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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

DENNIS HOF, an individual

Plaintiffs,

vs.

NYE COUNTY; ANGELA BELLO (IN HER
PERSONAL AND OFFICIAL CAPACITY);
JAMES OSCARSON (IN HIS PERSONAL
AND OFFICIAL CAPACITY); DAN
SCHINHOFEN (in his personal and
official capacity as an employee of
Nye County); NYE COUNTY SHERIFF'S
OFFICE; SHARON WEHRLY (in her official
capacity as an employee of Nye
County); JANE DOE; and JOHN ROE.

Defendants.

Case No. _____

**EMERGENCY EX PARTE MOTION FOR
A TEMPORARY RESTRAINING ORDER**

Plaintiff Dennis Hof brings this motion on an *ex parte* emergency basis for a temporary restraining order to enjoin Defendants, who first promised that they would not violate the Plaintiff's First Amendment rights. However, their plan was to wait until the Court had closed on the final weekend before Nevada's primary election and then silence a political opponent and violate the Plaintiff's First

1 Amendment rights by unlawfully removing a billboard, that contained purely
 2 political speech criticizing Plaintiffs. This constitutes a grave violation of Plaintiff's
 3 right to engage in activities protected under the First Amendment to the United
 4 States Constitution. This motion is made based on all pleadings and papers on
 5 file herein and the attached Memorandum of Points and Authorities, and any
 6 further argument and evidence as may be presented at hearing.

7 **MEMORANDUM OF POINTS AND AUTHORITIES**

8 **1.0 INTRODUCTION**

9 Plaintiff Dennis Hof is a candidate for Nevada State Assembly District 36.
 10 He brings this Motion on an emergency basis because the primary election in
 11 Nevada is Tuesday, and Hof's First Amendment rights have been violated by the
 12 very public officials who have sworn to uphold and protect the Constitution. Mr.
 13 Hof placed a mobile sign on a truck he owns and parked that truck on his own
 14 property, to display a political message criticizing the Defendants, specifically
 15 Defendant Oscarson, (who is Hof's opponent in the Republican primary and the
 16 incumbent) and Defendant Schinhofen, who is also up for re-election.
 17 Defendant Bello is the incumbent District Attorney who is also up for re-election.
 18 The parties met and conferred, and in that conversation Defendant Bello
 19 promised that the sign would not be removed. However, this was simply a ruse
 20 to set Plaintiff at ease until the court had closed. The Defendants then had the
 21 police remove the sign on Friday evening.

22 Hof moves to enjoin Defendants as they have intentionally violated his First
 23 Amendment rights by removing a political campaign sign critical of Defendants
 24 after the Courtroom doors closed for the last weekend before Nevada's primary
 25 election. Earlier that day, District Attorney Bello assured Hof's lawyers by phone
 26 that the sign would not be removed. See Declaration of LaTeigra Cahill,
 27

1 attached hereto. The removal of the Sign bars Hof from public participation and
 2 First Amendment protected activities.

3 Defendants removed the sign as a direct response to Plaintiff's act of
 4 engaging in peaceful constitutionally protected political speech. Plaintiff posted
 5 the Sign at issue as part of his campaign, the Sign is critical of the incumbent
 6 public officials and is political expression – the core of the First Amendment.
 7 Defendants' conduct is unconstitutional and violates the First and Fourteenth
 8 Amendments to the U.S. Constitution, as well as Article 1, Sections 8 & 9 of the
 9 Nevada Constitution.

10 Defendants' conduct would never be constitutionally tolerable. But the
 11 harm caused by their actions is especially pronounced here, because
 12 Defendants used their power as public officials to censor Plaintiffs' speech to
 13 influence an election in their favor. Further, they did so in a most dishonest,
 14 unethical, and dishonorable manner – after lying to the Plaintiff that their
 15 unconstitutional threats would not be carried out.

16 This cannot stand, and the Court should immediately remedy the
 17 unconstitutional wrong on an emergency basis by ordering that the impounded
 18 Sign be immediately returned to the Plaintiff's private property and that he be
 19 allowed to engage in political speech the weekend before this important
 20 election. The Plaintiff must be permitted to display the Sign on his private
 21 property.

22 **2.0 FACTS**

23 Plaintiff Dennis Hof is a candidate for Nevada State Assembly District 36.
 24 See Declaration of Dennis Hof ("Hof Declaration"), attached hereto, at ¶ X. Mr.
 25 Hof is a civically concerned individual, who over the years, has not shied away
 26 from expressing his political opinions and presenting himself as a candidate for
 27

1 public office. *Id.* at ¶ 14. Mr. Hof has a billboard for his campaign attached to a
 2 truck that he has parked on his private property. *Id.* at X.

3 A picture of the Sign on the trailer is below as Figure 1. The sign on the trailer
 4 below is critical of Defendant Schinhofen. The billboard above the trailer was not
 5 seized, but shows that the Plaintiff has also been critical of his political opponent
 6 Oscarson:

7 **Figure 1**



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 18 On or around Thursday, June 7, 2018, Mr. Hof received a phone call from
 19 District Attorney Angela Bello.¹ *Id.* at X. She told him that his sign violated Nye
 20 County Code 17.04.770. *Id.* at X. She forwarded him an email that contained an
 21 excerpt of the Nye County Code, a copy of which is attached. See Exhibit X.

22 Here is an excerpt from the email that Bello sent to Hof:

23
 24 NCC 17.04.770: Signage Requirements:

25
 26 ¹ It is worth noting that Attorney Bello was well aware that Hof was represented
 27 by counsel. However, she blatantly violated Nevada Rule of Professional
 Responsibility 4.2 and contacted Hof directly.

1 (D) Definitions: MOVABLE SIGN: Any sign prominently displayed to
 2 identify, advertise, direct, or promote, any person, product, company,
 3 or entity of service, which is movable in nature such as "A-frames",
 4 pedestal, signs on vehicles, banners attached to freestanding poles,
 5 or similar signs that are not permanently installed in the ground.

6 (E) General Sign Regulations In All Zones: 3. Prohibited Displays:
 7 Displays of the following nature are prohibited, unless otherwise
 8 approved by the zoning administrator:

- 9 a. Imitations or simulations of any directional, warning, danger or
 10 informational signs;
- 11 b. Illumination of such brilliance and/or position as to blind or dazzle
 12 the vision of travelers;
- 13 c. Mobile signs pulled or attached to a vehicle;

14 ***(highlighted portion in original)***

15 Based on the email, it appears that Bello claimed that all mobile signs are
 16 completely prohibited in Nye County. Bello also attached a new amendment
 17 to Nye County Code 17.04.770 (adopted on May 1, 2018), which specifically
 18 amended the code to regulate political signs only, and states that if a political
 19 sign is located, "along a County maintained road or street, political signs must"
 20 be a "(m)aximum sign area shall be 32 square feet". The attachment Bello sent
 21 to Hof is attached as Exhibit X. The amendment to the Code is attached as Exhibit
 22 X.

23 Mr. Hof's counsel, LaTeigra Cahill and Marc Randazza, spoke on the phone
 24 with Bello on Friday afternoon at approximately 12:13 pm. See the Declaration
 25 of LaTeigra Cahill, attached as Exhibit X. Bello stated that mobile signs are not
 26 allowed in Nye County, and that the amendment to the code applied
 27 specifically to political speech." See Id. at X. Bello said that since the Sign was
 over 32 square feet and was political, Hof had to remove it, or she would order
 that it be towed immediately. See Id. at X. When Mr. Randazza asked whether

1 the amendment only applied to political speech, and pointed out that that
 2 would be a content-based restriction, in violation of the First Amendment, Ms.
 3 Bello responded that the County is allowed to enact content based restrictions.
 4 See Id. at X. When Mr. Randazza attempted to clarify her position and posed the
 5 following hypothetical: "So if Mr. Hof had a billboard that said Anthony Bourdain,
 6 Rest in Peace, that would be allowed?", to which Bello replied, "Yes, because
 7 the amendment only applies to political signs." See Id. at X.

8 Randazza told Bello that he would seek an emergency temporary
 9 restraining order if she towed the truck with the billboard. See Id. at X. Bello also
 10 noted that the sign was in a public-right-of-way, and Mr. Randazza informed Bello
 11 that Hof moved the Sign out of the right-of-way and on to his private property.
 12 Id. at X. Bello did not change her position on whether the content-based
 13 amendment to the code was constitutional, **but she specifically told Mr.**
 14 **Randazza that she would not have the truck towed since Hof moved it to his**
 15 **private property.**" See Id. at X. Taking Bello at her word, Hof did not seek a
 16 temporary restraining order prior to the Court closing on Friday evening.
 17 However, by approximately 5:24 pm, the truck, with the political billboard, had
 18 been towed by the County off Hof's private property. See Id. at X.

19 On information and belief, Hof's opponent Assemblyman James Oscarson
 20 and Dan Schinhofen of the Nye County Board of Commissioners demanded that
 21 the billboard sign be removed from Hof's private property. Hof has been critical
 22 of his political opponent Oscarson, and has campaigned against Schinhofen.
 23 Based on information and belief, Bello, Oscarson, and Schinhofen, who are all up
 24 for re-election, used their power as public officials to order that police silence a
 25 political opponent and remove the billboard from Hof's property.
 26
 27

1 The official's actions of ordering the police to remove the political sign
 2 violates Plaintiffs' Constitutional rights, including Plaintiffs' First Amendment rights
 3 to freedom of speech and expression². *Id.*

4 Upon information and belief, the Defendants directed that the Sign be
 5 censored because they are political opponents and do not like the content of
 6 the Sign or the threat that Mr. Hof presents to Mr. Oscarson's reelection to the
 7 Nevada Assembly. The Defendants exercised unfettered discretion in seeking to
 8 censor the Sign's content. *Id.* at ¶ 33. The display of the Sign did not violate any
 9 ordinance, especially because the Sign was on Hof's private land. *Id.* at ¶ 34.
 10 However, even if the display of the Sign violated the new ordinance, the
 11 ordinance is unconstitutional and violates the First Amendment.

12 The political sign is a form of pure free speech and expression, and the First
 13 Amendment will not abide such a loss of free speech rights.

14 **3.0 STANDARDS FOR OBTAINING INJUNCTIVE RELIEF**

15 To obtain a temporary restraining order, a party must demonstrate either
 16 (1) a combination of probable success on the merits and the possibility of
 17 irreparable injury, or (2) the existence of serious questions going to the merits and
 18 that the balance of hardships tips sharply in its favor. *FDIC v. Garner*, 125 F.3d
 19 1272, 1277 (9th Cir. 1997); *Metro Pub. Ltd. v. San Jose Mercury News*, 987 F.2d 637,
 20 639 (9th Cir. 1993). "The injury or threat of injury must be both 'real and
 21 immediate,' not 'conjectural' or 'hypothetical.'" *City of Los Angeles v. Lyons*,
 22 461 U.S. 95, 102 (1983). Under these standards injunctive relief is appropriate
 23 when either of these two tests are met. These are not two separate tests, but
 24 "merely extremes of a single continuum." *Topanga Press, Inc. v. City of Los*

25 _____
 26 ² Given the emergency nature of Hof's petition and motion, Hof has not elaborated on
 27 other possible constitutional violations, such as the sudden seizure of his vehicle off of his
 private property, and reserves the right to amend the petition and motion as soon as
 possible.

1 *Angles*, 989 F.2d 1524, 1528 (9th Cir. 1993). When a violation of a constitutional
 2 right has been proven, however, no further showing of irreparable injury is
 3 required. See *Associate General Contractors of California v. Coalition for*
 4 *Economic Equity*, 950 F.2d 1401, 1410 (9th Cir. 1991).

5 **4.0 ARGUMENT**

6 **4.1 Plaintiffs Have Standing**

7 “To qualify as a party with standing to litigate, a person must show, first and
 8 foremost, an invasion of a legally protected interest that is concrete and
 9 particularized and actual or imminent.” *Arizonans for Official English v. Arizona*,
 10 520 U.S. 43, 64 (1997). A plaintiff can show standing by demonstrating that they
 11 “have been threatened with prosecution, [if] a prosecution is likely, or even [if] a
 12 prosecution is remotely possible.” *Culinary Workers Union, Local 226 v. Del Papa*,
 13 200 F.3d 614, 618 (9th Cir. 1999). In the First Amendment context in particular, a
 14 plaintiff has standing to sue if a challenged governmental action operates to
 15 “chill” the Plaintiffs’ exercise of his or her First Amendment Rights. *Id.* at 618-19
 16 (citing *Doe v. Bolton*, 410 U.S. 179, 188 (1973)).

17 Here, Plaintiffs’ harm is readily apparent. Plaintiff’s pure political speech
 18 has been censored by his political opponents, and his mobile billboard has been
 19 seized from his private property. Further, after learning that Plaintiff would file a
 20 TRO to prevent Defendants from censoring his speech, the Defendants
 21 purposefully waited until the Courts had closed for the weekend to seize the
 22 political sign from Plaintiff.

23 The Sign did not impede traffic. Defendants caused Plaintiffs concrete
 24 harm when they removed the political sign from public view the weekend before
 25 a critical primary election. Plaintiff is now unable to display his political sign the
 26 weekend before this important election, which is First Amendment protected
 27

1 activity. This creates a true case and controversy sufficient to confer Article III
 2 standing.

3 **4.2 Plaintiffs are Likely to Prevail on the Merits of His Free Speech Claims**

4 Plaintiffs' constitutional rights were violated by Defendants' actions,
 5 specifically by instructing Plaintiff to remove the sign, by lying and stating that the
 6 sign would not be removed so long as the sign was on Plaintiff's land, and by
 7 seizing the sign around the time the Court closed. Plaintiff's political speech is
 8 conduct protected under the First Amendment and Article 1, Section 9 of the
 9 Nevada Constitution.

10 **4.2.1 Plaintiffs' Activities are Protected by the First Amendment**

11 **4.2.1.1 Strict Scrutiny Applies to Content-Based Restrictions**

12 The First Amendment provides that "Congress shall make no law ...
 13 abridging the freedom of speech." See U.S. Const., Amendment I. Government
 14 action that restricts speech based on its content is subject to strict scrutiny. See
 15 *Reed v. Town of Gilbert*, 135 S. Ct. 2218, 2221 (2015). Where a law imposes
 16 content-based restrictions on speech, those provisions can stand only if they
 17 survive strict scrutiny, which requires the Government to prove that the restriction
 18 furthers a compelling interest and is narrowly tailored to achieve that interest. *Id.*
 19 Speech is content based if the government restriction applies to particular
 20 speech because of the topic discussed or the idea or message expressed. *Id.*
 21 Here, Defendants' sudden restriction on Plaintiffs' political speech is based only
 22 on the content of the speech, as evidenced by the fact that Defendants stated
 23 that the sign would have been allowed if the sign were not political

24 Here, Defendants decided that they did not like the Plaintiff's speech and
 25 censored it. Defendants' actions here were content based.

26 Accordingly, Defendants are not justified by any compelling
 27 governmental interest, as there is no conceivable compelling interest in

1 censoring political speech on a Sign, especially when this censorship benefits the
 2 Defendants personally. Defendants' actions were not narrowly tailored because
 3 Defendants removed the sign off Plaintiff's private property. Last, Defendants
 4 have not chosen the least restrictive means, because they have seized the entire
 5 sign. Defendants actions in censoring Plaintiffs' speech is content based and will
 6 not survive strict scrutiny.

7 **4.2.2 The Code is Facially Unconstitutional**

8 As Justice Thomas noted in *Reed v. Town of Gilbert*, above, an outdoor
 9 sign code provision that treats," ideological signs, political signs, and signs
 10 directing public...differently from each other held (are) content-based
 11 regulations that (violate the) First Amendment." *Reed v. Town of Gilbert*, 135 S.
 12 Ct. 2218, 2221 (2015)

13 A statute may be facially unconstitutional if (1) "it is unconstitutional in
 14 every conceivable application" or (2) "it seeks to prohibit such a broad range of
 15 protected conduct that it is unconstitutionally overbroad." *Foti v. City of Menlo*
 16 *Park*, 146 F.3d 629, 635 (9th Cir. 1998). The government is not allowed to restrict
 17 political speech based on its content. This determination is important because it
 18 will decide the level of scrutiny the Court will utilize in reviewing the ordinance.
 19 Generally, a content-neutral ordinance will be reviewed under an intermediate
 20 level of scrutiny, while a content-based ordinance will be reviewed under strict
 21 scrutiny. See *Bonita Media Enters., LLC v. Collier Cnty. Code Enf't Bd.*, No. 2:07-cv-
 22 411-FtM-29DNF, 2008 U.S. Dist. LEXIS 10637, at *15 (M.D. Fla. Feb. 13, 2008); see also
 23 *Reed v. Town of Gilbert*, 135 S. Ct. 2218, 2221 (2015).

24 There are two parts of the code at issue here, according to the County: 1)
 25 the code before the amendment, that states all signs on vehicles are prohibited;
 26 and 2) the amended portion of the code that specifically restricts political
 27 speech. We will analyze both portions of the code separately below.

1 When analyzing an ordinance that completely prohibits a particular
 2 manner of expression (such as prohibiting all mobile signs), but on its face is both
 3 content- and viewpoint-neutral, the United States Supreme Court will apply the
 4 "time, place, and manner" test: the Supreme Court will ask whether some interest
 5 unrelated to speech justifies this silence, or whether the manner of expression is
 6 incompatible with the normal activity of a particular place at a particular time.
 7 See *Lakewood v. Plain Dealer Pub. Co.*, 486 U.S. 750, 798, 108 S. Ct. 2138, 2165
 8 (1988). Here, this code appears to be facially unconstitutional. First, if the code
 9 (before the amendment) seems to state that all mobile signs are prohibited. This
 10 is non-sensical, because it would prohibit literally every type of sign on a moving
 11 vehicle: it would prohibit a Budweiser delivery truck and it would prohibit a
 12 couple from hanging a "just married" sign on a convertible.

13 However, the code, *as amended*, is not content-neutral on its face, and
 14 the Court must apply strict scrutiny. The code specifically targets and restricts
 15 political speech only. In fact, according to the admissions of District Attorney
 16 Bello, the sign would not have been seized had the content of the speech on
 17 the sign been ANYTHING BUT POLITICAL SPEECH. The code specifically regulates
 18 political speech, which means it regulates speech based on its content, and is
 19 facially unconstitutional.

20 Further, the very fact that the Defendants amended this code a few weeks
 21 ago, meaning the Defendants literally amended the code a few weeks before
 22 the election, is further evidence that the code violates (and was designed to
 23 violate) the Constitution. In a similar case, when the City of Antioch passed an
 24 ordinance shortly before an election that specifically targeted political speech,
 25 the court held:

26 [B]ecause the regulation restricted political speech, it was presumed
 27 unconstitutional. The regulation violated the Fourteenth Amendment's

1 equal protection requirement by imposing especially restrictive treatment
 2 to political signs than imposed on other subjects of speech. The ordinance
 3 violated the First Amendment, U.S. Const. amend. I, because it did not
 4 adequately accommodate its purposes to the public's right to election
 5 information. The city failed to show that the ordinance used the least
 6 drastic measures necessary to achieve its ends.

7 See *Antioch v. Candidates' Outdoor Graphic Serv.*, 557 F. Supp. 52, 53 (N.D. Cal.
 8 1982). Here, the Defendants' actions are entirely self-serving, performed to
 9 silence their political opponent, and do not serve the public's right to have
 10 adequate access to election information. This Court must issue an emergency
 11 temporary protection order to right the wrong perpetuated by Defendants.

4.2.2.1 Symbolic Speech is Protected by the First Amendment

12 Further, symbolic speech is no less protected than actual speech, and the
 13 fact that Plaintiffs' speech takes the form of a Sign, rather than actual speech, is
 14 irrelevant because Plaintiffs' Sign is sufficiently imbued with elements of
 15 communication to implicate the First Amendment. See *Texas v. Johnson*, 491 U.S.
 16 397, 399 (1989). Government officials do not have the power to "prescribe what
 17 shall be orthodox" in deciding what expression is being expressed by the
 18 symbolic speech. *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642, 87 L.
 19 Ed. 1628, 63 S. Ct. 1178 (1943) (internal quotation marks omitted)). Political
 20 speech is deserving of the most protection, and symbolic expression is equally
 21 protected by the First Amendment.
 22

4.2.3 Defendants' Actions Are an Unconstitutional Prior Restraint

23
 24 Prior restraints on speech are strongly disfavored and rarely permitted
 25 under the Constitution. "Prior restraints on speech and publication are the most
 26 serious and the least tolerable infringement on First Amendment rights." *Neb.*
 27

1 *Press Ass'n v. Stuart*, 427 U.S. 530, 559 (1976). This principle that “the Supreme
 2 Court has roundly rejected prior restraint” thoroughly ingrained in the American
 3 psyche that they cut against our very cultural fabric. See *Kinney v. Barnes*, 443
 4 S.W.3d 87, 91 n.7 (Tex. 2014) (quoting Sobchak, W. *The Big Lebowski* (PolyGram
 5 Filmed Entertainment & Working title Films 1998)). Prior restraints are not *per se*
 6 unconstitutional, but they “bear a heavy presumption against [their]
 7 constitutional validity.” *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 70 (1963).

8 Without any legal process at all, Defendants imposed a restraint on
 9 Plaintiffs' ability to engage in his Constitutionally protected free speech activities.
 10 That restraint is particularly egregious because Plaintiff is a candidate for political
 11 office, and one of the Defendants is his primary opponent. Defendants have
 12 eliminated Plaintiff's ability to engage in protected expression and chilled his
 13 ability to express political messages by posting a sign that Defendants may not
 14 like, based on its content. “First, the mere existence of the licensor's unfettered
 15 discretion, coupled with the power of prior restraint, intimidates parties into
 16 censoring their own speech, even if the discretion and power are never actually
 17 abused.” *Lakewood v. Plain Dealer Pub. Co.*, 486 U.S. 750, 757, 108 S. Ct. 2138,
 18 2144 (1988). Here, Defendants have abused their authority, and they have
 19 applied an **ordinance that they themselves recently passed a few weeks ago** to
 20 specifically censor their opponent's political speech.

21 This prior restraint authorizes “a licensor to pass judgment” on Plaintiffs'
 22 speech. *Seattle Affiliate of the October 22nd Coal. To Stop Police Brutality,*
 23 *Repression & the Criminalization of a Generation v. City of Seattle*, 550 F.3d 788,
 24 797 (9th Cir. 2008) (quoting *Thomas v. Chi. Park Dist.*, 534 U.S. 316, 322 (2002)).
 25 There is no reason here to think that the restriction here is anything other than
 26 content-based. The restriction in play was thus explicitly directed at the content
 27 of Plaintiff's free speech activity.

1 Defendants simply decided that they did not want the Plaintiff to engage
 2 in certain political speech and took it upon themselves to instruct Plaintiffs what
 3 speech they approve and what speech they do not approve. Even if
 4 Defendants' discretion was legislatively delegated to them, it would be
 5 improper. However, for Defendants to simply take it upon themselves to be the
 6 sole source of the designation of what speech is acceptable and to then
 7 arbitrarily impose it is beyond the pale, particularly since Plaintiff's speech was
 8 purely political and Defendants' actions were undertaken on the eve of an
 9 election. Defendants arbitrarily chose speech they did not like, which rendered
 10 Plaintiffs' exercise of free speech meaningless, and did not leave open
 11 adequate or ample alternative channels for communication. For a government
 12 official to determine that certain political speech of an opponent must be
 13 censored delegates far too much discretion to a single official.

14 A public official cannot decide which speech it likes and which speech it
 15 does not like because there must be "procedural safeguards that ensure that
 16 the decision maker approving the speech does not have 'unfettered discretion'
 17 to grant or deny permission to speak." *Six Star Holdings, LLC v. City of Milwaukee*,
 18 821 F.3d 795 (7th Cir. 2016). "At the root of this long line of precedent is the time-
 19 tested knowledge that in the area of free expression a licensing statute placing
 20 unbridled discretion in the hands of a government official or agency constitutes
 21 a prior restraint and may result in censorship." *Lakewood v. Plain Dealer Pub.*
 22 *Co.*, 486 U.S. 750, 757 (1988). The fact that one person may, without any checks
 23 or balances, impose a prior restraint "intimidates parties into censoring their own
 24 speech, even if the discretion and power are never actually abused." *Id.*

25 The Defendants disapproved of a political opponent's speech and wished
 26 to censor a campaign Sign by seizing it off his private property, even after
 27 Defendants stated they would not seize the sign.

1 This is a prior restraint that restricts Plaintiffs' speech and conditions it on
 2 having been willing to comply with the taste of particular government officials.
 3 Mr. Hof has owned brothels in Nevada for over 20 years and he previously had
 4 no issues with County officials. Now that Hof is a political rival, the Defendants
 5 have retaliated against him.

6 These actions by the Defendants are utterly impermissible under the U.S.
 7 and Nevada constitutions, and Plaintiff will prevail on his claims.

8 **4.3 Defendants' Activities Violate Plaintiffs' Due Process Rights**

9 The constitutional guarantee of due process requires that laws give
 10 individuals reasonable notice of prohibited conduct. Procedural due process
 11 under the Fourteenth Amendment is meant to protect persons not from the
 12 deprivation, but from the mistaken or unjustified deprivation of life, liberty, or
 13 property. *Carey v. Piphus*, 435 U.S. 247, 248 (1978). The constitutional guarantee
 14 of due process requires that a purpose of procedural due process is to convey
 15 to the individual a feeling that the government has dealt with him fairly, as well
 16 as to minimize the risk of mistaken deprivations of protected interests. *Id.* Here,
 17 the Plaintiff displayed a political Sign, and Defendants decided they did not like
 18 the content of the Sign. After Hof told Defendants he would seek a TRO,
 19 Defendants lied and stated they would not seize the sign so long as the sign was
 20 on his private property. Once the Courts were closed, Defendants seized the sign.

21 Defendants did not offer any recourse to Plaintiffs, or any means of
 22 appealing the sudden decision, meaning there is no administrative process for
 23 appeal. Further, given that the election is on Tuesday, an administrative appeal
 24 of this decision would do nothing for Plaintiff. Accordingly, Plaintiffs' due process
 25 rights guaranteed under the Constitution have been violated.

1 **4.4 Without Injunctive Relief, Plaintiffs Will Continue to Suffer Irreparable**
 2 **Harm**

3 As stated above, “[a] preliminary injunction should be issued upon a clear
 4 showing of either (1) probable success on the merits and possible irreparable
 5 injury or (2) sufficiently serious questions going to the merits to make them a fair
 6 ground for litigation and balance of hardships tipping decidedly toward the
 7 party requesting the preliminary relief.” *Lydo Enters. v. Las Vegas*, 745 F.2d 1211,
 8 1212 (9th Cir. 1984). Plaintiff meets both of these sets of criteria. As discussed
 9 above, he has a high probability of prevailing on the merits. **Moreover, the loss**
 10 **of First Amendment rights even for a short period of time constitutes irreparable**
 11 **harm.** See *Elrod v. Burns*, 427 U.S. 347, 373 (1976); *Jacobsen v. United States Postal*
 12 *Serv.*, 812 F.2d 1151, 1154 (9th Cir. 1987). “The loss of First Amendment [and state
 13 constitutional] freedoms, for even minimal periods of time, unquestionably
 14 constitutes irreparable injury.” *S.O.C., Inc. v. County of Clark*, 152 F.3d 1136, 1148
 15 (9th Cir.)

16 The Ninth Circuit generally examines these two prongs together,
 17 recognizing that when a regulation restricts First Amendment, the equities tip in
 18 the Plaintiffs’ favor and advance the public interest in upholding free speech
 19 principles. See *Thalheimer v. City of San Diego*, 645 F.3d 1109, 1128-29 (9th Cir.
 20 2011); *Kline v. City of San Clemente*, 584 F.3d 1196, 1208 (9th Cir. 2009) (finding
 21 that a plaintiff challenging a ban on placing leaflets on windshields established
 22 that the loss of his First Amendment rights tipped the equities in his favor and that
 23 the public interest also supported the issuance of the injunction).

24 As for the second set of criteria for a preliminary injunction, there are
 25 sufficiently serious questions going to the merits to make them fair grounds for
 26 litigation. As for the balance of hardships, Defendants cannot claim any
 27 hardship; Plaintiffs did nothing unlawful or disruptive by engaging in his free

1 speech. To allow him to continue to engage in free speech, by displaying the
 2 political Sign prior to the election, would not result in any conceivable harm to
 3 anyone. Furthermore, as Defendant's censorship is unconstitutional, there is no
 4 harm in not permitting them to enforce it.

5 The lack of damage that would occur if injunctive relief were granted
 6 obviously cannot compare with the irreparable harm already suffered by the
 7 Plaintiff, and that which he will continue to suffer without injunctive relief. *McIntire*
 8 *v. Bethel Sch., Indep. Sch. Dist. No. 3*, 804 F. Supp. 1415, 1429 (W.D. Okla. 1992) is
 9 instructive:

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

16 The situation in *McIntire* is the same as here. The Plaintiff was given an
 17 unquestionably unconstitutional prior restraint that prevents him from engaging
 18 in speech that is protected by the First Amendment. Every minute that the
 19 political sign remains impounded, the Defendants have violated Mr. Hof's
 20 constitutional rights, which is a serious case given the fact that this is the last
 21 weekend before an election where Mr. Hof is a primary challenger to one of the
 22 Defendants.

23 Last, the public interest in this matter is best served by the protection of
 24 Plaintiffs' constitutional rights. See *Elrod*, supra. Our constitutional rights are our
 25 fundamental freedoms, reserved by the people; not rights merely granted to us.
 26 To deny Plaintiffs one of the most fundamental freedoms – freedom of expression
 27 – would not serve the public interest.

1 **5.0 CONCLUSION**

2 For the foregoing reasons respectfully requests that the Court enter a
3 temporary restraining order enjoining Defendants from enforcing the
4 unconstitutional ordinance, and to immediately return the impounded political
5 sign. The forced censorship against the Plaintiff, removing the sign from his
6 property and not allowing Plaintiff to engage in activities protected under the
7 First Amendment is unconstitutional and must be remedied immediately,

8 Dated: June 9, 2018

Respectfully Submitted,

9 RANDAZZA LEGAL GROUP, PLLC

10 /s/ Marc J. Randazza

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