

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

VETERANS FOR PEACE, GREATER SEATTLE, CHAPTER 92, aka VETERANS FOR PEACE, a nonprofit corporation,

Plaintiff,

v.

CITY OF AUBURN, a municipal corporation,

Defendant.

No. 12-cv-1946

MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

**NOTE ON MOTION CALENDAR:**

**November 8, 2012**

**Oral Argument Requested**

Plaintiff Veterans For Peace, Greater Seattle, Chapter 92 (“Veterans For Peace” or “VFP”), respectfully moves the Court for an order (1) temporarily restraining Defendant City of Auburn (“the City”) from excluding Veterans For Peace 92 from marching in Auburn’s Veterans Day Parade (“Parade”), to be held on November 10, 2012; and (2) enjoining the City and its agents from denying VFP’s application so that it may participate lawfully in the Parade. Veterans For Peace requests this order because the 2012 Parade Rules and Regulations grant undue discretion to administrators, and, as applied to Veterans For Peace, constitutes impermissible viewpoint discrimination in violation of First Amendment to the U.S. Constitution.

**INTRODUCTION**

The bedrock of the First Amendment is that the “government has no power to restrict expression because of its message, its ideas, its subject matter, or its content.” *Police Dept. of Chicago v. Mosley*, 408 U.S. 92, 95 (1972).

1 Plaintiff Veterans For Peace stand for just that—peace—or more concretely, a  
 2 commitment to raising awareness about the human and social costs that tragically often follow in  
 3 the wake of U.S. wars abroad. But Veterans For Peace honors and respects veterans no less than  
 4 any other veteran or non-veteran group that has marched in past Parades or will march this year.  
 5 Veterans For Peace has, according to its mission, “dutifully served our nation” “spanning the  
 6 Spanish Civil War, World War II, Korea, Vietnam, Panama, Persian Gulf, Bosnia, Afghanistan,  
 7 Iraq, other conflicts and periods in between.” Ex. A<sup>1</sup>; *see also* Kinnucan Dec. ¶ 2. From this  
 8 “collective experience,” Veterans For Peace believes “wars are easy to start and hard to stop and  
 9 that those hurt are predominantly the innocent.”<sup>2</sup> Ex. A.

10 Since 2006, Veterans For Peace has participated in the Parade, which the City touts as  
 11 “one of the largest Veteran’s Day parades in the United States of America.” Ex. B. Yet this year,  
 12 the City rejected Veterans For Peace’s Parade application offering only a vague rationale that  
 13 Veterans For Peace does not meet the Parade’s purpose and goals to “positively focus on  
 14 honoring our country’s veterans and active military personnel” and “their military mission of  
 15 defending freedom around the world.” Ex. C; Ex. 13.

16 The City of Auburn opens its streets every year and invites Parade participants and  
 17 spectators to pay tribute to men and women who have served this country’s military, in  
 18 celebration of the national holiday of Veterans Day. In doing so, the City creates a limited  
 19 public forum for the Parade, an activity the U.S. Supreme Court has recognized as  
 20 “unquestionably” protected speech under the First Amendment. *Hurley v. Irish-American Gay,*  
 21 *Lesbian & Bisexual Group of Boston*, 515 U.S. 557, 569 (1995). Yet despite the constitutional

---

23 <sup>1</sup> “Ex.” or “Exhibit” with alphabetic sequencing, as in “Ex. A”, refers to the Exhibits attached to  
 24 the Declaration of David Whedbee (“Whedbee Dec.”), submitted herewith in support of Plaintiff’s  
 25 Motion for TRO. “Ex.” or “Exhibit” with numeric sequencing, as in “Ex. 1”, refers to the Exhibits  
 attached to the Declaration of Michelle Kinnucan (“Kinnucan Dec.”), also submitted herewith in support  
 of Plaintiff’s motion.

26 <sup>2</sup> In support of Veterans For Peace’s motion, several members—with a record of service in World  
 27 War II, Korea, and Vietnam—share their personal views that they honor veterans and the cause of peace.  
*See generally* Declarations of Pio DeCano, Daniel Gilman (Vietnam), Barbara Mercer (WWII), Lyle  
 Mercer (WWII), Philip Heft, Samuel Scharff (WWII and Korea), and Keith Orchard (Vietnam).

1 command that the City pick entrants reasonably and without regard to viewpoint, the City has  
2 excluded Veterans For Peace, apparently because of their message for peace.

3 The Court should reject any claim of viewpoint neutrality based on the City's assertion of  
4 some "purpose" to "positively" honor veterans. At best, these terms are vague, and the Parade's  
5 2012 Rules and Regulations reserve overly broad discretion to the City to deny participation in  
6 violation of the First Amendment. But the City's unconstitutional position appears to be yet  
7 more extreme. As easily inferred from its "Rules and Regulations" that allow in only  
8 participants who "positively" honor veterans—the City unabashedly disfavors those veterans  
9 whose wartime experiences may have converted them to a cause of peace or engendered critical  
10 views of U.S. foreign policy.

11 The 2012 Auburn Veterans Day Parade is scheduled to begin the morning of November  
12 10. The City refuses to permit Veterans For Peace to march on account of its message of peace,  
13 and they will be excluded absent the Court's immediate intervention and issuance of the  
14 requested TRO and preliminary injunction requiring the City to reverse its application denial and  
15 allow Veterans For Peace to participate in the Parade with their fellow veterans.

## 16 I. FACTUAL BACKGROUND

### 17 A. Veterans For Peace.

18 Veterans For Peace is a 501(c)(3) nonprofit corporation and national veterans  
19 organization based in St. Louis, Missouri. It was founded in 1985 by military veterans and  
20 currently has more than 3,900 members nationwide. Kinnucan Dec. ¶ 2. Veterans For Peace  
21 works to increase public awareness about the costs of war; to restrain the government from  
22 intervening, overtly and covertly, in the internal affairs of other nations; to end the arms race and  
23 to reduce and eventually eliminate nuclear weapons; to seek justice for veterans and victims of  
24 war; and to abolish war as an instrument of national policy. *Id.* ¶ 3. Veterans For Peace holds a  
25 permanent non-governmental organization seat at the United Nations and is the first military  
26 veterans organization invited to join the International Peace Bureau based in Geneva,  
27

1 Switzerland. *Id.* Veterans For Peace has more than 120 chapters and has collaborated with  
2 dozens of organizations to sponsor thousands of activities that promote peace. *Id.* ¶ 4.

3 Veterans For Peace, Greater Seattle Chapter 92 was founded in 2003 and has 96  
4 members. Kinnucan Dec. ¶ 5. Veterans are Full Members of the chapter; members who are not  
5 veterans, but who subscribe to the purpose, goals and ideals of the chapter, are Associate  
6 Members. *Id.* There are 71 Full Members and 25 Associate Members. *Id.* Veterans For Peace  
7 has participated in the annual Parade in Auburn for the last six years, displaying peace flags and  
8 VFP organizational flags. Kinnucan Dec. ¶ 6.

9 **B. The City of Auburn Veteran’s Day Parade.**

10 The City publicizes that “Auburn, Washington is designated by the Veterans Day  
11 National Committee and the US Department of Veterans Affairs as a Regional Site for  
12 celebration of Veterans Day 2012. Auburn has hosted the Veterans Day Parade since 1965.” Ex.  
13 B. Auburn provides law enforcement and other employees to block off city streets to allow for  
14 the Parade to travel its one-mile route through the city streets. Ex. D. In the preceding years, the  
15 Parade has drawn thousands of spectators and participants.

16 In the past, hundreds of veteran organizations and civic groups have marched in the  
17 Parade. *See, e.g.*, Ex. E. The City published an event flyer this year listing sponsored events that  
18 include an American Legion Breakfast, Auburn Noon Lions Club Lunch, and a Veterans of  
19 Foreign Wars Post #1741 Open House. Ex. F. The event flyer also indicates the Parade is  
20 sponsored by talk radio stations, 770 KTTH (“The Truth”) and 97.3 KIRO FM.

21 This year, the Parade will feature 184 participant groups, variously representing federal,  
22 state, tribal, and local governmental entities, private veteran organizations, the City of Auburn,  
23 many high schools from the region, and civic associations. *See* Ex. G. The groups are  
24 heterogeneous in historical background and current outlook, each with different specific social,  
25 cultural, religious, and/or political concerns, and each with distinct styles and aesthetics. A  
26 sample list of veteran and non-veteran groups to participate in 2012 include:<sup>3</sup> Seattle Seahawks

27 <sup>3</sup> The groups listed are taken in marching order, according to the 2012 “Parade Line-up.” Ex. G.

1 Blue Thunder Drumline (30), Veterans of Foreign Wars chapters (47-52), Disabled American  
 2 Veterans chapters (54-56), Vietnam Veterans of America (61), Swift Boat Sailors Association  
 3 (78), Washington State POW/MIA Color Guard (81), Inter-Tribal Warrior Society (84), Veterans  
 4 of the Republic of Vietnam (88)<sup>4</sup>, Marines Motorcycle Club of Washington (91), Auburn Pioneer  
 5 Queen (120), National Alliance to End Veteran Suicide (127), Puyallup Tribal Veterans Color  
 6 Guard (137), Point Man International Ministries (140), Buffalo Soldiers of Seattle (144), the  
 7 Sons and Daughters of the American Revolution (147-148), Auburn Sons of Italy Lodge #1955  
 8 (152), King Solomon Lodge #60 – Auburn Masonic Bodies (153), Clan Gordon Pipe Band  
 9 (154), Tacoma Corvette Club (162), Daffodil Festival Traveling Float (163), Auburn Girl Scouts  
 10 (164), ABATE of Washington (175),<sup>5</sup> and Washington State BMW Riders (180).

11 What unites all participant groups, despite their diversity, is a great respect and high  
 12 esteem for veterans.

### 13 **C. VFP’s Past Participation in the Auburn Veterans Day Parade.**

14 For the parades between 2006 and 2009, VFP applied for and received permission to  
 15 march with the other veteran and non-veteran participants. Kinnucan Dec. ¶ 6.

16 In 2010, Veterans For Peace submitted its application as it had in years past. Where the  
 17 application form requested “information about your entry,” the Veterans For Peace  
 18 representative wrote: “VFP is a national veterans organization founded in 1985 to promote  
 19 peaceful solutions to armed conflicts.” Ex. 1. In response, on October 6, 2010, Kristy Pachciarz,  
 20 the City’s Special Events Coordinator of the Parks, Arts and Recreation Department, wrote:

21 Due to the expanding length of our parade over the last several years, we are  
 22 limiting the number of participants, have had to revise our entry rules and  
 23 regulations, and are screening each and every application. After carefully

---

24 <sup>4</sup> Republic of Vietnam refers to the former South Vietnam before the fall of Saigon. Vietnam today is the  
 25 Socialist Republic of Vietnam. These parade participants are making a political statement by marching  
 with the former flag of the now non-existent geo-political entity.

26 <sup>5</sup> “ABATE” stands for “A Brotherhood Against Totalitarian Enactments,” which according to its website,  
 27 strives to “[e]nsure freedom by fighting anti-bike legislation and promoting fair motorcycle legislation. . .  
 . ABATE does not advocate that you ride without a helmet when the law is repealed, only that you have  
 the right to decide.” See <http://abate-wa.org> (last visited Nov. 4, 2012).

1 reviewing your application, the Veterans Day Committee has found your entry  
2 does not fit with the rules and regulations and is not approved.

3 Ex. 2. Ms. Pachciarz did not elaborate on the basis to reject VFP's application. She also did not  
4 identify which persons comprised the Veterans Day Committee ("the Committee") and screened  
5 the applications, or note whether the Committee members were city employees and/or affiliated  
6 with other organizations.

7 VFP administratively appealed the denial of its parade application. On October 13, 2010,  
8 then-Board Member of Veterans For Peace, Lt. Colonel George James Jr., followed up:

9 I really have appreciated your professional management of our application and  
10 regretfully your need to continue to deal with our on-going requests. . . . We  
11 sincerely hope that the City of Auburn and the Parade Application Review  
12 Committee will strive to live up to the Army values of integrity – to do what is  
13 right, moral and legal. There is nothing honorable about denying a National  
14 Veterans Organization a rightful place of recognition and celebration with our  
15 fellow brother and sister veterans.

16 Ex. 3.

17 On October 14, 2010, Ms. Pachciarz notified Lt. Colonel James that the Committee  
18 reconsidered the Veterans For Peace application and approved its participation in the Parade.

19 Ex. 4. It did so, "with the understanding that your organization's participation . . . will be  
20 respectful of other entrants . . . and in accordance with the purpose of the Parade." *Id.* Ms.  
21 Pachciarz referenced no complaints that Veterans For Peace had in any way before been  
22 disrespectful or disruptive. The next day, on October 15, Lt. Colonel James inquired about  
23 "specific cause/s for our original denial," noting that "[i]t might be helpful to take corrective  
24 action or clarify an[y] issues of concern." Ex. 5.

25 On October 25, 2010, Ms. Pachciarz explained to Lt. Colonel James via email that the  
26 Parade had "grown to a significant length," prompting a decision to shorten the route. Ex. 6.

27 About VFP's initial application denial, Ms. Pachciarz wrote:

the Parade Committee is an informal committee made up of City Staff members  
who are heavily involved in the coordination and logistics of the parade and  
who's [sic] responsibility it is to carefully review the applications as they are  
received. Because it is an informal committee, there are no minutes associated

1 with the meetings. As the Event Coordinator, I am considered the Committee  
 2 Chair . . . . As to why you were initially denied entry, our staff reviewed your  
 3 current website as well as photos and the parade video from 2009 and felt that  
 4 your entry could be considered controversial and may not positively focus on  
 5 honoring our country's veterans and active military personnel.

6 *Id.* Ms. Pachciarz never clarified further what specifically from the Veterans For Peace website  
 7 or the 2009 parade video might rouse this feared controversy.

8 In 2011, Veterans For Peace submitted an application for that year's Parade. Under the  
 9 application form's request for information about "your entry," the VFP representative stated:

10 Veterans For Peace honors our country's veterans and active military personnel  
 11 by working to restrain our government from intervening, overtly and covertly, in  
 12 the internal affairs of other nations and by working to abolish war as an  
 13 instrument of national policy so that no soldier will ever be order to place limb,  
 14 life, and soul I jeopardy for an unjust or unworthy cause. We honor them in our  
 15 work by using and guarding the Constitutional freedoms, including speech, that  
 16 we all swore to defend in our oaths of enlistment/office.

17 Ex. 8. That year, without need of appeal, the City permitted VFP to march. Ex. 9.

18 **D. 2012 Amendments to Parade Regulations and Denial of Veterans For Peace's**  
 19 **Parade Application.**

20 In 2012, the City amended its "Rules and Regulations," which provide in pertinent part:

21 The purpose of Auburn's Veterans Day Parade is to positively focus on honoring  
 22 our country's veterans and active military personnel. Through our parade, we  
 23 focus recognition on congressionally-recognized Veteran Service Organizations  
 24 and their auxiliaries, the military and reserve military, National Guard and ROTC.  
 25 The goals and purposes of Auburn's Veterans Day Parade are to give honor to our  
 26 country's military personnel and veterans and to their military missions of  
 27 defending freedom around the world. The Parade has more applicants than it can  
 permit to participate, and thus must select among the applicants those who will be  
 able to participate. Those applications who are approved will be those that most  
 closely meet the goals and purpose of Auburn's Veterans Day Parade.

Ex. C.

In the late summer of 2012, Veterans For Peace submitted its parade application.<sup>6</sup>

Kinnucan Dec. ¶ 19. As in past years, VFP provided information about the entry, noting that

---

<sup>6</sup> This year the City moved to an online application process, and Veterans For Peace submitted an electronic application. However, no hardcopy was retained. Veterans For Peace currently has a request



1 Veterans For Peace honors veterans by working toward restraining the government from  
2 engaging in unjust wars. Kinnucan Dec. ¶ 19. On October 4, the City rejected the application.  
3 Reminiscent of 2010, Ms. Pachciarz invoked the “purpose” of the Parade to “positively focus on  
4 honoring our country’s veterans and active military personnel...and...their military missions of  
5 defending freedom around the world.” Ex. 11. But this year the City denied VFP entry in the  
6 parade: “Unfortunately, each year, receive [sic] more applications than we can successfully  
7 accommodate, and we have to choose those that most closely meet the goals and purpose of the  
8 event. Regrettably, we are unable to approve your organization to participate in the parade this  
9 year.” *Id.*

10 VFP’s President, Michelle Kinnucan, wrote to Ms. Pachciarz on October 9 to appeal the  
11 decision. Ms. Kinnucan expressed her disappointment and confusion about the denial, noting  
12 this would have been VFP’s seventh year to participate, and that other groups that were allowed  
13 to march in 2011 were presumed to be marching this year, including Lao Veterans Organization,  
14 the Muckleshoot Casino, the Line Doggies, Friends of Willie & Joe, Point Man Ministries, and  
15 various Cub Scout Packs. Ex. 12. Ms. Kinnucan wondered aloud “why there is room” for those  
16 groups “but not for Veterans For Peace, unless, of course, the reason we are being excluded is  
17 because we march for peace and include peace flags in our contingent.” *Id.*

18 Ms. Pachciarz responded on October 15, but simply reiterated the Parade’s purpose to  
19 “positively focus on honoring veterans” without adding any substantive rationale for denying  
20 entry. Ex. 13. She also repeated that due to the numerous applicants, the City “chose those that  
21 most closely meet the goals and purpose” of the Parade. *Id.* As an apparent consolation, Ms.  
22 Pachciarz wrote Veterans For Peace was welcome to join the “Static Display & Exhibit  
23 Showcase area.” Ex. 13. Ms. Pachciarz did not identify who made the 2012 selection of  
24 marchers, confirm whether the non-veteran groups referenced by Ms. Kinnucan had received  
25

26  
27 \_\_\_\_\_  
under Washington’s Public Records Act for all documents that relate to VFP’s 2012 application and other  
information. Kinnucan Dec. ¶ 26.



1 entry, deny that Veterans For Peace had been rejected because of their peace advocacy, or  
 2 indicate whether others had their applications denied and on what grounds. *Id.*

3 Veterans For Peace have attempted to learn the basis for the denial in greater detail. On  
 4 October 10, 2012, Thomas Campbell, contacted Daryl Faber, Director of Auburn's Parks  
 5 Department, to inquire about why the City denied VFP's parade application. Declaration of  
 6 Thomas Campbell ("Campbell Dec.") ¶¶ 2-4. In response, Mr. Faber purportedly said that the  
 7 City had done so "because of VFP's message." *Id.* ¶ 4.

8 In a letter from Ms. Kinnucan, dated October 15, Veterans For Peace followed up with  
 9 Auburn's Mayor, Pete Lewis. Ex. 14. Ms. Kinnucan recited VFP's mission and ways that it  
 10 "honors our country's veterans" as articulated in VFP's 2011 application that the City had  
 11 approved. *See* Ex. 8, 14. Ms. Kinnucan also described Veterans For Peace's attempts to  
 12 administratively appeal the denial, with a plea that the Mayor intervene. Ex. 14. She closed: "I  
 13 find it difficult to believe that these politicized decisions to deny us a place in the Veterans Day  
 14 parade reflect the values and commitment to Freedom of Speech of the majority of Auburn  
 15 citizens." Ex. 14. No one from the City has responded. Kinnucan Dec. ¶ 27.

16 On October 22, 2012, VFP, *via* its attorneys, contacted Daniel Heid, attorney for the City  
 17 of Auburn, to request the City comply with the First Amendment by allowing VFP to march in  
 18 the Parade. Baker Dec. ¶ 2. The City refused. *Id.* ¶ 3. On October 25, 2012, VFP again notified  
 19 in the City that its refusal violated the First Amendment, and that unless the City rescinded its  
 20 decision to bar VFP, VFP would seek court intervention. *Id.* ¶ 4. On October 31, the City  
 21 confirmed it would deny VFP entry in the Parade. *Id.* ¶ 6.

## 22 II. ARGUMENT

### 23 A. Legal Standards for a Temporary Restraining Order and Preliminary 24 Injunction.

25 When asked to grant a preliminary injunction where the public interest is at stake, a court  
 26 must consider whether: (1) the plaintiff is likely to succeed on the merits, (2) the plaintiff is  
 27 likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities

1 tips in his or her favor, and (4) an injunction is in the public interest. Fed. R. Civ. P. 65(a);  
2 *Winter v. Nat'l Res. Def Council, Inc.*, 555 U.S. 7, 20 (2008). The standard “is substantially  
3 identical for the injunction and the TRO,” *Stuhlberg Intern. Sales Co., Inc. v. John D. Brush &*  
4 *Co., Inc.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001), except for the additional requirement that the  
5 applicant show immediate relief is necessary to obtain a TRO. *See Hunt v. Nat'l Broad. Co.*,  
6 *Inc.*, 872 F.2d 289, 292 (9th Cir.1989); Fed.R.Civ.P. 65(b)(1)(A).

7 Veterans For Peace seeks an order that temporarily restrains the City from excluding VFP  
8 as a Parade participant on November 10, 2012, and an order that preliminarily enjoins the City  
9 from denying its application so that Veterans For Peace may lawfully march.

10 **A. VFP Is Likely To Succeed On the Merits Of Its First Amendment Claim.**

11 To demonstrate that the City’s refusal to permit the Veterans For Peace to march violates  
12 the First Amendment, Plaintiff must establish that the City has created a limited public forum  
13 and that the City’s 2012 Parade “Rules and Regulations” are impermissibly vague or that the  
14 City grants itself unbridled discretion in enforcing the regulation or that the City has denied their  
15 application because the City disfavors VFP’s viewpoint. Evidence available now, even before  
16 discovery, demonstrates a likelihood VFP will succeed on the merits.

17 **1. Parading Is Expressive Activity.**

18 It is beyond dispute that the First Amendment protects parades and encompasses a wide  
19 variety of expressive conduct that is associated with marching. *Hurley*, 515 U.S. at 568-70. The  
20 First Amendment shields those who “join[] in a march of protest and pride, carrying placards and  
21 singing The Star Spangled Banner,” because ““the[se] activities reflect an exercise of these basic  
22 constitutional rights in their most pristine and classic form.”” *Id.* at 568-69 (quoting *Edwards v.*  
23 *South Carolina*, 372 U.S. 229, 235 (1963)). “The protected expression that inheres in a parade is  
24 not limited to its banners and songs, however, for the Constitution looks beyond written or  
25 spoken words as mediums of expression.” *Id.* at 569.

26 Veterans For Peace seeks to engage in expressive conduct long recognized, and it does so  
27 as veterans, in the name of peace and patriotism. To the extent Veterans For Peace incorporates

1 into its expressive conduct the display of peace flags, such activity is also protected. *See Spence*  
2 *v. Washington*, 418 U.S. 405, 409-10 (1974).

3 **2. The City Is Subject to Forum Analysis By Creating a Limited Public Forum**  
4 **and May Not Discriminate Based On Viewpoint.**

5 It is well settled precedent that there are three categories of public forums: traditional  
6 public forums, designated public forums, and limited public forums. *Kaahumanu v. Hawaii*, 682  
7 F.3d 789, 799 (9th Cir. 2012).

8 Quintessential public forums include “streets and parks which have immemorially been  
9 held in trust for the use of the public, and, time out of mind, have been used for purposes of  
10 assembly, communicating thoughts between citizens, and discussing public questions.” *Berger*  
11 *v. Seattle*, 569 F.3d 1029, 1083 (9th Cir. 2009) (internal citations omitted). “Notwithstanding the  
12 primacy of such areas as locations for communicative activity among citizens, in order to  
13 regulate competing uses of public forums, [local governments] may impose a permit requirement  
14 on those wishing to hold a march, parade, or rally.” *Santa Monica Food Not Bombs v. Santa*  
15 *Monica*, 450 F.3d 1022, 1035 (9th Cir. 2006). “The government can exclude a speaker from a  
16 traditional public forum only when the exclusion is necessary to serve a compelling state interest  
17 and the exclusion is narrowly drawn to achieve that interest.” *Kaahumanu*, 682 F.3d at 799  
18 (citation and internal quotation marks omitted).

19 Government property that is not traditionally regarded as a public forum may be  
20 converted into a “designated public forum” if the government intentionally opens it up for public  
21 discourse. *Pleasant Grove City, Utah v. Sumnum*, 555 U.S. 460, 469 (2009). Speech  
22 restrictions in a designated public forum “are subject to the same strict scrutiny as restrictions in  
23 a traditional public forum.” *Id.* at 470.

24 “Limited public forums are forums that the government has reserved ‘for certain groups  
25 or the discussion of certain topics.’” *Kaahumanu*, 682 F.3d at 800 (quoting *Rosenberger v.*  
26 *Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995)). “[T]o preserve the limits of a  
27 limited public forum, . . . the [government] may legitimately exclude speech based on subject

1 matter where the subject matter is outside the designated scope of the forum.” *Cogswell v.*  
 2 *Seattle*, 347 F.3d 809, 815 (9th Cir. 2003). But the government does not have a free hand to  
 3 restrict speech in a limited public forum; rather any government restrictions must be “reasonable  
 4 and viewpoint-neutral.” *Sumnum*, 555 U.S. at 469-70.

5 **a. The City Opened Its Streets to Hold a Veterans Day Parade and Created a**  
 6 **Limited Public Forum.**

7 Every year since 1965, the City blocks off traffic and invites veteran and non-veteran  
 8 groups to march through its streets. Historically, and as articulated in the 2012 Amended “Rules  
 9 and Regulations,” the City has espoused a purpose to honor veterans and active military  
 10 personnel, and thus has established for the day of the Parade a limited public forum to do just  
 11 that—express honor and respect for veterans. *See, e.g., Cornelius v. NAACP Legal Def. & Educ.*  
 12 *Fund, Inc.*, 473 U.S. 788, 813-14 (1985) (limited public forum created for fund raising in federal  
 13 workplace); *Flint v. Dennison*, 488 F.3d 816, 829-836 (9th Cir. 2007) (reasonable and viewpoint-  
 14 neutral limited public forum created where university restricted political activity to matters that  
 15 concerned student election at the exclusion of other political advocacy).

16 Courts routinely recognize that cities create a limited public forum where, as here, a city  
 17 opens up its streets to accommodate a parade, with all the expressive activity that entails. *See,*  
 18 *e.g., Parkland Republican Club v. Parkland*, 268 F.Supp.2d 1349, 1356-57 (S.D.Fla. 2003);  
 19 *Right to Life Comm. v. Manhasset Am. Legion Post No. 304*, 452 F.Supp. 834, 838–40  
 20 (E.D.N.Y.1978) (Memorial Day parade); *Toward a Gayer Bicentennial Comm. v. Rhode Island*  
 21 *Bicentennial Found.*, 417 F.Supp. 632, 639 (D.R.I.1976) (bicentennial commemoration);  
 22 *Houston Peace Coalition v. Houston City Council*, 310 F.Supp. 457, 460-61 (S.D.Texas 1970).

23 In *Parkland Republican Club*, the court illustrated the basis for finding that Auburn has  
 24 created a limited public forum. There, the city held an annual heritage parade and “allow[ed]  
 25 marching bands...and civic organizations to participate.” 268 F.Supp.2d at 1351. The court held  
 26 this was a “limited public forum”: “[T]he City may create a limited public forum by temporarily  
 27

1 reserving a portion of what is a traditional public forum for a limited purpose and for discussion  
2 of certain topics.” *Id.* at 1357; *accord Parks v. Columbus*, 395 F.3d 643, 650 (6th Cir. 2005).

3 Although the City here designates its purposes, it does not control the details of each  
4 entrant’s participation. As depicted in video imagery available on the City’s own website,  
5 Parade entrants are not shorn of their own identities, idiosyncrasies, or personal expression that  
6 may connote specific viewpoints in addition to the general purpose of honoring veterans. Ex. H.  
7 As a list of the 2012 participants shows, there are several contingents of Disabled American  
8 Veterans,<sup>7</sup> Veterans of Foreign Wars, the Inter-Tribal Warrior Society, Puyallup Tribal Veterans,  
9 Veterans of the Republic of Vietnam, the Sons and Daughters of the American Revolution,<sup>8</sup>  
10 Auburn Sons of Italy Lodge #1955, the King Solomon Masonic Family, South King County  
11 ABATE of Washington. Ex. G; *see also, infra*, Pl. Motion, Part I.B.

12 **b. The “Government Speech” Defense Is Not Available to the City.**

13 “Government speech” is a defense to forum analysis. *See Sumnum*, 555 U.S. at 464.  
14 The Court should reject any attempt by the City to assert this defense. *Sumnum* recognized that  
15 when the government decides whether to accept a “permanent monument in a public park,” it  
16 does not subject itself to forum analysis. *Id.* Critical to its decision, the Supreme Court explicitly  
17 excluded “transitory expressive acts” from the ambit of “government speech.” *Id.* The reasoning  
18 was concrete and straightforward:

19 The forum doctrine has been applied in situations in which government-owned  
20 property or a government program was capable of accommodating a large number  
21 of public speakers without defeating the essential function of the land or the  
22 program. . . . By contrast, public parks can accommodate only a limited number  
of permanent monuments. . . . Speakers, no matter how long-winded, eventually

23 <sup>7</sup> Disabled American Veterans (DAV) “assist[] veterans and their families in filing claims for VA  
24 disability compensation and pension; vocational rehabilitation and employment; education; home loan  
25 guaranty; life insurance; death benefits; health care and much more.” *See* Ex. I. DVA also advocates for  
homeless veterans (*id.*) and “struggle[d] to protect and enhance programs and services created to  
rehabilitate wartime disabled veterans.” *Id.*

26 <sup>8</sup> “The Sons of the American Revolution is an organization of men who are lineally descended  
27 from at least one person who contributed to the cause of American Independence. It is a lineage society,  
an historical society, and an educational society.” Ex. J.

1 come to the end of their remarks; persons distributing leaflets and carrying signs  
2 at some point tire and go home; monuments, however, endure.

3 *Id.* at 478-79.

4 Parades are not fixed monuments. They are quintessential “transitory expressive acts.”  
5 The Auburn Parade will begin in the morning on November 10, travel along its one-mile route  
6 and end several hours later. As is evident from the diverse groups marching in the parade, the  
7 City has not eliminated the flags, symbols, costumes, and other regalia that many participants  
8 bring with them to the Parade procession. All these trappings are expressive and connote the  
9 participants’ diverse historical backgrounds and their respective specific social, cultural,  
10 religious, and/or political concerns and viewpoints.<sup>9</sup>

11 The City invites the 185 participants into its streets and each group honors the veterans  
12 and “their military missions” as they see fit. This is a limited public forum.

13 **3. The City’s 2012 “Rules and Regulations” Are Vague and Provide Overly**  
14 **Broad Discretion To Reject Parade Applications Under the City’s Stated**  
15 **“Purpose.”**

16 The U.S. Supreme Court has repeatedly held that “[r]egulations which permit the  
17 Government to discriminate on the basis of the content of the message cannot be tolerated under  
18 the First Amendment.” *Forsyth County*, 505 U.S. at 135.

19 Regulations that allow government officials “to censor speech on the basis of its content  
20 are prior restraints on speech, against which there is a heavy presumption of invalidity.” *Int’l*  
21 *Women’s Day March Planning Comm. v. San Antonio*, 619 F.3d 346, 354 (5th Cir. 2010) (citing  
22 *Thomas v. Chi. Park Dist.*, 534 U.S. 316, 320-21 (2002)). Indeed, courts have required that  
23 regulations for permitting schemes contain “narrow, objective, and definite standards,” and that

24 \_\_\_\_\_  
25 <sup>9</sup> It is evident from past Parades, for example, that participants bear flags of other nations, *e.g.*,  
26 the yellow and orange flag of the former South Vietnam (Ex. K), or the red-white-green Italian flag that  
27 the Auburn Sons of Italy use to identify themselves in addition to the American flag. Ex. L. The  
Vietnam Veterans of America and POW/MIA Color Guard carry banners that focus on prisoners of war.  
Ex. M. And to the extent it is relevant at all, other groups besides Veterans For Peace manipulate and  
alter the American flag, *e.g.*, the White Center Fraternal Order of Eagles’ use of the flag to make skirts  
(Ex. N), or the presence of a flag from the American revolutionary era. Ex. O.

1 government officials provide explanations for their decisions. *Long Beach Area Peace Network*  
2 *v. Long Beach*, 574 F.3d 1011, 1025 (9th Cir. 2009) (quoting *Forsyth County*, 505 U.S. at 133).

3 **a. The City’s Parade Regulations Are Too Broad To Be Constitutionally Enforced.**

4 The City’s 2012 Amended “Rules and Regulations” are unconstitutionally vague and  
5 overly broad with respect to the pivotal criteria here—the stated “purpose” that (1) participants  
6 “positively focus on honoring our country’s veterans and active military personnel”; and (2)  
7 “[t]he goals and purposes of [the] Parade are to give honor to our country’s military personnel  
8 and veterans and to their military missions of defending freedom around the world.” Ex. C.

9 As to the first flaw, the “purpose” regulation provides no definition of what it means to  
10 “positively focus on honoring” veterans. If read literally, the clause inherently allows only  
11 “positive” messages about any debates surrounding veterans. This itself suggests a facial  
12 viewpoint favored by the City. At a minimum, as applied here, the criterion is fatally  
13 ambiguous. Does “positive” in this context mean to laud? To encourage? To console? To be  
14 passionate about? Or is it to be understood as the opposite of “negative”? And, if that is so, does  
15 “negative” mean pejorative or simply critical? Or is the “positive” qualifier just redundant of the  
16 inherent meaning of the verb “to honor”? The applicant is clearly left to guess.

17 Second, it appears that Parade applicants must be prepared to “honor” current service  
18 members’ and veterans’ “military missions of defending freedom around the world.” This  
19 criterion, too, defies clear understanding and furnishes no requisite “narrow, objective, and  
20 definite standards to guide the licensing authority.” *Forsyth County*, 505 U.S. at 133. Again, the  
21 City’s “purpose” raises only questions: Must participants advocate war lest they be excluded?  
22 Must participants support an interventionist U.S. foreign policy? Or does one “honor” such  
23 “military missions” by considering the potential risks and costs of such missions? Can  
24 participants honor active personnel who undertake humanitarian missions (*e.g.*, U.S. military  
25 “Operation Unified Response” to provide relief to Haiti after January 12, 2010 earthquake,<sup>10</sup> or

26 \_\_\_\_\_  
27 <sup>10</sup> See <http://www.globalsecurity.org/military/ops/unified-response.htm> (last visited Nov. 3,  
2012).



1 the U.S. military' aid to Indonesia after the 2005 tsunami<sup>11</sup>)? May they still “honor” those  
2 troops’ “military missions to defend American freedoms around the world”? The City’s standard  
3 is impossible to ascertain, and, as applied to Veterans For Peace, lacks viewpoint-neutrality.

4 If the City’s intent *is* to impose its viewpoint in the guise of a “purpose” that it narrowly  
5 interprets as permitting only “pro-war” veterans groups, then the 2012 Amendments violate the  
6 First Amendment. *See Moss v. Secret Serv.*, 675 F.3d 1213, 1228 (9th Cir. 2012) (“The  
7 ‘government may not grant the use of a forum to people whose views it finds acceptable, but  
8 deny use to those wishing to express less favored or more controversial views[.]’”) (quoting  
9 *Mosley*, 408 U.S. at 95-96).

10 **b. The City Uses Unreviewable Standards That Mask Viewpoint Discrimination.**

11 The First Amendment forbids indefinite criteria that inform a City’s permitting schemes  
12 to avoid subjective viewpoint discrimination on the part of the regulator. *Lakewood v. Plain*  
13 *Dealer Pub. Co.*, 486 U.S. 750, 758 (2005).

14 The City takes the position, as described above, that it may deny an application and need  
15 only say that an applicant, such as Veterans For Peace here, does not “closely meet the purpose  
16 and goals” of the Parade. No further explanation or justification is given. When pressed, the  
17 City simply circles back to its ambiguous “purpose.” This runs afoul of the First Amendment.  
18 *See, e.g., Lakewood*, 486 U.S. at 769 (news-rack permitting ordinance unconstitutional in part  
19 because “nothing in the law as written requires the mayor to do more than make the statement ‘it  
20 is not in the public interest’ when denying a permit application”); *Desert Outdoor Adver. Inc. v.*  
21 *Moreno Valley*, 103 F.3d 814, 819 (9th Cir. 1996) (“City officials have unbridled discretion in  
22 determining whether a particular structure or sign will be harmful to the community’s health,  
23 welfare, or ‘aesthetic quality.’ Moreover, City officials can deny a permit without offering any  
24 evidence to support the conclusion that a particular structure or sign is detrimental to the  
25 community.”).

26 \_\_\_\_\_  
27 <sup>11</sup> *See* <http://www.defense.gov/home/features/2006/2005yearinreview/article2.html> (last visited  
Nov. 3, 2012).

1 Here, the risk of viewpoint discrimination is heightened because the City fails to identify  
2 which staffers make parade permitting decisions, and there appears to be no higher authority at  
3 the City to lodge an appeal.<sup>12</sup> See *Seattle Affiliate of Oct. 22nd Coalition to Stop Police Brutality*  
4 *v. City of Seattle*, 550 F.3d 788, 798 (9th Cir. 2008) (“The Supreme Court has expressed  
5 particular concern about statutes that do not require the licensor to ‘provide any explanation for  
6 his decision, and [where] that decision is unreviewable.’” (quoting *Forsyth*, 505 U.S. at 133)).

7 In 2010, the City had a “Veterans Day Committee” for which Ms. Pachciarz claimed to  
8 be the chair. Ms. Pachciarz is Special Events Coordinator for Auburn’s Arts, Parks and  
9 Recreation Department, but in the past she did not divulge whether staff from that department  
10 belongs to the Veterans Day Committee. Ms. Pachciarz also did not indicate whether non-city-  
11 employees participate in the Committee, or whether the City staffers that do also have affiliations  
12 with groups that participate in the Parade. It appears no public information exists about this  
13 Committee because, as Ms. Pachciarz acknowledged, “it is an informal committee, there are no  
14 minutes associated with the meetings.” Ex. 6.

15 After the 2012 Amendments to the Parade Rules and Regulations, it is unclear whether  
16 the Committee still exists, informally or otherwise. It is also unclear what the administrative  
17 review process entails. In 2010, when the Committee reversed its application denial, Ms.  
18 Pachciarz communicated with the VFP. Aside from stating the revised decision to approve  
19 VFP’s application, in 2010 Ms. Pachciarz did not mention who reviewed the appeal or the basis  
20 for the reversal (except that VFP’s participation might “be considered controversial”).

21 This year, the City again communicated through Ms. Pachciarz, this time that it would  
22 uphold its refusal to allow VFP participate. Yet no mention was made of a reviewing body. As  
23 for refusing to reconsider its denial, Ms. Pachciarz simply reiterated the unexplained basis that  
24 there were purportedly too many applicants, and that the City “chose those that most closely  
25 meet the goals and purpose” of the Parade, *i.e.*, to “positively focus on honoring veterans.” Ex.

26  
27 <sup>12</sup> Veterans For Peace wrote to Auburn’s Mayor to ask that the City reconsider the permit denial,  
but the City never responded. See Kinnucan Dec. ¶ 27; Ex. 14.

1 13. As in *City of Lakewood*, and *Desert Outdoor Advertising, supra*, such circular reasoning  
 2 does not pass constitutional muster.

3 The City's standardless discretion and ad hoc procedures raise serious concerns about the  
 4 City's prior restraint on Veterans For Peace's speech and the integrity of its application scheme.  
 5 The Ninth Circuit has recently cautioned: "A standardless discretion ... makes it difficult to  
 6 detect, and protect the public from, unconstitutional viewpoint discrimination by the licensing  
 7 official." *Kaahumanu*, 682 F.3d at 807. It is particularly troublesome here because Ms.  
 8 Pachciarz and an unknown group of staffers make these decisions as part of some informal group  
 9 without recordation through meeting minutes or known oversight.

10 **4. The City May Not Unreasonably Exclude Veterans For Peace From the**  
 11 **Parade.**

12 "[U]nder 'the First Amendment . . . a government may not grant the use of a forum to  
 13 people whose views it finds acceptable, but deny use to those wishing to express less favored or  
 14 more controversial views.'" *Moss*, 675 F.3d at 1228 (quoting *Mosley*, 408 U.S. at 95-96); *see*  
 15 *also Rosenberger*, 515 U.S. at 828 ("[T]he government may not regulate speech based on its  
 16 substantive content or the message it conveys.") (citation omitted); *Santa Monica Food Not*  
 17 *Bombs*, 450 F.3d at 1036 (permitting schemes may not be used "to deny or unwarrantedly  
 18 abridge the right of assembly and the opportunities for the communication of thought and the  
 19 discussion of public questions").

20 **a. The City's Exclusion of Veterans For Peace Is Unreasonable Because It Denied**  
 21 **Veterans For Peace Without Any Reasoned Explanation.**

22 The City denied VFP's Parade application because it disfavored VFP's pro-peace  
 23 message as being antithetical to a "positive[] focus on honoring veterans" and "to their military  
 24 missions to defending freedom around the world," or because Veterans For Peace was not  
 25 "close" enough to the City's purpose compared to the other entrants. *See Hopper v. Pasco*, 241  
 26 F.3d 1067, 1074-75 (9th Cir. 2008) (in a limited public forum any restriction on speech must be  
 27 "reasonable in light of the purposed served by the forum" and viewpoint neutral).

1 The City's consideration of VFP's application is unreasonable because it is unreasoned.  
2 Simply put, the City provides no justification for concluding that Veterans For Peace, even if it  
3 marched with peace flags in addition to the stars and stripes, does not "positively focus on  
4 honoring veterans." *Cf. Long Beach Area Peace Network*, 574 F.3d at 1025 (official must  
5 "provide . . . explanation for his decision"). Even if one assumes an unstated basis that Ms.  
6 Pachciarz considered information provided by Veterans For Peace in the application process that  
7 VFP works to "restrain our government from intervening . . . in the internal affairs of other  
8 nations" or "to abolish war as an instrument of national policy so that no soldier will ever be . . .  
9 [in] jeopardy for an unjust or unworthy cause," that does not mean VFP dishonors veterans.

10 The City points to no past conduct that could be considered inimical to the Parade  
11 purpose. The City has granted VFP's applications to march every year since 2006. The City  
12 continued to issue permits in 2010 and 2011, even after the City initially rejected VFP's 2010  
13 application on grounds that the City "staff reviewed your current website as well as photos and  
14 the parade video from 2009 and felt that your entry could be considered controversial." Ex. 6.

15 There can be no serious claim of threatened disruption, and speculative fears about  
16 controversy or disruption are unreasonable and impermissible viewpoint discrimination. *See*  
17 *Cornelius*, 473 U.S. at 812 ("concern to avoid controversy excited by particular groups may  
18 conceal a bias against the viewpoint advanced by the excluded speakers"); *Norse v. Santa Cruz*,  
19 629 F.3d 966, 979 (9th Cir. 2010) ("undifferentiated fear or apprehension of disturbance is not  
20 enough to overcome the right to freedom of expression") (Kozinski, J. concurring).

21 **b. The City Denied Veterans For Peace's Parade Application Because Veterans For**  
22 **Peace Has a Mission That Advocates For Peace, i.e., Because of Its Viewpoint.**

23 By excluding Veterans for Peace, the City communicated that Veterans For Peace does  
24 not belong because of its pro-peace message. But Veterans For Peace does nothing more than  
25 honor veterans by maintaining a critical view of U.S. foreign policy that it believes has often led  
26 to "unjust and "unworthy" military conflicts and needlessly jeopardized American  
27 servicemembers. And in past years, Veterans For Peace has carried peace flags. Yet in contrast

1 to the many other participants that march with symbolic flags and banners and have their own  
2 political agendas, the City has censored Veterans For Peace.<sup>13</sup>

3 “When government has excluded perspectives on a subject matter otherwise permitted by  
4 the forum, the government is discriminating on the basis of viewpoint.” *Flint*, 488 F.3d at 833  
5 (citation and internal quotation marks omitted). “[W]here the government is plainly motivated by  
6 the nature of the message rather than the limitations of the forum or a specific risk within that  
7 forum, it is regulating a viewpoint.” *Sammartano v. First Judicial Dist. Court*, 303 F.3d 959, 971  
8 (9th Cir. 2002). “Discrimination against speech because of its message is presumed to be  
9 unconstitutional.” *Rosenberger*, 515 U.S. at 828 (citation omitted).

10 As argued above, the City’s unbridled discretion to reject applicants that allegedly do not  
11 comport with the City’s vague “purpose” automatically raises concerns about viewpoint  
12 discrimination. On its face, the stated purpose is susceptible to viewpoint discrimination  
13 because, by highlighting the “positive,” the City implicitly delegitimizes critical perspectives.

14 The City’s differential treatment of VFP compared to other Parade participants reveals  
15 the discrimination more starkly. For the previous six years, Veterans For Peace marched  
16 alongside the other veteran and non-veteran groups, and each honored the veterans and current  
17 military personnel as each group saw fit. As canvassed above, the City routinely allows entrants  
18 to parade with other country’s flags, symbolic banners, altered American flags, and other  
19 expression that may be secondary to “honoring” veterans. *See Mot., infra*, Part II.B.2.

20 If the City researches any of these groups via the internet, as it did with the Veterans For  
21 Peace in 2010, the City would find that many groups have political agendas. The Disabled  
22 Veterans of America fight for equitable compensation, medical treatment, and increased services  
23 for the disabled (Ex. I), which may put them at odds with the U.S. Veterans Administration. The  
24 Sons of the American Revolution touts itself as a “genealogical organization” and expresses an

25 \_\_\_\_\_  
26 <sup>13</sup> The City’s suppression of VFP’s pro-peace message is especially striking in light of First  
27 Amendment protections that extend to even the most controversial ideas that most Americans would find  
distasteful or repugnant. *See, e.g., R.A.V. v. St. Paul, Minn.*, 505 U.S. 377 (1992) (striking down law  
criminalizing display of “burning cross”); *Texas v. Johnson*, 491 U.S. 397 (1989) (burning of American  
flag); *Nat’l Socialist Party of Am. v. Skokie*, 432 U.S. 43 (1977) (parading with swastikas).

1 inherent message that it views contemporary U.S. wars overseas as an extension of American  
2 revolutionary values or some “true patriotism.” Ex. J. Washington ABATE seeks repeal of the  
3 Washington motorcycle helmet law (Ex. P), a message that has nothing to do with veterans.

4 These examples illustrate each participant may honor veterans, without relinquishing a  
5 particular viewpoint. The City has no trouble tolerating the secondary messages that other  
6 entrants bring to the Parade, despite political overtones. And this is as it should be.

7 *In North Shore Right To Life Committee*, the court confronted this exact situation and  
8 struck down a Memorial Day parade regulation maintained by the American Legion, acting as a  
9 “fiduciary for the local governments,” that insisted all participants be “absolutely non-political.”  
10 452 F.Supp. at 836, 838. The court held it violated the First Amendment to block participation  
11 of the right-to-life committee because of its inherent political message:

12 [T]he American Legion has chosen participants in the Memorial Day parade on  
13 the ground of their political views. The effect has been to cut off expression by  
14 individuals whose organization espouses a controversial doctrine. Other  
15 participants in the parade have also expressed views that some might deem  
16 political. . . . The Girl Scouts of America, an indispensable participant in every  
17 Memorial Day parade, favors the Equal Rights Amendment. Even firemen, whose  
18 equipment is an integral part of the procession, have an annual legislative  
19 program advanced each year in Albany.

20 *Id.* at 840.

21 This is the situation in Auburn, except that the City singles out VFP for its pro-peace  
22 message, even though VFP avowedly honors veterans. Daryl Farber’s observations that the City  
23 denied the VFP’s Parade application “because of the message” certainly support this conclusion.  
24 *See Campbell Dec.* The historical correspondence between VFP and the City bears this out, too.

25 At present, Veterans For Peace does not know exactly what motivated the City—its  
26 officials themselves may dislike VFP’s views; they may favor other participants over Veterans  
27 For Peace; they may only be apprehensive of “controversy” or fear some disruption because the  
participants could disagree with one another. But whatever the City motivations are, they are  
contrary to the First Amendment. *See, e.g., Cornelius*, 473 U.S. at 813-14; *Spence*, 418 U.S. at  
412 (“public expression of ideas may not be prohibited merely because the ideas are themselves

1 offensive to some of the hearers”); *Rosenbaum v. San Francisco*, 484 F.3d 1142, 1158 (9th Cir.  
 2 2007 (“heckler’s veto” is an impermissible content-based speech restriction “due to an  
 3 anticipated disorderly or violent reaction of the audience”).

4 **c. The City’s Rationale For Excluding Veterans For Peace, Allegedly Because the**  
 5 **Parade Is Oversubscribed, Is Pretext For Viewpoint Discrimination.**

6 In denying the 2012 permit, the City also alludes to a purportedly neutral rationalization:  
 7 “The Parade has more applicants than it can permit to participate, and thus must select among the  
 8 applicants those who will be able to participate.” Ex. C. This claim is disingenuous.

9 First and foremost, the City could have easily adopted content-neutral measures to solve  
 10 the purported problem of oversubscription. *See United States v. Griefen*, 200 F.3d 1256, 1260  
 11 (9th Cir. 2000) (restriction on expressive activity content- or viewpoint-neutral only if it is  
 12 “based on a non-pretextual reason divorced from the content of the message”). If there are  
 13 genuinely too many applicants, the City could have implemented a numerical cap and accepted  
 14 applications on a first-come, first-serve basis. The City also could have created a lottery  
 15 program. The City has done neither. The City has never even articulated a maximum number of  
 16 applicants; and of course, the City should be able to point to other applicants whose applications  
 17 were denied, but it has not done so despite Veterans For Peace’s inquiries.

18 The City’s stated justification is spurious and underscores that its staff operates without  
 19 the requisite narrow and objective standards. *See Lakewood*, 486 U.S. at 758 (“Without these  
 20 guideposts, *post hoc* rationalizations by the licensing official and the use of shifting or  
 21 illegitimate criteria are far too easy, making it difficult for courts to determine in any particular  
 22 case whether the licensor is permitting favorable, and suppressing unfavorable, expression.”).

23 **B. Veterans For Peace Will Suffer Irreparable Harm Absent the TRO.**

24 The principal injury to Veterans For Peace is the deprivation of its members’ First  
 25 Amendment rights in being excluded from the Parade. More concretely, the VFP members will  
 26 suffer the indignation of being singled out for exclusion because they seek to express a message  
 27 of peace. On November 10, when this nation celebrates all veterans, VFP members will suffer



1 ostracism from the veterans community. *See* Gilman Dec. ¶ 5 (Vietnam veteran who feels he has  
 2 “a right to march in the parade because I served my country.”). Even more bitter, VFP will  
 3 suffer the insult, communicated by the City’s exclusion, that the VFP veterans are less patriotic  
 4 than other veterans. They will be stigmatized by the City as not honoring the men and women  
 5 who serve in the military, or those who have fallen in battle.<sup>14</sup> VFP will suffer this indignity  
 6 simply because their organization promotes awareness about the human and social costs of war.  
 7 *See* DeCano Dec. ¶ 8 (“Marching in the parade is important because it shows that there are  
 8 veterans, combat and noncombat, who don’t view war as necessary to sustain civilization.”);  
 9 Heft Dec. ¶ 3 (“VFP 92’s participation in the parade allows young people to see that they don’t  
 10 have to be caught up in militarism, and that there are veterans who advocate for peace.”).

11 “Unlike monetary injuries, constitutional violations cannot be adequately remedied  
 12 through damages and therefore generally constitute irreparable harm.” *Nelson v. Nat’l Aero. &*  
 13 *Space Admin.*, 530 F.3d 865, 882 (9th Cir. 2008), *rev’d on other grounds by, Nat’l Aero & Space*  
 14 *Admin. V. Nelson*, 131 S. Ct. 746 (2011).

15 **C. The Balance of Hardships Tips In Favor of Plaintiff.**

16 Here, Veterans For Peace will suffer irreparable harm in being excluded from the 2012  
 17 Parade. Veterans For Peace has participated in the Parade for the past six years without any  
 18 hardship to the City. At most, the City will have to permit an additional entrant to march in the  
 19 Parade. But this will impose no appreciable cost, or result in any undue time expenditure to  
 20 accommodate Veterans For Peace. The balance of hardships strongly favors Plaintiff.

21 **D. The Public Interest Favors Free Expression Over Impermissible Government**  
 22 **Viewpoint Discrimination.**

23 The First Amendment represents a compelling public interest. “[P]rior restraints on  
 24 speech and publication are the most serious and the least tolerable infringement on First  
 25 Amendment rights.” *Nebraska Press Ass’n v. Stuart*, 427 U.S. 539, 559 (1976). The public has

26 \_\_\_\_\_  
 27 <sup>14</sup> It is ironic that in its online video, the City depicts veterans expressing their gratitude for the  
 Parade—*e.g.*, “for us Vietnam vets, we never got that.” Ex. H at 1:50-2:00 (time signature). Yet the City  
 here treats Veterans For Peace in much the same way as a returning Vietnam veterans, as outsiders.

1 an important interest in protecting the “marketplace of ideas,” wherever it may be found, and in  
 2 the continued vitality of the Bill of Rights. The public interest weighs strongly in favor of an  
 3 order enjoining the City from excluding Veterans For Peace from the 2012 simply because the  
 4 City may desire to cleanse the Parade of potential “controversy.”

5 **E. Immediate Judicial Intervention Is Necessary.**

6 Absent the Court’s intervention to temporarily restrain the City from continuing to  
 7 exclude Veterans For Peace, Veterans For Peace will be unable to march in the November 10,  
 8 2012 Parade and it will lose the unique opportunity to honor the country’s veterans.

9 **G. Plaintiff Seeks a Waiver of the Bond Requirement.**

10 Because Defendant will suffer no conceivable loss or damages from the entry of a  
 11 preliminary injunction, Plaintiff requests that the Court waive the requirement to post a security  
 12 bond during the pendency of the litigation. Where public interest organizations seek to enforce  
 13 the rights in matters of public interest, the Ninth Circuit has approved minimal bonds or waivers  
 14 of the bond requirement. *Barahona-Gomez v. Reno*, 167 F.3d 1228, 1237 (9th Cir. 1999); *Cal. ex*  
 15 *rel. Van de Kamp v. Tahoe Reg’l Planning Agency*, 766 F.2d 1319, 1325 (9th Cir. 1985) (no  
 16 bond required for non-profit group).

17 **III. CONCLUSION**

18 For the reasons stated above, the Court should grant Plaintiff’s Motion and (1)  
 19 temporarily restrain Defendant City of Auburn from excluding Veterans For Peace from  
 20 marching in Auburn’s Veterans Day Parade on November 10, 2012; and (2) enjoin the City from  
 21 denying Veterans For Peace’s Parade application so that VFP may lawfully participate.

22 DATED this 5<sup>th</sup> day of November, 2012.

23 MacDONALD HOAGUE & BAYLESS

24  
 25 By: /s/ David J. Whedbee  
 26 David J. Whedbee, WSBA # 35977  
 27 davidw@mhb.com

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

Sarah A. Dunne, WSBA #34869  
La Rond Baker, WSBA #43610  
ACLU of Washington Foundation  
901 Fifth Avenue, Suite 630  
Seattle, WA 98164  
(206) 624-2184  
[dunne@aclu-wa.org](mailto:dunne@aclu-wa.org); [lbaker@aclu-wa.org](mailto:lbaker@aclu-wa.org)  
Attorneys for Plaintiff