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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

STEVEN E. KROLL,

Plaintiff,

vs.

INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT, a/k/a I V G I D , a governmental subdivision of the State of Nevada; et al.,

Defendants.

Case No. 3:08-cv-00166-ECR-RAM

Plaintiff's Response in Opposition to Defendants' Motion to Dismiss Plaintiff's Complaint

Exhibit A

and

Certificate of Service

The Opposition in Brief

Defendants have failed to grasp the gravamen of Plaintiff's Complaint, either in terms of the facts or the law. The First Amendment is *not* "the primary constitutional question presented in this case" (p. 6 of Defendants' Memorandum filed April 30, 2008): in fact, it is Plaintiff's Fourteenth Amendment claim to the Equal Protection of the Law that underlies *all* of the 142 paragraphs and six Causes of Action alleging governmental wrongdoing herein, and Defendants do not even *mention* that in their Motion.

Plaintiff's Fifth Amendment claim is also understood incorrectly by defendant DISTRICT. It is not "that IVGID improperly assessed property taxes against him which were then used to

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maintain the subject beach properties" (p.8) which is the gravamen of Plaintiff's claim there, but Defendants' *taking and use of Plaintiff's property to secure the Municipal Bonds that raised money to fund recreational property which Plaintiff was forbidden to use* which explains this violation of Plaintiff's Privileges and Immunities under Section 1983. The matter quoted by defendants is dealt with not in the Federal claims of the first two Causes of Action, but in the four Causes of Action involving a common nucleus of operative facts alleged under State law, over which this Court has pendent jurisdiction (*cf. Mine Workers v. Gibbs*, 383 U. S. 715, 725 (1966), and which — like the Equal Protection claims in the Complaint — Defendants simply totally ignore in their quest to dismiss this case "with prejudice" (p.12) without having to file an Answer.

Only the Rule 19 "Necessary Parties" claim presents an even colorable legal issue in Defendants' Motion to Dismiss Complaint on jurisdictional grounds, and closer inspection reveals that the 8,000+ Incline Village property owners under the 1968 Deed not only are not "indispensable parties", their inclusion would rob this Court of subject matter jurisdiction and is thus forbidden by the Rule upon which IVGID relies, FRCP Rule 19(a)(1). Plaintiff does ***not***, as claimed by the Defendants at page 13 of their Memo, seek "a determination by this Court that the restrictive covenant in the 1968 deed for the properties in question is unconstitutional", and one would assume that such would be beyond the powers of this Court anyway, involving as it does private conduct not reachable by the Constitution. Nor does Plaintiff seek or have any standing to ask for "rescission" of the 1968 Deed, which was the basis of the principal case relied upon to support Defendants' Rule 19 Motion, *Kettle Range Conservation Group v. United States*, 150 F3d 1083 (9th cir 1998) and is thus wholly inapplicable here .

Whether the Restrictive Covenant in the 1968 Deed is void and unenforceable is a civil matter between other parties in another lawsuit. Even the Defendants can see this. Mustering only an allegation that these are "property owners who *arguably* hold rights under the restrictive

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covenant" (pp. 13 and 15), IVGID claims that a Plaintiff's "victory would *threaten* the legal rights of the owners of the properties within the 1968 boundaries" (pp. 14-15). Why that would be so they do not explain, and they do not allege that such a victory would "impede the person's ability to protect the interest", which is what is required under Rule 19(a)(a)(i).

Even if this Court were to find that a Rule 19 interest has been established by Defendants' contentions with respect to the 1968 Deedholders, their demand that the First Amended Complaint be dismissed "with prejudice" is beyond the pale, since Plaintiff made provisions for such a possible ruling by alleging the grounds for a Defendant Class Action in ¶¶ 85 and 86 of his Complaint, and dismissal with prejudice is unnecessary and unwarranted. In any event, under the law "Dismissal under FRCP 12(b)(7) for failure to name necessary parties is without prejudice", as the Defendants themselves admit at footnote 4 of page 15 of their Memorandum.

Bereft of legal argument and relying upon factual contentions that are advanced on "recollection" by IVGID employees without personal knowledge whose faulty memory is directly challenged by the Affidavit of RONALD L. CODE as well as by Plaintiff's Motion to Strike filed herein on May 3, 2008 (both incorporated herein by this reference), the Motion of Defendants IVGID, BOHN, BROCKMAN, EPSTEIN, WEINBERGER, and WOLF to dismiss Plaintiff's First Amended Complaint should be denied, and the Defendants ordered to file an Answer within ten days thereafter, as required by Rule 12(a)(4)(A) FRCP.

Plaintiff's Argument in Detail

Plaintiff Has Standing and this Court Has Article III Subject Matter Jurisdiction in the Case

Defendants assert that Plaintiff

> "provides no evidence or sufficient allegations in his complaint which suggest that Plaintiff has suffered an injury in fact which would entitled him to maintain the instant lawsuit in terms of Article III standing. **Rather, Plaintiff makes the generalized allegation that he has been denied access to the beach properties** because he is not an owner of property which was within the boundaries of IVGID in 1968. **He**

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> **does not state that he has been denied access to the beach properties to further exercise of his First Amendment rights. In reality, IVGID is unaware of Plaintiff *ever* [sic] making a request that he be granted access to the subject parcels to conduct First Amendment activities of any kind** … See Exhibit "D", Affidavit of Bill Horn. **Nor is IVGID aware of any circumstances wherein access was denied** to the subject properties **to any other group or individual,** including Plaintiff, **wishing to exercise their First Amendment rights**. Id." (p.6 of Defendants' Memo).

As indicated, these alleged facts are based upon the Affidavit of Bill Horn, which was made without personal knowledge or the certainty of clear recollection and is the subject of a Motion to Strike filed herein on May 3, 2008. It is in any event contradicted by the Affidavit of RONALD L. CODE dated May 2, 2008 who, after reading Mr. Horn's challenged Affidavit, declared:

> "11. Since I have been attending so many of the IVGID meetings and forums at which General Manager Bill Horn has usually been present ever since about August of 2005, **it is very difficult for me to believe that Mr. Horn has no recollection of my letters or oral protests, especially in light of my continuing presence and my persistence regarding the beach access issue."**

His "persistence regarding the beach access issue" refers to Mr. Code's attempt on August 2, 2005 to gain access with a Crystal Bay neighbor to the Beach Parks for clearly First Amendment purposes, under circumstances which most people might expect Mr. Horn to have remembered:

> 3. On August 2, 2005 Frank Wright and I were refused entry to Burnt Cedar Beach and Incline Beach parks by the IVGID employee attending the Gate at each venue. **I was wearing a T-shirt which made a policy statement regarding Yucca Mountain, and it was my purpose to communicate my strong feelings against nuclear dumping in Nevada to my neighbors using these beach parks.** When we were refused entry, Frank and I requested the gate attendant to verify the refusal with the office of Mr. William Horn, IVGID's General Manger. I was informed that Mr. Horn was not available, but his assistant, **Ms. Susan Herron, confirmed that the gate attendant was following the district's directives. Later that day or the next, I received a telephone call from Mr. Horn, confirming the district policy.**
>
> 4. **On August 3rd of 2005 I wrote a letter to Mr. Horn and explained that the**

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> **district was denying me rights guaranteed by the Constitution.** My letter stated my intentions: "to see, meet and be with other members of our community, to enjoy the parks, and possibly engage in discussions with friends and neighbors". I demanded that the IVGID policy be changed. A true and correct copy of that letter is attached hereto marked **Exhibit A.**

The charges of insufficient pleading is likewise contradicted by the pleadings themselves. Far from "generalized allegations that he has been denied access to the beach properties" because he resides outside the 1968 borders of his District claimed by the Defendants, the Amended Complaint alleges with great specificity the facts required when alleging fraud or mistake (FRCP Rule 9(b)), or those required to overcome an individual capacity defendant's qualified immunity should that have been raised herein. *GJR Investments, Inc. v Escambia County*, 132 F.3d 1359, 1367 (11th Cir. 1998). Indeed, it is the very specificity of Plaintiff's allegations which the Defendants appear to be trying to postpone having to answer directly, which explains motions such as this.

Recent and totally unexpected events since the filing of this Complaint have removed any question, however, that Plaintiff has standing to maintain this lawsuit and the First Amendment claims in particular. On April 30, 2008 defendant DISTRICT unanimously and without discussion adopted Policy and Procedure No. 136 "Concerning Access to District Property and the Use of District Facilities for Expression" effective the following day. On May 5, 2008 Plaintiff filed an "Emergency Motion to Enjoin Defendant IVGID's Policy No. 136 Regulating Speech As Void on its Face under the First Amendment."

> " It is well established that in the area of freedom of expression an overbroad regulation may be subject to facial review and invalidation, even though its application in the case under consideration may be constitutionally unobjectionable,"

declared the United States Supreme Court in *FORSYTH COUNTY v. NATIONALIST MOVEMENT*, 112 S. Ct. 2395 (1992) (inaccurately cited by the Defendants for the proposition that "requiring an individual to make a request of the governing agency prior to … utilizing public property for First

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Amendment purposes is wholly permissible" (ftnt 3, page 8 of Defendants' Memo)). Continues the Forsyth opinion:

> "**This exception from general standing rules is based on an appreciation that the very existence of some broadly written laws has the potential to chill the expressive activity of others not before the court.** See, e.g., New York v. Ferber, 458 U.S. 747, 772 (1982); Brockett v. Spokane Arcades, Inc., 472 U.S. 491, 503 (1985). **Thus, the Court has permitted a party to challenge an ordinance under the overbreadth doctrine in cases where every application creates an impermissible risk of suppression of ideas, such as an ordinance that delegates overly broad discretion to the decisionmaker,** see Thornhill v. Alabama, 310 U.S. 88, 97 (1940); Freedman v. Maryland, 380 U.S. 51, 56 (1965); Taxpayers for Vincent, 466 U.S., at 798, n. 15, and in cases where the ordinance sweeps too broadly, penalizing a substantial amount of speech that is constitutionally protected. See Broadrick v. Oklahoma, 413 U.S. 601 (1973); Jews for Jesus, 482 U.S., at 574-575.
>
> [25]
>
> **The Forsyth County ordinance requiring a permit and a fee before authorizing public speaking, parades, or assemblies in "the archetype of a traditional public forum," Frisby v. Schultz, 487 U.S. 474, 480 (1988), is a prior restraint on speech**. See Shuttlesworth v. Birmingham, 394 U.S. 147, 150-151 (1969); Niemotko v. Maryland, 340 U.S. 268, 271 (1951). Although there is a "heavy presumption" against the validity of a prior restraint, Bantam Books, Inc v. Sullivan, 372 U.S. 58, 70 (1963), the Court has recognized that government, in order to regulate competing uses of public forums, may impose a permit requirement on those wishing to hold a march, parade, or rally. See Cox v. New Hampshire, 312 U.S. 569, 574-576 (1941). **Such a scheme, however, must meet certain constitutional requirements. It may not delegate overly broad licensing discretion to a government official.** See Freedman v. Maryland, supra. **Further, any permit scheme controlling the time, place, and manner of speech must not be based on the content of the message, must be narrowly tailored to serve a significant governmental interest,** and must leave open ample alternatives for communication. See United States v. Grace, 461 U.S. 171, 177 (1983).

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It is interesting in light of the warnings made in Plaintiff's Motion for Permanent Injunction concerning the unbridled discretion which could be so misused by IVGID's General Manager that he has obliged us with proof of that warning in a newspaper interview revealing his unique view of the First Amendment and how he intends to administer IVGID's Policy 136. Exhibit A attached hereto is a front-page interview with General Manager Bill Horn in the May 7, 2008 edition of the North Lake Tahoe Bonanza. It reports:

> "If someone does violate the policy at the beaches, he or she would be asked to leave the premises, Horn said.
>
> If there is a repeat offender, and **if that person is an IVGID citizen with recreation privileges, those privileges would be revoked,** he said. If a repeat offender is not an IVGID resident, then the Washoe County **Sheriff's Office may be contacted to handle an IVGID trespassing complaint."**

That seems to take care of Defendants' claim in their Motion to Dismiss that "Plaintiff cannot demonstrate that he would be subject to prosecution, or the threat of prosecution, should he seek to engage in First Amendment Activities on the properties in question" (p.8), But of course Plaintiff would not have had to show that he *was* subject to punishment or arrest under the governing law to challenge this latest manifestation of IVGID's constitutional abuses. *Forsyth County, supra.*

As to his philosophy on constitutional rights, Mr. Horn reveals that all persons entering the Beach Properties will have their identity and purpose for being there checked first. "Nothing will be done differently at the gate, other than if someone comes up to express their First Amendment rights," Horn said, according to the Bonanza interview. "If a situation like that happens, then staff will direct them as to where to go." The IVGID General Manager emphasizes that "the main point to clarify here is that **they can't just come in and stand in the parking lot. They have to show that they are coming to express their First Amendment rights."** "Another point of emphasis" Horn makes, according to the Bonanza, is that "t**hose citizens who want to express First**

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Amendment rights must do so in a civil manner so as not to interrupt daily ongoings of the public forum areas" and he warns that **"They can't express their First Amendment rights and get in the way of how IVGID operates its business. And it's not just the beaches.** For example, if someone wants to express their First Amendment rights at The Chateau, they can't get in the way of how business is operated."

There can be no question that Plaintiff, as a resident of the INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT who has fought for years to vindicate his First Amendment rights in all of IVGID's publicly-owned venues as so fully alleged in the Complaint, and who has filed the Motion to Permanently Enjoin IVGID's latest iteration of constitutional assault (and which said Motion and supporting documents are incorporated herein as though fully set forth *in haec verba*) has standing to bring this lawsuit. It is an action that is so ripe for review it is rotten, and this Court has subject matter jurisdiction to consider his claims for IVGID's deprivation of Plaintiff's privileges and immunities as an American citizen under color of law. Defendants' arguments to the contrary must be rejected, and their Motion to Dismiss on those grounds denied.

Plaintiff's Fifth Amendment "Taking of Property" Claim as a §1983 Privileges and Immunities Deprivation

Defendants completely misread Plaintiff's Fifth Amendment allegations, saying, *inter alia*:

> "**There is no basis in fact for the assertion** that Plaintiff has been assessed any taxes whatsoever which have been utilized by IVGID to maintain the beach properties at issue in this case. **In fact, as is clear from the evidence submitted by IVGID in connection with its motion, the entire indebtedness resulting from the issuance of public bonds used for the initial purchase of the properties, as well as all monies used for the improvement and maintenance of the properties has been borne by the property owners within IVGID's boundaries in 1968.** See Exhibit "A", Affidavit of Ramona Cruz. **As such, Plaintiff's Fifth Amendment takings claim is factually untenable."**

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Whether there is a "basis in fact" for Plaintiff's allegations must be decided by a Jury after trial, not here, and certainly not by way of an Affidavits as deficient in form and content as Ramona Cruz's, which is the subject to Plaintiff's Motion to Strike filed May 3, 2008.

But even assuming *arguendo* that her "best recollection" is true, and that the Beach Properties were financed by Public Bonds paid off solely by the 1968 owners and their successors, what has that got to do with this Motion? Are Defendants saying that when a citizen moves to Reno or Las Vegas or Incline Village he or she has to pay off some portion of the Public Bonds that financed a Library or a School or a Recreation Facility before they can use it? That would be absurd. So what *is* the purpose of offering this information? Moreover, whatever this IVGID employee's "best recollection" about how the DISTRICT's books are kept and whether Plaintiff has had to contribute to the purchase and upkeep of public properties from which he is excluded by Ordinance 7, neither she nor the Defendants can override the Nevada law set forth in Paragraph 32 of Plaintiff's Amended Complaint, which Defendants will have to admit once they are required to file an Answer:

> 32. **At the moment of the 1995 Merger and as one result thereof, plaintiff STEVEN KROLL and his property in Crystal Bay became subject "to all of the taxes and charges imposed by the district, and liable for its proportionate share of existing general obligation bonded indebtedness of the district," pursuant to NRS 318.258.**

Defendants are further in error in asserting in their Motion to Dismiss that Plaintiff lacks standing because he is trying to get a tax refund and has not exhausted his administrative remedies. (p. 10). They say (p. 11) that "Plaintiff premises his Fifth Amendment claim on his allegation that IVGID improperly assessed property taxes against him which were then used to maintain the subject beach properties." That is not the premise of that claim, as even a cursory reading of the Complaint shows clearly:

> 75. As a result, **the 1999 Bonds have been and are being used by defendant**

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> **IVGID to help fund DISTRICT-owned properties which are closed to plaintiff while at the same time said defendant makes use of plaintiff's real property in Crystal Bay without his permission or agreement to help secure repayment of those Bonds,** all to plaintiff KROLL's damage in a sum in excess of $10,000.
>
> 76. The actions hereinabove complained of constitute among other violations of the United States Constitution the taking of plaintiff's property for public use without Due Process of Law or just compensation in violation of the Fifth and 14th Amendments, to plaintiff's damage in a sum in excess of $10,000.

Plaintiff also alleges that his IVGID-imposed Loss of Use of the tax-exempt Beach Properties was a "taking" under the Fifth Amendment, for which he should be compensated:

> 77. **The actual market value of the BEACH PROPERTIES as of the date of filing this Complaint exceeds $104,618,486, and the value of the Loss of its Use over the years to plaintiff STEVEN KROLL exceeds the sum of $10,000 and constitutes a deprivation of property** and consequent damage to plaintiff in addition to others sustained for the violation of plaintiff's Fifth and Fourteenth Amendment rights as herein alleged.

Plaintiff's claim of deprivation of Privileges and Immunities under the Fifth Amendment to the Constitution are well grounded and must be resolved at trial. Defendants' Motion to Dismiss on that ground must be denied.

The 8,000+ Incline Village Property Owners Have No Place In This Lawsuit, and Making Them Parties Would Divest This Court of Subject Matter Jurisdiction

In their Memorandum in Support of Dismissal for Plaintiff's failure to join allegedly Necessary Parties under FRCP 19, Defendants declare that "Plaintiff does not appear to dispute that joinder of these additional property owners may well be necessary before relief of the type sought by Plaintiff can be ordered by this Court." To call such a representation to this Court "wishful thinking" would be the most charitable spin one could put on it in the face of Plaintiff's *actual* words of the Complaint, with emphasis added:

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> 86. **Plaintiff nowhere in this Complaint seeks to invalidate the 1968 RESTRICTIVE COVENANT itself but rather seeks invalidation of defendant IVGID's Ordinance 7** and other acts and practices wrongfully based and disingenuously relying upon the RESTRICTIVE COVENANT by the named defendants, and **plaintiff is of the belief and thereon alleges that this Complaint does not, in fact, adversely effect any property rights claimed by the 1968 Deed holders requiring their presence as parties;** but if this Honorable Court determines otherwise upon its own Motion or one made by any defendant herein, plaintiff is entitled to a Certification of Defendant Class and prays that should this issue be raised, as soon as practicable thereafter this Court should determine by order whether said action is to be so maintained, and if so, that the matter proceed herein as required by Rule 23 NRCP.

A similar doubt that the 1968 Deedholders were indispensable parties was expressed in Plaintiff's Certificate of Interested Parties filed herein on April 23, 2008 pursuant to LR 7.1-1, wherein he wrote:

> **It can be argued (not by Plaintiff)** that every property owner in Incline Village, Nevada claiming title through the 1968 Deed at the heart of this litigation has or might claim a direct, pecuniary interest in the outcome of this case.

That Defendants would raise this issue was, to put it mildly, not unanticipated. This attempt to meld public and private into one indistinguishable and inseparable mass was part and parcel of the "sweetheart deal" between the Developers of Incline Village and the Trustees of the Incline Village General Improvement District back in the 1960s when the idea of transferring the Beach Properties to the Improvement District was first concocted. As alleged in Plaintiff's Complaint,

> 10. By Deed dated June 4, 1968 (hereinafter referred to as "the 1968 Deed", marked Exhibit A attached hereto and made part hereof), defendant IVGID purchased from the private developers thereof certain particularly beautiful real properties abutting Lake Tahoe, hereinafter sometimes referred to as "the BEACH PROPERTIES," for the recreational use of District members.
>
> 11. **The purchase of the BEACH PROPERTIES in 1968 became possible as a result of a litigation settlement which arose out of the developers' plan for a**

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> **property owner's recreation association to own and maintain the BEACH PROPERTIES, but which plan failed because of the developers' inability to obtain binding financing.**

The concept was brilliant. By inserting the Restrictive Covenant into the 1968 Deed of Sale to the District limiting access to and use of the Beach Properties to

> **"property owners and their tenants (specifically including occupants of motels and hotels) within the Incline Village General Improvement District as now constituted, and, as the Board of Trustees of said District may determine, the guests of such property owners,"**

the Developers could accomplish through public means what they had

> "failed to bring off with private money, namely the creation of a private beach on the crystalline shores of Lake Tahoe for the exclusive use of the developers' Incline Village home buyers, thereby significantly raising property values and saleability among many other economic and political benefits,"

as alleged in Paragraph 18 of the Complaint. And with such a deal came the bonanza of being able to enjoy these exclusive properties as if they were Private Beaches (the District so labels them today), but without having to pay the thousands and millions of dollars of property taxes that would otherwise be due from a Private owner, because the DISTRICT, as a public body, is exempt from such taxes. See ¶14 of the Complaint.

But Plaintiff does not in the case at bar seek to rescind the corrupt Restrictive Covenant in the 1968 Deed, and could not do so if he wanted to because he is not a 1968 Deedholder and would have no standing to bring such an action: there is no more legal connection between him and the Incline Village property owners than there is between them and this lawsuit, and that is why they can not be made parties to this lawsuit, necessary or otherwise. Plaintiff premises his attack on the constitutionality of Ordinance 7 and the District's policy excluding him from equal access to its publcly-owned property on the proscriptions of NRS 318.015 declaring that laws gov-

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erning General Improvement Districts "are not intended to provide a method for financing the costs of developing private property," (¶19 of the Complaint), not on trying to prove the Restrictive Covenant "unconstitutional", which as mentioned he would not have standing to do, and which in any event would be beyond the powers of this Court as well, involving as it does a civil matter over private property not covered by the United States Constitution.

The case before this Honorable Court is thus nothing like *Kettle Range Conservation Group v U.S.* 150 F3d 1083 (9th cir 1998) relied upon by Defendants. In fact, any claim that might be made by a 1968 Deedholder would be a private lawsuit based on a real property and contract argument which would involve someone other than this Plaintiff, and be completely outside the reach of 42 U.S.C. §1983 upon which Plaintiff's lawsuit here is premised, thereby depriving this Court of Subject Matter Jurisdiction, representations to the contrary made by Defendants at page 13 of their Memorandum notwithstanding. As such, Joinder of the 1968 Deedholders would not be permitted under Rule 19.

If the 8,000+ *were* so joined, however, Plaintiff *would* have standing to attack the 1968 Deed and Restrictive Covenant, and Plaintiff would prove that the 1968 Deedholders have long ago waived any rights they may have had by failing to challenge any number of actions taken by the District Trustees which ignored and repudiated the entrance restrictions of the Deed *sub silentio*, from the original Ordinance 7's Section 68 as alleged in ¶24 of the Complaint:

> Nothing in this ordinance shall prevent the District from issuing recreation privileges to employees, former Board members, or anyone else, in the past, present or future, as approved by the Board of Trustees,

to the most recent repudiation of the 1968 Deed reflected in IVGID's new Policy 136 which opens the Beach Properties up to the general public after 40 years of keeping them out allegedly on the basis of the 1968 Deed.

But the resolution of those private problems would make a circus of this litigation and

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have absolutely nothing to do with the serious issues of governmental misconduct raised therein, and Defendants' contention that the 1968 Deedholders are Necessary Parties under Rule 19 FRCP must be rejected, and their Motion to Dismiss the Complaint denied.

Conclusion

This Court must consider whether, construing the allegations of the First Amended Complaint in the light most favorable to the plaintiff, it "appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Zimmerman v. City of Oakland*, 255 F.3d 734, 737 (9th Cir. 2001). Federal courts may not dismiss a complaint unless "it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 514 (2002).

For those reasons and the reasons set forth above and in the other documents and motions on file herein, Plaintiff respectfully prays that the Motion to Dismiss Complaint filed by defendants IVGID, BOHN, BROCKMAN, EPSTEIN, WEINBERGER and WOLF be denied, and that said Defendants be ordered to Answer the First Amended Complaint no later than 10 days following this Court's Order.

DATED: at Crystal Bay, Nevada this 9th day of May, 2008.

Respectfully submitted,

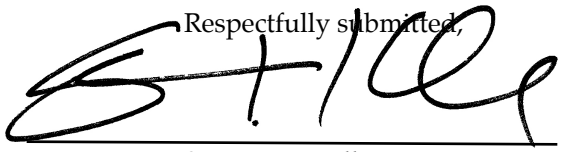

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EXHIBIT A

FIRST AMENDMENT POLICY

Bonanza Photo - Jen Schmidt

Beachgoers enjoy their lunches during the calm weather Tuesday at Incline Beach. According to IVGID's new First Amendment policy, IVGID residents without beach access, as well as other American citizens, can gain access to the parking lots and adjacent walkways to the three Incline beaches, but not the beaches themselves.

Muddled misconceptions

Questions arise after IVGID board adopts First Amendment policy

By Kevin MacMillan
BONANZA INTERIM EDITOR

"Free speech is free speech; it's not limited to anyone. But the main point to clarify is that they can't just come in and stand in the parking lot. They have to show that they are coming to express their First Amendment rights."
IVGID General Manager

A week ago, the Incline Village General Improvement District Board of Trustees adopted Policy and Procedure No. 136, which opens various areas on district property, dubbed "public forum areas," for the public to exercise First Amendment rights.

Since that adoption, questions about the policy, specifically about how it affects Incline Village's three beaches, have flooded the phones and e-mail inboxes of district officials and trustees.

Many of those questions have led to misconceptions about the policy and its aim, said Bill Horn, IVGID general manager, with the most common misconception revolving around whether residents' recreation passes will be checked at the gates of the respective beaches.

Horn said card-checking will continue at the beaches as normal. Residents with beach access will be allowed on the beaches and residents without beach access won't be allowed on the beaches.

"Nothing will be done differently at the gate, other than if someone comes up to express their First Amendment rights," Horn said. "If a situation like that happens, then staff will direct them as to where to go."

Furthermore, Horn confirmed that everyone, not just IVGID citizens with or without beach access, has access to the parking lots and adjacent sidewalks (as defined in the policy) at the three beaches, as well as other venues outlined in the policy.

"Free speech is free speech; it's not limited to anyone," Horn said. "But the main point to clarify here is that they can't just come in and stand in the

Bill Horn

parking lot. They have to show that they are coming to express their First Amendment rights."

The policy went into effect last Thursday.

According to the policy, "the district designates public forum areas within its real property and facilities,

and encourages any individual or group to use such designated public forum areas for the exercise of expression, speech and assembly, in accordance with this policy. The district will not further regulate such exercise except as consistent with applicable law."

See **First Amendment** - **Page 10**

First Amendment rights."

continued from page 1

Areas designated as public forums within IVGID are: "The parking lots, the walkways within and adjacent to the parking lots and the sidewalks adjacent to any public entrance to any building open to the public, located on such listed real properties and facilities."

Besides the three beaches, the other "public forum areas" in the policy include: The Anne Vorderbruggen Building, Recreation Center, Tennis Complex, The Chateau, Diamond Peak Ski Resort, Preston Field, Mountain Golf Course, Aspen Grove and Village Green. As part of the IVGID board's April 30 approval, trustees and IVGID legal counsel Scott Brooke, who drafted the policy, agreed that other venues, including the Skate Park, should be added to the policy.

Furthermore, the policy reads: "In order to preserve the peace, however, and to promote the significant interests of the district ... the district may make reasonable, lawful rules and regulations with respect to the time, place and manner of any use of its real property and facilities for purposes of expression, speech and assembly."

The entire policy can be viewed in the April 30 meeting agenda packet (available online at www.ivgid.org or in person at the IVGID administration building, 893 Southwood Blvd.).

Another misconception Horn spoke to was that residents without beach access, as well as non-IVGID residents who want to express First Amendment rights, can

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Bill Horn

IVGID General Manager

park cars in the beach parking lots.

"People who don't have beach access won't be able to park their car in the parking lots at the beaches," Horn said. "They will have to walk up."

Another point of emphasis, according to the policy, is those citizens who want to express First Amendment rights must do so in a civil matter, so as not to interrupt daily ongoings of the public forum areas.

"They can't express their First Amendment rights and get in the way of how IVGID operates its businesses," Horn said. "And it's not just the beaches. For example, if someone wants to express their First Amendment rights at The Chateau, they can't get in the way of how business is operated."

Another question raised since Wednesday's approval revolves around how the new policy will be policed.

Horn said the district doesn't have plans to post special First Amendment expression zones at various venues, or hire additional staff to thwart potential offenders.

"We don't anticipate anyone will violate the rules ... I do not anticipate hiring any additional staff," Horn said. "The idea here is for them to express their First Amendment If someone does violate the policy at the beaches, he or she would be asked to leave the premises, Horn said.

If there is a repeat offender, and if that person is an IVGID citizen with recreation privileges, those privileges would be revoked, he said. If a repeat offender is not an IVGID resident, then the Washoe County Sheriff's Office may be contacted to handle an IVGID trespassing complaint.

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 " **Plaintiff's Response in Opposition to Defendants' Motion to Dismiss Plaintiff's Complaint; 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.
Thorndal, Armstrong, Delk, Balkenbush & Eisinger
6590 South McCarran Blvd. Suite B
Reno, Nevada 89509

DATED: this 9th day of May, 2008.

STEVEN E. KROLL