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CENTRAL DISTRICT OF CALIFORNIA
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

RAY COMFORT, et al.)
)
Plaintiffs,)
)
v.)
)
WILLIAM A. MACLAUGHLIN, et)
al.)
)
Defendants.)

CV 05-7393-RSWL (JWJx)

ORDER DENYING
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION

THIS CONSTITUTES NOTICE OF ENTRY
AS REQUIRED BY FRCP, RULE 77(d).

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

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1 combination of probable success on the merits and the
2 possibility of irreparable harm, or that serious questions
3 are raised and that the balance of hardships tips in their
4 favor. A&M Records v. Napster, Inc., 239 F.3d 1004, 1013
5 (9th Cir. 2001). These two alternatives represent extremes
6 of one continuum, rather than separate tests. Sun
7 Microsystems, Inc. v. Microsoft Corp., 188 F.3d 1115, 1119
8 (9th Cir. 1999).

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

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

20 But, as the Supreme Court has noted, the mere physical
21 characteristics of a property cannot dictate forum analysis.
22 United States v. Kokinda, 497 U.S. 720, 727 (1990).

23 Instead, the Court must consider whether the forum has been
24 traditionally made available for speech, whether the primary
25 purpose of the forum is for expressive activity, and
26 finally, the extent to which speech is incompatible with the

1 usual functioning of the forum. See id.

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

13 In a non-public forum, the government can control
14 access so long as the regulations used to do so are
15 reasonable in light of the purpose served by the forum and
16 are viewpoint neutral. Cornelius v. NAACP Legal Defense &
17 Educ. Fund, Inc., 473 U.S. 788, 806 (1985). The government
18 is not required to choose the least restrictive alternative,
19 it need only choose one that reasonably fulfills a
20 legitimate and demonstrated need. Swarner v. United States,
21 937 F.2d 1478, 1482-83 (9th Cir. 1991).

22
23 ¹Indeed, the Court is aware of no instance in which another court
24 has found that courthouse grounds constitute a public forum. See
25 United States v. Grace, 461 U.S. 171 (1983); Huminski v. Corsones, 396
26 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 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).

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

8 The Court finds that the regulation on speech is not an
9 unreasonable means to ensure the legitimate interest of
10 ensuring the safe and orderly access to the Courthouse.
11 Given the large number of individuals that appear at the
12 Bellflower Courthouse on a daily basis, the presence of
13 protestors, demonstrators, solicitors, or proselytizers on
14 Courthouse walkways and near Courthouse doors poses obvious
15 impediments to access. See Kokinda, 497 U.S. at 733-34.
16 Even if a more narrowly tailored Order could be drawn, in a
17 non-public forum the government is only required to adopt
18 reasonable regulations, not the "most reasonable or the only
19 reasonable" regulation possible. Cornelius, 473 U.S. at
20 808.

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

25 In addition, the General Order also reasonably serves
26 another important governmental interest - preservation of a

1 forum that is free of actual or perceived partiality. As it
2 applies to this case, the General Order reasonably ensures
3 that members of the public will not perceive the courts
4 endorsing Plaintiffs faith above that of any other faith.

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

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

16 The Court finds that the Plaintiffs likelihood of
17 success on either of these claims is dubious. First, in
18 regard to the void for vagueness challenge, it does not
19 appear that a person of ordinary intelligence would not
20 understand what activity is prohibited, nor does it appear
21 likely that the General Order authorizes or encourages
22 arbitrary enforcement. As for the prior restraint argument,
23 the permitting scheme involved for the sale of concessions
24 on Courthouse grounds is not governed by the courts or the
25 General Order, but by the Los Angeles County Code.
26 Moreover, the permitting arrangement apparently involves

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1 non-expressive activity.

2 Altogether, each of the grounds that Plaintiffs assert
3 as a basis for a preliminary injunction do not appear to
4 have a strong likelihood of success.

5 Nor does it appear that Plaintiffs are suffering
6 irreparable injury or that the balance of hardships tips in
7 their favor. Because Plaintiffs' First Amendment claim is
8 unlikely to succeed, the Court does not find that the
9 prohibition on speech is currently causing an irreparable
10 injury to Plaintiffs. When this interest in free expression
11 is compared with the strong interest in ensuring that the
12 Bellflower Courthouse is free from actual or perceived
13 partiality, and is safely and easily accessible to the
14 members of the public that have business there, it does not
15 appear that the balance of hardships tips in Plaintiffs
16 favor.

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

19 **IT IS SO ORDERED.**

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21 DATED: May 9, 2006

RONALD S.W. LEW

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23 **RONALD S.W. LEW**
United States District Judge

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