

Office of General Counsel
College of Southern Nevada
6375 W. Charleston Ave., Sort Code W32E
Las Vegas, NV 89146

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7
8 **UNITED STATES DISTRICT COURT**
9 **DISTRICT OF NEVADA**

10 WILLIAM DEANS, an individual,
11 Plaintiff,
12 vs.

Case No. 2:16-cv-02405-APG-PAL

13 LAS VEGAS CLARK COUNTY LIBRARY
14 DISTRICT; RONALD R. HEEZEN (in his
official capacity); COLLEGE OF
15 SOUTHERN NEVADA; ANTONIA MARIE
SUMMERLIN (in her personal and official
16 capacity); RANDALL PERKINS (in his
official capacity) JANE DOE; JOHN ROE;
17 and JOHN POE,
Defendants.

**DEFENDANTS COLLEGE OF
SOUTHERN NEVADA, SUMMERLIN
AND PERKINS' RESPONSE TO
PLAINTIFF'S MOTION FOR
PRELIMINARY INJUNCTION**

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19 Defendants COLLEGE OF SOUTHERN NEVADA¹, POLICE OFFICER ANTONIA
20 SUMMERLIN, and POLICE OFFICER RANDALL PERKINS, through their undersigned
21 counsel of record, hereby files their Response to Plaintiff WILLIAM DEAN'S MOTION FOR
22 PRELIMINARY INJUNCTION. Defendants' Opposition is based on the following Points and
23 Authorities, the papers and pleadings on file herein, and any oral argument the Court may allow.
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25
26 ¹ The College of Southern Nevada is a branch of the State University governed by a Board of
27 Regents, as created in the Nevada Constitution, Art. 11, Sec. 4. The legal and corporate name
28 and the manner to name the State University in this case is: "The State of Nevada, ex rel Board
of Regents of the Nevada System of Higher Education on behalf of the College of Southern
Nevada." Nev. Rev Stat. 396.020, 41.031(2). Until the caption is modified and for purposes of
this Opposition, references to the College will either be to 'College' or 'CSN'.

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POINTS AND AUTHORITIES

I. PROCEDURAL BACKGROUND

This case was filed by Plaintiff on October 15, 2016 (ECF #1). Plaintiff simultaneously filed an Emergency Ex Parte Motion for a Temporary Restraining Order (TRO) and Preliminary Injunction (ECF #2). The Court entered its Order for a hearing on the TRO (ECF # 4) and heard that matter on October 17, 2016. The Court issued its Order Granting in Part the Plaintiff’s Motion for a TRO, and indicated Plaintiff need not file any further motion regarding his request for a preliminary injunction. Defendants’ responses regarding a preliminary injunction are due by October 24, 2016, and the hearing to consider a preliminary injunction is set for November 1, 2016. (ECF #7)

II. FACTUAL BACKGROUND

The College is the public community college in Clark County, Nevada. One of its campuses is located on W. Charleston Blvd. in Las Vegas. CSN entered into a long-term real-property lease in 1991 with the Las Vegas Clark County Library District (Library District), and the Library District constructed and operates the W. Charleston public library on the leased parcel.

In mid-afternoon on October 13, 2016, the branch management of the W. Charleston library called the CSN Police Department² and requested officers respond to assist with an individual who refused the management’s request to move so as not to block library patrons from entering/exiting the Library. CSN P.D. contacted library Florence Jakus who related management’s and it’s security officer’s conversations with the Plaintiff. Library District management requested CSN P.D. remove the Plaintiff from the Library District grounds as a trespasser.

Defendant Officer Summerlin communicated with Plaintiff. Based on the request of the Library District management, Officer Summerlin issued to him an oral directive pursuant to Nev. Rev. Stat. 207.200(b) and (d) to vacate the library property. Plaintiff was also handed the

² The Board of Regents are authorized to create a police department pursuant to Nev. Rev. Stat. 396.325. The officers are POST-certified, category I police officers. Defendant Officers Summerlin and Perkins are State of Nevada employees.

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1 Library District’s written ‘Notice of Trespass’ (attached as Ex. 3 to Plaintiff’s Motion).
2 Plaintiff eventually complied with that request to leave the library grounds. This lawsuit
3 followed.

4 **III. LEGAL STANDARDS**

5 A plaintiff seeking a preliminary injunction must establish 1) that he is likely to succeed on
6 the merits, 2) that he is likely to suffer irreparable harm in the absence of preliminary relief,
7 3) that the balance of equities tips in his favor, and 4) that an injunction is in the public interest.
8 *Winters v. Nat’l Resources Defense Council, Inc.*, 555 U.S. 7, 20 (2008)

9 A preliminary injunction is not an adjudication on the merits but rather is a device for
10 preserving the status quo and preventing the irreparable loss of rights before judgment. *U.S.*
11 *Phillips Corp. v. KBC Bank N.V.*, 590 F.3d 1091, 1094 (9th Cir. 2010).

12 The foregoing “...standard requires plaintiffs seeking preliminary relief to demonstrate that
13 irreparable injury is *likely* in the absence of an injunction.... Issuing a preliminary injunction
14 based only on a possibility of irreparable harm is inconsistent with our characterization of
15 injunctive relief as an extraordinary remedy that may only be awarded upon a clear showing that
16 the plaintiff is entitled to such relief.” *Winters*, at 22.

17 Time, place and manner restrictions may constitutionally be enforced when narrowly
18 tailored to serve a substantial government interest and there are ample alternatives for
19 communication. *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989); *Seattle Affiliate, etc.*
20 *v. City of Seattle*, 550 F.3d 788, 798 (9th Cir. 2008).

21 **IV. LEGAL ARGUMENT**

22 **A. CSN’s Involvement**

23 Plaintiff seeks a preliminary injunction against all Defendants to enjoin enforcement of the
24 Library District’s Notice of Trespass. Of course, CSN addresses Plaintiff’s Motion for
25 Preliminary Injunction as it would pertain to CSN and the CSN Police Officer Defendants.

26 CSN has no interest in or stake in defending the Library District’s Notice of Trespass.
27 Officer Summerlin enforced Nev. Rev. Stat. 207.200 (Nevada’s Trespass Law) at the request of
28 the property lessee-occupant.

1 Nor does CSN have an interest or stake in applying Nev. Rev. Stat. 293.127565. Library
2 District is the lessee-occupant of the designated library grounds and applies Nev. Rev. Stat.
3 293.127565 independent from CSN. Having reached the conclusion that Plaintiff violated Nev.
4 Rev. Stat. 293.127565, Library District invoked Nevada's Trespass Law, and requested law
5 enforcement assistance to remove the Plaintiff when Plaintiff refused to leave the grounds. For
6 its adjacent campus, CSN has adopted the policy that all outside areas are available for free
7 speech activity subject to requirements that it not unduly impact its primary educational
8 purpose. If Plaintiff had been disrupting student ingress/egress near a building entrance on its
9 open campus, CSN would have similarly asked him to re-locate.

10 Defendant Officer Summerlin acted to enforce Nevada's Trespass Law for the reason that
11 the lessee-occupant of the property made demand that Plaintiff vacate the grounds pursuant to
12 NRS 207.200(d), and he refused. There is nothing here for the Court to enjoin as it pertains to
13 CSN. It would be improper for the Court to enter its order enjoining CSN P.D. from enforcing
14 the criminal law of Nevada. The proper order of the Court, if appropriately supported, is for the
15 Library District not to prohibit Plaintiff from being on its grounds petition-gathering, as long as
16 Plaintiff doesn't position himself close to the door so as to be a disturbance to the Library
17 patrons.

18 **B. CSN's Position on Granting a Preliminary Injunction**

19 At the TRO hearing, all parties agreed and the Court expressed that the Plaintiff cannot
20 stand adjacent to the entrance door. This is a reasonable 'time, place and manner' restriction so
21 that library patrons' rights are not infringed.

22 It is a short distance from where the Plaintiff can't be, and where Plaintiff can stand
23 anywhere in the circular plaza to easily speak in a normal voice to everyone entering/exiting to
24 extend an invitation to speak with him about his petition. This is the location generally
25 discussed as area 'A' at the TRO hearing. (ECF #2, Emergency *Ex Parte* Motion for a
26 Temporary Restraining Order and Preliminary Injunction, Ex. 2)

27 If the Library District doesn't agree or stipulate that Plaintiff can be in the circular plaza
28 away from the door, CSN does not oppose the issuance of a preliminary injunction that is
consistent with the TRO, until any issue regarding the application of NRS 293.127565 is

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1 resolved by this Court. It is also the case that since the TRO hearing that the primary
2 requirements of NRS 283.127565 have now been substantially complied with inasmuch as:
3 1) Plaintiff is able to be in the plaza and not violate an appropriate time, place and manner
4 restriction, and 2) Plaintiff's counsel has provided video of Plaintiff registering with the Library
5 District by 'checking-in' each day with a person at the library desk.

6 In stating its lack of opposition to having the TRO terms extended to a preliminary
7 injunction, CSN does not concede that the elements for a preliminary injunction can be met that
8 Plaintiff will suffer irreparable harm or that he is likely to prevail on the merits of the
9 underlying Complaint. Rather, under the circumstances this is an appropriate interim
10 resolution. CSN notes on the observation at the end of the Nevada Supreme Court's analysis of
11 Nev. Rev. Stat. 293.127565 when it stated: "Although (the governmental entities') time, place
12 and manner restrictions are constitutionally valid, NRS 293.127565 must be liberally construed
13 to effect its intent to provide petition circulators areas at public buildings in which to conduct
14 signature-gathering activities." *UCCSN, et al v. Nevadans for Sound Government*, 100 P.3d
15 179, 196 (Nevada 2004).

15 V. CONCLUSION

16 The free-speech right to petition-gather is fundamental, and Plaintiff could have
17 successfully conducted that activity, and can do so going forward, by positioning himself away
18 from the entrance door so as not to infringe on the library patron's rights. CSN and the
19 Defendant Officers do not oppose the extension of the TRO terms into a preliminary injunction
20 until the appropriate issues in the case are resolved by this Court.

21 DATED: October 24, 2016.

22
23 /s/ Richard L. Hinckley

24 RICHARD L. HINCKLEY
25 Nevada Bar No. 1884
26 DIANE L. WELCH, ESQ.
27 Nevada Bar No. 11738
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CERTIFICATE OF SERVICE

I hereby certify that I am an employee in the Office of General Counsel for the College of Southern Nevada, located at 6375 W. Charleston Blvd. (W32E), Las Vegas, Nevada 89146, I am over the age of 18 years, and I am not a party to the within cause. I further certify that on October 24, 2016, I electronically transmitted the attached **DEFENDANTS’ RESPONSE TO MOTION FOR PRELIMINARY INJUNCTION** to the U.S. District Court, District of Nevada, Clerk’s Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to all counsel in this matter, all counsel being registered to receive Electronic Filing, as follows:

Marc J. Randazza
Alex J. Sheppard
4035 S. El Capitan Way
Las Vegas, NV 89147

Dennis Kennedy
Kelly Stout
8984 Spanish Ridge Ave.,
Las Vegas, NV. 89148

X BY MAIL I caused such envelope(s) with First class postage thereon fully prepaid to be placed in the U.S. Mail in Las Vegas, Nevada.

BY ELECTRONIC SERVICE

/s/Diane Welch
Office of General Counsel, College of Southern Nevada, Las Vegas, Nevada