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**FILED**  
 MAY 19 2011  
 By PATRICK E. DUFFY, CLERK  
 DEPUTY CLERK, MISSOULA

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

*CV-11-64-M-DWM-JCL*

MICHAEL SPREADBURY	)	Cause No: CV-11-61-M-DWM
Plaintiff	)	
v.	)	
BITTERROOT PUBLIC LIBRARY,	)	<b>MOTION, BRIEF IN</b>
CITY OF HAMILTON,	)	<b>SUPPORT TO STAY</b>
LEE ENTERPRISES, INC.,	)	<b>DISCOVERY PENDING</b>
BOONE KARLBERG, PC,	)	<b>COURT ACTION</b>
_____	)	

Comes now the Plaintiff with motion to stay discovery pending decision from Honorable court, claim for summary judgment, qualified immunity pending.

Motion:

Spreadbury moves court *stays* discovery pending ruling on summary judgment, qualified immunity of Defendants before Honorable court.

Defense oppose this motion.

Brief in Support:

Defense actors in the aforementioned have pled to this court “subject” to qualified immunity [¶7 pg. 19 Individual Defendants Answer; ¶4 pg. 21 Main Defendant Answer] charging criminal trespass for Spreadbury’s August 20, 2009 peaceful assembly on public property, established right Amendment 1 US Constitution.

Qualified immunity for Defense actors nullified as reasonable officer, prosecutor, publisher knew, or should have known peaceful assembly on public property deprives established right of Spreadbury *Anderson v. Creighton* 483 US at 646 (1987), *Davis v. Scherer* 468 US at 197 (1984).

Defense actors have responsibility to plead functional analysis of qualified immunity, Defense actors have not pled functional analysis before this court *Buckley v. Fitzsimmons* 509 US 259 (1993). Defendant City of Hamilton, other Defendants bear burden of demonstrating qualified immunity attaches to prosecuting, publishing, investigating, Spreadbury with trespass on public property *inter alia Morley v. Walker* 175 F. 3d at 759(9<sup>th</sup> Cir. 1999), *Burns v. Reed* 500 US 478 (1991).

Qualified Immunity is an affirmative defense that must be pled by the Defendant official *Gomez v. Toledo* 446 US 635 (1980) citing *Harlow v. Fitzgerald* 457 US at

815 (1982). At summary judgment, the court determines established constitutional right at time action occurred, but until threshold immunity question resolved, discovery should not be allowed *Harlow 457US at 818*. Immunity should be decided by court long before trial *Mitchell v. Forsyth 472 US at 527-529 (1985)*. Discovery is stayed pending summary judgment *Siegest v. Gilley 500 US at 230-231 (1991)*.

For reasons herein pled, under lawful court authority, Spreadbury moves that discovery be halted due to pending summary judgment, decision on qualified immunity of Defense actors.

Certificate of Compliance

From LR 7(d)(2)(E) US District Court Rules Montana, I certify that this brief conforms with 14 point font, New Times Roman typeface, is double spaced, contains 275 words excluding title page, this compliance.

Respectfully submitted this 17<sup>th</sup> day of May, 2011

BY: \_\_\_\_\_

Michael E. Spreadbury, Pro Se

Certificate of Service

Cause No. CV-11-0064-DWM

I certify as Plaintiff in this action, a copy of the below named motion was served upon the US District Court Missoula Division and all opposing counsel for parties in this above named cause of action by first class mail. The following addresses were used for service:

*Motion to Stay Discovery Pending Court Action*

Russell Smith Federal Courthouse  
Clerk of Court  
200 E. Broadway  
Missoula, MT 59803

Defendant Counsel:

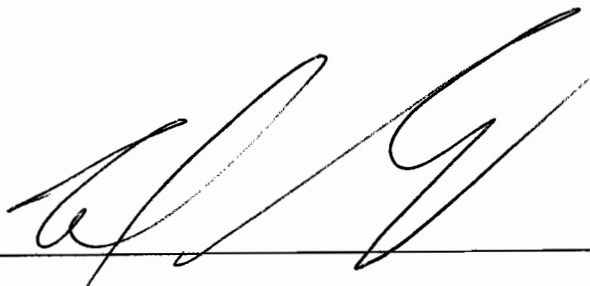
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Dated \_\_\_\_\_ 5/17/11 \_\_\_\_\_

  
\_\_\_\_\_  
Michael E. Spreadbury, Pro Se Plaintiff