

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO

FILED
Superior Court of California
County of San Francisco

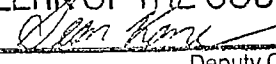
FEB 09 2022

CLERK OF THE COURT

OPEN THE GREAT HIGHWAY
ALLIANCE, et al.,

Case No. CPF-21-517641

BY:



Deputy Clerk

Plaintiffs/Petitioners,

vs.

PHILIP GINSBURG, et al.,

Defendants/Respondents.

**ORDER DENYING PRELIMINARY
INJUNCTION**

Plaintiffs' motion for a preliminary injunction is denied.

In this action, plaintiffs seek a writ of mandate ordering the City and County of San Francisco to immediately open all of three Golden Gate Park streets "to all vehicular traffic."¹ The City has partially closed these streets to most motor vehicles during the Covid-19 pandemic to allow safe outdoor recreation. The closures: The Great Highway between Lincoln Way and Sloat Boulevard (noon Fridays to 6 a.m. Mondays), John F. Kennedy Drive between Kezar and Transverse drives and Martin Luther King Jr. Drive between Middle Drive and Lincoln.

Writs of mandate and preliminary injunctions are both termed "extraordinary" for good reason – they are not to be granted lightly. (See 8 Witkin, California Procedure (5th ed. 2008) p. 903; *Tahoe Keys Property Owners' Assn. v. State Water Resources Control Bd.* (1994) 23 Cal.App.4th 1459, 1471.) In particular, when a preliminary injunction is sought, the case has yet

¹ Plaintiffs/petitioners are the Open the Great Highway Alliance, Victoria Bruckner, Raul Hernandez, Sheila Koren, Michael Regan and Steven Hill. Defendants/respondents are Philip Ginsburg (general manager of San Francisco's recreation and parks department) and the San Francisco Recreation and Park Commission (collectively the City).

to be adjudicated, for “no trial on the merits” has been held. (*Id.*; *SB Liberty, LLC v. Isla Verde Assn., Inc.* (2013) 217 Cal.App.4th 272, 280.) Moreover, a court must take care not to usurp powers of other government branches. (*Butt v. State of California* (1992) 4 Cal.4th 668, 695 (“significant restraints on courts’ authority to order...acts normally committed to the discretion of other branches or officials”); *Costa Mesa City Employees Assn. v. City of Costa Mesa* (2012) 209 Cal.App.4th 298, 308 n.2 (in considering injunctions, “[c]ourts must be mindful not to interfere with the legislative process before it plays out”).)

Two “interrelated factors” are weighed “when deciding whether to grant a plaintiff’s motion for preliminary injunction: (1) the likelihood that the plaintiff will prevail on the merits at trial, and (2) the relative interim harm to the parties from the issuance or nonissuance of the injunction.” (*SB Liberty*, 217 Cal.App.4th at 280.)²

Plaintiffs are unlikely to prevail on the merits at trial. They rely primarily on Vehicle Code §21101.6, which provides that “local authorities may not place gates or other selective devices on any street which deny or restrict the access of certain members of the public to the street, while permitting others unrestricted access to the street.” Vehicle Code §21101.6 was “intended to codify the decision” in *City of Lafayette v. County of Contra Costa* (1979) 91 Cal.App.3d 749. (Veh. Code §21101.6.) In that case, a city sought to install an “automatic gate” to block a street – a gate that only local residents “were to be furnished devices to open,” leaving nonresidents to drive 10 miles out of their way. (*Lafayette*, 91 Cal.App.3d at 752.)

Our case is not *Lafayette*. Here, no one is permitted “unrestricted access to” the three Golden Gate Park streets. (See Veh. Code §21101.6.) Rather, the same motorized-vehicle

² The parties dispute whether the proposed injunction is “mandatory.” On the law and facts here, it matters not.

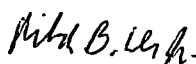
restrictions apply to everyone. Likewise, no one is denied, or restricted from, access to the streets. Rather, certain types of vehicles are barred, not “certain members of the public.” (Id.)

The City relies primarily on Vehicle Code §21101(e) (permitting officials to temporarily close streets) and S.F. Park Code §3.03 (allowing closure of park streets in “an emergency” or “the public interest”). The Covid-19 pandemic is nothing if not an emergency. City officials’ decisions to close parts of the three streets to allow safe outdoor recreation would likely be found lawful at trial.

The balance of interim harms also weighs in the City’s favor. Plaintiffs submit declarations from and about disabled people who have more difficulty accessing Golden Gate Park than they did pre-Covid. This evidence is significant. But the City responds with evidence that “[n]early seven million walking, rolling, hiking and strolling trips have been made on car-free JFK Drive from April 2020 to September 2021,” and “each month, an average of 126,000 people walk, run, bike, skate or otherwise use the closed portion of the Great Highway.”

Two other factors merit consideration. First, the harm to be weighed is *interim* harm – i.e., from now until the writ proceeding’s resolution. (*SB Liberty*, 217 Cal.App.4th at 280.) With proper expedition, a writ trial can be held within a few months or even weeks, so any interim harm is temporally limited. Second, the City reports that its board of supervisors will soon consider legislation for a “permanent solution” regarding the three streets. As noted above, in considering preliminary injunctions, “[c]ourts must be mindful not to interfere with the legislative process before it plays out...” (*Costa Mesa*, 209 Cal.App.4th at 308 n.2.)


Dated: February 9, 2022



Richard B. Ulmer Jr.
Judge of the Superior Court

CPF-21-517641 OPEN THE GREAT HIGHWAY ALLIANCE ET AL VS. PHILIP A.
GINSBURG, GENERAL MANAGER ET AL

I, the undersigned, certify that I am an employee of the Superior Court of California, County Of San Francisco and not a party to the above-entitled cause and that on February 09, 2022 I electronically served the foregoing order on the following counsel of record by causing a copy thereof to be sent by email to the email addresses indicated below.

Date: February 09, 2022 By:  SEAN KANE

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