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ACLU and DOA Sign Agreement for Capitol Permit Process *ACLU Agrees Permit Process is Constitutional*

MADISON – The Department of Administration (DOA) announced today that it has signed a settlement agreement with the ACLU of Wisconsin Foundation related to the Capitol permitting process. The agreement recognizes that DOA has the responsibility and authority under Wisconsin law to manage state buildings; acknowledges the permitting process that has been in place since 1979 is constitutional; and provides for an additional method to reserve space in the Capitol building.

“The Capitol is where the people’s business occurs – where *all* citizens should be able to exercise their First Amendment rights,” said DOA Secretary Mike Huebsch. “During the past few years, we held listening sessions about the permitting process, met with legislators, and reached out to those who failed to follow the rules required to use the space. The permit process has been repeatedly upheld as constitutional by the courts, and today’s settlement demonstrates ACLU’s agreement with the process as well. We have taken reasonable steps to ensure all visitors and citizens can enjoy our beautiful Capitol building, and I’m hopeful we can all move forward together.”

Permits are free, and the Capitol Police Department issues permits to use the Capitol regardless of political party, affiliation, or content. To date, the Capitol Police have issued 459 permits in 2013, and 496 permits were issued in 2012.

The permitting process has been part of Wisconsin’s Administrative Code since 1979. For nearly two years, one regular organized group has come to the Capitol each day at the same time and location with song books to protest at the Capitol, but have refused to obtain a permit.

Capitol Police have issued citations for failure to get a permit, and the ACLU filed an injunction on February 11, 2013, to challenge the constitutionality of the permit process. On July 8, 2013, Judge Conley upheld the permit process as constitutional, but changed the minimum number needed to apply for a permit from four to 20. A trial was scheduled to occur in early 2014.

DOA and ACLU mediated an agreement to avoid further litigation expense and time. Below are highlights of the resolutions reached in the Settlement Agreement:

- DOA has the authority to manage and operate the Wisconsin State Capitol Building.
- DOA has the authority to create a permit system for use of state facilities under its management authority, including the Wisconsin State Capitol Building.

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- Groups with fewer than 12 participants will not be required to obtain a permit or provide advance notice for an event, unless otherwise required under Administrative Code (example: using a sound amplification system).
- Groups with 12 or more participants will be required to obtain a permit or provide advance notice of an event to use the Wisconsin State Capitol Building. An event not properly noticed may be deemed unlawful.
- DOA will establish an additional method by which groups may reserve space in the Capitol. An individual using this Advance Notice system must:
 - Provide advance notice of at least two business days and no more than 10 business days before the planned event; and
 - Provide details of the event including date, start and finish time, estimated number of attendees, and contact information for one or more people in the group who can be contacted if the Advance Notice event is removed due to a valid permitted event or DOA-led tour group.
- Advance Notices can be issued for five cumulative days.
- Permitted events and DOA-led tours will receive priority over an Advanced Notice event. If a permitted event or DOA-led tour is scheduled, the Capitol Police will notify the Advance Notice contact that their noticed event is no longer reserved.
- Participation in a previously-noticed event which has been superseded by a permitted event or DOA-led tour will be deemed unlawful and citations or arrests may be issued for participation in that unlawful event after a warning has been given.
- All other permitting rules and policies will remain in full force and effect.

To meet these agreement terms, DOA will update its Access Policy and begin the process of promulgating emergency rules to reflect the Settlement Agreement. In addition, DOA will take steps to create an Advance Notice form that individuals can use online, but they may also call the Capitol Police Department to provide advance notice of an event.

Per state law, an emergency rules scope statement will be submitted to the Governor, and then DOA must wait 10 days prior to drafting the emergency rules.

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