

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

WILLIAM E. DOWLING and KATHERINE P.
DOWLING,

Plaintiffs,

v.

TOWNSHIP OF WOODBRIDGE,

Defendant.

Civ. No. 05-313 (WGB)

O P I N I O N

APPEARANCES:

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BASSLER, DISTRICT JUDGE:

This case involves the constitutionality of Section 3-42 of the Revised Ordinances of the Township of Woodbridge, also referred to as the "Demonstration Ordinance of the Township of Woodbridge" ("Woodbridge Demonstration Ordinance" or "Ordinance"), which requires that certain public demonstrations

conducted in Woodbridge Township ("Woodbridge") be pre-registered with the municipal Chief of Police. William E. Dowling and Katherine P. Dowling ("Plaintiffs") are anti-abortion activists who regularly demonstrate on the public streets of Woodbridge. This Opinion addresses their request that the Court preliminarily enjoin Woodbridge from enforcing the Ordinance.

The Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331. Venue is proper pursuant to 28 U.S.C. § 1391(b).

Plaintiffs have standing to bring a facial challenge to the Woodbridge Demonstration Ordinance. See Indo-American Cultural Soc'y, Inc. v. Township of Edison, 930 F. Supp. 1062, 1066 (D.N.J. 1996) (citing Forsyth County v. Nationalist Movement, 505 U.S. 123, 129 (1992) ("Because freedom of expression is so highly valued, a party may challenge a law that threatens to inhibit speech without showing that the law, in practice, has affected the challenging party: this is a 'facial' challenge.")).

For the reasons set forth below, Plaintiffs' request for a preliminary injunction is **GRANTED**.

I. BACKGROUND

A. Facts

1. Plaintiffs' free speech activities

Plaintiffs are anti-abortion activists who demonstrate at least once per week on the public sidewalks in front of American Women's Services ("AWS"), a clinic located in Woodbridge. AWS

provides medical services to women, including abortions.

(Compl., at ¶¶ 4-5.)

Plaintiffs publicize their demonstrations in church bulletins and through announcements at church functions. (Id. at ¶ 8.) On occasion, other church groups and anti-abortion organizations, unaffiliated with the Plaintiffs, also demonstrate outside of AWS. (Id. at ¶¶ 9-10.) The number of demonstrators who appear on any given day varies from a handful of people to as many as 30 or 40 individuals. (Id. at ¶ 12.) Except for the routine passage of patrol cars and a single incident dating back to approximately 2003, when Woodbridge police officers advised demonstrators to stay away from the roadway, local law enforcement has not interfered with any of Plaintiffs' demonstrations. (Id. at ¶ 19.)

Around September 2004, Woodbridge proposed the adoption of a new municipal ordinance which would require the pre-registration of certain public demonstrations. (Id. at ¶ 20.) On October 12, 2004, at Plaintiffs' request, the Legal Center for the Defense of Life, Inc. ("Legal Center"), a not-for-profit law firm, sent a letter to Woodbridge opposing the proposed ordinance and objecting to many of its provisions as unconstitutional. (Id. at ¶ 21.) Woodbridge did not respond to the letter. (Id. at ¶ 22.)

On December 21, 2004, Woodbridge formally adopted the Woodbridge Demonstration Ordinance, a revised version of the

proposed ordinance. On January 5, 2005, the Legal Center once again sent a letter to Woodbridge objecting to the Ordinance as unconstitutional and requesting assurances that it would not be applied to Plaintiffs. (Id. at ¶ 24.) Woodbridge again did not respond to the letter. (Id. at ¶ 25.)

2. The Woodbridge Demonstration Ordinance

The Woodbridge Demonstration Ordinance requires that any public demonstration involving over twenty people¹ first be registered with the Woodbridge Chief of Police. The purpose and intent of the Ordinance is described in Section 3-42.1:

The purpose of this Ordinance shall be to provide for the orderly exercise of constitutional rights, and to insure demonstrators' safety during said exercise.

In order to obtain a permit, the applicant must file a written application with the Municipal Clerk's Office at least 14 days prior to the demonstration.² The information the applicant is required to provide includes:

- (1) The name, address and telephone number of the person in charge of seeking to conduct a demonstration.
- (2) If the Demonstration is proposed to be conducted for, or on behalf of or by an

¹ Section 3-42.2 of the Ordinance defines a demonstration as "[t]he gathering of over twenty (20) or more persons for the purpose of demonstrating, picketing, speechmaking, marching or holding of vigils, where such gathering shall be held upon any street, sidewalk or other public place under the control of the Township."

² Pursuant to Section 3-42.4(E) of the Ordinance, the Chief of Police can consider a late application "where good cause is shown."

organization, the name, address and telephone number of the headquarters and local officers if different of [sic] the organization and of [sic] the authorized responsible heads of such organizations.

- (3) The name, address and telephone number of the person who will be the Demonstration Chairperson.
- (4) The date(s) when the Demonstration is to be conducted.
- (5) The route to be traveled, the starting point and termination point.
- (6) The approximate number of persons who are expected to participate in the Demonstration.
- (7) The times at which the Demonstration will start and end.
- (8) A statement as to whether the demonstration will occupy all or only a portion of the width of the streets proposed to be traversed or public property proposed to be used.
- (9) The location by streets of any assembly areas for such Demonstration.
- (10) The purpose of said demonstration.

The Chief of Police is directed to issue a certificate of registration unless one of the following circumstances exists:

- (1) A fully executed prior application for the same time and place has been received, and has or will be granted, which seeks to authorize an activity which does not reasonably permit multiple occupancy of the area. In that event, the Chief of Police will make all reasonable efforts to accommodate the applicant's request for the site and time requested. If unable to

accommodate the request the Police Chief may propose an alternate site and time.

- (2) The requested location, time or route unduly impedes the normal traffic flow or pattern; or unreasonably interferes with customary or scheduled community events or activities.
- (3) A portion of the proposed route or location is under the jurisdiction, care, custody or control of a government entity other than the Township, or private property owner, and such governmental entity or property owner has not approved the use of such route or location.

In the event that the Chief of Police denies an application, he is required to notify the applicant, in writing, no later than 72 hours after the filing of the application. The notification must include the reason for the denial. An aggrieved party has a right to appeal an adverse decision by filing a written appeal with the Woodbridge Administrator within 2 days after receiving notice that the application has been denied. The Woodbridge Administrator is then required to act on an appeal within 2 business days after it is filed, including conducting "a full contested hearing" if requested by the aggrieved party. Finally, a written decision must be issued within 1 day after the conclusion of the hearing and must state the basis for the decision.

In addition, the following groups and/or events are exempt from the Ordinance:

- (1) Funeral processions.
- (2) Students going to and from school classes or participating in educational activities, provided that such conduct is under the immediate direction and supervision of the proper school authorities.
- (3) A governmental entity acting within the scope of its functions.
- (4) Veteran Organizations conducting remembrance services on public owned property.
- (5) Religious services, rites and ceremonies emanating from and concluding in local religious organizations' buildings.

The Woodbridge Demonstration Ordinance contains a number of other provisions not relevant to the issues currently before the Court, including provisions relating to the construction and removal of temporary structures, the use of sound equipment, and penalties for violations.

B. Procedural Background

On January 18, 2005, Plaintiffs filed a Verified Complaint ("Complaint") with this Court against Woodbridge pursuant to 42 U.S.C. § 1983. Plaintiffs allege that the Woodbridge Demonstration Ordinance violates their right to free speech as secured by the First and Fourteenth Amendments to the United States Constitution. Plaintiffs seek to preliminarily and permanently enjoin Woodbridge from arresting, charging, or prosecuting Plaintiffs for violation of the Ordinance. In

addition, they seek a declaratory judgment that the Ordinance is unconstitutional.

Although Plaintiffs did not file the Complaint in accordance with local rules governing requests for emergent relief, the Court nevertheless considered the matter on an expedited basis. On January 20, 2005, the Court held a conference call with the parties to consider whether a Temporary Restraining Order ("TRO") should be issued. During the conference call, Plaintiffs expressed their concern that the Woodbridge Demonstration Ordinance would be used to interfere with an anti-abortion demonstration planned for January 22, 2005--the thirty-second anniversary of the Supreme Court's decision in Roe v. Wade. In response to Plaintiffs' concerns, Woodbridge agreed that, pending a preliminary injunction hearing, Plaintiffs would not be prosecuted under the Ordinance. Plaintiffs thereafter withdrew their application for a TRO, the Court set a briefing schedule on the issue of the preliminary injunction, and a hearing was scheduled for February 22, 2005.

Since the conference call, the Court has received a Supplemental Certification from Plaintiff William Dowling stating that he and Katherine Dowling, along with approximately 50 to 60 other individuals, demonstrated as planned on January 22 without incident. Despite Plaintiffs' expectations that police officers would at the very least issue a "friendly warning" concerning the

Woodbridge Demonstration Ordinance, no police officers approached the demonstrators. According to the same Certification, on January 29, William Dowling and approximately twelve other individuals again demonstrated in front of AWS without any interference from the Woodbridge police. (W. Dowling Suppl. Certif.)

In its brief on the preliminary injunction issue, Woodbridge does not dispute any of the facts set forth in the Complaint or in William Dowling's Supplemental Certification.

On February 22, 2005, the Court heard oral argument.

II. ANALYSIS

A. Standard for a Preliminary Injunction

In order to obtain preliminary injunctive relief, a movant must demonstrate: (1) a reasonable probability of success on the merits; (2) irreparable harm if relief is denied; (3) that granting the injunction will not result in greater harm to the non-moving party; and (4) that granting the injunction would serve the public interest. Council for Alternative Political Parties v. Hooks, 121 F.3d 876, 879 (3d Cir. 1997).

B. Likelihood of Success on the Merits

Plaintiffs argue that the Woodbridge Demonstration Ordinance is unconstitutional because: (1) its requirement of advance registration for the purpose of obtaining a permit is a prior restraint on speech; (2) it exempts certain demonstrations based

on the subject matter of their expression; and (3) it infringes on the constitutional rights of freedom of expressive association and anonymity. (Pl. Br. in Support, at 4.)

1. Government regulation of speech

It is well-settled that, even in a public forum, the government may impose reasonable restrictions on the time, place, or manner of protected speech. Ward v. Rock Against Racism, 491 U.S. 781, 791 (1989). Such restrictions, however, must: (1) be justified without reference to the content of the regulated speech; (2) be narrowly tailored to serve a significant government interest; and (3) leave open ample alternative channels for communication of the information. Id. (citing Clark v. Cmty. for Creative Non-Violence, 468 U.S. 288, 293 (1984) (other citations omitted)). Therefore, the threshold issue before the Court is whether the Woodbridge Demonstration Ordinance is content-based or content-neutral. See Bartnicki v. Vopper, 200 F.3d 109, 121 (3d Cir. 1999), aff'd, 532 U.S. 514 (2001) ("Ordinarily, the distinction between permissible and impermissible regulation of speech depends on whether the law at issue regulates the substantive content of the speech (what is said) or whether it merely regulates the time, place, or manner of the speech (when, where, at what volume, and through what medium) it is said.").

a) Content-based vs. content-neutral

The principal inquiry in determining content neutrality is whether the government has adopted a regulation of speech “without reference to the content of the regulated speech.” Madsen v. Women’s Health Center, 512 U.S. 753, 763 (1994) (quoting Ward, 491 U.S. at 791. The government’s purpose is the controlling consideration in this analysis. See Renton v. Playtime Theatres, Inc., 475 U.S. 41, 48 (1986).

Woodbridge contends that the Ordinance is content-neutral. Woodbridge explains, “the Township’s Ordinance does not prohibit any type of speech. It does not issue or deny permits on the basis of the content of the demonstration. It only requires that a group of over 20 people register when they plan on attending said demonstration . . . This is a far cry from prohibiting speech based on its content.” (Def. Opp. Br., at 10.) Woodbridge’s argument is flatly contradicted by the record currently before the Court.

First, the Ordinance, on its face, discriminates based on the subject matter of the speech by specifically exempting certain categories of demonstrations from the pre-registration requirement. Section 3-42.3[B] of the Ordinance provides for five exceptions:

- (1) Funeral processions.
- (2) Students going to and from school classes or participating in educational

activities, provided that such conduct is under the immediate direction and supervision of the proper school authorities.

- (3) A governmental entity acting within the scope of its functions.
- (4) Veteran Organizations conducting remembrance services on public owned property.
- (5) Religious services, rites and ceremonies emanating from and concluding in local religious organizations' buildings.

The exceptions make it quite clear that the Woodbridge Demonstration Ordinance regulates on the basis of the subject-matter of the demonstrations--a veterans organization conducting a memorial service for fallen soldiers is exempt from the Ordinance, but the same organization protesting veterans benefits is not. A funeral procession conducted for a victim of a police shooting is exempt from the Ordinance, but a protest against police brutality is not. Indeed, the very applicability of the Woodbridge Ordinance depends upon an examination of the content of the proposed speech.

The Supreme Court has held that a restriction on speech is content-based when, like here, the message conveyed determines whether the speech is subject to the restriction. See City of Cincinnati v. Discovery Network, Inc., 507 U.S. 410, 428 (1993). Accordingly, courts have found ordinances providing similar exemptions to be content-based regulations. See e.g Hotel

Employees & Res. Employees Union, Local 2850 v. City of Lafayette, 1995 WL 870959, at *2 (N.D.Cal. Nov. 2, 1995) (exemption for "vehicular wedding or funeral procession" is content-based); Trewhella v. City of Lake Geneva, 249 F. Supp. 2d 1057, 1068-69 (E.D.Wis. 2003) (exemption for veterans' organizations and governmental agencies); Ohio Citizen Action v. City of Avon Lake, 986 F.Supp. 454, 457-60 (N.D. Ohio 1997) (exemption for religious, civic, and charitable canvassers is content-based).

Second, Woodbridge itself states that the Ordinance is intended to apply only to "political speech." As Woodbridge explains in its brief in opposition to a preliminary injunction:

Registration is not required from [certain exempt groups] because their activities are not political in nature and as such, the Township does not anticipate any opposition or conflict to occur in connection with such activities that would endanger the safety of the participants, the audience, or innocent by-standers.³

(Pl. Opp. Br., at 1.) Moreover, Woodbridge's stated concern about the potential effect that political speech might have on the Woodbridge community does nothing to further its argument that the Ordinance is content-neutral. The Supreme Court has

³ In addition to being constitutionally defective, Woodbridge's assumption that there is a clear distinction between "political" and "nonpolitical" speech strikes the Court as intellectually naive. As Plaintiffs point out, it takes little imagination to envision the ways in which funeral processions, school-sponsored student events, government entities acting within the scope of their function, memorial services held by veterans organizations, and public religious ceremonies, may very well constitute political expression.

clearly stated, “[l]isteners’ reaction to speech is not a content-neutral basis for regulation.” Forsyth County, 505 U.S. at 134.

The Court finds that the Woodbridge Demonstration Ordinance is content-based because it discriminates against certain speech depending on the content of that speech. The Ordinance places impermissible restrictions on demonstrations that Woodbridge deems “political.” Therefore, Plaintiffs are likely to succeed on the merits of their claim that the Ordinance violates the First and Fourteenth Amendments.⁴

2. Time, Place, and Manner Restrictions

As stated above, a valid time, place, and manner restriction must be content-neutral, must serve a significant governmental interest, and must leave open ample alternative channels for communication of the information. Heffron v. Int’l Soc’y for Krishna Consciousness, 452 U.S. 640, 647-48 (1981) (internal citations omitted). Even if, arguendo, the Woodbridge Demonstration Ordinance could be viewed as content-neutral, it fails to satisfy the intermediate scrutiny standard.

⁴ Once an ordinance is found to be content-based, it can be upheld only if it meets the strict scrutiny standard by serving a compelling governmental interest using narrowly tailored means. Bartnicki, 200 F3d at 121. Section II(B)(2) below considers the Ordinance as a content-neutral regulation and applies the appropriate intermediate scrutiny standard for time, place, and manner restrictions. Given that this Court finds that the Ordinance fails to meet an intermediate standard of review, it would necessarily fail the strict scrutiny review applied to content-based regulations. See New Jersey Freedom Org. v. City of New Brunswick, 7 F. Supp. 2d 499, 509 (D.N.J. 1997). Therefore, for the sake of brevity, the Court shall forego a detailed strict scrutiny analysis.

Woodbridge argues that the Ordinance furthers three important governmental goals: (1) to coordinate multiple uses of limited spaces; (2) to prevent traffic problems; and (3) to ensure that the property requested to be used is under the control of Woodbridge. Woodbridge contends that the Ordinance:

further the Township[']s legitimate interest of having notice of large events occurring on public streets or areas that may impact upon traffic, public safety, and police services so that it can manage, and if necessary, limit the occurrence of multiple events. The Township needs to know whether it has enough police officers on shift to accommodate special events as well as the normal police services it provides on any given day.

(Def. Opp. Br., at 8.) The Court does not question the significance of Woodbridge's purported interests.

The mere assertion of a significant governmental interest, however, is insufficient in and of itself to justify a time, place, and manner regulation of speech. New Jersey Action v. Edison Township, 797 F.2d 1250, 1256 (3d Cir. 1986).

Governmental interests, although compelling, do not justify sweeping regulation of speech. Instead, the regulation must actually further those interests. See e.g. City of Cincinnati, 507 U.S. at 424 (holding that "[n]ot only does Cincinnati's categorical ban on commercial newsracks place too much importance on the distinction between commercial and noncommercial speech, but in this case, the distinction bears no relationship whatsoever to the particular interests that the city has

asserted") (emphasis in original); Village of Schaumburg v. Citizens for a Better Env't, 444 U.S. 620, 636 (1980)(requirement that charitable solicitors use seventy-five percent of funds collected for charitable purposes only "peripherally promoted" the city's interest in "protecting the public from fraud, crime, and undue annoyance."); New Jersey Freedom Org., 7 F. Supp. 2d at 509-10 (finding no logical relationship between the city's asserted interests in reducing noise and the requirement for groups larger than 50 people to obtain a permit for those events that charge admission).

Even the most cursory review of the Woodbridge Demonstration Ordinance reveals that it is both over-inclusive and under-inclusive with respect to achieving its stated goals. For example, take Woodbridge's interest in preventing traffic problems. The Ordinance would exempt a funeral procession for a fallen civic leader that draws hundreds of participants who march throughout the streets of the city. By comparison, a group of 25 anti-abortion protestors who seek to conduct a silent prayer in a Woodbridge park must first obtain the permission of the Woodbridge Chief of Police.

Or, take Woodbridge's interest in coordinating multiple uses of public space. Certainly, the Ordinance's provision that the first application for use of a particular space will take priority over any subsequent application for the same space makes

sense. What happens, however, when a group of 30 animal-rights protestors who have applied for and been granted a permit to hold a demonstration outside of city hall bumps up against an impromptu Gulf War memorial service held by a local veterans group but which is exempt from the pre-registration requirement? The Ordinance appears to be of little help in resolving such conflicts. Finally, the exemptions seem to bear no relation whatsoever to Woodbridge's purported interest in knowing whether the property to be used is owned by Woodbridge or not. Therefore, the Court finds that Woodbridge falls far short of satisfying the intermediate scrutiny standard.

3. Prior restraint on speech

Plaintiffs also claim that they are likely to succeed on the merits of their claim that the Woodbridge Demonstration Ordinance is an impermissible prior restraint on speech. The Court agrees.

A prior restraint on speech comes into play when the government conditions an individual's right to speak upon the prior approval of government officials. Shuttlesworth v. City of Birmingham, 394 U.S. 147, 150-51 (1969). It is well-settled that permit and licensing requirements, such as the one embodied in the Woodbridge Demonstration Ordinance, are prior restraints on speech. See e.g. Forsyth County, 505 U.S. at 130 (parade permit is prior restraint on speech), Peachum v. City of York, 333 F.3d 429, 438-39 (3d Cir. 1993) (permit required to post certain kinds

of signs); Indo-American Cultural Soc'y, 930 F. Supp. at 1062-66 (permit required for certain public entertainment).

A prior restraint carries with it a "heavy presumption against its constitutional validity." Southeastern Promotions, Ltd. v. Conrad, 420 U.S. 546, 558 (1975). The rationale for the presumption is that "a free society prefers to punish the few who abuse rights of speech after they break the law than to throttle them and all others beforehand. It is always difficult to know in advance what an individual will say, and the line between legitimate and illegitimate speech is often so finely drawn that the risks of freewheeling censorship are formidable." Id. at 559; see also Nebraska Press Ass'n v. Stuart, 427 U.S. at 558, 559 (1976) ("If it can be said that a threat of criminal or civil sanctions after publication 'chills' speech, prior restraint 'freezes' it at least for the time.").⁵

At the same time, the Supreme Court has never held that prior restraints are per se invalid.⁶ Southeastern Promotions,

⁵ In Thomas v. Chicago Park Dist., a Supreme Court case involving a municipal ordinance that required a permit for public events involving more than fifty people, Justice Scalia explained why prior restraints on free speech have been disfavored in American jurisprudence. Justice Scalia wrote, "the core abuse against which [the First Amendment] was directed was the scheme of licensing laws implemented by the monarch and Parliament to contain the 'evils' of the printing press in 16th- and 17th-century England...The English licensing system expired at the end of the 17th century, but the memory of its abuses was still vivid enough in colonial times that Blackstone warned against the 'restrictive power' of such a 'licensor'--an administrative official who enjoyed unconfined authority to pass judgment on the content of speech." 534 U.S. 316, 320 (2002) (internal citations omitted).

⁶ According to Woodbridge, Plaintiffs incorrectly suggest that prior restraints on free speech are per se invalid. (Def. Opp. Br., at 6.) Whether or not Plaintiffs advance this argument in their briefs is of no consequence

420 U.S. at 558. Rather, the Supreme Court has explicitly stated that:

[t]he privilege of a citizen of the United States to use the streets and parks for communication of views on national questions may be regulated in the interest of all; it is not absolute, but relative, and must be exercised in subordination to the general comfort and convenience, and in consonance with peace and good order; but it must not, in the guise of regulation, be abridged or denied.

Hague v. Comm. for Indus. Org., 307 U.S. 496, 515-16 (1939).

Accordingly, the Supreme Court has held that while a prior restraint on speech may be permissible under certain circumstances, a permit or licensing scheme may not delegate overly broad licensing discretion to a government official. Shuttlesworth, 394 U.S. 147; see also Forsyth County, 505 U.S. 123.

In Shuttlesworth, for example, the Supreme Court struck down a municipal ordinance that made it an offense "to participate in any parade or procession or other public demonstration" without first obtaining a permit from the City Commission. The petitioner in Shuttlesworth was prosecuted and convicted for violating the statute when he participated in a civil rights march for which a permit had not been obtained.

to the decision announced by the Court today. Woodbridge is correct that prior restraints are not per se unconstitutional. As shown by the discussion that follows, however, this broad proposition does nothing to save the Woodbridge Demonstration Ordinance from its numerous constitutional infirmities.

The Supreme Court reversed the petitioner's conviction on the basis that the ordinance "den[ied] or unwarrantedly abridge[d] the right of assembly and the opportunities for the communication of thought . . . immemorially associated with resort to public places." Id. at 159 (internal quotation marks omitted). In reaching this conclusion, the Supreme Court focused on a specific provision of the Ordinance which provided that:

[t]he commission shall grant a written permit for such parade, procession or other public demonstration, prescribing the streets or other public ways which may be used therefor, unless in its judgment the public welfare, peace, safety, health, decency, good order, morals or convenience require that it be refused.

Id. at 149 (emphasis added). The Supreme Court found that the ordinance did not contain sufficiently "narrow, objective, and definite standards" to guide the licensing authorities in making a decision as to whether to grant or deny a permit. Instead, the ordinance impermissibly "empower[ed] its licensing officials to roam essentially at will, dispensing or withholding permission to speak, assemble, picket, or parade according to their own opinions concerning the potential effect of the activity in question on the 'welfare,' 'decency,' or 'morals' or the community." Id. at 153. The petitioner's conviction was accordingly overturned.

Plaintiffs argue that the Woodbridge Demonstration Ordinance fails to meet the standard set forth in Shuttlesworth because it

"gives the Chief [of Police] far too much discretion and thus poses an unacceptable risk of censorship." (Pl. Br. in Support, at 10.) In support of their argument, Plaintiffs point to Section 3-42.5(B) of the Ordinance which allows the Chief of Police to deny a permit if he finds that "[t]he requested location, time or route unduly impedes the normal traffic flow or pattern; or unreasonably interferes with customary or scheduled community events or activities." (Id.) The Court agrees with Plaintiffs' argument.

The Supreme Court's reasoning in Forsyth County is also instructive on this point. In Forsyth County, the Supreme Court invalidated a municipal ordinance requiring that permits be obtained from a government official prior to conducting a parade. The ordinance provided that the municipal administrator "shall adjust the amount to be paid [for the permit] in order to meet the expense incident to the administration of the Ordinance and to the maintenance of public order." Forsyth County, 505 U.S. at 131 n.9.

In invalidating the ordinance, the Supreme Court found that "nothing in the law or its application prevents the official from encouraging some views and discouraging others through the arbitrary application of fees." Id. at 133. As the Supreme Court reasoned:

In order to assess accurately the cost of security for parade participants, the

administrator must necessarily examine the content of the message that is conveyed, estimate the response of others to that content, and judge the number of police necessary to meet that response. The fee will depend on the administrator's measure of the amount of hostility likely to be created by the speech based on its content. Those wishing to express views unpopular with bottle throwers, for example, may have to pay more for their permit.

Id. at 134. The Supreme Court's reasoning in Forsyth County is directly applicable to the facts presented here.

As in Forsyth County, the licensing official charged with carrying out the Woodbridge Ordinance (in this case, the Chief of Police) is called upon to predict which demonstrations are likely to "unduly impede" traffic or "unreasonably interfere" with community activities. In making this prediction, the Chief of Police is guided only by his own notions, beliefs, and impressions concerning the kinds of events or the types of subject matter that are or are not likely to elicit public controversy or to cause public conflict. The Chief of Police's discretion is not constrained by any objective criteria and is therefore constitutionally defective.

The Court's conclusion that the Woodbridge Ordinance is unconstitutional because it delegates broad licensing discretion to the Chief of Police is consistent with a long line of First Amendment jurisprudence. See also Staub v. City of Baxley, 355 U.S. 313 (1958) (invalidating ordinance that allowed Mayor and

City Council to deny permits for public solicitations based on a determination of the "effects [of the proposed activity] upon the general welfare of the city"); Hague, 307 U.S. at 516

(invalidating ordinance that "enabled the Director of Safety to refuse a permit [to lease a public hall] on his mere opinion that such refusal will prevent 'riots, disturbances or disorderly assemblage'")

_____ Indeed, the Supreme Court's clear mandate against the delegation of broad authority to government officials in the sphere of First Amendment rights has been faithfully followed by courts in this district. See e.g. New Jersey Environmental Federation v. Wayne Township, 310 F. Supp. 2d, 681, 699 (D.N.J. 2004) (invalidating ordinance that allowed Chief of Police to grant a door-to-door canvassing permit only "upon being satisfied that the [person, organization, or entity] is a bona fide religious, charitable, civic, philanthropic or political organization and free from fraud, and that the agents or representatives who shall conduct the solicitations are of good moral character"); New Jersey Org., 7 F. Supp. 2d at 513 (invalidating ordinance that allowed the Police Department to impose "special conditions" on party permits); Indo-American Cultural Soc'y, 930 F. Supp. at 1067 (invalidating ordinance that allowed licensing officials to issue a permit "upon such terms and conditions as it deems necessary and proper to ensure the

public health, safety and welfare").⁷

Accordingly, the Court finds that Plaintiffs are also likely to prevail on the merits of their claim that the Woodbridge Demonstration Ordinance constitutes an impermissible prior restraint on speech.

C. Irreparable Harm

The Supreme Court has unequivocally stated that "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." Elrod v. Burns, 427 U.S. 347, 373 (1975). The mere assertion of First Amendment rights, however, does not automatically require a finding of irreparable injury, thus entitling a plaintiff to a preliminary injunction if he shows a likelihood of success on the merits. Hohe v. Casey, 868 F.2d 69, 72-73 (3d Cir. 1989). Instead, the Third Circuit has stated that, to establish irreparable harm for injunctive purposes, a plaintiff must demonstrate that the ordinance has a " 'chilling effect on free expression,' " in the form of an unconstitutional governmental suppression of speech.

⁷ Plaintiffs also argue that the Ordinance is an impermissible prior restraint on free speech because it does not contain adequate procedural safeguards. The Court notes that the Supreme Court has indeed required that when it comes to prior restraints: (1) the burden of instituting judicial proceedings and of proving that the material is unprotected must rest on the censor; (2) any restraint prior to judicial review can be imposed only for a specified brief period and only for the purpose of preserving the status quo; and (3) a prompt final judicial determination must be assured. Southeastern Promotions, 420 U.S. at 560. The Court is skeptical that the Woodbridge Demonstration Ordinance satisfies these requirements. In light of the fact that the Court finds that the Ordinance improperly grants the Chief of Police broad discretion to deny permits, it is unnecessary to elaborate on the issue of procedural safeguards at this time.

Id. at 73 (quoting Dombrowski v. Pfister, 380 U.S. 479, 487 (1965)).

This Court has little trouble concluding that the Woodbridge Ordinance threatens to chill free speech by imposing monetary penalties on groups that fail to comply with an unconstitutional pre-registration requirement. Clearly some groups may choose to forego engaging in free speech activities rather than risk violating the Ordinance or subject themselves to the discretion of the Chief of Police.

By contrast, the Court finds that irreparable harm will not result from granting the injunction. As Plaintiffs correctly point out, such an injunction will simply restore the "status quo that existed for many years prior to the adoption of the new ordinance." (Pl. Br. in Support, at 20.) Indeed, with the exception of citing two incidents that merely "inconvenienced" Woodbridge residents, Woodbridge points to no evidence showing that there was a significant threat to public safety or order prior to the adoption of the ordinance.⁸ Accordingly, the Court

⁸ An affidavit submitted by Woodbridge Councilman Charles Kenney refers to two demonstrations which inspired Woodbridge to adopt the Ordinance. The first demonstration took place in October 2003, when a Newark-based housing advocacy group brought inner-city children into residential areas of Woodbridge to trick-or-treat. The second demonstration cited by Councilman Kenney was also held in the fall of 2003. At this event, a pro-life group formed a "chain of life" on Woodbridge's Main Street. Kenney's affidavit does not point to any specific public safety or traffic problems that resulted from either of these demonstrations. Councilman Kenney merely asserts that many Woodbridge residents were "concerned," "inconvenienced," and "interrupted" in their use and enjoyment of private property as a result of these two events. (Kenney Aff., at ¶¶ 3-7.) This is insufficient to establish a risk of irreparable harm.

finds that the balance of equities weighs in favor of the issuance of a preliminary injunction.

E. Public Interest

Finally, the Court has no difficulty concluding that the public interest would be served by the issuance of a preliminary injunction. As the Third Circuit has recently stated, "the public interest is best served by enjoining a statute that unconstitutionally impairs First Amendment rights." Forum for Acad. & Inst. Rights v. Rumsfeld, 390 F.3d 219, 246 (3d Cir. 2004).

IV. CONCLUSION

For the reasons set forth above, the Court preliminarily enjoins the Township of Woodbridge, its officers, agents, employees, servants, and representative from enforcing Section 3.42 of the Revised Ordinance of the Township of Woodbridge, also referred to as the "Woodbridge Demonstration Ordinance," against Plaintiffs pending a final judgment in the above-captioned matter. An appropriate Order follows.

/s/ WILLIAM G. BASSLER
United States District Judge

DATED: February 22, 2005

