maintains a website to view its live-streaming activities at: http://www.livestream.com/occupynj_statehouse

5. Plaintiff ALEXANDER HIGGINS is a freelance journalist. He is a contributor to Examiner.com, an online news reporting website, and has also contributed to YahooNews and

Before It's News. He is an also author of The Alexander Higgins Blog which reports on civil liberties issues and promotes environmental and peace activism.

6. Defendant Raymond L. Zawacki is the Deputy Commissioner of the Department of Military and Veterans Affairs. He is sued in his official capacity only.

7. Defendant Col. Rick Fuentes is the Superintendent of the New Jersey State Police. He is sued in his official capacity only.

8. Defendants John Does 1-3 were individuals who seized and confiscated Plaintiffs' property on October 14, 2011. They are sued in their official capacities only.

9. Defendant John Does 4-11 are officers of the New Jersey State Police who were present during the seizure of Plaintiffs' property on October 14, 2011. Three of their badge numbers are: 4173, 4398, and 5262. They are sued in their official capacities only.

10. Defendant Department of Military and Veterans Affairs is a state agency located in Trenton, New Jersey. It has claimed authority over use of Veterans Park on State Street in Trenton.

11. Defendant New Jersey State Police is a State Agency located in West Trenton, New Jersey. It is responsible for enforcing the law on State of New Jersey property.

12. Defendants, at all relevant times and as to all relevant actions described herein, were acting under the color of state law.

FACTUAL ALLEGATIONS

13. Occupy Trenton is an outgrowth of the "Occupy Wall Street" movement that began approximately one and a half months ago. The Occupy Trenton movement seeks to bring attention to the imbalance in our financial system and to ensure that politicians are as concerned about and responsive to citizens of our country without means or with moderate means as they are to those with the most.

14. Veterans Park is located on State Street in Trenton, directly across the street from the Statehouse, making it an appropriate and effective public forum at which Occupy Trenton can convey its message.

15. Veterans Park is open to all persons at all times and, like other parks, has been and is a quintessential public forum.

16. There are no permit requirements for the use of the park, nor are there any regulations or restrictions that have been promulgated pertaining to use of the park. The park does not close, but is available 24 hours a day for use or to just pass through. Because no regulations exist, persons using the park must simply comport generally with any applicable statutes or ordinances (such as prohibiting destruction of property, city noise ordinances, obstruction ordinances, etc.) that may exist.

17. In the front half of the park abutting State Street, there is a rotunda with a statue of Lady Victory in the center. Surrounding the Lady Victory statue is open pedestrian space, which is in turn surrounded by large amphitheater stepped-seating. Outside of the stepped-seating is more open pedestrian space, on the outsides of which are ledges. Further in from the ledges are plaques and story walls. The statue and story walls are part of the World War II Memorial on site. On the back half of the park (abutting Capital Street) are more pedestrian walkways, along with seating areas, bushes and more sculptures as part of the memorial. Pictures of the park are attached hereto as Exhibit 1.

18. For many years, on many occasions before and after the World War II Memorial was placed there, Veterans Park has been used for political, social and labor demonstrations. Often it is used for the overflow of demonstrations directly in front of the State House and on West State

Street. It is also used by demonstrators who simply wish to be visible across the street from the State House rather than directly on its doorstep.

19. A recent example of a demonstration in Veterans Park was a demonstration by a group known as NJ-CAN on August 8, 2011. NJ-CAN sought a permit approximately a week in advance at the State Police office in the State House and advised the police that they intended to set up at least one table to distribute literature, a microphone with an amplifier and to also erect a temporary canopy if there was inclement weather. The State Police initially responded that they did not believe the State of New Jersey controlled the park and that they knew of no permitting requirements or other restrictions on its use. NJ-CAN was eventually informed by the State that there was no permit requirement, no restrictions on erecting tables or a canopy, and no rules or regulations governing the use of the Veterans Park with the exception that NJ-CAN “clean up after” and “show respect”.

20. NJ-CAN held its demonstration on August 8, 2011, at which time it set up a table for the distribution of literature and spread signs all around Veterans Park, many of which were not held by or even close to any of the demonstrators. With the exception of a brief initial inquiry when NJ-CAN first set up, the State Police did not interfere with NJ-CAN’s activities in any way. Indeed, no one from the State Police or any other State agency made inquiry as to what the demonstrators were doing, how long they intended to stay, or anything else.

21. Occupy Trenton began its speech activities at the park on October 6, 2011. The “Occupy” movement encompasses a continuous presence at a location. Occupy Trenton participants are not normally sleeping at the park but, rather, maintain a continuous around-the-clock presence by rotating participants. At any one time, there have been as few as one participant or as many as 20 participants. Occupy Trenton participants have mainly located

themselves and their property right near the rotunda, on a seating section of the stepped-seating, or at a section of one of the ledges. Participants positioned themselves and their property so as not to obstruct other pedestrians' usage of or passage through the park. Signs are kept at the site so as to be available for use of additional participants and supporters who show up.

22. Part of the method and message of Plaintiff is to have a continuous around-the-clock, seven-days-per-week presence until the problems concerning the economic and political systems' failure to adequately address the needs and interests of "the 99%" who do not control the majority of wealth are responded to. As such, the ability to "live-stream" the rally, and to give 24-hour commentary and proof of the rally, is an essential part of Plaintiffs' speech activities.

23. Part of the message being conveyed by Occupy Trenton is that there is strength in the uniting and coming together of all of "the 99%" of persons who do not control the majority of the wealth. As such, the "Occupy" participants seek to connect to and associate with other "Occupy" participants around the country and around the globe. Again, they do so through "live-streaming" their activities on the Internet and engaging in running commentaries and "live chats" on the Internet. Therefore, the computerized, Internet-based live-streaming conveyance of the protest is as important, or more important, to Plaintiffs than the conveyance of their message to Trenton's pedestrians or motorists via the holding of signs.

24. Plaintiff HIGGINS is one of the individuals who both participated in and, at the same time, reported on Occupy Trenton's speech activities through live web-stream video commentary, live on-the-scene chat, and blogging. The use of his computer and video equipment was therefore essential to conveying his message. As noted in Paragraph 5 above,

Plaintiff HIGGINS is a journalist and was on the site not only as a participant but also as a journalist.

25. Other Occupy Trenton participants also brought computers and video equipment and engaged in live chats and provided streaming video of Occupy Trenton's activities.

26. Some Occupy Trenton participants brought with them coolers of food, drinks or small medical supplies for use if needed during their speech activities. They also brought political signs. A few had small pup-tents. They brought tarps to cover items when it began raining. A few brought small collapsible chairs to sit in or small single-person tables upon which to place their computer to engage in real-time live chat from the "occupation" site. Again, given the size of the park and of the pedestrian walkways, none of the activities engaged in by Occupy Trenton, even at their peak of participation, obstructed the use of the park by other persons.

27. To power their media equipment, participants utilized the electrical outlets that were in the park. There were no signs or regulations that prohibited public use of these outlets. However, at some point prior to October 13, 2011, Defendants turned off electricity to all of the outlets. At that point, for continued use of their media equipment, Plaintiffs utilized a small, bookbag-sized, non-obstructive, self-contained generator.

28. On Wednesday, October 12, 2011, it began to rain. Plaintiffs set up a covering to protect their media equipment and other property. They were informed by Defendants that anything showing "signs of permanence" had to be taken down, which included the covering. Plaintiffs removed the covering.

29. Prior to Friday, October 14, 2011, State Police officers read Plaintiffs a letter from Department of Military and Veterans Affairs' Deputy Commissioner Ray Zawacki. The letter set forth never-before-existing restrictions on the use of the park. Plaintiffs were told that they

had to, before noon Friday, remove their coolers, equipment, generator, and any signs of camping or even of “picnicking.” They were also informed that anything (including signs, media equipment and obvious personal property) that was “unattended” would be considered “trash” and would be removed. Plaintiffs asked for a copy of the letter but they were refused.

30. Although the undersigned attorneys have researched the question and have made inquiry of the Attorney General’s office, Plaintiffs are aware of no statute or Executive Order or other authority that grants the Department of Military and Veterans Affairs authority to regulate, or in any way control, the park at issue. Even the World War II Memorial Commission (which was established as “in, but not of” the Department) was not granted such authority but, rather, was only granted authority to raise money for and provide recommendations regarding the creation of the World War II memorial. *See* Executive Order 107 of 2004; Executive Order 45 of 2006; *N.J.S.A.* 38A:3-2.4 and -2.5. Therefore, it appears Defendants Zawacki and the Department of Military and Veterans Affairs had no authority to establish regulations on use of the park, even if such regulations were properly promulgated under the Administrative Procedures Act (which they were not).

31. Prior to noon on Friday, October 14, 2011, Plaintiffs cleared certain items away. However, since they were never provided with written rules that they could identify as having the force of law, Plaintiffs did not remove “picnicking” and other items.

32. On Friday, October 14, 2011, just after noon, members of the State Police (Defendant JOHN DOES 4-11) were present as Defendant JOHN DOES 1-3 (who refused to identify themselves to Plaintiffs) came on to the park and seized Plaintiffs’ property over Plaintiffs’ objection. Included among the items taken were Plaintiff HIGGINS’ computer, another Occupy

Trenton participant's computer, other media equipment, tripods, backpacks, umbrellas, rain gear, and additional property.

33. At one point, one of the unidentified individuals began to take away Plaintiffs' political signs, whereupon a State Police officer stated the signs should not be taken. The unidentified individual who was taking the signs threw three or four of the signs on the ground while still seizing and carrying away all of the rest of Plaintiffs' political signs. Right before leaving, a JOHN DOE defendant brought back more, but not all, of the signs.

34. During the seizure of their items, Plaintiffs were present and were questioning why and how their property could be taken. It was therefore clear that the items being seized were not abandoned items but were the property of Plaintiffs. An accurate video of a portion of the seizure of Plaintiffs' property can be found at: <http://blog.alexanderhiggins.com/2011/10/14/police-confiscate-occupy-trenton-protest-signs-media-gear-occupywallstreet-77361/>

35. All of Plaintiffs' seized items were placed into a truck and were driven away. Upon information and belief, the property was placed into the possession of the State Police.

36. Plaintiffs, via counsel, were informed that they would have to go to the State Police office located in the State House to arrange to retrieve their items. However, Plaintiffs' counsel was informed by Defendants' counsel (i.e., the Office of the Attorney General) that Plaintiffs would need to obtain their own truck to carry their items away and that the retrieval could not occur over the weekend.

37. Plaintiffs have not yet arranged for trucks to retrieve their items.

38. On Monday, October 17, 2011, Plaintiffs' counsel was provided with the letter from Defendant Zawacki that created the invalid *ad hoc* rules that were imposed upon Plaintiffs (see

Exhibit 2 attached hereto) and pursuant to which Plaintiffs' property was seized. The letter was dated October 13, 2011, the day before the seizure of Plaintiffs' property occurred.

39. The prohibitions and restrictions contained in the October 13, 2011, Zawacki letter were *ultra vires*. Additionally, they were created *ad hoc* and were not rules that were in existence prior to Occupy Trenton's use of the park. Indeed, none of the prohibitions or restrictions on use of the park that the letter sets forth were passed pursuant to the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq.; nor were any of the prohibitions or restrictions adopted via ordinance, statute or other proper process; nor did they correspond to any other prohibitions or restrictions that were validly adopted.

40. On Friday, October 21, 2011, Plaintiffs were again threatened with confiscation of their property. They were informed by a State Police officer that they needed to remove all coolers, tables, and "picnic" items or the items would be confiscated at noon on Monday, October 24, 2011. The officer also informed Plaintiffs that they would remove any chair that someone was not sitting in. Plaintiffs were also told to remove the gas can for the generator (which, as noted, is used for their media equipment). Plaintiffs have been keeping the generator off of state property; specifically, the generator is kept on the city sidewalk, without objection from the City of Trenton. Plaintiffs offered to keep the gas can off state property if necessary.

41. Plaintiffs continue to use the park for their free speech activities, albeit they have been hindered (including in the conveyance of their message) by the restrictions placed upon them. Plaintiffs intend to continue to engage in free speech activities (and to generally enjoy the use of the park) now and in the future for an indefinite period of time. They wish to do so without being subjected to the invalid, unlawful prohibitions and restrictions imposed upon them by Defendants.

FIRST CLAIM FOR RELIEF
ARTICLE I, PARAGRAPH 1 OF
THE NEW JERSEY CONSTITUTION
(Violation of Due Process)

42. Plaintiff repeats and realleges the preceding paragraphs as if fully set forth herein.

43. Article 5, Section 5, paragraph 6 of the New Jersey Constitution states: “No rule or regulation made by any department, officer, agency or authority of this state, except such as relates to the organization or internal management of the State government or a part thereof, shall take effect until it is filed either with the Secretary of State or in such other manner as may be provided by law.”

44. The Administrative Procedures Act, *N.J.S.A.* 52:14B-1 et seq., sets forth the process to which agencies must adhere to adopt and implement a rule or regulation.

45. The restrictions and prohibitions decreed in the Zawacki letter were not adopted pursuant to the required process.

46. By imposing invalid restrictions upon Plaintiffs, thereby infringing upon Plaintiffs’ enjoyment of a public park, Defendants have violated Plaintiffs’ right to Due Process as guaranteed by Article I, Paragraph 1 of the New Jersey Constitution.

47. By seizing Plaintiffs’ property pursuant to invalid and unlawful “regulations,” Defendants have violated Plaintiffs’ right to Due Process as guaranteed by Article I, Paragraph 1 of the New Jersey Constitution.

48. As a result of the described actions by Defendants, Plaintiffs have suffered and are continuing to suffer from irreparable harm and other damages.

**SECOND CAUSE OF ACTION
ARTICLE I, PARAGRAPH 6 OF
THE NEW JERSEY CONSTITUTION**

(Unlawful Interference With, Restraint of, and Retaliation Against
Free Speech, Freedom of Expression, and Freedom of the Press)

49. Plaintiff repeats and realleges the preceding paragraphs as if fully set forth herein.

50. By seizing and confiscating Plaintiffs' political signs and other media equipment, as well as by generally imposing unlawful restrictions on Plaintiffs' use of their chosen site for expression and the means by which they may express themselves to that site, Defendants have unlawfully interfered with Plaintiffs' right to free speech and expression as guaranteed by Article I, Paragraph 6 of the New Jersey Constitution.

51. By seizing and confiscating Plaintiff HIGGINS' media equipment, as well as by generally imposing unlawful restrictions on Plaintiff HIGGINS' ability to engage in his profession as a journalist, Defendant have unlawfully interfered with Plaintiff's right to freedom of the press as guaranteed by Article I, Paragraph 6 of the New Jersey Constitution.

52. As a result of the described actions by Defendants, Plaintiffs have suffered and are continuing to suffer from irreparable harm and other damages.

**THIRD CAUSE OF ACTION
VIOLATION OF ARTICLE I, PARAGRAPH 7 OF
THE NEW JERSEY CONSTITUTION**

(Unlawful Search and Seizure of Personal Property)

53. Plaintiff repeats and realleges the preceding paragraphs as if fully set forth herein.

54. By seizing Plaintiffs' property without a search warrant or other authority rendering such seizure reasonable, Defendants violated Plaintiff's right to be free from unlawful searches and seizures of personal property, as guaranteed by Article I, Paragraph 7 of the New Jersey Constitution.

55. As a result of the described actions by Defendants, Plaintiffs have suffered and are continuing to suffer from irreparable harm and other damages.

**FOURTH CAUSE OF ACTION
VIOLATION OF ARTICLE I, PARAGRAPH 18
OF THE NEW JERSEY CONSTITUTION
(Freedom of Assembly)**

56. Plaintiff repeats and realleges the preceding paragraphs as if fully set forth herein.

57. By imposing invalid restrictions upon Plaintiffs, thereby infringing upon Plaintiffs' enjoyment of a public park, Defendants have infringed upon Plaintiffs' freedom of assembly as guaranteed by Article I, Paragraph 18 of the New Jersey Constitution.

58. As a result of the described actions by Defendants, Plaintiffs have suffered and are continuing to suffer from irreparable harm and other damages.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff requests judgment against the Defendants as follows:

- (a) Declaratory relief, including but not limited to a declaration that the restrictions and prohibitions contained in the October 13, 2011 letter from Defendant Zawacki are invalid and are unenforceable;
- (b) Immediate, preliminary and permanent injunctive relief;
- (c) Return of all seized items;
- (d) Attorney's fees and costs associated with this action, pursuant to N.J.S.A. 10:6-1 et seq. and other relevant authority;
- (e) Any further relief as this Court deems just and proper and any other relief as allowed by law.

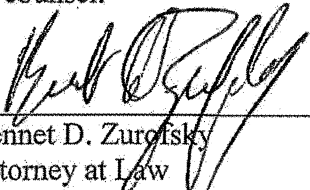
NO JURY DEMAND

Plaintiff does not demand trial by jury in this action.

DESIGNATION OF TRIAL COUNSEL

Plaintiff designates Bennet D. Zurofsky as trial counsel.

Dated: October 24, 2011



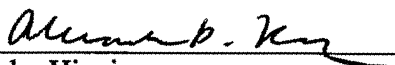
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VERIFICATION

I, Alexander Higgins, hereby affirm under the penalty of perjury that the factual statements contained in the foregoing Verified Complaint, other than factual statements contained in paragraphs 18-20 about which I have no personal knowledge, are, to the best of recollection and belief, true and accurate.

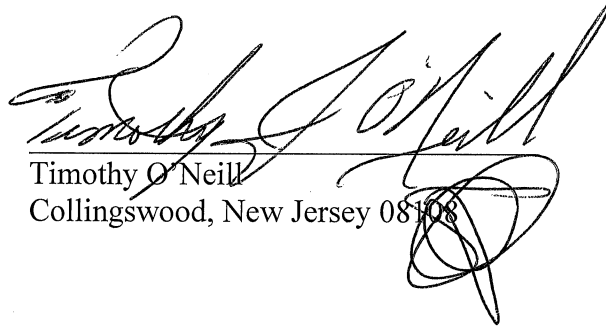


Alexander Higgins
Brick, New Jersey 08723

Dated: October 24, 2011

VERIFICATION

I, Timothy O'Neill, hereby affirm under the penalty of perjury that the factual statements contained in paragraphs 18-20 of the foregoing Verified Complaint are, to the best of recollection and belief, true and accurate.



Timothy O'Neill
Collingswood, New Jersey 08108

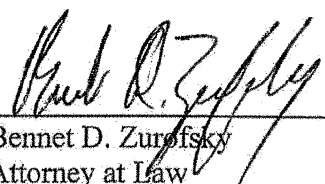
Dated: October 24, 2011

CERTIFICATION PURSUANT TO R. 4:5-1

Plaintiff, via counsel, hereby certifies that there are no other proceedings or pending related cases arising from the same factual dispute described herein. The matter in controversy is not the subject of any other action pending in any other court or a pending arbitration proceeding, and no other action or arbitration proceeding is contemplated. Further, other than the parties set forth in this complaint, the undersigned knows of no other parties that should be made a part of this lawsuit. In addition, the undersigned recognizes the continuing obligation to file and serve on all parties and the court an amended certification if there is a change in the facts stated in this original certification.

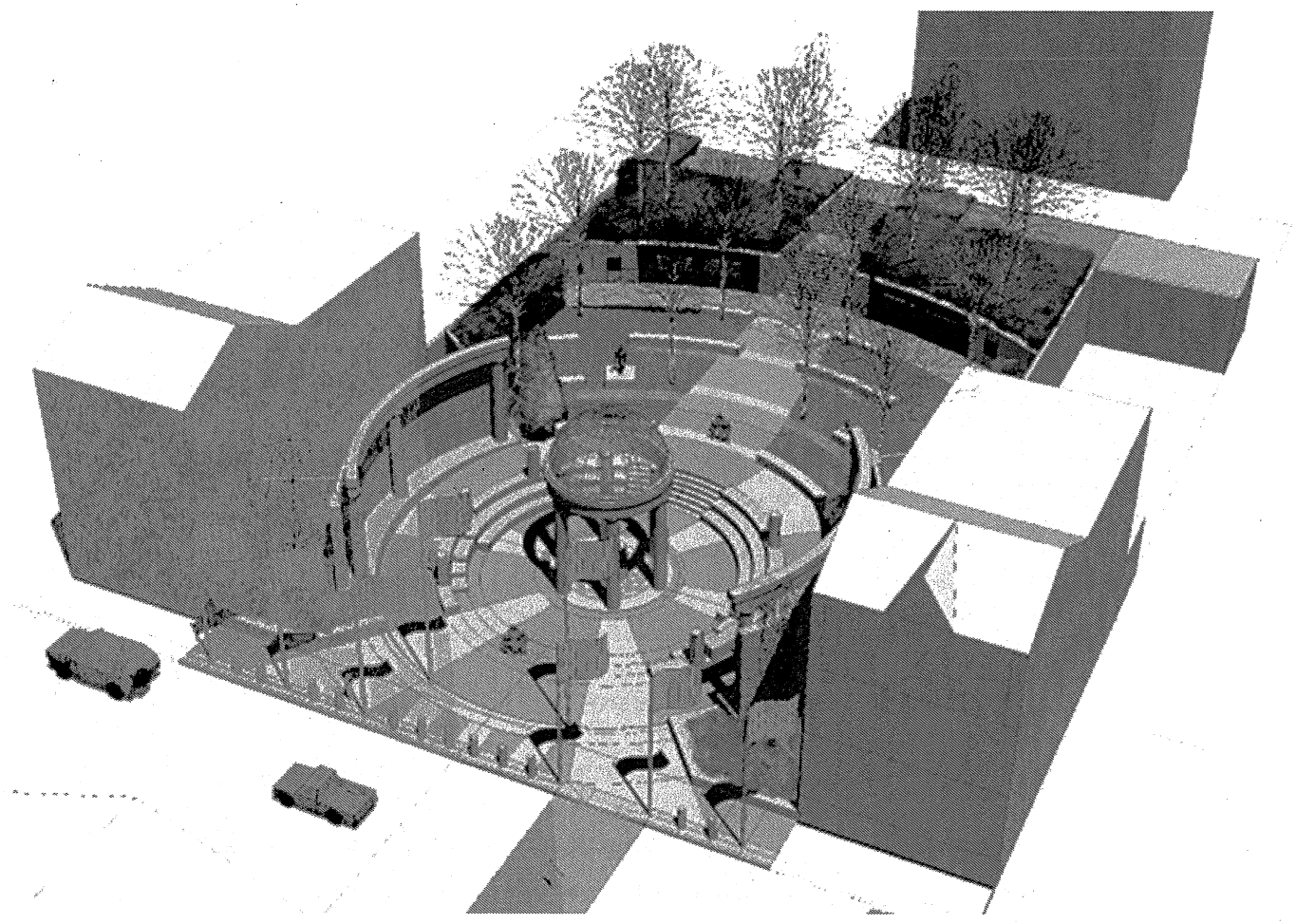
Dated: October 24, 2011

By:

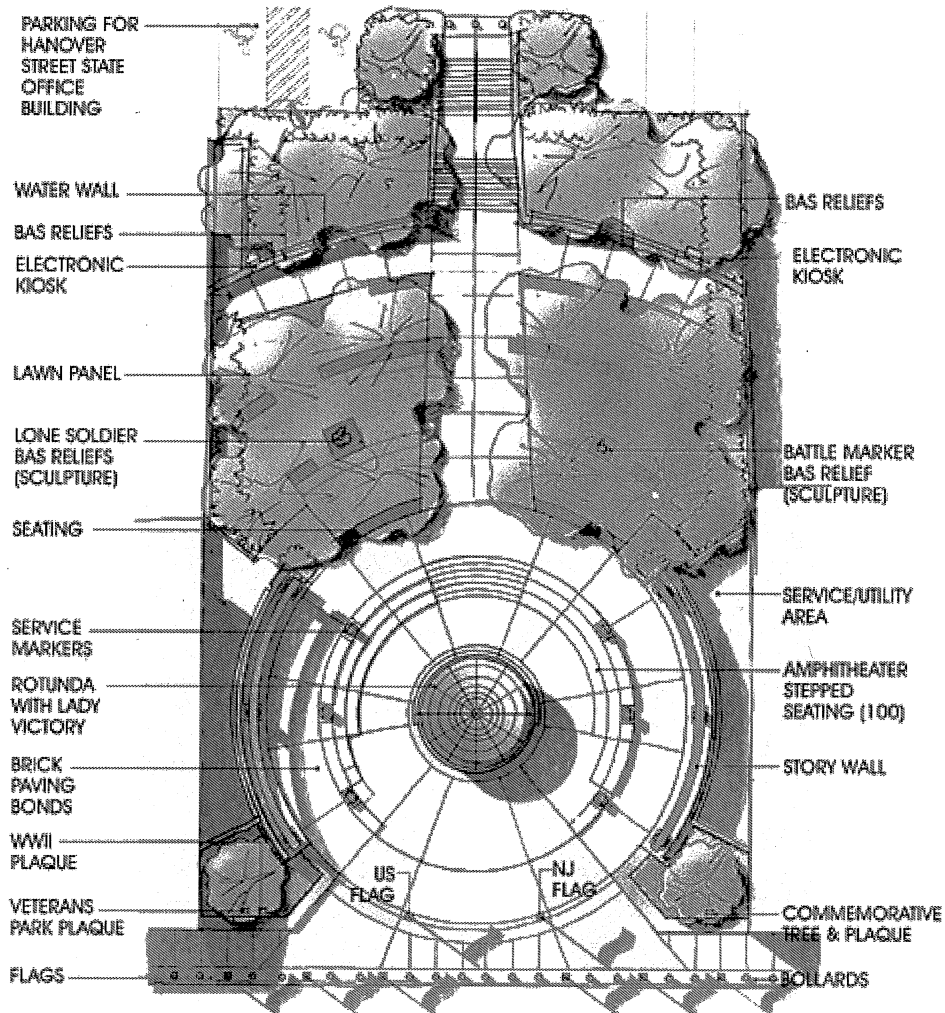


Bennet D. Zurofsky
Attorney at Law
17 Academy Street, Suite 1010
Newark, NJ 07102
973-642-0885
bzurofsky@zurofskylaw.com

Exhibit One



CAPITAL STREET (ALLEY)



STATE STREET





Exhibit Two



State of New Jersey
DEPARTMENT OF MILITARY AND VETERANS AFFAIRS
POST OFFICE BOX 340
TRENTON, NEW JERSEY 08625-0340

CHRIS CHRISTIE
Governor
Commander-in-Chief

☆☆
GLENN K. RIETH
Major General
The Adjutant General

13 October 2011

To Whom It May Concern:

The property that you are on is State property under the management of the Department of Military and Veterans Affairs, known as DMAVA.

You are more than welcomed to stay on this site and exercise your First Amendment rights of expression. However, in order to protect you, the public, the accessibility of this memorial to all members of the general public, and to maintain the safety, condition, and esthetic value of this site, DMAVA requires that you comply with the following rules:

1. You may bring your personal property with you so long as you attend to that property. All unattended items will be considered trash and must be removed.
2. You are not permitted to use this site as a campground. You therefore must remove all tables, furnishings, coolers, and boxes. Other camping or picnicking items are also prohibited.
3. You may not affix or attach anything to the walls of the Monument.
4. You may not erect structures of any type.
5. You may use signs, flags and other symbols in the exercise of your First Amendment rights. However, all such items must be attended. All unattended items will be considered trash and must be removed.
6. You may not use the electricity available on this site. We have previously advised you not to use the electricity on the site and we advise you again not to use the electricity.
7. You may not operate a generator on this site.

Sincerely,

Raymond L. Zawacki

Deputy Commissioner for Veterans Affairs

New Jersey Department of Military and Veterans Affairs