

1 Marc J. Randazza, NV Bar # 12265
2 Alex J. Shepard, NV Bar # 13582
3 RANDAZZA LEGAL GROUP, PLLC
4 4035 S. El Capitan Way
5 Las Vegas, NV 89147
6 Telephone: 702-420-2001
7 Facsimile: 305-437-7662
ecf@randazza.com

8
9 *Attorneys for Plaintiff,*
10 *William Deans*
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12 UNITED STATES DISTRICT COURT
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14 DISTRICT OF NEVADA
15

16 WILLIAM DEANS, an individual,
17

18 Case No. 2:16-cv-02405-APG-PAL
19

20 Plaintiff,
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22 vs.
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24 LAS VEGAS CLARK COUNTY LIBRARY
25 DISTRICT, *et al.*,
26

27 Defendants.
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29 REPLY IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION AS TO
30 DEFENDANTS COLLEGE OF SOUTHERN NEVADA, OFFICER ANTONIA
31 SUMMERLIN, AND OFFICER RANDALL PERKINS
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1 **1.0 INTRODUCTION**

2 Plaintiff seeks to enjoin Defendants from enforcing an unlawfully issued Notice of Trespass
3 against Plaintiff, barring him from any library in Clark County for a period of at least one year, and
4 also enjoining Defendants from enforcing an unconstitutional policy restricting all petitioning activity
5 to a designated “spot.” Further, as the provisions of the LVCCLD’s procedures are unconstitutional
6 and CSN is the entity in control of the property, the Court should compel CSN to cease any further
7 infringement upon Deans’s rights, thereby compelling its lessee, LVCCLD, to abide by the First
8 Amendment.

9 **2.0 FACTUAL AND PROCEDURAL BACKGROUND**

10 **2.1 Deans’s Encounter at the Library**

11 On October 13, 2016, Plaintiff positioned himself outside the West Charleston Public Library
12 in Las Vegas, Nevada (the “Library”). (*See* Doc. No. 3-1 at ¶¶7-11.) He did not disturb anyone.
13 (*Id.* at ¶11; *see* Declaration of Steven Cooper [“Cooper Decl.”], attached as Exhibit 1, at ¶8-9, 13-14).¹
14 Defendants admit this when they allege he was “standing directly in front of the entrance,
15 **approximately sixteen (16) feet from the doors.**” (*See* Doc. No. 11 at 3) (emphasis added.)
16 Plaintiff circulated a petition and told people how to register to vote. (Doc. No. 3-1 at ¶¶6, 12, & 13.)

17 Security Officer Phyllis Del Soldato approached Plaintiff and stated that she was acting in her
18 official capacity as a representative of Defendant LVCCLD. (*Id.* at ¶17.) Soldato told Plaintiff that
19 he could not engage in his free speech activity without first **registering** with the LVCCLD.
20 (*Id.* at ¶18.) Assistant Branch Manager Sam Kushner, and Branch Manager Florence Jakus, informed

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22
23 ¹ Defendants claim that Deans was blocking the entrance of the Library, but have provided no
24 evidence of this. This is not a credible assertion, given that the Notice of Trespass states its basis as
25 “failure to comply with staff instruction.” (*See* Doc. No. 3-3.) This is so even though the a more
26 specific Library Rule of Conduct explicitly prohibits “[r]estricting access to entrances, exits, and/or
27 library resources.” (*See* Doc. No. 11-5.) Furthermore, the incident report does not at any point assert
as Exhibit 2.)

1 him that **if he was approved**, he would have to relocate to a spot at the outer perimeter of the Library
 2 entrance plaza, with significantly less pedestrian traffic. (*Id.* at ¶21-23; *see also* Doc. No. 3-2).²

3 Plaintiff informed Kushner and Jakus it was a violation of his First Amendment rights to
 4 require registration. (Doc. No. 3-1 at ¶24.) Kushner and Jakus summoned CSN police. (*Id.* at ¶24.)
 5 The officers arrived, including Defendant Summerlin. Summerlin stated that Deans had to leave the
 6 Library premises. (*Id.* at ¶25 & 26.) She claimed that she was the “duly appointed representative of
 7 the owner of the public library.” (*See* transcript of video recording of library plaza encounter, attached
 8 as **Exhibit 3** at 3.)³ Despite Defendants’ *post hoc* representations, this Notice of Trespass was issued
 9 because he questioned the responding police officers and library personnel. (*See* Doc. No. 3-3;
 10 Doc. No. 11-5; **Exhibit 2**; **Exhibit 3** at 2.) CSN then issued an unlawful Notice of Trespass for
 11 “failure to comply with staff instruction.” (*See* Doc. No. 3-1. at ¶¶28-29; *see also* Doc. No. 3-3.)
 12 The Notice forbids Deans from visiting **any** branch of the LVCCLD for at least one year, under threat
 13 of arrest. (*Id.*; Doc. No. 3-1 at ¶¶31 & 33.)

14 Deans then went to the CSN Police Department office to appeal the decision. (*Id.* at ¶35.)
 15 Shortly thereafter, he received a call from Lieutenant Randall Perkins with CSN. (*Id.* at ¶39.)
 16 Perkins informed Deans⁴ that he would not lift the order and permit Deans to continue exercising his
 17 rights pending the outcome of the investigation. (*Id.* at ¶41.) Perkins also stated that if the
 18 investigation was inconclusive, he would uphold the trespass order. (*Id.* at ¶42.) This presumption is
 19 a derogation of Deans’s First Amendment rights. Perkins then informed Deans that the investigation
 20 would conclude by Oct. 25, 2016 at the earliest, and Nov. 11, 2016 at the latest. (*Id.* at ¶43.)

21 **3.0 STANDARDS FOR OBTAINING INJUNCTIVE RELIEF**

22 The traditional test in *Stanley v. Univ. of S. Cal.*, 13 F.3d 1313, 1319 (9th Cir. 1994) and *FDIC v.*
 23 *Garner*, 125 F.3d 1272, 1277 (9th Cir. 1997) and *Metro Pub. Ltd. v. San Jose Mercury News*, 987 F.2d

24 _____
 25 ² That spot was defined by Kushner as the area shown in Doc. No. 11-7. Since the TRO hearing,
 however, counsel for LVCCLD has provided a different interpretation of the spot.

26 ³ Deans has provided all parties with a copy of the underlying video recording, and it will be filed with
 the Court to be played during the hearing.

27 ⁴ Deans, through counsel, requested that the trespass be lifted pending the outcome of the appeal.

1 637, 639 (9th Cir. 1993) is met. If the balance of hardships strongly favors the plaintiff, he does not
 2 need to make as strong a showing of success on the merits, and vice versa. *See Walczak v. EPL Prolong,*
 3 *Inc.*, 198 F.3d 725, 731 (9th Cir. 1999). When there is a violation of a constitutional right, no further
 4 irreparable injury is required. *See Assoc. Gen'l Cont. of Calif. v. Coal. for Ec. Equity*, 950 F.2d 1401, 1410
 5 (9th Cir. 1991). In fact, the first prong of the “traditional” test is outcome determinative in First
 6 Amendment cases, as any chill to First Amendment rights is irreparable harm, the government has no
 7 interest in enforcing an unconstitutional regulation, and the public does not benefit by enforcement.
 8 *See Kroll v. Incline Vill. Gen. Improvement Dist.*, 598 F. Supp. 2d 1118, 1126 (D. Nev. 2009).

9 **4.0 ARGUMENT**

10 Defendants argue “CSN has no interest in or stake in defending the Library District’s Notice
 11 of Trespass. Officer Summerlin enforced Nev. Rev. Stat. 207.200 . . . at the request of the property
 12 lessee-occupant.” (Doc. No. 10 at 3:26-28.) They also claim that CSN has no “interest or stake in
 13 applying Nev. Rev. Stat. 293.127565. Library District is the lessee-occupant of the designated library
 14 grounds and applies Nev. Rev. Stat. 293.127565 independent from CSN.” (*Id.* at 4:1-3.) CSN cannot
 15 evade responsibility so easily. These assertions are belied by the facts. Officer Summerlin stated that
 16 she was acting “as duly appointed representative of the owner of the property of the public library”
 17 when she issued the Trespass. (Exhibit 3 at 3.) Absent injunctive relief, there is nothing other than
 18 their word that prevents them from arresting Deans if he goes to any public library. As the enforcer
 19 of LVCCLD’s policies, and the owner of the subject property, injunctive relief is just as necessary
 20 against CSN and its officers.

21 The lease requires LVCCLD to “keep and maintain the premises . . . in compliance with all
 22 existing or hereafter enacted laws, statutes, ordinances, order, rules and regulations . . .” (See Library
 23 lease, attached as Exhibit 4, at § X.) LVCCLD, by unlawfully stifling petitioning activity, is violating
 24 the First Amendment. CSN, as the landowner, has the power and the **responsibility** to prevent
 25 LVCCLD from violating the First Amendment. If LVCCLD were committing other unlawful acts,
 26 like impeding handicapped access, CSN could not claim to have no dog in the fight.

1 One of the explicit bases cited for restricting Deans's activity is NRS 293.127565. Though
 2 CSN and its officers do not provide much of a defense for the erroneous interpretation of this statute
 3 (that it **restricts** petitioning activity), this interpretation is central to this case. LVCCLD may defend
 4 its policies, but CSN and the State of Nevada are the proper parties to defend the state statute.

5 If LVCCLD's interpretation of NRS 293.127565 is correct, the Court should strike the statute
 6 down as unconstitutional unless the State can defend it. LVCCLD's arguments ensure that CSN must
 7 remain a party unless the State of Nevada endorses the proper interpretation of NRS 293.127565.

8 **4.1 NRS 293.127565 Does Not Restrict Petitioning Activity**

9 LVCCLD claims that its actions were taken under the blessings of NRS 293.127565.
 10 CSN and its officers issued a notice of trespass against Deans for failing to conduct his activities within
 11 a designated "petitioning spot."

12 The statute creates an **affirmative obligation** on the part of government entities to set aside
 13 an area in which people petition, even at buildings that are not traditional public fora. It **creates** a
 14 limited public forum in areas that are otherwise nonpublic fora. The statute does not, however,
 15 mandate a restriction on petitioning to *only* these designated spots. To interpret the statute in this way
 16 would make it facially unconstitutional, as it would restrict such activity in all public fora. The statute
 17 creates a floor, not a ceiling, for petitioning activity. *See Univ. & Cnty. College Sys. Of Nev. v. Nevadans
 18 for Sound Gov't*, 120 Nev. 712 (2004) ("NSG"). The Nevada Supreme Court discussed
 19 NRS 293.127565, but the government did not rely on the statute as a basis for **restricting** speech.
 20 They argued that they could impose reasonable restrictions *despite* NRS 293.127565. *See id.* at 725
 21 (appellant conceding that 293.127565 creates a limited public forum at public buildings, regardless of
 22 the building's use).

23 Looking at the statute's legislative history, the court found that:

24 NRS 293.127565(1)(c) expresses the state's public policy that election laws . . . should
 25 be liberally construed to effectuate the will of the people. Correspondingly, any time,
 26 place, or manner restriction associated with buildings to which NRS 293.127565
 27 pertains must not work unreasonably, in light of the totality of the circumstances, so
 as to deny a petition circulator his or her right to gather signatures.

1 *Id.* at 734. The purpose of the statute is “to provide petition circulators areas at public buildings in
 2 which to conduct signature-gathering activities.” *Id.* at 735. Accordingly, any restrictions on such
 3 activities at a public building “under the statute’s purview must also comport with the spirit and intent
 4 of NRS 293.127565 in light of the particular circumstances.” *Id.* at 736. Nothing in the statute
 5 **restricts** an individual’s right to circulate petitions.

6 **4.2 Plaintiff is Likely to Prevail on the Merits of His Free Speech Claims**

7 Defendants’ violated Deans’s constitutional rights by issuing a Trespass. This retaliatory
 8 conduct violates Deans’s rights under the First Amendment, remedied under 42 U.S.C. § 1983.
 9 Courts evaluate a First Amendment claim as follows: (1) whether the speech is protected; (2) the
 10 nature of the forum; and (3) whether the government justification is satisfactory. *See Cornelius v.*
 11 *NAACP Legal Defense & Education Fund*, 473 U.S. 788, 797 (1985). Defendants do not question
 12 whether Deans’s activities are protected Political speech. “The solicitation of signatures for a petition
 13 involves protected speech.” *Meyer v. Grant*, 486 U.S. 414, 422 n.5 (1988). Telling other citizens to
 14 register to vote, and telling them how to do so, hits the bullseye of the First Amendment.

15 **4.2.1 The Plazas Are Traditional or Designated Public Fora⁶**

16 The Ninth Circuit has a three-factor public forum test: “1) the actual use and purposes of the
 17 property, particularly status as a public thoroughfare and availability of free public access to the area;
 18 2) the area’s physical characteristics, including its location and the existence of clear boundaries
 19 delimiting the area; and 3) [the] traditional or historic use of both the property in question and other
 20 similar properties.” *ACLU v. City of Las Vegas*, 333 F.3d 1092, 1100-01 (9th Cir. 2003).

21 A public library may contain different types of public fora. *See* California case of *Prigmore v.*
 22 *City of Redding*, 211 Cal. App. 4th 1322 (2012). As here, *Redding* dealt with organizations that wished
 23 to petition in the **outdoor areas** of a public library, specifically a “covered area of approximately 765
 24 square feet [with] two cement columns, a sculpture, several benches, and a newspaper rack.”

25
 26 ⁶ As far as a facial challenge to NRS 293.127565 (as interpreted by Defendants) is concerned, this
 27 determination is a foregone conclusion; the statute applies to **all** public buildings, including those that
 are unquestionably traditional public forums.

1 *Id.* at 1328. Given the differences between the interior and exterior areas of the library, the court
2 found that “a ‘more tailored approach’” to the public forum analysis was appropriate. *Id.* at 1338.
3 The *Redding* library, just like the Library here, offered “complete, unrestricted public access” to the
4 outdoor area, and an entrance “larger than the typical sidewalk and includes several benches and a
5 newspaper rack. It is an area where people can rest or congregate for lengthy conversation.”
6 *Id.* at 1339. The court found that “[c]haracterizing the area as a public forum is consistent with the
7 role of a library as ‘a mighty resource in the free marketplace of ideas. It is specially dedicated to
8 broad dissemination of ideas. It is a forum for silent speech.’” *Id.* (quoting *Minarcini v. Strongsville City*
9 *School Dist.*, 541 F.2d 577, 582083 (6th Cir. 1976)). The court distinguished the library “from, for
10 example, stand-alone retail establishments that do not invite people to congregate, to meet friends,
11 rest, or be entertained, and are not public forums.” *Id.*

12 The facts here match *Redding*. The plaza is an open area that is larger than any sidewalk.
13 It contains places to sit and a circular area larger than necessary to allow ingress and egress.
14 The circular center is designed in such a way to evoke the impression of a traditional Greek or Roman
15 forum. This Court observed that the plaza “**appears to be, on the one hand, designed as a**
16 **gathering space, aesthetically pleasing, but also potentially to exchange ideas that one just**
17 **learned studying inside the library.**” (*See* transcript, attached as Exhibit 5 at 54:14-17) (emphasis
18 added.) There are no physical barriers impeding access to the Library. These physical characteristics
19 indicate that the area is meant for unrestricted public access, and is thus a traditional public forum.
20 Additionally, the library is connected to the CSN campus, across street from Bonanza High School,
21 one block from Fighters Memorial Park, and two blocks from Gary Dexter Park, all public buildings
22 or places. Though it may not be at the nerve center of CSN’s campus, its location also suggests that
23 the plazas are part of a traditional public forum. There is evidence that the plazas, if not the entirety
24 of the Library, are regarded as a traditional or designated public forum. LVCCLD has stated that it
25 provides welcoming and inspiring spaces for reading, learning and achieving, and the
26 tools and resources that families, children, teens and adults need to succeed. The
27 Library is committed to building communities of people who can come together to
pursue their individual and group aspirations.

1 (See LVCCLD Collection Development Policy, Mission Statement, attached as Exhibit 6.) It claims
 2 that “[t]he District is guided by the principles of Public Librarianship and First Amendment Rights.
 3 The District protects library materials from censorship.” (*Id.*) It “seek[s] innovative ways to . . .
 4 [c]reate a sense of community by providing a welcoming, inviting, secure environment for our public
 5 and staff.” (*Id.*)⁷ Clark County libraries are intended to be traditional or designated public forums.

6 Portions of Clark County public libraries have been intended to be public forums for over a
 7 decade. In 2004, a member of the LVCCLD Board of Trustees went on record stating all speakers
 8 must be treated equal because “[p]ublic forums cannot be regulated by content and use, only when,
 9 where and how can be regulated.” (June 10, 2004 Board of Trustees’ Meeting Minutes, attached as
 10 Exhibit 7, at 6.)⁸ And in 2011, when discussing a rule regarding searches of library patrons, a board
 11 member noted “that the District has one of the most lenient entrance policies as a government
 12 agency.” (January 13, 2011 Board of Trustees’ Meeting Minutes, attached as Exhibit 8, at 10.)⁹
 13 If entry to the building is so lenient, the plaza outside must be more so.

14 Finally, the Library is located on CSN’s campus. Counsel for CSN stated that the college
 15 does not restrict petitioning activities to “public speech zones.” (See Exhibit 5 at 19:15-18, 22:4-7.)
 16 He said that “**the whole campus is a free speech zone.**” (*Id.* at 24:5-7) (emphasis added.)
 17 CSN’s Opposition states that “CSN has adopted the policy that all outside areas are available for free
 18 speech activity subject to requirements that it not unduly impact its primary educational purpose.”
 19 (Doc. No. 10 at 4:5-8.)

20 “[T]he vigilant protection of constitutional freedom is nowhere more vital than in the
 21 community of American schools.” *Healy v. James*, 408 U.S. 169, 180 (1972). “The college classroom
 22 and its environs is peculiarly the ‘marketplace of ideas,’ *Id.* The mere “undifferentiated fear of

23 _____
 24 ⁷ The Court should note, as explained in the Reply concerning LVCCLD, that the Library District
 25 makes these aspirational statements easily available to the public, while the details of their restrictive
 26 policies are much more difficult to obtain.

27 ⁸ Available at: http://www.lvccld.org/about/board/2004/minutes/06_10_04_minutes.pdf (last accessed Oct. 26, 2016).

⁹ Available at: http://www.lvccld.org/about/board/2011/minutes/01_13_11_1_minutes.pdf (last accessed Oct. 26, 2016).

1 apprehension of a disturbance is not enough to overcome the right to freedom of expression on a
 2 college campus.” *Healy*, 408 U.S. at 191. The fact that CSN considers the entirety of the CSN campus
 3 a “free speech zone,” and the Library is located on CSN’s campus, mandates that these open plazas
 4 are traditional, or at least designated, public fora.

5 This Court noted a potentially adverse case on this question, *United States v. Kokinda*, 497 U.S.
 6 720, 727-28 (1990). *Kokinda* is not binding on this point. The portion of the plurality opinion that
 7 held the post office sidewalk was a 4-member plurality, with Justice Kennedy finding it unnecessary
 8 to decide this issue in light of the reasonable time, place, and manner restrictions in the case.
 9 *See id.* at 739 (Kennedy, J., concurring). The other four justices disagreed and felt the sidewalk was a
 10 traditional or designated public forum. *See id.* at 593 (Brennan, J., dissenting). As this issue was
 11 considered by a divided court and not actually decided, the plurality’s decision on whether sidewalks
 12 outside a post office are a limited public forum is non-binding dicta.¹⁰

13 Even if *Kokinda* were binding, it is distinguishable. There is no mention of an enormous plaza
 14 in front of the *Kokinda* post office with benches for people to congregate, and “discuss what they
 15 learned in the post office.” There are no statements from the government regarding the historically
 16 open use of the sidewalks. The plurality placed weight on the fact that “postal property is expressly
 17 dedicated to only one means of communications: the posting of public notices on designated bulletin
 18 boards.” *Id.* at 730. LVCCLD’s and CSN’s own policies undermine any comparison between this
 19 case and *Kokinda*.

20 **4.2.2 If Applicable, NRS 293.127565 is Unconstitutional**

21 **4.2.2.1 Prior Restraint**

22 “As a starting point, one must assume the general principle that, under the First Amendment
 23 and our notions of a democratic society, freedom of expression is the rule and constraint the
 24 exception.” Thomas I. Emerson, “The Doctrine of Prior Restraint,” YALE FACULTY SCHOLARSHIP
 25 SERIES, Paper 2804 at 655 (1955). Prior restraints turn that principle on its head. There are generally
 26

27 ¹⁰ And frankly, Brennan’s opinion is more compelling.

1 two kinds of prior restraints: those that “‘authorize a licensor to pass judgment of speech’ and those
 2 whose purpose ‘is not to exclude communication of a particular content, but to coordinate multiple
 3 uses of limited space’ on a content-neutral basis.” *Seattle Affiliate*, 550 F.3d at 797 (quoting *Thomas v.*
 4 *Chi. Park Dist.*, 534 U.S. 316, 322 (2002)). As explained in Section 5.2.2.2, *infra*, the restrictions here
 5 are content-based.¹¹ There is also a third type of prior restraints

6 which make unlawful publication or other communication unless there has been
 7 previous compliance with specific conditions imposed by legislative act. In this
 8 situation, no approval of an executive or judicial official is involved. Examples of such
 9 restraint are those requiring registration or lobbyists or of certain political
 organizations. Laws imposing taxes on newspapers or other forms of communication
 may be said to fall within this category. Enforcement of the control is normally by
 criminal prosecution or other legal proceeding for failure to meet the condition.

10 *Emerson, supra*, at 656.

11 Any rule requiring registration before authorizing public advocacy is a prior restraint.
 12 See *Shuttlesworth v. Birmingham*, 394 U.S. 147, 150-151 (1969); *Niemotko v. Maryland*, 340 U.S. 268, 271
 13 (1951).¹² **“Advance notice or registration requirements [can] drastically burden free speech.”**
 14 *Rosen v. Port of Portland*, 641 F.2d 1243, 1249 (9th Cir. 1981) (emphasis added). “It is offensive – not
 15 only to the values protected by the First Amendment, but to the very notion of a free society – that
 16 in the context of everyday public discourse a citizen must first inform the government of her desire
 17 to speak to her neighbors and then obtain a permit to do so.” *Watchtower Bible. v. Stratton*, 536 U.S.
 18 150, 165-66 (2002). This places a burden on the exercise of free speech, and absolutely bans
 19 spontaneous speech. *See id.*

20 Requiring pre-notification is only permitted where “there are procedural safeguards that
 21 ensure that the decision maker approving the speech does not have ‘unfettered discretion’ to grant
 22 or deny permission to speak.” *Six Star Holdings, LLC v. City of Milwaukee*, 821 F.3d 795 (7th Cir.
 23 2016). “A licensing statute placing unbridled discretion in the hands of a government official or

24
 25
 26¹¹ Indeed, the Court found that, even if it could be viewpoint-neutral, the policy restricting petitioning
 27 activity to a designated spot is content-based. (See Exhibit 5 at 48:2-5, 53:6-11.)

¹² Although there is a dispute as to whether Mr. Deans was told to “register” or only give advance
 notice, both are prior restraints.

1 agency constitutes a prior restraint.” *Lakewood v. Plain Dealer Pub. Co.*, 486 U.S. 750, 757 (1988).
2 It “intimidates parties into censoring their own speech, even if the discretion and power are never
3 actually abused.” *Id.*

4 By Defendants’ interpretation of NRS 293.127565, the Nevada Legislature insisted that public
5 buildings must restrict First Amendment activity to designated spots, and that people **must** register
6 before using such spots. Even if a person does not need to fill out a form, this requirement still chills
7 protected speech, and serves as a content-based prior restraint on speech. *See Grant*, 486 U.S. at
8 422 n.5. Because there is a “heavy presumption against [the] constitutional validity” of this portion
9 of the statute, if it does indeed apply the way Defendants claim it does, Defendants bear the burden
10 of justifying this requirement. As explained in Section 5.2.2.2, *infra*, they cannot do so.

11 4.2.2.2 NRS 293.127565 Does Not Satisfy Strict Scrutiny

12 A regulation that only applies to petitioning is content-based. (*See Exhibit 5* at 48:2-5,
13 53:6-11); *see also Reed v. Town of Gilbert*, 135 S. Ct. 2218, 2227 (2015). NRS 293.127565 (if interpreted
14 in the manner urged by Defendants) is indeed content-based. Its terms are limited to “gather[ing]
15 signatures on a petition.” It does not restrict any other type of expressive activity. It applies to all
16 buildings. This means that, even if this public plaza is not a traditional or designated public forum,
17 the statute restricts one class of expressive activity at and outside **all** public buildings, including all
18 that are traditional public fora.

19 The government must “prove that the restriction furthers a compelling interest and is
20 narrowly tailored to achieve that interest.” *Arizona Free Enterprise Club’s Freedom Club PAC v. Bennett*,
21 131 S. Ct. 2806, 2817 (2011); *Thalheimer v. City of San Diego*, 645 F.3d 1109, 1116 (9th Cir. 2011). It is
22 apparent from the analysis in NSG that the Nevada Legislature passed NRS 293.127565 to **ensure**
23 that people are able to engage in petitioning in and around **all** public buildings, not just traditional
24 public forums. *See* 120 Nev. at 734. This **guarantee** may very well be a compelling government
25 interest, but no interest is served by **limiting** these activities to a circumscribed “petitioning spot” in
26 all cases. If applied in this manner, the statute directly opposes its stated purpose, and is not narrowly
27 tailored. Interpreted in this manner, NRS 293.127565 is unconstitutional.

4.2.2.3 The Notice is a Prior Restraint

The Notice of Trespass is impermissible prior restraint too. It is based on a violation of the Library Rule prohibiting “[f]ailure to comply with reasonable staff instruction.” (Doc. No. 3-3; Doc. No. 11-5.) There was no process before Deans’s rights were violated. LVCCLD demanded that Deans stop his protected activity and move to a less effective spot in the Library entrance plaza. The employee called CSN’s campus police, fabricating the allegation that Deans was blocking an entrance to the Library. (See Exhibit 1 at ¶¶8-9). CSN’s officers then issued the unlawful Notice of Trespass based upon the Library employee’s statement. In less than an hour and on the unquestioned word of a single government employee, CSN’s officers effectively sentenced Deans to a one-year loss of his First Amendment rights.

Banning a person from all public libraries in Clark County for an entire year without due process, without a hearing, or any articulation of any standards, is a prior restraint. Absent injunctive relief, Deans cannot circulate petitions on library property, speak to patrons on library property, read books in any library, or even enter the areas of any library explicitly designated as public fora. (See Exhibit 8 at 5; *see also* Exhibit 7 at 6). He is completely cut off from a font of knowledge and a popular forum for discussion. This prior restraint has no principled justification for existing.

Dated: October 26, 2016

Respectfully Submitted,

/s/ Marc J. Randazza

Marc J. Randazza (NV Bar # 12265)

Alex J. Shepard (NV Bar # 13582)

RANDAZZA LEGAL GROUP, PLLC

4035 S. El Capitan Way

Las Vegas, NV 89147

Attorneys for Plaintiff,

William Deans

1 CASE NO: 2:16-cv-02405-APG-PAL

2 **CERTIFICATE OF SERVICE**

3 I HEREBY CERTIFY that on October 26, 2016, I electronically filed the foregoing
4 document with the Clerk of the Court using CM/ECF. I also certify that a true and correct copy of
5 the foregoing document is being served via transmission of Notices of Electronic Filing generated
6 by CM/ECF.

7 Respectfully submitted,

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9 Employee,
Randazza Legal Group, PLLC

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