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

10 WILLIAM DEANS, an individual,
 11
 12 Plaintiff,

13 vs.

14 LAS VEGAS CLARK COUNTY LIBRARY
 15 DISTRICT, et al.,
 16 Defendants.

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

17
 18 **REPLY IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION AS TO**
 19 **DEFENDANTS LAS VEGAS CLARK COUNTY LIBRARY DISTRICT**
 20 **AND RONALD R. HEEZEN**
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1 Plaintiff William Deans files his Reply to Defendants Las Vegas Clark County Library District
2 (“LVCCLD”) and Ronald R. Heezen’s Opposition to the Motion for Preliminary Injunction.

3 **1.0 INTRODUCTION**

4 For efficiency, Mr. Deans incorporates by reference the facts, arguments, and exhibits found
5 in §§ 1.0 to 4.0 of his Reply as to Defendants CSN and Officers Summerlin and Perkins, filed
6 concurrently (the “CSN Reply”).

7 **2.0 ARGUMENT**

8 **2.1 LVCCLD’s Regulation**

9 **2.1.1 NRS 293.127565 Does Not Restrict Petitioning Activity**

10 The CSN Reply discusses whether NRS 293.127565 actually restricts the right of individuals
11 to petition. For the sake of efficiency, the arguments in Section 4.1 of that brief are incorporated
12 here by reference. Additionally, at the TRO hearing, LVCCLD relied upon the statute to justify
13 restricting even where Mr. Deans could speak to fellow citizens about voter registration – not
14 petitioning. Nothing in the statute supports this interpretation.

15 **2.1.2 LVCCLD’s Petitioner Policy and Rules of Conduct**

16 Because NRS 293.127565 cannot form the basis of LVCCLD’s restrictions, it is left with only
17 its Petitioner & Voter Registration Guidelines (the “Petitioner Policy”) and its Library Rules of
18 Conduct (the “Rules of Conduct”). These policies do not enjoy a presumption of constitutionality.
19 The Petitioner Policy requires petitioners to “check in with the Las Vegas Clark County Library
20 District . . . Person in Charge . . . prior to set up,” to “set up within the designated zone that LVCCLD
21 has filed with the Secretary of State’s Office,” and to “remain within the designated petitioner zone.”
22 As explained in Section 2.2.2.2, *infra*, this is an unconstitutional content-based restriction on speech.

23 The Rules of Conduct instruct visitors to “engage in normal activities associated with the use
24 of public libraries,” and prohibit individuals from engaging in “[c]onduct that endangers or disturbs
25 library users or staff in any way, or that hinders others from using the library or its resources.”
26 (Doc. No. 11-5.) The policy includes examples of such disruptive activity, including (as relevant here)
27 “[f]ailure to comply with reasonable staff instruction.” (*Id.*) As explained in greater detail in

1 Sections 2.2.3 and 2.2.3, *infra*, this restriction is an unjustified burden on one's First Amendment
2 rights that is also unconstitutionally vague, and thus violative of Mr. Deans's due process rights.

3 **2.2 Plaintiff is Likely to Prevail on the Merits of His Free Speech Claims**

4 Because this is a case involving the deprivation of Mr. Deans's First Amendment rights, the
5 Court should enter a preliminary injunction if it finds a likelihood of success on the merits. *See Kroll*
6 *v. Incline Vill. Gen. Improvement Dist.*, 598 F. Supp. 2d 1118, 1126 (D. Nev. 2009).

7 The standard is as follows: (1) whether the speech is protected; (2) the nature of the forum
8 where the speech is to occur and the proper standard for restrictions in that forum; and (3) whether
9 the government justification is satisfactory. *See Cornelius v. NAACP Legal Defense & Education Fund*,
10 473 U.S. 788, 797 (1985). Defendants admit Deans's activities are protected.

11 **2.2.1 The Plazas Are Traditional or Designated Public Fora**

12 The first step in determining whether LVCCLD's regulation is constitutional is to discern
13 whether the location to which this regulation applies is a traditional public forum, a designated public
14 forum, or a limited public forum. The type of forum at issue determines the standard in deciding
15 whether the regulation is constitutional.

16 Mr. Deans discusses that the Library entrance plazas are traditional or designated fora in the
17 CSN Reply. For efficiency, he incorporates by reference the arguments in § 4.2.1 of that Reply here.

18 **2.2.2 The Petition Policy Is Unconstitutional**

19 **2.2.2.1 The Petition Policy Is an Unconstitutional Prior Restraint**

20 Mr. Deans discusses the general principles of prior restraints in the CSN Reply. For the sake
21 of efficiency, he incorporates by reference the arguments in Section 4.2.2.1 of that Reply here.

22 LVCCLD decided that people like Mr. Deans can only circulate petitions in designated spots
23 in or around public buildings, and **must** register before using such spots. Even if a person need not
24 fill out a registration form or give notice days in advance, this requirement still chills protected speech
25 and serves as a prior restraint. Because there is a "heavy presumption against [the] constitutional
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1 validity” of such restrictions, Defendants have the burden of justifying this requirement. As
2 explained in Section 2.2.2.2, *infra*, they cannot do so.

3 The Petition Policy also leaves unfettered discretion to a single government employee to
4 restrict petitioning activity. It requires people to “check in” with the person in charge (“PIC”) prior
5 to petitioning, requires petitioners to comply with the Library Rules of Conduct, restricts petitioners
6 to a “designated petitioner zone,” gives the PIC “final discretion” in allowing petitioners to use items
7 such as “tents, tables, [and] chairs” to “ensure that a safe and welcoming environment is provided
8 for all patrons of the library,” prohibits “heated discourse and aggressive debates with patrons
9 opposing petitioning groups,” and, most importantly, gives the PIC “final discretion of authority over
10 violations of these guidelines and our Library Rules of Conduct.” (Doc. No. 11-4.)

11 There are no principles or guidelines limiting this discretion. And it only takes a “[f]ailure to
12 comply with reasonable staff instruction” to run afoul of this discretion, which is used to unjustly bar
13 individuals from entry to **any** public library. The PIC’s decisions regarding whether a person may
14 engage in petitioning activity under the Petition Policy does not appear to be subject to any form of
15 review. Thus, in addition to being a content-based restriction without adequate justification, the
16 Petition Policy’s notice requirement also gives a single government employee unfettered discretion
17 to deny permission to petition², and is thus unconstitutional.

18 **2.2.2.2 The Petitioner Policy Is Content-Based and Does Not** 19 **Satisfy Strict Scrutiny**

20 A regulation is content-based “if a law applies to particular speech because of the topic
21 discussed or the idea or message expressed.” *Reed v. town of Gilbert*, 135 S. Ct. 2218, 2227 (2015).
22 In deciding whether a restriction is content-based, a court must “consider whether a regulation of
23 speech ‘on its face’ draws distinctions based on the message a speaker conveys.” *Id.*

24 To survive strict scrutiny, a restriction must “further[] a compelling interest and [be] narrowly
25 tailored to achieve that interest.” *Ariz. Free Enterprise Club’s Freedom Club PAC v. Bennett*, 131 S. Ct.

26 ² Although NRS 293.127565 prohibits the PIC from denying access to the petition spot in the first
27 instance, the Rules of Conduct give the PIC the unfettered right to immediately rescind that access
for any perceived minor violation of the rules.

1 2806, 2817 (2011). The government has the burden of justifying its restrictions. *Thalheimer v. City of*
2 *San Diego*, 645 F.3d 1109, 1116 (9th Cir. 2011).

3 The Petitioner Policy restricts petitioning to designated zones and requires parties to give
4 advance notice to the PIC of the library before petitioning. (*See* Doc. No. 11-4.) This is a content-
5 based restriction. In its Opposition, LVCCLD notes that

6 [t]he check-in requirement does not require Petitioners to submit any written
7 information and the Library District does not keep any written records regarding
8 Petitioners. A Petitioner simply must notify Library District staff that they are on the
9 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.

10 (*Id.*) This proves that there is no legitimate purpose to a registration requirement. As the Court
11 noted at the TRO hearing, if the purpose of registering is simply to let the library know that people
12 are petitioning outside, this could be achieved just as effectively by looking out a door. (*See* Doc. No.
13 12-5 at 46:23-47:7.) Further, requiring an ID is not the only way to take away someone's anonymity.
14 Thus, the only effect of the notice requirement is to burden spontaneous petitioning activities.

15 The Policy's restriction of petitioning activity to designated spots is unconstitutional. It limits
16 petitioning to a tiny sliver of Library grounds. It imposes this restriction without regard for the
17 number of people who wish to use that spot, how much space they will occupy (whether they will
18 use a table or simply a clipboard), or whether the Library entrance is experiencing a significant degree
19 of pedestrian traffic. It is a categorical restriction on this activity, regardless of whether the
20 circumstances justify it. Furthermore, the designated spot is well outside the path of most pedestrian
21 traffic to and from the east entrance of the Library; a person such as Mr. Deans would have to shout
22 at passersby to get their attention. It excludes petitioners from using the center of the plaza, a place
23 where one would most expect a speaker to place his literal or figurative soap box.

24 The Supreme Court has struck down such restrictions under similar facts. *See Schenck v.*
25 *Pro-Choice Network of W. N.Y.*, 519 U.S. 357, 377-79 (1997) (finding that 15-foot "buffer zone" on
26 sidewalks outside healthcare clinics was not narrowly tailored). The only articulated justification for
27 this restriction is ensuring that people may petition on Library property. Restricting petitioning

1 activity fails to support this interest, and Defendants' argument on this point is Newspeak. To the
 2 extent Defendants reference patron safety, Defendants have not explained how this content-based
 3 restriction serves a compelling government interest in the least restrictive manner possible.
 4 They have provided no studies or other evidence justifying this policy, nor have they articulated any
 5 non-speculative harms that the Policy hopes to avoid. And the Policy is at odds with LVCCLD's
 6 statements about allowing people to engage in petitioning activity. In 2004, the LVCCLD Board of
 7 Trustees' Deputy Director stated that "[i]n practice the District has always allowed people to gather
 8 signatures for a petition as long as they do not interfere with people coming and going from the
 9 library." (See Sept. 9, 2004 Board of Trustees' Meeting Minutes, attached as **Exhibit 1** at 5.)³
 10 This restriction fails to pass muster even under rational basis review.

11 **2.2.3 The Rules of Conduct, Even If Content-Neutral, Do Not Satisfy** 12 **Intermediate Scrutiny**

13 LVCCLD's Rules of Conduct, prohibit "[f]ailure to comply with reasonable staff instruction."
 14 (Doc. No. 11-5.) This must be narrowly tailored to serve a substantial government interest and leave
 15 open ample alternatives for communication. See *Seattle Affiliate of Oct. 22nd Coalition to Stop Police*
 16 *Brutality, Repression and Criminalization of a Generation v. City of Seattle*, 550 F.3d 788, 798 (9th Cir. 2008).

17 **2.2.3.1 The Rules of Conduct Are Not Narrowly Tailored**

18 In order for a time, place, and manner restriction to be narrowly tailored it must further a
 19 substantial government interest and must not burden substantially more speech than is necessary to
 20 further that interest. See *Kuba v. 1-A Agric. Ass'n*, 387 F.3d 850, 861 (9th Cir. 2004). There must be a
 21 legitimate harm the government is trying to redress or prevent; mere speculation that speech would
 22 be disruptive is insufficient, as "undifferentiated fear or apprehension of a disturbance is not enough
 23 to overcome the right to freedom of expression on a college campus." *Healy*, 408 U.S. at 191.

24 LVCCLD's Rules of Conduct prohibit "[f]ailure to comply with reasonable staff instruction,"
 25 and imposes a penalty of a complete ban on visiting any Clark County public library for one year for

26 _____
 27 ³ Available at: http://www.lvcclld.org/about/board/2004/minutes/9_9_04_minutes.pdf (last
 accessed Oct. 26, 2016).

1 this failure, with the sentence imposed immediately, at the whim of a single staff member. There is
 2 no indication as to what LVCCLD's interest is here. The rule in question was implemented in July
 3 2016, and was meant to serve as "a catchall for items not listed," because "[s]taff realizes that a policy
 4 cannot list every possible offence." (*See* July 14, 2016 minutes of LVCCLD Board of Trustees meeting,
 5 attached as **Exhibit 2** at 4.)⁴ Thus, the only guidance available as to LVCCLD's reasoning are the
 6 Rules of Conduct, which state that LVCCLD "welcomes all visitors and provides excellent service in
 7 a pleasant and safe atmosphere" and prohibits "behaviors and activities that interfere with the safe,
 8 secure, and respectful use of libraries," including "[c]onduct that endangers or disturbs library users
 9 or staff in any way, or that hinders others from the using the library or its resources." (Doc. No. 11-5.)
 10 This may be a substantial government interest, but the policy is not in any way narrowly tailored.

11 "Failure to comply with reasonable staff instruction" could amount to any action contrary to
 12 the instructions of LVCCLD staff. Such a restriction burdens substantially more speech than is
 13 necessary to further LVCCLD's interest. *See Kuba*, 387 F.3d at 861. Furthermore, the length of the
 14 ban that the policy allows is over-restrictive; not allowing one even to access a single public library in
 15 Clark County for one year, much less speak there. This results in a no-trial, no-hearing, no-procedure,
 16 arbitrary sentence of complete exclusion from all public libraries, losing all right to receive or transmit
 17 First Amendment-protected information, all at the whim of one member of the library staff.

18 **2.2.3.2 The Rules of Conduct Do Not Leave Open Ample** 19 **Alternative Channels of Communication**

20 Even if LVCCLD's Rules of Conduct were narrowly tailored, they do not leave open ample
 21 alternative channels. An alternative channel is not "ample" if it does not allow the party to reach its
 22 desired audience. *See Berger v. City of Seattle*, 569 F.3d 1029, 1049 (9th Cir. 2009). Other methods of
 23 communication "may be constitutionally inadequate if the speaker's 'ability to communicate effectively
 24 is threatened.'" *Menotti v. City of Seattle*, 409 F.3d 1113, 1138 (9th Cir. 2005) (quoting *Members of City*
 25 *Council v. Taxpayers for Vincent*, 466 U.S. 789, 812 (1984)).

26 _____
 27 ⁴ Available at: http://www.lvcclld.org/about/board/2016/minutes/07_14_16_1_minutes.pdf (last
 accessed Oct. 26, 2016).

1 LVCCLD’s policy first barred Mr. Deans from petitioning. Then, for challenging that
 2 determination, Defendants banned Mr. Deans from engaging in any speech activity at all on library
 3 grounds, including his First Amendment right to receive information at the Library. This arbitrary
 4 and capricious one-year ban is a substantial burden on his activities. (*See* Deans Declaration [“Deans
 5 Decl.”], attached as **Exhibit 3** at ¶¶7-24.) The Supreme Court has struck down restrictions that were
 6 less onerous than this because they did not leave open ample alternative channels of communication.
 7 *See McCullen v. Coakley*, 134 S. Ct. 2518, 2535 (2014) (finding that “buffer zone” restriction substantially
 8 burdened speech because speaker was “often reduced to raising her voice at patients from outside the
 9 zone – a mode of communication sharply at odds with the compassionate message she wishes to
 10 convey”). The *McCullen* Court recognized that “[i]n the context of petition campaigns, . . . ‘one-on-
 11 one communication’ is ‘the most effective, fundamental, and perhaps economical avenue of political
 12 discourse.’” *Coakley*, 134 S. Ct. at 2536 (quoting *Meyer v. Grant*, 486 U.S. 414, 424 (1988)). Even if the
 13 only restriction in question was the Petitioner Policy’s limitation on petitioning activities to a
 14 designated spot, Mr. Deans would be unconstitutionally burdened. (*See* **Exhibit 3** at ¶¶25-50.)

15 **2.2.4 The Rules of Conduct Are Unconstitutional Prior Restraints**

16 The “[f]ailure to comply with reasonable staff instruction” prohibition, and the consequences
 17 of violating this policy, are so vague as to impose an unconstitutional prior restraint. The Library
 18 Rules of Conduct specify that violating any rule “may result in . . . exclusion from the library for a
 19 period of one day to one year, depending on the seriousness of the infraction.” As explained in § 2.3,
 20 *infra*, there are no objective standards or criteria for determining “seriousness” or any standards of
 21 proof or procedure.

22 Banning a person from all public libraries in Clark County for an entire year without due
 23 process or review standards is a prior restraint. Absent injunctive relief, Mr. Deans cannot circulate
 24 petitions on library property, speak to patrons on library property, read books in any library, or even
 25 enter the areas explicitly designated as public fora. (*See* Doc. Nos. 12-7, 12-8.)

1 2.3 **The LVCCLD Policies Are Overbroad and Void for Vagueness**

2 Mr. Deans has already articulated the basic principles of constitutional vagueness. (*See* Doc.
3 No. 3 at 15-16.) Additionally, Mr. Deans has standing to challenge even portions of LVCCLD’s
4 policies that are not directly at issue here under the overbreadth doctrine. *See Bd. of Airport Comm’Rs*
5 *v. Jews for Jesus*, 482 U.S. 569, 574 (1987). LVCCLD has identified that over 300 people have been
6 banned under these vague policies, banning them from exercising their First Amendment right to
7 receive information from the Library and from speaking on its grounds. This overbroad policy will
8 most certainly compromise the First Amendment rights of not only Mr. Deans, but also those of any
9 citizens who may run headlong into this unfettered discretion. *See City Council of Los Angeles v. Taxpayers*
10 *for Vincent*, 466 U.S. 789, 801 (1984) (finding overbroad law that stated airport “is not open for First
11 Amendment activities by any individual and/or entity”).

12 Defendants’ conduct and restrictions are arbitrary and capricious. Defendants have engaged
13 in selective enforcement of the registration requirement of LVCCLD’s Petition Policy, their Rules of
14 Conduct, and their tortured interpretation of NRS 293.127565. Mr. Deans was not the only person
15 speaking in the entrance plaza of the Library, and he was not in any way disruptive. (*See* Doc. No.
16 12-1 at ¶¶8-9, 12, 16, 17.) He was targeted for his First Amendment activity. He was afforded no due
17 process rights at all before Defendants deprived him of his right to enter even the curtilage of any
18 branch of the LVCCLD. This is to say nothing for his right to engage in voter registration activity in
19 the few days remaining before the Nevada voter registration deadline. These policies have already
20 burdened more than 300 citizens, and unquestionably will burden many more in the future.

21 But even if it LVCCLD’s regulations were not selectively applied here, they are
22 unconstitutionally vague on their face. First, the “[f]ailure to comply with reasonable staff instruction”
23 prohibition is a classically vague restriction. The language of the policy does not provide any real
24 prospective indication of what conduct is prohibited. When is a staff member’s instruction
25 “reasonable?” That is left to the library patron to guess. The only way for a patron to ensure he is
26 not in violation of the policy is to reflexively comply with all staff instruction, whether or not the
27 individual thinks it is reasonable, or whether it violates his rights, or indeed the rights of others.

1 It also lacks any objective standards that could potentially curtail a staff member’s selective or arbitrary
 2 enforcement of this restriction. *See Miller*, 622 F.3d at 539-40 (finding void for vagueness policy giving
 3 discretion to city council members with only guiding principle being that the space where the
 4 restriction applied was meant to allow officials “to exercise the rights and responsibilities specified in
 5 the Charter of the City of Cincinnati”). This vagueness is especially impermissible here, as “where a
 6 vague statute ‘abut[s] upon sensitive areas of basic First Amendment freedoms,’ it ‘operates to inhibit
 7 the exercise of [those] freedoms.’ Uncertain meanings inevitably lead citizens to ‘steer far wider of
 8 the unlawful zone . . . than if the boundaries of the forbidden areas were clearly marked.’” *Grayned v.*
 9 *City of Rockford*, 408 U.S. 104, 109 (1972). With a potential one-year ban for activity that a patron has
 10 no way of knowing is prohibited ahead of time, there is no doubt that the “[f]ailure to comply with
 11 reasonable staff instruction” policy is unconstitutionally vague and has a chilling effect on speech.

12 Second, the LVCCLD restriction of petitioning activity to designated spots is
 13 unconstitutionally vague simply by virtue of the fact that very few people are likely to discover a
 14 designated “petition spot” ahead of time.

- 15 (1) To begin with, a person must know about NRS 293.127565.
- 16 (2) The person must then agree with Defendants’ erroneous interpretation of that statute
 17 to think that all public buildings may limit petitioning activity to designated spots.
- 18 (3) Next, the person must then be aware that LVCCLD is a separate entity from whichever
 19 public entity owns the property on which the library is located.
- 20 (4) Finally, the person must know to check the Nevada Secretary of State web site for
 21 LVCCLD’s designation of a given spot.

22 This is a tall order for a person of average intelligence, especially considering that LVCCLD’s
 23 web site does not clearly identify where this designation may be found or even that it exists. It is
 24 sufficient that the average person is not likely to know of the existence of a petitioning spot ahead of
 25 time to declare this policy unconstitutionally vague.

26 Additionally, however, the policy is vague because it does not clearly indicate where the
 27 petitioning spot is actually located, or at least the one at the east entrance of the Library. LVCCLD’s

1 designation for this entrance is “[a]t the east entrance a [sic] the far edget [sic] **of the center circle.**”
 2 (*See* Doc. No. 11-3) (emphasis added.) The plazas are a large circular area with pillars containing three
 3 circles in a layout resembling a dartboard. The first circle is directly in the center, and is
 4 proportionately comparable to the bullseye. (*See* Doc. No. 11-6.) The second circle is larger. (*See id.*)
 5 The third circle is the outer rim of the entrance and directly abuts the sidewalk and parking lot.
 6 (*See id.*) Given this layout, there are many reasonable interpretations of where the “far edge of the
 7 inner circle” is. It could be the space in the inner bullseye directly opposite the entryway doors, which
 8 is where Mr. Deans was circulating his petition. It could be the space in the second circle directly
 9 opposite the entryway doors. Of course, since the area is a circle, the “far edge” could also reasonably
 10 be interpreted as the circle’s circumference. In fact, it took counsel for Mr. Deans and LVCCLD
 11 several days of discussion and several rounds of emails to discern where the “petitioning spot” was
 12 actually (allegedly) located. (*See* email exchange, attached as **Exhibit 4.**)

13 Apart from failing to inform the public of this restriction on speech, the lack of specificity
 14 allows Library staff to choose spots arbitrarily. The danger of ad hoc designations is especially present
 15 here given that the Petition Policy states that “[t]he library branch PIC has the final discretion of
 16 authority over violations of these guidelines and our Library Rules of Conduct.” (Doc. No. 11-4.)
 17 It is impossible for anyone not clairvoyant to guess where a library employee will claim the “petitioning
 18 spot” is on a given day. LVCCLD’s Petition Policy is thus unconstitutionally vague.

19 **2.4 Mr. Deans Did Not Need to Exhaust Administrative Remedies**

20 Defendants argue that Mr. Deans must first exhaust his administrative remedies. The
 21 Supreme Court “has stated categorically that exhaustion is not a prerequisite to an action under
 22 § 1983.” *Patsy v. Bd. of Regents*, 457 U.S. 496, 500-01 (1982) (superseded by statute on unrelated
 23 grounds). And, as already explained, even a temporary restriction on First Amendment rights
 24 constitutes irreparable harm. Defendants’ victim blaming falls flat.

25 But even if § 1983 plaintiffs were generally required to exhaust administrative remedies, there
 26 were no adequate remedies to exhaust. First, Defendants cite to the ability under NRS 293.127565 to
 27 appeal a designation of space for petitioning activity to the Secretary of State. (*See* Doc. No. 11

1 at 12:1-20.) This offers no remedy. The appeal must be made “not later than 3 working days after
 2 the date of the decision that aggrieved the person.” NRS 293.127565(3). The decision was the
 3 designation of the spot. Nothing in the record indicates when the employee in control of the operation
 4 of the Library made that designation, but it presumably was long ago. The appeal had to be made
 5 within three days of the annual designation. *See id.* The statute does not allow for *any* ad hoc decision
 6 making at the time a petitioner notifies the public officer of his intention to use the spot. To the
 7 contrary, the statute states that “[t]he public officer may not deny the person the use of the area.”
 8 *Id.* at 293.127565(2). The appeal process identified in NRS 293.127565 was not available to Deans.

9 The library policies’ non-existent “appeal” process is also problematic. Defendants note that
 10 a trespassed person may appeal a decision within 14 days, and that

11 [a]n appeal need not be in any particular format – a simple letter or statement will
 12 suffice. Once received, the Executive Director reviews the appeal and then asks a staff
 13 member to investigate the facts and circumstances giving rise to the suspension. The
 14 investigation will include reviewing the letter and any other relevant information,
 15 including any of the following: speaking to staff, security, or other witnesses; reviewing
 16 all reports and other documentation; visiting the site; reviewing the patron’s past
 17 history, including any previous incidents and/or appeals; and consulting with counsel.

18 (Doc. No. 11 at 5:26-6:4.) The staff member who conducts the investigation then provides a
 19 recommendation to the Executive Director, who is free to accept, reject, or modify the trespass.

20 (*Id.* at 6:5-8.) This information is not published anywhere; the only guidance a trespassed person has
 21 is the Notice of Trespass, which states that the person may appeal in writing to the “Library
 22 Director.” (Doc. No. 3-3.) The lack of formal, clearly communicated procedures shows that
 23 Defendants have given no thought to this process. Defendants seem to argue that the loose,
 24 improvisational nature of their appeals system is its greatest virtue, when in reality that is its most
 25 inexcusable sin. There is no form, no hearing, no instructions on what may guide the Library
 26 Director’s decision on appeal. A trespassed person is simply supposed to guess as to what he should
 27 submit to the Library Director. Defendants’ assertion that a trespassed person can submit anything
 is just another way of admitting that there is no appeals procedure. LVCCLD cannot even
 communicate to the public where its designated “petitioning spot” is located. And in fact, LVCCLD’s

1 own lawyer could only speculate as to where it is. (*See Exhibit 4.*) There is also no indication as to
 2 how long this “appeals” process may take. The Court and the public are left to speculate. Meanwhile,
 3 the trespassed person is still banned from all public libraries pending the “appeal.”

4 These non-existent procedural safeguards are not adequate to protect Constitutional
 5 freedoms. In a context where First Amendment protections are at their outer limits, adult
 6 entertainment licensing, the Supreme Court has found that “(1) any restraint prior to judicial review
 7 can be imposed only for a specified brief period **during which the status quo must be maintained;**
 8 [and] (2) expeditious judicial review of that decision must be available.” *FW/PBS, Inc. v. Dallas*, 493
 9 U.S. 215, 220 (1990) (emphasis added) (overturned on other grounds). The Ninth Circuit in *4805*
 10 *Convoy, Inc. v. City of San Diego*, 183 F.3d 1108 (9th Cir. 1999) found that a strict limitation on time
 11 regarding issuance a judicial or administrative decision was not needed only where there is an
 12 automatic stay of enforcement of a license suspension or revocation. *See id.* at 1114.

13 Mr. Deans’s conduct was at the center of First Amendment protection. He did not, however,
 14 even receive the rights afforded to a nude dancing establishment. The case law surrounding appeals
 15 in Deans’s factual context is quite thin, likely because LVCCLD’s policies are so brazenly
 16 unconstitutional that most government entities would not attempt to defend policies like them.

17 **3.0 CONCLUSION**

18 For the foregoing reasons, the Court should enter a preliminary injunction lasting for the
 19 duration of this litigation enjoining all Defendants from infringing upon Mr. Deans’s First
 20 Amendment rights, and of all those similarly situated.

21 Dated: October 26, 2016

Respectfully Submitted,

/s/ Marc J. Randazza

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 William Deans*

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

CERTIFICATE OF SERVICE

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

Respectfully submitted,



Employee,
Randazza Legal Group, PLLC

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