IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MARCUS SABO, MAXWELL BURKERT, RODNEY CAMPBELL, MICHAEL DOUGLAS, ROBERT DUKE, EDWARD FOLTZ, ROBERT GATEWOOD, GREGORIO GONZALEZ, DEMETRIUS HUGHES, NIKOS KASTRINSIOS, ROBERT LAMMERS, DOUGLAS EARL MARTIN, RICHARD MOORE, NICHOLAS NARISH, DANE NEYLAND, CARLOS RIVERA, DAVID ROCHEVILLE, EDWARD ASKEW, and DELQUISE ALLEN,	)	19 CV 4837 Judge Pallmeyer Magistrate Judge Harjani
Plaintiffs,	)	
v.	)	
CITY OF AURORA,	)	
Defendant.	)	

MOTION FOR A TEMPORARY RESTRAINING ORDER

Plaintiffs, through counsel, respectfully request that the Court enter a temporary restraining order prohibiting Defendant City of Aurora from forcing Plaintiffs to move out of their home at Wayside Cross Ministries. In support thereof, Plaintiffs state as follows:

INTRODUCTION

The Plaintiffs are 15 residents and four resident staff of Wayside Cross Ministries ("WCM"), located at 215 E. New York Street in Aurora, Illinois. The Plaintiffs are participants in the Master's Touch Ministry, a Bible-based community that seeks to help men in crisis rebuild their lives through prayer, mentoring, and

supportive services. Each of the Plaintiffs has been convicted of a sex offense that makes him subject to the residency restrictions set forth in 720 ILCS 5/11-9.3(b-5) and (b-10) (hereinafter "the Residency Law"). The City of Aurora has given the Plaintiffs notice that if they do not move out of WCM by July 26, 2019, they will face arrest and criminal charges.

For decades, the City of Aurora has registered individuals subject to the Residency Law (including all of the Plaintiffs) at Wayside Cross Ministries.[1] But the City has now decided that it is illegal for Plaintiffs to continue residing at WCM because of its proximity to McCarty Park, a City park located in downtown Aurora. If they are kicked out of WCM, the Plaintiffs will be severely harmed. They will become homeless and be deprived of a faith community that is enabling them to rebuild their lives.

As set forth in Plaintiffs' complaint, the City of Aurora's determination that Plaintiffs may not live at WCM violates their rights under the First Amendment's Free Exercise Clause and the Illinois Religious Freedom Restoration Act. ECF No. 1, Complaint at ¶¶47–81. In addition, Plaintiffs seek a declaratory judgment that the City's determination that Plaintiffs may not reside at WCM is based on a misinterpretation and misapplication of the Residency Law. *Id*. at ¶¶82–93. Plaintiffs request that this Court enter af temporary restraining order allowing

[1] Indeed, the City registered Plaintiffs Douglas, Moore and Narish at 215 E. New York Street less than two weeks before giving them notice that it was illegal for them to remain there. *See* Ex. 9, Decl. of Douglas (Aurora PD registered him on June 14, 2019); Ex. 10, Decl. of Moore (June 22, 2019); Ex. 11, Decl. of Narish (June 24, 2019).

Plaintiffs to remain at WCM without threat of arrest until such time as the Court can rule on a preliminary injunction.

FACTUAL BACKGROUND

I. Wayside Cross Ministries

Founded in 1928, Wayside Cross Ministries ("WCM") ministers to people whose lives are in crisis. WCM offers six Bible-based transformational programs for men, women, women with children, at-risk youth, the incarcerated, and ex-offenders. Ex. 3, Decl. of James Lukose, WCM Executive Director, at ¶1. The Master's Touch Ministry is a comprehensive residential, life transformation program for troubled men whose lives are out of control as a result of drugs, alcohol, or other destructive behavior patterns. *Id*. at ¶2. The program helps them confront their problems and empowers them to change through spiritual development, biblically based mentoring, work rehabilitation, education, partnerships with local churches and transitional housing. *Id*. at ¶3.

Plaintiff Robert Gatewood describes the Master's Touch Ministry program as "a spiritual family" where the residents are committed to transforming their lives through deepening their connection with God and supporting their fellow residents' spiritual progress. Ex. 5, Declaration of Gatewood. Likewise, Plaintiff Gregorio Gonzalez describes his experience at WCM as "transformational" because the residents "pray together, read the Bible together and are learning together how to be productive people and to do it for the glory of God." Ex. 6, Declaration of Gonzalez.

There are presently 90 men in WCM's resident population at 215 E. New York Street, nine of whom are resident staff and the rest of whom are working their way through the program. Ex. 3 at ¶3. WCM has provided its ministry in downtown Aurora for more than 90 years, and has been at its current location for more than 60 years. *Id*. at ¶5. As reported by the *Chicago Tribune*, "Even the Aurora Police Department acknowledges Wayside runs a tight ship that has resulted in fewer problems than other areas of the city." Ex. 23.

II. The City's Notice Instructing Plaintiffs to Move Out of WCM

Defendant City of Aurora, through its police department, has given each of the Plaintiffs written notice that he is prohibited from continuing to reside at WCM because doing so violates the Residency Law. Ex. 24, Notice to Marcus Sabo. The substance of each of these notices is identical. The notice states that the Plaintiffs are "required to relocate within 30 days" because their living at 215 E. New York Street violates the Residency Law because WCM is located within 500 feet of McCarty Park. *Id*. The notice states that if the men "fail to move" they "may be charged with a class 3 felony violation of the registration act." *Id*.

To date, Aurora police have given notices to 19 residents of Wayside Cross Ministries. Plaintiffs Sabo, Burkert, Campbell, Douglas, Duke, Foltz, Gatewood, Gonzalez, Hughes, Kastrinsios, Lammers, Martin, Moore, Narish, Neyland, Rivera, Rocheville, and Askew have been given until July 26, 2019 to move out of Wayside Cross Ministries. Exs. 4–21. Plaintiff Allen has been given until August 15, 2019 to move out of Wayside Cross Ministries. Ex. 22.

III. McCarty Park

McCarty Park is a public park located in downtown Aurora at 350 E. Galena Boulevard. McCarty Park is situated between E. New York Street on the North, W. Park Place on the West, E. Galena Blvd. on the South, and E. Park Place on the East. Ex. 1, Google Maps Satellite Image.

McCarty Park has been at that location for more than 100 years. McCarty Park is open to the public and contains benches, landscaping, paved pathways and a fountain. Ex. 3, Decl. of Lukose at ¶7. The fountain has been located in the center of McCarty Park for approximately 10 years. *Id*. Within the past two months, the City added two children's rocking horses to the lawn on the east side of the park near E. Park Place. Ex. 2, Photo; Ex. 3 at ¶7.

Google Maps' measuring tool shows that the easternmost boundary of 215 E. New York Street is within 500 feet of the westernmost boundary of McCarty Park. Ex. 1. The fountain at the center of McCarty Park is more than 550 feet from the easternmost boundary of 215 E. New York Street. *Id.* The rocking horses on the east side of McCarty Park are more than 700 feet from the easternmost boundary of 215 E. New York Street. *Id.*[2]

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[2] This Court can and should take judicial notice of these geographic facts, which are readily apparent from Google Maps. Federal Rule of Evidence 201 provides that a court may take judicial notice of a fact that is "(1) generally known within the trial court's territorial jurisdiction or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed.R.Evid. 201(b). The Seventh Circuit has endorsed the taking of judicial notice of Google Maps. See *Cloe v. City of Indianapolis*, 712 F.3d 1171, 1177 n.3 (7th Cir. 2013), overruled on other grounds by *Ortiz v. Werner Enters., Inc.*, 834 F.3d 760 (7th Cir. Aug. 19, 2016) ("We have taken judicial notice of—and drawn our distance estimates from—images available on Google Maps, a source whose accuracy

IV. The Relevant Provisions of Illinois Law

Because of their criminal convictions, all of the Plaintiffs are subject to the Residency Law, which sets forth restrictions on where they may reside. *See* 720 ILCS 5/11-9.3(b-5) and (b-10). The statute makes it illegal for Plaintiffs to reside within 500 feet of schools, playgrounds, daycare facilities, and facilities providing programs or services directed exclusively towards minors. The provision prohibiting residency within 500 feet of playgrounds went into effect on July 7, 2000. 720 ILCS 5/11-9.3(b-10). It is a Class 4 felony for an individual subject to the Residency Law to reside in a prohibited location. 720 ILCS 5/11-9.3(f). Notably, there is no statute that prohibits Plaintiffs or other individuals subject to the Residency Law from living within 500 feet of a "park."

Illinois law defines a "playground" as "a piece of land owned or controlled by a unit of local government that is designated by the unit of local government for use *solely or primarily for children's recreation*." 720 ILCS 5/11-9.3(d)(13) (emphasis added). Per 720 ILCS 5/11-9.3(e), the 500-foot distance is measured from "the edge of the property comprising the … playground … to the edge of the child sex offender's place of residence."

Under Illinois law, an individual who is required to register as a sex offender must register his address and other identifying information annually "with the chief of police in the municipality in which he or she resides." 730 ILCS 150/3 (a)(1). It is within the discretion of each local registration authority (*i.e.*, the local police

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cannot reasonably be questioned, at least for the purpose of determining" general distances.) (internal citations omitted).

department) to apply the Residency Law to addresses within its jurisdiction and determine whether a registrant is permitted to register a particular address. Failure to register and/or providing false registration information is a Class 3 felony. 730 ILCS 150/10.

Prior to June 26, 2019, the City registered all of the Plaintiffs at WCM using 215 E. New York Street as their home address. Exs. 4–23, Declarations of Plaintiffs. Indeed, the City has permitted individuals who have been convicted of sex offenses against minors to register at WCM for decades and never raised a concern that WCM is too close to McCarty Park. Ex. 3 at ¶8. The City will no longer allow individuals subject to the Residency Law to register at WCM because the City has determined that 215 E. New York Street does not comply with the Residency Law due to its proximity to McCarty Park. In particular, the City has decided to treat the entirety of McCarty Park as a "playground" due to the presence of a fountain in the center of the park and two rocking horses on the east side of the park. Ex. 24, Notice to Sabo; Ex. 25, Correspondence from Corporation Counsel Richard Veenstra.

V. Security Provisions at WCM

The residential building of WCM where Plaintiffs all reside is located at 215 E. New York Street. Ex. 3 at ¶9. The residents of the Master's Touch ministry are only permitted to enter and exit the residential building through a door on the west side of the building. *Id*. at ¶10. This door is more than 500 feet from the nearest boundary of McCarty Park. *Id*. The residents of the Master's Touch ministry are

restricted from leaving the residence property at night because of a 9:30 p.m. curfew and also because they are closely supervised by the staff at WCM. *Id*. at ¶11.

WCM is prepared to secure written agreements from the Plaintiffs that they would not be permitted on portions of Wayside's property that are less than 500 feet from the McCarty Park property line after the close of business. *Id*. at ¶12.

VI. The Plaintiffs Are Being Seriously Harmed

Each of the Plaintiffs came to WCM because his life was in crisis after he was convicted of a serious crime. Exs. 4–23, Declarations of Plaintiffs. The Plaintiffs are at WCM seeking to transform their lives through deepening their faith in God, working to break negative patterns of behavior, and building skills that will allow them to be independent.

If Plaintiffs are forced to leave WCM, they will be deprived of the stability, services and supportive religious community that are essential to their growth and progress towards leading law abiding, productive lives. For example, Plaintiff Askew states that during his time at WCM, he has begun to change his life through prayer, seeking forgiveness, and putting his faith in God, but he fears that if he leaves WCM, he will return to a life "on the streets" because he is "a drug addict and not yet strong enough to fight this battle alone." Ex. 7, Decl. of Askew. Similarly, Plaintiff Martin states that living and working at WCM and participating in its programs has "restored [his] self-worth" and deepened his Christian faith. Ex. 8, Decl. of Martin. But if he is kicked out of the program, he will have no job, no money, and would become homeless. *Id*.

Plaintiffs Gatewood, Sabo, Foltz, Campbell, Rivera, Kastrinsios, Askew, Martin, Narish, Rocheville, Gonzales, Neyland, Douglas, Burkert, Moore and Allen will all become homeless if they are forced to move out of WCM. Exs. 4–18, 22. They do not have sufficient resources to obtain their own housing and do not have family members who can take them in. *Id*. Plaintiffs Lammers, Duke and Hughes each have a small amount of savings that they would seek to put towards obtaining housing, but they fear that if they move out of WCM their lives and their employment will be destabilized and they will also be at risk of homelessness. Exs. 19–21. If the Plaintiffs do not have housing, they will be forced to sleep outside because most homeless shelters in Illinois will not accept individuals who are required to register as sex offenders.

Moreover, based on the City's new interpretation of the Residency Law, the City is refusing to register Plaintiffs at 215 E. New York Street. If the Plaintiffs' registration lapses and the City refuses to re-register them because of its new interpretation of the Residency Law, they face potential felony criminal charges. 730 ILCS 150/10 (making failure to register one's address annually a Class 3 felony). Plaintiff Gatewood must register again on July 26, 2019. Ex. 5 at ¶7. Plaintiffs Martin, Douglas and Duke all must register again within the next two months. *See* Exs. 8, 9, 19.

VII. Background to the City's Issuance of the June 26 Notices

Shortly before the City installed the hobby horses at McCarty Park and issued notice to Plaintiffs that they must move, WCM had accepted Thomas Kokoraleis

into the Master's Touch Ministry program on March 29, 2019. Ex. 3 at ¶13. Mr. Kokoraleis was released to WCM from prison after serving a sentence for a notorious murder he committed in 1982. *Id.* Mr. Kokoraleis' release garnered significant media attention and WCM's decision to allow Mr. Kokoraleis to reside at the ministry was greeted unfavorably by certain members of the community. *Id.* City officials requested that WCM not allow Mr. Kokoraleis to reside at the ministry. Conversations ensued between City officials and WCM officials about the matter, but WCM would not kick Mr. Kokoraleis out of the program. Mr. Kokoraleis is not impacted by the eviction notice because the applicable law only applies to individuals whose crimes were against minors. *Id.*

ARGUMENT

I. Temporary Restraining Order Standards

To be entitled to a temporary restraining order a plaintiff must demonstrate "(1) some likelihood of succeeding on the merits and (2) that he has 'no adequate remedy at law' and will suffer irreparable harm" if relief is denied. *Abbott Laboratories v. Mead Johnson & Co.,* 971 F.2d 6, 11 (7th Cir. 1992) (internal citations omitted). If these two elements are established, a court should consider "(3) the irreparable harm the non-moving party will suffer if preliminary relief is granted, balancing that harm against the irreparable harm to the moving party if relief is denied; and (4) the public interest, meaning the consequences of granting or denying the injunction to non-parties." *Id.* In deciding this motion, the court "[is] sitting as would a chancellor in equity," and should weigh all four factors "seeking at all times

to minimize the costs of being mistaken." *Id.*

As set forth below, Plaintiffs are entitled to a temporary restraining order to halt Defendant City of Aurora from carrying through on its threat to make arrests beginning on July 26, 2019, and to require the City to continue to register Plaintiffs at Wayside Cross until the Court can rule on a motion for a preliminary injunction.

II. Plaintiffs Have a Likelihood of Success on the Merits of their First Amendment Hybrid Rights Claim

Plaintiffs assert a "hybrid right" theory with respect to their Free Exercise claim. The theory of hybrid rights comes from *Employment Div., Dep't of Human Res. v. Smith*, 494 U.S. 872 (1990), in which the Supreme Court noted that the First Amendment can bar "application of a neutral, generally applicable law to religiously motivated action" in cases involving "the Free Exercise Clause in conjunction with other constitutional protections." *Id*. at 881. A successful hybrid rights claim entitles a plaintiff to strict scrutiny analysis. Under a strict scrutiny analysis, the government must demonstrate that its actions are in furtherance of a compelling governmental interest and the least restrictive means are being used to further that interest. *See Wisconsin v. Yoder*, 406 U.S. 205 (1972); *Sherbert v. Verner*, 374 U.S. 398 (1963).

Admittedly, hybrid right claims are rare, and the precise contours of such a claim are as yet undeveloped. The Seventh Circuit has never ruled on such a claim, and there is no agreement among the circuits as to the best approach to establish

such a claim.[3] Nevertheless, this case presents an almost ideal hybrid rights claim under "the colorable claim approach," which is the approach adopted by the Ninth and Tenth Circuits,[4] as well as by this Court in *Vineyard Christian Fellowship of Evanston v. City of Evanston*, 250 F. Supp. 2d 961, 988-89 (N.D. Ill. 2003) ("This court therefore will follow the logic of the Ninth and Tenth Circuits, which require that in order for strict scrutiny to apply, a plaintiff must make a showing of a colorable infringement of one of the other constitutional rights involved in the hybrid claim").

As shown below, a hybrid rights claim is established here, based on the following: (1) the City's actions burden Plaintiffs' exercise of religion; (2) the City's actions infringe upon Plaintiffs' right of free association; and (3) the City's actions fail to satisfy the strict scrutiny test.

A. Defendant's Actions Impose a Substantial Burden on Plaintiffs' Exercise of Religion and Freedom of Association

The City of Aurora's actions substantially burden Plaintiffs' exercise of religion

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[3] See Ryan S. Rummage, *Comment: In Combination: Using Hybrid Rights to Expand Religious Liberty,* 64 Emory L.J. 1175, 1189-1196 (identifying the three hybrid rights approaches that have emerged in the circuits: (1) treating Justice Scalia's language in *Smith* regarding hybrid rights as dicta, which expressly undercuts hybrid rights as a valid approach to a free exercise claim; (2) allowing independent claims, which holds that a hybrid rights claim is appropriate only when the companion claim can win on its own without the free exercise claim; and (3) allowing colorable claims, which holds that a hybrid rights claim is one that includes a free exercise claim and a companion claim that has a probable, or colorable, chance of success on its own; and explaining that "debates regarding these three approaches will continue until the Supreme Court clarifies the proper approach to hybrid rights.")

[4] See *Swanson v. Guthrie Independent School District No. I-L*, 135 F.3d 694, 696 (10th Cir. 1998)*;* and *Thomas v. Anchorage Equal Rights Commission*, 165 F.3d 692, 696 (9th Cir. 1999)*,* vacated en banc on ripeness grounds, 220 F.3d 1134 (9th Cir. 2000).

by forcing them to move out of WCM or face criminal prosecution.

All 19 of the Plaintiffs are part of WCM's Bible-based, Christ-centered ministry. Ex. 3, Declaration of James Lukose at ¶2,3. Plaintiffs are part of WCM's Master's Touch Ministry program. *Id.* at ¶4, 6. The Master's Touch Ministry is a comprehensive residential, life transformation program for troubled men whose lives are out of control as a result of drugs, alcohol, or other destructive behavior patterns. *Id.* at ¶3. The program helps them confront their problems and empowers them to change through spiritual development, biblically based mentoring, work rehabilitation, education, partnerships with local churches and transitional housing. *Id*. There are presently 90 men in the resident population. Nine are Resident Staff and the rest are working their way through the program. *Id*.

Plaintiffs have experienced spiritual transformation through WCM's Bible-based, Christ-centered ministry. Plaintiff Robert Gatewood describes the Master's Touch Ministry program as "a spiritual family" where the residents are committed to transforming their lives through deepening their connection with God and supporting their fellow residents' spiritual progress. Ex. 5, Decl. of Gatewood. Plaintiff Gregorio Gonzales describes his experience at WCM as "transformational" because the residents "pray together, read the Bible together and are learning together how to be productive people and to do it for the glory of God." Ex. 6, Decl. of Gonzales.

Additionally, Defendant's actions violate Plaintiffs' right of free association by requiring them to sever their connection with WCM and their faith community or

face criminal prosecution. Courts "have long understood as implicit in the right to engage in activities protected by the First Amendment 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).[5]

If Plaintiffs are required to move out of WCM, they will be unable to continue practicing their faith with the group of their choosing. They are joined to WCM and to each other in living a religious life and providing each other with religious fellowship. Their relationship with Wayside and each other is akin to a parishioner's with his church, or a monk's with the monastery where he lives. By imposing the threat of criminal prosecution if Plaintiffs do not remove themselves from their faith community, Defendant has violated Plaintiffs' right of association.

B. Defendant's Actions Are Not Justified by a Compelling Governmental Interest

In determining whether the government has demonstrated a compelling governmental interest, courts must "look[] beyond broadly formulated interests justifying the general applicability of government mandates and scrutinize[] the asserted harm of granting specific exemptions to particular religious claimants." *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 431

[5] *See Smith* at 882 (identifying freedom of association as a worthy companion claim, noting that "it is easy to envision a case in which a challenge on freedom of association grounds would likewise be reinforced by Free Exercise Clause concerns") (citations omitted). The other companion constitutional claims the *Smith* Court identified to establish a valid hybrid rights claim, when combined with a religious interest, were (i) the freedom of speech and of the press; and (ii) the right of parents to direct the care, custody, and control of their children. See *Smith* at 881.

(2006).

Here, Defendant cannot show that it has a compelling governmental interest in preventing these particular Plaintiffs from living on a property whose boundary is less than 500 feet from the property line of McCarty Park for several reasons:

a. The dormitory where Plaintiffs reside is more than 500 feet from the fountain and two hobby horses that Defendant asserts convert McCarty Park into a "playground."[6] Ex. 1, Google Maps Satellite Photo;

b. Plaintiffs are restricted from leaving the property because of a 9:30 p.m. curfew and also because the men are closely supervised by the staff at Wayside. Ex. 3, Decl. of Lukose at ¶11;

c. Wayside is prepared to secure written agreements from the men that they would not be permitted on portions of Wayside's property that are less than 500 feet from the McCarty Park property line after the close of business. *Id*. at ¶11;

d. Wayside has provided its ministry in downtown Aurora for more than 90 years, and has been at its current location for more than 60 years. *Id*. at ¶5. As reported by the *Chicago Tribune*, "Even the Aurora Police Department acknowledges Wayside runs a tight ship that has resulted in fewer problems than other areas of the city." Ex. 23; and

e. Until three weeks ago, the City of Aurora considered WCM to be an acceptable address for Plaintiffs and registered all of them there. Ex. 3 at ¶8; Ex. 4–22.

In addition, in December 2017, the Illinois Sex Offenses and Offender Registration Task Force, which was established by the Illinois General Assembly with the mandate to "examine the implementation and impact of the state's sex offender registration and residency restrictions," released its Final Report

[6] Plaintiffs dispute Defendant's characterization of McCarty Park as a "playground." *See* discussion in §IV (B), *infra*.

("Report")[7] which concluded as follows:

> No research was available on whether [residency] restrictions would prevent sexual offending prior to implementation in states and local jurisdictions across the nation. Since that time, research has shown residency restrictions neither lead to reductions in sexual crime or recidivism, nor do they act as a deterrent. One reason for this null finding is that while residency restrictions were premised on preventing sexual abuse by strangers, research has shown most offenders are not strangers to their victims and abuse tends to happen in a private residence rather than identified public locations. At the same time, registry restrictions produce collateral consequences that stem from the inability to secure stable housing and employment or meaningfully participate in civic, social, or religious activities. Many of these collateral consequences weaken protective factors that reduce the risk of criminal behavior, such as family support, and aggravate factors that increase risk, such as homelessness or unemployment.

Id., pp. 22-23.

In this case, just such "collateral consequences" are likely to result if Plaintiffs are required to remove themselves from their support network at WCM. As such, far from furthering a compelling governmental interest, Defendant's actions are likely to exacerbate the very risk that it purportedly wishes to prevent.

C. Defendant's Actions Are Not the Least Restrictive Means of Achieving Any Compelling Governmental Interest

Assuming *arguendo* that Defendant has a compelling governmental interest in preventing contact between minors who may be present in McCarty Park and individuals who have been convicted of sex offenses, Defendant's actions are not the least restrictive means of furthering that interest. This is so for two primary reasons.

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[7] Sex Offenses and Sex Offender Registration Task Force Final Report (2017), http://www.icjia.state.il.us/assets/articles/SOTF_report_final_12292017.pdf.

First, the very existence of a government-sanctioned exception to a regulatory scheme that is purported to be the least restrictive means can demonstrate that other, less-restrictive alternatives exist. *See Burwell v. Hobby Lobby Stores, Inc.,* 573 U.S. 682, 730-31 (2014). Here, the Illinois Criminal Code provides an exception to the general rule that a child sex offender may not reside within 500 feet of a playground. This exception applies to child sex offenders who own property that was purchased before July 7, 2000. 720 ILCS 5/11-9.3(b-10). This government-sanctioned exception suggests that requiring Plaintiffs to leave Wayside is *not* the least restrictive means of furthering any interest in protecting minors from recidivist sex offenders. Additionally, the Report recommended ways to "[e]nsure [r]estrictions are [n]arrowly [t]ailored to [i]mprove [p]ublic [s]afety," also suggesting those restrictions are not currently narrowly tailored. Report, p. 28.

Second, there are less restrictive options that would ensure the protection of minors in McCarty Park without substantially burdening Plaintiffs' free exercise of religion including, for example:

a. Securing agreements from WCM and Plaintiffs that they would not be permitted on portions of Wayside's property that are less than 500 feet from the McCarty Park property line after the close of business;

b. Obtaining a statement from WCM describing the precise supervision and restrictions placed on each of the Plaintiffs;

c. Allowing Defendant to verify that the only unlocked entrance to Plaintiffs' residence building is more than 500 feet from McCarty Park. Ex. 1; Ex. 3 at ¶10; and

d. Enforcement of the statutory restrictions that prohibit Plaintiffs from being "present" in a park or "loitering" near a park. *See* 720 ILCS 5/11-9.3 (a-10) and (b-2).

Based on the above, the Plaintiffs have a likelihood of success on their First Amendment hybrid rights claim.

III. Plaintiffs Have a Likelihood of Success on the Merits of their Claim Under the Illinois Religious Freedom Restoration Act

Plaintiffs assert a claim under the Illinois Religious Freedom Restoration Act, 775 ILCS 35/1, et *seq.* ("RFRA"). Illinois RFRA provides, in pertinent part:

> Government may not substantially burden a person's exercise of religion, even if the burden results from a rule of general applicability, unless it demonstrates that application of the burden to the person (i) is in furtherance of a compelling governmental interest and (ii) is the least restrictive means of furthering that compelling governmental interest.

775 ILCS 35/15.

Defendant is substantially burdening Plaintiffs' exercise of religion by requiring them to move out of their residences at WCM or face criminal prosecution. *See* discussion in §II(A), *supra*. "[T]he hallmark of a substantial burden on one's free exercise of religion is the presentation of a coercive choice of either abandoning one's religious convictions or complying with the governmental regulation." *Diggs v. Snyder*, 333 Ill. App. 3d 189, 195 (5th Dist. 2002) (citing *Yoder*, 406 U.S. at 217-18). Here, Defendant placed a substantial burden on Plaintiffs' free exercise of religion by presenting a coercive choice—namely, Plaintiffs must abandon their lives in a religious community or face criminal prosecution.

Moreover, Defendant's actions are not in furtherance of a compelling governmental interest. *See* discussion in §II(B), *supra*. Finally, assuming *arguendo* that Defendant has a compelling governmental interest in preventing contact between Plaintiffs and children who may be present in McCarty Park, Defendant's

actions are not the least restrictive means of furthering that interest. *See* discussion in §II(C), *supra*.

Based on the above, the Plaintiffs have a likelihood of success on their Illinois RFRA claim.

IV. Plaintiffs Are Likely to Succeed on the Merits of the Declaratory Judgment Action

Plaintiffs have a likelihood of success on their claim for declaratory relief for two reasons: (1) the parties' rights and responsibilities under the law are in question and Plaintiffs are in danger of sustaining serious harm because of the City's misinterpretation of the law; and (2) 215 E. New York Street is not within 500 feet of a "playground" as that term is defined in Illinois law.

A. A Declaration of Law Is Necessary and Warranted

The Illinois Supreme Court has explained that a declaratory judgment is appropriate where the plaintiff "seeks construction of a governmental regulation or written instrument and a declaration of the rights of the parties involved." *Am. Family Mut. Ins. Co. v. Savickas*, 193 Ill. 2d 378, 390 (Ill. 2000) (*citing* 735 ILCS 7/2-701(a) (West 1998)). Where, as here, a plaintiff brings a declaratory judgment action concerning the validity or proper application of a statute, the plaintiff "must have sustained, or be in immediate danger of sustaining, a direct injury as a result of enforcement of the statute." *Lebron v. Gottlieb Mem'l Hosp.*, 237 Ill. 2d 217, 266-67 (Ill. 2010) (*citing Village of Chatham v. County of Sangamon*, 216 Ill. 2d at 419-20 (Ill. 2005)).

A declaration of law is necessary and proper here because the parties are in disagreement concerning the proper interpretation of 720 ILCS 5/11-9.3(b-10) and whether 215 E. New York Street is within 500 feet of a "playground" under Illinois law. The resolution of these disputes will have a substantial and immediate impact on the parties' respective legal rights and responsibilities.

First, Plaintiffs will sustain serious injury if the City persists in its erroneous interpretation of 720 ILCS 5/11-9.3(b-10). As explained above, if Plaintiffs are forced to leave WCM, they will be deprived of their ability to participate in the supportive religious community of the Masters' Touch Ministry. Plaintiffs Gatewood, Sabo, Foltz, Campbell, Rivera, Kastrinsios, Askew, Martin, Narish, Rocheville, Gonzales, Neyland, Douglas, Burkert, Moore and Allen will all become homeless if they are forced to move out of WCM. Exs. 4–19, 23. Plaintiffs Lammers, Duke and Hughes also will be at risk of homelessness. Exs. 20–22. If the City will not register Plaintiffs at 215 E. New York Street, they will either have to sleep on the street or face potential felony charges for violation of the Sex Offender Registration Act. It is a Class 4 felony for an individual subject to the Act to reside in a prohibited location (720 ILCS 5/11-9.3(f)) and a Class 3 felony to fail to register one's address (730 ILCS 150/10).

Second, a proper interpretation of 720 ILCS 5/11-9.3(b-10) is necessary so both Plaintiffs and the City know their legal rights and responsibilities. Plaintiffs have a legal obligation to not reside within 500 feet of a playground and can face felony prosecution if they fail to abide by this restriction. 720 ILCS 5/11-9.3(f). It is thus

necessary for them to know how the distance between a playground and a residence will be measured so they can conform their conduct to the law. Likewise, the City has a legal responsibility to register individuals who have been convicted of sex offenses residing within its jurisdiction. 730 ILCS 150/3 (a)(1). The City has to know how to properly measure the distance between a between a playground and a residence so it can properly carry out its obligation to administer the registration law and register individuals such as Plaintiffs who live within Aurora. For these reasons, Plaintiffs are entitled to obtain a declaratory judgment.

B. 215 E. New York Street Is Not Within 500 Feet of a Playground

Plaintiffs have a substantial likelihood of success on their claim for declaratory relief because 215 E. New York Street is not within 500 feet of a "playground" as that term is used in Illinois law.

1. At Most, Only a Small Section of McCarty Park Meets the Statutory Definition of a Playground

Illinois law defines a "playground" as "a piece of land owned or controlled by a unit of local government that is designated by the unit of local government for use *solely or primarily for children's recreation*." 720 ILCS 5/11-9.3(d)(13) (emphasis added).

The City contends that McCarty Park constitutes a "playground" because of the presence of two hobby horses on the lawn on the east side of the park and the presence of an "interactive fountain" at the park's center. *See* Ex. 25, Veenstra letter; Ex. 2, photo of lawn with hobby horses. Yet neither the lawn nor the fountain meet the definition of a "playground" under the plain language Illinois law. These

areas are not "solely or primarily" for children. They are open to be enjoyed by all members of the public, adults and children alike. Children might play on the hobby horses or run through the fountain, but these areas are also to be enjoyed by adults. These features are not like a traditional jungle gym with swings, slides, ladders and other equipment that is designed for use by kids.

More importantly, even if the hobby horses and/or the fountain are deemed to meet the definition of a "playground" under Illinois law, that does not mean that the entirety of McCarty Park is a playground. McCarty Park is a general use park open to members of the public (adults and children alike) which contains paved walking paths, open green space, landscaping, other amenities. Ex. 1, Google Maps Satellite Image; Ex. 3, Decl. of Lukose at ¶7. The fact that the larger park contains some features that children may enjoy does not convert the entire larger park, including the areas that have nothing to do with children's recreation, into a "playground."

Indeed, long standing past practices demonstrate that not even the City of Aurora thinks that the entirety of McCarty Park is a playground. The fountain at the center of McCarty Park has been there for approximately 10 years. Ex. 3 at ¶7. The City has routinely registered individuals subject to the Residency Law, including all of the Plaintiffs, at 215 E. New York Street. Ex. 3 at ¶8. Exs. 4–23 (declarations of all Plaintiffs stating that when they registered with the Aurora police department, the registration authorities raised no concerns about the proximity of McCarty Park to WCM). Only now, after the City's disagreement with

WCM about the presence of Mr. Kokoraleis in the Master's Touch Ministry program has the City decided that McCarty Park is a "playground." Ex. 3 at ¶13.

2. The Proper Measurement Is From the Actual Playground to the Residence

The relevant statute provides that the 500-foot distance is measured from "the edge of the property comprising the … playground … to the edge of the child sex offender's place of residence." 720 ILCS 5/11-9.3(e). The statute does not specifically state how the distance from a playground to a residence should be measured where a children's playground is contained within a larger park.

The City contends that measurement should be made from the boundary of the park to the residence. Plaintiffs contend that the measurement should be made from the boundary of the area of the park that constitutes a playground to the residence. There is no published opinion from the Illinois Courts addressing this question. However, in a Rule 23 Order (*i.e.*, a non-precedential order), the Illinois Appellate Court interpreted the law as requiring proof that an individual's residence is within 500 feet of the "particular areas" of a park that "meet the statutory definition of a playground." *See People v. Cripe*, 2017 IL App (4th) 150400-U, ¶ 38 (Ill. App. 4th, 2017) ("the State failed to prove that defendant resided within 500 feet of a playground…. The evidence showed that defendant resided approximately 438 feet from the 'Saunemin City Park and Playground.' But the evidence did not establish which areas of the Saunemin City Park and Playground met the statutory definition of a 'playground' or how far defendant resided from those particular areas.").

The *Cripe* court's analysis makes good sense when viewed in light of the rules of statutory construction. In particular, when the language of a statute "is unambiguous, the statute must be applied as written." *First Am. Bank Corp. v. Henry*, 239 Ill. 2d 511, 515-16 (Ill. 2011) (*citing DeLuna v. Burciaga*, 223 Ill. 2d 49, 59 (Ill. 2006)). And where there is any ambiguity, "the entire statute must be read as a whole, considering all relevant parts." *Id*. (*citing Kraft, Inc. v. Edgar*, 138 Ill. 2d 178, 189 (Ill. 1990)).

These two rules of statutory construction point to the conclusion that where a children's playground area is located within a larger, general use park, the Illinois legislature intended the distance to be measured from the boundary of the playground area, not the property line of the larger park.

The plain language of the statute restricts residence within 500 feet of a "playground" and does not restrict residence within 500 feet of a "park." *See* 720 ILCS 5/11-9.3 (b-5) and (b-10). The statute gives separate definitions of "playground" and "public park." *See* 720 ILCS 5/11-9.3(d)(14); 720 ILCS 5/11-9.3(d)(13). If the Illinois legislature intended to make it illegal for individuals such as Plaintiffs to live within 500 feet of general use parks such as McCarty Park, it would have said so. And if the legislature intended the definition of "playground" to include any larger park that contains a playground area, it would have said so in the definition of "playground." But it didn't.

Accordingly, the City's interpretation of the statute and its determination that Plaintiffs may not continue to live at 215 E. New York Street is contrary to law. As

shown in the satellite image attached hereto as Exhibit 1, 215 E. New York Street is within 500 feet of McCarty Park but more than 550 feet from the fountain and more than 650 feet from the hobby horses. Ex. 1. Accordingly, Plaintiffs have a likelihood of success on their claim for a declaratory judgment and should be granted a temporary restraining order allowing them to remain in their homes.

V. Plaintiffs Are Suffering Irreparable Harm, and Any Harm to the Defendant's Interests Will Be Minimal

In addition to establishing a likelihood of success on the merits of their claims, Plaintiffs lack an adequate remedy at law and will suffer irreparable harm in the absence of a temporary restraining order.

As explained in full above, forcing Plaintiffs to move out of WCM will force them into homelessness and deprive them of the opportunity to continue their participation in the Master's Touch faith community in violation of their First Amendment rights. The Supreme Court has held that a showing of a colorable First Amendment claim is sufficient to satisfy the irreparable injury requirement for an injunction. "The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976). When deprivation of a constitutional right is alleged, "most courts hold that no further showing of irreparable injury is necessary." *Ezell v. City of Chicago*, 651 F.3d 684, 699 (7th Cir. 2011) (quoting Alan Wright et al., *Federal Practice and Procedure* §2948.1 (2d ed. 1995)).

The City cannot claim its interests will be harmed if the requested temporary restraining order is granted. This is so for at least four reasons. First, Plaintiffs

seek nothing more than to continue residing at a location the City has previously deemed to be entirely compliant with the law for decades. Second, the relevant statute, by its own terms, does not prohibit Plaintiffs from living within 500 feet of McCarty Park. The City does not have a reasonable claim that it will be harmed by being prohibited from continuing to misinterpret and misapply the law. Third, the City cannot claim that public safety will be compromised if Plaintiffs are allowed to continue residing at WCM. Forcing Plaintiffs to live on the streets rather than in a stable home with supervision, a curfew, and supportive services doesn't improve the safety of the City of Aurora. Fourth, even crediting as true the ostensible rationale for this statute—*i.e.*, that keeping people who have committed offenses against children away from playgrounds will prevent recidivism—the City cannot claim it will suffer any harm if the requested injunctive relief is granted. This is so because the statute only restricts Plaintiffs from *sleeping* at 215 E. New York Street. They would not be prohibited from being there during the day when it is much more likely that children will be present within McCarty Park.

CONCLUSION

WHEREFORE, Plaintiffs respectfully request that this Honorable Court grant a temporary restraining order granting the following relief:

- require the City of Aurora to register Plaintiffs at 215 E. New York Street; and
- prohibit the City of Aurora from arresting Plaintiffs who remain at WCM beyond July 26, 2019.

Respectfully submitted,

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