

United States District Court
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

WALTER B. HOYE, II,
Plaintiff,
v.
CITY OF OAKLAND,
Defendant.

No. CV 07-06411 CRB

**ORDER DENYING APPLICATION
FOR INJUNCTION PENDING
APPEAL**

Now pending before the Court is Plaintiff’s Application for Injunction Pending Appeal, pursuant to FED. R. CIV. P. 62(c). Plaintiff seeks to enjoin enforcement of Oakland Municipal Code § 8.50.010 (“the Ordinance”) pending appeal. Under Hilton v. Braunskill, 481 U.S. 770, 776 (1987), the Court is to consider four factors in ruling on such an application: “(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.”

The Court agrees that “[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” See Elrod v. Burns, 427 U.S. 347, 373 (1976). However, granting an injunction may risk injury to patients who seek access to Oakland’s reproductive healthcare facilities— access which the Ordinance aims to protect. In addition, the public interest lies in balancing the right to free speech and

1 expression with the right to access reproductive healthcare; granting an injunction would
2 skew that balance. Most importantly, the Court finds, as articulated in its twenty-five page
3 Order granting summary judgment for Defendant, that Plaintiff has failed to make a strong
4 showing that he is likely to succeed on the merits. Plaintiff's Application has not convinced
5 the Court otherwise. Accordingly, Plaintiff's Application is DENIED. The hearing currently
6 scheduled for October 9, 2009 is hereby VACATED.

7 **IT IS SO ORDERED.**

8 Dated: September 30, 2009



9 CHARLES R. BREYER
10 UNITED STATES DISTRICT JUDGE

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