

## Press Release – For Immediate Release

### Mendocino County Settles Free Speech Case, Changes Policies Re Petitioning at Shopping Centers

February 20, 2014 (Ukiah, CA) The County of Mendocino today settled a lawsuit brought by one of its residents after a county deputy interfered with petitioning at a local shopping center. From now on, store owners/managers cannot just call the police to roust petitioners and others engaged in free speech activities near their stores; they must first get a court order that such activity is interfering with their business.

“You cannot deprive someone of an essential right without due process of the law,” said Dennis O’Brien, a retired attorney who filed the lawsuit. “Shopping centers and malls may be private commercial property, but the California Supreme Court has determined that they are the modern day equivalent of a town square. People have the right to engage in free speech and petitioning so long as they are not directly in front of a store entrance or otherwise interfering with the normal course of business. They can’t just be rousted by the police at the beck and call of corporations who do not like the politics of those engaged in protected activities.”

The event leading to the lawsuit happened in April 2012. Mr. O’Brien was approaching the Raley’s supermarket at the Crossroads Shopping Center on State Street just north of Ukiah. A woman was standing about 15 feet to the side of one of the entrances, collecting signatures for to get propositions on the state ballot. One of the propositions raised taxes on high incomes. Before Mr. O’Brien could finish signing the petitions, a uniformed deputy of the Mendocino County Sheriff’s Office appeared and said that the store manager wanted them to leave (the petitioner had informed the manager of her activities and shown him the petitions as a courtesy). After a discussion of free speech rights, the officer said that if Mr. O’Brien and the petitioner did not leave, he would arrest them. Both left.

Mr. O’Brien filed a formal complaint with the MCSO. Their internal review board found the complaint to be “unfounded.” [See attached.] Mr. O’Brien appealed the decision, ultimately meeting with Sheriff Tom Allman in early 2013. Sheriff Allman offered his personal apology and agreed that 15 feet from an entrance was a reasonable distance for free speech activity. All he needed to change the department’s policy was approval from then-County Counsel Tom Parker. But when County Counsel failed to approve the change before to the expiration of the statute of limitations, Mr. O’Brien was forced to file a lawsuit [attached] in order to protect his rights. The County responded by filing a motion to dismiss the lawsuit, claiming that the area where the free speech activity occurred was not protected. After filing opposing briefs, the parties met with local attorney Barry Vogel and hammered out the settlement, the first of its kind in California [per County Counsel’s office].

The key provision of the settlement is the County’s acknowledgment that free speech rights exist in shopping centers and malls, even though they are private commercial property. If someone is engaged in petitioning or other protected free speech activity and is not directly in front of an entrance, then the store owner/manager will need to obtain an injunction or

restraining order before the sheriff's office will intervene. Absent some criminal activity, like vandalism, it will be considered a civil matter. If an owner/manager believes there is criminal activity, they can still institute a citizen's arrest, but the consequences of wrongfully doing so can be costly, as with the case against the local Walmart for a false arrest a few years ago.

"This is a major change in the policy and procedures of local law enforcement. Instead of enforcing the whims of powerful corporations, they have acknowledged the right of the people to gather peacefully, to speak freely, and to petition their government," said O'Brien. "These rights are being fought for even now in the streets of Kiev and around the world. They are the very basis of our democracy, and if we do not honor them, then our society will quickly be engulfed in the turmoil of political repression. Without those rights, we might as well live in Putin's Russia, where people are jailed merely for singing protest songs."

"This settlement would not have been possible without community support," continued O'Brien. "The folks at the Mendocino Environmental Center and Occupy Ukiah provided essential feedback and moral support throughout the process. It is difficult for any one person to 'take on city hall.' But when the people come together to assert their basic rights, few forces can stop them. Fortunately, we don't have to take to the streets and build barricades to protect ourselves; in this country, the pen is still mightier than the sword. No matter how powerful corporations become, no matter how much they spend to influence elections, they must bow before the right of the people to engage in the political process."

"I would like to thank Sheriff Allman for his willingness to find a solution that benefits the entire community," said O'Brien. "My father was a police officer most of his life, and I know how difficult the job is. The police are on the front lines when it comes to making public policy a reality, and it is difficult to please everyone. This settlement will actually relieve officers of an unfair burden, of having to take sides in a civil matter. It is not an officer's job to make the law, only to enforce it. The new protocols will provide clear guidance for officers, store owners/managers, and the people. I haven't seen a single petitioner since the incident in 2012; our free speech rights were effectively 'chilled.' This settlement will encourage robust political debate and engagement by the people in the political process."

The case is *O'Brien v. County of Mendocino*, case no. SCUK-CVG-13-61758, filed in Mendocino County Superior Court in Ukiah. Raley's had also been named a defendant, but was dismissed when the case settled, as were all claims for money damages. "The money means nothing. It is the rights that are priceless," said O'Brien. The Complaint, Settlement Agreement and MCSO Policy are attached. The County was represented by deputy County Counsel Terry Gross (707-234-6885). Her last day working for the County is Friday, February 21, 2014. County Counsel Tom Parker abruptly retired last Friday, February 14. It is not known to what extent, if any, this case influenced their decisions.

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