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**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

KEITH REYNOLDS, in his official capacity as
the Director of the Idaho Department of
Administration,

Plaintiff,

v.

BOISE MUTUAL AID, TY WERENKA, as a
representative of Boise Mutual Aid, MONICA
YURIVILCA, TIMOTHY CHRISTENSEN,
TYLER BERG, DAVID FRAZIER,
YOLANDA PULLMAN, ALICIA PHILLIPS,
JERRY MULLENIX, DAVID CANNON,
ROBERT FITZPATRICK, and JOHN and
JANE DOES 1–50,

Defendants.

Case No. _____

**COMPLAINT FOR INJUNCTIVE
RELIEF AND DECLARATORY
JUDGMENT**

Filing Fee: Exempt I.C. § 31-3212

1. Plaintiff Keith Reynolds, Director of the Idaho Department of Administration, seeks injunctive relief and a declaratory judgment to stop continuing and threatened violations of

the rules governing the grounds at 514 West Jefferson Street, Boise, Idaho (the “Capitol Annex”) and to abate the nuisance that the violations have created.

2. Defendants have erected a tent city at the Capitol Annex. They are using the tent city not as a symbolic form of expression, but as a place to unlawfully live. They are abusing the Capitol Annex by littering it with feces, vomit, urine, rotting food, needles, alcohol containers, and cigarette butts. The conditions are so abysmal that Central District Health has advised Director Reynolds that the tent city is a public health hazard.

3. The tent city is also a locus of criminal activity. Individuals with outstanding warrants hide out at the tent city. Drug dealers visit the tent city to sell their wares. An adult man stayed at the tent city with his runaway 16-year-old “girlfriend.” Fights break out requiring police intervention, and an inhabitant of the tent city battered a state legislator while he lawfully stood on state property.

4. The Capitol Annex would not be a public health hazard and a locus of criminal activity if Defendants obeyed the laws and rules governing the area. Those rules, among other things, prohibit camping, defecating on the grounds, urinating on the grounds, drinking, smoking, and tossing rotten food and trash on the grounds. By continually violating those rules, Defendants have created a nuisance.

5. Idaho State Police and the Department of Administration have advised Defendants of the rules, warned Defendants, and cited Defendants. Yet the violations continue, the public health hazards have grown, and the criminal activity has expanded. Defendants seemingly think they can continue to violate the rules because their conduct is constitutionally protected. Defendants are wrong. The U.S. Constitution does not require Idaho to allow individuals to live, defecate, urinate, sell drugs, use drugs, litter, drink, or smoke at the Capitol Annex.

6. Idaho Code § 67-5709 says that Director Reynolds “shall have authority to sue to enjoin any threatened or continuing violation of” the rules governing the Capitol Annex. Director Reynolds now invokes that authority and asks the Court to issue an injunction enjoining Defendants from using the Capitol Annex. Defendants’ repeated violations demonstrate that if left on the property they cannot follow the rules, thus the only way to abate the ongoing health hazards and to prevent continued criminal activity is to remove Defendants from the area.

7. Director Reynolds also sues under Idaho Code § 52-111 for an order abating the nuisance at the Capitol Annex by removing the tent city.

JURISDICTION AND VENUE

8. The Court has original jurisdiction under Idaho Code § 1-705 because Director Reynolds sues under Idaho law.

9. Venue is proper in this Court under Idaho Code § 5-401 because this action seeks a determination of Director Reynolds’s rights and interests in enforcing the laws and rules governing the Capitol Annex, which is in Ada County. Venue is also proper under Idaho Code § 5-404 as Defendants are believed to be residing at the Capitol Annex, which is in Ada County.

PARTIES

10. Plaintiff Keith Reynolds is the Director of the Idaho Department of Administration. He sues in his official capacity.

11. Defendant Boise Mutual Aid is believed to be an unincorporated association active in Idaho. It touts itself as the organizer of the tent city, encourages individuals to camp at the tent city, and solicits items for the tent city that are not permitted at the Capitol Annex.

12. Ty Werenka is believed to be a member of Boise Mutual Aid. He is sued as a representative of Defendant Boise Mutual Aid under Idaho Rule of Civil Procedure 79.

13. Defendant Monica Yurivilca is an individual believed to be residing at the Capitol Annex.

14. Defendant Timothy Christensen is an individual believed to be residing at the Capitol Annex.

15. Defendant Tyler Berg is an individual believed to be residing at the Capitol Annex.

16. Defendant David Frazier is an individual believed to be residing at the Capitol Annex.

17. Defendant Yolanda Pullman is an individual believed to be residing at the Capitol Annex.

18. Defendant Alicia Phillips is an individual believed to be residing at the Capitol Annex.

19. Defendant Jerry Mullenix is an individual believed to be residing at the Capitol Annex.

20. Defendant David Cannon is an individual believed to be residing at the Capitol Annex.

21. Defendants John and Jane Does 1–50 are unknown individuals believed to be continuously and repeatedly violating the laws and rules governing the Capitol Annex.

THE CAPITOL ANNEX

22. The Capitol Annex is state land located at 514 West Jefferson Street, Boise, Idaho, across the street to the east of the State's Capitol. Colloquially, the area is sometimes referred to as the old Ada County Courthouse. As one of the capitol mall properties, the Capitol Annex reflects the prestige and grandeur of the State of Idaho. Visitors to the Capitol regularly visit or walk

through the Capitol Annex. Most recently, the building on the property housed the University of Idaho College of Law and the University still uses the property for certain activities.

23. Under Idaho Code § 67-5709, Director Reynolds has “exclusive control of the capitol mall properties” including the Capitol Annex. He is entrusted to maintain the property for safe and enjoyable use by all Idahoans. He is also entrusted to maintain the property in a manner that reflects the prestige and grandeur of the State of Idaho. He must responsibly use state funds to achieve those goals.

24. As the manager of the capitol mall properties, Director Reynolds has “authority to promulgate rules relating to use of those properties.” Idaho Code § 67-5709(1). The Director has exercised that authority, promulgating rules designed to keep the Capitol Annex safe and clean so that all Idahoans can enjoy the public land surrounding the Capitol.

25. The Director has promulgated a rule prohibiting camping at the Capitol Annex. IDAPA 38.04.06.200. The Capitol Annex belongs to all Idahoans. When individuals camp at the Capitol Annex, they unduly prioritize their use of this public land over the use by all others. The Capitol Annex is not a campsite designed for safe and sanitary camping. It does not have areas designed to safely start fires, cook meals, or use the bathroom. Nor should it. Unlike other public lands, the Capitol Annex’s primary use is not camping.

26. The Director has promulgated a rule providing that no “person shall excrete human waste” at the Capitol Annex “except in designated restroom facilities.” IDAPA 38.04.06.317. When feces, urine, and vomit are present on the grounds of the Capitol Annex, they create a health risk, degrade the property, and impair the ability of all Idahoans to enjoy the property.

27. The Director has promulgated a rule prohibiting “fires, candles, or other sources of open flame.” IDAPA 38.04.06.309. The Capitol Annex does not have areas designed to safely start

or maintain a fire. If a fire is started or maintained on the Capitol Annex, there is an undue risk that it could grow out of control. If a fire grows out of control on the Capitol Annex, it poses a safety risk to those on or around the capitol mall. The fire could also damage the grounds and the historic state buildings in the area, including the Capitol.

28. The Director has promulgated a rule requiring individuals at the Capitol Annex to leave the area “in reasonably clean condition after use, including depositing all trash in designated receptacles.” IDAPA 38.04.06.317. When the Capitol Annex is left unclean and trash accumulates on the grounds, it creates a health hazard and impairs the enjoyment of other Idahoans using the property. If the Capitol Annex is unkempt, it reflects poorly on the prestige and grandeur of the State of Idaho and the Capitol.

29. The Director has promulgated a rule requiring individuals to keep their dogs on leashes and to pick up their dogs’ waste. IDAPA 38.04.06.305. When a dog is not leashed, it creates risks of fright or injury to other individuals that also want to enjoy the property. When a dog’s waste is left on the Capitol Annex, it creates a health risk, degrades the property, and impairs the ability of all Idahoans to enjoy the property.

30. The Director has promulgated a rule requiring individuals to “smoke only in designated exterior areas.” IDAPA 38.04.06.308. The rule is designed to ensure that non-smokers visiting the Capitol Annex are not unfairly exposed to the negative health effects of second-hand smoke. The rule also protects the State’s buildings from smoke damage and protects the State’s grounds from littering of cigarette butts.

31. The Director has promulgated a rule stating that “[a]lcohol may not be consumed or distributed at the” Capitol Annex. IDAPA 38.04.06.307. The rule ensures all Idahoans can enjoy the Capitol Annex, even if they would prefer not to be exposed to the consumption of alcohol. It

also reduces public intoxication in the area, which can lead to unruly behavior or damage to the property.

32. The Director has promulgated a rule prohibiting individuals from digging in or otherwise damaging grass areas at the Capitol Annex. IDAPA 38.04.06.306. When individuals damage the grass at the Capitol Annex, it diminishes the property's appearance. That degradation reflects poorly on the prestige and grandeur of the State of Idaho and the Capitol. That degradation also impairs the enjoyment of other Idahoans using the property.

33. The Director has promulgated a rule prohibiting individuals from inserting stakes, posts, or rods into the ground at the Capitol Annex. IDAPA 38.04.06.310. When individuals insert stakes, posts, or rods into the ground at the Capitol Annex, they damage the property, diminish the property's appearance, and create tripping hazards.

THE TENT CITY

34. Starting on approximately January 16, 2022, a group erected a tent city at the Capitol Annex.

35. The State does not oppose the use of the Capitol Annex for lawful protests subject to reasonable time, place, and manner restrictions. The State has consistently communicated to individuals at the tent city that the State's desire is to allow individuals to use the Capitol Annex for protesting in a safe and respectful manner so that all Idahoans can enjoy this public land.

36. Defendants are not using the tent city for a lawful protest. Defendants are not manning symbolic tents. Defendants are living at the Capitol Annex. Defendants are defecating, urinating, and vomiting on the Capitol Annex. Defendants are using and selling drugs at the Capitol Annex. Defendants are piling up trash and rotting food at the Capitol Annex. Defendants are drinking and smoking at the Capitol Annex, tossing their empty bottles and cigarette butts on the

grounds. Defendants are letting their dogs run loose on the Capitol Annex, leaving dog feces littered across the property. Defendants are staking and damaging the grass at the Capitol Annex.

37. Officers from Idaho State Police and the Idaho Department of Administration regularly observe activities at the tent city. Those observations are shared with Director Reynolds.

38. Officers have repeatedly and continuously observed indicia of camping at the tent city, including mattresses with disheveled bedding, blankets, pillows, and sleeping bags.

39. Officers have repeatedly and continuously observed individuals stumbling out of tents in the morning hours. Officers believe those individuals were sleeping in the tents, and some have admitted to officers that they were doing so.

40. Individuals familiar with the tent city¹ have advised officers that a runaway 16-year-old girl was living at the tent city with Defendant Tyler Berg, an adult male.² Another man at the tent city sexually groped the 16-year-old girl. That same man has reportedly fondled other women at the tent city as well.

41. Officers have repeatedly and continuously observed numerous propane tanks and heaters hidden in tents or under tarps at the tent city. Given the quantity of the propane tanks and heaters observed and that they are stored in or near flammable tents, they pose a serious fire hazard and explosion risk that endangers the lives of those at the tent city, those walking or driving near the Capitol Annex, and those inside the Capitol and other buildings adjacent to the Capitol Annex.

¹ Director Reynolds withholds the identities of these individuals in this public filing to protect them from harassment or attack from those living at the tent city, including from Defendants. If necessary, Director Reynolds will seek a protective order before disclosing the identities to the Court.

² On February 24, 2022, Idaho State Police visited the tent city and could not locate the girl. Officers were told that the girl's mother removed her from the tent city. Upon information and belief, the girl may try to return to the tent city.

The propane tanks and heaters similarly endanger the State's property at and near the Capitol Annex.

42. Officers have repeatedly and continuously observed feces on the grounds, in the bushes, and on the sidewalks at the Capitol Annex. The feces create a health risk, degrade state property, and impair the ability of all Idahoans to enjoy the Capitol Annex.

43. Officers have repeatedly and continuously observed evidence of urination outside of designated facilities at the Capitol Annex. Officers found containers of urine in tents and lying on the grounds, observed wet toilet paper on the grounds, and observed discoloration that appeared to be urine on the building at the Capitol Annex. The urine creates a health risk, degrades state property, and impairs the ability of all Idahoans to enjoy the Capitol Annex.

44. Officers have repeatedly and continuously observed evidence of drug use at the Capitol Annex, including marijuana, methamphetamines, hypodermic needles, Narcan, alcohol wipes, tourniquets, and glass pipes. Individuals familiar with the tent city have advised officers that a drug dealer visits the tent city, there are drug transactions at the tent city, and there is drug use at the tent city.

45. The use of drugs and exposure to used needles create a health risk, degrade state property, and impair the ability of all Idahoans to enjoy the Capitol Annex.

46. Officers have repeatedly and continuously observed evidence of alcohol consumption at the Capitol Annex, including partially and completely empty bottles of alcohol. The use of intoxicants and littering of used containers create a health risk, degrade state property, and impair the ability of all Idahoans to enjoy the Capitol Annex.

47. Officers have repeatedly and continuously observed evidence of smoking at the Capitol Annex outside of designated areas, including individuals at the tent city actively smoking

cigarettes and used cigarette butts littered on the ground. The smoking and cigarette butts create a health risk, degrade state property, and impair the ability of all Idahoans to enjoy the Capitol Annex.

48. Officers have repeatedly and continuously observed vomit at the Capitol Annex, including in tents, on sidewalks, and on the grounds. In one instance, officers observed a tent covered in vomit and asked those in the area to clean or remove the tent. When officers returned approximately a week later, the tent and the vomit were still there. The vomit creates a health risk, degrades state property, and impairs the ability of all Idahoans to enjoy the Capitol Annex.

49. Officers have repeatedly and continuously observed excessive trash and rotting food accumulated in tents and on the grounds at the Capitol Annex. Some tents are unclaimed, collapsed, and full of refuse. The piles of trash and rotting food create a health risk, degrade state property, and impair the ability of all Idahoans to enjoy the Capitol Annex.

50. Officers have repeatedly and continuously observed damage to the grounds at the Capitol Annex from the wear and tear of standing tents, tarps, staking, and foot traffic. The damage degrades state property and impairs the ability of all Idahoans to enjoy the Capitol Annex.

51. On February 23, 2022, Michael Reno from Central District Health wrote Director Reynolds about the tent city at the Capitol Annex. Mr. Reno wrote that during an inspection of the tent city the previous day he “noted garbage and discarded food waste on the ground, what appeared to be dog vomit or dog diarrhea on the ground within the circle of tents, and what appeared to be urination stains on the side of the building at the West entrance.” Mr. Reno also wrote that “one of the encampment occupants stated that several of the tents were being used for overnight camping, and we observed two individuals exiting two of the tents at approximately 9:30 am.” Mr. Reno further wrote that “it was disclosed that maintenance crews had picked up several

hypodermic needles at the site that morning and that this was a normal occurrence.” Based on these observations and others, Mr. Reno wrote that it is Central District Health’s “opinion that the encampment site does pose a risk to public health.”

52. Officers’ observations of the tent city demonstrate continuous and threatened violations of the laws and rules governing the Capitol Annex.

53. The observed violations are not protected speech. The U.S. Constitution does not require Idaho to allow individuals to live, defecate, urinate, sell drugs, use drugs, litter, drink, or smoke at the Capitol Annex. A federal court has held that Idaho “has the right to ban camping, cooking, making fires, and storing personal belongings related to camping.” *Watters v. Otter*, 955 F. Supp. 2d 1178, 1187 (D. Idaho 2013). The Supreme Court has also held that rules prohibiting camping around a capitol are permissible to promote the “substantial interest in maintaining” the area around a capitol “in an attractive and intact condition, readily available to the millions of people who wish to see and enjoy them by their presence. To permit camping—using these areas as living accommodations—would be totally inimical to these purposes, as would be readily understood by those who have frequented the National Parks across the country and observed the unfortunate consequences of the activities of those who refuse to confine their camping to designated areas.” *Clark v. Cmty. for Creative Non-Violence*, 468 U.S. 288, 296 (1984).

ENFORCEMENT ACTIONS

54. The State has strived to enforce the laws and rules governing the Capitol Annex to maintain the property and keep those visiting the Capitol Annex and the surrounding capitol mall properties safe and healthy. In so doing, the State has been extremely careful to respect the constitutional rights of those at the tent city.

55. In a letter dated January 25, 2022 to counsel for individuals at the tent city, the State's counsel conveyed that the "goal is to ensure that Idaho law is being enforced and that protesters' rights are being respected" and that the "hope [is] through an open dialogue we can maintain the Capitol Annex as a safe and respectful place for public protest."

56. To achieve the State's goal, Idaho State Police and the Idaho Department of Administration have methodically enforced the laws and rules governing the Capitol Annex.

57. Officers have not taken down any tents used for an expressive purpose, nor have they threatened to do so.

58. When officers approach individuals at the tent city, they first ask if anyone needs shelter and advise of resources available.

59. When officers first started noticing indicia of camping and other items not permitted at the Capitol Annex on approximately January 24, 2022, they advised individuals at the tent city that the items should be removed. Officers did not warn or cite individuals. They instead helped individuals remove their items with no repercussions. If no person claimed individual ownership of the items, officers removed the items and left instructions on how the owner could retrieve his or her items.

60. Despite being advised of the laws and rules governing the Capitol Annex, the individuals at the tent city continued the violations. Starting on February 4, 2022, officers began issuing warnings to individuals living at the tent city. Officers also arrested four individuals who had outstanding warrants.

61. Even after officers began issuing warnings, individuals at the tent city continued to violate the laws and rules governing the Capitol Annex. On February 10, 2022, officers cited five individuals who had previously been warned about violating the laws and rules governing the

Capitol Annex. The citations do not lead to criminal prosecutions or criminal penalties. Two other individuals were issued warnings. One individual who had an outstanding warrant was arrested.

62. On February 16, 2022, the State's counsel sent a letter to Idaho Legal Aid, which had previously contacted the State on behalf of "members of Boise Mutual Aid with regard to actions taken by the Idaho State Police on the grounds of the Capitol Annex[.]" In the February 16, 2022 letter, the State's counsel advised Idaho Legal Aid of the health hazards at the tent city, provided photographic evidence of the conditions, and asked Idaho Legal Aid to work with its clients to "abate the health hazards and stop the continuing violations of law." Idaho Legal Aid responded by writing that, despite its prior representations to the State, it "does not represent Boise Mutual Aid or any of its 'members.'" The conditions have not improved after the State's counsel asked Idaho Legal Aid to work with its clients. In fact, Central District Health visited the tent city after the correspondence and concluded that the encampment posed a risk to public health.

63. Even after officers began issuing citations, individuals at the tent city continued to violate the laws and rules governing the Capitol Annex. On February 17, 2022, officers issued warnings to fifteen individuals living at the tent city. Officers also arrested one individual who had an outstanding warrant.

64. On February 24, 2022, officers cited twelve individuals living at the tent city. Officers also arrested three individuals with outstanding warrants and opened an investigation into illegal drug use and trafficking by certain individuals living at the tent city.

65. On March 8, 2022, officers cited six individuals living at the tent city. Officers also arrested three individuals with outstanding warrants.

66. Officers also sporadically warn, cite, and arrest individuals at the tent city when officers are unexpectedly at the tent city to respond to a reported disturbance or emergent situation.

67. Defendant Boise Mutual Aid facilitates the continued and threatened violations of the laws and rules governing the Capitol Annex. It touts itself as an organizer of the tent city and encourages individuals to camp at the tent city. It regularly solicits and distributes propane tanks, heaters, sleeping bags, blankets, and other prohibited items at the Capitol Annex.

68. Defendant Ty Werenka has been arrested for resisting and obstructing a law enforcement officer at the tent city. He is believed to be a member of Boise Mutual Aid.

69. Defendant Monica Yurivilca has been warned once and cited twice for unlawfully living at the Capitol Annex. She has also been arrested at the tent city on an outstanding warrant related to an assault. Officers have been called to the tent city to break up fights involving Yurivilca, including an incident where she wielded a knife and slashed tents.

70. Defendant Timothy Christensen has been warned twice and cited twice for unlawfully living at the Capitol Annex. He has also been arrested at the tent city on an outstanding warrant related to disorderly conduct. Christensen is believed to have illegally used or sold methamphetamines at the tent city.

71. Defendant Tyler Berg has been warned once and cited once for unlawfully living at the Capitol Annex. He has also been arrested at the tent city on an outstanding warrant. Berg is an adult, and he has lived with a runaway 16-year-old girl at the tent city. He has admitted to defecating on the grounds of the Capitol Annex.

72. Defendant David Frazier has been cited twice for unlawfully living at the Capitol Annex. He also been arrested twice at the tent city, once on an outstanding warrant related to possession of a controlled substance and once on an outstanding warrant related to a probation violation.

73. Defendant Yolanda Pullman has been warned twice and cited once for unlawfully living at the Capitol Annex. She has also been arrested on an outstanding warrant related to unlawful possession of a controlled substance.

74. Defendant Alicia Phillips has been warned three times and cited twice for unlawfully living at the Capitol Annex.

75. Defendant Jerry Mullenix has been warned once and cited twice for unlawfully living at the Capitol Annex.

76. Defendant David Cannon has been warned once and cited twice for unlawfully living at the Capitol Annex. He unlawfully erected a latrine for individuals to defecate, urinate, and vomit at the Capitol Annex. Officers have observed bags of human waste in the latrine.

77. Defendant Robert Fitzpatrick has been warned twice and cited once for unlawfully living at the Capitol Annex. He has also been arrested at the tent city on an outstanding warrant related to trespass.

78. Other individuals not named in this Complaint have been warned or cited for living at the tent city. Unlike Defendants, those other individuals have responded to enforcement actions and stopped breaking the law.

79. Based on Defendants' repeated warnings and citations, Director Reynolds believes Defendants are continuously living at the tent city and will continue to do so indefinitely. He also believes Defendants are responsible for the health and safety hazards present at the tent city.

COUNT 1: INJUNCTION UNDER IDAHO CODE § 67-5709

80. Director Reynolds brings a cause of action under Idaho Code § 67-5709(1), which permits him "to sue to enjoin any threatened or continuing violation" of the rules governing the Capitol Annex.

81. Defendants are threatening and continuing to violate the rules governing the Capitol Annex.

82. As previously described, Officers have repeatedly and continuously observed violations of the rules governing the Capitol Annex that prohibit camping, consumption of alcohol, smoking outside of designated areas, use of fires, candles, or other sources of open flame, tossing trash on the grounds, defecating on the grounds, urinating on the grounds, and damaging the grass. Director Reynolds believes Defendants are responsible for these violations.

83. Officers have advised those at the tent city, including Defendants, of the laws and rules governing the Capitol Annex. The violations have not stopped.

84. Officers have warned those at the tent city, including Defendants, for unlawfully living at the Capitol Annex. The violations have not stopped.

85. Officers have cited those at the tent city, including Defendants, for unlawfully living at the Capitol Annex. The violations have not stopped.

86. Defendants' threatened and continuing violations of the laws and rules governing the Capitol Annex have created a public health hazard, as confirmed by Central District Health's letter to Director Reynolds after its visit to the tent city.

87. To address these continuing and threatened violations of the rules, Director Reynolds needs an injunction under Idaho Code § 67-5709(1) to address the harm the violations are causing to public health, public safety, public property, and the rights of all Idahoans to enjoy the Capitol Annex.

88. Director Reynolds fears that without an injunction, there is a risk that individuals at or walking near the Capitol Annex may face injury or death from an act of violence, a fire, an overdose, or a disease contracted from the many health hazards. Director Reynolds also fears that

if he does not seek relief to abate the nuisance at the Capitol Annex, some person injured there may seek to hold him, or the State, liable for failing to take action to abate the hazards.

89. Director Reynolds believes the only way to stop the threatened and continued violations of the rules is to remove Defendants and their belongings from the Capitol Annex. Director Reynolds has tried advising, warning, and citing Defendants, but they refuse to follow the rules. Defendants have demonstrated that they cannot responsibly exercise the privilege of using the Capitol Annex.

COUNT II: NUISANCE

90. Director Reynolds sues under Idaho Code § 52-111 to enjoin and abate the nuisance that Defendants' violations of the laws and rules governing the Capitol Annex have created.

91. A nuisance is "[a]nything which is injurious to health or morals, or is indecent, or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, stream, canal, or basin, or any public park, square, street, or highway[.]" Idaho Code § 52-101.

92. Defendants' use of the tent city as a place to live, defecate, urinate, vomit, use drugs, sell drugs, fight, stay with an underage girl, and litter has created a nuisance. The tent city is injurious to health and morals, indecent, and offensive to the senses. The tent city obstructs and interferes with the free use and comfortable enjoyment of the Capitol Annex.

93. A nuisance "action may be brought by any person whose property is injuriously affected, or whose personal enjoyment is lessened by the nuisance[.]" Idaho Code § 52-111. As the person with exclusive control over the Capitol Annex, Director Reynolds brings suits under Idaho Code § 52-111 as a person whose property is injuriously affected by the tent city.

COUNT III: DECLARATORY JUDGMENT

94. Director Reynolds seeks a declaratory judgment under Idaho Code § 10-1201 that:

- (a) Defendants are threatening and continuing to violate the rules governing the Capitol Annex;
- (b) Defendants have created a public health hazard at the Capitol Annex; and (c) the United States Constitution does not require Idaho to allow individuals to live, defecate, urinate, sell drugs, use drugs, use propane heaters, litter, drink, or smoke at the Capitol Annex.

95. Defendants seemingly think they may violate the rules governing the Capitol Annex with impunity because a symbolic tent may be expressive and the Ninth Circuit has held that the Eighth Amendment offers some protections for camping in public. Defendants rely on their mistaken understanding of the law to justify continued violations of the rules governing the Capitol Annex and to resist the State's efforts to enforce the law.

96. Defendants' misunderstandings affect Director Reynolds's rights under statutes and regulations to maintain the Capitol Annex. His request for declaratory judgment is thus proper under Idaho Code § 10-1202.

97. A declaratory judgment would correct Defendants' misunderstandings and enable Director Reynolds to better enforce the rules governing the Capitol Annex.

98. Defendants are not manning symbolic tents, they are unlawfully living in tents on state property. They are abusing the Capitol Annex by littering it with feces, vomit, urine, rotting food, needles, alcohol containers, and cigarette butts. The U.S. Constitution does not require Idaho to allow individuals to live, defecate, urinate, sell drugs, use drugs, litter, drink, or smoke at the Capitol Annex.

99. The Ninth Circuit opined that "an ordinance violates the Eighth Amendment insofar as it imposes criminal sanctions against homeless individuals for sleeping outdoors, on public

property, when no alternative shelter is available to them.” *Martin v. City of Boise*, 920 F.3d 584, 604 (9th Cir. 2019). The rules governing the Capitol Annex do not violate the Eighth Amendment. Violations of the rules are civil infractions, not criminal sanctions. The rules also govern only certain plots of state land, not the entire city of Boise. *Martin* thus does not apply. Even if *Martin* did apply, upon information and belief there has been space available at local shelters every night that Defendants have violated the rules. Defendants have chosen not to seek shelter when they do not like the rules that the shelter imposes. Defendants are free to make that choice, but that choice does not mean there is no shelter available.

PRAYER FOR RELIEF

Director Reynolds respectfully requests:

1. An injunction enjoining threatened and continuing violations of the rules governing the Capitol Annex by ordering Defendants to leave the Capitol Annex and remove their belongings;
2. An order requiring removal of the tent city from the Capitol Annex to abate the nuisance it has created;
3. A declaratory judgment that Defendants are threatening and continuing to violate the rules governing the Capitol Annex;
4. A declaratory judgment that Defendants have created a public health hazard at the Capitol Annex;
5. A declaratory judgment that the United States Constitution does not require Idaho to allow individuals to live, defecate, urinate, sell drugs, use drugs, store propane, use heaters, litter, drink, or smoke at the Capitol Annex;

6. Reasonable costs and attorney's fees; and
7. Any other relief the Court deems appropriate.

DATED: March 14, 2022

By: /s/ Cory M. Carone
CORY M. CARONE
Deputy Attorney General