

O

1
2
3
4
5
6 **United States District Court**
7 **Central District of California**
8

9 I. M., a minor by and through his parents
10 ALEX MARTINEX and MYRNA
11 MARTINEZ

12 Plaintiff,

13 v.

14 WEST COVINA UNIFIED SCHOOL
15 DISTRICT; GORDON PFITZER,
16 individually and in his official capacity as
17 an employee; SHERYL LESIKAR,
18 individually and in her official capacity as
19 an employee; DOES 1-20
20 Defendants.

Case № 2:14-cv-06996-ODW(FFMx)

**ORDER DENYING PLAINTIFF'S
MOTION FOR PRELIMINARY
INJUNCTION [20]**

21 **I. INTRODUCTION**

22 Last year, while a first grader at Merced Elementary School, I.M. wanted to
23 hand out candy canes at his class Christmas party.¹ Attached to each candy cane was
24 the “Legend of the Candy Cane”— a religious message explaining that Christmas is
25 meant to honor the birth of Jesus Christ. The teacher, principal, and school district
26 determined that the message was religious and therefore could not be distributed
27 during the class Christmas party. This year, I.M. wants to hand out candy canes with

28

¹ The student is a minor and therefore the Court will refer to him by his initials.

1 the same message, but is concerned that he will again be denied permission. By and
2 through his parents, I.M. filed the instant action and seeks a preliminary injunction
3 forcing the West Covina School District to allow him to distribute candy canes with
4 the message at this year’s class Christmas party. For the reasons discussed below, the
5 Court **DENIES** Plaintiff’s Motion for a Preliminary Injunction.² (ECF No. 20.)

6 **II. FACTUAL BACKGROUND**

7 On December 11, 2013, I.M.’s sister, Alexandra Cantu, shared with him the
8 “Legend of the Candy Cane” (“Legend”), which states:

9 A candy maker wanted to make a candy that would be a witness,
10 so he made the CHRISTmas Candy Cane to incorporate several symbols
11 for the birth, ministry, and death of Jesus Christ.

12 He began with a stick of pure white, hard candy. White, to
13 symbolize the Virgin Birth, the sinless nature of Jesus, and hard to
14 symbolize the Solid Rock, the foundation of the church, and firmness of
15 the promises of God.

16 The candy maker made the candy in the form of a “J” to represent
17 the precious name of Jesus, who came to earth as our savior. It also
18 represents the staff of the “Good Shepherd” with which He reaches down
19 into the ditches of the world to lift out the fallen lambs who, like all
20 sheep, have gone astray.

21 The candy maker stained it with red stripes. He used the three
22 small stripes to show the stripes of the scourging Jesus received by which
23 we are healed. The large red stripe was for the blood shed by Jesus on
24 the Cross so that we could have the promise of eternal life, if only we put
25 our faith and trust in Him.

26 Unfortunately, the candy became known as a Candy Cane—a
27

28 ² After carefully considering the papers filed in support of and in opposition to the Motion, the Court deems the matter appropriate for decision without oral argument. Fed. R. Civ. P. 78; L.R. 7-15.

1 meaningless decoration seen at Christmas time. But the meaning is still
2 there for those who “have eyes to see and ears to hear.”

3 I pray that this symbol will again be used to witness to the Wonder
4 of Jesus and His Great Love that came down at Christmas and remains
5 the ultimate and dominant force in the universe today.

6 (Mot. 2.)

7 After hearing about the Legend, I.M. told his sister that he wanted to hand out
8 candy canes with the Legend to his classmates to share his belief about Christmas
9 with his friends. (I.M. Decl. ¶ 3.) He and his sister purchased candy canes,
10 construction paper, and ribbon. (*Id.* ¶ 5.) They printed the Legend, fastened it to
11 decorative red paper, and tied it to each candy cane with a ribbon. (*Id.*)

12 On December 13, 2013, I.M. attempted to hand out the candy canes with the
13 Legend to his classmates. (*Id.* ¶ 6.) He asked his teacher, Valerie Lu, for permission.
14 (*Id.*) She said that she needed to ask the principal, Gordon Pfitzer. (*Id.*)

15 On December 18, 2013, Lu told I.M. that he could not distribute the candy
16 canes due to the religious content of the Legend. (*Id.* ¶ 7.) I.M. alleges, and
17 Defendants deny, that Lu told I.M. “Jesus is not allowed in school.” (*Id.*) She offered
18 to let him distribute the candy canes without the Legend. (*Id.*) I.M. still wanted to
19 hand out candy canes, so Lu removed the Legend. (*Id.*) That evening, I.M. explained
20 what happened to his parents and said that he was afraid he was in trouble for trying to
21 share the Legend with his friends. (*Id.* ¶¶ 8-9.)

22 On December 19, 2013, I.M. and his sister went to the school to speak with Lu.
23 (Cantu Decl. ¶ 10.) Lu explained that she needed permission from the principal due to
24 the religious content of the Legend. (*Id.*) Lu also explained that students are not
25 allowed to distribute religious messages on school grounds, and based on that policy
26 she could not allow I.M. to distribute candy canes with the Legend in class. (*Id.*)
27 That evening, Alexandra asked I.M. if he wanted to distribute candy canes at his class
28

1 Christmas party the next day. (I.M. Decl. ¶ 10.) He did, so the two spent the rest of
2 the evening attaching copies of the Legend to candy canes. (*Id.*)

3 On December 20, 2013—the day of the class Christmas party—Alexandra
4 called the principal, Pfitzer, to ask whether I.M. would be permitted to distribute
5 candy canes with the Legend as a gift for the class Christmas party. (Cantu Decl.
6 ¶ 13.) Pfitzer consulted with Sheryl Lesikar at the West Covina School District and
7 reported to Alexandra that the district agreed I.M. should not be allowed to distribute
8 candy canes with the Legend due to the religious content. (*Id.*)

9 While Alexandra was speaking with Pfitzer, I.M. attended the class Christmas
10 party. (*Id.* ¶¶ 13-14.) About 10 minutes before school ended, Pfitzer informed
11 Alexandra that I.M. would be permitted to distribute candy canes with the Legend off
12 school grounds as students exited the campus. (*Id.* ¶ 14.) Alexandra escorted I.M. off
13 campus and waited for his classmates. (*Id.*) I.M. was able to give some classmates
14 candy canes with the Legend, but not all because not all passed by. (I.M. Decl.
15 ¶¶ 13-14.)

16 When I.M. returned home, he showed his family the gifts that were exchanged
17 during the class Christmas party. (Cantu Decl. ¶ 15.) The school allowed I.M.’s
18 classmates to distribute secular Christmas messages. (*Id.*) However, one gift was a
19 chocolate candy cane wrapped in a box with a message that told the story of Jesus as
20 the Good Shepherd. (*Id.* ¶ 16.) I.M.’s sister believes this message was similar to the
21 Legend. (*Id.*)

22 On January 6, 2014, Advocates for Faith and Freedom (“AFF”) filed a formal
23 complaint on behalf of I.M. with Merced and the West Covina School District
24 requesting that I.M. be permitted to distribute candy canes with the Legend. (Tyler
25 Decl. Ex. A.) Michael Seaman, the Assistant Superintendent of Human Resources for
26 the school district, investigated the complaint and determined that the school’s
27 decision was made in an effort to remain religious neutrality. (*Id.* Ex. C.)

28

1 On March 7, 2014, AFF appealed Seaman’s findings to the West Covina School
2 Board. (*Id.* Ex. D.) On March 26, 2014, the school board determined that there was
3 no violation of I.M.’s rights. (*Id.* Ex. E.)

4 In March 2014, the Superintendent issued a directive to all elementary school
5 teachers clarifying permissible gift exchanges. (Pfitzer Decl. ¶ 11, Ex. 2.) The
6 directive states that no gifts or messages of any kind will be distributed during class
7 time, but students may exchange written materials before school, during recess, and
8 after school.³ (*Id.*) All students are permitted to hand out gifts once they are
9 dismissed from class. (*Id.*) The directive applies to all students within the district and
10 does not distinguish any particular viewpoints. (*Id.*)

11 Although I.M. is permitted to distribute candy canes with the Legend before
12 school, during recess, and after school, there is no evidence that he has attempted to
13 distribute the Legend at any of these times.

14 On April 14, 2014, AFF appealed the school board’s decision to the California
15 Department of Education and, as of the instant Motion, has not received a response.
16 (*Id.* Ex. F, G.) On September 8, 2014, by and through his parents, I.M. filed the
17 instant action, alleging violations of Free Speech and the Establishment Clause under
18 the U.S. Constitution, Free Speech under the California Constitution, and The
19 California Education Code § 48907(a). (Compl. ¶ 1.) Now a second grader, by and
20 through his parents, I.M. seeks a preliminary injunction forcing the West Covina
21 School District to allow him to distribute candy canes with the Legend at this year’s
22 class Christmas party. (Mot. 2.)

23 III. LEGAL STANDARD

24 A preliminary injunction is an extraordinary remedy. *Winter v. Natural Res.*
25 *Def. Council, Inc.*, 555 U.S. 7, 24 (2008). A plaintiff seeking a preliminary injunction
26 must establish that: (1) he is likely to succeed on the merits; (2) he is likely to suffer

27 _____
28 ³ The Court **GRANTS** Defendants’ Request for Judicial Notice in Support of Opposition to the
instant Motion.

1 irreparable harm in the absence of preliminary relief; (3) the balance of equities tips in
2 his favor; and (4) an injunction is in the public interest. *Id.* at 20; *Perfect 10, Inc. v.*
3 *Google, Inc.*, 653 F.3d 976, 979 (9th Cir. 2011). In each case, the court “must balance
4 the competing claims of injury and must consider the effect on each party of the
5 granting or withholding of the requested relief.” *Amoco Prod. Co. v. Vill. of Gambell*,
6 480 U.S. 531, 542 (1987). Courts of equity should pay particular regard for the public
7 consequences in employing the extraordinary remedy of injunction. *Weinberger v.*
8 *Romero-Barcelo*, 456 U.S. 305, 312 (1982).

9 IV. DISCUSSION

10 The Court finds that irreparable harm is not likely because I.M. is permitted to
11 distribute candy canes with the Legend to his classmates before school, during recess,
12 and after school.

13 Likelihood of irreparable injury is “the single most important prerequisite for
14 the issuance of a preliminary injunction...[a]ccordingly, the moving party must first
15 demonstrate that such injury is likely before the other requirements for the issuance of
16 an injunction will be considered” *Freedom Holdings, Inc. v. Spitzer*, 408 F3d 112,
17 114 (2nd Cir. 2005.) “Past exposure to illegal conduct does not in itself show a
18 present case or controversy regarding injunctive relief...[i]f unaccompanied by any
19 continuing, present adverse effects.” *City of Los Angeles v. Lyons* 461 US 95, 102
20 (1983) (internal quotes omitted). Thus, even if Plaintiff is likely to succeed on his
21 First Amendment claim, he must still establish the likelihood of irreparable injury, the
22 balance of equities, and that public interest tips in his favor before a preliminary
23 injunction may issue. *DISH Network Corp. v. Fed. Comm’n’s Comm’n*, 653 F3d 771,
24 776 (9th Cir. 2011).

25 Plaintiff is and has been permitted to distribute the Legend to his classmates at
26 school. He is permitted to distribute the Legend before school, during recess, and
27 after school. Plaintiff seeks preliminary intervention from the Court forcing the
28 school to permit him to distribute the Legend in class at the class Christmas party.

1 Plaintiff argues that the irreparable harm is the school “requiring I.M. to
2 distribute materials outside the classroom while allowing other students to distribute
3 material inside the classroom.” (Opp’n 1.) However, Plaintiff strategically ignores
4 the 2014 directive that prevents the distribution of gifts or messages by *any* student
5 during class time. Without acknowledging the 2014 directive, Plaintiff asserts that the
6 district will treat I.M. differently from other students. Plaintiff then relies on this
7 baseless assertion to establish “the single most important prerequisite for the issuance
8 of a preliminary injunction.” The Court finds this approach unpersuasive.

9 The Court is not tasked with determining the constitutionality of the district’s
10 decisions in 2013. The instant Motion seeking a preliminary injunction for the 2014
11 class Christmas party was filed after the March 2014 directive, which changed the
12 district’s policies regarding student distribution of messages in class. Plaintiff should
13 have addressed the directive and provided some reasonable basis for the Court to
14 conclude that the school would, as Plaintiff argues, require I.M to distribute the
15 Legend outside class while allowing other students to distribute messages inside class.
16 That the school permitted some students to hand out secular messages at the 2013
17 class Christmas party does not demonstrate that the school will do so in 2014. In light
18 of the 2014 directive, the Court cannot assume, as Plaintiff has, that the school will
19 require I.M. to distribute the Legend outside class while allowing other students to
20 distribute message inside class.

21 As the moving party, Plaintiff had to establish that irreparable harm is likely
22 before meeting the other requirements. *Freedom Holdings, Inc.*, 408 F3d at 114 (2nd
23 Cir. 2005.) Plaintiff failed to establish that irreparable harm is likely. Therefore, the
24 Court need not address Plaintiff’s likelihood of success on the merits, whether the
25 balance of equities tips in his favor, or whether a preliminary injunction is in the
26 public interest.

27 ///

28 ///

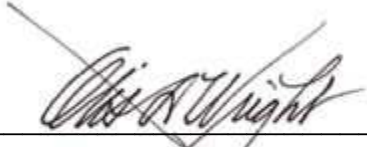
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

V. CONCLUSION

For the reasons discussed above, the Court **DENIES** Plaintiff's Motion for a Preliminary Injunction. (ECF No. 20.)

IT IS SO ORDERED.

December 11, 2014



OTIS D. WRIGHT, II
UNITED STATES DISTRICT JUDGE