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15
16 UNITED STATES DISTRICT COURT
17 SOUTHERN DISTRICT OF CALIFORNIA

18
19 DON BLYTHE,

20 Plaintiff,

21 v.

22 CITY OF SAN DIEGO,

23 Defendant.

24 NO.: **'24CV2211 JLS SBC**

25 **COMPLAINT FOR CIVIL RIGHTS
VIOLATION AND INJUNCTIVE
AND DECLARATORY RELIEF;**

26 **1. 42 U.S.C. § 1983**

27 Plaintiff alleges as follows:

28
1 1. This is a civil action for declaratory and injunctive relief for violation of the Constitution
2 and laws of the United States. Plaintiff seeks to enforce his right to engage in free speech in the
3 traditional public forum of the public streets and sidewalks.

4 2. This lawsuit challenges enforcement of City of San Diego Municipal Code §52.1003(c),
5 passed by the City of San Diego, California, and which, as written, interpreted, and enforced by
6 Defendants, prohibits constitutionally protected speech and assembly on public streets and
7 sidewalks.

JURISDICTION

3. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1331, 1343, 2201, and 2202, and 42 U.S.C. §§ 1983 and 1988. Venue properly lies in the Southern District of California pursuant to 28 U.S.C. §1391(b) in that defendants have their principal place of business in that district. Each and all of the acts (or threats of acts) alleged herein were done by defendants, or their officers, agents, and employees, under color and pretense of the statutes, Ordinance, regulations, customs and usages of the City of San Diego.

THE PARTIES

4. Plaintiff Don Blythe is a natural person. Motivated by his moral, religious, and political beliefs, Plaintiff regularly engages in pro-life, anti-abortion speech activities in California. These speech activities include hand-to-hand leafleting, education about abortion, and holding signs with a pro-life, anti-abortion message. All of these activities occur on public sidewalks or other public fora, where he can convey his message to the public. In particular, Plaintiff Blythe often seeks to display and distribute written information and engage in thoughtful discussions with college and high school students. He engages in this free speech activity dozens of times each year, primarily in California.

5. Defendant City of San Diego (“City”) is a municipal corporation organized under the laws and Constitution of the State of California, and is a corporate entity capable of suing and being sued. Defendant City maintain and operates the San Diego Police Department which, in the first instance, is responsible for the enforcement of the challenged ordinance and the arrest of any person alleged to have violated it.

OPERATIVE FACTS

6. On June 11, 2024, the City of San Diego adopted Ordinance No. O-21822 N.S amending Chapter 5, Article 2, Division 10 of the San Diego Municipal Code (§52.1001-§52.1006). One provision of this enactment is §52.1003(c) (herein “the Ordinance”).

7. The Ordinance greatly restricts a speaker from engaging in the activity of leafleting, handbilling, displaying a sign, protesting, educating, and counseling in the public right of way or sidewalk if the person speaking is attempting to communicate with a member

1 of the public who is seeking to enter or exit a health care facility, place of worship, or school
 2 ground.

3 8. In particular, the Ordinance creates a restricted zone around the categorized
 4 institutions which is 100' in radius from the institution's main entrance door or main entrance
 5 gate. Inside this restricted zone, a speaker is prohibited from approaching without consent
 6 within eight feet of any person entering or exiting the institution in order to engage in the free
 7 speech activities noted above.

8 9. Section 52.1003("Establishment of Buffer Zone at Entrances and Exits to Health
 9 Care Facilities, Places of Worship, and School Grounds") states as follows:

10 (c) Consent Required. Within a radius of 100 feet of a health care facility, place of
 11 worship, or school grounds, unless the person or motor vehicle occupant consents, no
 12 person shall:

13 (1) knowingly and willfully approach within eight feet of a person in the public
 14 right-of-way or sidewalk area who is seeking to enter or exit a health care facility,
 15 place of worship, or school grounds, to:

- 16 (i) pass a leaflet or handbill to that person;
- 17 (ii) display a sign to that person; or
- 18 (iii) engage in oral protest, education, or counseling.

19 (2) knowingly and willfully approach within eight feet of an occupant of a motor
 20 vehicle seeking to enter or exit a parking lot, to:

- 21 (i) pass a leaflet or handbill to the motor vehicle occupant;
- 22 (ii) display a sign to the motor vehicle occupant; or
- 23 (iii) engage in oral protest, education, or counseling.

24 10. Plaintiff Blythe intends to engage in free speech activities in the vicinity of high
 25 schools in the city of San Diego. In particular, Plaintiff intends to join with others to hold
 26 signs, distribute literature, and have conversations with students leaving high school grounds
 27 at school dismissal time.

28 11. For example, Plaintiff, along with others, intends to stand outside Patrick Henry
 29 High School, 6702 Wandermere Drive, San Diego. Plaintiff and his associates intend to
 30 station themselves on the public right of way at the school exits and, without obstructing
 31 passage, approach within 8 feet of students as they leave school grounds and walk onto the
 32 public sidewalk. Those exits include two along Wandermere Drive and a third on Park Ridge

1 Road. In engaging in this activity, Plaintiff will likely take some steps toward students and/or
 2 extend an arm to pass a leaflet to students when they are within 8 feet.
 3

4 12. The Ordinance prohibits Plaintiff from engaging in this activity unless he has first
 5 gained the consent of each student whom he is approaching and to whom he is offering
 6 leaflets. Obtaining consent is an unrealistic requirement for distributing literature to multiple
 7 people arriving in waves and leaves Plaintiff unable to engage in the critical literature
 8 distribution aspect of his free speech activity. Plaintiff is concerned that, if he fails to abide
 9 by the Ordinance, he will be arrested for engaging in this free speech activity while outside
 high schools in the city of San Diego.

10 **FIRST CAUSE OF ACTION**

11 **(VIOLATION OF 42 U.S.C. § 1983)**

12 12. Plaintiff incorporates by reference all preceding paragraphs as if fully restated
 13 here.

14 13. The law passed by defendant deprives Plaintiff of his free speech rights under the
 15 First and Fourteenth Amendments of the Constitution of the United States.

16 14. The Ordinance is an unconstitutional abridgment on its face, and as applied or
 17 threatened to be applied, of the Plaintiff's affirmative right to freedom of speech under the
 18 United States Constitution, Amendments I and XIV.

19 15. The Ordinance on its face and as applied or threatened to be applied, is an
 20 unconstitutionally overbroad restriction on expressive activity.

21 16. The Ordinance on its face and as applied or threatened to be applied, is an
 22 unconstitutional content-based restriction on expressive activity.

23 17. The Ordinance on its face and as applied or threatened to be applied, is an
 24 unconstitutionally vague restriction on expressive activity.

25 18. The Ordinance on its face and as applied or threatened to be applied, does not
 26 serve a significant governmental interest.

1 19. The Ordinance on its face and as applied or threatened to be applied, does not
 2 leave open ample alternative channels of communication.
 3

4 20. The Ordinance on its face and as applied or threatened to be applied, is not the
 5 least restrictive means to accomplish any permissible governmental purpose sought to be
 6 served by the legislation.
 7

8 21. The Ordinance violates the Equal Protection Clause of the Fourteenth
 9 Amendment to the United States Constitution and similar guarantees in the California State
 10 Constitution by denying Plaintiff's free speech rights allowed to others in similar situations.
 11

12 WHEREFORE, Plaintiff prays that this Court:

- 13 (a) Enter judgment against the Defendant;
- 14 (b) Enter a declaratory judgment declaring the Ordinance passed by of the Defendant
 15 to be a violation of Plaintiff's constitutional rights to freedom of speech;
- 16 (c) Issue a declaratory judgment declaring that City of San Diego Municipal Code
 17 §52.1003(c) is unconstitutional on its face;
- 18 (d) Issue a declaratory judgment declaring that City of San Diego Municipal Code
 19 §52.1003(c) is unconstitutional as enforced and as applied to Plaintiff's activity;
- 20 (e) Issue a temporary restraining order, and a preliminary and permanent injunction
 21 enjoining defendant, its agents, servants, employees, officers and the San Diego Police
 22 Department from enforcing City of San Diego Municipal Code §52.1003(c) with reference to
 23 Plaintiff and all others seeking to engage in constitutionally protected speech in or around
 24 educational institutions;
- 25 (f) Award Plaintiff damages;
- 26 (g) Award Plaintiff costs, reasonable attorneys' fees, and interest for this action
 27 pursuant to 42 U.S.C. §1988; and,
 28

Dated: 11/25/2024

Mark Miller

MICHAEL MILLEN, ESQ.
ATTORNEY FOR PLAINTIFF

DEMAND FOR JURY TRIAL

Plaintiff hereby requests a jury trial in this action.

Dated: 11/25/2024

Miss Butter

MICHAEL MILLEN, ESQ.
ATTORNEY FOR PLAINTIFF