

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:16-cv-00318-RM-CBS

DANIELE LEDONNE,

Plaintiff,

v.

DR. BEVERLEE MCCLURE, in her official capacity as  
President of Adams State University, and PAUL  
GROHOWSKI, in his official capacity as Chief of Adams  
State Police Department,

Defendants.

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**PLAINTIFF'S REPLY IN SUPPORT OF MOTION FOR EXPEDITED BRIEFING  
SCHEDULE AND EXPEDITED HEARING ON PLAINTIFF'S MOTION FOR  
PRELIMINARY INJUNCTION (ECF NO. 10)**

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Every day that passes is another day that Plaintiff Danny Ledonne's rights are being infringed. Defendants banned him from the Adams State University campus without any notice or a hearing. Now, four months later, they claim they cannot defend their actions without weeks of extensive preparation.

Defendants argue that they cannot reasonably respond to the Plaintiff's Motion for a Preliminary Injunction (ECF No. 2) within ten days for the following reasons: (1) because Mr. Ledonne's delay in the filing of the Verified Complaint and Motion for a Preliminary Injunction means the issue must not be important enough to merit expedited review; (2) because Mr. Ledonne has failed to provide any specific examples of how his livelihood is being threatened; (3) because Mr. Ledonne has failed to provide any specific examples of the educational,

intellectual, and cultural programs of which he is being denied on a daily basis; and (4) because the Verified Complaint is too long and detailed to allow for a quick response. These arguments are weak. This Court should order expedited briefing and a quick hearing on the Motion for a Preliminary Injunction.

### **ARGUMENT**

#### **I. ANY DELAY WAS NECESSARY AND IS NOT INCONSISTENT WITH PLAINTIFF SUFFERING IRREPARABLE HARM**

First, Defendants rely on *Utah Gospel Mission v. Salt Lake City Corp.*, 316 F. Supp. 2d 1201, 1221 (D. Utah 2004) to argue that Mr. Ledonne's delay is evidence that the claimed harm is not serious enough for expedited consideration. (Defendants' Response to Plaintiff's Motion for an Expedited Briefing Schedule and Expedited Hearing on Plaintiff's Motion for Preliminary Injunction at 2 ("Defendants' Response"), ECF No. 12.) In fact, *Utah Gospel Mission* suggests only that "unnecessary delay" may be a basis for denying expedited relief. *Utah Gospel Mission*, 316 F. Supp. 2d at 1221. (Emphasis added). In *Utah Gospel Mission*, the Tenth Circuit held that Plaintiffs' delay in waiting three months between the filing of the complaint and the filing of the preliminary injunction motion undermined their claim of irreparable harm. *Id.* Here, Plaintiff filed his Motion for a Preliminary Injunction on the very same day the Verified Complaint was filed. (See ECF No. 1; ECF No. 2.) There was no "unnecessary delay" on Mr. Ledonne's part in seeking preliminary relief.

The Tenth Circuit has even held that a delay did not undermine a claim of irreparable harm where the event that precipitated the need for injunctive relief occurred *eight months prior* to the filing of the complaint seeking declaratory and injunctive relief. *Kansas Health Care Ass'n, Inc. v. Kan. Dept. of Social & Rehabilitation Servs.*, 31 F.3d 1536, 1542-44 (10th Cir.

1994). Five months of the delay was attributable to the plaintiffs' attempts to negotiate and reach a settlement in the matter. *Id.* at 1544. After the negotiations failed, the plaintiffs took another three months to file the complaint. *Id.* Yet, that limited delay did not undermine the plaintiffs' claim of irreparable harm and need for injunctive relief: "Within three months of having failed to reach such a settlement plaintiffs commenced this action. Under those circumstances, we are reluctant to hold that plaintiffs' delay should be fatal to their claim of irreparable injury." *Id.*

The Tenth Circuit reached the same result in *RoDa Drilling Company v. Siegal*, 552 F.3d 1203, 1212 (10th Cir. 2009). In that case, the plaintiff did not request a preliminary injunction until October 2007 even though the plaintiff was first aware of the actions precipitating the need for an injunction as early as 2005. *Id.* "[D]elay is *but one factor* in the irreparable harm analysis," and the record established that the "delay in filing its complaint arose from its attempts to resolve the dispute, rather than a decision merely to 'sit on its rights.'" *Id.* at 1211-12. (Emphasis added.)

Here, Defendants served Mr. Ledonne with the unconstitutional No Trespass Order on October 14, 2015. Mr. Ledonne spent the following month communicating with Adams State University officials—without counsel and without any meaningful notice of the allegations against him—to achieve the following goals: (1) receive notification of the specific allegations and charges against him that allegedly necessitated the No Trespass Order; and (2) reach some form of resolution with the University without having to resort to legal action. (Declaration of Daniele Ledonne Pursuant to 28 U.S.C. § 1746 ("Ledonne Dec.") ¶¶ 7-10, attached as Exhibit 1.)

Mr. Ledonne ceased the negotiation efforts only after Defendant McClure sent out a mass e-mail to the Adams State University student body falsely and publicly accusing Mr. Ledonne of making direct and indirect threats against individuals and the campus as a whole. (Ex. 8 to Verified Compl.; Ledonne Dec. ¶ 11.) Thus, a month of the delay is solely attributable to Mr. Ledonne's attempts to resolve this matter through informal negotiations with the University and should in no way undercut the irreparable harm Mr. Ledonne faces through Defendants' actions.

Additionally, Mr. Ledonne, pursuant to FRE 201(b)(1), asks this Court to take judicial notice of the fact that for an individual, especially one who lives in the rural area of the San Luis Valley, who seeks access to the federal judicial system and is without the financial resources to do so—the process of seeking out and retaining counsel on a *pro bono* basis to take on a complex constitutional case necessarily takes time. Even after making contact with the American Civil Liberties Union of Colorado, additional steps were required, including finding cooperating counsel who was also willing to take on a complex constitutional case on a *pro bono* basis. The attorneys must then fulfil their own due diligence obligations under Federal Rule of Civil Procedure 11.

Defendants do not claim that they have been disadvantaged by this delay. *See Kansas Health Care Ass'n*, 31 F.3d at 1544 (noting that defendants did not allege any disadvantage or prejudice because of the delay when finding irreparable harm despite eight month delay in filing preliminary injunction motion). Unlike Mr. Ledonne, who had no lawyer until recently, Defendants maintain that they consulted with their *own* attorneys in the Attorney General's office *before* issuing the ban order. *See* E-mail issued Nov. 9, 2015 by ASU Board of Trustees to all Faculty and Staff (attached as Ex. 6 to Verified Complaint) (claiming that the ban order

was “taken in conjunction with information from the Colorado Attorney General’s Office); Valley Courier article of November 7, 2015 (attached as Ex. 5 to Verified Complaint) (quoting President McClure as saying that before issuing the ban, she had collected information about Ledonne, including his “creation of a website” and “took that and went to the Attorney General’s office”). Defendants have had counsel since (or before) Day One. Mr. Ledonne should not be further penalized for taking the time to seek and obtain competent counsel to represent him in this matter of constitutional magnitude.

## **II. PLAINTIFF’S LIVELIHOOD IS BEING THREATENED BY THE NO TRESPASS ORDER**

Next, Defendants dispute Mr. Ledonne’s claim that the No Trespass Order is threatening his livelihood, suggesting that he is not suffering irreparable harm because he is not an Adams State University employee or enrolled in classes. Those facts are irrelevant. Colorado state policy allows members of the public access to public areas of Colorado public universities. Mr. Ledonne does not have to be a University employee or student to have that right. (Verified Compl. ¶ 85.) As stated in the Verified Complaint, Mr. Ledonne has been filming the Mountain Valley Dance Studio’s spring dance recitals regularly since 2004. (Verified Compl. ¶ 46.) That event takes place on the University campus. (*Id.*) The spring recital this year will take place on May 12 through May 14 and Mr. Ledonne intends to film that event. (Ledonne Dec. ¶ 5.)

The fact that the University has “allowed” Mr. Ledonne on the campus twice for his professional obligations since issuing the ban does not diminish the fact that Mr. Ledonne’s livelihood is being threatened. First, there is no guarantee that the University will continue to allow Mr. Ledonne onto campus, especially since he has now initiated this lawsuit. Second, Defendants have repeatedly defamed Mr. Ledonne’s reputation in his professional communities

in Alamosa by calling him a violent and threatening person who engages in terrorism. (Verified Compl. ¶¶ 57-63.) Either Mr. Ledonne or the organizations with which he works, now must ask for permission from the University for Mr. Ledonne to access the campus and perform his professional obligations. That act threatens his livelihood. Logic dictates that not every organization is willing to look past the false accusations and jump through the hoops required by the University for Mr. Ledonne to work on the campus.

### **III. PLAINTIFF'S FIRST AMENDMENT RIGHTS ARE BEING DEPRIVED BY THE NO TRESPASS ORDER**

Defendants also claim that Plaintiff has failed to provide any specific examples of how the No Trespass Order is depriving him of his constitutional right to access ideas and information. The Verified Complaint and the declaration attached to this Reply do provide extensive detail on this point. The Adams State University theatre program is producing *Arcadia* this spring and Mr. Ledonne will be arrested if he goes on campus to attend it. (Verified Compl. ¶ 54.) Mr. Ledonne will need to access campus to attend the orientation meetings for the biology field study program in Peru. (Verified Compl. ¶ 51.) True, counsel for Defendants did inform Plaintiff that he is still permitted to go on a trip for which he already paid in-full, with the University cashing his \$5,000 deposit for the trip after the ban had been implemented. (*See* Alamosa State Bank Deposit Receipts, attached as Exhibit 2.) But the University has given no assurance that Mr. Ledonne will be allowed on campus for the orientation meetings.

Also, due to the No Trespass Order, Mr. Ledonne has been unable to attend three Adams State University theatre productions, three faculty lectures, two concerts, one Adams State University panel discussion, and two Adams State University art gallery openings that have all taken place since the ban was implemented; programs which he had interest in attending.

(Ledonne Dec. ¶ 3.) Mr. Ledonne would like to attend two separate Adams State University theatre productions (*Arcadia* included), and four faculty lectures; all events that are taking place between March 8, 2016 and May 4, 2016. (Ledonne Dec. ¶ 4.) Mr. Ledonne’s First Amendment right to receive education and cultural communication and to interact with his former professional colleagues is being infringed. *See Board of Educ., Island Trees Union Free School Dist. No. 26 v. Pico*, 457 U.S. 853, 867 (1982) (holding the Constitution “protects the right to receive information and ideas” in a “variety of contexts”).

#### **IV. DEFENDANTS’ CLAIM REGARDING PREPARATION TIME IS NOT WELL-FOUNDED**

Lastly, Defendants claim they need at least twenty-one days to intelligently respond to the Motion for a Preliminary Injunction. It is important to note that the University’s No Trespass Order itself supposedly only gave Mr. Ledonne ten days to respond to the ban—without counsel and without proper notice of what he is alleged to have done. The University’s claim is now that that it cannot respond on an expedited basis, in part, because Mr. Ledonne has provided *too much* detail in explaining exactly how Defendants violated his constitutional rights. This claim rings hollow.

In addition, only one day after the filing of the lawsuit, Defendant McClure publicly crowed that the Defendants “*look forward* to making the case that the University’s actions were based solely on evidence and belief that Mr. Ledonne’s longstanding pattern of inappropriate actions and threatening statements required [them] to act in an abundance of caution ....”

(Westword Article published on February 11, 2016, attached as Exhibit 3.) (Emphasis added.)

The University has also been quoted as saying that “it is eager to tackle the allegations of a former faculty member in U.S. District Court.” (The Pueblo Chieftain Article published on

February 12, 2016, excerpt attached as Exhibit 4.) Mr. Ledonne asks only that he be given the prompt opportunity to engage in the court battle that Defendants publicly claim that they welcome.

### **CONCLUSION**

For the reasons set forth above and in Plaintiff's Motion for Expedited Briefing Schedule and Expedited Hearing on Plaintiff's Motion for Preliminary Injunction, Mr. Ledonne prays that this Court:

- set an expedited briefing schedule, giving Defendants no more than ten days to respond to Plaintiff's Motion for a Preliminary Injunction, five days for a reply, and
- set a one-day evidentiary hearing on the Motion for a Preliminary Injunction as soon as practicable thereafter.

Dated: February 24, 2016

Respectfully submitted,

*s/ Kayla Scroggins*

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*AS COOPERATING ATTORNEYS FOR THE  
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*Attorneys for Plaintiff Daniele Ledonne*

**CERTIFICATE OF SERVICE (CM/ECF)**

I HEREBY CERTIFY that on February 24, 2016, I electronically filed the foregoing **PLAINTIFF'S REPLY IN SUPPORT OF MOTION FOR EXPEDITED BRIEFING SCHEDULE AND EXPEDITED HEARING ON PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION (ECF NO. 10)** with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following email addresses:

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*s/ Karen L. Brock*

\_\_\_\_\_  
Karen L. Brock

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:16-cv-00318

DANIELE LEDONNE,

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Defendants.

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**DECLARATION OF DANIELE LEDONNE PURSUANT TO 28 U.S.C. § 1746**

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DANIELE LEDONNE hereby declares:

1. I am over the age of 18 and have personal knowledge of the matters set forth below.
2. On October 14, 2015, Adams State University (“ASU”) officials Chief Paul Grohowski and Dr. Beverlee McClure banned me from the University campus by implementing a No Trespass Order.
3. The following list compiles each educational, intellectual or cultural program taking place on the ASU campus that I have been denied from attending because of the No Trespass Order and of which I had interest in attending, based on a previous and ongoing interest

**EXHIBIT 1**

in ASU as a central cultural, academic, and artistic source of information in Alamosa, CO wherein I reside.

- “Toybox” and “Vampire Lesbians of Sodom” – ASU Theatre – October 27-31, 2015
- “Modern Cuba: Stories from the Forbidden Side of Paradise” – ASU Faculty Lecture – November 4, 2015
- “A Bold New Path: Colorado’s Novel Approach to Marijuana Policy” – ASU Faculty Lecture – November 18, 2015
- “ASU Percussion Extravaganza” – ASU Concert – November 23, 2015
- “ASU Wind Ensemble” – ASU Concert – December 1, 2015
- “The Snow Queen” – ASU Theatre – December 5-13, 2015
- “Wanda’s Visit” and “The Titanic” – ASU Theatre – February 9-13, 2016
- “The Importance of Good Flag Design” – ASU Faculty Lecture – February 17, 2016
- “The Politics of the Black Lives Matter Movement: Policing the Police” – ASU Panel Discussion – February 17, 2016
- “Return of the Corn Mothers” – ASU Art Gallery Opening – February 18, 2016
- “Intimate Strangers” – ASU Art Gallery Opening – February 18, 2016

4. The following list compiles each educational, intellectual or cultural program taking place on the ASU campus that I would like to attend in the future—if I am not banned from campus, as well as the dates of the program and the affiliated organization.

- “Slut Shaming in the Age of the Internet” – ASU Faculty Lecture – March 8, 2016
- “The Intruder” and “Flowers for Algernon” – ASU Theatre – March 8-12, 2016
- “The Link Between Human Violence and Animal Abuse: Creating Public Safety Through Community Partnerships” – ASU Faculty Lecture – April 6, 2016

- “Exceptional Presidential Companions: The First Ladies as an Essential Institution to the Presidency” – ASU Faculty Lecture – April 20, 2016
- “Arcadia” – ASU Theatre – April 22 – May 1, 2016
- “Star Wars and the Good Life” – ASU Faculty Lecture – May 4, 2016

5. The Mountain Valley Dance Studio performs its annual spring dance recital on the ASU campus on May 12-14, 2016.

6. Mountain Valley Dance Studio has regularly hired me to serve as the videographer for these performances and plans to do so again this year.

7. From October 27, 2015 until November 17, 2015 I engaged in written and verbal conversations with ASU’s Interim Vice-President, Mr. Kurt Cary, in an effort to gain a better understanding of the nature of the allegations underlying the No Trespass Order, as directed by Assistant Attorney General Jessica Salazar per the No Trespass Order.

8. Although I attempted, through correspondence with Mr. Cary, to engage in the appeals process, the process was never formally initiated or completed because I was never informed of the substance of the allegations.

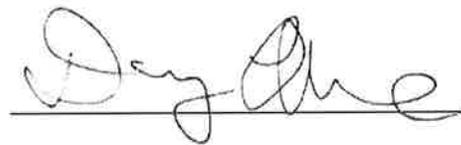
9. I refused to meet with Mr. Cary under the pretext of any appeal process until I had been provided with the substance of the allegations against me, which never happened.

10. I met with Mr. Cary on November 17, 2015 as part of a separate negotiation process to try to reach a resolution of multiple issues, including the adverse effects of the No Trespass Order.

11. Later on November 17, 2015, Dr. McClure also e-mailed the ASU student body with more defamatory and untrue statements about me. At that time, I ended the negotiation process with Mr. Cary because I no longer believed the parties were operating in good faith.

12. All of the statements above are accurate as of today's date, and also were accurate as of February 23, 2016.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

A handwritten signature in black ink, appearing to read "Daniele Ledonne", written over a horizontal line.

Daniele Ledonne

This 24th day of February, 2016

# Check Details



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Posted on 12/17/2015

For \$2,500.00

DANIELE A LEDONNE  
918 ROSS AVE  
ALAMOSA, CO 81102

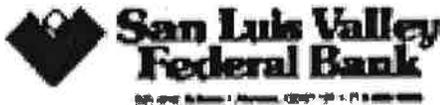
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62-7472/321

1224

DATE 11/24/15

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*D. Ledonne*

MEMO Peru 1/2

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EXHIBIT 2

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DANIELE A LEDONNE  
918 CROSS AVE  
ALAMOSA, CO 81101

848011

02-1415/2001

1228

DATE: 1/29/16

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Adams State University

\$ 2500.00

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**Westword**

# DANNY LEDONNE: ACLU SUES ADAMS STATE OVER BAN OF FORMER PROF

BY ALAN PRENDERGAST

THURSDAY, FEBRUARY 11, 2016 | 12 DAYS AGO



Former film and video instructor Danny Ledonne started a website critical of Adams State University administrators.

*Facebook*

The ACLU of Colorado has filed a lawsuit against Adams State University on behalf of a former professor who started a website critical of hiring practices and was then banned from campus – and subsequently accused of posing a public safety risk by the university's president.

As we first reported last October, Danny Ledonne got an unexpected visit from the chief of ASU campus police shortly after he launched *WatchingAdams*, a watchdog website that published ASU salary data and raised issues about fair pay for adjunct instructors. Ledonne had taught film courses at ASU for four years before his contract wasn't renewed last summer; he's since emerged as a persistent critic of university hiring and compensation policies. The chief handed him a letter from ASU president Beverlee J. McClure, informing Ledonne that he would be arrested for trespassing if he stepped onto campus property.

The dispute quickly escalated, with Ledonne claiming the ban from a public campus was retaliatory, while campus officials insisted that Ledonne's banishment was a result of "safety concerns." President Beverlee McClure told the Alamosa *Valley Courier* that Ledonne is "a threat to our staff and students" and accused him of "harassment" and even "terrorism against me and the previous president." Ledonne denied making any threats.

Enter the ACLU. "Not only were Danny Ledonne's First Amendment rights violated when university officials retaliated against him for operating a website criticizing their policies, the ban was issued without notice or an explanation of the evidence being used to support it," says ACLU of Colorado legal director Mark Silverstein.

In response to the lawsuit, the university issued a statement indicating that officials welcomed the opportunity to clarify the reasons behind their actions: "We look forward to making the case that the University's actions were based solely on evidence and belief that Mr. Ledonne's longstanding pattern of inappropriate actions and threatening statements required us to act in an abundance of caution to protect our students, faculty and staff. We will aggressively contest any accusation that our safety-based decisions were in any way related to Constitutionally protected freedom of expression.

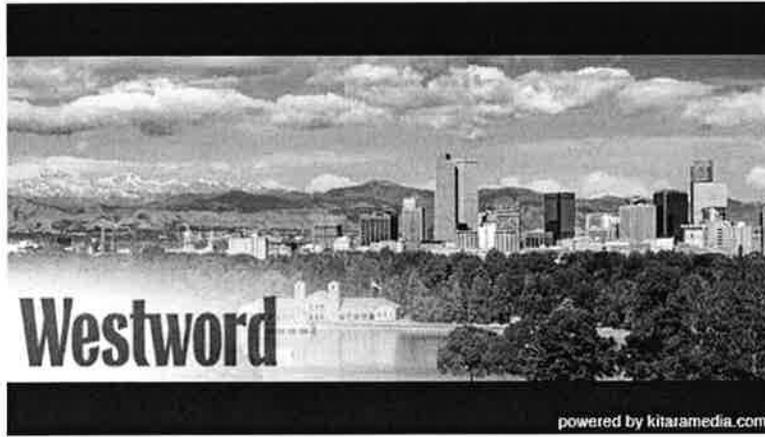
"As part of the legal process, we will now be able to share a substantial amount of information behind our decisions that we have legally been unable to share. Mr. Ledonne has declined our request to release this information publicly and we have had to honor that request. This lawsuit will remove that prohibition."

For more on the details of the dispute, read the ACLU complaint below.

Contact: **Alan Prendergast** Follow: **@alanprend** **Westword** **Westword**

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**EXHIBIT 3**



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## COURTS

**Adams State on lawsuit: Bring it on!**

University eager to refute former faculty member's claims

BY MATT HILDNER THE PUEBLO CHIEFTAIN

*Published: February 12, 2016; Last modified: February 12, 2016 04:00AM*

ALAMOSA — Adams State University said Thursday it is eager to tackle the allegations of a former faculty member in U.S. District Court.

Daniele Ledonne asked the court in a lawsuit filed Wednesday to bar the university from enforcing a no-trespass order it issued against him in October.

While the university has not filed a formal response in court, it said in a statement that it had been prevented by law from responding to Ledonne's claims.

"We look forward to making the case that the university's actions were based solely on evidence and the belief that Mr. Ledonne's long-standing pattern of inappropriate actions and threatening statements required us to act in an abundance of caution to protect our students, faculty and staff," the statement said.

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**EXHIBIT 4**