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an unincorporated association

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

BRUCE BOYER, individually and on behalf of SONS OF LIBERTY LA, an unincorporated association,)	Case No.: CV12-04005 GAF (FFMx)
)	
Plaintiffs,)	MEMORANDUM OF POINTS AND
)	AUTHORITIES IN SUPPORT OF EX
vs.)	PARTE APPLICATION FOR
)	TEMPORARY RESTRAINING
CITY OF LOS ANGELES,)	ORDER AND FOR ORDER TO
)	SHOW CAUSE RE PRELIMINARY
Defendant.)	INJUNCTION
)	
)	
)	
)	

Plaintiffs BRUCE BOYER, individually and on behalf of SONS OF
LIBERTY LA, an unincorporated association, submit the following points and
authorities in support of their application for a Temporary Restraining Order and
an Order to Show Cause re Preliminary Injunction:

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1 The plaintiffs in this action seek the Court’s assistance in obtaining the
2 opportunity to exercise their rights of free speech, expression and assembly under
3 the First Amendment of the Constitution without threat of arrest or other chilling
4 impositions by the City of Los Angeles. The case arises from an ongoing
5 difference of opinion between the City and the plaintiffs concerning the wisdom,
6 propriety and legality of the City’s annual Gun Buy Back events. The plaintiffs
7 do not seek by this action to interfere with or to halt the City’s Gun Buy Back
8 program; they seek only the opportunity to be present, to convey to others their
9 opposition to and criticism of the Buy Backs, and to offer alternatives to those
10 who wish to dispose of firearms at those events. In prior years, the City has
11 arrested or threatened to arrest plaintiffs’ representatives merely for their being
12 present at Gun Buy Back sites and attempting to speak with or otherwise
13 communicate to others present. Although plaintiffs have attempted to obtain
14 permission to appear and comment on Gun Buy Backs scheduled for this coming
15 Saturday, May 12, 2012, the City and its representatives have refused to grant
16 permission and refused to provide any assurance that the plaintiffs will not be
17 arrested if they attempt to exercise their First Amendment rights.

18
19 **Summary of Facts**

20 The facts underlying this suit and this application for equitable and
21 injunctive orders are contained primarily in the Declaration of plaintiff Bruce
22 Boyer. That declaration demonstrates the following:

23 Plaintiff Bruce Boyer is a resident of the County of Los Angeles and the
24 founder and self-styled “Chief Instigator” of the unincorporated advocacy group
25 “Sons of Liberty LA.” Declaration of Bruce Boyer [“DECL”], ¶2. Sons of Liberty

1 LA seeks to advance individual liberty and Constitutional rights, with a particular
2 focus on the rights preserved by the First, Second and Fourth Amendments. *Id.*
3 Sons of Liberty LA seeks in part to advance and vindicate Constitutional rights
4 through the vigorous exercise of those rights in public.

5 Since at least 2009, the City of Los Angeles has sponsored and conducted a
6 series of “Gun Buy Back” events. DECL, ¶3 [first of that number, at p. 2]. At a
7 Gun Buy Back, members of the public are invited to come to a designated
8 location at a designated date and time for the purpose of turning over possession
9 and ownership of firearms. In exchange for the surrender of these weapons, the
10 City presents the participants with “gift cards” in a stated sum usable for
11 purchases at area merchants. *Id.* Those presenting firearms to the City can and do
12 do so anonymously, “no questions asked.” The City does not inquire how or
13 where the weapon came into the participants’ possession, whether they are the
14 weapons’ legal owners, whether the legal owner has granted permission to
15 relinquish the gun, whether there is any illegality in the past history of the
16 firearm, and so on. After the firearms have been collected, the Los Angeles Police
17 Department—which has overall responsibility for running the event—makes only
18 enough inquiry in to the weapon’s provenance to determine whether it has been
19 reported lost or stolen. Those firearms that are not to be returned to their true
20 owners are to be destroyed. *Id.* The City holds out the Gun Buy Back as an
21 exercise in public safety—in the form of “getting guns off our streets”—and
22 elected and appointed civic officials attend and associate themselves with the
23 presumed aura of public service that surrounds the event.

24 The members of Sons of Liberty LA do not hold as favorable a view of the
25 Gun Buy Back process as does the City. To the contrary, they consider gun buy

1 backs an unwise procedure as a matter of policy, and one that provides mere
2 “window dressing” without actually contributing to greater public safety. They
3 also question the legality of many aspects of the gun buy back process. See
4 DECL, ¶3 [second of that number, at p. 3]. For these reasons, Sons of Liberty LA
5 is opposed to the City’s Gun Buy Back events.

6 Sons of Liberty LA is not in a position to bring about the end of the City’s
7 Gun Buy Back events, and it does not seek to do so in this case. What Sons of
8 Liberty LA should be in a position to do, what it has in the past attempted to do,
9 and what it seeks to obtain a meaningful opportunity to do with the Court’s
10 assistance, is to attend Gun Buy Back events for the purpose of *expressing* its
11 opposition and seeking to persuade members of the public that there are
12 preferable alternatives to these events. Beginning in 2010, Sons of Liberty LA
13 began attempting to engage in political speech activity at and in the vicinity of
14 Gun Buy Back events, only to be met with threats of force and possible arrest by
15 the City’s representatives. DECL, ¶¶4-5. Members of Sons of Liberty LA,
16 including plaintiff Boyer, have gone to the locations at which Gun Buy Back events
17 are being conducted and, by means of signs, flyers, slogans on t-shirts and, where
18 possible, direct conversation with other attendees, have attempted to
19 communicate their criticisms of the City’s policies and to offer information
20 whereby those who might otherwise surrender a gun to the City for a mere \$100
21 gift card might instead be directed to a fully licensed firearms dealer willing to
22 purchase the same firearms for a potentially substantially larger amount. DECL,
23 ¶4. Sons of Liberty LA has, in 2010, 2011, and again in 2012, sought to obtain
24 specific permission from the City, but has consistently been rebuffed in that
25 attempt. The City has not offered anything but a blanket prohibition on plaintiffs’

1 speech activity, such as procedures that would operate as a content-neutral “time,
2 place and manner” restriction. DECL, ¶5.

3 Plaintiff Bruce Boyer was himself arrested at the 2010 Gun Buy Back in
4 Hollywood, within mere moments of walking on to the site and before he could
5 even attempt to engage in communication with any willing listeners he might
6 have found. DECL, ¶¶6-7. The arrest was specified to be for a violation of
7 California Penal Code §602(o)(1), a provision having no possible application to
8 Boyer’s case: the statute makes it a misdemeanor to remain on property *after*
9 being requested to leave by a peace officer *who has been requested by the*
10 *property owner* to accomplish the removal.¹ None of those conditions applied in
11 Boyer’s case: he was not asked to leave prior to his arrest, and no property owner
12 requested that he should be. After arrest, and a search of his vehicle two block
13 away, Boyer was not charged with violation of the statute under which he had
14 been arrested. He was instead charged with misdemeanor “interference” with the
15
16

17 ¹ Penal Code §602(o)(1) provides, in relevant part:

18 Except as provided in subdivision (u), subdivision (v),
19 subdivision (x), and section 602.8, every person who willfully
20 commits a trespass by any of the following acts is guilty of a
21 misdemeanor:

22 ***

23 (o) Refusing or failing to leave land, real property, or
24 structures belonging to or lawfully occupied by another and not open
25 to the general public, upon being requested to leave by (1) a peace
officer at the request of the owner, the owner’s agent, or the person
in lawful possession, and upon being informed by the peace officer
that he or she is acting at the request of the owner, the owner’s agent,
or the person in lawful possession

1 officers—he did not resist his arrest in any way—and with violation of a general
2 ordinance governing the “erection” of signs. DECL, ¶7. Boyer was convicted of
3 violation of the sign ordinance, because he was found to be responsible for a
4 trailer, licensed by the California Department of Motor Vehicles, that was legally
5 parked in a location visible from the Gun Buy Back site; the trailer carried a
6 banner on behalf of Sons of Liberty LA. In short, Boyer was ultimately convicted
7 precisely *because* of his efforts to engage in speech activity in the vicinity of the
8 Gun Buy Back event.

9 Further attempts to participate and comment upon Gun Buy Back events in
10 2011 did not result in any arrests, but only because Sons of Liberty LA members
11 left those events *under threat of* arrest. DECL, ¶¶8-9. Characterizing Sons of
12 Liberty LA as “solicitors,” based upon the plaintiffs’ intent to propose that Gun
13 Buy Back participants sell their firearms elsewhere, a member of the Los Angeles
14 Police Commission urged the Police Department to “insure they are not present”
15 at future events. DECL, ¶8. Boyer was personally threatened with arrest at an
16 event in 2011 if he so much as “opened his mouth.” DECL, ¶9.

17 This year’s Gun Buy Back date and locations were first announced on
18 April 24, 2012. In the period of two weeks prior to the commencement of this
19 action, Boyer and Sons of Liberty LA again attempted to obtain the City’s
20 permission to be present and to engage in speech activities in the immediate
21 vicinity of this year’s Gun Buy Back events, which will occur on Saturday, May
22 12, 2012. DECL, ¶¶10-11. Boyer has been informed by Los Angeles Police
23 Detective Tompkins, the LAPD Officer with overall charge of the Gun Buy Back
24 events, has declined either to affirmatively grant permission for Sons of Liberty
25 LA members or to give any assurances that their presence, let alone any attempt

1 to communicate their views with others present, will not result in arrest. DECL.
 2 ¶¶12-13. The City has not proposed any arrangement by which Sons of Liberty
 3 LA can engage in speech activity anywhere near a Gun Buy Back site, even
 4 subject to controls over the time, place or manner of that activity. Plaintiffs are
 5 left with no “middle ground”: either they can appear and subject themselves to the
 6 risk of arrest merely by that appearance or they must seek safety in absence and
 7 silence. DECL. ¶14.

8 9 *Legal Argument*

10 *I. Deprivation of Speech Rights Under the First Amendment,* 11 *Even Temporarily, is a Significant and Irreparable Harm* 12 *Warranting Equitable Relief by Restraining Order or* 13 *Injunction*

14 At the heart of this case is the plaintiffs’ right to speak and to be heard on
 15 issues of significant public importance and controversy: gun control, public
 16 safety, and the scope and implementation of the rights surrounding firearms that
 17 are guaranteed by the Second Amendment to the Constitution. The plaintiffs and
 18 the City of Los Angeles do not see eye to eye on these issues. In particular, the
 19 City has adopted a policy of encouraging the voluntary relinquishment of firearms
 20 in exchange for gift cards at its annual gun Buy Back events, a policy with which
 21 the plaintiffs disagree citing questions concerning its wisdom as public policy and
 22 the legality of the City’s chosen procedures. For the past several years, plaintiffs
 23 have attempted to attend Gun Buy Back events in order to *express* their
 24 disagreement with the City’s policies. The plaintiffs have not sought to prevent or
 25 to interfere with the orderly, safe conduct of the events. Rather, plaintiffs have

1 sought merely the opportunity to *speak to* and *communicate with* those members
2 of the public who attend the Gun Buy Back events, the opportunity to express
3 plaintiff's disagreement and the opportunity to provide any willing listeners
4 among the public attendees with information concerning alternatives to the Gun
5 Buy Back program. The plaintiffs' efforts have been met by the City with threats
6 of arrest and similarly blunt and chilling action. Plaintiff Bruce Boyer was
7 personally arrested at the May, 2010, Gun Buy Back event, on a supposed
8 violation of anti-trespassing laws; he was never charged under those laws (which
9 were inapplicable on their face to his situation) but was subsequently convicted of
10 a misdemeanor *for having control of a sign*, i.e., a fundamentally communicative
11 device, in the vicinity. Boyer and other members of Sons of Liberty LA have
12 been threatened repeatedly with arrest simply for being present and for seeking to
13 communicate with others at Gun Buy Back events.

14 Injunctive relief is authorized, in appropriate cases, by Fed.R.Civ.P. 65.
15 The required showing in support of an injunction or restraining order has been
16 summarized by the Ninth Circuit as follows:

17 In *Martin v. International Olympic Committee*, 740 F.2d 670
18 (9th Cir. 1984), we described the legal standard a district court must
19 apply in exercising its discretion [to grant injunctive relief]:

20 'In this circuit, a party seeking preliminary injunctive relief
21 must meet one of two tests. Under the first, a court may issue a
22 preliminary injunction if it finds that:

23 "(1) the [moving party] will suffer irreparable injury if
24 injunctive relief is not granted, (2) the [moving party] will probably
25 prevail on the merits, (3) in balancing the equities, the [non-moving

1 party] will not be harmed more than [the moving party] is helped by
2 the injunction, and (4) granting the injunction is in the public
3 interest.”

4 ‘Alternatively, a court may issue a preliminary injunction if
5 the moving party demonstrates *either* a combination of probable
6 success on the merits and the possibility of irreparable injury *or* that
7 serious questions are raised and the balance of hardships tips sharply
8 in his favor. Under this last part of the alternative test, even if the
9 balance of hardship tips decidedly in favor of the moving party, it
10 must be shown as an irreducible minimum that there is a fair chance
11 of success on the merits. . . .’

12 *Id.* at 674-75 (internal quotations and citations omitted)

13 (emphasis in original).

14 *Stanley v. University of Southern California*, 13 F.3d 1313, 1320 (9th Cir. 1994);
15 accord: *S.O.C., Inc. v. County of Clark*, 152 F.3d 1136, 1142 (9th Cir. 1998),
16 citing *Gilder v. PGA Tour, Inc.*, 936 F.2d 417, 422 (9th Cir. 1991).

17 First Amendment rights of speech, expression and assembly are
18 fundamental among Constitutional rights, and interference with those rights is
19 presumed to be irreparable.

20 No further showing of irreparable injury is necessary when the
21 moving party has shown a probable violation of constitutional rights.

22 ***In First Amendment cases, the presumption in favor of irreparable***
23 ***harm is particularly strong***, as ‘[t]he loss of First Amendment
24 freedoms, for even minimal periods of time, unquestionably
25

1 constitutes irreparable injury’ for purposes of the issuance of a
2 preliminary injunction.

3 *Bible Club v. Placentia-Yorba Linda Sch. Dist.*, 573 F.Supp.2d 1291, 1300 (C.D.
4 Cal. 2008), citing *Elrod v. Burns*, 427 U.S. 347, 373, 96 S.Ct. 2673, 49 L.Ed.2d
5 547 (1976).

6 Here, extra urgency warrants issuance of a temporary restraining order, as
7 the window for the exercise of plaintiffs’ speech rights is so limited: plaintiffs
8 seek to attend and to comment upon an event that has traditionally occurred only
9 once a year and which is scheduled to occur within approximately 48 hours of
10 this application.² Once the window of opportunity to address *this year’s*
11 participants is closed, it cannot be reopened. One cannot exercise the same right
12 of free speech twice: the loss of the right to engage in speech *here* and *now*
13 cannot be remedied by some different speech activity later. Thus, to the extent
14 plaintiffs can demonstrate that the City is impinging upon their First Amendment
15 rights, injunctive action by this Court is the most appropriate and effectual
16 remedy.

22 ² The occurrence and scheduling of the 2012 Gun Buy Back events was not
23 announced by the City until April 24, 2012. In the time prior to the filing of the
24 Complaint, plaintiffs have attempted to obtain relief by direct application to the
25 City and by negotiation with City representatives. Only when those efforts failed,
with only limited time remaining, did the plaintiffs turn to this Court for relief.
See DECL, ¶¶12-13.

1 ***II. The City's Refusal to Permit Attendance and Participation***
2 ***on Any Terms, Its Threats to Arrest Plaintiffs, and Its***
3 ***Refusal to Offer Any Proposal of Conditions Under Which***
4 ***Plaintiffs Can Exercise Their Rights in Conjunction With***
5 ***the Gun Buy Back Events is a Continuing Violation of***
6 ***Plaintiffs' Constitutional Rights That Can and Should Be***
7 ***Remedied by Immediate Issuance of a Restraining Order***
8 ***Applicable to the Buy Back Events Scheduled for May 12,***
9 ***2012, and by Requiring the City to Show Cause Why a***
10 ***Preliminary Injunction Should Not Issue to Protect***
11 ***Plaintiffs' Rights During the Pendency of This Litigation***

12 The past actions of the City targeting the plaintiffs have been driven by an
13 intent to silence them. At least one City official is on record disdainfully referring
14 to Sons of Liberty LA as "solicitors" and requesting that action be taken for the
15 specific purpose of seeing to it that they are "not present." The City's hostility
16 toward plaintiffs is specifically triggered by the plaintiffs' substantive
17 disagreement with the City's policies. The City's purpose is to eliminate that
18 agreement by doing what is necessary to prevent plaintiffs' view point from being
19 heard. The City's actions, and the City's refusal to provide *any* opportunity under
20 *any* conditions for plaintiffs to speak at the time and place in which that speech is
21 more pertinent is a plain restriction on the rights of freedom of speech and
22 expression under the First Amendment.

23 "“When the Government restricts speech, the Government bears the burden
24 of proving the constitutionality of its actions.’ *United States v. Playboy Entm’t*
25 *Grp., Inc.*, 529 U.S. 803, 816, 120 S.Ct. 1878, 146 L.Ed.2d 865 (2000).” *Comite*

1 *de Jornaleros de Redondo Beach v. City of Redondo Beach*, 657 F.3d 936, 944
2 (9th Cir. 2011, *en banc*). The City has, to date, offered no such justification. Its
3 actions, driven by a particularized animus toward plaintiffs' views, opinions and
4 message, cannot withstand even cursory constitutional scrutiny.

5 Content-based regulations are presumptively unconstitutional.

6 *See R.A.V. v. City of St. Paul*, 505 U.S. 377, 382, 112 S.Ct. 2538,
7 120 L.Ed.2d 305 (1992). Content-based regulations pass
8 constitutional muster only if they are the ***least restrictive means to***
9 ***further a compelling interest***. *See Sable Communs. of Cal. v.*

10 *F.C.C.*, 492 U.S. 115, 126, 109 S.Ct. 2829, 106 L.Ed.2d 93 (1989).

11 *S.O.C., Inc. v. County of Clark*, 152 F.3d 1136, 1145 (9th Cir. 1998) ["S.O.C."],
12 emphasis added. No compelling interest has been identified by the City, and a
13 blanket prohibition on plaintiffs' message can hardly be considered the "least
14 restrictive means" of advancing such an interest, if one were shown to exist.

15 It may be suggested by the City that restrictions on plaintiffs' activities can
16 be justified in the name of safety, and no doubt there is a colorable rationale for
17 requiring reasonable measures in the vicinity of firearms. Stopping
18 communication altogether, even at a distance from the spot at which possession of
19 firearms is being transferred, is still not the least restrictive means to accomplish
20 that end, assuming it is deemed to be "compelling."

21 The blanket threat of arrest also cannot be justified by the City as a
22 reasonable "time, place and manner" restriction. Such limitations on speech may
23 be constitutionally permissible if they are *content-neutral*—i.e., not targeted
24 against plaintiffs because plaintiffs espouse their particular points of view—and
25 only within reasonable limits.

1 Under the time, place and manner standard, government
2 imposed restrictions on protected speech are ‘valid if they (1) are
3 ***content-neutral***; (2) are ***narrowly tailored*** to serve a significant
4 government interest; and (3) ***leave open ample alternative channels***
5 of communication.’ *One World One Family Now v. City and County*
6 *of Honolulu*, 76 F.3d 1009, 1012 (9th Cir. 1996) (citing *Rock Against*
7 *Racism*, 491 U.S. at 790, *cert. denied*, 519 U.S. 1009, 117 S.Ct. 554,
8 136 L.Ed.2d 403 (1996)).

9 A speech restriction is content-neutral if it is ‘justified without
10 reference to the content of the regulated speech.’ *Clark v. Cmty. For*
11 *Creative Non-Violence*, 468 U.S. 288, 293, 104 S.Ct. 3065, 82
12 L.Ed.2d 221 (1984).

13 *S.O.C.*, *supra*, 152 F.3d at p. 1145, italics original, boldface added.

14 The City cannot credibly or reasonably claim that the content of plaintiffs’
15 message is not its primary concern. City officials are on record as wishing that
16 plaintiffs’ particular message should not be heard. Even if it could offer a content-
17 neutral rationale for establishing conditions on plaintiffs’ presence, the City has to
18 date not proposed or agreed to *any* conditions under which it will allow
19 meaningful communications between Sons of Liberty LA and prospective Gun
20 Buy Back sellers/participants. Having established no standard at all, the City is
21 not able to argue that its restrictions on plaintiffs satisfy the “time, place and
22 manner standard.”

1 **Conclusion**

2 Because the City refuses either to specify the conditions under which it will
 3 choose to arrest plaintiffs or to define a meaningful range of speech activities that
 4 plaintiffs can engage in *without* the fear of arrest, plaintiffs have been and will
 5 remain deeply chilled in the exercise of their free speech rights, put to the choice
 6 of saying nothing or of speaking and risking being branded as criminals. This is
 7 not a constitutionally sound or satisfactory arrangement.

8 Plaintiffs have a plain right to attempt to be heard concerning the City's
 9 Gun Buy Back event and alternatives to the policies embodied by that event.
 10 Plaintiffs can only exercise that right under these circumstances if the Court
 11 provides a directive to the City, in the form of a Temporary Restraining Order,
 12 concerning plaintiffs' rights to speak and be heard at this Saturday's Gun Buy
 13 Back events. There are compelling reasons for the Court to act to preserve and
 14 protect these fundamental rights. Plaintiffs request that the Court act by granting
 15 this application, by issuing the proposed Temporary Restraining Order and by
 16 scheduling hearing on an Order to Show Cause why a longer-term preliminary
 17 injunction should not be issued in this case.

18
 19 DATED: May 9, 2012

Respectfully submitted,

20 WALLACE. BROWN & SCHWARTZ

21
 22 _____
 23 by GEORGE M. WALLACE
 24 Attorneys for Plaintiffs BRUCE BOYER,
 25 individually and on behalf of SONS OF
 LIBERTY LA, an unincorporated
 association