
**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

No. 18-15970

**CITIZENS FOR FREE SPEECH, LLC and MICHAEL SHAW,
Plaintiffs-Appellants,
v.
COUNTY OF ALAMEDA; ALAMEDA COUNTY EAST COUNTY
BOARD OF ZONING ADJUSTMENTS; FRANK J. IMHOFF,
SCOTT BEYER, and MATTHEW B. FORD, in their official
capacities as members of the Alameda County East County Board
of Zoning Adjustments,
Defendants-Appellees.**

APPELLANTS' OPENING BRIEF

**D.C. No. 4:18-cv-00834-SBA
U.S. District Court Northern District of California, Oakland**

**FRANK C. GILMORE, ESQ.
California Bar No. 283859
ROBISON, SHARP, SULLIVAN & BRUST
A Professional Corporation
71 Washington Street
Reno, Nevada 89503
Telephone: (775) 329-3151
Facsimile: (775) 329-7941
Attorneys for Plaintiffs-Appellants-
CITIZENS FOR FREE SPEECH, LLC and
MICHAEL SHAW**

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure,
Appellants state as follows:

CITIZENS FOR FREE SPEECH, LLC, does not have a parent
company and no publicly held corporation owns 10% or more of its stock.

REQUEST FOR ORAL ARGUMENT

Pursuant to Federal Rule of Appellate Procedure 34(a)(2), Appellants hereby request oral argument due to the complexity of the issues and the magnitude of the errors presented for the Court's consideration.

TABLE OF CONTENTS

CORPORATE DISCLOSURE STATEMENT	i
REQUEST FOR ORAL ARGUMENT	ii
TABLE OF AUTHORITIES	v
STATEMENT OF JURISDICTION	1
ISSUES PRESENTED FOR REVIEW	1
STATEMENT OF THE CASE	2
STATEMENT OF FACTS	3
A. <u>The Prior Action</u>	4
B. <u>The 2017 Notice to Abate and the 2018 Action</u>	9
1. <u>The County’s Abatement Procedure</u>	11
2. <u>The 2018 Action</u>	12
SUMMARY OF ARGUMENT	13
<u>ARGUMENT</u>	16
A. <u>Standard of Review</u>	16
B. <u>The District Court Committed Clear Legal Error in Analyzing and Applying Fed. R. Civ. P 13(a)</u>	17
1. <u>The Prior Action Was Not Merely a Declaratory Relief Action; Citizens Sought and Were Awarded Damages</u>	19

2.	<i><u>The County Acknowledged in the Prior Action that It Had an Intent and Motivation to Seek Abatement of the Signs; Yet, It Failed to Plead a Counterclaim Because It Preferred to Have the Issue Resolved Through a Subsequent Administrative Proceeding</u></i>	21
3.	<i><u>The County Failed To Oppose Citizens’ Contention that the 2014 Notice and 2017 Notice Arose Out of he Same Transaction, Thereby Conceding that Element of Rule 13(a)</u></i>	22
C.	<u>The District Court Incorrectly Analyzed and Applied the Doctrine of Res Judicata, Also Known as Claim Preclusion</u>	24
D.	<u>The District Court Abused Its Discretion in Concluding that Citizens Has Not Demonstrated Immediate Threatened Injury</u>	26
E.	<u>The District Court Abused Its Discretion in Concluding that, on Balance, the Public Interest Weighs Against Entering a Preliminary Injunction</u>	30
	CONCLUSION	32
	STATEMENT OF RELATED CASES	34
	CERTIFICATE OF COMPLIANCE TO FED R. APP. 32(a)(7)(C) and CIRCUIT RULE 32-1	35
	ADDENDUM	37

TABLE OF AUTHORITIES

Case Authority

<i>4805 Convoy, Inc. v. City of San Diego</i> , 183 F.3d 1108 (9th Cir. 1999)	16, 30, 31
<i>Allen v. McCurry</i> , 449 U.S. 90 (1980)	24
<i>Baby Tam & Co. v. City of Las Vegas</i> , 154 F.3d 1097 (9th Cir.1998)	28
<i>Bay Area Addiction Research & Treatment, Inc. v. City of Antioch</i> , 179 F.3d 725 (9th Cir.1999)	18
<i>Citizens for Free Speech, LLC, v. County of Alameda</i> , 114 F.Supp.3d 952 (N.D. Cal. 2015)	5, 13
<i>Clear Channel Outdoor Inc. v. City of Los Angeles</i> , 340 F.3d 810, 813 (9th Cir.2003)	17
<i>Fund for Animals, Inc. v. Lujan</i> , 962 F.2d 1391 (9th Cir.1992)	17, 18
<i>Homans v. Albuquerque</i> , 264 F.3d 1240 (10th Cir.2001)	33
<i>Local Union No. 11, Int'l Bhd. of Elec. Workers, AFL-CIO v. G. P. Thompson Elec., Inc.</i> , 363 F.2d 181 (9th Cir. 1966)	23
<i>Sammartano v. First Judicial Dist. Court</i> , 303 F.3d 959 (9th Cir. 2002)	28, 29, 32, 33
<i>Southern Const. Co. v. Pickard</i> , 371 U.S. 57 (1962)	22
<i>Sports Form, Inc. v. United Press Int'l., Inc.</i> , 686 F.2d 750 (9th Cir.1982)	18

<i>Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency</i> , 322 F.3d 1064 (9th Cir. 2003)	25, 26
<i>Twin City Fire Ins. Co. v. McBreen & Kopko LLP</i> , 847 F. Supp. 2d 1084 (N.D. Ill. 2012)	20, 21,
<i>Valle Del Sol Inc. v. Whiting</i> , 709 F.3d 808 (9th Cir. 2013)	29
<i>Walczak v. EPL Prolong, Inc.</i> , 198 F.3d 725 (9th Cir.1999).....	17, 18
<i>Winter v. Natural Res. Def. Council, Inc.</i> , 555 U.S. 7 (2008)	18, 29, 31

Statutes

Circuit Rule 3-3	3, 14
Fed. R. Civ. P. 13(a)i, 1, 2, 13, 14, 15, 16, 17, 18, 19, 20, 22, 23, 28, 33, 34	
28 U.S.C. § 1292(a)(1).....	1
28 U.S.C. § 1331	1
28 U.S.C. § 1343(a)(3)	1
42 U.S.C. § 1983	13
42 U.S.C. § 1988	13

Ordinances

Alameda County Zoning Ordinance Section 17.18.010	5
Alameda County Zoning Ordinance Section 17.18.120	5, 6, 7, 10, 15, 19
Alameda County Zoning Ordinance Section 17.52.520(A)	4, 7, 8
Chapter 17.59 of the Alameda County Ordinance Code.....	11
Alameda County Zoning Ordinance Section 17.59.030	11

Alameda County Zoning Ordinance Section 17.59.040 12

Alameda County Zoning Ordinance Section 17.59.060 12

Alameda County Zoning Ordinance Section 17.59.090 12

Alameda County Zoning Ordinance Section 17.59.100..... 12

Alameda County Zoning Ordinance Section 17.59.120..... 12

Alameda County Zoning Ordinance Section 17.59.190..... 13

STATEMENT OF JURISDICTION

The district court had jurisdiction over Appellants CITIZENS FOR FREE SPEECH, LLC and MICHAEL SHAW (collectively “Citizens”) civil rights claims under 28 U.S.C. §§ 1331 and 1343(a)(3).

This Court has jurisdiction over this appeal pursuant to 28 U.S.C. § 1292(a)(1), because this appeal concerns the denial of a motion for preliminary injunction. The district court filed its order denying Citizens’ Motion for a Preliminary Injunction on May 9, 2018. Citizens timely filed their notice of appeal on May 25, 2018.

ISSUES PRESENTED FOR REVIEW

1. In determining that Citizens’ were not likely to succeed on the merits of their claims, did the district court err by:
 - (a) failing to properly analyze and apply Fed. R. Civ. P. 13(a); and
 - (b) failing to properly analyze and apply the doctrine of claim preclusion, also known as res judicata?
2. As a result of its erroneous analysis of the likelihood of success on the merits, did the district court abuse its discretion in finding that there was no threat of irreparable injury, that the

balancing of harms favored denial of the injunction, and that the public interest did not weigh in favor of granting a preliminary injunction?

STATEMENT OF THE CASE

Plaintiffs-Appellants filed a Complaint for Civil Rights Violations against Defendants-Appellees Alameda County and members of the Alameda County East County Board of Zoning Adjustments (collectively the “County”) on February 8, 2018. Among other things, Citizens sought declaratory and injunctive relief preventing the County from utilizing the County’s administrative process to remove and demolish existing signs constructed by Citizens. On March 7, 2018, Citizens filed a Motion for Preliminary Injunction (“Motion”), contending that the County is barred from using its administrative process to abate the signs on the basis that the County was obligated to bring an abatement/nuisance counterclaim against Citizens in a 2014 action between the parties in the district court which involved the Signs and the County’s unconstitutional sign ordinance. The County failed to raise the issue in the prior litigation prior to Judgment being entered in Citizens’ favor. Because that issue could have been raised by the County in the prior action, the pending abatement procedure is

barred by Fed. R. Civ. P. 13(a), and the doctrine of res judicata.

On May 9, 2018, the district court denied the Motion without a hearing, rejecting the Rule 13(a) argument and finding that Citizens suffered no immediate harm. Citizens timely appealed the Order pursuant to Circuit Rule 3-3.

STATEMENT OF FACTS

The facts are generally not in dispute. Plaintiff/Appellant Michael Shaw is the owner of a parcel of land located at 8555 Dublin Canyon Road within the County (the “Parcel”). Excerpt of Record (hereinafter “ER”) Vol. 3, p. 209. In 2014, Plaintiff/Appellant Citizens for Free Speech, LLC, entered into an agreement with Shaw for the construction and display of billboards on the Parcel. ER Vol. 3, p. 170.

One sign, displaying on-premises commercial speech advertising for Shaw’s on-site business, has been lawfully maintained on the Parcel since the time the business commenced operations. ER Vol. 3, p. 172.

In 2014, Citizens constructed three signs and supporting structures on the Parcel per the agreement with Shaw (hereinafter the “Signs”). ER Vol. 3, p. 209. The messages displayed on the signs originally consisted wholly of noncommercial, political speech intended to challenge the

political ideology espoused by County officials. ER Vol. 3, p. 170.

Defendant/Appellee Alameda County (hereinafter “County”) has promulgated certain ordinances, known as the Alameda County Code of Ordinances (the “Code”). ER Vol. 3, p. 209. The Code purports to regulate the display of signs in unincorporated areas of the County. ER Vol. 1, pp. 109-132. Under the Code, all new advertising signs are banned within the SC. ER Vol. 2, pp. 127-132.

A. The Prior Action.

On June 1, 2014, Citizens filed suit in United States District Court for the Northern District of California (Oakland), Case No. 4:14-cv-02513, (the “Prior Action”), naming the County as defendant. ER Vol. 2, p 137. In the Prior Action, Citizens alleged that the Code’s regulation of signs violated Citizens’ rights to free speech and equal protection under the First and Fourteenth Amendments to the United States Constitution, and prayed that the County be enjoined from any and all conduct enforcing the unconstitutional Code to prohibit, encumber, or penalize Citizens’ Signs. ER Vol. 1, pp. 137-146. Citizens prayed for “actual damages according to proof at trial; For additional actual, consequential, and other special damages in an amount according to proof at trial.” ER Vol. 1, p. 146

In response to the Prior Action and the construction of the Signs, on June 11, 2014, Shaw received a “Declaration of Public Nuisance – Notice to Abate” (2014 Notice) from the Alameda County Community Development Agency Planning Commission, dated June 2, 2014, signed by Paul da Silva, Investigator of the Code Enforcement Division. ER Vol. 3, p. 171, p. 175. The 2014 Notice asserted that Shaw was in violation of “Alameda County Zoning Ordinance Section 17.18.010 and 17.18.120.” ER Vol. 3, p. 171, p. 175. The 2014 Notice ordered that the signs be removed within ten days from the postmarked date of the notice. *Id.* The 2014 Notice also threatened fines and an abatement hearing if the Signs were not removed. *Id.*

On July 16, 2015, the district court in the Prior Action entered an order denying, in part, the County’s motion for summary judgment, finding Code section 17.18.130 unconstitutionally conferred unfettered discretion in County officials. *Citizens for Free Speech, LLC, v. County of Alameda*, 114 F.Supp.3d 952, 963 (N.D. Cal. 2015). The County responded by amending the section on September 29, 2015, removing the unfettered discretion of the County officials. ER Vol. 4, pp. 237 & ER _____ [Alameda CODE 17.18.130]

In the Prior Action, both the County and Citizens argued the constitutionality and application of Code §17.18.120. ER Vol. 4, pp. 245-246. In response to Citizens’ Motion for Summary Judgment, the County contended that:

“The signs were in violation of section 17.18.120 when they were erected, and they continue to be in violation of that section. Unless plaintiffs follow the County’s procedure for seeking approval of new uses for the property, the County has an obligation to pursue abatement procedures.”

ER Vol. 4, p. 268.

Further, the County conceded that “[t]he essence of plaintiffs’ claims in [the Prior Action] is that, although the signs were in conflict with section 17.18.120, the procedure which the County had established at that time for consideration of the plaintiffs’ right to erect the signs was constitutionally deficient’ ER Vol. 4, p. 269.

The district court in the Prior Action confirmed that the County argued that Citizens violated Code §17.18.120: “County argues that it was actually section 17.18.120 . . . with which Plaintiffs failed to comply.” ER Vol. 4, pp. 245-246.

Prior to the Judgment, the County considered taking action to remove the Signs for the same reasons identified in the 2017 Notice. The district

court in the Prior Action noted that, “the County stated at the motion hearing that it is considering the removal of Citizens' signs and that the dissolution of the preliminary injunction ‘frees [it] up’ to take such action.” ER Vol. 3, p. 223.

On July 8, 2016, the district court in the Prior Action entered its order granting in part, and denying in part, Citizens’ Motion for Summary Judgment. ER Vol. 4, pp. 234-259 and ER Vol. 1, p- 34. Among other findings, the district court concluded that Citizens were entitled to summary judgment as to their “Equal Protection challenge to section 17.52.520(A) . . . because that section is content-based and cannot withstand strict scrutiny.” *Id.*

On July 8, 2016, pursuant to the success of Citizens’ equal protection claim, the district court entered its Order Granting Motion for Damages and Attorneys’ Fees in favor of Citizens (“Damages Order”). ER Vol. 4, pp. 234-259; ER Vol. 2, pp. 148-150 – Vol. 3, p. 151-165. In the Damages Order, the district court confirmed, under “the law of the circuit” that Citizens were entitled to damages and attorneys’ fees. *Id.* The district court confirmed that Citizens’ “prayer for relief in the Complaint sought, among other things, ‘actual, consequential, and other special damages in an

amount according to proof at trial’ and ‘such other and further relief as the Court deems just, equitable, and proper.’” ER Vol. 2, p 150. The district court concluded that:

“Citizens prevailed on its equal protection claim based on section 17.52.520(A), which privileged government speech over speech by private speakers, like Citizens. Accordingly, Citizens is entitled to nominal damages. The Court will award Citizens nominal damages of one dollar to acknowledge the ‘importance to organized society’ that its constitutional rights “be scrupulously observed.”

ER Vol. 3, pp. 152-153.

The district court confirmed that “The County's amendment of section 17.52.520(A) to correct the unconstitutional language favoring speech by public officials is a tangible result that Citizens achieved ‘in addition to obtaining a judgment for nominal damages.’” (citations omitted) ER Vol. 3, pp. 155-156. The district court further concluded that “the equal protection claim that Citizens prevailed upon is significant,” (ER Vol. 3, p. 156) and “the County's subsequent amendment of the section was legally significant, as it served to correct an unconstitutional ordinance dealing with both the equal protection clause and the First Amendment, important public issues. The public will (theoretically) benefit by having a constitutional zoning ordinance in place.” ER Vol. 3, pp. 156-157.

The district awarded Citizens attorneys' fees and costs. ER Vol. 3, p. 164. A final Judgment ("Judgment") was entered on March 8, 2017. ER Vol. 3, p. 166.

The County did not file a counterclaim in the Litigated Case. ER Vol. 2, pp. 133-136.

B. The 2017 Notice to Abate and the 2018 Action.

On or about October 6, 2017, Appellant Michael Shaw received a "Declaration of Public Nuisance – Notice to Abate" from the Alameda County Community Development Agency Planning Commission, dated September 28, 2017, signed by Paul da Silva, Investigator of the Code Enforcement Division, and Rodrigo Orduna, Assistant Planning Director & Code Enforcement Officer ("2017 Notice"). ER Vol. 2, p.173; Vol. 3, pp. 176-177. The 2017 Notice is substantially similar to the 2014 Notice, in that it: (1) determines that the Signs violate Code §17.18.120, (2) orders that the Signs be removed within ten days from the postmarked date of the Notice, (3) failure to cure the violations will result in monetary penalties, and (4) provides the opportunity to appeal. *Id.*

In November, 2017, Plaintiff Shaw received a "Notice of Administrative Hearing on Abatement of Nuisance" ("2017 Notice of

Hearing”) from the Alameda County Community Development Agency Planning Commission, dated November 22, 2017, and signed by Rodrigo Orduna, Code Enforcement Division. ER Vol. 3, pp. 178-179; ER Vol. 3, p. 173; ER Vol. 3, pp. 178-181. The 2017 Notice of Hearing stated that a hearing was set before the Alameda County East County Board of Zoning Adjustments (hereinafter the “Board”), to determine whether the Signs violated the Code (the “Hearing”). *Id.* The 2017 Notice of Hearing explains that if the Signs are determined to constitute public nuisance: the Signs will be abated by way of demolition of the signs and support structures; Appellant Shaw will be cited for violation of the Code; and the costs of the administrative process will be assessed to Shaw and will constitute a lien on his property until paid. ER Vol. 3, pp. 178-179; ER Vol. 3, p. 173; ER Vol. 3, pp. 178-181.

Originally set for December 7, 2017, the Hearing was postponed by stipulation, pending the resolution of Citizens’ Motion for Preliminary Injunction. ER Vol. 2, p. 168. However, the County has not agreed to suspend abatement of the Signs pending resolution of this appeal. ER Vol. 2, p. 56. Instead, the County confirmed only that it would not abate the Signs “until the conclusion of the County’s administrative proceeding.” ER

Vol. 2, p. 56. The filing of the instant Complaint has not resulted in the County's willingness to cease the administrative process to abate the Signs. *Id.*

1. *The County's Abatement Procedure.*

The County's administrative procedure for abatement of signs is contained in Chapter 17.59 of the Alameda County Ordinance Code, entitled the "Abatement Procedures." Addendum. The code provides that if an enforcement officer deems a property to constitute a nuisance, the property owner is to receive a notice to abate. §17.59.030. In the event the property owner refuses to abate the nuisance, the County shall hold a hearing before the Board. §17.59.040. The Board does not consist of judicial officers, but instead consists of citizens selected by County officials.

If, after a hearing, the Board determines that a nuisance exists, it may enter an order for abatement of the nuisance. §17.59.060. The order includes the right to appeal to the County Board of Supervisors, an elected body. §17.59.090. After a hearing held by the Board of Supervisors, a resolution may be entered setting forth the conditions of the abatement with timing requirements. §17.59.100. A property owner may appeal a Board of Supervisors order within thirty days. §17.59.120. The Abatement

Procedure does not contain a provision which permits the property owner to seek and obtain an automatic stay of the enforcement of the abatement order pending a decision from a judicial officer. The Abatement Procedure permits the County to abate a sign deemed to be a nuisance without the requirement that a judicial officer evaluate the abatement order from the Board of Supervisors.

The Abatement Procedure also provides that “Nothing in this chapter shall be deemed to prevent the Board of Supervisors from ordering the commencement of a civil proceeding to abate a public nuisance pursuant to applicable law.” §17.59.190.

2. *The 2018 Action.*

On February 2, 2018, Citizens filed a Complaint against the County and the Board members, in the case from which this appeal is derived. *Citizens for Free Speech, LLC v. Alameda County et. al.*, Case No. 18-cv-00834 SBA (the “2018 Action”). The Complaint alleges five claims pursuant to 42 U.S.C. § 1983: (1) violation of the right to free speech; (2) violation of due process; (3) violation of the right to free speech; (4) violation of the Equal Protection Clause, and (5) attorney’s fees under 42 U.S.C. § 1988. ER Vol. 3, pp. 207-215. In addition to the affirmative

claims, Citizens seek injunctive and declaratory relief that, among other things, the Hearing and abatement proceeding is barred by the doctrine of *res judicata* and Fed. R. Civ. P. 13(a). ER Vol. 3, p. 214.

Citizens filed a Motion for Preliminary Injunction (ER Vol. 3, pp. 182-206), seeking to enjoin the County from conducting the Hearing and attempting to abate the signs during the pendency of the 2018 Action. The County opposed the Motion (ER Vol. 1, pp. 83-106), and Citizens filed a Reply. ER Vol. 1, pp. 16-32. On May 9, 2018, the district court entered its Order denying the Motion. ER Vol. 1, pp. 5-15 (Doc#36). Citizens filed a timely Preliminary Injunction Appeal pursuant to Circuit Rule 3-3. ER Vol. 1, pp. 1-4.

SUMMARY OF ARGUMENT

The district court erred in denying Citizens' Motion for Preliminary Injunction ("Motion"). The district court committed clear legal error in failing to apply Rule 13(a) to bar the County's pending administrative proceeding. Known as the "Compulsory Counterclaim Rule," Rule 13(a) required the County to assert a counterclaim against Citizens in the Prior Action for any claims it had against Citizens which arose out of the transaction that was the subject matter of the Prior Action. During the

pendency of the Prior Action, the County had the opportunity and intent to seek abatement of the Signs by way of the Abatement Procedure. The subject matter of the Prior Action was entirely related to Citizens' Signs and the County's Code regulating signs. The County failed to assert a counterclaim for abatement of the nuisance prior to the Judgment being entered in Citizens' favor. Entry of the Judgment barred the pending 2018 Notice of Hearing pursuant to the Compulsory Counterclaim Rule, thereby prohibiting the County from commencing any state court or administrative action to remove the Signs.

The County did not contend to the district court in its opposition memorandum that the Hearing and abatement proceeding arises out of a different transaction than was litigated to Judgment in the Prior Action. The County has thus conceded the requisite elements of Rule 13(a). The district court did not analyze or apply the elements of Rule 13(a). Rather, the district court erroneously concluded that the Prior Action was merely a declaratory relief action to which Rule 13(a) does not apply. This was clear legal error.

The district court committed clear legal error in rejecting the application of the doctrine of res judicata to the County's pending

abatement proceeding. While the doctrine of *res judicata* ordinarily precludes litigation of claims that were *actually* litigated, it also bars litigation of claims that *could have been brought* in the prior action, but were not. The record in the Prior Action is clear that the County contended to the district court that Citizens had built their Signs in violation of Code §17.18.120, and that it intended to abate the Signs through an administrative proceeding (or state court action) once the Prior Action injunction was dissolved. Yet, even after the injunction was dissolved, the County never formally asserted the abatement claim in the Prior Action prior to Judgment. Thus, *res judicata* bars the subsequent effort by the County to relitigate the issue by way of the Hearing and the abatement process. Because the district court failed to properly apply the Compulsory Counterclaim Rule and the doctrine of *res judicata*, the district court concluded that Citizens had not shown reasonable likelihood of success on the merits.

After committing clear legal error, the district court then concluded that Citizens had not shown irreparable harm. This was an abuse of discretion. The district court's conclusions on lack of harm was derived principally by the sliding-scale *Winter* test which requires a particularly

high showing of harm where the merits of the case are shown to be lacking. This was an abuse of discretion because Citizens' claims have a high probability of success as a matter of law.

Moreover, there is genuine and immediate harm. The County has clearly evidenced its intent to abate the Signs by forceful demolition, thereby depriving Citizens of their ability to display speech. Deprivation of the ability to exercise their First Amendment rights constitutes an injury *per se*, justifying injunctive relief, particularly when the abatement procedure is barred by Rule 13(a). Moreover, where, as here, the Abatement Procedure provides for removal of the Signs without the approval of a judicial officer, injunctive relief is warranted, as provided in *4805 Convoy, Inc. v. City of San Diego*, 183 F.3d 1108, 1116 (9th Cir. 1999).

Further, the district court similarly abused its discretion in concluding that the County's interest in conducting the Hearing and abating the Signs outweighed Citizens' First Amendment rights to display speech. The district court applied the wrong test. It is the public's interest that is to be weighed, and not the parties' interests.

Finally, when weighing the hardships, the district court abused its discretion. The only hardship facing the County if an injunction were to

issue is the requirement that a judicial officer first determine whether the Hearing and Abatement Procedure is barred before forcibly removing and destroying the Signs. This hardship of delay pales in comparison to the hardship that Citizens will suffer if the County removes and destroys Citizens' Signs through an administrative process that is barred by res judicata and Rule 13(a).

ARGUMENT

A. Standard of Review

A preliminary injunction is appropriate where plaintiffs demonstrate “either: (1) a likelihood of success on the merits and the possibility of irreparable injury; or (2) that serious questions going to the merits were raised and the balance of hardships tips sharply in [their] favor.” *Clear Channel Outdoor Inc. v. City of Los Angeles*, 340 F.3d 810, 813 (9th Cir.2003) (quoting *Walczak v. EPL Prolong, Inc.*, 198 F.3d 725, 731 (9th Cir.1999)). The district court must also consider whether the public interest favors issuance of the injunction. *Fund for Animals, Inc. v. Lujan*, 962 F.2d 1391, 1400 (9th Cir.1992). The less certain the district court is of the likelihood of success on the merits, the more plaintiffs must convince the district court that the public interest and balance of hardships tip in

their favor. *Id.*

This court reviews the district court's decision to grant or deny a preliminary injunction for abuse of discretion. *Walczak v. EPL Prolong, Inc.*, 198 F.3d 725, 730 (9th Cir.1999). The district court's analysis and application of the substantive law is subject to *de novo* review and a district court abuses its discretion when it makes an error of law. *Bay Area Addiction Research & Treatment, Inc. v. City of Antioch*, 179 F.3d 725, 730 (9th Cir.1999). Thus, the district court “will be reversed only if the district court relied on an erroneous legal premise or abused its discretion.” *Sports Form, Inc. v. United Press Int'l., Inc.*, 686 F.2d 750, 752 (9th Cir.1982).

B. The District Court Committed Clear Legal Error in Analyzing and Applying Fed. R. Civ. P 13(a).

The district court denied Citizens’ Motion based on the sliding scale of the *Winter* test. *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). ER Vol. 1, p. 10 The district court concluded that Citizens had no likelihood of success on the merits of its Rule 13(a) claim. ER Vol. 1, p. 12. This was clear legal error.

Citizens contended in their Complaint (ER Vol. 3, 207-215) and in the Motion for Preliminary Injunction, that the abatement procedures commenced by the County, as evidenced by the 2017 Notice and 2017

Notice of Hearing, are barred by Fed. R. Civ. Pro. 13(a). ER Vol. 3, p. 196. Citizens alleged that the Prior Action involved the County's contention that the Signs violated §17.18.120 of the Code, and as such, the County was required to assert an abatement counterclaim in accordance with Rule 13(a). ER Vol. 3, pp. 196-199. Citizens contended that the facts that gave rise to the Prior Action are virtually identical to those on which the County now bases its administrative abatement action. *Id.* Citizens alleged that in response to the construction of the Signs, the County served the 2014 Notice, asserting violations of §17.18.120. After the Judgment was obtained in the Prior Action, the County served a subsequent notice, the 2017 Notice, which is substantially similar to the 2014 Notice, alleging that the Signs violated §17.18.120.

Accordingly, Citizens contended to the district court that the 2017 Notice "arises out of the transaction or occurrence that is the subject matter" of the Prior Action. Fed. R. Civ. P. 13(a). Citizens contended that this clearly establishes a "logical relationship" between the two sets of facts, and therefore establishes Rule 13(a) is implicated to bar any subsequent claims brought by the County after the conclusion of the Prior Action.

In response to Citizens' Rule 13(a) argument, the County did not

contend that the 2017 Notice arose from different transactions that were at issue in the Prior Action. Instead, the County argued only that Rule 13(a) does not apply to bar a subsequent administrative proceeding, and, confusingly, that res judicata bars Citizens' 13(a) argument. ER Vol. 2, pp. 96-97.

The district court did not address Citizens' contention that the 2014 Notice (which was litigated in the Prior Action) and the 2017 Notice (the subject of the pending Abatement Procedure arise from the same transaction. Without discussion of the substance of Rule 13(a), the district merely court concluded that the compulsory counterclaim rule does not apply to a subsequent action where the prior action was merely a declaratory action, because a counterclaim in a declaratory relief action "would have been superfluous," citing *Twin City Fire Ins. Co. v. McBreen & Kopko LLP*, 847 F. Supp. 2d 1084, 1088 (N.D. Ill. 2012) ER Vol. 1, p. 12. This was clear legal error.

1. *The Prior Action Was Not Merely a Declaratory Relief Action; Citizens Sought, and Were Awarded, Damages.*

The only analysis offered by the district court in rejecting Citizens' Rule 13(a) argument was that a counterclaim is unnecessary where "it is merely the flipside of a complaint for declaratory relief." ER Vol. 1, p. 12.

The district court concluded that a counterclaim was not necessary in the Prior Action “given the nature of [Citizens’] challenge.” *Id.* In reaching this conclusion, the district court erroneously concluded that the Prior Action was only a declaratory relief action. *Id.*

The case cited by the district court to support its conclusion is inapposite. In *Twin City Fire Ins. Co. v. McBreen & Kopko LLP*, an insurance company filed a purely declaratory relief action seeking a determination as to its obligation to defend its insured law firm on a claim for breach of fiduciary duty. 847 F. Supp. 2d at 1085. No damages or coercive relief were sought. The court dismissed the declaratory counterclaims of the law firm as “unnecessary” and redundant. *Id.* at 1088. This opinion and its holding has no application here.

As set forth above, the Prior Action contained First Amendment challenges to the County Code. Citizens sought damages, declaratory relief, and injunctive relief. After cross-motions for summary judgment, the district court found the Code to be unconstitutional, entering Judgment in Citizens’ favor. ER Vol. 4, pp. 234-259. Citizens were awarded nominal damages and attorneys’ fees. ER Vol, 3 pp. 216-225- Vol. 4, pp. 226-233. The Prior Action was not merely a declaratory relief action. Thus, the

district court's reliance on *Twin City* was misplaced, and the sole basis for the Court's decision has no application here.

2. *The County Acknowledged in the Prior Action that It Had an Intent and Motivation to Seek Abatement of the Signs; Yet, It Failed to Plead a Counterclaim Because It Preferred to Have the Issue Resolved Through a Subsequent Administrative Proceeding.*

The County contended in its opposition to the Motion that Rule 13(a) cannot be used to bar a subsequent administrative action, and that the County had the option to defer its administrative proceeding until after the Prior Action concluded. ER Vol. 2, p 96. This type of forum shopping is precisely the type of multiplicity that Rule 13(a) is designed to prevent.

Rule 13(a) “was designed to prevent multiplicity of actions and to achieve resolution in a single lawsuit of all disputes arising out of common matters. The Rule was particularly directed against one who failed to assert a counterclaim in one action and then instituted a second action in which that counterclaim became the basis of the complaint.” *Southern Const. Co. v. Pickard*, 371 U.S. 57, 60 (1962) (citation omitted).

The County acknowledged in its filings in the Prior Action that it maintained an intent and desire to commence an abatement proceeding to remove the Signs. ER Vol. 3, p. 223. The County explained to the district

court in the Prior Action that once the injunction was dissolved, it intended to seek abatement proceedings. *Id.* The County could have, and should have, asserted an abatement/nuisance counterclaim in the Prior Action. The County's failure to do so means that any such claim has been waived and cannot now be relitigated before an administrative tribunal. See *Local Union No. 11, Int'l Bhd. of Elec. Workers, AFL-CIO v. G. P. Thompson Elec., Inc.*, 363 F.2d 181, 184 (9th Cir. 1966) ("If a party fails to plead a compulsory counterclaim, he is held to waive it and is precluded by res judicata from ever suing upon it again."). Because the County failed to plead the claim in the Prior Action, the subsequent administrative action is barred.

3. *The County Failed To Oppose Citizens' Contention that the 2014 Notice and 2017 Notice Arose Out of the Same Transaction, Thereby Conceding that Element of Rule 13(a).*

In its opposition to the Motion, the County did not address the substance of Rule 13(a). The County did not contend that the 2014 Notice and the 2017 Notice do not arise from the same transaction or that there is not a "logical relationship" between them. Because the County failed to address this issue with the district court, the County has conceded that the 2017 Notice is based on the same transaction that the parties litigated in the

Prior Action.

C. **The District Court Incorrectly Analyzed and Applied the Doctrine of Res Judicata, Also Known as Claim Preclusion.**

Citizens contended in their Complaint and in the Motion for Preliminary Injunction that the 2017 Notice and administrative process were barred by the doctrine of res judicata, also known as claim preclusion. ER Vol. 3, pp. 194-195.

The County's administrative Hearing, as set forth in the 2017 Notice of Hearing, is barred by the doctrine of claim preclusion. "Claim preclusion," or res judicata, "bars litigation of claims that were or could have been raised in a prior action." *Holcombe v. Hosmer*, 477 F.3d 1094, 1097 (9th Cir. 2007). "Under res judicata, a final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action." *Allen v. McCurry*, 449 U.S. 90, 94 (1980) (internal citation omitted). Claim preclusion is to be widely applied: it "bars bringing claims that were previously litigated as well as claims that were never before adjudicated." *Clements v. Airport Auth. of Washoe Cty.*, 69 F.3d 321, 327 (9th Cir. 1995).

The district court correctly identified the circumstances in which res

judicata bars subsequent litigation of claims raised in prior litigation. ER Vol. 1, p. 11. The district court acknowledged that “res judicata bars relitigation not only of all grounds of recovery that were actually asserted, but also those that could have been asserted.” *Id.* (citing *Allen v. McCurry*, 449 U.S. 90, 94 (1980)). However, the district court then failed to properly apply the doctrine when it explained that the “salient question is whether the final judgment entered in the Prior Action bars the County’s current attempt to enforce its sign ordinances against [Citizens] [in the administrative proceeding].” *Id.* The district court then answered its own question by concluding that the Prior Action Judgment does not expressly enjoin the County from proceeding with the abatement proceeding. *Id.* The district court’s “salient question,” and the answer it provided, constitutes a clear legal error and misapplication of the doctrine of res judicata.

The doctrine of res judicata does not require that the final judgment in the prior case expressly resolve the subsequent claim, or that the particular claims was *actually litigated*; res judicata only requires that the subsequent claim was one that “could have been asserted,” and that a final judgment was rendered. *Clements*, 69 F.3d at 327. The County’s

abatement claim could have been asserted in the Prior Action in the form of a counterclaim, but it was not. Accordingly, res judicata bars the County's 2017 efforts to pursue it.

The district court focused on whether the final Judgment explicitly enjoined the County from pursuing its abatement proceeding. The district court concluded that the Judgment did not enjoin the County, so res judicata did not apply. The substance of the Judgment is immaterial. Whether the Judgment contained a permanent injunction prohibiting the abatement has no bearing on whether or not res judicata applies. Res judicata bars the County's abatement proceeding because it was a claim that could have – and should have – been brought in the Prior Action. The case of *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency*, 322 F.3d 1064, 1077 (9th Cir. 2003), makes this plain.

In that case, a preservation association challenged the regional planning agency's decisions related to development around Lake Tahoe. After this Court dismissed the association's various claims, the association filed a subsequent action and attempted to couch the claims in new legal theories and with different claims for relief from the prior actions. *Id.* at 1074-75. When the district court dismissed the subsequent claims, this

Court *sua sponte* raised the issue of res judicata on appeal. *Id.* at 1076-77.

This Court concluded that res judicata:

bars relitigation of all grounds of recovery that were asserted, or could have been asserted, in a previous action between the parties, where the previous action was resolved on the merits. **It is immaterial whether the claims asserted subsequent to the judgment were actually pursued in the action that led to the judgment; rather, the relevant inquiry is whether they could have been brought.**

Id. at 1078 (emphasis added).

The district court did not consider whether the abatement claim could have, or should have, been brought in the Prior Action. The district court only evaluated the substance of the Judgment, and concluded that nothing in the Judgment precluded the County from pressing forward with its abatement hearings. This was clear error. The abatement issue could have, and should have, been brought in the Prior Action.

There were no obstacles to the County bringing the abatement counterclaim in the Prior Action. First, the Code expressly permits the County to commence a civil action to seek abatement of a nuisance in lieu of administrative hearings. **Addendum _____ [§17.5.190]**. This forecloses the County's contention that its Abatement Procedures could not be litigated in a the Prior Action.

Second, the County confirmed to the district court in the Prior Action that it intended to abate the alleged nuisance: “the County stated at the motion hearing that it is considering the removal of Citizens' signs and that the dissolution of the preliminary injunction ‘frees [it] up’ to take such action.” ER Vol. 3, p 155. The County could have, and should have, raised that claim in the Prior Action. It elected not to pursue the claims in the Prior Action so that it could do so in subsequent proceedings, ignoring the preclusive effects of res judicata. This was a purely tactical decision that res judicata is intended to prevent. See Semtek Int'l Inc. v. Lockheed Martin Corp., 531 U.S. 497, 498, 121 S. Ct. 1021, 1023, 149 L. Ed. 2d 32 (2001).

Finally, it is clear that here “[i]dentity of claims exists” because the Prior Action and the 2017 Notice “arise from the same transactional nucleus of facts.” ER Vol. 3, p 155 Whether an identity of claims exists requires analysis of four factors: (1) whether the two suits arise out of the same transactional nucleus of facts; (2) whether rights or interests established in the prior judgment would be destroyed or impaired by prosecution of the second action; (3) whether the two suits involve infringement of the same right; and (4) whether substantially the same evidence is presented in the two actions. *Mpoyo v. Litton Electro-Optical*

Sys., 430 F.3d 985, 987 (9th Cir. 2005). Whether the two suits arise out of the same nucleus of transactional facts is the “central criterion” in determining whether there is an identity of claims between the first and second adjudications. *Frank v. United Airlines, Inc.*, 216 F.3d 845, 851 (9th Cir. 2001). “Whether two events are part of the same transaction or series . . . depends on whether they are related to the same set of facts and whether they could conveniently be tried together.” *W. Sys., Inc. v. Ulloa*, 958 F.2d 864, 871 (9th Cir. 1992). Here, the 2014 Notice, which was at issue in the Prior Action, seeks the same relief as the 2017 Notice. The central issue in the Prior Action was whether the Signs could be maintained in light of the unconstitutional County Code. ER Vol. 4, pp. 240 (“[Citizens] also, in their own motion, argue that they are entitled to a permanent injunction because the original section 17.18.130 was unconstitutional and the amended section 17.18.130 does not apply retroactively where [Citizens’] billboards existed prior to its enactment.”) Unquestionably, the issue of whether Citizens’ Signs constituted a nuisance appropriate for abatement could have logically been tried together with Citizens’ §1983 claims. The chapter of the Code upon which the 2014 and 2017 Notices were based -- §17.18 -- was the chapter upon which Citizens based their constitutionality challenge.

Compare ER Vol. 3, p. 175 with ER Vol. 4, p. 240. Indeed, the County continually raised the abatement issue in the Prior Action but without pleading for affirmative relief as required by Rule 13(a). Res judicata bars the County's attempt to relitigate these issues by way of the 2017 Notice of Hearing and the Abatement Procedures.

D. The District Court Abused Its Discretion in Concluding that Citizens Has Not Demonstrated Immediate Threatened Injury.

The district court determined that Citizens had not shown likelihood of success on the merits, and that “consequently, [Citizens’] showing of irreparable injury is correspondingly lacking.” ER Vol. 1, p. 14. The district court abused its discretion by concluding that Citizens does not face immediate irreparable harm if the injunction were denied.

First, it is well established that the four-prong *Winter* test presents a “sliding scale in which the required degree of irreparable harm increases as the probability of success decreases. *Sammartano v. First Judicial Dist. Court*, 303 F.3d 959, 965 (9th Cir. 2002). Thus, if Citizens “has a 100% probability of success on the merits, this alone entitles it to reversal of a district court's denial of a preliminary injunction, without regard to the balance of the hardships.” *Id.* (citing *Baby Tam & Co. v. City of Las Vegas*,

154 F.3d 1097, 1102 (9th Cir.1998)). The district court required a high showing of harm based on its assessment of the low (or zero) probability of success as to Citizens' Rule 13(a) and res judicata claims. This was an abuse of discretion because Citizens' preclusion claims are meritorious.

Second, it is well-recognized that deprivation of the right to speak "unquestionably constitutes irreparable injury." *Valle Del Sol Inc. v. Whiting*, 709 F.3d 808, 828 (9th Cir. 2013). Here, as in *Sammartano v. First Judicial Dist. Court*, 303 F.3d 959, 973 (9th Cir. 2002), "[t]he district court refused to assume the existence of this injury because it found that Appellants had not 'clearly established' that their First Amendment rights had been violated."

However, as in *Sammartano*, even if the merits of Citizens' claim were not "clearly established" at the pre-Answer stage of the litigation, Citizens' case presents "the potential for irreparable injury" by demonstrating the existence of a colorable First Amendment claim." *Id.*

Third, the district court concluded that no immediate irreparable injury was established because the County has "committed to taking no action on removing the signs until the administrative process has concluded . . ." ER Vol. 1, p. 14. This finding constitutes an abuse of

discretion. It is apparent that the County seeks to immediately abate and destroy Citizens' signs. ER Vol. 1, pp. 57-70

The County's "commitment" to which the district court referred (ER Vol.1 p.14), is an illusory commitment which provides no safeguards against immediate and improper deprivation of Citizens' rights. ER Vol. 1, p.57. The County has only committed to concluding the Abatement Procedure before it removes the Signs. However, the Abatement Procedure has no mechanism for Citizens to obtain a stay of the abatement, pending review of the process by a judicial officer. To be sure, the Abatement Procedure consists of a hearing by the County's hand-picked hearings officers who are neither legally trained nor can reasonably be expected to understand complicated legal concepts like *res judicata*. Thus, nothing contained in the County's commitment reduces the urgency for injunctive relief, because the County has not agreed to postpone abatement of the Signs pending a judicial officer's review of Citizens' claims. As a result, Citizens are facing removal of their Signs in violation of the protections afforded them in *4805 Convoy, Inc. v. City of San Diego*, 183 F.3d 1108, 1115 (9th Cir. 1999).

The Abatement Procedure merely permits Citizens the right to seek judicial review, but it does not provide for a stay of enforcement pending

judicial review. This runs afoul of the safeguards needed to “guard against undue delay that could lead to the suppression of protected speech.” *Id.*

Under the Abatement Procedure, there is no mechanism to ensure that the Signs are not abated until after a judicial officer reviews the appropriateness of the abatement. *Id.* Thus, the County’s own self-seated administrative hearings officers could order the Signs abated, and they would be abated, prior to any opportunity for judicial review. Critically, even if Citizens may be able to seek a stay of abatement in the judicial review process, this does not satisfy *Convoy*. 183 F.3d at 1116 (where “there is no guarantee of a stay” after seeking judicial review, “[t]his gives rise to the possibility of the suppression of protected expression before judicial review of the case on the merits”).

The district court erred in concluding that the “commitment” from the County to follow the Abatement Procedures adequately protects Citizens from immediate irreparable harm.

E. The District Court Abused Its Discretion in Concluding that, on Balance, the Public Interest Weighs Against Entering a Preliminary Injunction.

In determining that the public interest weighs against entry of a preliminary injunction, the district court applied the *Winter* test sliding

scale, which “view[s] public interest factors as subsumed within [the] analysis of likelihood of success on the merits, irreparable injury, and balance of hardships.” *Sanders Cty. Republican Cent. Comm. v. Bullock*, 698 F.3d 741, 749 (9th Cir. 2012). The district court concluded that Citizens had made no colorable showing as to the merits of their claims, implying that Citizens must overcome that deficiency with overwhelming weight of hardship. ER Vol. 1, p. 15. The district abused its discretion in concluding that the County’s interest in immediately abating the Signs outweighs Citizens’ interest in maintaining the Signs based on the perceived lack of merit of their claims.

It is established that “[t]he public interest inquiry primarily addresses impact on non-parties rather than parties.” *Sammartano*, 303 F.3d at 974. Thus, the district court’s direct focus on Citizens’ -- or the County’s -- interest is improper. The question is not whether Citizens’ own interest is furthered by entry of an injunction, but whether the public interest is furthered by ensuring that First Amendment injuries are not subordinated to the County’s interest in enforcing the Code. *Id.* It cannot genuinely be argued that the public’s interest in abating Signs is more pressing than protecting the public’s First Amendment freedoms. Yet, that is what the

district court appears to conclude. “Courts considering requests for preliminary injunctions have consistently recognized the significant public interest in upholding First Amendment principles.” *Id.* In this context, “the public interest is better served by . . . protecting the core First Amendment right of political expression.” *Id.* (citing *Homans v. Albuquerque*, 264 F.3d 1240, 1244 (10th Cir.2001)).

The district court also confused the public interest considerations with individual hardships to the parties in the event the injunction is entered. The district court concluded that Citizens face no hardship if the injunction is denied, because the hardship is of Citizens’ own making for maintaining illegal signs. ER Vol. 1, p. 15. This finding ignores the fact that the County’s unconstitutional Code was amended twice in response to Citizens’ successful challenges, and that the district court in the Prior Action deemed that to be “Not a De Minimus Victory” for Citizens. ER Vol. 3, pp. 153-157. Moreover, this finding ignores the fact that if the Signs are abated prior to a determination on the merits of the res judicata and Rule 13(a) challenges, Citizens will suffer an obvious and considerable hardship. On the other hand, if an injunction were to issue, and the County ultimately prevailed on the merits of the 2018 Action, then the County’s abatement

efforts will merely be delayed by the entry of an injunction. The hardship to the County in delaying the abatement of the signs pales in comparison to the hardship that will befall Citizens if the County is permitted to abate the signs before a judicial officer can rule on the merits of their res judicata, Rule 13(a), and other substantive claims.

CONCLUSION

The district court incorrectly applied the doctrine of res judicata and Rule 13(a) to determine that Citizens had no reasonable probability of success. This was clear legal error. That legal error was compounded by the abuse of discretion in finding Citizens faced no immediate injury and that a balancing of the hardships and public interest favored the County. Citizens respectfully request this Court reverse the Order of the district court, and remand this case with instructions to enter the preliminary injunction.

DATED: This 26th day of June, 2018.

ROBISON, SHARP, SULLIVAN & BRUST
A Professional Corporation
71 Washington Street
Reno, Nevada 89503

/s/ Frank C. Gilmore
FRANK C. GILMORE – California Bar No. 283859

Attorneys for Plaintiffs-Appellants- CITIZENS FOR
FREE SPEECH, LLC and MICHAEL SHAW

STATEMENT OF RELATED CASES

Plaintiff/Appellant is not aware of any related cases currently pending in this Court.

DATED: This 26th day of June, 2018.

ROBISON, SHARP, SULLIVAN & BRUST
A Professional Corporation
71 Washington Street
Reno, Nevada 89503

/s/ Frank C. Gilmore
FRANK C. GILMORE – California Bar No. 283859
Attorneys for Plaintiffs-Appellants- CITIZENS FOR
FREE SPEECH, LLC and MICHAEL SHAW

**CERTIFICATE OF COMPLIANCE TO
FED R. APP. 32(a)(7)(C) and CIRCUIT RULE 32-1**

I certify that, pursuant to Fed. R. App. 32(a)(7)(C) and Ninth Circuit Rule 32-1, the attached Opening Brief is proportionately spaced with a typeface of 14 points or more, in Georgia font, generated in the MICROSOFT WORD processing software and contains approximately words.

DATED: This 26th day of June, 2018.

ROBISON, SHARP, SULLIVAN & BRUST
A Professional Corporation
71 Washington Street
Reno, Nevada 89503

/s/ Frank C. Gilmore
FRANK C. GILMORE – California Bar No. 283859
Attorneys for Plaintiffs-Appellants- CITIZENS FOR
FREE SPEECH, LLC and MICHAEL SHAW

ADDENDUM

ADDENDUM

TABLE OF CONTENTS

Alameda County Ordinance Code, Title 7, Chapter 17.18 Add. 1

CERTIFICATE OF SERVICE

**U.S. Court of Appeal Docket:
No. 12-17102**

I hereby certify that I am an employee of Robison, Sharp, Sullivan & Brust and that on this date I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

All participants in the case are registered CM/ECF users and will be served by the appellate CM/ECF system.

DATED: This 26th day of June, 2018

/s/ Mary Carroll Davis
MARY CARROLL DAVIS