

Michael E. Spreadbury
700 S. 4th Street
Hamilton, MT 59840
Telephone: (406) 363-3877
mspread@hotmail.com

RECEIVED

MAY 11 2011

U.S. DISTRICT COURT
DISTRICT OF MONTANA
MISSOULA

Pro Se Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

MICHAEL E. SPREADBURY)	Cause No: CV-11-61-M-DWM
Plaintiff)	
v.)	MOTION FOR PARTIAL
BITTERROOT PUBLIC LIBRARY,)	SUMMARY JUDGMENT
CITY OF HAMILTON,)	AGAINST DEFENDANT
LEE ENTERPRISES, INC.,)	CITY OF HAMILTON,
BOONE KARLBERG, PC,)	BITTERROOT PUBLIC
_____)	LIBRARY

Comes now Spreadbury with motion for partial summary judgment against Defendant City of Hamilton, Bitterroot Public Library in the aforementioned.

Motion:

Spreadbury respectfully moves that Honorable Court find partial summary judgment against Defendant City of Hamilton, Bitterroot Public Library.

This motion is opposed by Defense counsel.

Brief in Support:

Section 1983 litigation, 42 USC §1983 is established to permit persons who have had constitutional rights violated, and to sue the wrongdoer for redress of injuries.

Liability attaches if the defendant acted in “color of law”, and the action(s) deprived the Plaintiff of some right, privilege, or immunity secured by the Constitution, or federal laws *Monroe v. Pape 365 US 167 (1961)*.

Spreadbury alleges constitutional deprivations in color of law 2nd Amended complaint served upon this court. In answer dated April 26, 2011, Defendant Bitterroot Public Library, City of Hamilton Montana admit claims pled by Spreadbury, less issues of material fact remain, partial summary judgment proper *Celotex Corp. v. Catrett 477 US 317 (1986)*.

Spreadbury pleads before this Honorable court that the right to peaceful assembly is a fundamental right ***Amendment 1 US Constitution***. Spreadbury further avers property, facility at 306 State Street Hamilton MT 59840 that contains the Bitterroot Public library in original block #18 of the City of Hamilton is *public* property. On August 20, 2009 Spreadbury peacefully assembled on same public property; unlawful prosecution for criminal trespass by Defendant City of Hamilton executed for *private* property Montana Code Ann. ***MCA§ 45-6-203***.

In Defendant City of Hamilton April 26, 2011 answer to this court, Defendant City of Hamilton admitted to prosecuting Spreadbury for peaceful assembly on public property in ¶ 2 pg. 3, ¶21, ¶57 in Joint Answer of Defendants; response to Spreadbury ¶ 117 of the Amended State Complaint. Defendant City of Hamilton admitted dropping charges in ¶ 26 Joint Defendant Answer of April 26. 2011.

In Joint Answer of *individual* Defendants ¶ 19 of April 26, 2011 Defendant Bitterroot Public Library admits to refusing a submission request by Spreadbury which deprives fundamental right to free speech found in ***Amendment 1 US Constitution***, violates Defendant public library policy from American Library Association (ALA) “right to read”: Defendant public library precluded from rejecting submission if not profane, illicit. Spreadbury admission to Defendant Public library: US President letter as presented in May 2009 to Defendant Roddy.

In Joint Answer of *individual* Defendants ¶19 Defendant City of Hamilton admits to asking Spreadbury to not enter 232 W. Main St. Hamilton MT the business of Defendant Lee Enterprises Inc., a liberty interest without due process, violates Spreadbury protected right in ***Amendment 5, 14 US Constitution***. Hamilton Police (HPD) Chief Oster made “policy or custom” on Spreadbury by restricting liberty into Lee Enterprises property Ravalli Republic; punitive damages attach to City of Hamilton *Monell v. NYC Dept. of Social Services 436 US 658 (1978)*.

Defendant City of Hamilton further admits HPD Detective Murphy investigated, published, and sent reports to Hamilton City Attorney Bell for prosecution in ¶51. By investigating, writing public police reports against Spreadbury for protected free speech fundamental right in *Amendment 1, US Constitution*. Defendant Det. Murphy admission, defamatory to Spreadbury with actual malice; *reasonable* officer would not have investigated, published police reports, requested prosecution for sighting of a person on internet site; defeats qualified immunity of Defendant Detective Murphy *Buckley v. Fitzsimmons 509 US 259 (1993)*.

Defendant Bitterroot Public Library admitted to removing library privileges of Spreadbury in ¶30, 32, 34, 37 without willful violation of the rules, never asked Spreadbury to remove person from public library: former Director Langstaff, under oath in municipal trespass trial affirmed no staff asked Spreadbury to leave library; Defendant public library in violation *MCA§22-1-311[Use of Library-Privileges]*. Procedural Due Process protected in *Amendment 14 US Constitution* violated for Spreadbury; state statute breeched, right to liberty interest [library privilege] taken; no administrative remedy, access to library board, no written appeal is offered to Spreadbury, not heard pre-deprivation *Matthews v. Eldridge 424 US 319 (1976)*, *Mendez v. INS 563 F. 2d 956 (9th Cir. 1977) federal statute due process*.

Defendant City of Hamilton admitted City Attorney Bell policymaker in ¶43; Hamilton Police Chief Oster policymaker in ¶45 in Joint Answer of Defendants

April 26, 2011. Any decision of official policymaker; municipal policy if acts deprive clearly established right: fairly represents official policy, municipal punitive damages attach *Monell*.

Defendant City of Hamilton actors prosecuting Spreadbury for peaceful assembly when *reasonable* prosecutor, knew or would have known *1st Amendment US Constitution* protects peaceful assembly of Spreadbury, no law can be enforced abridging this right *Amendment 14 US Constitution, Buckley*.

Individual actors for City, Public library are subject to qualified immunity under color of law; negated if a *reasonable* officer who knew or should have known that approaching, investigating, or prosecution activity for peaceful assembly on public property would violate established right *Amendment 1 US Constitution Morley v. Walker 175 F. 3d 756 (9th Cir., 1999), Buckley*. Defendants have burden to prove functional analysis of actors immunity to court, plead immunity as entitlement for Defense actors *ibid*.

Restricting Spreadbury's access to Ravalli Republic July 9, 2009 Hamilton Police Chief Oster engaged in civil conspiracy to deprive rights between Defendants City of Hamilton, Lee Enterprises Inc., made new policy to restrict liberty interest of Spreadbury without cause, deprives due process of law in violation of *Amendment 5, 14 US Constitution*. Defendants prosecute Spreadbury in sworn complaint to

Hamilton City Court for peaceful assembly on public property, Defendant Bell made new policy to prosecute Spreadbury for peaceful assembly, violated ***Amendment 1 US Constitution*** right to peaceful assembly, punitive damages attach *Monell*. Admitted actions of Defendant City of Hamilton, Bitterroot Public Library, implicate Defense actors for §1983, negligence, defamation, IIED, NIED in Spreadbury's 2nd Amended complaint served on Honorable court May 4, 2011.

No material facts remain, partial summary judgment proper. Defense admit to Spreadbury before this court; no clear and convincing evidence standard is needed where the *New York Times Standard* for defamatory publication and summary judgment apply *Anderson et. al. v. Liberty Lobby Inc. et. al. 477 US 242 (1986)*.

WHEREFORE, Spreadbury moves Honorable Court find count # 1,2,3,5, 6,7,9,10,11,12,13,14,17,20,21,25,26 of 2nd Amended Complaint as actions and omissions admitted and enacted by Defendant City of Hamilton, Bitterroot Public Library are subject to summary judgment. Spreadbury asks court to find summary judgment against Defendants for above counts, fully admitted in April 26 2011 Defense answer pleadings as presented herein.

Respectfully submitted this 9th day of May, 2011

BY: 

Michael E. Spreadbury, Self Represented Plaintiff