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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

STEVEN E. KROLL,

Plaintiff,

vs.

INCLINE VILLAGE GENERAL IMPROVEMENT
DISTRICT, a/k/a IVGID, a governmental subdivi-
sion of the State of Nevada; et al.,

Defendants.

Case No. 3:08-cv-00166-ECR-RAM
**Supplement to Plaintiff's Emer-
gency Motion to Enjoin Defendant
IVGID's Policy No. 136 Regulating
Speech as Void on its Face under the
First Amendment**
Exhibit A
and
Certificate of Service

A just-released public document — defendant IVGID's Agenda packet for its May 15, 2008 meeting — reveals a chilling addendum to the District's newly-adopted "Policy 136" regulating speech challenged by Plaintiff's Emergency Motion to Enjoin the same filed herein on May 6, 2008 which must be brought to the attention of this Honorable Court.

Buried within that Agenda packet is a "General Manager's Report" (Exhibit A attached hereto) revealing the promulgation of "some basic rules to support the successful execution of Policy 136" not specified in the already Draconian language adopted unanimously and without discussion by defendant Trustees on April 30, 2008. Created by General Manager Bill Horn and District General Counsel T. Scott Brooke, Esq. without notice or opportunity to be heard, this new language further refines IVGID's codified Free Speech infringements in the following brazen words (emphasis added):

**When someone desiring to express their First Amendment rights at
Burnt Cedar Beach, Incline Beach and Ski Beach walks up to the en-**

trance kiosk they will be asked to sign in and they will be handed a success list of what is allowed and what will not be allowed along with a map showing the specific area they may express their First Amendment rights. Those requesting this right will be asked to wear a wrist band which will allow Staff to know who has been granted their request to express their First Amendment rights. At the end of their expression, upon leaving these three beaches, they will be asked to sign out. The three basic requirements will be (1) not get in the way of operations; (2) going outside of the designated area; and (3) violating the space of those who are not interested in hearing or receiving their expression of their First Amendment rights. ...”

The defendants in this lawsuit are like a bull in a china-shop of the constitutional rights they profess to regulate, mindlessly shattering even the most precious of vases in their single-minded purpose of preserving their Private Beaches in this bizarre public municipality. Laid bare is yet another of IVGID’s attempts to mislead its constituency and now this Court with the appearance that its Policy 136 was to apply equally and even-handedly to *all* of the District’s recreational venues as written (as if that would make it more acceptable). No: it was and is the Beach Properties these defendants mean to target with their utterly unnecessary and quite breathtaking Free Speech regulations, and it is only to the Beach Properties that these “ basic rules to support the successful execution of Policy 136” are addressed. That one of the authors of this latest example of unbridled governmental excess is their chief lawyer is appalling, in light of its glaring unconstitutionality under decades and generations of unwavering American jurisprudence on the subject.

It has been black-letter law for more than half a century now that

As a matter of principle a requirement of registration in order to make a public speech would seem generally incompatible with an exercise of the rights of free speech and free assembly. Lawful public assemblies, involving no element of grave and immediate danger to an interest the State is entitled to protect, are not instruments of harm which require previous identification of the speakers. *Thomas v Collins*, 323 U.S. 516, 539 (1945)

What could possibly be the purpose in the District’s keeping track of those who speak and what they say in a public forum? Does this fifth wealthiest zip code in the Nation¹ think it is the poorest and most dictatorial, a Myanmar? a North Korea? Might their tracking system have

¹ The Incline Village zip code of 89451 is the 5th wealthiest in the Nation out of the 100 wealthiest [reported by web site Mongabay.com](#), based on IRS figures for “Salaries and Wages”.

something to do with an unpopular Plaintiff in the case at bar, and those who agree with him in the face of a powerful and intolerant majority? The Court of Appeals for this Circuit has spoken directly and eloquently to this point in *Washington Initiatives Now v. Ripple*, 213 F.3d 1132 (9th Cir. 2000):

There can be no doubt that the compelled disclosure of this information chills political speech. See *American Constitutional Law Foundation v. Meyer*, 120 F.3d 1092, 1105 (10th Cir. 1997); see also *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 356 (1995). As the Supreme Court has explained:

Anonymity is a shield from the tyranny of the majority . It thus exemplifies the purpose behind the Bill of Rights, and of the First Amendment in particular: to protect unpopular individuals from retaliation -- and their ideas from suppression -- at the hand of an intolerant society.

The right to remain anonymous may be abused when it shields fraudulent conduct. But **political speech by its nature will sometimes have unpalatable consequences, and, in general, our society accords greater weight to the value of free speech than to the dangers of its misuse.** *McIntyre*, 514 U.S. at 356 (internal citation omitted).

Depriving individuals of this anonymity is, therefore, "a broad intrusion, discouraging truthful, accurate speech by those unwilling to [disclose their identities] and applying regardless of the character or strength of an individual's interest in anonymity." *American Constitutional Law Found.*, 120 F.3d at 1103.

Four years ago the Court of Appeals for this Circuit also found in *American Civil Liberties Union of Nevada v. Heller*, 378 F.3d 979 (9th Cir. 2004) (bracketed numbers for Opinion paragraphs; emphasis added) that

Requiring a political communication to contain information concerning "the identity of the speaker" is "no different from [requiring the inclusion of] other components of the document's content that the author is free to include or exclude." *Id.* at 348.

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McIntyre then explained that there are **two distinct reasons why forbidding anonymous political speech is a serious, direct intrusion on First Amendment values:** First, **"[t]he decision in favor of anonymity may be motivated by fear of economic or official retaliation, by concern about social ostracism, or merely by a desire to preserve as much of one's privacy as possible."** *Id.* at 341-42. **Second,**

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an advocate may believe her ideas will be more persuasive if her readers are unaware of her identity. Anonymity thereby provides a way for a writer who may be personally unpopular to ensure that readers will not prejudice her message simply because they do not like its proponent. Thus, even in the field of political rhetoric, where 'the identity of the speaker is an important component of many attempts to persuade,' *City of Ladue v. Gilleo*, 512 U.S. 43, 56 (1994) [footnote omitted], **the most effective advocates have sometimes opted for anonymity. ...**

It apparently must be repeated once *again* that The INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT is not a private Homeowner's Association. It may not legally require "someone desiring to express their First Amendment rights at Burnt Cedar Beach, Incline Beach and Ski Beach" to "sign in" and "sign out" to do so; to "wear a wrist band which will allow Staff to know who has been granted their request to express their First Amendment Rights"; nor, as more fully argued in Plaintiff's original Emergency Motion, to hand these people "a success list of what is allowed and what will not be allowed along with a map showing the specific area they may express their First Amendment rights." *Long Beach Area Peace Network v. City of Long Beach*, No. 05-55083 (9th Cir. 04/15/2008), *passim*.

As to the requirement that speakers must not "violate the space of those who are not interested in hearing or receiving their expression of their First Amendment rights", this reflects such a profound and depressing misunderstanding of what the First Amendment is all about by the public officials entrusted to respect and enforce it as to be downright frightening.

It is simply fundamental, learned by us all in High School Civics class: the State can not unduly suppress free communication of views, religious or other, under the guise of conserving desirable conditions. *Cantwell v Connecticut*, 310 U.S. 296, 309 (1940). It may not grant the use of a forum to people whose views it finds acceptable, but deny use to those wishing to express less favored or more controversial views. *Police Department of Chicago v. Mosley*, 408 U.S. 92, 95-96 (1972). And it *certainly* can not make a "listener's reaction to speech" the basis for preventing that speech. *Forsyth County v. Nationalistic Movement*, 505 U.S. 123, 134 (1992). What *are* these people *thinking*?

And IVGID's policy of handing to those who sign up and are properly branded by a Minimum Wage employee minding the Beach Gates "a success list of what is allowed and what will not be allowed" in the expression of their First Amendment rights ... is this creative phrase "Success List" to be added to the other Orwellian perversions of the English language such as "Public *with Restricted Access*" and "Public Forum *Areas*" which characterize these Defendants'

desperate efforts to fit the square peg of their private aspirations into the round hole of their public duties? As alleged at Paragraph 51 of the First Amended Complaint, "such deceptive actions" by the District and the individually-named defendants constitute a "particular offense against the First Amendment and the concept of ordered liberty at the very heart of our democracy."

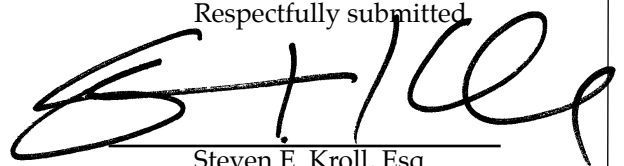
Exhibit A is yet another example of behind-the-scenes rule-making on the most sensitive of subjects by highly-paid unelected employees of defendant IVGID carrying out its wishes. That one of those employees is the District's chief Legal Counsel is particularly disturbing. He would have had to know better in light of the long line of unwavering First Amendment precedents discussed above and in the other records filed in this case. This sort of thing provides strong evidence to support one of the bases of Federal jurisdiction in this case, Plaintiff's charge in Paragraph 6 of his First Amended Complaint that Defendants both named and unnamed have indeed "unlawfully agreed and conspired with one another to deprive plaintiff STEVEN KROLL of rights, privileges and immunities guaranteed by the First, Fifth, and Fourteenth Amendments to the United States Constitution".

That these IVGID rules and regulations should emerge after this Court has now taken jurisdiction of the matter and the question of First Amendment violations by this public body is *sub judice* seems particularly puzzling. The appearance is that the Defendants in this case are flaunting the First Amendment and signaling a deep disrespect for this Court as they plow on with their legislative demolition of the most basic rights of their constituents in general and Plaintiff in particular, all as if it were they, not this Court, with the power to declare what is permitted under the Constitution, and what not. Unless they are stopped by this Court, we can expect further manipulations of the First Amendment and other constitutional protections as only another tool to close the tax-exempt public properties of IVGID to all but those whom the District and its self-interested Trustees may approve of.

Plaintiff prays that this Court put an emphatic and swift end to defendants' abuse of power by declaring both the original Policy 136 and these just-released additional "basic rules to support the successful execution of Policy 136" to be unconstitutional on their face under the First Amendment, and enjoining their further enforcement by the defendants in this lawsuit.

DATED: at Crystal Bay, Nevada this 15th day of May, 2008.

Respectfully submitted



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Attorney for Plaintiff

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Exhibit A

General Manager's Report
Meeting of May 15, 2008
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XVIII. POLICY 136 – FIRST AMENDMENT: RULES

District General Counsel Scott Brooke and I met to discuss some basic rules to support the successful execution of Policy 136. When someone, desiring to express their First Amendment rights at Burnt Cedar Beach, Incline Beach and Ski Beach, walks up to the entrance kiosk, they will be asked to sign in and they will be handed a success list of what is allowed and what will not be allowed along with a map showing the specific area they may express their First Amendment rights. Those requesting this right will be asked to wear a wrist band which will allow Staff to know who has been granted their request to express their First Amendment rights. At the end of their expression, upon leaving these three beaches, they will be asked to sign out. The three basic requirements will be (1) not get in the way of operations; (2) going outside of the designated area; and (3) violating the space of those who are not interested in hearing or receiving their expression of their First Amendment rights. Staff anticipates no challenges with those who desire to express their First Amendment rights.

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Exhibit A

CERTIFICATE OF ELECTRONIC SERVICE

Pursuant to Rule 5(b) FRCP, I certify that I am the attorney for Plaintiff in the above entitled action, and that on this date I caused a true and correct copy of the **“Supplement to Plaintiff’s Emergency Motion to Enjoin Defendant IVGID’s Policy No. 136 Regulating Speech as Void on its Face under the First Amendment; Exhibit A”** herein to be served upon the parties or attorneys by electronically filing the same with this Court pursuant to and in compliance with its CM/ECF filing system, to which the following named attorney for all named defendants is a signatory:

**Stephen C. Balkenbush, Esq.
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DATED: this 15th day of May, 2008.



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