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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. 2:16-cv-02405-APG-PAL

DEFENDANT LAS VEGAS-CLARK COUNTY LIBRARY DISTRICT'S RESPONSE TO PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION

Pursuant to NRS 293.127565, the Las Vegas-Clark County Library District ("Library District") has promulgated Petitioner & Voter Registration Guidelines (the "Guidelines") for persons seeking to collect signatures on petitions ("Petitioners") on Library District property. The Guidelines simply require that Petitioners (1) check-in with Library District staff before beginning to gather signatures and (2) conduct their activities within a designated area that does not impede the normal flow of foot traffic. Mr. Deans seeks a preliminary injunction because he objects to these

requirements and maintains that they violate his constitutional rights. However, the Library District facilities are not public forums and the restrictions are reasonable in light of the Library District's interest in maintaining the safety of its patrons and the orderly administration of library business.

Moreover, Mr. Deans has failed to exhaust his administrative remedies; thus, any harm he has suffered is of his own making. NRS 293.127565 provides both a means to contest the Library District's Guidelines and a remedy if the provisions are found to be unreasonable. Mr. Deans has failed to seek this relief. Consequently, he cannot demonstrate that the Library District's Guidelines have caused him any harm. To the extent that he claims that his harm results from his suspension of library access, the suspension was a result of his failure to follow staff instructions—another decision Mr. Deans has also failed to appeal.

Mr. Deans is unable to demonstrate that his claims have merit or that he has suffered irreparable harm. Additionally, the equities weigh heavily in the Library District's favor, and the restrictions do not offend public policy. Therefore, his request for a preliminary injunction must be denied.

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I. RELEVANT FACTS[1]

A. The Library District.

The Library District is a political subdivision authorized by statute. NRS 379.0221, 379.142. Currently, it has fourteen (14) urban branches and eleven (11) outlying branches. One of the urban branches is located at 6301 West Charleston Boulevard, Las Vegas, Nevada (the "West Charleston Branch"). It is adjacent to the Charleston Campus of the College of Southern Nevada ("CSN").

The West Charleston Branch has two public entrances, the main entrance on the east side (the "East Entrance") and one on the west side of the building. The East Entrance is a circular area, with sculpture creating an inner circle (approximately 50 feet wide) and outer circle (the "East Entrance"). It is surrounded by sculpture and includes benches and landscaping. Due to the area's size, the East Entrance is not generally used for any purpose other than entering and exiting the

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[1] At the upcoming hearing on Mr. Deans' Motion, a Library District representative will testify to these facts.

building. Benches are provided for patrons who are waiting for friends or rides, reading, making calls, or for other temporary uses.

In most years, no "events" occur in the East Entrance. The West Charleston Branch is a polling place. During elections, the Clark County Election Department displays signs outside of the east (and west) entrance. Otherwise, the only non-Library District use of the East Entrance is by groups who have rented space inside and who are allowed to place signs (usually sandwich boards) in the East Entrance to direct people to their event

Other than allowing groups who have rented space inside to place "directional" signage (directing people to the rented location) Library District rarely allows signage or events in the space outside either the east or west entrance. When it does, it is usually for the Library District's own programs such as "fairs" or other educational programming. Since the West Charleston Branch opened in 1993, the east entrance has been used for special programming open to the public[2] on approximately twelve occasions.

B. Mr. Deans Refuses to Follow Directions of the Library District Staff.

At approximately 2:15 p.m. on October 13, 2016, Mr. Deans was outside the east entrance to the West Charleston Branch collecting signatures on a petition. He was standing directly in front of the entrance, approximately sixteen (16) feet from the doors.

Security Officer Phyllis Del Soldato approached Mr. Deans and explained that he needed to check in with the person in charge before collecting signatures and identified the designated . Mr. Deans refused.

Security Officer Del Soldato then called the Assistant Brand Manager, Sam Kushner ("Mr. Kushner"), who explained the check-in procedures and showed Mr. Deans the area designated for collecting signatures, which was around the edge of the entrance area and located approximately fifty (50 feet) from the entrance. When Mr. Deans refused to stay within the designated area, Mr. Kushner explained to him that if he would not stay within the designated area, he would have to leave for the remainder of the day. Mr. Deans still refused.

[2] At times, that the whole facility has been rented for private events, but such use is not relevant to this analysis because the building was not open to the public during those times.

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After repeated requests by multiple Staff Members—and Mr. Deans refusing—to stay within the designated area, Mr. Kushner called CSN Campus Police at approximately 2:45 p.m. When the officers arrived, Branch Manager Florence Jakus ("Ms. Jakus") informed the officers that the Library District would like Mr. Deans removed from the premises because he had refused to follow staff instructions and was causing a disturbance near the front door.

After Mr. Deans stated that he would not move to the designated area, one of the officers read him the Notice of Trespass ("Notice"), which includes instructions on how to appeal the Notice and decision. Mr. Deans has not appealed the Notice and decision.

C. The Library District Has Designated Zones for Gathering Signatures on Petitions.

In accordance with NRS 293.127565, the Library District has designated areas for Petitioners to gather signatures on petitions. (Ex. 3.) This information is available on the websites for the Nevada Secretary of State[3] and the Clark County Clerk[4]. At the West Charleston Branch, the Library District has identified two zones: Zone 1 is "[a]t the east entrance a[t] the far edge of the center circle" and Zone 2 is "[a]t the west entrance at the far edge of the center circle." *(Id.)*

The Library District has also established Petitioner & Voter Registration Guidelines, which include the following provisions:

> Petitioners and voter registrars must ***check in*** with the Las Vegas-Clark County Library District (LVCCLD) Person In Charge (PIC) prior to set up.
>
> Petitioners and voter registrars must follow our Library Rules of Conduct while on District property.
> . . . .
>
> Petitioners and voter registrars must set up within the designated zone that LVCCLD has filed with the Secretary of State's Office. . . .
>
> Petitioners and voter registrars must remain within the designated petitioner zone.
> . . .

[3] http://nvsos.gov/sos/elections/initiatives-referenda/petition-district-maps/designation-of-public-areas-for-the-gathering-of-signatures-on-petitions.

[4] http://www.clarkcountynv.gov/election/services/Pages/Petitions.aspx.

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> Petitioners and voter registrars must not obstruct a library entrance or exit, nor should they impede vehicular or pedestrian traffic.

(Ex. 3 (emphasis added).)

The check-in requirement does not require Petitioners to submit any written information and the Library District does not keep any written records regarding Petitioners. A Petitioner simply must notify Library District staff that they are on the premises to collect signatures on a petition. In particular, the Library District staff does not require that a Petitioner disclose his or her identity or the nature or subject of the petition. After checking-in, the staff member will show the Petitioner the areas designated for collecting signatures and answer any questions they may have regarding the Guidelines or Rules.

D. The Library District Rules of Conduct.

The Library District Rules of Conduct (the "Rules") prohibit "[c]onduct that endangers or disturbs library users or staff in any way, or that hinders others from using the library or its resources." (Ex.4.) This includes "[h]arassing, hostile, or threatening language or behavior;" "[r]estricting access to entrances, exits, and/or library resources;" and "[f]ailure to comply with reasonable staff instruction." (*Id.*) Moreover, the Rules state that "[f]ailure to comply with the Library Rules of Conduct may result in restriction of library privileges, immediate removal from the premises, or exclusion from the library for a period of one day to one year, depending on the seriousness of the infraction." (*Id.*)

A patron who has had his or her library privileges suspended may appeal the decision. A person who has been trespassed from a Library District facility receives a Notice of Trespass, which states: "If you wish to appeal this decision, you must do so by written request to the Library Director within fourteen (14) days of the above date." (Mot. at Ex. 3.) The Notice also includes the address for submitting a request. (*Id.*) Additionally, an appeal may be submitted by e-mail at administration@lvccld.org.

An appeal need not be in any particular format—a simple letter or statement will suffice. Once received, the Executive Director reviews the appeal and then asks a staff member to investigate the facts and circumstances giving rise to the suspension. The investigation will include reviewing

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the letter and any other relevant information, including any of the following: speaking to staff, security, or other witnesses; reviewing all reports and other documentation; visiting the site; reviewing the patron's past history, including any previous incidents and/or appeals; and consulting with counsel.

After completing the investigation, the staff member who conducted the investigation makes a recommendation to the Executive Director. The recommended course of action may include lifting the suspension, reducing the length of the suspension, or continuing the suspension as originally issued.

II. LEGAL STANDARD FOR PRELIMINARY INJUNCTION

"A preliminary injunction is an extraordinary remedy never awarded as of right." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008).

"To obtain a preliminary injunction, the moving party 'must establish that: (1) it is likely to succeed on the merits; (2) it is likely to suffer irreparable harm in the absence of preliminary relief; (3) the balance of equities tips in its favor; and (4) an injunction is in the public interest.'" *Idaho v. Coeur d'Alene Tribe*, 794 F.3d 1039, 1046 (9th Cir. 2015) (quoting *Pom Wonderful LLC v. Hubbard*, 775 F.3d 1118, 1124 (9th Cir.2014)).

Additionally, the Ninth Circuit uses the "serious questions" approach: "'[S]erious questions going to the merits' and a balance of hardships that tips sharply towards the plaintiff can support issuance of a preliminary injunction, so long as the plaintiff also shows that there is a likelihood of irreparable injury and that the injunction is in the public interest." *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011).

III. LEGAL ANALYSIS

Mr. Deans argues that the Library District's designation of zones for persons to collect signatures on a petition and to engage in voter education violates his rights under the United States and the Nevada Constitutions. (Compl. ¶¶ 34-42.) The Library District does not dispute that

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petitioning and voter registration both involve speech protected by the First Amendment.[5] Therefore, this Court need only determine whether the restrictions are permissible. And they are.

The West Charleston Branch (including the adjacent plaza and sidewalks) is not a public forum. The Library District's interests in maintaining order and safety justify the requirements that Petitioners check-in with Library District staff and confine the actions to designated areas.

A. Mr. Deans Is Not Likely to Prevail on the Merits.

1. The West Charleston Library Is a Limited Purpose Public Forum.

Mr. Deans concedes that the West Charleston Branch itself is a limited purpose public forum. (Mot. 7:6-8.) Nevertheless, he maintains that the building's exterior plaza and sidewalk are public forums. (*Id.* at 7:26 – 8:2.) They are not, as the evidence will show.

"In evaluating restrictions on speech, different standards apply depending on the type of forum involved." *Hills v. Scottsdale Unified Sch. Dist. No. 48*, 329 F.3d 1044, 1048 (9th Cir. 2003). "In places which by long tradition or by government fiat have been devoted to assembly and debate, the rights of the state to limit expressive activity are sharply circumscribed." *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 45 (1983). The same standards apply when public property has been designated or opened for use by the public as a place for expressive activity. *Id.*

Conversely, "[p]ublic property which is not by tradition or designation a forum for public communication is governed by different standards." *Id.* at 46. "[A] limited public forum is a sub-category of a designated public forum that "refer[s] to a type of nonpublic forum that the government has intentionally opened to certain groups or to certain topics." *Hopper v. City of Pasco*, 241 F.3d 1067, 1074 (9th Cir. 2001). "The government does not create a public forum by inaction or by permitting limited discourse, but only by intentionally opening a nontraditional forum for public discourse." *Cornelius v. NAACP Legal Def. & Educ. Fund, Inc.*, 473 U.S. 788, 802 (1985). "The question is whether these factors indicate an intent to designate a public forum

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[5] The protections provided under the Nevada Constitution are co-extensive with the protections provided under the First Amendment of the U.S. Constitution. *Univ. & Cmty. Coll. Sys. of Nev. v. Nevadans for Sound Gov't*, 100 P.3d 179, 187 (2004). Therefore, this memorandum discusses only free speech under the First Amendment for the sake of efficiency.

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dedicated to expressive activities." *DiLoreto v. Downey Unified Sch. Dist. Bd. of Educ.*, 196 F.3d 958, 965 (9th Cir. 1999).

In a limited public forum, restrictions that are viewpoint neutral and reasonable in light of the purpose served by the forum are permissible." *Hopper* at 1074–75. "The necessities of confining a forum to the limited and legitimate purposes for which it was created may justify the State in reserving it for certain groups or for the discussion of certain topics." *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995). Thus, "[i]n addition to time, place, and manner regulations, the state may reserve the forum for its intended purposes, communicative or otherwise, as long as the regulation on speech is reasonable and not an effort to suppress expression merely because public officials oppose the speaker's view." *Perry*, 460 U.S. at 45).

To determine whether an area constitutes a traditional public forum, federal courts in the Ninth Circuit consider three factors: "1) the actual use and purposes of the property, particularly status as a public thoroughfare and availability of free public access to the area; 2) the area's physical characteristics, including its location and the existence of clear boundaries delimiting the area; and 3) traditional or historic use of both the property in question and other similar properties." *Am. Civil Liberties Union of Nev. v. City of Las Vegas*, 333 F.3d 1092, 1100–01 (9th Cir. 2003) (internal citations omitted). Accordingly, "[t]he mere physical characteristics of the property cannot dictate forum analysis." *United States v. Kokinda*, 497 U.S. 720, 727 (1990).

In particular, "not all streets and sidewalks are traditional public fora." *Verlo v. Martinez*, 820 F.3d 1113, 1138 (10th Cir. 2016). *See also United States v. Marcavage*, 609 F.3d 264, 275 (3d Cir. 2010) ("not all public sidewalks constitute public fora for First Amendment purposes").

"Instead, the particular characteristics of a sidewalk are highly relevant to the inquiry." *Verlo*, 820 F.3d at 1139. *See also Marcavage*, 609 F.3d at 275 ("The question whether a particular sidewalk is a public or a nonpublic forum is highly fact-specific and no one factor is dispositive.). Specifically, "the location and purpose of a publicly owned sidewalk is critical to determining whether such a sidewalk constitutes a public forum." *Kokinda*, 497 U.S. at 728–29.

In *Kokinda*, the Supreme Court held that the "postal sidewalk at issue does not have the characteristics of public sidewalks traditionally open to expressive activity" and that restrictions

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must be "analyzed under the standards set forth for nonpublic fora." *Id.* at 730. Although physically indistinguishable from public sidewalks, the Court found that "the postal sidewalk was constructed solely to provide for the passage of individuals engaged in postal business" and "not to facilitate the daily commerce and life of the neighborhood or city." *Id.* at 727. *See also Greer v. Spock*, 424 U.S. 828, 837–38 (1976) (sidewalks on a military base were nonpublic); *McTernan v. City of York, Penn.*, 577 F.3d 521, 527-28 (3d Cir. 2009) (ramp that ran parallel to public sidewalk was not a pubic forum when it "is distinct from the sidewalk and serves a separate purpose").

Furthermore, the Court found that "a practice of allowing some speech activities on postal property do not add up to the dedication of postal property to speech activities." *Kokinda*, 497 U.S. at 730. Thus, the fact that "individuals or groups have been permitted to leaflet, speak, and picket on postal premises" did not transform the sidewalks into a public forum. *Id.*

Like the post office sidewalk in *Kokinda*, the east entry to the West Charleston Branch was constructed solely for library patrons. Although adjacent to CSN's Charleston campus, it is on property that is leased to the Library District and does not provide access to any other building. The sidewalk and the plaza area lead only to the parking area (which is also part of the property leased to the Library District) and were intended for use only by library patrons.

Additionally, the plaza and the sidewalks adjacent to the building have not been intentionally designated or opened for use by the public as a place for expressive activity. The Library District will present testimony that these areas are rarely used for any purpose other than entering and exiting the building by patrons using the area for personal tasks (not expressive, public communication) or for Library District programs. Furthermore, other uses are only allowed subject to restrictions. These limited uses are not sufficient to transform the area into a public forum.

Accordingly, the Library District's restrictions are not subject to strict scrutiny. Instead, they are permissible so long as they are "reasonable and 'not an effort to suppress expression merely because public officials oppose the speaker's view.'" *Kokinda*, 497 U.S. at 730.

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2. The Restrictions Provided in NRS 293.127565 Are Permissible Time, Place, and Manner Restrictions.

"In a nonpublic forum opened for a limited purpose, restrictions on access 'can be based on subject matter . . . so long as the distinctions drawn are reasonable in light of the purpose served by the forum' and all the surrounding circumstances." *DiLoreto*, 196 F.3d at 967 (quoting *Cornelius v. NAACP Legal Def. & Educ. Fund, Inc.*, 473 U.S. 788, 806 (1985)). "The 'reasonableness' analysis focuses on whether the limitation is consistent with preserving the property for the purpose to which it is dedicated." *Id.* Although a restriction must be viewpoint neutral, it may discriminate based on content. *Rosenberger*, 515 U.S. at 830 (1995) ("content discrimination . . . may be permissible if it preserves the purposes of that limited forum").

Because the West Charleston Branch is not a public forum, a restriction on speech "need only be reasonable; it need not be the ***most*** reasonable or the ***only*** reasonable limitation." *Kokinda*, 497 U.S. at 730 (emphasis added).

Here, the Library District's Guidelines (which incorporate the Rules) are viewpoint neutral and reasonable in light of its interest in maintaining orderly functioning and safety. Each of the restrictions (like the Rules) is designed to allow the Library District to control activities on the premises and prevent "[c]onduct that endangers or disturbs library users or staff in any way." (Ex. 4.)

The Library District's Guidelines are promulgated pursuant to statute, which states:

> At each building that is open to the general public and occupied by . . . a political subdivision of this State or an agency thereof . . . an area must be designated for the use of any person to gather signatures on a petition at any time that the building is open to the public. The area must be reasonable and may be inside or outside of the building.

NRS 293.127565(1). Although the statute guarantees the right to gather signatures, it also requires that a person "must notify the public officer or employee in control of the operation of the building governed by subsection 1 of the dates and times that the person intends to use the area to gather signatures on a petition." NRS 293.127565(2).[6]

[6] To the extent that Mr. Deans challenges the constitutionality of NRS 293.127565, it must comply with Rule 5.1 of the Federal Rules of Civil Procedure, which requires him to "file a notice of constitutional question stating the question and identifying the paper that raises it" and serve the notice on the Nevada Attorney General.

Given the Library District's interest in maintaining order and ensuring the safety of its patrons, it is reasonable to require that Petitioners stay within designated areas. Petitioning, like the solicitation that was at issue in *Kokinda*, "impedes the normal flow of traffic" and "requires action by those who would respond." *Kokinda*, 497 U.S. at 734. Thus, it is reasonable to require that the activity take place out of the main flow of foot traffic. The Library District does not have to wait until a Petitioner creates a disturbance to impose restrictions. *United Food & Commercial Workers Local 1099 v. City of Sidney*, 364 F.3d 738, 751 (6th Cir. 2004) ("the government does not need to wait "until havoc is wreaked to restrict access to a nonpublic forum.") (quoting *Cornelius*, 473 U.S. at 810). Likewise, it may restrict speech that would be disruptive to Library District business or for the purpose of avoiding controversy. *Id.*

Similarly, the check-in requirement is reasonable. In contrast to Mr. Deans' efforts to portray the procedure as burdensome,[7] the check-in requirement is simple—it requires only that a person notify the Library District staff of their presence and intent to gather signatures. This minimal burden assists the Library District in maintaining appropriate control of its premises. First, it allows the Library District to be aware of activities that are occurring on its premises and to take appropriate action if others engage in improper activities. It also allows the Library District staff to respond promptly and knowledgeably if other patrons question a Petitioner's actions or right to be present. Furthermore, it provides the Library District staff with an opportunity to explain the Guidelines to petitioners to ensure that any petitioning is orderly and non-disruptive. Accordingly, the Library District's Guidelines are reasonable. *See Univ. & Cmt. Coll. Sys. of Nev. v. Nevadans for Sound Gov't*, 100 P.3d 179 (2004) (holding that a notice requirement is permissible under NRS 293.127565, U.S. Constitution, and Nevada Constitution so long as the requirements do not unreasonably deny a person the ability to gather signatures). *See also Walker v. Oregon*, No. CIV. 08-06135-HO, 2010 WL 1224235 (D. Or. Mar. 23, 2010) (holding that Oregon statute requiring paid petition circulators to carry proof of registration, did not restrict speech so as to violate the First Amendment because "requiring paid circulators to provide identifying information to the state—

[7] As Mr. Deans refused to enter the building and check-in, he could do little more than speculate—he did not know what information or action is required.

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information that is already available by public records request—does not so restrict speech as to violate the First Amendment")

B. Any Harm Suffered by Mr. Deans Is of His Own Making.

Any harm that Mr. Deans has suffered (or will suffer) is of his own making. NRS 293.127565 provides a method to appeal the designation and provides a remedy for violation:

> Not later than 3 working days after the date of the decision that aggrieved the person, a person aggrieved by a decision made by a public officer or employee pursuant to subsection 1 or 2 may appeal the decision to the Secretary of State. The Secretary of State shall review the decision to determine whether the public officer or employee violated subsection 1 or 2. If the Secretary of State determines a public officer or employee violated subsection 1 or 2 and that a person was denied the use of a public building for the purpose of gathering signatures on a petition, the Secretary of State shall order that the deadline for filing the petition provided pursuant to NRS 293.128, 293.172, 293.200, 295.056, 298.109, 306.035 or 306.110 must be extended for a period equal to the time that the person was denied the use of a public building for the purpose of gathering signatures on a petition, but in no event may the deadline be extended for a period of more than 5 days.

NRS 293.127565(3). Moreover, it provides that "[t]he decision of the Secretary of State is a final decision for the purposes of judicial review. Not later than 7 days after the date of the decision by the Secretary of State, the decision of the Secretary of State may only be appealed in the First Judicial District Court." NRS 293.127565(4).

Notwithstanding the availability of a remedy, Mr. Deans insisted on flouting the Guidelines and violating the Rules. Had Mr. Deans complied with the staff's instructions and requested review by the Secretary of State, he would not have been trespassed.

Although Mr. Deans has not alleged that time is of the essence with respect to the petition he was circulating,[8] the statute provides that if the Secretary of State found in his favor, he would be permitted additional time for gathering signatures. Therefore, there would be no harm to his ability to gather signatures on the petition.

Thus, the only harm Mr. Deans can allege in support of extending the injunction beyond 14 days is his suspension of library privileges. However, Mr. Deans' suspension of his library

[8] Indeed, Mr. Deans has not even alleged an impending deadline for collecting signatures on his petition.

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privileges was a result of his refusal to comply with the reasonable instructions of the Library District staff. As a result, the Library District was forced to call the police and request that Mr. Deans be trespassed.

C. The Equities and Public Policy Weigh Heavily in the Library District's Favor.

Notwithstanding the existence of administrative remedies, Mr. Deans has come to this Court seeking injunctive relief.

It is a well-established rule that administrative remedies must be exhausted prior to seeking judicial relief. The exhaustion doctrine serves "to permit administrative agencies to utilize their expertise, correct any mistakes, and avoid unnecessary judicial intervention in the process." *Great Old Broads for Wilderness v. Kimbell*, 709 F.3d 836, 846 (9th Cir. 2013) (quoting *Lands Council v. McNair*, 629 F.3d 1070, 1076 (9th Cir.2010) (en banc)). The exhaustion rule applies equally to preliminary injunctive relief. *Daly v. Costle*, 661 F.2d 959, 963 (D.C. Cir. 1981) ("for so long as effective remediation conceivably could have been achieved through the administrative process, exhaustion was prerequisite"); *Casey v. F.T.C.*, 578 F.2d 793, 796 (9th Cir. 1978); *Heidman v. United States*, 414 F. Supp. 47, 49 (N.D. Ohio 1976) ("Since further administrative remedies are available to plaintiff, the Court concludes that the Motion for Preliminary Injunction must be denied and that the action is dismissed without prejudice.").

Furthermore, the Library District's guidelines appropriately balance the public interests in protecting individual Constitutional rights and ensuring that the "[t]he library and reading room of any consolidated, county, district or town library must forever be and remain free and accessible to the public, subject to such reasonable regulations as the trustees of the library may adopt." NRS 379.040.

Mr. Deans has not sought review of the Library District's designation areas for petitioning nor has he sought review of his suspension. Additionally, he has not demonstrated why either would be futile. Given the purpose and public policies that support the exhaustion requirement, it would be inequitable to allow Mr. Deans to circumvent the administrative options available to him and grant the extraordinary relief of a preliminary injunction.

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IV. CONCLUSION

The Library District's West Charleston Branch is not a public forum. Its purpose, the character of the premises, and the historical usage establish that it has never been designated or intended to be an area open to free expression. Rather, the Rules are designed to avoid any disturbance to patrons and maintain quiet order. As Library District has established that its Rules and Guidelines are reasonable in light of its purpose, Mr. Dean is unable to demonstrate a likelihood of success on the merits.

Furthermore, Mr. Deans is unable to demonstrate that he will suffer an irreparable harm due to the Library District's Guidelines and Rules. Not only was his suspension a result of his decision to ignore the Library District staff's reasonable instructions, he has failed to appeal the decision. It would be inequitable and would offend public policy to allow Mr. Deans to obtain a preliminary injunction under these circumstances.

For these reasons, the Library District asks that Mr. Deans' Motion be denied.

DATED this 24th day of October, 2016.

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CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY❖KENNEDY and that on the 24th day of October, 2016, service of the foregoing **DEFENDANT LAS VEGAS-CLARK COUNTY LIBRARY DISTRICT'S RESPONSE TO PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION** was made by mandatory electronic service through the United States District Court's electronic filing system and/or by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known address:

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