

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

STAND UP AMERICA NOW,
WAYNE SAPP, and
PASTOR TERRY JONES

Plaintiffs,

v.

Case No. 2:12-cv-11471-DPH-MAR

Judge Denise Page Hood

Magistrate Judge Mark A. Randon

CITY OF DEARBORN and RONALD HADDAD,
Chief of Police for the City of Dearborn Police
Department,

Defendants.

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**PLAINTIFFS' NOTICE OF MOTION AND EMERGENCY MOTION FOR
TEMPORARY RESTRAINING ORDER & BRIEF IN SUPPORT**

PLEASE TAKE NOTICE that at the earliest possible time for the court to hear this motion, Plaintiffs Stand Up America Now, Wayne Sapp, and Terry Jones, by and through their undersigned counsel, will and hereby does move the court for a Temporary Restraining Order

pursuant to Fed. R. Civ. P. 65 and LR 65.1 in order to prevent immediate irreparable injury to Plaintiffs' fundamental rights and interests.

In support of their motion, Plaintiffs rely upon the pleadings and papers of record, as well as their brief filed with this motion, and the declaration and exhibits attached hereto. For the reasons set forth more fully below, Plaintiffs hereby request that this court temporarily enjoin the enforcement of Defendants' "Free Speech Restriction," which violates Plaintiffs' rights guaranteed by the First Amendment to the United States Constitution.

1. The purpose for a TRO in this case is to permit Plaintiffs to engage in their lawful, peaceful, non-obstructive speech activity, which includes discussing issues pertinent to their Christian faith and handing out religious literature, in an area designated and open to the public in the City of Dearborn on Saturday, April 7, 2012.

2. Plaintiffs have planned for this upcoming opportunity to speak in public, exercising their First Amendment rights to Free Speech and Free Assembly.

3. Plaintiffs first applied for a "Special Events Permit and Application" on February 17, 2012. The Defendants replied in their letters dated March 13, 2012, March 26, 2012 and March 28, 2012, by stating that Plaintiffs would be granted a permit with the prior free speech restraint if they sign the Defendants' "Hold Harmless" agreement.

4. The "Hold Harmless" agreement imposes an unconstitutional restraint upon the Plaintiffs' rights.

5. Plaintiffs request a TRO that would permit them to engage in their lawful speech Activity without being forced to sign the "Hold Harmless" agreement. Plaintiffs do not seek to trespass nor engage in disorderly or any other criminal conduct.

6. Contrary to Defendants' claim, the Defendants' "Hold Harmless" agreement does nothing to promote safety within the City of Dearborn. Instead, the "Hold Harmless" agreement is a cost shifting mechanism that seeks to make the Plaintiffs pay for their constitutional rights.

7. Should this court issue the requested TRO, Defendants' interest in maintaining safety and order in their community would remain fully protected by existing law.

8. Defendants' free speech restriction, as demonstrated further below, violates Plaintiffs' First Amendment rights and causes irreparable harm sufficient to justify immediate injunctive relief.

9. This TRO request requires immediate attention because the Plaintiffs speaking engagement is scheduled to commence Saturday, April 7, 2012.

10. If Plaintiffs are not permitted to engage in their lawful speech activity during this time, they will be irreparably harmed.

11. Plaintiffs, individually and through counsel, have made attempts to resolve this matter prior to seeking this TRO. Plaintiffs have been in continuous email contact with Lt. Robinson and Cpl. Danak of the City of Dearborn Police Department upon first learning of the City's prior restraint on their constitutional rights on March 13, 2012.

12. On March 30, 2012, Cpl. Danak left a voice mail stating that the Chief of Police would approve the Plaintiffs' Special Events permit upon receiving the Plaintiffs' signed "Hold Harmless" agreement.

13. The Plaintiffs responded by e-mail on March 30, 2012 stating that they wanted to speak on April 7, 2012 and requested that the Defendants waive the requirement to sign the "Hold Harmless" agreement.

14. As a result of this exchange, Plaintiffs sought counsel with the Thomas More Law Center. Plaintiffs instructed the Defendants to contact their legal representation directly.

15. Ms. Laurie Ellerbrake from the City's Department of Law called the Thomas More Law Center to discuss the legal issues.

16. The next business day on April 2, 2012, the Thomas More Law Center called Ms. Ellerbrake and left two phone messages.

17. On April 3, 2012, Ms. Ellerbrake emailed the Thomas More Law Center who promptly responded to their email and asked her to call to discuss the case. The Thomas More Law Center informed Ms. Ellerbrake that if they could not come to a resolution, a motion for a TRO would be filed with the court.

18. On April 3, 2012, Plaintiffs personally served Defendant City of Dearborn with the complaint.

19. On April 4, 2012, Plaintiffs personally served Defendant Ronald Haddad with the complaint.

20. On April 4, 2012 Ms. Ellerbrake spoke with the Thomas More Law Center, and no agreement pertaining to the TRO was reached.

21. With the limited amount of time before April 7, 2012 and the minimal likelihood that the Defendants will be able to reach concurrence with the Plaintiffs prior to this Saturday, Plaintiffs had no choice but to seek this TRO with the court.

22. Plaintiffs' counsel will provide notice of this TRO request by sending a copy of this motion and brief to the Corporation Counsel for the City of Dearborn (Department of Law) via facsimile at (313) 943-2469. The phone number for the Department of Law is (313) 943-2035.

ISSUE PRESENTED

I. Whether denying Plaintiffs access to a traditional public forum for the purpose of engaging in peaceful, non-obstructive speech activity causes irreparable harm sufficient to warrant injunctive relief.

CONTROLLING AUTHORITY

Forsyth County v. Nationalist Movement, 505 U.S. 123 (U.S. 1992)

Elrod v. Burns, 427 U.S. 347 (1976)

BREIF IN SUPPORT OF EMERGENCY TRO MOTION

RELEVANT FACTS

Plaintiffs Wayne Sapp and Terry Jones are the founders of Stand Up America Now, a religious organization incorporated under the laws of Florida and is located in Gainesville, Florida. (Sapp Decl. at ¶ 1). Plaintiff Wayne Sapp is a Christian minister with a deeply-held religious conviction to evangelize non-Christians. Plaintiff Wayne Sapp believes that evangelizing and public speaking is an important aspect of exercising his religious beliefs and vocation. (Sapp Decl. at ¶ 2). Plaintiffs Wayne Sapp and Terry Jones established Stand Up America Now to help in proclaiming the Holy Bible of Jesus Christ to Muslims and educating people about the threat of Sharia law to the fundamental freedoms of our nation. (Sapp Decl. at ¶ 3). As part of the outreach efforts for Plaintiff Stand Up America Now, its members and volunteers, including Plaintiffs Wayne Sapp and Terry Jones, travel around the country to speak about the threat of Sharia law. (Sapp Decl. at ¶¶ 3, 4). When conducting these activities, the Plaintiffs do not seek to cause disruption and only want to exercise their First Amendment rights with non-obstructive speech activities in accordance with their beliefs. (Sapp Decl. ¶ 5).

The Plaintiffs wish to speak in a grassy area open to the public in the City of Dearborn on Holy Saturday, April 7, 2012. (Sapp Decl. at ¶ 6). The Plaintiffs only seek to be on this public land in City of Dearborn from 12:30-3:30pm on April 7, 2012. (Sapp Decl. at Ex. A). The Plaintiffs only expect the participation of 20-25 people at the event. (Sapp Decl. at Ex. A). The speaking activity is encompassed by the Plaintiffs' religious outreach efforts. (Sapp Decl. at ¶¶ 2, 3, 4). The Plaintiffs specifically chose the location in the City of Dearborn because the Plaintiffs see Islamic Sharia law as limiting freedoms, including the most vital freedoms of American life, such as the freedom of speech and freedom of religion. (Sapp Decl. at ¶ 10). Plaintiffs see Sharia law as the religious law of Islamic extremists. (Sapp Decl. at ¶ 9). Plaintiffs

believe that having the backdrop of the mosque during their speaking event is important as it represents standing up to Islamic extremists and terrorism. (Sapp Decl. at ¶ 9). During the event Plaintiffs intend on distributing literature in the form of a small flyer which includes the organization's contact information and a quote from John 14:6 - Jesus answered, "I am the way and the truth and the life. No one comes to the Father except through me." (Sapp Decl. at ¶ 8).

In planning the event, Plaintiff Wayne Sapp completed a "Special Events Application and Request Form" with the City of Dearborn on February 16, 2012. (Sapp Decl. at Ex. A); *see also* City of Dearborn Ord. No. 17-28(a). In the Plaintiffs' request for a Special Events permit, Plaintiff Sapp did not request any services from the City of Dearborn. (Sapp Decl. at Ex. A).

On March 13, 2012, the City of Dearborn responded to the Plaintiffs' permit request. (Sapp Decl. at ¶ 14). Lt. Robinson of the City of Dearborn Police Department states in the letter that he was "prepared to recommend the approval of this Special Event application." (Sapp Decl. at Ex. B). The letter discusses the logistics of the event and states "it is requested that you complete and return the 'Hold Harmless' document prior to the commencement of your event." (Sapp Decl. at Ex. B and Ex. C).

The Hold Harmless agreement that the Defendants require the Plaintiffs to sign contains the following terms:

- a. "In consideration for the right to utilize City of Dearborn property, Standup America! and Wayne Sapp, their employees, representatives, agents, and participants agree to RELEASE AND FOREVER DISCHARGE the City of Dearborn, a municipal corporation, and its officers, employees, and agents, from any and all claims, liabilities, or lawsuits, including legal costs and reasonable

attorney fees, resulting from their activities on City of Dearborn property.” (Sapp Decl. at Ex. C).

- b. “Standup America! and Wayne Sapp’s employees, agents, representatives, and participants have been notified of this Release, are aware of, understand, and fully appreciate, all possible risks associated with the participation in their activities on City of Dearborn property. Stand up America! and Wayne Sapp do hereby expressly, voluntarily, and willingly assume all risk and dangers associated with the participation in the activities on City of Dearborn property on April 7, 2012. These risks could result in damage to property, personal, and/or bodily injury or death, including injuries or death to the individual participants.” (Sapp Decl. at Ex. C).
- c. “Standup America! and Wayne Sapp hereby agree to defend, indemnify, and hold harmless the City of Dearborn, its officers, employees, agents, representatives, and departments from and against any and all claims and causes of action of any kind arising out of or in connection with their activities on City of Dearborn property.” (Sapp Decl. at Ex. C).

Therefore, the Defendants’ “Hold Harmless” agreement forces the Plaintiffs to relinquish all legal recourse against the City of Dearborn for the City of Dearborn’s actions or its employees’ actions. (Sapp Decl. at ¶ 23). The Defendants’ “Hold Harmless” agreement makes the Plaintiffs completely liable for all of the decisions and actions of the City of Dearborn, even if the City of Dearborn’s actions results “in damage to property, personal, and/or bodily injury or death, including injuries or death to the individual participants.” (Sapp Decl. at ¶ 33, Ex. C).

Plaintiffs are unwilling to sign the “Hold Harmless” agreement; however, the Defendants demand that Plaintiffs sign the agreement prior to speaking on the public land. (Sapp Decl. at ¶¶ 17, 21); *see also* City of Dearborn Ord. No. 17-33 (“The applicant, the sponsor of the event, and the event organizer shall sign an indemnification agreement with terms established by the legal department.”). On March 26, 2012, Lt. Robinson wrote a second letter to the Plaintiffs which states that Plaintiffs must sign the “Hold Harmless” agreement; otherwise the Plaintiffs cannot speak on the requested area of public property. (Sapp Decl. at Ex. D). In that letter, the Defendants provided a list of events where they required a “similar” agreements. (Sapp Decl. at Ex. D). However, these events given as examples by the Defendants were dissimilar to the Plaintiffs’ event involving only 20-25 participants. (Sapp Decl. at Ex. D). The examples provided by the Defendants include groups of much larger than 20-25 participants and involving strenuous, physical exercise. (Sapp Decl. at Ex. D). On March 28, 2012, Lt. Robinson wrote a third letter which again insists that the “Hold Harmless” agreement must be signed prior to the Plaintiffs speaking on April 7th, 2012. (Sapp Decl. at Ex. E).

The Plaintiffs do not have insurance to cover the City of Dearborn’s one-sided “Hold Harmless” agreement. (Sapp Decl. at ¶ 22). The Plaintiffs believe that obtaining such insurance, especially in light of the terms of the “Hold Harmless” agreement would impose extremely high monetary costs. (Sapp Decl. at ¶ 23). The Plaintiffs cannot pay such costs, nor believe they should be forced to pay a substantial amount of money in order to exercise their constitutional rights. (Sapp Decl. at ¶ 23). Defendants’ claim in the March 28, 2012 letter written by Lt. Robinson, that “The result I am hoping to achieve is that the goals of your event are met and public safety is maintained.” (Sapp Decl. at Ex. E). However, the Defendants, to date, have been unwilling to waive the requirement of the “Hold Harmless” agreement. (Sapp Decl. at ¶¶

17, 21). The Plaintiffs have been diligent in planning their event at the Islamic Center in Dearborn on April 7, 2012. (Sapp Decl. at ¶ 26). Plaintiffs wish to conduct their event as planned this Saturday, April 7, 2012. (Sapp Decl. at ¶ 30).

ARGUMENT

The factors to be weighed before issuing a TRO are the same as those considered for issuing a preliminary injunction. *See, e.g., Workman v. Bredesen*, 486 F.3d 896, 904-05 (6th Cir. 2007); *Southerland v. Fritz*, 955 F. Supp. 760, 761 (E.D. Mich. 1996). The standard for issuing a preliminary injunction in this Circuit is well established. In *Connection Distributing Co. v. Reno*, 154 F.3d 281, 288 (6th Cir. 1998), the court stated:

In determining whether or not to grant a preliminary injunction, a district court considers four factors: (1) the plaintiff's likelihood of success on the merits; (2) whether the plaintiff could suffer irreparable harm without the injunction; (3) whether granting the injunction will cause substantial harm to others; and (4) the impact of the injunction on the public interest.

Id.; *see also Hamilton's Bogarts, Inc. v. Michigan*, 501 F.3d 644, 649 (6th Cir. 2007). Typically, the reviewing court will balance these factors, and no single factor will necessarily be determinative of whether or not to grant the injunction. *Connection Distributing Co.*, 154 F.3d at 288. However, because this case deals with a violation of Plaintiffs' First Amendment rights, the crucial and often dispositive factor is whether Plaintiffs are likely to prevail on the merits. *Id.*

A. Plaintiffs' Likelihood of Success on the Merits

The First Amendment is made applicable to the States and their political subdivisions through the Fourteenth Amendment. *See Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940). Unquestionably, the First Amendment protects Plaintiffs' right to publicly express their religious

beliefs and to hand out religious materials. *See, e.g., Lovell v. City of Griffen*, 303 U.S. 444, 452 (1938) (holding that the First Amendment protects handing out pamphlets and leaflets). As the United States Supreme Court has long recognized, “spreading one’s religious beliefs” and “preaching the Gospel” are activities protected by the First Amendment. *See Murdock v. Pennsylvania*, 319 U.S. 105, 110 (1943). Supreme Court precedent also “establishes that private religious speech, far from being a First Amendment orphan, is as fully protected under the Free Speech Clause as secular private expression.” *Capitol Square Rev. & Adv. Bd. v. Pinette*, 515 U.S. 753, 760 (1995). Accordingly, the First Amendment’s Free Speech clause protects “religious proselytizing.” *Id. (citing Heffron v. International Soc. for Krishna Consciousness, Inc.*, 452 U.S. 640, 647 (1981) & *Widmar v. Vincent*, 454 U.S. 263, 269 n.6 (1981)).

Additionally, “[a]mong the rights protected by the First Amendment is the right of individuals to associate to further their personal beliefs. While the freedom of association is not explicitly set out in the Amendment, it has long been held to be implicit in the freedoms of speech, assembly, and petition.” *Healy v. James*, 408 U.S. 169, 181 (1972) (citations omitted). The Sixth Circuit echoed this fundamental understanding of the right to association by stating, “Freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of freedom of speech.” *Connection Distributing Co.*, 154 F.3d at 295 (citing *NAACP v. Alabama*, 357 U.S. 449, 460 (1958)).

Indeed, “implicit in the right to engage in activities protected by the First Amendment” is “a corresponding right to associate with others in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends.” *Roberts v. United States Jaycees*, 468 U.S. 609, 622 (1984); *see also id.* at 636 (O’Connor, J., concurring) (“Even the training of outdoor

survival skills or participation in community service might become expressive when the activity is intended to develop good morals, reverence, patriotism, and a desire for self-improvement.”).

Of most importance to the case before the court is the holding in *Forsyth County v. Nationalist Movement*, 505 U.S. 123 (U.S. 1992), which dealt with a government’s prior restraint on free speech which 1) required a plaintiff incur costs to pay for his/her right to free speech and 2) disallowed “uncontrolled discretion” left in the hands of a government employee. *Id.* at 134.

The Court in *Forsyth* struck down an ordinance which required an applicant to pay \$100 in order to obtain a special events permit. *Id.* at 136. The court stated that raising revenue for its police services, the justification provided by the government as the reason for the ordinance, did not justify the permit fee. *Id.*

The Court in *Forsyth* further condemned the ordinance’s design, which placed the decision of issuing the permit fee in the hands of the county administrator and allowed the administrator “unbridled discretion.” *Id.*; *see also Id.* at 130-131 (“To curtail that risk, ‘a law subjecting the exercise of First Amendment freedoms to the prior restraint of a license’ must contain ‘narrow, objective, and definite standards to guide the licensing authority.’”) (quoting *Shuttlesworth v. City of Birmingham*, 394 U.S. 147, 150-151); (“The reasoning is simple: If the permit scheme ‘involves appraisal of facts, the exercise of judgment, and the formation of an opinion,’ by the licensing authority, ‘the danger of censorship and of abridgment of our precious First Amendment freedoms is too great’ to be permitted”) (internal citations omitted).

The Defendants’ prior restraint on the Plaintiffs’ speech forces the Plaintiffs to incur the costs imposed by the “Hold Harmless” agreement, directly forbidden under *Forsyth*. Furthermore, the ordinance enforced by the Defendants places the formation of the terms of the “Hold Harmless” agreement solely within the purview of the City of Dearborn’s legal

Department: both unconstitutional prior restraints on the Plaintiffs' freedom of speech under *Forsyth*. And not to be overlooked is the "heavy presumption" against the validity of a prior restraint. *Id.* at 130; see also *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 70 (1963).

Based on the speech activities at issue here (expressing one's Christian faith and handing out one, small religious flyer), Plaintiffs are also protected by "the First Amendment's expressive associational right." See *Boy Scouts of America v. Dale*, 530 U.S. 640, 650 (2000) (finding that the Boy Scouts are protected by the First Amendment's expressive associational right, stating, "It seems indisputable that an association that seeks to transmit . . . a system of values engages in expressive activity").

While Plaintiffs' Christian views may not be acceptable to the general public at large, that is no reason to prohibit it. As the Supreme Court has stated repeatedly, a listener's reaction to speech is not a proper basis for regulation. *Forsyth County*, 505 U.S. at 134 (1992). "The First Amendment knows no heckler's veto." See *Lewis v. Wilson*, 253 F.3d 1077, 1082 (8th Cir. 2001). Restrictions on speech because of its "secondary effects" are sometimes permissible; however, an effect from speech is not secondary if it arises from its content. "The emotive impact of speech on its audience is not a 'secondary effect.'" *Boos v. Barry*, 485 U.S. 312, 321 (1988) (opinion of O'Connor, J.)

"It is axiomatic that the government may not regulate speech based on its substantive content or the message it conveys." *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 828 (1995). The government may not "impose special prohibitions on those speakers who express views on disfavored subjects" or on the basis of "hostility—or favoritism—towards the underlying message expressed." *R.A.V. v. St. Paul*, 505 U.S. 377, 386-92 (1992); see *Police Dept. of the City of Chicago v. Mosley*, 408 U.S. 92, 96 (1972) (holding that the government may

not grant the use of a forum to people whose views it finds acceptable, but deny use to those wishing to express more controversial views).

In *Terminiello v. City of Chicago*, 337 U.S. 1 (1949), the Court did not allow convictions to stand because the trial judge charged that the defendants' speech could be punished as a breach of the peace "if it stirs the public to anger, invites dispute, brings about a condition of unrest, or creates a disturbance, or if it molests the inhabitants in the enjoyment of peace and quiet by arousing alarm." *Id.* at 3. In finding such a position unconstitutional, the Supreme Court famously stated,

[A] function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger. Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea. That is why freedom of speech . . . is . . . protected against censorship or punishment. . . . There is no room under our Constitution for a more restrictive view.

Id. at 4.

Therefore, the fact that Plaintiffs' speech may actually offend some persons does not lessen its constitutionally protected status; it enhances it. "The fact that society may find speech offensive is not a sufficient reason for suppressing it. Indeed, if it is the speaker's opinion that gives offense, that consequence is a reason for according it constitutional protection." *Simon & Schuster, Inc. v. Members of New York State Crime Victims Bd.*, 502 U.S. 105, 118 (1991) (editing marks and citations omitted); *Forsyth County*, 505 U.S. at 135 (noting that speech cannot be "punished or banned, simply because it might offend a hostile mob"). Consequently, "the Constitution does not permit government to decide which types of otherwise protected speech are sufficiently offensive to require protection for the unwilling listener or viewer." *Erznoznik v. City of Jacksonville*, 422 U.S. 205, 210 (1975).

Indeed, pursuant to the First Amendment, the government is not permitted to affirm the heckler; rather, it must protect the speaker and punish those who react lawlessly to a controversial message. As the Sixth Circuit rightfully acknowledged, “A police officer has the duty not to ratify and effectuate a heckler’s veto nor may he join a moiling mob intent on suppressing ideas. Instead, he must take reasonable action to protect . . . persons exercising their constitutional rights.” *Glasson v. Louisville*, 518 F.2d 899, 906 (6th Cir. 1975).

Consequently, by preventing Plaintiffs from engaging in speech activity on the public grounds through its prior restraint of demanding they sign a “Hold Harmless” agreement, Defendants have violated Plaintiffs’ First Amendment rights. Therefore, Plaintiffs have demonstrated a substantial likelihood of prevailing on the merits of their claims.

B. Irreparable Harm to Plaintiffs without the TRO.

Plaintiffs will be irreparably harmed without the TRO. Defendants Free Speech Restriction deprives Plaintiffs of their fundamental First Amendment rights. And it is well established that “[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373 (1976); *see also Connection Distributing Co.*, 154 F.3d at 288 (quoting *Elrod*); *Newsome v. Norris*, 888 F.2d 371, 378 (6th Cir. 1989) (“The Supreme Court has unequivocally admonished that even minimal infringement upon First Amendment values constitutes irreparable injury sufficient to justify injunctive relief.” (citing *Elrod*)).

Additionally, Plaintiffs will suffer financial harm if they are not permitted to engage in their outreach program. Plaintiffs have been planning for this event and have incurred many costs and expenses as a result. If a TRO does not issue, Plaintiffs’ program will be frustrated, causing a significant monetary loss for Plaintiffs and others.

C. Whether Granting the TRO Will Cause Substantial Harm to Others.

In this case, the likelihood of harm to Plaintiffs is substantial because Plaintiffs intend to peacefully exercise their First Amendment rights in a public forum, and the deprivation of these rights, even for minimal periods, constitutes irreparable injury.

On the other hand, if Defendants are restrained from enforcing their Free Speech Restriction against Plaintiffs, Defendants will suffer no harm because the exercise of constitutionally protected expression can never harm any of the Defendants' or others' legitimate interests. *See Connection Distributing Co.*, 154 F. 3d at 288. The Defendants already agree to issue the Special Events permit to the Plaintiff, only with the contingency that the plaintiffs sign the "Hold Harmless" agreement. Any legitimate interest asserted by Defendants or others will remain fully protected by existing provisions of law, such as prohibitions against trespassing, assault, disorderly conduct, and others.

In the final analysis, the question of harm to others as well as the impact on the public interest "generally cannot be addressed properly in the First Amendment context without first determining if there is a constitutional violation. . . ." *Connection Distribution Co.*, 154 F.3d at 288. For if Plaintiffs show that their First Amendment rights have been violated, then the harm to others is inconsequential. As demonstrated previously, the enforcement of Defendants Free Speech Restriction on Plaintiffs' speech violates the First Amendment; therefore, any "harm" to others is inconsequential.

D. The Impact of the TRO on the Public Interest.

The impact of the TRO on the public interest turns in large part on whether Plaintiffs' constitutional rights are violated by the enforcement of Defendants' Free Speech Restriction. As the Sixth Circuit noted, "[I]t is always in the public interest to prevent the violation of a party's

Constitutional rights.” *G & V Lounge, Inc. v. Michigan Liquor Control Comm’n*, 23 F.3d 1071, 1079 (6th Cir. 1994); *see also Dayton Area Visually Impaired Persons, Inc. v. Fisher*, 70 F.3d 1474, 1490 (6th Cir. 1995) (stating “the public as a whole has a significant interest in ensuring equal protection of the laws and protection of First Amendment liberties”).

As noted previously, the enforcement of Defendants’ Free Speech Restriction is a direct violation of Plaintiffs’ fundamental rights protected by the First Amendment. Therefore, it is in the public interest to issue the TRO. Moreover, Plaintiffs intend to engage in their peaceful, non-obstructive speech activity on the public land, which otherwise opens to the general public. In fact, Defendants permit members of the public who have no interest in holding an event to use the public grounds. Furthermore, Defendants agree to allow the Plaintiffs to use the public property for their stated purpose. The only point of disagreement is that the Defendants wish for the Plaintiffs to sign anyway all of their legal rights prior to doing so.

In the final analysis, Defendants’ restriction on Plaintiffs’ right to engage in speech activity on public grounds violates fundamental constitutional rights. Without a TRO, Plaintiffs will be irreparably harmed.

CONCLUSION

Plaintiffs hereby request that this court issue the requested TRO.

Respectfully submitted,

s/ Erin Mersino

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Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on April 4, 2012, a copy of the foregoing was sent to the Corporation Counsel for the City of Dearborn via facsimile at (313) 943-2469.

THOMAS MORE LAW CENTER

/s/ Erin Mersino

Erin Mersino, Esq. (P70886)

INDEX OF EXHIBITS

Exhibit 1

Declaration of Wayne Sapp

Ex. A City of Dearborn "Special Events Permit and Request Form"

Ex. B City of Dearborn March 12, 2012 Letter

Ex. C City of Dearborn "Hold Harmless" Agreement

Ex. D City of Dearborn March 26, 2012 Letter

Ex. E City of Dearborn March 28, 2012 Letter

Exhibit 1

IN THE UNITED STATES DISTRICT COURT
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STAND UP AMERICA NOW,
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PASTOR TERRY JONES

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Magistrate Judge Mark A. Randon

CITY OF DEARBORN and RONALD HADDAD,
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DECLARATION OF WAYNE SAPP

I, Wayne Sapp, make this declaration pursuant to 28 U.S.C. § 1746 based upon my personal knowledge and, where stated, upon information and belief:

1. I am an adult citizen of the State of Florida and one of the founders and leaders of Stand Up America Now. Stand Up America Now is incorporated under the laws of Florida and is located in Gainesville, Florida.

2. I am a Christian minister with a deeply-held religious conviction to evangelize non-Christians. Evangelizing and public speaking is an important aspect of my religious beliefs and vocation.

3. Stand Up America Now is a national, Christian organization established for the purpose of proclaiming the Holy Bible of Jesus Christ to Muslims and educating people about the threat of Sharia law to the fundamental freedoms of our nation. As part of its outreach efforts, Stand Up America Now travels around the country public speaking about the threat of Sharia law.

4. I and other Stand Up America Now members and volunteers have visited the City of Dearborn in the past to speak and spread our message of Christian faith.

5. I, alongside the members and volunteers of Stand Up America Now, do not wish to cause any disruption and only want to exercise our First Amendment rights with non-obstructive speech activities.

6. I wish to speak in the grassy area open to the public across from the Dearborn Islamic Center on Saturday, April 7th, 2012.

7. The speech will discuss the dangers of Sharia law and how it threatens American freedoms.

8. Stand Up America Now also intends on distributing literature in the form of a small flyer which includes the organization's contact information and a quote from John 14:6 - Jesus answered, "I am the way and the truth and the life. No one comes to the Father except through me."

9. Stand Up America Now chose the location in front of the Islamic Center in Dearborn because Sharia law is the religious law of Islam, and the mosque represents Islam.

10. Sharia law limits freedoms, including the most vital freedoms of our American life such as the freedom of speech and freedom of religion. Therefore, the effect and imposition of Sharia law is the limiting of our freedoms guaranteed to us in the United States Constitution.

11. In order to secure the location, I completed a "Special Events Application and Request Form" with the City of Dearborn on February 16, 2012. (Ex. A).

12. I estimate that approximately 20-25 people will attend the event. (Ex. A).

13. I did not request any services from the City of Dearborn. (Ex. A).

14. On March 13, 2012, Lt. Robinson of the City of Dearborn Police Department responded stating that he was "prepared to recommend the approval of this Special Event application." (Ex. B).

15. The letter discusses the logistics of the event and states "it is requested that you complete and return the 'Hold Harmless' document prior to the commencement of your event." (Ex. B), see also (Ex. C).

16. The Hold Harmless agreement not only forces Stand Up America Now and I to relinquish all legal recourse against the City of Dearborn for the City of Dearborn's actions or its employees' actions, but also makes Stand Up America Now and I 100% liable for all of the decisions and actions of the City of Dearborn, even if the City of Dearborn's actions results "in

damage to property, personal, and/or bodily injury or death, including injuries or death to the individual participants.” (Ex. C).

17. On March 26, 2012, Lt. Robinson wrote a letter which states that I must sign their “Hold Harmless” agreement; otherwise Stand Up America Now and I cannot speak on the requested area of public property. (Ex. D).

18. The City of Dearborn provided a list of events where they required a “similar” agreement. However, these events all appear to include groups of much larger than 20-25 participants. (Ex. D).

19. The other groups all include some sort of running or marching. (Ex. D).

20. The event I seek to hold does not involve any sort of physical exertion, and only involves free speech. (Ex. D).

21. On March 28, 2012, Lt. Robinson wrote a letter which again insists that the “Hold Harmless” agreement must be signed prior to me speaking on April 7th, 2012. (Ex. E).

22. Both Stand Up America Now and I do not have insurance to cover the City of Dearborn’s one-sided “Hold Harmless” agreement.

23. I believe obtaining insurance to cover the event in light of the City of Dearborn’s “Hold Harmless” agreement poses exorbitant costs that neither Stand Up America Now nor I can afford.

24. Therefore, I cannot sign the “Hold Harmless” agreement.

25. I still want to hold the event at the Islamic Center in Dearborn on April 7, 2012.

26. Stand Up America Now has done everything in its power to plan the event at the Islamic Center in Dearborn on April 7, 2012.

27. Stand Up America Now has already purchased airline tickets for myself and four other members totaling \$3024.37.

28. Stand Up America Now has also secured a hotel for myself and four other members totaling \$700.57.

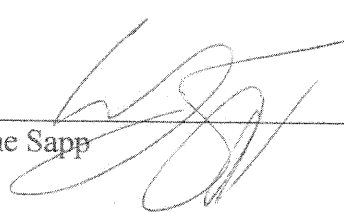
29. Stand Up America Now has also arranged for my car rental in Michigan which totals \$188.17.

30. Stand Up America Now and its members still want to hold the event at the Islamic Center in Dearborn on April 7, 2012.

31. Stand Up America Now and I cannot hold the event with the high cost for insurance imposed by the City of Dearborn through its requirement of a "Hold Harmless" agreement.

I declare under penalty of perjury under the laws of the United States, the State of Michigan, and the State of Florida that the foregoing is true and correct.

Executed this 30th day of March, 2012, in Gainesville, Florida.



Wayne Sapp

Exhibit A

City of Dearborn.

Special Events Application and Request Form



Today's Date: 02 | 16 | 2012

Sponsoring Organization Information:

Name Stand Up America Now
Address 5200 NW 43rd St. Ste. 102 #188, Gainesville, FL 32606
City Gainesville State FL Zip 32606 Phone Number 352-871-2680

Is your group a State registered non-profit organization? (Be prepared to show proof) Yes No

Contact Person Information:

Name Wayne Sapp
Address 5805 NW 37 St
City Gainesville State FL Zip 32653 Phone Number 352-562-2204

On Site Coordinator Information:

Name Wayne Sapp
Address 5805 NW 37 St
City Gainesville State FL Zip 32653 Phone Number 352-562-2204

Event Information:

Name of Event Exposing Sharia
Description of Event small group gathering together in the grassy area described below
Preferred Location (s) Grassy area across from 19500 Ford Rd. Dearborn, MI, 48126
Preferred Set Up Date (s) 4-7-2012 Time (s) 12:30
Preferred Event Date (s) 4-7-2012 Time (s) 1pm
Preferred Tear Down and Clean Up Date (s) 4-7-2012 Time (s) 3:30
What is the Expected attendance? 20-25 people

Please check the appropriate response to the following questions:

- Does your preferred date(s) have any special significance? Yes No
If so what? Easter weekend to symbolize the persecution of Christians
- Does your preferred location(s) have any special significance? Yes No
If so what? Islamic Center will be the backdrop as we discuss Islam & Sharia
- Will this event require any street to be closed? Yes No
- Will food be sold? Yes No
- Will merchandise be sold? Yes No
- Will alcoholic beverages be consumed? Yes No
- Will there be an admission fee? Yes No
- Will there be a parking fee? Yes No
- Will the event be restricted to a certain group? Yes No

Continue on page #2

This application is subject to approval. A contract will be issued upon approval.

Please list any facilities or services that you are requesting from the City of Dearborn. Please include the dates these services or facilities must be provided. Also, attach as complete a site plan as is available.

N/A - we are not requesting anything
from the City of Dearborn, MI

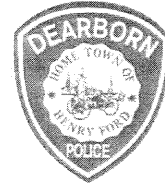
This application is subject to approval. A contract will be issued upon approval.

Exhibit B



John B. O'Reilly Jr.
Mayor

CITY OF DEARBORN
Home Town of Henry Ford
Police Department



Ronald Haddad
Chief of Police

March 13, 2012

Stand Up America Now!
C/O Mr. Wayne Sapp
5200 NW 43rd St, Ste. 102 # 188
Gainesville, FL 32606

Dear Mr. Sapp:

The Dearborn Police Department is in receipt of your Special Events application to demonstrate in front of the Islamic Center of America, 19500 Ford Rd, Dearborn, MI 48124, on Saturday, April 7, 2012. It is your request to use the Islamic Center as the backdrop for your demonstration, and that this is the site preferred by you. I am prepared to recommend the approval of this Special Events application to the Dearborn Chief of Police, in doing so, you are reminded of logistical issues you will encounter when using this venue for your event.

Your request is to demonstrate in the grassy area across from 19500 Ford Rd. Your application also states that you will simply have a small group, possibly 20 – 25 people. The location is controlled in part by the Michigan Department of Transportation. This portion is maintained as an emergency shoulder for the Michigan Highway M-153, also known as Ford Road, which is utilized only as an emergency shoulder to be used by disabled vehicles in this area. The remainder of the green space is City of Dearborn property meant to be a buffer zone between the church properties and the high-speed traffic of westbound Ford Road. This area is not intended for pedestrian traffic use and there are no sidewalks available. The City of Dearborn will assist you in using this area; however, it is requested that you complete and return the attached "Hold Harmless" document prior to the commencement of your event.

Further, there is no legal parking on Ford Road or on Altar Road, which is a limited access roadway. The venues north of Altar Road are posted "Private Property". In order to accommodate your request in an efficient and safe manner, it is my recommendation that you select an alternate parking location and shuttle to the site via van or bus. If you are unwilling to make such provisions we are requesting you to provide a list of individuals and their vehicle types so we can direct them to legal parking areas located east of the Altar Road campus.

Attached please find a list of the rules and regulations that require compliance by the City of Dearborn for all demonstrations. Your application indicates that you are NOT requesting "Anything" from the City of Dearborn to facilitate your event, however, if you require any further assistance please feel free to contact me at (313) 943-2055.

Sincerely,

Lt. David Robinson
Dearborn Police Department
313-943-2055 drobinson@ci.dearborn.mi.us



John B. O'Reilly Jr.
Mayor

CITY OF DEARBORN

Home Town of Henry Ford
Police Department



Ronald Haddad
Chief of Police

DEARBORN POLICE DEPARTMENT SPECIAL EVENT / DEMONSTRATION RULES

1. The right to strike and peacefully picket or demonstrate is recognized and will be protected subject to restrictions imposed by law or court order. The police will not take sides, but are sworn to enforce law and orders of the court.
2. You may not interfere with, or engage in physical contact with anyone entering, exiting, or passing by an establishment. Threats, whether verbal, posturing, or by printed word constitute interference.
3. Loud noises, including the use of PA systems, radios, horns or yelling are prohibited, when violating the City of Dearborn Noise Ordinance
4. Littering of any kind is prohibited according to Dearborn Ordinance
5. Fires must be in suitable containers. They must be reasonable and not so large as to constitute a hazard or nuisance by emitting heavy, dark smoke or offensive odors according to Dearborn Ordinance.
6. The posting of signs and the distribution of handbills are controlled by Dearborn ordinance
7. Do not park in "No Parking" areas unless given specific permission to do so by a police officer. Do not block any sidewalks or entranceways. Do not park on grassy areas. Obey police parking directions at the scene.
8. Parades and processions are prohibited except by police permit.
9. Do not block driveways or walks with cars, picketers, or demonstrators
10. Do not walk or demonstrate in the street. Cross at crosswalks. No "Jaywalking".
11. Do not use any parking lot or other private property to park on unless the owner gives permission
12. Disorderly conduct will not be tolerated. This includes drunkenness, improper conduct, improper noise, creating a disturbance, using indecent language, gambling, assaults, jostling, throwing stones or other objects.
13. Damaging the property of another, private or public, whether a building, car, grass, or other property is illegal.
14. No alcoholic beverages shall be allowed on or in the immediate area of the picket line or demonstrating area.
15. Failure to comply with an order of a police officer is a violation of Dearborn Ordinance.
16. If you believe that the officer is wrong, obey his order and then contact the police department Officer in Charge or the Chief of Police at phone 313-943-2078.

Ronald Haddad
Chief of Police

Exhibit C

RELEASE, WAIVER OF LIABILITY, AND HOLD HARMLESS AGREEMENT

Standup America! and Wayne Sapp have requested permission to utilize City of Dearborn property located on the grassy median north of Ford Rd. and south of Altar Rd. (as depicted in the attached map) in the City of Dearborn on Saturday, April 7, 2012.

In consideration for the right to utilize City of Dearborn property, Standup America! and Wayne Sapp, their employees, representatives, agents, and participants agree to RELEASE AND FOREVER DISCHARGE the City of Dearborn, a municipal corporation, and its officers, employees, and agents, from any and all claims, liabilities, or lawsuits, including legal costs and reasonable attorney fees, resulting from their activities on City of Dearborn property.

Standup America! and Wayne Sapp's employees, agents, representatives, and participants have been notified of this Release, are aware of, understand, and fully appreciate, all possible risks associated with the participation in their activities on City of Dearborn property. Standup America! and Wayne Sapp do hereby expressly, voluntarily, and willingly assume all risk and dangers associated with the participation in the activities on City of Dearborn property on April 7, 2012. These risks could result in damage to property, personal, and/or bodily injury or death, including injuries or death to the individual participants.

Standup America! and Wayne Sapp hereby agree to defend, indemnify, and hold harmless the City of Dearborn, its officers, employees, agents, representatives, and departments from and against any and all claims and causes of action of any kind arising out of or in connection with their activities on City of Dearborn property.

The undersigned, Wayne Sapp, representative for Standup America! acknowledges that he has the authority to enter into this agreement on behalf of this Standup America!

I HAVE READ THIS ENTIRE AGREEMENT. I UNDERSTAND IT AND AGREE WITH IT AND THEREFORE SIGN IT AS MY OWN FREE ACT.

By: Wayne Sapp
Standup America!

Date:

Witness

Date

Exhibit D



John B. O'Reilly Jr.
Mayor

CITY OF DEARBORN
Home Town of Henry Ford
Police Department



Ronald Haddad
Chief of Police

March 26, 2012

Stand Up America Now!
C/O Mr. Wayne Sapp
5200 NW 43rd St, Ste. 102 # 188
Gainesville, FL 32606

Dear Mr. Sapp:

I have not officially heard from you or members of your staff as to whether or not you still plan to demonstrate in front of the Islamic Center of America, 19500 Ford Rd, Dearborn, MI 48124, on Saturday, April 7, 2012 from 1:00pm to 3:00pm.

Cpl. Danak did receive an email from Stephanie Sapp inquiring as to whether the Release, Waiver of Liability, and Hold Harmless agreement sent to you is standard for all special events. The answer is yes. The area that will be set aside for your 20-25 demonstrators is City of Dearborn property and, more significantly, is unimproved property not dedicated for use by pedestrians or vehicles; it is considered a buffer between the high-speed, heavy traffic on Ford Road, and the slower, lighter traffic on the limited access Altar Road. Nevertheless, we are willing to work with you so that you can use this property for your stated purpose. But you will need to execute the Release, Waiver of Liability and Hold Harmless agreement.

Examples of other organizations who have been asked to execute similar agreements are attached for your review.

The information that I forwarded to you in my last letter regarding the logistical challenges of your selected location was sent as a courtesy so you can properly plan your event in order to meet your event goals. It is very important that you are aware that there are no sidewalks at the location you have selected. Further, there is no legal parking on Ford Road or on Altar Road. The venues north of Altar Road are posted "Private Property". My recommendation that you select an alternate parking location and shuttle to the site via van or bus was simply a recommendation to assist you with the safe and efficient facilitation of your event. If you do not wish to provide a list of individuals and their vehicle types so we can direct them to legal parking areas located east of the Altar Road campus it is not required.

The City of Dearborn understands that you do not want or need anything from the city in order to facilitate your event. We do however request that you return the required Release, Waiver of Liability, and Hold Harmless agreement on or before March 30, 2012, along with confirmation that you do indeed still plan on holding this event.

If you require any further assistance please feel free to contact me at (313) 943-2055.

Sincerely,

Lt. David Robinson
313-943-2055 drobinson@ci.dearborn.mi.us



John B. O'Reilly Jr.
Mayor

CITY OF DEARBORN

Home Town of Henry Ford

Police Department



Ronald Haddad
Chief of Police

Sampling of 2011 Hold Harmless Agreement's

- | | |
|---|-----------|
| 1) Makerfaire at The Henry Ford | 7/29/2011 |
| 2) Divine Child Falcon 5k Run | 8/07/2011 |
| 3) Susan G. Komen Breast Cancer 3Day | 8/11/2011 |
| 4) Divine Child Homecoming Parade | 9/15/2011 |
| 5) Children's Dyslexia Center 5k Walk | 9/23/2011 |
| 6) University of Michigan Cross Country | 9/23/2011 |
| 7) Church World Service Crop Walk | 9/20/2011 |
| 8) Falcon Cross Country Invitational Race | 9/30/2011 |
| 9) Dearborn High Homecoming Parade | 9/30/2011 |
| 10) Cycling Saddleman Bicycle Ride | 1/01/2012 |

Exhibit E



John B. O'Reilly Jr.
Mayor

CITY OF DEARBORN
Home Town of Henry Ford
Police Department



Ronald Haddad
Chief of Police

March 28, 2012

Stand Up America Now!
C/O Mr. Wayne Sapp
5200 NW 43rd St, Ste. 102 # 188
Gainesville, FL 32606

Dear Stephanie Sapp:

I will try to respond to your inquiries and requests in the order you presented them in your email on March 27, 2012.

In my initial letter I stated, "I am prepared to recommend the approval of this Special Events application to the Dearborn Chief of Police". The completion of the Release, Waiver of Liability, and Hold Harmless agreement is part of the permit being granted. When you inquired whether this is standard practice I explained stating, in part, "the Release, Waiver of Liability, and Hold Harmless agreement sent to you is standard for all special events. The answer is yes. The area that will be set aside for your 20-25 demonstrators is City of Dearborn property and, more significantly, is unimproved property not dedicated for use by pedestrians or vehicles; it is considered a buffer between the high-speed, heavy traffic on Ford Road, and the slower, lighter traffic on the limited access Altar Road. Nevertheless, we are willing to work with you so that you can use this property for your stated purpose. But you will need to execute the Release, Waiver of Liability and Hold Harmless agreement."

I believe I have gone beyond my due diligence in attempting to assist you in the facilitation of your event. Logistical issues you will encounter have been expressed to you and suggestions made to you to properly handle these issues. I also forwarded you a sampling of other events in which hold harmless agreements (standard form - same as the one you were forwarded) were completed. Unfortunately, I cannot simply forward to you the legal agreements of other groups.

Most groups, comparable to the 20-25 participants of your group, choose to demonstrate in the permit exempt zones as you have done in the past. Therefore, hold harmless agreements were not required as those areas are controlled and prepared for demonstration type events unlike the area in which you are choosing to demonstrate.

It is not my intention to put any procedures onto your group that are not standard or legally necessary for the issuance of your Special Events permit. To the contrary, I have attempted to assist you with logistical concerns that you will be faced with at this location and have only required from you what I would require from any other group that wished to demonstrate in the location and during the time period in which you have requested.



CITY OF DEARBORN

Home Town of Henry Ford

Police Department



John B. O'Reilly Jr.
Mayor

Ronald Haddad
Chief of Police

The result I am hoping to achieve is that the goals of your event are met and public safety is maintained.

Sincerely,

Lt. David Robinson
313-943-2055 drobinson@ci.dearborn.mi.us