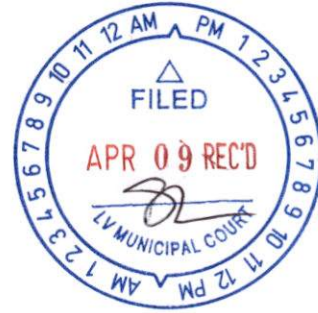




25-071255 Motion SHAJUAN HUFF

ORIGINAL



1 **MTD**
2 JACOB T. S. VALENTINE (16324)
3 CHRISTOPHER PETERSON (13932)
4 **AMERICAN CIVIL LIBERTIES**
5 **UNION OF NEVADA**
6 4362 W. Cheyenne Ave.
7 North Las Vegas, NV 89032
8 Telephone: (702) 366-1226
9 Facsimile: (702) 830-9205
10 Email: jvalentine@aclunv.org
11 *Attorneys for Defendant*

7
8 **MUNICIPAL COURT**
9 **LAS VEGAS, NEVADA**

9 STATE OF NEVADA,
10
11 Plaintiff,
12 v.
13 TONEY FOOTE,
14 Defendant

Case Number: 25-071255
Department: 2

**Motion to Dismiss Pursuant to the
First Amendment**

4/14/26 @ 8am

15 Defendant Toney Foote files this Motion to Dismiss the charge against him for violating
16 Las Vegas Municipal Code § 11.68.107 because the ordinance violates the First Amendment to
17 the U.S. Constitution both as applied to Mr. Foote and on the face of the ordinance. This Motion
18 is supported by the following Memorandum of Points and Authorities and any attached exhibits.

19
20 Dated: April 09, 2026.

**American Civil Liberties
Union of Nevada**

21
22
23 JACOB T. S. VALENTINE (16324)
24 4362 W. Cheyenne Ave.
North Las Vegas, NV 89032
Tel.: (725) 235-3119

1 **Memorandum of Points and Authorities**

2 Mr. Foote is a street performer on Fremont Street who was charged with a misdemeanor
3 for allegedly performing outside of the six-foot diameter circle LVMC 11.68.107 requires street
4 performers to perform in. This three-foot barrier in any direction only applies to street performers
5 like Mr. Foote but Fremont Street Experience LLC (a private company) and anyone the
6 organization hires are permitted to perform anywhere at any time.

7 My Foote brings both a facial and as-applied First Amendment challenge to the ordinance
8 he was cited under. LVMC 11.68.107 violates the First Amendment on its face as it engages in
9 viewpoint discrimination by favoring the speech of Fremont Street Experience LLC and anyone
10 the organization hires over the First Amendment protected speech of those designated as street
11 performers such as Mr. Foote. Viewpoint discrimination in a forum such as Fremont Street is by
12 itself a violation of the First Amendment but the government cannot even satisfy strict scrutiny
13 requirement to justify LVMC 11.68.107. As applied to Mr. Foote, LVMC 11.68.107 burdens Mr.
14 Foote's ability to engage in protected street performing as Mr. Foote's speech requires adequate
15 space and crowd participation which LVMC 11.68.107 does not permit. Also, Fremont Street
16 Experience LLC's speech is favored over Mr. Foote's which violates the First Amendment as
17 applied to Mr. Foote.

18 **I. Statement of Facts**

19 **A. Mr. Foote's history on Fremont Street**

20 Toney Foote is a well-known street performer on Fremont Street who impersonates
21 Michael Jackson and dances to a number of the late icon's songs. He has been performing on
22 Fremont Street for approximately ten years.
23
24

1 **B. Mr. Foote’s citation under LVMC 11.68.107**

2 On October 10, 2025, Mr. Foote was cited for “performing outside of the FSE performance
3 circle.” Officer Sarhan, the officer who cited Mr. Foote, did not claim to have viewed any
4 violations by Mr. Foote of LVMC 11.68 (the Pedestrian Mall Ordinance). Instead, Officer Sarhan
5 wrote the citation based upon a statement he received from Officer Guzman who claims to have
6 seen Mr. Foote violate the ordinance while looking at security footage. Officer Guzman claims
7 that Mr. Foote was “performing outside of the designated circle.” See Exhibit A at 3. Based on
8 this, Officer Sarhan cited Mr. Foote for “willfully and unlawfully [] performing outside of the FSE
9 performance circle.” See Exhibit A at 1.

10 **C. The Pedestrian Mall Ordinance**

11 LVMC 11.68 places limitations on the use of the Fremont Street Pedestrian Mall. One such
12 limitation, LVMC 11.68.107(c)(3), states that “[w]ithin the specified time frame, street performers
13 may perform only in a designated location[.]” LVMC 11.68.108 includes as one of the two
14 designated locations “[o]ther areas, each of which is no greater than six feet in diameter and is
15 denoted on the surface of the Pedestrian Mall.” These locations are commonly referred to as the
16 “circles”. LVMC 11.68.130 states that any person who violates 11.68.108 is guilty of a
17 misdemeanor.

18 Only individuals designated as street performers are required to stay within the circles. All
19 other visitors to the Fremont Street Pedestrian Mall may engage in similar actions to the street
20 performers anywhere they like. Anyone who works for Fremont Street Experience LLC, a private
21 operating entity operating on Fremont Street, are explicitly exempt from the requirement on others
22 to perform within the circles. For street performers who dance, this results in a scenario where a
23 street performer must stay inside of a circle to dance, but there are large crowds of guests and
24 representatives of Fremont Street Experience LLC dancing just outside the circles.

1 **II. Procedural history of this case**

2 Mr. Foote was cited on October 10, 2025, and entered a not guilty plea on December 10,
3 2025.

4 **III. Argument**

5 Under NRS 189.007(3), a complaint may be dismissed where “the facts stated do not
6 constitute a public offense.” When the underlying statute violates the First Amendment of the
7 United States Constitution, it cannot form the basis of a valid criminal prosecution. A defendant
8 may raise the unconstitutionality of the statute as a defense to a criminal charge. *City of Houston*
9 *v. Hill*, 482 U.S. 451, 455 (1987) (defendant charged with violating municipal ordinance entitled
10 to challenge the ordinance as unconstitutional under the First Amendment).

11 A party may bring both a facial¹ and as-applied² challenge under the First Amendment to
12 an ordinance. *Real v. City of Long Beach*, 852 F.3d 929, 931 (9th Cir. 2017). When making either
13 a facial or as-applied challenge, the party raising the challenge bears the initial burden to show that
14 the restriction at issue implicates the First Amendment, i.e. the restriction impacts a
15 constitutionally-protected activity taking place in a protected forum. *McAllister v. Clark Cty.*, 746
16 F. Supp. 3d 918, 944 (D. Nev. 2024) (citing *Moody v. Netchoice, LLC*, 144 S. Ct. 2383, 2394
17 (2024)).

18 If the challenger satisfies his burden, the burden then shifts to the government to justify the
19 constitutionality of the restriction which often involves determining both the forum of the speech
20 and whether the restriction is content neutral or content based. *Ward v. Rock Against Racism*, 491
21

22 ¹ In a facial First Amendment challenge to an ordinance the relief is universal and a successful
23 facial challenge “invalidates the law itself.” *Italian Colors Rest. v. Becerra*, 878 F.3d 1165, 1175
(9th Cir. 2018)

24 ² In an as-applied challenge to an ordinance the relief is personal and a successful as-applied
challenge invalidates “only the particular application of the law.” *Italian Colors Rest. v. Becerra*,
878 F.3d 1165, 1175 (9th Cir. 2018)

1 U.S. 781, 791 (1989). “Content-based laws—those that target speech based on its communicative
2 content—are presumptively unconstitutional and may be justified only if the government proves
3 that they are narrowly tailored to serve compelling state interests.” *Reed v. Town of Gilbert*, 576
4 U. S. 155, 163, 135 S. Ct. 2218, 192 L. Ed. 2d 236 (2015). An egregious form of content
5 discrimination is viewpoint discrimination which includes restrictions that favor one speaker over
6 another. *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 828-830 (1995)
7 (“government regulation may not favor one speaker over another”); *Members of City Council v.*
8 *Taxpayers for Vincent*, 466 U.S. 789, 804, 104 S. Ct. 2118, 2128 (1984) (“the First Amendment
9 forbids the government to regulate speech in ways that favor some viewpoints or ideas at the
10 expense of others”). Viewpoint based restrictions at a minimum invoke strict scrutiny, however
11 within traditional public forums viewpoint based restrictions are inherently unconstitutional.
12 *Pleasant Grove City v. Summum*, 555 U.S. 460, 469, 129 S. Ct. 1125, 1132 (2009) (within
13 traditional public fora “restrictions based on viewpoint are prohibited”); *Waln v. Dysart Sch. Dist.*,
14 54 F.4th 1152, 1162 (9th Cir. 2022) (skipping the forum analysis if a “policy discriminates because
15 of the viewpoint of the speaker”).

16 **A. Defendant meets his initial burden as the Fremont Street Pedestrian Mall is a**
17 **traditional public forum and street performing is protected by the First**
18 **Amendment.**

19 Within traditional public forums the ability for the government to place restrictions on
20 speech is “sharply circumscribed.” *Perry Educ. Ass’n v. Perry Local Educators’ Ass’n*, 460 U.S.
21 37, 45, 103 S. Ct. 948, 954 (1983). “[T]he Fremont Street Experience unmistakably possesses the
22 characteristics of a traditional public forum.” *ACLU of Nevada v. City of Las Vegas*, 333 F.3d
23 1092, 1094 (9th Cir. 2003). Therefore, any regulations on speech within the Fremont Street
24 Experience must be sharply criticized.

1 Street performing is a form of expressive speech and expressive conduct that is protected
2 under the First Amendment. *Berger v. City of Seattle et al.*, 569 F.3d 1029 (9th Cir. 2009). Mr.
3 Foote performs as a street performer on Fremont Street. Mr. Mr. Foote is even identified as a street
4 performer in the case report of the citation he received. Exhibit A at 3. If Mr. Foote had not been
5 street performing he would not even fall under the ordinance he was cited under as the ordinance
6 only applies to street performers. *See* LVMC 11.68.107.

7 Defendant's initial burden is satisfied as he was cited for engaging in a protected activity
8 under the First Amendment (street performing) within a traditional public forum (Fremont Street).

9
10 **B. The government cannot meet its burden as LVMC Chapter 11.68 is intrinsically**
11 **unconstitutional as it engages in viewpoint discrimination but even if the statute**
12 **was not intrinsically unconstitutional the government cannot satisfy strict**
13 **scrutiny.**

14 Restrictions which favor certain types or categories of speech over others are content-based
15 restrictions. *Barr v. Am. Ass'n of Political Consultants*, 591 U.S. 610, 610, 140 S. Ct. 2335, 2341
16 (2020). Viewpoint discrimination is "an egregious form of content discrimination" where the
17 "motivating ideology or the opinion or perspective of the speaker is the rationale for the
18 restriction." *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 829, 115 S. Ct.
19 2510, 2516 (1995). Viewpoint discrimination includes when the government favors one speaker
20 over another or all others. *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 828
21 (1995) ("Government regulation may not favor one speaker over another"). Within traditional
22 public fora "restrictions based on viewpoint are prohibited." *Pleasant Grove City v. Sumnum*, 555
23 U.S. 460, 469, 129 S. Ct. 1125, 1132 (2009).

24 LVMC Chapter 11.68 favors one specific speaker over all others. Speech is regulated on
Fremont Street under LVMC Chapter 11.68. But Fremont Street Experience, LLC, and anyone
contracted with the organization, is not required to abide by the same regulations as everyone else.

1 Performers hired by the Fremont Street Experience, LLC are not required to adhere to the same
2 rules as any non-affiliated “street performers” on the Fremont Street Pedestrian Mall. This includes
3 an exemption for all performers hired by the Fremont Street Experience, LLC from the requirement
4 that street performers stay within the performance circles. The ordinance’s classification of
5 speakers into “street performers” (regulated and subject to criminal penalties) and “FSE
6 performers” (categorically exempt) is a speaker-based distinction which inherently violates the
7 First Amendment.

8 LVMC 11.68.107 is further damned as similar statutes have not been found to even meet
9 strict scrutiny. *See Berger v. City of Seattle*, 569 F.3d 1029, 1043 (9th Cir. 2009) (When discussing
10 a similar ordinance: “[T]here are easily available alternative modes of regulation ... that would
11 have considerably less impact on speech than the single-speaker prospective registration system.”);
12 *see also ACLU of Nevada v. City of Las Vegas*, 466 F.3d 784, 798 (9th Cir. 2006) (finding that a
13 labor exemption in the City’s tabling ordinance violated the First Amendment because the
14 ordinance discriminated among speakers).

15
16 **C. The citation must be dismissed as the government cannot show that as applied to
Mr. Foote LVMC Chapter 11.68 does not burden Mr. Foote’s rights.**

17 Restrictions for an as-applied challenge within a traditional public forum “based on content
18 must satisfy strict scrutiny, and those based on viewpoint are prohibited.” *See Minn. Voters All. v.*
19 *Mansky*, 138 S. Ct. 1876, 1885, 201 L. Ed. 2d 201 (2018) (*citing Pleasant Grove City v. Sumnum*,
20 555 U.S. 460, 469, 129 S. Ct. 1125, 172 L. Ed. 2d 853 (2009)).

21 Built within LVMC 11.68 is an inherent favoritism for the viewpoint of the Fremont Street
22 Experience LLC. LVMC 11.68 creates a disfavored designation of street performers based upon
23 whether or not those performers signed a contract or are employed by Fremont Street Experience
24 LLC. LVMC 11.68 places multiple restrictions on those disfavored street performers that it

1 exempts the Fremont Street Experience LLC from. One such restriction is the restriction that street
2 performers must stay within 3 feet of a location on Fremont Street, but anyone with the Fremont
3 Street Experience LLC can perform and dance anywhere. This regulation clearly disfavors the
4 speech of Mr. Foote, and other performers like him, in order to lift up the speech of the Fremont
5 Street Experience LLC and visitors to Fremont Street.

6 Mr. Foote was cited under LVMC 11.68.107 which places an unconstitutional burden on
7 Mr. Foote's protected activity. In fact, the case report for the citation issued to Mr. Foote states
8 that Officer Guzman "observed a street performer, known as Foote." See Exhibit A at 3. Since Mr.
9 Foote was cited under a statute which promotes viewpoint discrimination or, at a minimum content
10 discrimination which cannot satisfy strict scrutiny, the citation must be dismissed.

11 **IV. Conclusion**

12 LVMC Chapter 11.68.107 facially violates the First Amendment and violates the First
13 Amendment as-applied to the citation Mr. Foote received. Should this Court decide to hang its hat
14 on the facial issues with LVMC 11.68.107 the remedy is for the ordinance to be invalidated.
15 However, should this Court instead decide to focus on Mr. Foote's as-applied challenge, the
16 remedy is for the charges against Mr. Foote to be dismissed.

17
18 Dated: April 09, 2026

19 **American Civil Liberties
20 Union of Nevada**

21 

22 JACOB T. S. VALENTINE (16324)
23 4362 W. Cheyenne Ave.
24 North Las Vegas, NV 89032
Tel.: (725) 235-3119

1 **Certificate of Electronic Service**

2 I hereby certify that service of this Motion to Dismiss Pursuant to the First Amendment
3 was hereby filed and served April 09, 2026, via email to:

- 4 • This Court by sending a copy to municourtmotions@lasvegasnevada.gov
- 5 • The City Attorney's Office by sending a copy to lvcadonotreply@lasvegasnevada.gov

6
7 

8 _____
9 Jacob T. S. Valentine
10 An employee of
11 **American Civil Liberties**
12 **Union of Nevada**

Exhibit A
Charging Document

Case # 25-57088

State of Nevada

Citation # CLV0081679

Accident #

Violation Date/Time: 10/10/2025 2309
Issue Date/Time: 10/10/2025 2315

CRIMINAL

In the Justice/Municipal Court LAS VEGAS MUNICIPAL COURT

VIOLATION(S)	
1)	MUNI/NRS 11.68.107
	NOC 55969
CITATION : 2002 UNLAWFUL ACTS-STREET PERFORMERS	
TO WIT	
FOOTE WILLFULLY AND UNLAWFULLY WAS PERFORMING OUTSIDE OF THE FSE PERFORMANCE CIRCLE	
TOTAL	
CONTACT COURT (MANDATORY COURT APPEARANCE)	

Failure to comply with this complaint or future dates relating to this complaint will constitute a separate offense

Court LAS VEGAS MUNICIPAL COURT

Address: 100 E. Clark Ave Las Vegas, NV 89101

PO Box 3950; Las Vegas, NV 89127

Phone: 702-382-6878

Website: <http://www.LasVegasNevada.gov/MunicipalCourt>

Total Bail: COURT

You are hereby ordered to appear to answer the above charges on the day and time

12/09/2025 at 1300

Court Mandatory Interpreter needed Language:

Juvenile: No	<input type="checkbox"/> School Zone	<input type="checkbox"/> Radar
Type: CRIMINAL	Grant: FSE PATROL	Confirm: Mile Marker:

PEDESTRIAN							
LAST NAME		FIRST	MIDDLE				
FOOTE JR		TONEY	LEE				
RESIDENCE ADDRESS				PHONE			
5689 RUBY CREEK DR							
EMAIL				CELL			
CITY				STATE	ZIP CODE		
LAS VEGAS				NV	89142		
DRIVER LICENSE NUMBER		DL CLASS	DL STATE	CDL			
2106986322		C	NV	No			
DOB	AGE	SEX	RACE	HEIGHT	WEIGHT	EYE	HAIR
09/15/1983	42	M	B	508	180	BRO	BLK
RESTRICTIONS			ENDORSEMENTS				

VEHICLE INFORMATION							
LICENSE PLATE		STATE	REG. EXP.		COLOR		
MAKE			MODEL		TYPE		
VIN		YEAR	CMV	HAZMAT			
TRAILER PLATE		TRAILER STATE	VEH IS TRAILER		US DOT#		
CURRENT PROOF OF INSURANCE?				INS. CARD EXP. DATE:			


REGISTERED OWNER	SAME AS SUS?: NO
NAME	
ADDRESS	
NV	

LOCATION
AT 4TH STREET
AT AT FREMONT STREET EXPERIENCE

CITED SPEED (MPH)	POSTED SPEED (MPH)	ACT. SPEED (MPH)	CASE NO.
			25-57088
CONSTR. ZONE	SCHOOL ZONE	ACCIDENT	
No	No	No	
DIR OF TRAV	BEAT/AREA	COND/WEATHER	TRAFFIC LIGHT
W	FSE	CLEAR	LIGHT
SPEED DETERMINED			ROAD
			DRY

ADDITIONAL INFORMATION		
NAME		
ADDRESS		PHONE
CITY		STATE
		NV
		ZIP CODE

PARENT INFORMATION		
NAME		
ADDRESS		PHONE
CITY		STATE
		ZIP CODE
E-MAIL		

OFFICER INFORMATION	
S. SARHAN 1579	UNIT: 3F2
I certify (or Declare) under penalty of perjury under the laws of the state of Nevada that I have reasonable grounds/probable cause to believe and do believe that above named person committed the above offense(s) contrary to law.	
Officer Signature:	
Complainant Signature:	

Without admitting having committed the above offense(s), I hereby promise to respond as directed on this notice and waive my right to be taken immediately before a magistrate (NRS 484.799 and NRS 484.803) YOU MUST APPEAR IN COURT

Defendant Signature: 

Officer Notes:

Civil or Criminal: CRIMINAL

Radar (Mov/Sta):

Stop Type: CRIMINAL

Trailer Tag:

County: CLARK

HazMat Vehicle: Yes

Workers Present: No

Suspension Date:

Laser #:

Phone:

of Occ:

Hwy Type: CONCRETE

Same as Vio: No

Attitude: COURTEOUS

HBD:

> 16 Pass: No

Trailer State:

Par Notified?: No

SSN:

Void Reason:

Opt in for text message notifications from court? No

Radar #:

Have Insurance: No

Insurance Exp:

City: LAS VEGAS

Insp Exp (MMYY):

Accident: No

Void Citation: No

Evidence?: No

Work Phone:

DL Exp: 09/15/2029

Wgt: 180

Beat: FSE PATROL

Test Type:

Drug Sus: No

Ped Sfty Zn: No

Reg Exempt: No

Tint %:

Result:

Business Name:

Business Addr.:

Address Type: Business

Business City:

State: NV

Zip:

Compl. Name:

Compl. Phone:

Compl. Address:

Compl. City:

State: NV

Zip:

Stop Info

Create Racial Profiling Info: Yes

Companion Case/Cite #:

Ethnicity: NH

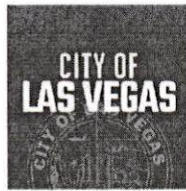
Driver Search Conducted: *NONE

Vehicle Search Conducted: *NONE

Contraband: . . .

Arrest: No

Arrest Due to Contraband: No



Case Report

Administrative

Case Report Number	25-57088-001	Assisted By	
Subject	D450A-FSE PERFORMER VIOLATION	Occurred On (Date and Time)	Friday 10/10/2025 10:56:40 PM
Reported On	10/10/2025	Location	S 4TH ST / FREMONT ST
Reporting Officer	Guzman, Sergio		

Narrative

On 10/10/25 at about 2256 hours I, Officer S. Guzman P#1329, operating as a surveillance investigator at the Fremont Street Experience, observed a street performer, known as Foote, Toney Lee (DOB 09/15/1983) throwing his hat at patrons and performing outside of the designated circle. Foote was observed multiple times performing outside the circle while also given multiple verbal warnings in the past.

I notified Officer S. Sarhan P#1579 who was operating as a marked patrol unit. Officer Sarhan made contact with Foote and conducted a records check revealing Foote had a prior for the same offense. Officer Sarhan explained to Foote the reason for the stop and issued him a citation of Unlawful Act by Street Performer, a violation of 11.68.107. Foote signed the citation without further incident.

End report.

Offense

Offense UNLAWFUL ACTS-
STREET PERFORMERS
-M

Offenders

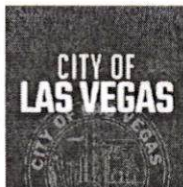
Arrestee Name: **FOOTE, TONEY LEE**

Aliases

Alias	Alias DOB	Alias SSN

Addresses

Address Type	Address	CSZ	County	Country
H - Home	5689 Ruby Creek Dr	Las Vegas, NV	Clark	USA - United States of America



[Empty input field]

Phones

Phone Type	Phone Number
------------	--------------

Emails

Email Address

Languages Spoken

Fluency	Language
---------	----------

Sex	Male	Hair Color	
Race	Black or African American	Height	
Ethnicity	Not Hispanic or Latino	Weight	
DOB	9/15/1983	Resident	Resident
Age	42	POB	
Eye Color		SSN	288-84-6393

Arrest Information

Arrest For	2002 - UNLAWFUL ACTS-STREET PERFORMERS -M - 11.68.107	Arrest Type	Cited
		Armed With	Unarmed
Arrest Number	25-57088		

Notes

Victims

Name:

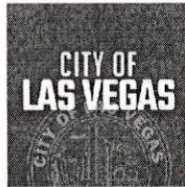
Victim Type	Society/Public
Victim of	2002 - UNLAWFUL ACTS-STREET PERFORMERS -M - 11.68.107

Aliases

Alias	Alias DOB	Alias SSN
-------	-----------	-----------

Addresses

Address Type	Address	CSZ	County	Country
--------------	---------	-----	--------	---------



Phones

Phone Type	Phone Number
------------	--------------

Emails

Email Address

Languages Spoken

Fluency	Language
---------	----------

- | | |
|------------|------------------|
| Sex | Weight |
| Race | Resident |
| Ethnicity | DLN |
| DOB | DL State |
| Age | SSN |
| Eye Color | Employer/School |
| Hair Color | Occupation/Grade |
| Height | Injury |

Offender Relationships

Offender	Relationship
----------	--------------

Witnesses

Other Entities