

1 Hearing date: February 26, 2021
2 Hearing time: 9:00 AM
3 Judge/Calendar: Hon. James J. Dixon/Civil

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10 WASHINGTON STATE SUPERIOR COURT FOR THURSTON COUNTY

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12 TYLER G. MILLER,
13 Plaintiff,

Case No.: 21-2-00092-34

14 vs.

MOTION FOR PRELIMINARY
INJUNCTION

15
16 JAY INSLEE, in his official capacity as
17 Governor of Washington State, and CHRIS
18 LIU, in his official capacity as Director of
Enterprise Services,

19 Defendant

20 **I. INTRODUCTION**

21 The Plaintiff hereby moves that an Order for Preliminary Injunction be issued in
22 this matter to prevent ongoing irreparable injury to his Constitutional rights while litigation
23 continues. This Order is necessary to ensure that the rights of the Plaintiff and public are restored
24 and protected while the judicial process is completed. Appreciating the plight of the Court in
25

26 MOTION FOR PRELIMINARY INJUNCTION - 1

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1 dealing with the coronavirus pandemic, as well as the stated concern of the Defendants in not
2 wishing to rush the litigation of this question, it is likely that this case will go well beyond the
3 April 25th scheduled end of the 2021 legislative session. Given these considerations and the
4 essential time-sensitive nature of the Plaintiff's claims, only a Preliminary Injunction at this time
5 can prevent further, ongoing harm to the rights of the Plaintiff and general interests of the public.
6

7 The current operational status of the Capitol Campus, and specifically the
8 Legislative Building, presents a continuous and unavoidable injury to the Plaintiff's
9 Constitutional right to be in physical attendance of the Legislature while it is in open session, as
10 well as to his rights under Article I § 4 to petition and peaceably assemble for the common good.
11 Plaintiff's rights are being injured by actions of the Defendants in two ways:
12

- 13 1) Plaintiff is being physically restrained from approaching the Legislative
14 Building by the presence of a temporarily erected chain-linked fence which
15 surrounds the building. Attempting to cross the perimeter of this fence line
16 carriers the threat of immediate arrest.
- 17 2) Plaintiff is further restrained by the total prohibition of the public from
18 entering the Legislative Building altogether.

19 **II. REQUEST FOR PRELIMINARY INJUNCTIVE RELIEF**

20 Wherefore the continued actions of the Defendants as outline above cause a
21 continuous and unavoidable injury to his rights, Plaintiff seeks preliminary injunctive relief as
22 follows:
23
24

- 1 1) The complete removal of the chain-linked fence currently surrounding the
2 Legislative Building and Temple of Justice. Alternatively, removal of portions
3 of the fence that will allow for the free flow of pedestrian traffic to the
4 exterior of the Legislative Building, including the steps and ellipse on the
5 Northern side in between the Legislative Building and Temple of Justice.
6
7 2) Removal of the threat of arrest from all persons engaged in lawful activity on
8 all areas of the Capitol Campus.
9
10 3) Order the Defendants to provide for the immediate access by the public to the
11 viewing galleries of both legislative chambers while each house is in session.

12 **III. GROUNDS FOR REMOVING THE FENCE**

13 The chain-linked surrounding the Legislative Building was erected over a month
14 ago, according to Defendant Inslee, in response to generalized threats of violence at the Capitol
15 in Olympia following incidents at the National Capitol and the Governor’s Mansion on January
16 6, 2021. *See* Inslee statement on security measures for 2021 legislative session, (January 8,
17 2021), [https://www.governor.wa.gov/news-media/inslee-statement-security-measures-2021-](https://www.governor.wa.gov/news-media/inslee-statement-security-measures-2021-legislative-session)
18 [legislative-session](https://www.governor.wa.gov/news-media/inslee-statement-security-measures-2021-legislative-session). The nature of those threats were never specified or elucidated to the public in
19 any way, nor have they been in any of the extensions of these security precautions since they
20 were first issued.
21

22 On or about January 15, 2021, the Washington State Patrol stated that no “*specific*
23 *threats to any time date, location or anything specific to our area.*” *See* Jonathan Choe, *State*
24 *Capitol Tightening Security in Wake of Threats, Looming Presidential Inauguration*, KOMO

25 MOTION FOR PRELIMINARY INJUNCTION - 3

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1 News (January 15, 2021), [https://komonews.com/news/local/state-capitol-tightening-security-in-](https://komonews.com/news/local/state-capitol-tightening-security-in-wake-of-threats-looming-presidential-inauguration)
2 [wake-of-threats-looming-presidential-inauguration.](https://komonews.com/news/local/state-capitol-tightening-security-in-wake-of-threats-looming-presidential-inauguration)

3 On January 29, 2021, Bob Covington, Department of Enterprise Services Capitol
4 Security & Visitor Services Director, acting under authority delegated to him by Defendant Liu,
5 extended the presence of the chain-linked fence through at least March 01, 2021. The
6 justification cited was again unspecified and generalized warnings issued by the Department of
7 Homeland Security which did not include any warnings specific to Washington State, and
8 unspecified reference to “recent” violence at the Capitol. Although the “recent” violence was not
9 specified, it is assumed that this is in reference to the breaching of the gates at the Governor’s
10 Mansion over three weeks prior on January 6th since there have been no other reported incidents
11 since that time. The only other possible reference would be to a December 12, 2021 incident
12 involving a shooting at a protest that occurred near, but not actually on, the Capitol Campus. *See*
13 *Rolf Boone, 1 shot, 3 arrested after protesters clash in Olympia on state Capitol Campus, The*
14 *Olympian* (December 12, 2020), <https://www.theolympian.com/news/local/article247809255.html>.

15 Regardless of the justifications used either initially or since, there is no longer a
16 specific or even generalized threat to either the Capitol Campus or the people working there to
17 warrant the extreme measures causing the ongoing injury to the rights of the Plaintiff or the
18 public in general. Any present security concerns can be mitigated through means which do not
19 infringe upon the Constitutionally protected rights of the Plaintiff. Therefore, the preliminary
20 injunctive relief sought by the Plaintiff to remove the chain-link fence immediately or,
21 alternatively, have it modified in such a manner that allows the Plaintiff the full enjoyment of his

22 MOTION FOR PRELIMINARY INJUNCTION - 4

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1 Constitutional rights, unmolested by the threat of arrest, pending the outcome of this case should
2 be granted.

3 **IV. GROUNDS FOR LEGISLATIVE BUILDING ACCESS**

4 Public access to the viewing galleries of each legislative chamber within the
5 Legislative Building can be accommodated with no appreciable increase in risk to health or
6 safety. It can also be accomplished within the current guidelines governing all other activity
7 within Thurston County under Defendant Inslee’s “*Healthy Washington - Roadmap to*
8 *Recovery*,” [https://www.governor.wa.gov/sites/default/files/proclamations/proc_20-](https://www.governor.wa.gov/sites/default/files/proclamations/proc_20-25.12.pdf?utm_medium=email&utm_source=govdelivery)
9 [25.12.pdf?utm_medium=email&utm_source=govdelivery](https://www.governor.wa.gov/sites/default/files/proclamations/proc_20-25.12.pdf?utm_medium=email&utm_source=govdelivery). The procedures already established
10 for the safe operation of legislative activities and access to the Legislative Building can easily be
11 modified to incorporate members of the public, including the Plaintiff. Therefore, the
12 preliminary injunctive relief sought by the Plaintiff to provide for public access to the viewing
13 galleries of each legislative chamber inside the Legislative Building pending resolution of this
14 case should be granted.

15 **V. CONCLUSION**

16 Plaintiff seeks this Preliminary Injunction in order to cease the ongoing harm to
17 his Constitutional rights while the judicial process proceeds. Plaintiff appreciates the many
18 difficulties presented to the Court as a result of the coronavirus pandemic, as well as the desire
19 by all parties to not rush the first-time litigation of this important Constitutional issue. Not
20 wishing to unnecessarily aggravate these conditions, yet also wishing to protect and preserve the

1 very rights the Plaintiff seeks to vindicate, this request serves the best interests of justice, all
2 parties to the case, and the public in general.
3

4
5 Dated this 16th day of February 2021.
6

7 _____
8 s/Tyler G Miller

9 Tyler G Miller
10 Plaintiff
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1 **DECLARATION OF SERVICE**

2 I hereby declare that on this day I caused the foregoing document to be served by
3 email on the following:

4 Zachary Pekelis Jones (zach.jones@atg.wa.gov),
5 Christina Sepe (cristina.sepe@atg.wa.gov),
6 Assistants Attorney’s General
7 Jeffrey T. Even (jeffrey.even@atg.wa.gov),
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10 800 Fifth Avenue, Suite 2000
11 Seattle, WA 98104-3188
12 206.464.7744

13 Dated this 16th day of February, 2021, at Bremerton, Washington.

14 _____
15 s/Tyler G. Miller

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