UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

CENTRO DE LA COMUNIDAD HISPANA DE LOCUST VALLEY; and THE WORKPLACE PROJECT,	:	Civ. 10-2262
Plaintiffs,	:	
-versus-	:	
TOWN OF OYSTER BAY; JOHN VENDITTO, Town Supervisor of the Town of Oyster Bay,	:	
Defendants.	:	

ORDER GRANTING PRELIMINARY INJUNCTION

WHEREAS the Plaintiffs have filed a complaint alleging that Chapter 205.32 of the Code of the Town of Oyster Bay is unconstitutional under, *inter alia*, the First Amendment to the U.S. Constitution, and

WHEREAS on May 18, 2010, the Plaintiffs moved by Order to Show Cause for a preliminary injunction and temporary restraining order enjoining enforcement of Chapter 205.32, and

WHEREAS on May 20, 2010, the Court granted Plaintiffs' application for a temporary restraining order on the grounds that Plaintiffs demonstrated a substantial likelihood of success on the merits of their First Amendment claim and irreparable harm, and set a schedule for a hearing on the application for preliminary injunction, and

WHEREAS Defendants have requested that the Court forego a hearing on the application for preliminary injunction and further development of the factual record and

issue a preliminary injunction based on the Court's opinion and findings of May 20, 2010, so as to enable Defendants to appeal that ruling, and

WHEREAS, Plaintiffs do not oppose this request,

For the reasons set forth on the record by the Court on May, 20, 2010, a copy of the transcript of which is attached and incorporated herein, IT IS HEREBY ORDERED that Defendants Town of Oyster Bay and John Venditto, together with their subdivisions and representatives are hereby preliminarily enjoined from enforcing Chapter 205.32 of the Code of the Town of Oyster Bay, pending final resolution of the merits of Plaintiffs' First Amendment claims.

SO ORDERED.

Dated: Central Islip, New York
June 1, 2010

Denis R. Hurley
Senior District Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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CENTRO DE LA COMUNIDAD HISPANA
DE LOCUST VALEY;
and THE WORKPLACE PROJECT
: CV 10-2262

Plaintiffs,
: United States Courthouse
-against- Central Islip, New York

TOWN OF OYSTER BAY;
JOHN VENDITTO, Town Supervisor
of the Town of Oyster Bay,
: May 20, 2010
Defendants. 2:00 p.m.
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TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE DENIS R. HURLEY
UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

For the Plaintiffs: NEW YORK CIVIL LIBERTIES UNION
125 Broad Street
New York, NY 10004
By: COREY STOUGHTON, ESQ.

For the Defendants: SINNREICH KOSAKOFF & MESSINA
267 Carleton Avenue, Suite 301
Central Islip, NY 11722
By: JONATHAN SINNREICH, ESQ.

TOWN OF OYSTER BAY
Office of The Supervisor
54 Audrey Avenue
Oyster Bay, NY 11771
By: COLIN F. O'DONNELL, ESQ.

(Case called.)

THE COURT: As indicated yesterday, what is before me today is an application by plaintiffs for a temporary restraining order. That's the sole matter that will be addressed today.

Yesterday, we set a schedule for the preliminary injunction hearing, and that process will start on May 28th, and it will continue to June 1st, to the extent that is required. And if it's not concluded by June 1st, we'll address the matter then as to when we'll continue the preliminary injunction hearing.

At the conclusion of the proceedings yesterday, after I had heard extensive oral argument on the temporary restraining order application made by plaintiffs, the parties asked to submit further briefing. In defendants' case, it would be initial briefing on the issue of standing. That was done.

By way of background, the complaint in this case has two constitutional claims. Both seek the same relief, that being the stay of the enforcement and ultimately a declaration that the subject ordinance is unconstitutional.

The first cause of action is predicated on a First Amendment violation. The second cause of action sounds in an equal protection claim under the Fourteenth

Amendment. However, the temporary restraining order and the preliminary injunction as well is sought on the basis of the first cause of action alone.

As to that cause of action, defendant has indicated that they agree there is standing for present purposes, in other words, for this Court to entertain the pending application for a TRO.

In sum, the question of standing which was discussed yesterday is a nonissue.

That being said, I would note parenthetically, commend counsel for the very professional way in which this issue was addressed.

Mr. Sinnreich is a very forceful advocate. He's also a good lawyer. And having reviewed the question, even though he had some reservations yesterday as to whether plaintiffs have standing, there is an indication, the law indicates, that the plaintiff has standing.

Now we move on to the question of laches.

The defendants' position on the issue of laches, or delay, is essentially as follows. He underscores for the Court, or I should say counsel for the defendant underscores for the Court, that following two highly publicized public hearings, the subject ordinance was passed on September 19, 2009.

The lawsuit in this case, which was commenced by

the filing of the complaint, was not started until May 18, 2010, that being approximately eight months after the statute was enacted.

The temporary restraining order was sought contemporaneously with the filing of the complaint.

Given that factual scenario, defense counsel argues that the delay here, that being the delay between the enactment of the ordinance and the commencement of litigation, and more particularly the seeking of a temporary restraining order, belies or is inconsistent with the claim that this matter is urgent and, accordingly, was brought before the Court via an accelerated mechanism of a temporary restraining order.

Plaintiffs counter through their counsel that following the enactment of the statute, various groups and individuals apparently negotiated with the Town in an apparent effort to prevent the enforcement of the ordinance and conceivably a recision of the ordinance.

Accompanying that argument is the proposition that efforts to resolve the dispute absent litigation should be encouraged, and surely such efforts in this case cannot be deemed to be somehow fatal to the temporary restraining application which is presently before me. Mr. Sinnreich, as I recall, labeled the efforts by various individuals and groups negotiating with the Town on this

as "lobbying."

In any event, though, no matter what label is attached to the activities that occurred between the enactment of the statute and the current litigation being commenced by plaintiffs, the applicable law suggests that the delay in filing suit here obviously doesn't preclude plaintiffs from seeking a temporary restraining order, nor is that delay given the attendant circumstances I so find inconsistent with plaintiffs seeking an emergence of relief via the present application for a temporary restraining order.

My conclusion in that regard is based on a number of authorities, including Tom Doherty, D-O-H-E-R-T-Y, Associates against Sabin, S-A-B-I-N, Entertainment, 60 F.3d 27, that being a Second Circuit decision decided in 1995.

In that decision the Second Circuit, at page 39 of the decision, quotes an excerpt from a lower court case decided in 1980, insofar as that lower court decision stated: "Parties should not be discouraged" -- let me rephrase that.

"Parties should not be encouraged to sue before a practical lead to do so has been clearly demonstrated."

In reaching the above conclusion -- in other words, the delay here is understandable given the

attendant circumstances. And I agree with the general proposition stated by plaintiffs' counsel: To the extent parties can resolve disputes absent the involvement of the Court, that is something that should be encouraged rather than discouraged.

In reaching the above conclusion, I have considered the case advanced by the defense. That's a decision of Judge Pauley of the Southern District of New York. The decision bears the caption National Council of Arab Americans against the City of New York, 331 F.Supp. 2d, 258.

The facts of that case are somewhat sui generis, and as a result, the holding of that case is not particularly helpful for present purposes.

By way of a quick overview, in that case the plaintiffs sought to use a park for demonstrations, which demonstrations were apparently held during the National Republican Convention which was to begin on August 30th. August 30th is the day that the plaintiff intended to have the demonstrations.

The City denied the permit on June 15th. In denying the application, the City invited plaintiff to contact them and to consider other alternatives.

Plaintiffs did not respond to that application. Instead, they filed a lawsuit on August 13th. In that

lawsuit they sought emergency relief, to wit, an injunction granting them a permit. In doing so, however, they proceeded by way of notice of motion, not by order to show cause. Moreover, in making this belated application for emergency relief, supporting authority was not provided, at least in the first instance.

Judge Pauley, accordingly and understandably, said basically that the emergency cited by plaintiffs was essentially self-created. Moreover, given that the application for an injunction to prevent or to require -- so it would be a mandatory injunction, to be an issuance of the permit was literally served at the last moment. As a result, the defendants had less than a week to defend against the constitutional challenge.

Judge Pauley, considering all of those circumstances, found, basically, the application was too late, and, accordingly, it would not be entertained on the merits.

That situation is sufficiently different than what transpired here to warrant, in my judgment, a different result.

So to partially reiterate: I certainly have considered the delay, but I don't find that it in any way belies the nature of the request advanced by the plaintiffs, which is to say I don't find the delays

inconsistent with them proceeding by way of temporary restraining order seeking injunctive relief on an emergency basis.

The next item I'd like to address is the question of the applicable standard of proof for this temporary restraining order.

As noted, plaintiffs seek to have the subject ordinance, which is numbered 205-32, declared unconstitutional. In so doing, plaintiffs seek to alter the present status quo.

The applicable standards under those circumstances is well-established and has been recently restated in VIP of Berlin against Town of Berlin, 593 F.3d 179 at page 185-86. The Berlin case is a Second Circuit decision decided in 2010.

The relevant excerpt from that case reads, absent internal cites, as follows. "Where a party seeks a preliminary injunction that challenges government action taken in the public interest pursuant to a statutory or regulatory scheme, and that would alter rather than maintain the status quo, the moving party must demonstrate irreparable harm and a clear or substantial likelihood of success on the merits."

Before addressing some of the fundamental questions which bear on the issue at hand, I think it is

worthwhile to note that the question before me is not whether a municipality may pass an ordinance to address the problems associated with street solicitations by day laborers seeking employment. Rather, the issue, of course, is whether this particular ordinance passes constitutional muster or, more accurately for present purposes, whether plaintiffs have shown on the information presently before the Court both, one, a substantial likelihood of success on the merits and, two, irreparable injury.

A fundamental question involves whether the speech under discussion is appropriately labeled as commercial speech or noncommercial speech.

Before I address that subject, I will note that one relevant consideration in assessing the constitutionality of the statute or ordinance subject to a constitutional challenge under the First Amendment is where the speech -- or the nature of forum in which the speaker or the speakers -- let me reword that.

One of the factors the Court should consider in determining the constitutional issue here is the forum that is affected by the ordinance. In other words, where are the speakers who are the subject of this ordinance likely to be located?

In reference to the statute or the ordinance

itself indicates appropriately the site involved. The site involved in the caption are the sidewalks and the streets of Oyster Bay.

Historically, the streets and sidewalks have been considered, basically, the quintessential forum for assembly, protests, etcetera, and other communications that fall within the ambit of the First Amendment.

At this point, though, let's address what I consider to be the pivotal question, and that again is the question whether the speech, which is restricted by this ordinance, is commercial or noncommercial.

Before doing this, I will address a question raised yesterday. And the question was, as I understand, as to whether this is speech, and even if it is speech, it may be protected speech. I may have misunderstood what was communicated yesterday.

So there be no uncertainties in this regard, that there is absolutely no question in my mind that individuals standing on a street corner, typically in significant numbers, given, again, the attendant circumstances which I will not go into, are communicated.

There are certain areas in the county where individuals typically stand, typically in numbers of ten or multiples thereof, and they are there seeking employment. Basically everyone in the county knows that.

Now sometimes, apparently from papers that have been submitted, they will vocally ask for employment. Sometimes they will rather signal individuals in cars. But given the totality of the circumstances, I don't think there can be any legitimate dispute -- and I recognize we haven't had a full record on this -- they are communicating, the day laborers.

What are they communicating? Their availability for short-term, basically, blue-collar employment. I don't hesitate on the question whether we have speech.

And on the question of whether the speech is protected, we'll address that in a moment. But I did want to address that initial question whether we can even talk about speech in the first instance. As indicated, we are.

In my judgment, for the reasons I'll indicate, I believe that what we're talking about here is commercial speech.

In the case of Bad Frog Brewery, Inc., against New York State Liquor Authority, 134 F.3d 87 at page 97, the Second Circuit, in its decision of 1998, succinctly states, "The core notion of commercial speech includes speech which does no more than propose a commercial transaction."

Other cases indicate that the nature of the commercial transactions involved has to do with basically

only reason I don't want to go through that, I believe it is unnecessary, and it will unduly prolong the analysis.

This ordinance and the speech that is embraced within the ordinance does constitute an advertisement consistent with the rationale embodied in the Bolger case.

The second element raises the question of whether the speech refers to a particular product or service.

I think what I've already said concerning the first element indicates that the second element with respect to a service is clearly satisfied.

The third element is whether the speech contains an economic motivation. Clearly, such is the case here. The day laborer is seeking employment with the purpose being to receive compensation for his services. There's clearly an economic motivation to the speech involved.

For the reasons indicated, I believe we're talking about commercial speech.

Then the question becomes: Is that speech protected speech within the purview of the First Amendment?

That inquiry gives rise to a four-part test. That test, the specifics of which will be provided in a moment, is derived from the case of Central Hudson Gas and Electric Corporation against Public Service Commission of

New York, 447 U.S. 557 (1980), as later modified by another supreme court decision, which is Board of Trustees of the University of New York against Fox, 492 U.S. 469. The Fox decision was issued in 1989.

From those two cases, the four-part test is as follows:

The first element is whether what is being sought to be regulated is nonmisleading and lawful commercial speech.

The first aspect of that element, to wit, that the speech be nonmisleading, is not at issue here. There is no thought that communication seeking employment by the day laborers is misleading.

The second aspect of that first prong of the four-part test does not lend itself to a simple answer; the second aspect, whether we're talking about lawful activity.

During argument yesterday, there was a discussion about whether the day laborers, who are at least in part the target of this ordinance, are seeking lawful employment. It may be that some of the day laborers are illegally in the country; it may be that most are illegally in the country. So does that somehow tinge the transaction with an unlawfulness, which would indicate that the speech involved here is not protected under the

Constitution?

I don't believe this issue has been addressed at any great length, head on, by an appellate court.

It was my impression -- and I so conclude having read some Law Review articles on the subject and some of the cases which, while not directly on point, are partially instructive -- that lawful means or that unlawful means that the speech and the transaction that is occurring is either lawful or unlawful.

Therefore, by way of an example, if an individual is endeavoring to sell controlled substances on a corner and communicates that fact to a prospective purchaser, that obviously is not protected speech.

The fact that some of the day laborers here may be illegally in the country -- and, of course, presumably some are not -- and the fact that to the extent the transaction occurs on a street corner and, accordingly, labor law requirements and regulations, as well as taxing requirements, may not be satisfied, I don't think renders the transaction unlawful for purposes of the Central Hudson/Fox test. I don't believe that is what is meant.

That being said, I will note that on the information before me -- and again, this is in a temporary restraining order context -- that there's information to suggest that what I've just mentioned about potential

unlawfulness, albeit indirect unlawfulness, it is true of all or a substantial -- I'll just say all of the persons seeking employment via, basically, street solicitation.

That's a very interesting issue. I don't pretend that it is a simple issue, as I indicated earlier. I think what I said is correct. I think that the lawfulness has to do with the character of the transaction and the communication itself rather than what may underlie the transaction or what may ultimately materialize or not materialize after the transaction has occurred.

In using the word "transaction," I'm referring to the offer and acceptance of the employment.

Now the second element is -- I'll just back up for a minute.

Again, I think we're talking about protected speech here for the reasons I've indicated. Therefore, the next question is whether the regulation, in this case the subject ordinance, is directed at establishing or advancing a substantial governmental interest.

As to that element, I think the statute of the ordinance, at least facially, satisfies that element. I think the courts have recognized that municipalities have an interest in promoting the safety of individuals driving or riding in automobiles, as well as pedestrians who are in close proximity to the various roadways.

As to this element, that being the regulation advancing a substantial government interest or at least seeking to do so, a question comes to mind. Ordinance section 205.32 subdivision (a), lists the legislative intent. The legislative intent as set forth in the ordinance is self-explanatory.

The question here is whether, at the preliminary hearing, evidence of legislative intent beyond that which is stated in subdivision 1(a) of ordinance 205.32 would be appropriate.

The reason I mention that is that the primary reason that is advanced in that particular subdivision of the ordinance does not seem to embrace, at least directly, the idea of the Town being concerned individuals hiring -- individuals hiring day laborers who might be in the country illegally and related issues, such as preventing compliance -- let me withdraw that.

Another ground that was advanced by the defense yesterday concerning why this ordinance was enacted and what it seeks to address includes the idea of people avoiding their obligations under the relevant labor law and taxing provisions.

Simply put, would evidence as to those concerns, to the extent they were harbored by the town board at the time this ordinance was enacted, be appropriately adduced

at a hearing?

But in any event, to go back to these various factors...

Then another factor mentioned in the Central Hudson's/Fox test is whether the regulation in fact advances the interest which was sought to be promoted.

In that regard, the evidence at this point, of course, is sketchy, which is, of course, not unusual in a case which is in a temporary restraining order context.

The question arises whether there should be some evidence before the Court -- I'll withdraw that.

On the third element, I'm satisfied, at least for present purposes, or I will assume that that has been satisfied.

The last element is where the problem arises, and this is the fourth element, again, of that Central Hudson/Fox four-part test. Under that fourth element, there must be evidence that the regulation or ordinance is narrowly tailored to serve, basically, the goal of the ordinance.

Under the case law, sometimes that has been characterized as there must be a reasonable fit between the goals sought to be advanced by the government in which they have a substantial interest and the ordinance under attack.

We do know that the methodology employed by the municipality need not be the least restrictive means available to address that substantial government interest.

We also know, though, that to the extent there are less restrictive alternatives which are reasonably available to promote the government interest involved, that the availability of those less restrictive alternatives which were not utilized suggest that the ordinance under attack was not narrowly tailored as required by the four-part test.

Against that backdrop, to the extent the ordinance is concerned, basically, with traffic safety defined, in essence, as safety to the drivers and occupants in automobiles and the safety to those in relatively close proximity to the roadways, the plaintiff points out that there are a number of existing regulations and statutes on the books which are more than adequate to address the traffic safety issue.

From that, it is argued not so much there is an appropriate fix or fit but that the ordinance is unnecessary, and to the extent it infringes on First Amendment rights, it cannot survive a constitutional attack.

I will not go through all of the ordinances and statutes cited by the plaintiffs with respect to the issue

under discussion; rather, I will incorporate by reference what appears on page 9 of the memorandum submitted in support of the relief sought in the order to show cause. That being said, I will mention a few.

Plaintiffs indicate that the Town has authority to enforce New York State traffic laws, which laws limit pedestrian behavior when entering roadways. There's also a provision in the New York State Vehicle and Traffic Law, I'm told, that prohibits persons from standing in roadways for the purposes of solicitation. There are also provisions which prevent individuals from proceeding in their automobile at such a slow rate of speed to impede the normal and reasonable movement of traffic, etcetera.

Is also noted, and I believe correctly so, that the Town has the authority to enforce, among other things, the provision in the New York State Penal Law which pertains to disorderly conduct. So that's one observation. In other words, is this ordinance narrowly tailored?

On the information before me, I don't believe it is. One reason is, there is some question whether it is even necessary. To the extent it is unnecessary because there are alternate, less restrictive ways to accomplish the intended goal, that calls its constitutionality into serious question.

But beyond that, a statute or an ordinance can't be considered narrowly tailored to the extent its scope is considerably broader than necessary to accomplish the intended goal, and to the extent its scope in and of itself raises very serious constitutional questions.

By way of an example, the ordinance as presently configured provides in paragraph 1(c) that "it shall be unlawful for any person standing within or adjacent to any public right-of-way within the Town of Oyster Bay to stop or attempt to stop any motor vehicle utilizing said public right-of-way for the purpose of soliciting employment of any kind from the occupants of said motor vehicle."

Subdivision (d) basically mirrors the provision just quoted except that, unlike subdivision (c), it indicates when the motorist or someone in the vehicle is acting improperly as defined in the statute.

Under subdivision (c), by way of example, if an individual was on his own property but that property is adjacent to or abuts any public right-of-way, and while so positioned he, for instance, raised a sign which said "please pull over" or "please turn in the next driveway because I am a disabled veteran and I need employment," that would run afoul, in my judgment, of the ordinance. Yet the sign displayed by the hypothetical "disabled veteran," positioned so that it could be seen by

motorists, would have no more effect on traffic safety than many of the solicitations and signs that line the strip mall or the strip zoning areas which are prevalent in Nassau and Suffolk County.

By way of example, it's no more disruptive than a McDonald's sign, somebody standing on the corner -- I'll leave it at that.

With respect to any sign which is near a roadway, an argument can be made that the sign represents a potential distraction to motorists. I think that is probably true. But there are limits to what a municipality can do. Just as a municipality would have problems, I assume, telling McDonald's to take down their sign because it is a distraction to motorists, it seems to me they can encounter the same difficulty and legitimately should encounter the same problem.

I think I've made my point, except I will add that a person who is, by hypothetical, a disabled veteran, on his property which happens to lie adjacent to a public roadway, points a sign to a motorist, is not the type of individual which will cause the traffic problems and raise safety concerns which apparently is the core concern of this ordinance. However, that individual would, under the scenario that I've provided, I believe consistent with the literal meaning of this ordinance, be subject to being

issued a ticket for $250.

What is my point? Well, my point is that this statute and this ordinance and what it attempts to preclude is not finely tailored to the situation; rather, it is too broad. And to the extent its breadth affects the constitutional rights of individuals without any corresponding benefits to the municipality or any legitimate corresponding benefit, it has -- it raises constitutional concerns.

In any event, and for the reasons I've indicated by way of partial conclusion, at least, on this point, on the limited information that is before me, I find that the plaintiffs have established a substantial likelihood of success and that they've also satisfied the irreparable injury standard that must also be satisfied for injunctive relief to issue.

For the reasons I've indicated, it seems to me that there is a clear violation of the First Amendment. That in and of itself establishes irreparable harm for present purposes.

One other thing I'd like to mention, just because we have this preliminary injunction hearing coming up, and that is the question of whether the named plaintiffs have also been directly affected by this ordinance as distinct from affected, basically, as the

medium -- I will say as for the spokesperson for the migrant laborers, which are members of the plaintiff organizations.

Plaintiffs' counsel raised an interpretation of the portion of the ordinance which is entitled "Solicit or Solicitation." That portion of the statute involves the definition of those terms.

Plaintiffs' counsel posits that a fair reading of the statute would be broader than the manner in which I've interpreted it. I've interpreted it, as I've articulated it yesterday, as essentially a nonsolicitation statute by day laborers who are seeking immediate employment and by individuals in automobiles who are offering immediate employment.

If the statute is read, recognizing its disjunctive wording, as follows, I think it tends to support the position of plaintiff on this point. The reading would be: "Any action which seeks to secure employment" would constitute solicitation within the definition.

From that, plaintiff argues, as I understand it, that if an individual from one of the plaintiff organizations, for instance, held up a sign directed at motorists which said "hire day laborers because it will save you money and they are hard workers," the argument

would be made, that falls within the ambit of the statute. The thought would be that such action does seek to secure employment. The employment may not be immediate, but yet it falls within the ambit of seeking to secure employment.

I don't know if that is correct or not. I've not had a chance to fully reflect on it. It probably should not have been dismissed as summarily as I did yesterday.

The resolution of the issue is not necessary for purposes of a temporary restraining order. However, if plaintiff elects to raise that issue again, as I suspect plaintiffs will through counsel, the issue will be addressed further on the next date, that being the May 28th date or shortly thereafter.

Parenthetically, should the legislative -- excuse me. Should the term "solicit" or "solicitation" be interpreted as including the alternative just mentioned, the significance of that would be, I would imagine, that that would be arguably noncommercial speech, and therefore it would be entitled to greater protection by the courts than would be true for commercial speech.

One of the things -- excuse me. The last issue concerns the issue of a bond. Rule 65(b), I believe, or it may be (c) of the Rules of Civil Procedure, provided for a bond issue should the Court issue a preliminary

injunction or a temporary restraining order.

I'm aware of a number of cases, although I have none at hand, which indicate that even though that directive seems to be mandatory, it is not. In certain circumstances, no bond needs to be furnished.

Plaintiffs' counsel indicated yesterday there is case law, when they were talking about the First Amendment as we are here, there is no need for a bond to be furnished.

If the defense feels to the contrary, I'll be happy to hear them; otherwise, I will not require that a bond be furnished.

MR. SINNREICH: We're not requiring one, your Honor.

THE COURT: So that will conclude my decision over the objection of defense.

Both sides have done a very good job in this case, both the plaintiffs' counsel and defendants' counsel. They have helped to frame the issues for the Court. And since it was done in a temporary restraining order context, it was done somewhat under the gun. That is particularly true for the defendant, who has to respond, whereas the plaintiff has time to reflect on these matters.

In any event, that's where we are.

What I'd ask counsel to do for the hearing is discuss it to see what can be stipulated to. It may be you will not be able to reach any stipulations, and if you can't, that's fine.

What I'll do, in the exercise of my authority at the hearing, I'll listen to proffers, at least in the first instance. Once I receive a proffer by an attorney indicating what they are prepared to prove and why, I would look to opposing counsel and ask for their input.

The point is, to the extent -- if a party is not in a position to rebut what opposing counsel presents by way of a reasonable proffer, I really don't think it is worthwhile to take testimony, because it would essentially be a waste of time.

Having said that, if there is a dispute on any of this, obviously, I'll address it.

So I'm prepared at this point to sign a temporary restraining order. I know one has been presented, but I have not read it.

So I want to go off the bench, and I'll review it. I'll ask counsel to remain for a couple of minutes so if I have any questions, I can review it with counsel.

To the extent I don't have any questions, I will reappear and so indicate, and you'll be on your way. So thank you, Counsel. (Proceedings adjourned.)