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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

WILLIAM DEANS, an individual,

Plaintiff,

vs.

LAS VEGAS CLARK COUNTY LIBRARY DISTRICT; RONALD R. HEEZEN, (in his official capacity); COLLEGE OF SOUTHERN NEVADA; ANTONIA MARIE SUMMERLIN (Badge No. 228) (in her personal and official capacity); RANDALL PERKINS (Badge No. 104) (in his professional capacity); JANE DOE; JOHN ROE; and JANE POE,

Defendants.

Case No.

***EMERGENCY EX PARTE* MOTION FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

Plaintiff William Deans files this motion on an *ex parte emergency basis* for a temporary restraining order to enjoin Defendants from enforcing the unlawful Notice of Trespass issued against Plaintiff or requiring Plaintiff to register with the Las Vegas Clark County Library District to engage in activities protected under the First Amendment, made based on all pleadings and papers on file herein and the attached Memorandum of Points and Authorities, and any further argument and evidence as may be presented at hearing.

MEMORANDUM OF POINTS AND AUTHORITIES

1.0 INTRODUCTION

Plaintiff moves to enjoin Defendants from enforcing an unlawfully issued Notice of Trespass against Plaintiff, barring him on threat of arrest and imprisonment from visiting any library in Clark County, Nevada for a period of at least one year, and thus barring him from public participation and First Amendment protected activities.

Defendants issued and enforced this Notice of Trespass as a direct response to Plaintiff engaging in peaceful and orderly constitutionally protected speech and activity. Mr. Deans was circulating a petition and encouraging citizens to register to vote and instructing them on how to do so. Defendants' conduct is an unconstitutional prior restraint on activity that is at the core of the First Amendment, and violates the First and Fourteenth Amendments to the U.S. Constitution, as well as Article 1, Sections 8 & 9 of the Nevada Constitution.

Defendants' conduct is never constitutionally tolerable. But the harm caused by their actions is especially pronounced here, mere weeks away from an election and mere days away from the deadline for voter registration. Political issues are of especially heightened interest in the run-up to national elections, and the deadline for voters to register in Nevada is October 18, 2016. To chill Plaintiff's free speech activities, when they are directly related to political advocacy, awareness, and education is to place the heavy boot of censorship firmly upon the throat of the noble values underlying the First Amendment. This will not stand, and the Court should immediately remedy the unconstitutional wrong on an emergency basis by ordering that the trespass be lifted, that Mr. Deans be permitted to peacefully gather signatures and instruct his fellow citizens on how to register vote, and that he be permitted to do so in locations that allow his public participation to be meaningful and effective.

2.0 FACTS

On October 13, 2016, Plaintiff positioned himself outside the West Charleston Public Library in Las Vegas, Nevada. *See* Declaration of William Deans ("Deans Decl."), attached hereto as **Exhibit 1**, at ¶¶7-11. His positioning did not disturb anyone, nor did it obstruct anyone's ingress or egress into or out of the library. *Id.* at ¶11. Plaintiff regularly engages in this type of political activism, and chooses to do so outside of public libraries, because in his experience, those who visit public libraries tend to be more civically active and more likely to participate in the political process. *Id.* at ¶14.

Plaintiff circulated a petition for to be placed on the ballot in Nevada. Plaintiff distributed this petition to several individuals at this location, and additionally both encouraged people to register to vote in Nevada and provided instructions on how they could register to vote. *Id.* at ¶¶6, 12, & 13.

Not long after he began this free speech activity, Defendant Jane Doe approached Plaintiff and stated that she was acting in her official capacity as a representative of Defendant Las Vegas Clark County Library District ("LVCCLD"). *Id.* at ¶17. Jane Doe told Plaintiff that he could not engage in his free speech activity without first registering with the LVCCLD. *Id.* at ¶18. Defendants Roe and Poe subesequently informed him that if he was approved, he would have to relocate to a certain portion outside of the West Charleston Library, where there was significantly less pedestrian traffic. *Id.* at ¶21-23; *see also*, annotated map of Library entrance, attached hereto as **Exhibit 2**.

Plaintiff informed Defendants Roe and Poe that he had a constitutional right to be there and it was a violation of his First Amendment rights to condition his public participation on registration or approval. Deans Decl. at ¶24. After Plaintiff refused to cease his activism, Defendants Roe and Poe summoned College of Southern Nevada ("CSN") police officers to force Plaintiff to leave. Id.

at ¶24. The officers later arrived, including Defendant Antonia Summerlin. Summerlin then, without any lawful basis, stated that Plaintiff had to leave the West Charleston Library premises. *Id.* at ¶25 & 26. When he showed reluctance to do so, she issued him an unlawful Notice of Trespass for "failure to comply with staff instruction." *See* id. at ¶28-29; *see also* Notice of Trespass, attached hereto as **Exhibit 3**. This Notice forbids Plaintiff from visiting **any** branch of the LVCCLD for at least one year. *Id.* She additionally told Plaintiff that he would be arrested if he at any point entered the premises of any branch of the LVCCLD while the Notice of Trespass was still in effect, and that he would be arrested if he did not leave the West Charleston Public Library immediately. Deans Decl. at ¶31 & 33.

Frightened by Summerlin's threat of arrest, Plaintiff left the library. *Id.* at ¶34. The next morning, Plaintiff went to the CSN Police Department office to lodge a complaint against Summerlin with her supervisor and to appeal the decision. *Id.* at ¶35. Shortly thereafter, he received a call from Lieutenant Randall Perkins with the CSN. *Id.* at ¶39.

Defendant Perkins informed Plaintiff that he was conducting an investigation of his officers' conduct, but could not take any action regarding the Notice of Trespass until after his investigation was completed. *Id.* at ¶40-43. Perkins informed Mr. Deans that he would not lift the trespass order while he conducted his investigation. *Id.* at ¶41. When questioned, Defendant Perkins also stated that if the investigation was inconclusive or there were conflicting stories, that he would support the officer's decision to issue the trespass order. *Id.* at ¶42. The result of this is a presumption in derogation of Mr. Deans' First Amendment rights, rather than the constitutionally mandated presumption in favor of him being able to exercise such rights.

Defendant Perkins was asked if he would temporarily use his discretion to lift the trespass order pending the outcome of his investigation, such as it was. *Id.*

at ¶43. Defendant Perkins refused. *Id.* Defendant Perkins then informed Mr. Deans that the investigation would conclude by October 25, 2016 at the earliest, and November 11, 2016 at the latest. *Id.* The deadline to register to vote in Nevada in the upcoming 2016 presidential election is October 18, 2016. *See Election Department: Important Dates*, Clark County Government,[1] attached hereto as **Exhibit 4**. The election itself is November 8, 2016. *Id*.

3.0 STANDARDS FOR OBTAINING INJUNCTIVE RELIEF

To obtain a temporary restraining order, a party must demonstrate either (1) a combination of probable success on the merits and the possibility of irreparable injury, or (2) the existence of serious questions going to the merits and that the balance of hardships tips sharply in its favor. *FDIC v. Garner*, 125 F.3d 1272, 1277 (9th Cir. 1997); *Metro Pub. Ltd. v. San Jose Mercury News*, 987 F.2d 637, 639 (9th Cir. 1993). "The injury or threat of injury must be both 'real and immediate,' not 'conjectural' or 'hypothetical.'" *City of Los Angeles v. Lyons*, 461 U.S. 95, 102 (1983). Under these standards injunctive relief is appropriate when either of these two tests are met. These are not two separate tests, but "merely extremes of a single continuum." *Topanga Press, Inc. v. City of Los Angles*, 989 F.2d 1524, 1528 (9th Cir. 1993). When a violation of a constitutional right has been proven, however, no further showing of irreparable injury is required. *See Associate General Contractors of California v. Coalition for Economic Equity*, 950 F.2d 1401, 1410 (9th Cir. 1991).

4.0 ARGUMENT

4.1 Plaintiff Has Standing

"To qualify as a party with standing to litigate, a person must show, first and foremost, an invasion of a legally protected interest that is concrete and

[1] Available at <http://www.clarkcountynv.gov/election/Pages/Dates.aspx> (last accessed October 14, 2016).

particularized and actual or imminent." *Arizonans for Official English v. Arizona*, 520 U.S. 43, 64 (1997). A plaintiff can show standing by demonstrating that they "have been threatened with prosecution, [if] a prosecution is likely, or even [if] a prosecution is remotely possible." *Culinary Workers Union, Local 226 v. Del Papa*, 200 F.3d 614, 618 (9th Cir. 1999). In the First Amendment context in particular, a plaintiff has standing to sue if a challenged statute operates to "chill" the plaintiff's exercise of his or her First Amendment Rights. *Id*. at 618-19 (citing *Doe v. Bolton*, 410 U.S. 179, 188 (1973)).

Here, Plaintiff's harm is readily apparent. He has been forbidden from entering the premises or grounds of any branch of the public libraries, either inside or outside. He was given the Notice of Trespass barring him from these premises because he circulated a political petition and advised people on how to register to vote. Mr. Deans plans to peacefully stand in the large piazza outside of the West Charleston Public Library. When he did so, he neither impeded traffic nor disturbed anyone. He sought signatures for a political petition and informed people on the voter registration process. When Defendant Summerlin issued the Notice of Trespass, she threatened Mr. Deans with arrest if he did not vacate the premises, or if he returned to any public library within one year, regardless of motive or activity. This obviously creates a true case and controversy sufficient to confer Article III standing.

4.2 Plaintiff is Likely to Prevail on the Merits of His Free Speech Claims

Plaintiff's constitutional rights were violated by Defendants' actions, specifically issuing a Notice of Trespass under NRS 207.200 and threatening to enforce it, against Plaintiff for his conduct protected under the First Amendment and Article 1, Section 9 of the Nevada Constitution.

4.2.1 Mr. Deans' Activities Are Protected Under the First Amendment

Government actions that infringe upon free speech in a public forum are evaluated under strict scrutiny if they are content-based. They are evaluated under an intermediate review if they are facially neutral time, place and manner restrictions. *See American Civil Liberties Union of Nevada v. City of Las Vegas*, 333 F.3d 1092, 1098 (9th Cir. 2003). A public library is a limited public forum, "a place dedicated to quiet, to knowledge, and to beauty." *Brown v. Louisiana*, 383 U.S. 131, 142 (1966).

This is not the case, however, for the streets and plazas outside such places; these are more akin to traditional public fora such as public streets and parks. *See John Ascuga's Nugget*, 548 F.3d 892, 896-97 (9th Cir. 2008) (stating that "there is no question that . . . a public sidewalk [] is a 'quintessential public forum' where protection for freedom of speech is at its height." Where the government has generally opened a place to the public, such as a University campus, any restrictions are speech there are judged by the same standards as a traditional public forum. *See Widmar v. Vincent*, 454 U.S. 263, 267-68 (1981).

In these circumstances, the government "must show that its regulation is necessary to serve a compelling state interest and that it is narrowly drawn to achieve that end" if the restriction is content-based. *Id*. at 270. If the restriction is a content-neutral time, place, and manner restriction, the government cannot delegate overly broad discretion to a government official. The regulation must be narrowly tailored to serve a substantial governmental interest, and it must leave open ample alternatives for communication. *See Seattle Affiliate of Oct. 22nd Coalition to Stop Police Brutality, Repression and Criminalization of a Generation v. City of Seattle*, 550 F.3d 788, 798 (9th Cir. 2008).

Mr. Deans did not engage in his political advocacy inside the West Charleston Public Library; rather, he was outside it, in a public plaza, complete

with park benches, that saw significant foot traffic and was adjacent to a large parking lot. Other people used the area in multiple other ways. For example, one man was audibly negotiating the terms of shooting a pornographic film. Another man apparently was spending the majority of the day there, simply resting on one of the benches. Furthermore, the library itself is located within and is part of the campus of the College of Southern Nevada. The government is thus no more entitled to restrict political speech in the plaza outside the library than it is to restrict political demonstrations outside lecture halls on campus.

The question here is whether Mr. Deans' activity of distributing a political petition and informing people on how to register to vote is protected under the First Amendment. To ask the question is to answer it. Political speech is at the very core of the First Amendment; it is the highest ideal the founding fathers had in mind when drafting the Bill of Rights. For example, '"[d]iscussion of public issues and debate on the qualifications of candidates are integral to the operation' of our system of government." *Ariz. Free Enter. Club's Freedom Club PAC v. Bennett*, 564 U.S. 721, 734 (2011).

Mr. Deans was doing nothing disruptive. He was doing nothing inconsistent with the purpose for which libraries are open to the public. He most certainly was not acting outside the norm for a public plaza on a college campus. He was increasing civic awareness in a peaceful, quiet manner. For performing his civic duty, he was threatened with arrest and banned from these libraries.

4.2.2 Defendants' Actions Are an Unconstitutional Prior Restraint

Without any legal process to speak of, Defendants imposed a restraint on Mr. Deans' ability to engage in political advocacy and education. For at least one year, he cannot step onto the premises of any branch of the LVCCLD. This eliminates his ability to distribute petitions and engage in political advocacy in some of the places where people are most likely to be interested in becoming

more civically literate, to say nothing for his ability to access those buildings to read books.

There are two kinds of prior restraints in the free speech context: those that '"authorize a licensor to pass judgment of speech' and those whose purpose 'is not to exclude communication of a particular content, but to coordinate multiple uses of limited space' on a content-neutral basis." *Seattle Affiliate*, 550 F.3d at 797 (quoting *Thomas v. Chi. Park Dist.*, 534 U.S. 316, 322 (2002)). There is no reason here to think that the restriction here is anything other than content-based. There was no competition here for limited public space; the area where Mr. Deans engaged in his free speech activity received significant foot traffic, but it was not congested such that restrictions on space were necessary. Furthermore, there were other people who used the same space, some of whom stayed there longer than Mr. Deans. And yet, Mr. Deans was the only person to receive a trespassing citation. The only difference was that he engaged in political speech. The restriction in play was thus either explicitly directed at those engaging in free speech activity, or he was selectively prosecuted in retaliation for him engaging in this activity. Either way, the restriction is content-based.

The rule requiring registration before authorizing public advocacy in "the archetype of a traditional public forum," Frisby v. Schultz, 487 U.S. 474, 480 (1988) is a prior restraint on speech. *See Shuttlesworth v. Birmingham*, 394 U.S. 147, 150-151 (1969); *Niemotko v. Maryland*, 340 U.S. 268, 271 (1951).

In this case, Defendant Jane Doe simply decided that she did not want Mr. Deans to engage in his activism in the center of a public plaza, and instead took it upon herself to create a free speech "spot."[2] Even if this discretion was

[2] Though it has been *de rigeur* for censorship-minded government officials to create so-called "free speech zones," Mr. Deans was not even afforded this luxury. Instead, Doe, backed up by armed government agents, decided that

legislatively delegated to her, it would be improper. However, for her to simply take it upon herself to be the sole source of the designation of such a zone and to then arbitrarily impose it is beyond the pale. This was not a narrowly tailored resolution, and did not provide ample alternatives for communication. This arbitrary spot is not narrowly tailored to serve any, much less a significant public interest. She arbitrarily chose an area where a single person could stand, which rendered Mr. Deans' public participation meaningless, and did not leave open adequate or ample alternative channels for communication. For a single member of the staff to determine where a previously unestablished "free speech spot" would exist delegates far too much discretion to this single person.[3]

In the vast majority of circumstances, prior restraints on speech are not permitted under the Constitution. "Prior restraints on speech and publication are the most serious and the least tolerable infringement on First Amendment rights." *Neb. Press Ass'n v. Stuart*, 427 U.S. 530, 559 (1976). This principle that "the Supreme Court has roundly rejected prior restraint" is so thoroughly ingrained in the American psyche that various forms of popular culture have repeated it. *See Kinney v. Barnes*, 443 S.W.3d 87, 91 n.7 (Tex. 2014) (quoting Walter Sobchak, *The Big Lebowski* (PolyGram Filmed Entertainment & Working title Films 1998)). Prior restraints are not *per se* unconstitutional, but they "bear a heavy presumption against [their] constitutional validity." *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 70 (1963).

Regulatory schemes that require licensing before a person may engage in protected speech are only permitted where "there are procedural safeguards that ensure that the decisionmaker approving the speech does not have

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after Mr. Deans registered, he would not be able to exercise his rights in a tiny area, behind a wall, where nobody would see him.

[3] This presupposes that she had any such actual authority.

'unfettered discretion' to grant or deny permission to speak." *Six Star Holdings, LLC v. City of Milwaukee*, 821 F.3d 795 (7th Cir. 2016). "At the root of this long line of precedent is the time-tested knowledge that in the area of free expression a licensing statute placing unbridled discretion in the hands of a government official or agency constitutes a prior restraint and may result in censorship." *Lakewood v. Plain Dealer Pub. Co.*, 486 U.S. 750, 757 (1988). The fact that one person may, without any checks or balances, impose a prior restraint "intimidates parties into censoring their own speech, even if the discretion and power are never actually abused." *Id*.

There are two issues in play here. The first is the registration scheme that Defendant Jane Doe claimed Mr. Deans had to comply with in order to circulate a petition or speak. This is a prior restraint that restricts his speech and conditions it on having been willing to be licensed by a single government employee. But more pernicious is the Notice of Trespass issued by Defendant Summerlin. Regarding the Notice, to say that Defendants have enacted a licensing "scheme" is to give their activities too much credit. There was no system in place here, no standards, no procedure. This was a series of flunkies who did not appreciate a citizen failing to immediately cow to their asserted authority. They invented a reason to cite Mr. Deans in an attempt to silence him. The effect of their citation is to prevent him from engaging in his political speech activities where they will be most effective for at least a year. Meanwhile, if this stands longer than 4 days, it will effectively be permanent. There are no exceptions to their edict. This is utterly impermissible under the U.S. and Nevada constitutions, and Mr. Deans will prevail on his claims.

4.2.3 Defendants' Restrictions on Speech Are Not Reasonable Time, Place, and Manner Restrictions

Even if the Court were to overlook the fact that Defendants' restrictions are prior restraints based on the content of speech, they must fall because they are not reasonable time, place, and manner restrictions. Although restrictions on speech are disfavored, a government may issue reasonable regulations governing the time, place, or manner of speech. Ward v. Rock Against Racism, 491 U.S. 781, 802-03 (1989). For time, place, and manner restrictions to be valid they must not delegate overly broad discretion to a government official, must be narrowly tailored to serve a substantial governmental interest, and must leave open ample alternatives for communication. *See Seattle Affiliate*, 550 F.3d at 798. Defendants' decision to, on the fly, create a restricted zone, where Mr. Deans could engage in his activism, was not even thought out – much less thought out so that it would be narrowly tailored. It served no governmental interest at all, and burdened more speech than was necessary.

In order for a time, place, and manner restriction to be narrowly tailored it must further a substantial government interest. *See Kuba v. 1-A Agric. Ass'n*, 387 F.3d 850, 861 (9th Cir. 2004). Defendants decided, on the fly, to create a very small spot in which Mr. Deans could stand, well out of the path of foot traffic, where his speech would be rendered completely impotent. This arbitrary decision served no governmental interest at all, much less a substantial one. The burden is on Defendants to provide "concrete evidence" the restriction furthers the government's claimed substantial interest. *Kuba*, 387 F.3d at 858 (citing *Weinberg v. City of Chicago*, 310 F.3d 1029, 1038 (7th Cir. 2002)); *Lim v. City of Long Beach*, 217 F.3d 1050, 1054 (9th Cir. 2000) (holding that burden is on the state to prove restriction is necessary); *Carreras v. City of Anaheim*, 768 F.2d 1039, 1046 (9th Cir. 1985) (holding that mere inconvenience, annoyance, and loss of revenue are not

sufficient justifications to warrant restriction). However, when the restriction on speech is limited, the court may accept evidence based on "common sense" so long as it is more than speculation. *See, e.g., United Broth. of Carpenters and Joiners of Am. Loc. 586 v. N.L.R.B.*, 540 F.3d 957, 967-68 (9th Cir. 2008).

There is no possible government interest served by an employee of LVCCLD deciding, on her own initiative, to invent a "free speech spot" on library premises. Mr. Deans was not being disruptive with his advocacy in any way. Deans Decl. at ¶11. Nor was there any conceivable reason for Defendant Summerlin to ban Mr. Deans from **all** branches of the LVCCLD for an entire year. He did not pose any sort of threat of even mild disturbance to any individuals or library staff. This was simply Defendants being spiteful to a citizen who did not kowtow to their authority.

Even if there was a substantial government interest in limiting Mr. Deans' speech, there is no justification for the extent to which Defendants restricted it. An alternative form of communication is not "ample" if it does not allow the party to reach its desired audience. *See Berger v. City of Seattle*, 569 F.3d 1029, 1049 (9th Cir. 2009). While the government does not have to use the least restrictive means available under these circumstances, regulations that "do not permit leafleting outside the Free Expression Zones . . . do not provide ample alternatives for plaintiffs to express their views." *Cal Expo*, 2013 U.S. Dist. LEXIS 106058 at *32.

Mr. Deans is currently banned from even setting foot onto library property inside or out for an entire year. This ban is not limited in any way; Mr. Deans could literally tape his mouth shut and only enter a library for the purpose of checking out a book, and he would still run afoul of the ban. He is incapable of carrying out any activity whatsoever on these grounds, even activity completely unrelated to the purported or actual reason he was issued the Notice of Trespass. The ban thus does not leave open ample alternative channels of communication and

does not achieve any conceivable government interest. Under no legal standard are the restrictions narrowly tailored.

4.2.4 Defendants' Registration Requirement Violates Mr. Deans' Right to Anonymous Political Speech

Anonymous speech, particularly in the political realm, is a time-honored tradition that enjoys the full protections of the First Amendment. "Under our Constitution, anonymous pamphleting is not a pernicious fraudulent practice, but an honorable tradition of advocacy and dissent. Anonymity is a shield from the tyranny of the majority . . . . It thus exemplifies the purpose behind the Bill of Rights, and of the First Amendment in particular; to protect unpopular individuals from retaliation – and their ideas from suppression – at the hands of an intolerant society." *McIntyre v. Ohio Elections Comms.*, 514 U.S. 334, 357 (1995). Many registration schemes requiring people to identify themselves in order to engage in protected speech have been found unconstitutional. *See Watchtower Bible & Tract Soc'y v. Village of Stratton*, 536 U.S. 150, 166-67 (2002) (finding unconstitutional ordinance requiring a permit for door-to-door solicitation); *Talley v. California*, 362 U.S. 60 (1960) (finding ban on anonymous leafletting unconstitutional); *NLRB v. Midland Daily News*, 151 F.3d 472, 475 (CA 6 1998) (recognizing that discovery to identify anonymous advertisers engaged in lawful commercial speech could chill speech).

Defendants did not disclose to Mr. Deans precisely what the requirements of their registration scheme are, or even identify the registration scheme itself. But any registration scheme must necessarily require at least the identification of the individuals who register; without identifying registered members, the scheme cannot work. There is no legal justification for requiring individuals to register with the LVCCLD so that they may quietly and peacefully hand out petitions to

passersby, and there is no legal justification for requiring that such individuals identify themselves in order to carry out this activity.

4.3 Defendants' Activities Violate Mr. Deans' Due Process Rights

The constitutional guarantee of due process requires that criminal laws give individuals reasonable notice of prohibited conduct. To survive a vagueness challenge, a regulation must "define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement." *Kolender v. Lawson*, 461 U.S. 352, 357 (1983). A great degree of specificity and clarity is required when First Amendment rights are at stake. *Gammoh v. City of La Habra*, 395 F.3d 1114, 1119 (9th Cir. 2005); *Kev, Inc. v. Kitsap County*, 793 F.2d 1053, 1057 (9th Cir. 1986). Finally, an ordinance can be vague if it either fails to place people on notice of exactly which conduct is criminal, or, if the possibility for arbitrary enforcement is present. *City of Chicago v. Morales*, 527 U.S. 41, 56 (1999).

Courts have repeatedly held that criminal ordinances which rely on a viewer's subjective interpretation of facts are void for vagueness. *City of Chicago v. Morales*, 527 U.S. 41, 56-64 (1999) (holding a provision criminalizing loitering, which is defined as "to remain in any one place with not apparent purpose," void for vagueness because the provision was "inherently subjective because its application depends on whether some purpose is 'apparent' to the officer on the scene"); *Tucson Woman's Clinic v. Eden*, 379 F.3d 531, 554-55 (9th Cir. 2004) (holding a statute requiring physicians to treat patients "with consideration, respect, and full recognition of the patient's dignity and individuality" void for vagueness because it "subjected physicians to sanctions based not on their own objective behavior, but on the subjective viewpoint of others"); *Free Speech Coalition v. Reno*, 198 F.3d 1083, 1095 (9th Cir. 1999), *aff'd sub nom*; *Ashcroft v.*

Free Speech Coalition, 535 U.S. 234, (2002) (holding a provision that criminalized sexually explicit images that "appear[] to be a minor" or "convey the impression" that a minor is depicted unconstitutionally vague because it was unclear "whose perspective defines the appearance of a minor, or whose impression that a minor is involved leads to criminal prosecution").

Morales provides a useful guidepost for when enforcement of a statute or regulation may be unconstitutionally vague:

> If the police are able to decide arbitrarily which members of the public they will order to disperse, then the Chicago ordinance becomes indistinguishable from the law we held invalid in *Shuttlesworth v. Birmingham*, 382 U.S. 87, 90 (1965). Because an officer may issue an order only after prohibited conduct has already occurred, it cannot provide the kind of advance notice that will protect the putative loiterer from being ordered to disperse.

527 U.S. at 58-59.

Defendants' conduct here, the restrictions they enforced and have threatened to enforce, are arbitrary and capricious. It is apparent from the circumstances here that Defendants have engaged in selective enforcement of the LVCCLD's purported registration requirement and NRS 207.200. Mr. Deans was not the only person spending time outside the entrance of the Library, and he was not in any way disruptive. Rather, he was targeted for engaging in activity protected under the First Amendment. He was afforded no due process rights at all before Defendants simply deprived him of his right to enter even the curtilage of any branch of the LVCCLD. This is to say nothing for his right to engage in voter registration activity in the few days remaining before the Nevada voter registration deadline.

4.4 Without Injunctive Relief, Mr. Deans Will Continue to Suffer Irreparable Harm

As stated above, "[a] preliminary injunction should be issued upon a clear showing of either (1) probable success on the merits *and* possible irreparable injury *or* (2) sufficiently serious questions going to the merits to make them a fair ground for litigation *and* balance of hardships tipping decidedly toward the party requesting the preliminary relief." *Ebel*, *supra*. Mr. Deans meets both of these sets of criteria. As discussed above, he has a high probability of prevailing on the merits. Moreover, the loss of First Amendment rights even for a short period of time constitutes irreparable harm. *See Elrod v. Burns*, 427 U.S. 347, 373 (1976); *Jacobsen v. United States Postal Serv.*, 812 F.2d 1151, 1154 (9th Cir. 1987). The Ninth Circuit generally examines these two prongs together, recognizing that when a regulation restricts First Amendment, the equities tip in the plaintiff's favor and advance the public interest in upholding free speech principles. *See Thalheimer v. City of San Diego*, 645 F.3d 1109, 1128-29 (9th Cir. 2011); *Kline v. City of San Clemente*, 584 F.3d 1196, 1208 (9th Cir. 2009) (finding that plaintiff challenging a ban on placing leaflets on windshields established that the loss of his First Amendment rights tipped the equities in his favor and that the public interest also supported the issuance of the injunction).

The harm is especially significant here, as every hour Mr. Deans is restricted from engaging in his free speech activities is an hour during which potential voters are not informed of how to register to vote and petition signers are lost. *See Cuviell v. Cal Expo*, 2013 U.S. Dist. LEXIS 106058, *33 (E.D. Cal. July 27, 2013) (finding that "any irreparable harm is exacerbated by the State Fair's short duration").

As for the second set of criteria for a preliminary injunction, there are clearly sufficiently serious questions going to the merits to make them fair grounds for

litigation. As for the balance of hardships, Defendants cannot claim any hardship; Mr. Deans was doing nothing unlawful or disruptive during his free speech activities. To allow him to continue this activity would not result in any conceivable harm to anyone. Furthermore, as Defendant's registration scheme is unconstitutional, there is no harm in not permitting them to enforce it. The lack of damage that would occur if injunctive relief were granted obviously cannot compare with the irreparable harm already suffered by Mr. Deans, and that which he will continue to suffer without injunctive relief. *McIntyre* is instructive:

> The Court also considers the potential damage to Defendants of undermining their authority that a proposed injunction would have. On the other hand, the First Amendment right of free speech is a fundamental right, the loss of which, as observed above, for even a minimal period of time, constitutes irreparable injury . . . . The Court finds that the threatened injury to Plaintiffs – impairment and penalization of the exercise of their First Amendment rights – outweighs whatever damage, if any, the proposed injunction may cause Defendants.

804 F. Supp. at 1429.

The situation in *McIntyre* is the same as here. Mr. Deans was given an unquestionably unconstitutional prior restraint that prevents him from engaging in political advocacy and educational speech that is core to the First Amendment. Every day that the ban on Mr. Deans visiting Clark County libraries stays in effect, Defendants both violate his constitutional rights, and also works to suppress voter registration in Clark County.

5.0 CONCLUSION

For the foregoing reasons, Mr. Deans respectfully requests that the Court enter a temporary restraining order enjoining Defendants from enforcing the unlawful Notice of Trespass against Mr. Deans or requiring Mr. Deans to register

with the Las Vegas Clark County Library District to engage in activities protected under the First Amendment.

Dated: October 14, 2016

Respectfully Submitted,

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