

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

PLANET AID,  
a Massachusetts nonprofit corporation,

Plaintiff,

v.

Case No. 14-CV-11472  
Honorable Denise Page Hood

YPSILANTI TOWNSHIP,  
a Michigan municipal corporation,

Defendant.

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**ORDER GRANTING PLAINTIFF'S *EX PARTE* MOTION FOR  
TEMPORARY RESTRAINING ORDER [#4]**

**and**

**NOTICE SETTING HEARING ON PLAINTIFF'S REQUEST FOR  
PRELIMINARY INJUNCTION**

**I. INTRODUCTION**

This matter involves a request for injunctive relief, enjoining Defendant Ypsilanti Township (the "Township") "from violating Plaintiff's civil rights through its unilateral action of banning all clothing and shoe donation collection bins in Ypsilanti Township." Before the Court is Plaintiff's *Ex Parte* Motion for Temporary

Restraining Order, Or in the Alternative, Show Cause Order<sup>1</sup> and Request for Preliminary Injunction. **[Docket No 4, filed April 14, 2014]** For the reasons discussed below, Plaintiff's Motion as it pertains to its request for a temporary restraining order is **GRANTED**.

On April 11, 2014, Plaintiff Planet Aid filed the instant action against Defendant Ypsilanti Township challenging the constitutionality of the Township's alleged decision to "ban all donation bins within Township limits." **[Docket No. 7, Pg ID 62]** Plaintiff seeks relief pursuant to the following claims: Violation of Plaintiff's Rights Under 42 U.S.C. § 1983 (Count I); Impairment of Contracts (Count II); Violation of its Free Speech (Count III); Violation of the Dormant Commerce Clause (Count IV); and Violation of its Due Process Rights (Count V). **[Docket No. 1]** On April 14, 2014, Plaintiff filed the instant motion, requesting injunctive relief. **[Docket No. 4]**

Planet Aid is a 501(c)(3) nonprofit organization headquartered in Milford, Massachusetts, and with State of Michigan operations in Romulus, Michigan. (Comp., ¶ 1) Plaintiff states that its mission is "to work to strengthen and organize

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The Court notes that pursuant to Local Rule 65.1, "Requests for temporary restraining orders and for preliminary injunctions must be made by a separate motion and not by order to show cause."

communities, reduce poverty and promote small enterprise development, support sustainable local food production, improve access to training and quality education, and increase health awareness and encourage healthy lifestyles around the world, operat[ing] and maintain[ing] clothing and shoe donation collection bins at which individuals can donate their used clothing, shoes and textiles in Michigan.” **[Docket No.4, Pg ID 57]** Planet Aid has operated bins in the Township over the past seven (7) years as the Township did not have any type of zoning ordinance (or did not enforce one) that restricted or banned its bins. Plaintiff claims that all of its bins, which are “clearly labeled, standalone donation bins,” were placed with the consent of the property owner and, in some instances, contractually placed on property to gather donations of clothes, textiles, and other lightly used goods that ultimately go to benefit families and persons in need. (Comp., ¶ 3) Planet Aid has sixteen (16) donation bins located within the Township.

On April 8, 2014, Brian Hinterleiter, Operations Manager for Planet Aid in the State of Michigan received a telephone call from the Township’s Community Ordinance Officer, Mark Heppner, who advised him that the Township Administration concluded it would ban all donation bins within Township limits. Plaintiff alleges that Mr. Heppner stated that the Township administration believed that there were too many bins in the Township, and that he was instructed to inform

all bin operators and site hosts to remove all of their bins within 30 days. Plaintiff claims that though Mr. Heppner noted Planet Aid's bins "had properly been on site without any Township interference for several years" and there had been no complaints about the placement of Planet Aid's bins, their maintenance, or their condition, the bins had to be removed. Plaintiff contends that it was not provided with notice or a hearing to determine if a problem existed with the donation bins before the telephone directing removal.

Ordinance Officer Heppner followed up his call with a memorandum in which Plaintiff contends he stated that the Township would enforce Section 2115(k)(3) of the Township's Zoning Ordinance (the "Ordinance"). [**Docket No. 4, Ex. 3**] The Ordinance provides:

It shall be the responsibility of the owner of a property for which site plan approval has been granted to maintain the property in accordance with the approved site design on a continuing basis until the property is razed, or until new zoning regulations supersede the regulations upon which site approval was based, or until a new site design approval is sought. Such maintenance shall include all building and site elements depicted on the site plan including parking configuration, lighting and landscaping. Any property owner who fails to maintain a site as approved shall be deemed in violation of the applicable use provisions of this section and shall be subject to penalties.

**[Docket No. 4, Pg ID 62]** Plaintiff argues that the memorandum “did not cite any examples or instances in which individuals left donations or refuse outside of [its] bins in the Township.” **[Id. at 63]** Plaintiff contends that its counsel asked if it could “go through site plan approval” with the Township to continue to maintain its bins and that Mr. Heppner told him that though Planet Aid could apply it, “would most likely be denied by the Planning Commission.” **[Id.]** Plaintiff states that Mr. Heppner was “indifferent” to the monthly rental contracts that Plaintiff had with Grenadier Properties Paint Creek North LLC (for placement of six bins) and Hutton Management Services LLC-Norton’s Flower Show (for placement of one bin), reaffirming that the Township “was banning all donation bins.” **[Id. at 61, 63]**

Plaintiff claims that it made numerous attempts to resolve the issue with the Township and to “discuss a compromise,” but that Defendant was not amenable to meet to “resolve the issue” and that the Township attorney “had not contacted Plaintiff’s counsel to discuss the matter.” **[Id. at 63, 64]** Further, Plaintiff alleges that Defendant’s counsel Mr. Heppner “has been aggressively harassing property owners, advising them [that] they will face civil sanctions should they allow Planet Aid bins on their property.” **[Id. at 64]** Plaintiff states that to date, the Township has not offered an explanation for the ban on its bins. **[Id.]**

### **III. DISCUSSION**

Planet Aid seeks an order requiring Defendant be enjoined and restrained—whether alone or in concert with others—from requiring Plaintiff or any property owner who is hosting a clothing and shoe donation bin on its property, to remove the clothing and shoe donation bin within the Township. Rule 65(b) of the Federal Rules of Civil Procedure provides the Court with authority to issue a temporary restraining order as follows:

**Rule 65(b) Temporary Restraining Order.**

(1) *Issuing Without Notice.* The court may issue a temporary restraining order without written or oral notice to the adverse party or its attorney only if:

(A) specific facts shown by affidavit or by a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition;

(B) the movant's attorney certifies to the court in writing any efforts made to give the notice and the reasons why it should not be required.

Fed. R. Civ. P. 65(b).

Rule 65(b) is clear that the possibly drastic consequences of a restraining order mandate careful consideration by a trial court faced with such a request. 1966 Advisory Committee Note to 65(b). Before a court may issue a temporary restraining order, it should be assured that the movant has produced compelling evidence of

irreparable and imminent injury and that the movant has exhausted reasonable efforts to give the adverse party notice. *Fuentes v. Shevin*, 407 U.S. 67 (1972); *Boddie v. Connecticut*, 401 U.S. 371 (1971); *Sniadach v. Family Finance Corp.*, 339 U.S. 337 (1969); 11 Wright & Miller, Federal Practice and Procedure § 2951, at 504-06 (1973). Other factors such as the likelihood of success on the merits, the harm to the non-moving party and the public interest may also be considered. 11 Wright & Miller at § 2951, at 507-08; *Workman v. Bredesen*, 486 F.3d 896, 904-05 (6th Cir. 2007).

As to the notice issue, the court is satisfied that Defendant's counsel has received notice of this lawsuit and motion as a certificate of service of the instant motion was entered onto the docket on April 14, 2014.

Addressing the irreparable injury requirement, it is well settled that a plaintiff's harm is not irreparable if it is fully compensable by money damages. *Basicomputer Corp. v. Scott*, 973 F.2d 507, 511 (6th Cir. 1992). However, an injury is not fully compensable by money damages if the nature of the plaintiff's loss would make damages difficult to calculate. *Id.* at 511-12.

Reviewing the Complaint, the Court finds that Planet Aid has been and will continue to be irreparably harmed by Defendant's decision to restrict donation bin placement throughout the Township. Plaintiff claims a violation of its rights pursuant to 42 U.S.C. § 1983 based on violations of its right to free speech, impairment of its

contracts with Grenadier and Hutton, violations of the dormant commerce clause, and violation of its due process rights. The Court need not address each claim for relief individually at this time as the Court is satisfied that Plaintiff has produced compelling evidence of irreparable, imminent injury that will result without this Court's grant of a temporary restraining order and likelihood of success on the merits of its First Amendment free speech claim.

It is well settled 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 (1976); *Newsome v. Norris*, 888 F.3d 371, 378 (6th Cir. 1989). The Sixth Circuit Court of Appeals has stated that “solicitations to pay or contribute money, because they are so intertwined with speech, are entitled to protection under the First Amendment.” *Dayton Area Visually Impaired Persons, Inc. v. Fisher*, 70 F.3d 1474, 1481 (6th Cir. 1995) (citing *Riley v. National Federation of the Blind of North Carolina, Inc.*, 487 U.S. 781, 787-89 (1988); *Joseph H. Munson Co., Inc.*, 467 U.S. 947, 959-60 (1984); *Schaumburg v. Citizens for a Better Environment*, 444 U.S. 620, 632-33 (1980)). The *Dayton Area* Court further stated that “speech is not entitled to less protection simply because the speaker is compensated for the message.” *Id.* (citing *Riley*, 487 U.S. at 801). Consequently, the court determined that “statutes attempting to restrict such speech must be narrowly

tailored to achieve an important governmental interest without unnecessary infringement of First Amendment freedoms.” *Id.* (citing *Riley*, 487 U.S. at 788). The Court is satisfied that this protection extends to donations for goods which will then be converted to donations of money. *See, e.g., Nat’l Fed’n of the Blind of Texas, Inc. v. Abbott*, 647 F.3d 202, 213 (5th Cir. 2011) (stating that “donation bins’ ‘solicitation is characteristically intertwined with informative and perhaps persuasive speech seeking support for particular causes or for particular views on economic, political, or social issues’”).

Here, Defendant relies on a zoning ordinance to restrict Plaintiff from placing any donation bins within the Township. According to Plaintiff, Defendant states the reason is that there are too many donation bins in the Township. Plaintiff also states that though Defendant has said that it may go through site plan approval with the Township to maintain its bin placement, the process would be futile as Plaintiff’s application “would most likely be denied.” To satisfy strict scrutiny, the ordinance must be “narrowly tailored[ed] to achieve the [Township’s] principal asserted interest,” here, that there are too many bins. *See Riley*, 487 U.S. at 788). Plaintiff has adequately shown likelihood on the merits of its claim that the Township’s restriction to ban all of Plaintiff’s bin placement in the Township is not narrowly tailored to

achieve its interest in that there are likely less restrictive ways to reach Defendant's goal.

Based on Planet Aid's allegations in its Complaint, Plaintiff has shown that it will suffer irreparable injury if Defendant is able to restrict the placement of all of its donation bins within Ypsilanti Township. The Court is sufficiently satisfied that the balance of harm weighs in favor of granting Plaintiff's motion for temporary restraining order. Because Planet Aid has shown the likelihood that it may prevail on the merits of its First Amendment claim, the Court issues a temporary restraining order.

#### **IV. CONCLUSION**

For the reasons set forth above,

**IT IS ORDERED** that Plaintiff's Motion for Temporary Restraining Order [Docket No. 4, filed April 14, 2014) is **GRANTED**.

**IT IS FURTHER ORDERED** that Defendant is enjoined and restrained, whether alone or in concert with others, including any officer, agent, representative and/or employee of Defendant's, from requiring Plaintiff, or any property owner who is hosting a Planet Aid clothing and shoe donation bin on its property, to remove the clothing and shoe donation bin within Defendant Township.

**IT IS FURTHER ORDERED** that, although Plaintiff has not addressed the security requirement set forth in Fed. R. Civ. P. 65(c), the Court will not require a security since the matter involves a constitutional issue affecting the public.

**IT IS FURTHER ORDERED** that the Request for Preliminary Injunction is set for a hearing on **Friday, May 23, 2014, 3:00 p.m.** Plaintiff must serve Defendant with the Complaint, the Request for Preliminary Injunction and this Order by **April 25, 2014**. Any response to the Request for Preliminary Injunction must be filed by **May 9, 2014**. Any reply to the response must be filed by **May 16, 2014**.

**IT IS SO ORDERED.**

S/Denise Page Hood  
Denise Page Hood  
United States District Judge

Dated: April 16, 2014

I hereby certify that a copy of the foregoing document was served upon counsel of record on April 16, 2014, by electronic and/or ordinary mail.

S/Julie Owens for LaShawn R. Saulsberry  
Case Manager