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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
Los Angeles Division

JENNY DONNELLY; HER VOICE MOVEMENT, INC., d/b/a TETELESTAI MINISTRIES; ROBERT DONNELLY; ROSS JOHNSTON; RUSSELL JOHNSON,

Plaintiff;

v.

CITY OF LOS ANGELES, CALIFORNIA; KAREN BASS, in her official capacity as Mayor of the City of Los Angeles, California; JIM MCDONNELL, in his official capacity as Chief of Police for the Los Angeles Police Department; ERROLL SOUTHERS, in his official capacity as the President of the Los Angeles Board of Police Commissioners,

Defendants.

Case No. 2:25-cv-7870

REPLY IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

Date: January 12, 2025

Time: 1:30 PM

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I. Plaintiffs are likely to succeed on the merits.

A. Plaintiffs challenge the permitting scheme as a whole because Defendants' application of the permitting scheme required them to jump through both ordinances to obtain permission to engage in speech.

Defendants contend that Plaintiffs' challenge to their permitting scheme is a "muddied concoction of arguments that blend two separate ordinances," that purportedly aims to confuse the Court concerning their scheme. Doc. 66, Page ID #335. This is factually incorrect and legally irrelevant. Plaintiffs are neither confused nor concocting anything. Rather, it was Defendants' application of their unbridled discretion and standardless permitting scheme that required Plaintiffs to seek two different permits, jump through the muddied waters that Defendants created, and that ultimately resulted in a denial of every permit that Plaintiffs requested. *E.g*, Doc. 1, ¶14 (noting that it was Defendants who denied Plaintiffs' requested BOSS permit and referred them instead to the other permitting scheme to attempt to host their event); *id.* ¶15 (same). Specifically, Defendants initially approved Plaintiffs' requested SEPU permit, *id.* ¶95; but then—the very next day—informed Plaintiffs that this was the incorrect category of permit and that Plaintiffs would instead be forced to obtain a BOSS permit under a different scheme and different licensing official. *Id.* ¶96. What followed was a series of requests and communications passing Plaintiffs around to various licensors in what ended as a denial of all requested permits. *Id.* ¶¶95–143. Defendants' protest of Plaintiffs challenge to both schemes is entirely of their own creation and cannot serve as a basis for denial of injunctive relief.

B. Defendants' permitting scheme demands a license and approval from the government before engaging in protected speech, which is classic prior restraint.

Defendants contend that their permitting scheme is not a prior restraint. Doc. 66, Page ID #352. This is plainly incorrect. If a speaker must obtain permission from the government before engaging in protected speech, *it is a prior restraint*. Period. As the Supreme Court recognized, an "ordinance requiring a permit and a fee before authorizing public speaking, parades, or assemblies in the archetype of a traditional public forum is a prior restraint on speech." *Forsyth Cnty. v. Nationalist Movement*, 505 U.S. 123, 130 (1992). *See also Jersey's All-American Sports Bar, Inc. v. Washington State Liquor Control Bd.*, 55 F. Supp. 2d 1131, 1136 (W.D. Wash. 1999) ("A prior restraint is a law giving public officials the power to deny the use of a forum in advance of actual expression.").

Leaving Defendants' definitional misunderstanding aside, Defendants' efforts to avoid the presumptive unconstitutionality of their permitting scheme fails on the merits. Defendants contend that the permitting scheme is not a prior restraint because it allegedly requires approval of the requested permit unless some reason exists for denial and because its primary purpose is to protect health and safety. Doc. 66, Page ID #352. This is precisely the argument defendants raised, and the court rejected, in *Jersey's All-American Sports Bar*. 55 F. Supp. 2d at 1136–37. There, as here, the defendants "resist[ed] the characterization as a prior restraint" because the focus of the analysis should be "on the goal of the legislation," which defendants claimed was "unrelated to the suppression of speech or ideas" but rather about "maintaining safe conditions." *Id.* at 1137. The court rightly rejected that contention as asking the wrong

question. *Id.* ("The defendants' arguments are not persuasive."). If, as here, Doc. 1, ¶¶63, 92, the law requires permission prior to engaging in speech, it is a prior restraint. Full stop. Just as Defendants here, the *Jersey's* defendants "ask the Court to simply ignore the means chosen by the state to advance its interest." 55 F. Supp. 2d at 1137. "But the Court may not limit its inquiry to the government's asserted goals when the means employed directly infringe rights protected by the [C]onstitution." *Id.* Indeed, just as here, "[b]ecause the state has decided to regulate the health and safety via a license to speak, that license must meet the requirements of the First Amendment" and its prior restraint doctrines.

1. Defendants' permitting scheme demonstrates that it impermissibly vests unbridled discretion.

Defendants contend that the permitting scheme does not vest unbridled discretion in the hands of government officials because it purportedly requires the grant of a permit absent limited grounds. Doc. 66, Page ID #352. This is incorrect. To be sure, Defendants are correct that a part of the LAMC 103.111 purports to include the criteria by which a permit may be denied. Doc. 1, ¶78. But that is only part of the story.

As the sworn allegations of Plaintiffs' Verified Complaint make clear, the Los Angeles Board of Police Commissioners articulates plainly that it has "the ultimate authority to approve or deny a permit," and conditions that unbridled grant of authority on nothing. Doc. 1, ¶79. And, LAMC 103.111(h) states that the Board can base the decision of whether to grant a permit on any conditions "necessary to protect the safety of all persons and property." Doc. 1, ¶75. This broadly articulated parameter is precisely what the Court found impermissible in *City of Lakewood v. Plain Dealer Publ'g Co.*, 486 U.S. 750, 770 (1988). There, the government needed only

to state that "it was not in the public interest" to deny a permit, which the Court said was an "illusory constraint." *Id.* There, as here, defendants contended that a limitation on permit denial solely on the "health, safety, or welfare" of the community was sufficient to cabin the official's discretion. *Id.* The Supreme Court rejected that contention. Essentially, the government asked that the Court "presume[] the [government] will act in good faith and adhere to standards absent from the ordinance's face" by only denying permits "for reasons related to the health, safety, or welfare" *Id.* "But this is the very presumption that the doctrine forbidding unbridled discretion disallows." *Id. See also Diamond S.J. Enter., Inc. v. City of San Jose*, 100 F.4th 1059, 1067 (9th Cir. 2024) (noting that "the Supreme Court found that a provision allowing a mayor to deny newspaper rack permits 'for reasons related to health, safety, or welfare' conferred unbridled discretion"). Defendants' contentions to the contrary are incorrect.

2. Defendants' application of their permitting demonstrates that it vests unbridled discretion in the hands of government officials.

Defendants contend that they "applied their permitting scheme without infringing [Plaintiffs'] First Amendment Free Speech rights." Doc. 66, Page ID #343. Defendants make two contentions to support this point: (1) they did not deny Plaintiffs' permit and (2) Plaintiffs purportedly held their event on Hollywood Boulevard without incident. *Id.* Neither statement is true.

First, Defendants denied Plaintiffs' requested permit—*both of them*. Despite being told that they were required to obtain a BOSS permit, Plaintiffs' application for such a permit was denied. Doc. 1, ¶118; Doc. 1-

3, Page ID #75. Plaintiffs attempted to secure the other type of permit that Defendants said might be permissible to host their event on Hollywood Boulevard, and that permit was denied as well. Doc. 1, ¶¶124–125. Defendants' contentions that Plaintiffs were given "a permit" and it was only "one block south," Doc. 66, Page ID #336, so there is no constitutional flaw is simply incorrect as a matter binding law. The denial of a requested location is a denial. "The Court has recognized that *location* of the speech, like other aspects of presentation, can affect the meaning of communication and merit First Amendment protection for that reason." *Galvin v. Hay*, 374 F.3d 739, 750 (9th Cir. 2004) (emphasis added). Indeed, "there is a strong First Amendment interest in protecting the right of citizens to gather in traditional public forum locations that are critical to the content of their message, just as there is a strong interest in protecting speakers seeking to reach a particular audience." *Id.* at 752. *See also Santa Monica Food Not Bombs v. City of Santa Monica*, 450 F.3d 1022, 1048 (9th Cir. 2006) ("The ability to communicate a particular message in a particular location can significantly contribute to the effectiveness of the communication."). The reasons for this include that the location might be "symbolic of the very object of the protest," that the location is "one at which a particular audience the speaker seeks to reach is present," or that "the location itself may be significant to the content of the message." *Galvin*, 374 F.3d at 747–50; *Santa Monica*, 450 F.3d at 1047–48 (same).

All these are true for Plaintiffs here. Plaintiffs chose Hollywood Boulevard for its prominence, for the fact that it would be hosting an event with an opposite message and viewpoint the following week, and because it would allow them to reach their intended audience. Doc. 1, ¶¶150–152. And, because of all the things Plaintiffs planned to say at their event (or,

as Defendants put it, "the themes covered"), Plaintiffs were relegated to constitutional orphan status and denied access to Hollywood Boulevard so that the City could limit Plaintiffs' visibility, prevent them from "opening a can of worms," and take place away from the public eye. Doc. 1, ¶129. That denial of Plaintiffs' preferred location is a First Amendment violation, particularly when coupled with the fact that a host of other organizations with a different message were permitted to use Hollywood Boulevard for their events, assemblies, and messages. Doc. 1, ¶¶137–143.

Second, despite Defendants' protestations to the contrary, Plaintiffs were denied a permit on the basis of impermissible consideration of their viewpoint and content. Under the sworn allegations of Plaintiffs' Verified Complaint, it is clear that Defendants took into consideration past events (that were not Plaintiffs), Doc. 1, ¶99; explicitly requested video of past events, *id.,* ¶102; informed Plaintiffs not to open a "can of worms" by discussing the LA Pride event, Doc. 1, ¶107, and that because of the "**themes covered**," Doc. 1, ¶102, Plaintiffs event would not be permitted. Thus, far worse than the scenario where the Ninth Circuit invalidated a permit scheme that included "considerable danger that the content of prior speech, or simply the goals of an organization, might inform the process," *ACLU of Nevada v. City of Las Vegas*, 333 F.3d 1092, 1107 (9th Cir. 2003), Defendants actually considered past speech and the goal of Plaintiffs' event in denying the permit. That is plainly and inescapably a First Amendment violation.

Third, Defendants admit that they have applied the permitting scheme in a discriminatory manner by permitting some organizations to host massive events on the same street (Hollywood Boulevard) that Plaintiffs requested and were denied. Both the month before and the

month immediately after the date Plaintiffs wished to hold their event on Hollywood Boulevard, Defendants permitted Songkran Festival, the Parade Party, No Kings Day Protests, and a host of the events. Doc. 1, ¶¶5–9. 134–143. And, the week after Plaintiffs desired to have their event, Defendants open up Hollywood Boulevard for a parade and a festival that shut down Hollywood Boulevard far more significantly than Plaintiffs limited event would have done. Yet, Defendants had no problem "shutting down a major transit artery" the LA Pride, as they claim was such a significant concern to them for Plaintiffs' speech. Doc. 66, Page ID #335.

It is important to note, too, that Defendants fundamentally misconstrue the sworn evidence before the Court and misrepresent what Plaintiffs were requesting. Despite Defendants' repeated insistence that Plaintiffs sought to shut down a "major transit artery for 24 hours and construct a stage in the middle of it," Doc. 66, Page ID #335, Plaintiffs sought no such thing. *And Defendants know it*. Rather, as the sworn evidence before the Court demonstrates, Plaintiffs requested a permit that allowed them to use a "mobile stage," and not shut down a street to "construct" anything. Doc. 1-4, Page ID #77. Defendants' subterfuge is aimed at one thing: masking the fact that Plaintiffs' permit for religious event on Hollywood Boulevard was denied, and other non-religious speech was permitted for the same location.

Fourth, Defendants' contention that Plaintiffs held their requested event on Hollywood Boulevard anyway and thus suffered no injury is plainly incorrect. To be sure, as Plaintiffs stated in the Verified Complaint, they did engage in protected speech on the requested day on Hollywood Boulevard, but it was significantly chilled and limited by Defendants' refusal to grant them a permit. Doc. 1, ¶135. That *alone* is a First

Amendment violation. Indeed, as the Ninth Circuit has made clear, "it would be unjust to allow a defendant to escape liability for a First Amendment violation merely because an unusually determined plaintiff persists in his protected activity." *Mendocino Envt'l Ctr. v. Mendocino Cnty.* , 192 F.3d 1283, 1300 (9th Cir. 1999). Rather, the appropriate inquire here is whether Defendants' denial of Plaintiffs' requested location "would chill" a plaintiff's speech. *Id.* Here, there is no question that it did. Plaintiffs were only able to engage in any speech at all under explicit threat from Defendants that they would be declared an unlawful assembly and arrested. Doc. 1, ¶134. Moreover, and more importantly, Plaintiffs "were unable to reach their intended audience and unable to achieve the desired aims of their speech," *id.* ¶150, because their specifically requested location, which was unquestionably important and constitutionally protected, *Galvin*, 374 F.3d at 747–52, was denied. And, "effectively stifl[ing]" Plaintiffs' desired communication with their desired audience at their desired location violated the First Amendment. *McCullen v. Coakley*, 573 U.S. 464, 489 (2014).

3. Defendants' incantation that the permitting scheme is simply a time, place, and manner restriction is incorrect.

Defendants go to great lengths to contend that their permitting scheme is merely a time, place, manner restriction on speech and thus survives constitutional scrutiny. Doc. 66, Page ID #340. *See also* Doc. 1-4, Page ID #76 (stating the denial and administrative hurdles for a permit are merely "***TIME, PLACE and MANNER***" restrictions (emphasis original)). This, too, is incorrect. "[E]ven if the government may constitutionally impose content-neutral restrictions on the manner of

speech, it may not *condition* that speech on obtaining a license or permit from a government official in that official's boundless discretion." *City of Lakewood*, 486 U.S. at 763. Moreover, repeating the words "time, place, and manner" as if it magically transforms viewpoint discrimination into permissible regulation of speech has been tried and failed under binding law. In fact, Defendants' contentions are quite curious when compared to *Meinecke v. City of Seattle*, 99 F.4th 514 (9th Cir. 2024), in which these same contentions were met with resounding defeat in the Ninth Circuit. There, Seattle resisted the characterization of its actions as a heckler's veto by "repeatedly referring to its actions as time, place, or manner restrictions." *Id.* at 523. But, as the Ninth Circuit held, "incanting the words 'time,' 'place,' and 'manner' over a content-based restriction does not transmute it into one that is content neutral." 99 F.4th at 523. And doing so in bold, capital letters does not change that analysis.

C. Defendants admit, as they must, that the permitting scheme allows Defendants to deny Plaintiffs' requested permit on the basis of nongovernment objectors.

Defendants contend that Plaintiffs were not subjected to a requirement to obtain the support of a majority of business on Hollywood Boulevard prior to obtaining a permit, so they were not subjected to an unconstitutional show of hands. Doc. 66, Page ID #356. This is incorrect.

First, and importantly, Defendants admit that the permitting scheme does, in fact, require a permit applicant to obtain the signature of non-government actors before engaging in protected speech. Doc. 66, Page ID #356 ("the 51% practice was for permitting via BOSS under LAMC §41.20.2"). That *alone* is a First Amendment violation. "A scheme that requires permission from the government, **or its designee**, before one

may engage in constitutionally-protected expression, constitutes a prior restraint." *United States v. Perelman*, 737 F. Supp. 2d 1221, 1232–33 (D. Nev. 2010) (emphasis added). That Defendants have also farmed out some of the unbridled discretion in the permitting scheme to community businesses does not eliminate the presumptively unconstitutional vesting of unbridled discretion. Here, not only does the City itself have unbridled discretion to deny a permit, but it has compounded that facial flaw by requiring a speaker to obtain additional permission from non-government entities prior to obtaining a permit. No standards apply to the non-government entities whose permission must be obtained prior to speaking in parts of Los Angeles, and nothing in the permitting scheme prohibits Defendants from denying a permit on the basis of the non-government entities' rejection. In fact, as the Verified Complaint shows and Defendants admit, 51% approval is a precondition to engaging in protected speech on Hollywood Boulevard. The First Amendment does not allow the government to condition a speaker's ability to speak on whether the community agrees with its speech. Defendants' permitting scheme admittedly does precisely that in violation of the First Amendment.

Second, Defendants incorrectly state that Plaintiffs were not required to obtain the signatures of a majority of businesses to obtain their permit. Doc. 66, Page ID #356. This is plainly false under the sworn evidence before the Court. Doc. 1, ¶109.

D. Defendants admit a violation of the Free Exercise Clause.

Defendants admit, as they must, that the permitting scheme was applied in such a manner that permitted nonreligious speech of the LA Pride parade and festival, yet denied Plaintiffs' requested permit for the

same location. Doc. 66, Page ID #347. And, fatally, Defendants admit that they permitted the nonreligious event (LA Pride), actually two separate events, and denied Plaintiffs' requested permit to engage in religious speech at the precise location. Doc. 66, Page ID #353 ("neither the event nor the organization [LA Pride] espouses a religious viewpoint"). In other words, Defendants admittedly treated non-religious speech and activity more favorably that Plaintiffs' religious speech. That is a blatant First Amendment violation. "At a minimum, the protections of the Free Exercise Clause pertain if the law at issue discriminates against some or all religious beliefs or regulates or prohibits conduct because it is undertaken for religious reasons." *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 533 (1993). "[G]overnment regulations are not neutral and generally applicable, and therefore trigger strict scrutiny under the Free Exercise Clause, whenever they treat any comparable secular activity more favorably than religious exercise." *Tandon v. Newsom*, 593 U.S. 61, 63 (2021). The preliminary injunction should issue on that basis alone.

II. Defendants' denial of Plaintiffs' requested permit is *per se* irreparable harm under binding precedent.

Defendants contend that Plaintiff suffered no irreparable injury because they were not denied a permit and waited too long to seek an injunction. Doc. 66, Page ID #357. Neither contention has any merit. The argument that there "is no irreparable harm where there is no infringement on Plaintiffs' First Amendment rights" is a tired trope that has been tried and rejected. *See Meinecke*, 99 F.4th at 526 ("That argument does not move the needle because Meinecke has demonstrated a likelihood of First Amendment injury for the reasons explained above.").

Moreover, Plaintiffs' loss of First Amendment rights for even moments is irreparable harm, *Elrod v. Burns*, 427 U.S. 347, 373 (1976), so Defendants' timing contentions are without merit.

III. Defendants' contentions concerning the other elements of a preliminary injunction fail for the same reason their merits contentions fail.

Defendants contend that enjoining the permitting scheme would not serve the public interest because it is a valid and constitutional scheme, and that enjoining it would harm the public interest because the injunction would jeopardize safety. Doc. 66, Page ID #357. Neither contention has any merit. This was the exact argument rejected in *Meinecke*. 99 F.4th at 526 ("When a party raises serious First Amendment questions, that alone compels a finding that the balance of hardships tips sharply in its favor."). And Defendants' refrain that public order requires a denial of a preliminary injunction was likewise rejected by the Ninth Circuit because "even undeniably admirable goals must yield when they collide with the Constitution." *Id.* "That is especially true here because the City had other means of vindicating its interest." *Id.* Plaintiffs' injunction would not require invalidating the entire permitting scheme, but only require that Defendants' permitting scheme and the application of it conform to First Amendment procedural safeguards and be applied in a nondiscriminatory manner. Doc. 1, Page ID #50–53. Because the balance tips decidedly in Plaintiffs' favor and an injunction favors the public interest in upholding constitutional rights, the preliminary injunction should issue.

CONCLUSION

For the foregoing reasons, the preliminary injunction should issue.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned counsel hereby certifies that this Reply contains only 12 pages, exclusive of the tables, and therefore complies with this Court's standing Order (ECF No. 31).

/s/ Daniel J. Schmid
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