

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

JAN 24 2011

GENERAL ORDER RE: EXPRESSIVE ACTIVITY

NOTICE TO ALL PERSONS ENTERING COURTHOUSES IN LOS ANGELES

John A. Clark, Executive Officer/Clerk
Gloria A. Pedregon
GLORIA A. PEDREGON, Deputy

It is the purpose and intent of the Court in issuing this General Order to ensure the safe and orderly use of court facilities; to minimize activities which unreasonably disrupt, interrupt, or interfere with the orderly and peaceable conduct of court business in a neutral forum free of actual or perceived partiality, bias, prejudice, or favoritism; to provide for the fair and orderly conduct of hearings and trials; to promote the free flow of pedestrian and vehicular traffic on sidewalks and streets around court facilities; and to maintain proper judicial decorum.

The Court further issues this General Order to facilitate safe, peaceful, and orderly public access to courthouses unhindered by threats, confrontation, interference, noise pollution or harassment that may be directed at court users including but not limited to those court users waiting in line outside a courthouse.

The Court intends this General Order to be enforced in a content-neutral fashion. The Order regulates only conduct occurring in and around court facilities without regard to the content of any particular message, idea or form of speech. The Court does not intend to ban all expressive activities from the environs surrounding court facilities and intends that this Order be construed so as to provide for ample alternative channels for communication of information near but not within court facilities nor on courthouse grounds. (See *Comfort v. MacLaughlin* (C.D. Cal. 2006) 473 F.Supp.2d 1026).

The Court hereby orders:

attached

I. Demonstrations, Distributions, Solicitation and Other Expressive Activity

A. The following definitions apply to this Section.

1. "Prohibited Activity" shall mean the acts of demonstrating, picketing, parading, proselytizing or preaching, distributing literature or other materials to the general public, soliciting sales or donations, engaging in commercial activity unless otherwise authorized by this Order or the Court, or engaging in oral or demonstrative protest, education or counseling.
2. "Walkway" shall mean (a) the area of any corridor or sidewalk, or other path of pedestrian movement, directly from the edge of the public sidewalk nearest an entrance to any building containing a courtroom to that entrance; (b) the area of any corridor or sidewalk leading directly from any parking lot within a curtilage to an entrance to any building containing a courtroom; or (c) a corridor or passageway within a multi-purpose, commercial, or private building that leads directly to the part of the building containing a courtroom.
3. "Curtilage" shall mean the area between any building containing a courtroom and the nearest edge of the public sidewalk surrounding the building. It shall not include the area adjacent to that portion of a multi-purpose, commercial or private building that does not contain a courtroom.
4. "Courthouse" shall mean any building containing at least one courtroom. It shall also include that portion of a multi-purpose, commercial or private building that contains at least one courtroom.

B. Prohibitions

1. No person shall engage in any prohibited activity within a courthouse.
2. No person shall engage in any prohibited activity within the curtilage of a courthouse.
3. No person shall engage in any prohibited activity within 25 feet from either side of, or in front of, the intersection of a walkway and the public sidewalk; or within 25 feet from either side of, or in front of, a doorway to a courthouse.
4. No person shall obstruct, harass, impede or interfere with persons entering or leaving a courthouse, or with persons waiting in line to enter a courthouse.

5. No person shall approach another person waiting in line to enter a courthouse, within 8 feet of such person, unless such other person consents, for the purpose of engaging in any prohibited activity.
6. No person shall engage in any prohibited activity in or near a courthouse with the intent to interfere with, obstruct, or impede the administration of justice or with the intent to influence any judge, juror, witness, or officer of the court in the discharge of his or her duty.
7. No person shall use amplification equipment to engage in prohibited activity in a manner that harasses or interferes with persons entering or leaving a courthouse, or with persons waiting in line to enter a courthouse.

C. Exclusions

1. This Order shall not apply to authorized court personnel or law enforcement officers in the performance of their official duties.
2. Sections I(B)(1), (2), and (3) shall not apply to individuals engaged in the stationary solicitation of sales as part of any commercial, primarily non-expressive activity (including but not limited to the sale of newspapers, reading materials, sundries or food stuffs) that is expressly authorized by a written space permit, license, agreement, or lease from the County or the Court or the Administrative Office of the Courts or other owner of a building containing a courtroom authorizing that activity in a specific space not dedicated to court functions.

D. Severability Clause

If any provision of this Order or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the Order and the application of such provision to other persons and circumstances shall not be affected thereby.

E. Delegation

To the extent the terms of this Order do not accomplish its stated purpose at a courthouse, on delegation by the Presiding Judge, the Supervising Judge responsible for that courthouse is hereby authorized to issue an order to accomplish the stated purpose of this Order.

- ii. **Compliance with Law Enforcement.** While on or in the premises of any courthouse, all persons are ordered to comply with the lawful requests, directions and orders of any law enforcement officers and their agents in the performance of their duties.
- iii. **Posting and Service of Order.** This Order shall be posted at each public entrance to a courthouse; and at such other places that will reasonably provide notice of this Order to persons entering such courthouse. The Sheriff of Los Angeles County and his or her deputies and their agents are directed to serve a copy of this Order personally on any person who appears to be in violation thereof, to advise such person of the apparent violation, and, if the apparent violation continues after such notice, to immediately notify the Court's Director of Security, Court Counsel, or Site Judge responsible for that courthouse, as may be available in that order, so that the Court can determine whether proceedings should be initiated to ensure compliance with this Order. This Order shall not preclude any law enforcement officer from taking appropriate steps to ensure the orderly and peaceable conduct of court business at a courthouse.
- iv. **Penalties.** Violation of this Order may result in the imposition of sanctions in amounts of up to \$1,500 per violation pursuant to Code of Civil Procedure section 177.5 and/or prosecution for criminal violations.

IT IS SO ORDERED this 24th day of February 24, 2011.



Lee Smalley Edmon
 LEE SMALLEY EDMON, Presiding Judge

Untitled

COMFORT v. MACLAUGHLIN
473 F.Supp.2d 1026 (2006)
Ray COMFORT, et al. Plaintiffs,
v.
William A. MACLAUGHLIN, et al. Defendants.
No. CV 05 7393 RSWL JWJX.
United States District Court, C.D. California.

May 9, 2006.

Benjamin W. Bull, Alliance Defense Fund, Scottsdale, AZ, J. Michael Johnson, Alliance Defense Fund, Shreveport, LA, Kevin Theriot, Alliance Defense Fund, Leawood, KS, Robert H. Tyler, Advocates for Faith and Freedom, Temecula, CA, Timothy D. Chandler, Alliance Defense Fund, Folsom, CA, for Plaintiffs.
Blake J. Lawit, Steven L. Mayer, Howard Rice Nemerovski Canady Falk And Rabkin, San Francisco, CA, for Defendants.

[473 F.Supp.2d 1028]

ORDER DENYING PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION
LEW, District Judge.

Currently before the Court is Plaintiffs Ray Comfort and Emeal Zwyane ("Plaintiffs") motion for a preliminary injunction. Pursuant to Rule 78 of the Federal Rules of Civil Procedure and Central District Local Rule 7-15, this Court took the motion under submission. After considering the materials filed in this matter, the Court now FINDS AND RULES AS FOLLOWS:

In order to show that a preliminary injunction is appropriate, Plaintiffs must demonstrate either a combination of probable success on the merits and the possibility of irreparable harm, or that serious questions are raised and that the balance of hardships tips in their favor. *A & M Records v. Napster, Inc.*, 239 F.3d 1004, 1013 (9th Cir.2001). These two alternatives represent extremes of one continuum, rather than separate tests. *Sun Micro-systems, Inc. v. Microsoft Corp.*, 188 F.3d 1115, 1119 (9th Cir.1999).

In order to determine whether Plaintiffs can demonstrate a probability of success on the merits of their First Amendment claim, the Court must begin its inquiry by determining the nature of the relevant forum, in this case, the grounds of the Bellflower Courthouse ("Courthouse").

Plaintiffs argue that because the Courthouse grounds share many characteristics with a public park – the Courthouse is surrounded by a large grassy area where members of the public convene – that the Courthouse grounds, like a public park, are "undeniably a traditional public forum."

But, as the Supreme Court has noted, the mere physical characteristics of a property cannot dictate forum analysis. *United States v. Kokinda*, 497 U.S. 720, 727, 110 S.Ct. 3115, 111 L.Ed.2d 571 (1990). Instead, the Court must consider whether the forum has been traditionally made available for speech, whether the primary purpose of the forum is for expressive activity, and finally, the extent to which speech is incompatible with the usual functioning of the forum. See *id.*

Unlike traditional public fora, courthouses, including the Bellflower Courthouse, are not areas that traditionally have been made available for public assembly and debate. Nor is the primary purpose of the Bellflower Courthouse to provide a platform for members of the public to espouse their views. The purpose of the Courthouse, rather, is the impartial and efficient administration of justice under the law. Given the traditional function of courthouses in general and the Bellflower Courthouse in particular, the Court finds that the Bellflower Courthouse grounds are a non-public forum.¹

In a non-public forum, the government can control access so long as the regulations used to do so are reasonable in light of the purpose served by the forum and are viewpoint neutral. *Cornelius v. NAACP Legal Defense & Educ. Fund*,

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Inc., 473 U.S. 788, 806, 105 S.Ct. 3439, 87 L.Ed.2d 567 (1985). The government is not required to choose the least restrictive alternative, it need only choose one that reasonably fulfills a legitimate and demonstrated need. *Swanner v. United States*, 937 F.2d 1478, 1482-83 (9th Cir.1991).

Plaintiffs assert that the restriction on speech in this case is unreasonable because it is overly broad and unnecessary to achieve the stated goals of neutrality and orderly access to the Courthouse. There is, however, no argument that these stated goals are legitimate – the question is merely whether the means to achieve them are reasonable.

The Court finds that the regulation on speech is not an unreasonable means to ensure the legitimate interest of ensuring the safe and orderly access to the Courthouse. Given the large number of individuals that appear at the Bellflower Courthouse on a daily basis, the presence of protestors, demonstrators, solicitors, or proselytizers on Courthouse walkways and near Courthouse doors poses obvious impediments to access. See *Kokinda*, 497 U.S. at 733-34, 110 S.Ct. 3115. Even if a more narrowly tailored Order could be drawn, in a non-public forum the government is only required to adopt reasonable regulations, not the "most reasonable or the only reasonable" regulation possible. *Cornelius*, 473 U.S. at 808, 105 S.Ct. 3439.

Because the restriction in this case is targeted towards behavior that would impede free access to the Courthouse, the Court finds that the General Order is reasonable in light of the purposes of the forum.

In addition, the General Order also reasonably serves another important governmental interest – preservation of a forum that is free of actual or perceived partiality. As it applies to this case, the General Order reasonably ensures that members of the public will not perceive the courts as endorsing Plaintiffs' faith above that of any other faith.

In light of the legitimate interest of the Courthouse to safeguard access to the building and to ensure that the Court is free of actual or perceived impartiality, and the fact that the prohibited activities impede these goals, the Court finds that the prohibition on speech at issue in this case does not appear to be unreasonable. Accordingly, Plaintiffs have not demonstrated a likelihood of success on this portion of their claim.

In addition to the reasonableness challenge, Plaintiffs argue that the General Order is unconstitutional because it is void for vagueness and acts as a prior restraint.

The Court finds that the Plaintiffs' likelihood of success on either of these claims is dubious. First, in regard to the void for vagueness challenge, it does not appear that a person of ordinary intelligence would not understand what activity is prohibited, nor does it appear likely that the General Order authorizes or encourages arbitrary enforcement. As for the prior restraint argument, the permitting scheme involved for the sale of concessions on Courthouse grounds is not governed by the courts or the General Order, but by the Los Angeles County Code. Moreover, the permitting arrangement apparently involves non-expressive activity. Altogether, each of the grounds that Plaintiffs assert as a basis for a preliminary injunction do not appear to have a strong likelihood of success.

Nor does it appear that Plaintiffs are suffering irreparable injury or that the balance of hardships tips in their favor. Because Plaintiffs' First Amendment claim is unlikely to succeed, the Court does not find that the prohibition on speech is currently causing an irreparable injury to Plaintiffs. When this interest in [473 F.Supp.2d 1030]

free expression is compared with the strong interest in ensuring that the Bellflower Courthouse is free from actual or perceived partiality, and is safely and easily accessible to the members of the public that have business there, it does not appear that the balance of hardships tips in Plaintiffs' favor.

For these reasons, Plaintiffs' request for a preliminary injunction is DENIED.

IT IS SO ORDERED.

Footnotes

1. Indeed, the Court is aware of no instance in which another court has found that courthouse grounds constitute a public forum. See *United States v. Grace*, 461 U.S. 171, 103 S.Ct. 1702, 75 L.Ed.2d 736 (1983); *Huminski v. Corsones*, 396 F.3d 53 (2d Cir.2005); *Sammartano v. First Judicial Dist. Court*, 303 F.3d 959, 966 (9th Cir.2002); *Pouillon v. City of Owosso*, 206 F.3d 711 (6th Cir.2000). While Plaintiffs cite *Grider v. Abramson* to support the position that courthouse grounds are a public

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forum, the parties in that case stipulated to that conclusion and the Sixth Circuit did not conduct a forum analysis in that case. 180 F.3d 739, 748 n. 11 (6th Cir.1999).
