

No. 10-1746

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

GEORGE SAIEG,)
)
 Plaintiff - Appellant,)
)
 v.)
)
 CITY OF DEARBORN; RONALD HADDAD,)
 Dearborn Chief of Police,)
)
 Defendants - Appellees.)

O R D E R

FILED
Jun 17, 2010
LEONARD GREEN, Clerk

Before: SUHRHEINRICH, SILER, and CLAY, Circuit Judges.

George Saieg is a minister whose religious practice includes proclaiming Christian beliefs to Muslims. Saieg wants to distribute religious leaflets at the 15th annual Dearborn Arab International Festival (“Festival”) to be held on June 18, 19, and 20, 2010. The Festival rules and policies prohibit leafleting on certain streets and permit the distribution of literature only from approved booths and information tables. In 2009, shortly before the commencement of the Festival, Saieg brought this action for declaratory and injunctive relief against the city of Dearborn and its Chief of Police, charged with enforcing the Festival policies and providing other support. The district court denied Saieg’s request for a temporary restraining order. At the 2009 Festival, Saieg distributed his literature from a booth provided to him at no charge.

In the ensuing year, Saieg and the defendants engaged in discovery and filed cross motions for summary judgment. Saieg also moved for injunctive relief against the enforcement of the leafleting policy at the 2010 Festival. The district court denied Saieg’s motion for an injunction and

granted summary judgment to the defendants. Saieg appeals. He moves this court for expedited review and reversal of the district court's order or, alternatively, for an injunction pending appeal. The defendants respond in opposition. Given the constraints of time, we consider Saieg's motion only insofar as it seeks an injunction pending this appeal. We also consider Saieg's motion as seeking relief only on behalf of himself.

The issuance of an injunction pending appeal is within this court's authority. *Overstreet v. Lexington-Fayette Urban County Gov't*, 305 F.3d 566, 572 (6th Cir. 2002). "In granting such an injunction, the Court is to engage in the same analysis that it does in reviewing the grant or denial of a motion for a preliminary injunction." *Id.* The relevant factors are: "(1) whether the movant has shown a strong likelihood of success on the merits; (2) whether the movant will suffer irreparable harm if the injunction is not issued; (3) whether the issuance of the injunction would cause substantial harm to others; and (4) whether the public interest would be served by issuing the injunction." *Id.* at 573; *see also Baker v. Adams County/Ohio Valley Sch. Bd.*, 310 F.3d 927, 928 (6th Cir. 2002).

The loss of a First Amendment right, "for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976). This factor weighs in favor of injunctive relief for Saieg. Regarding his likelihood of success on the merits of the appeal, we note that the district court concluded that because of the nature and size of the Festival, as well as the necessary street closures, the public streets were not serving in their usual capacity. This reasoning finds support in *Heffron v. Int'l Soc'y for Krishna Consciousness*, 452 U.S. 640 (1981), and *Spignola v. Village of Granville*, 39 F. App'x 978 (6th Cir. 2002). *See also Hynes v. Metropolitan Gov't of Nashville and Davidson County*, 667 F.2d 549 (6th Cir. 1982). While these cases may support the restriction of leaflet distribution among the crowds within the core area of the

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Festival, they do not appear to preclude similar activity in the “outer perimeter” or “buffer zone” leading up to the core area. Otherwise content-neutral restrictions must be “narrowly tailored to serve a significant governmental interest” *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989) (quoting *Clark v. Community for Creative Non-Violence*, 468 U.S. 288, 293 (1984)). Given the issues presented by this appeal, we conclude that temporary injunctive relief is appropriate.

Therefore, the motion for an injunction pending appeal is **GRANTED** as follows. The relief granted hereby pertains only to the Festival to be held June 18, 19, and 20, 2010, after which this order will be deemed to have expired. During the hours that the Festival is open to the public on June 18, 19, and 20, 2010, Saieg shall be permitted to distribute his religious literature in the streets contained within the area referred to as the “outer perimeter” or “buffer zone.” This order leaves undisturbed the ability of the defendants to prohibit Saieg from distributing his religious literature within the Festival itself. *See Heffron*. Obviously, this temporary order shall be fully subject to reconsideration and revision or modification by any merits panel of this court to which this appeal may be assigned.

ENTERED BY ORDER OF THE COURT



Clerk

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

Leonard Green
Clerk

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Re: Case No. 10-1746 , *George Saieg v. City of Dearborn, et al*
Originating Case No. : 09-12321

Dear Sir or Madam,

The Court issued the enclosed Order today in this case.

Sincerely yours,

s/Louise Schwarber
Case Manager
Direct Dial No. 513-564-7015
Fax No. 513-564-7096

cc: Mr. David J. Weaver

Enclosure