UNITED STATES DISTRICT COURT WESTERN DISTRICT OF MICHIGAN SOUTHERN DIVISION

WAYNE WYNKOOP,

Plaintiff,

CASE NO. 1:09-CV-650

v.

HON. ROBERT J. JONKER

JAMES R. LINDERMAN, Special Charlevoix County Prosecuting Attorney, in his official capacity, and E. MICHAEL MCNAMARA, Special Charlevoix County Assistant Prosecuting Attorney, in his official capacity,

Defendants.	

ORDER DENYING TEMPORARY RESTRAINING ORDER

This matter is before the Court on Plaintiff Wynkoop's Motion for Temporary Restraining Order (docket #2). Plaintiff presented the papers to the Court this afternoon. Counsel for Plaintiff has not personally appeared. The papers seek an injunction against a pending state court criminal prosecution set for a pretrial conference tomorrow. The papers do not state with precision when the criminal case was filed, but the matter appears to have roots reaching all the way back to the spring of 2008. Moreover, the papers reveal that the criminal prosecution is itself embedded in local political and civil litigation issues of longstanding. The papers do not reflect service on the defendants. The Temporary Restraining Order must be denied.

In the first place, the moving papers do not include certification of any efforts made to give

notice to the adverse parties, or the reason why such notice should not be required. FED. R. CIV. P.

65(b)(1).

More importantly, the Court has reviewed the motion papers and does not believe the issues

presented rise to a level that would warrant federal court interference in a state court criminal

proceeding. See Younger v. Harris, 401 U.S. 37, 45 (1971); Fieger v. Cox, 524 F.3d 770, 775-76

(6th Cir. 2008). Plaintiff is not challenging the underlying constitutionality of the Contracts of

Public Servants Act. Instead, he is raising a series of challenges to the sufficiency of the cirminal

complaint, and the sufficiency and veracity of the anticipated proofs. These are arguments that can

and should be presented to the state court. This is especially true when the controvesy is one

embedded in a lengthy history of local civil and criminal litigation, and local political issues

involving land use.

ACCORDINGLY, IT IS ORDERED: Plaintiff's Motion for Temporary Restraining Order

(docket # 2) is **DENIED**.

/s/ Robert J. Jonker ROBERT J. JONKER

UNITED STATES DISTRICT JUDGE

Dated: July 15, 2009

indicated that he had not yet served Defendants but would be willing to do so. As noted in FED. R. Civ. P. 65(b)(1), the court may not issue a temporary restraining order without written or oral notice to the adverse party or its attorney unless specific facts in an affidavit or verified complaint clearly show that irreparable injury will result before the adverse party can be heard in opposition and the moving party provides written certification of any efforts made to give notice and why notice should

¹In an informal telephone conference with the Court's Judicial Assistant, Plaintiff's counsel

not be required. The papers do not meet this burden.