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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 12-04005 GAF (FFMx)	Date	May 11, 2012
Title	Bruce Boyer v. City of Los Angeles		

Present: The Honorable	GARY ALLEN FEES	
Renee Fisher	None	N/A
Deputy Clerk	Court Reporter / Recorder	Tape No.
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:	
None	None	

Proceedings: (In Chambers)

ORDER RE: EX PARTE APPLICATION FOR TEMPORARY RESTRAINING ORDER

**I.
INTRODUCTION**

Plaintiff Bruce Boyer, individually and on behalf of the “Sons of Liberty LA” (the “Sons of Liberty”), brings this action against the City of Los Angeles (“the City”), alleging that the City has prevented him and other members of the Sons of Liberty from accessing its “Gun Buy Back” events held annually at various locations around Los Angeles. (Docket No. 1, Compl. ¶ 4.) Boyer now moves for an order restraining the City from preventing him and members of the Sons of Liberty LA from gaining access to such an event taking place on Saturday, May 12, 2012. (Docket No. 4.) For the reasons set forth below, the application is **DENIED**.

**II.
BACKGROUND**

Plaintiffs allege that, beginning in or around 2009, the City, under the auspices of the Office of the Mayor and the Los Angeles Police Department (“LAPD”) has sponsored and conducted a series of “Gun Buy Back” events, in which members of the public are invited to come to identified locations and to transfer possession of one or more firearms to the City, “no questions asked,” in return for gift cards usable at various merchants. (Compl. ¶ 4.)¹ These

¹ All allegations contained in Plaintiffs’ complaint, filed on May 8, 2012, are repeated in near identical fashion in Plaintiff Boyer’s declaration filed in support of the pending application for a temporary restraining

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events are typically held in mid-May, at various locations in Los Angeles. (Id.) According to Plaintiffs, the City's stated practice is to check each surrendered firearm to determine whether it can be identified as lost or stolen, and for the LAPD to destroy any and all other firearms received. (Id.)

Plaintiffs believe that these events "are unwise as a matter of public policy, [and] that the events and the manner in which firearms are handled at and disposed of following these events may be unlawful." (Id. ¶ 5.) In particular, Plaintiffs believe that "the policy underlying Gun Buy Back Events – encouraging citizens to disarm – is counterproductive to the goal of heightening public safety, that rather than destroying surrendered firearms the more prudent policy would be to see to it that those firearms are lawfully and safely transferred to citizens who can and will use them for their personal safety, and that the Gun Buy Back program is counter to the individual right to bear arms confirmed by the Second Amendment to the Constitution." (Id.)

To express these views concerning Gun Buy Back events, Plaintiffs have, since 2010, appeared in the vicinity of these events and attempted to communicate an opposing viewpoint to participants, and to "offer those persons arriving with firearms an alternative means of disposing of them." (Id. ¶ 6.) In particular, Plaintiffs "offer[] information and assistance so that those who wish to do so can instead present firearms to duly licensed firearms dealers for valuation and sale, frequently for sums substantially in excess of the nominal amounts being proffered via gift cards by the City." (Id. ¶ 7.) Plaintiffs allege that "the City has consistently and persistently taken measures to prevent the attendance, assembly, and speech activities of Plaintiffs, by methods including refusing access to the event and its vicinity, and the direct threat of unauthorized arrest by officers of the LAPD." (Id. ¶ 6.) For instance, Boyer alleges that he was arrested for trespass at a 2010 Gun Buy Back event in Hollywood, "as he attempted to enter the event site on foot, through its designated entrance, and to converse with participants." (Id.) Plaintiffs also allege that other members of the Sons of Liberty "have been threatened with arrest without cause merely for being near an event site . . ." (Id.) Plaintiffs allege that the City has characterized them as "solicitors," and that, following the 2010 Gun Buy Back event, "Commissioner Skobin [has] instructed the [LAPD] to look into the legality of the solicitors and ensure they are not present for the next Buy Back event." (Id.)

Following the announcement of the Gun Buy Back event to be held on May 12, 2012, Plaintiffs contacted City representatives and sought to obtain permission to be present at or immediately adjacent to the scheduled event, "so that they may participate meaningfully and

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have a fair opportunity to communicate with attendees, to convey their point of view on the law and policy surrounding the events, and to convey information concerning alternatives to the surrender of firearms to the City.” (*Id.* ¶ 8.) The Office of the Mayor deferred to the LAPD, and Detective Tompkins of the LAPD “has declined to permit or authorize access, stating that the only members of the public permitted entry are those who are arriving with one or more firearms to transfer or surrender.” (*Id.*) Plaintiffs allege that this statement “is not precisely true, as the Department also permits entry to elected and appointed officials, the invitees and guests of such officials, and media representatives.” (*Id.*) Plaintiffs allege that “Detective Tompkins has further conveyed that [they] and other members of the public are prohibited from adjacent sidewalk areas.” (*Id.*) Although Tompkins claims that signs will be permissible, Plaintiffs allege that “past experience is to the contrary,” as Boyer was convicted of a misdemeanor under the general “sign ordinance” provisions of the Los Angeles Municipal Code based only on having a sign at the 2010 Hollywood Gun Buy Back event. (*Id.*) Plaintiffs allege that Tompkins informed them that “there is no written policy for the conduct of the Gun Buy Back event, and that operation of the event lies entirely within the discretion of the [LAPD].” (*Id.*)

In their application for a temporary restraining order, Plaintiffs seek an order permitting the following:

- a. That plaintiffs may be present at the event site(s) and enter the event site(s) for purposes of communicating with other attendees/participants;
- b. That plaintiffs be permitted to speak with other attendees/participants at the event site(s) who are willing to hear from plaintiffs concerning the wisdom or legality of the Gun Buy Back event;
- c. That plaintiffs be permitted to communicate with other attendees/participants who are willing to hear from plaintiffs concerning alternatives to turning in firearms to the City, including opportunities to dispose of firearms through lawful sale through a licensed firearms dealer in compliance with governing state and federal law;
- d. That plaintiffs be permitted to erect and display signs at the event site(s) conveying plaintiff’s point of view and communicating to attendees/participants and others then present concerning alternatives to participation on the Gun Buy Back;
- e. That the communication of plaintiffs’ views to other willing attendees/participants be permitted prior to those attendees/participants surrendering firearms to the City.

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(App. at 2.) Plaintiffs allege that they “seek only a meaningful opportunity to convey, to any willing listener, [their] point of view concerning the Gun Buy Back and alternative means by which attendees can safely and lawfully dispose of unwanted firearms.” (Compl. ¶ 8.)

In their opposition to the application, the City avers that it “will not prevent Plaintiffs from expressing and communicating their views in areas that have not been restricted to those persons who are turning in firearms and City personnel involved in the operation of the program.” (Docket No. 10, Opp. at 2.) Rather, the City characterizes the dispute as “center[ing] on Plaintiffs’ demand for access to the area immediate to where the firearms are being removed from the vehicles and rendered safe by police officers.” (*Id.*) According to the City, at previous buyback programs, people have turned in defective and unsafe firearms, unstable ammunition, and even explosives. (Docket No. 10-1, Declaration of Richard Tompkins (“Tompkins Decl.”) ¶ 9.) Accordingly, “for obvious safety reasons,” the City contends that “access to the area where firearms are being surrendered must be restricted.” (Opp. at 3.)

Pointing to the group’s website, the City characterizes Plaintiffs “true motivation [as] not to protect their rights, but to interfere with the operation of the program and ‘slow down the line to a crawl, [so that] people will leave to go to the gun stores!’” (*Id.* at 3) (citing Declaration of Carlos De La Guerra (De La Guerra Decl.), Ex. 1[Sons of Liberty News].) Defendants note that the Plaintiffs’ website solicits “ropers,” “hagglers” and “blockers” whose “sole purpose is to cause lengthy delays in hopes of persuading program participants to take their guns to gun stores associated with plaintiffs.” (*Id.*) “Ropers” are paid “depending on the ‘deal’ the gun is purchased for” and Plaintiffs “want to make sure that every roper gets a ‘pick of the litter’ gun for their work.” (*Id.*) The City claims that, “as further evidence that Plaintiffs are merely seeking to redirect program participants to gun stores, Plaintiffs are soliciting investors to buy up to \$240,000 worth of guns to resell for \$480,000-\$720,000.” (*Id.*)

Defendants aver that six locations in Los Angeles have been selected for the gun buyback event on May 12, 2012. (Tompkins Decl. ¶¶ 5–6.) One will be conducted on state-owned property, four will be conducted on private property, and the sixth will be held at the Los Angeles Fire Department training center, which, although public property, is limited to City personnel and persons there for Fire Department business purposes. (De La Guerra Decl. ¶ 5.) According to Detective Tompkins and the City Attorney’s office, Plaintiffs will have the opportunity to exercise their First Amendment rights on the public sidewalks or other public areas immediately adjacent to the gun buyback locations, subject only to “very reasonable” restrictions. (Tompkins Decl. ¶ 11.) In particular, the City Attorney’s office has informed Plaintiffs, through their counsel, that they will be able to [1] verbally express their views; [2] carry signs or wear signs on their person; [3] wear t-shirts or other clothing with slogans

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containing their message; and [4] hand out flyers to pedestrians or persons in vehicles in line to enter the gun buyback locations. (*Id.*; Docket No. 10-3, Declaration of Debra L. Gonzales (“Gonzales Decl.”) ¶ 4.) According to Tompkins, the only limitations on Plaintiffs will be that they will not be able to [1] enter the roadway and create a traffic hazard; [2] impede the movement of vehicles in line to enter the gun buyback program locations; and [3] not violate any Los Angeles municipal code provisions or state laws such as the California Penal or Vehicle Codes. (*Id.*)

**III.
DISCUSSION**

A. LEGAL STANDARD FOR ISSUANCE OF A TEMPORARY RESTRAINING ORDER

The standard for a temporary restraining order is identical to the standard for a preliminary injunction. *Frontline Med. Assocs., Inc. v. Coventry Healthcare Workers Comp., Inc.*, 620 F. Supp. 2d 1109, 1110 (C.D. Cal. 2009) (citing *Lockheed Missile & Space Co. v. Hughes Aircraft Co.*, 887 F. Supp. 1320, 1323 (N.D. Cal. 1995)). A plaintiff seeking preliminary relief must establish “[1] that he is likely to succeed on the merits, [2] that he is likely to suffer irreparable harm in the absence of preliminary relief, [3] that the balance of equities tips in his favor, and [4] that an injunction is in the public interest.” *Doe v. Reed*, 586 F.3d 671, 676 (9th Cir. 2009) (quoting *Winter v. Natural Res. Def. Council, Inc.*, 129 S. Ct. 365, 374 (2008)). The elements of this test are “balanced, so that a stronger showing of one element may offset a weaker showing of another.” *Alliance for Wild Rockies v. Cottrell*, 622 F.3d 1045, 1049–50 (9th Cir. 2010). Thus, a court may grant temporary relief where a plaintiff demonstrates “that serious questions going to the merits were raised and the balance of hardships tips sharply in the plaintiff’s favor.” *Id.* at 1052 (internal quotations omitted).

B. APPLICATION TO PLAINTIFFS’ APPLICATION

The Court concludes that the application should be denied because Plaintiffs cannot establish a likelihood of success on the merits. In light of the City’s guarantee that Plaintiffs and other citizens will be permitted to express their views on sidewalks and other areas adjacent to the gun buyback events, the Court finds that the restrictions placed on entrance to the actual buyback events are clearly consistent with the Supreme Court’s First Amendment jurisprudence.

“[T]he [Supreme] Court has adopted a forum analysis as a means of determining when the Government’s interest in limiting the use of its property to its intended purpose outweighs the interest of those wishing to use the property for other purposes.” *Cornelius v. NAACP Legal*

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Defense and Educational Fund, Inc., 472 U.S. 788, 800 (1985). Government-owned property may be designated “as either a traditional public forum, a designated public forum, or a nonpublic forum.” International Society for Krishna Consciousness, Inc. v. Lee, 505 U.S. 672, 694 (1992). “The mere physical characteristics of the property cannot dictate forum analysis.” United States v. Kokinda, 497 U.S. 720, 727 (1990). Rather, the Supreme Court has looked to such factors as whether or not the forum has been traditionally made available for speech, the primary purpose of the forum, and to the extent to which speech is compatible with the forum’s usual functioning. Id.

Traditional public forums are limited to “public property which have as a principal purpose the free exchange of ideas,” as “evidenced by a long-standing historical practice of permitting speech.” Krishna Consciousness, 505 U.S. at 694 (internal citations and quotation marks omitted). Designated forums “consist of property which the government intends to open for public discourse.” Id. “All other types of property are, in the Court’s view, nonpublic forums (in other words, not public forums), and government-imposed restrictions of speech in these places will be upheld so long as reasonable and viewpoint neutral.” Id. Indeed, the First Amendment “does not guarantee access to property simply because it is owned or controlled by the government.” Perry Educ. Ass’n v. Perry Local Educators’ Ass’n, 460 U.S. 37, 46 (1983) (quoting United States Postal Service v. Council of Greenburgh Civic Associations, 453 U.S. 114, 129 (1981)). Rather, “the state may reserve the forum for its intended purposes, communicative or otherwise, as long as the regulation on speech is reasonable and not an effort to suppress expression merely because public officials oppose the speaker’s view.” Id. “[T]he State, no less than a private owner of property, has power to preserve the property under its control for the use to which it is lawfully dedicated.” Greenburgh Civic Associations, 453 U.S. at 129–130.

In this case, Plaintiffs have presented no evidence that any of the six locations being used for gun buyback events have ever had as their “principle purpose the free exchange of ideas,” or that the government intends to open any of these forums for public discourse. The only evidence offered on the matter is the City’s, which avers that the programs will take place at six locations around the City of Los Angeles: one will be conducted on state-owned property, four will be conducted on private property, and the sixth will be held at the Los Angeles Fire Department training center, which, although public property, is limited to City personnel and persons there for Fire Department business purposes. (Tompkins Decl. ¶ 5; De La Guerra Decl. ¶ 5.) The City avers, and Plaintiffs do not contradict, that the sole purpose of the gun buyback program is for the City to receive voluntarily surrendered firearms in exchange for a gift card. The Court thus finds that these locations all constitute non-public forums.

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Accordingly, the restrictions placed on Plaintiffs' expressive activity on the property where the gun buyback events are being held are constitutional so long as they are reasonable and "viewpoint neutral." The City contends that it has a need to restrict access to the area where firearms are actually being surrendered "in order to ensure the safety of the citizens participating in the gun buyback program and the City employees and officials staffing the event." (Opp. at 5; Tompkins Decl. ¶ 9.) At previous buyback events, according to the City, people have turned in defective and unsafe firearms, unstable ammunition and even explosives. (Tompkins Decl. ¶ 9.) Accordingly, "for obvious safety reasons," the City contends that "access to the area where the firearms are being surrendered must be restricted." (Opp. at 3.) The City also asserts an interest in "limiting its potential liability for any injuries to persons it invites onto the properties." (*Id.* at 5; Tompkins Decl. ¶ 8.) Thus, the City contends that it needs to "strictly limit entry to those individuals who want to participate in the program and those few others that the City has determined are necessary for the successful operation of the program." (*Id.*)

The Court finds that these restrictions are both reasonable and neutral as to the speakers' viewpoint. The City is merely restricting access to the buyback events based on whether or not a person plans to participate in the exchange program. Plaintiffs have presented no evidence that the City has ever discriminated, or plans to discriminate on the basis of the content of their or any other citizens' speech. Given that the City has a substantial interest in ensuring that these events are run safely and smoothly, particularly in light of the weapons that are necessarily handled at such events, restricting access to those participating is reasonable.

Moreover, although the requirement that the government "leave open ample alternative channels for communication" is applicable only to public fora, Kokinda, 497 U.S. at 738, the City has satisfied that requirement here. The City has communicated to Plaintiffs that they will have the opportunity to exercise their First Amendment rights on the public sidewalks or other public areas immediately adjacent to the gun buyback locations. In particular, Plaintiffs will be able to [1] verbally express their views; [2] carry signs or wear signs on their person; [3] wear t-shirts or other clothing with slogans containing their message; and [4] hand out flyers to pedestrians or persons in vehicles in line to enter the gun buyback locations. (Tompkins Decl. ¶ 11; Gonzales Decl. ¶ 4.)

Accordingly, based on the evidence before the Court, and a review of the relevant authorities, the Court finds that the Plaintiffs cannot demonstrate a likelihood of success on the merits. The application is therefore **DENIED**.

**IV.
CONCLUSION**

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Based on the foregoing discussion, Plaintiffs' application for a temporary restraining order is **DENIED**.

IT IS SO ORDERED.