

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

DOUGLAS MARSHALL,

Plaintiff,

v.

Case No: 2:14-cv-12872-MOB-MJH

CITY OF WARREN and  
JAMES R. FOUTS, in his individual  
capacity and in his official capacity  
as Mayor of Warren,

Hon: Marianne O. Battani

Magistrate Judge: Michael J. Hluchaniuk

Defendants.

---

**DEFENDANTS' RESPONSE TO PLAINTIFF'S  
MOTION FOR PRELIMINARY INJUNCTION**

Defendants, through their counsel, request this Court deny Plaintiff's Motion for Preliminary Injunction because that there is no likelihood that Plaintiff will succeed on the merits, the Plaintiff will not suffer irreparable injury without the injunction, the injunction would cause substantial harm to others, and the public interest would not be served by issuance of the injunction.

A supporting brief accompanies this Response.

Respectfully Submitted,

BERRY MOORMAN P.C.

Dated: August 22, 2014

/s/ Sheryl A. Laughren  
Sheryl A. Laughren (P 34697)  
Attorney for Defendant James R. Fouts  
535 Griswold, Suite 1900  
Detroit, Michigan 48226  
(313) 496-1200  
slaughren@berrymoorman.com

WARREN CITY ATTORNEY'S OFFICE

/s/ David L. Griem

David L. Griem (P23187)

Caitlin Creed Murphy (P75741)

Attorneys for Defendant City of Warren

One City Square, Suite 400

Warren, MI 48093

(586) 574-4671

dgriem@cityofwarren.org

cmurphy@cityofwarren.org

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

DOUGLAS MARSHALL,

Plaintiff,

v.

Case No: 2:14-cv-12872-MOB-MJH

CITY OF WARREN and  
JAMES R. FOUTS, in his individual  
capacity and in his official capacity  
as Mayor of Warren,

Hon: Marianne O. Battani

Magistrate Judge: Michael J. Hluchaniuk

Defendants.

---

**BRIEF IN SUPPORT OF DEFENDANTS' RESPONSE TO  
PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION**

**TABLE OF CONTENTS**

Introduction ..... 1

I. Statement of Facts and Law Applicable to Plaintiff’s Likelihood of Success on the Merits..... 2

II. Standards for Granting Injunctive Relief ..... 2

    A. Plaintiff Cannot Demonstrate a Strong Likelihood of Success on the Merits ..... 4

    B. The Equities Do Not Favor Injunctive Relief ..... 4

Conclusion..... 6

**ISSUE PRESENTED**

Should the Court grant a preliminary injunction where there is no likelihood that Plaintiff will succeed on the merits, the Plaintiff will not suffer irreparable injury without the injunction, the injunction would cause substantial harm to others, and the public interest would not be served by issuance of the injunction?

**MOST APPROPRIATE AUTHORITY**

*Mazurek v. Armstrong*, 520 U.S. 968(1997)

*Rock and Roll Hall of Fame & Museum, Inc. v. Gentile Prods.*, 134 F.3d 749 (6<sup>th</sup> Cir. 1998).

*Freedom from Religion Foundation, Inc. v. Warren*,, 707 F.3d 686 (6<sup>th</sup> Cir. 2013).

*Freedom from Religion Foundation Inc. v. Warren*, 873 F. Supp. 2d 850 (E.D. Mich. 2012).

## INTRODUCTION

Douglas J. Marshall (“Plaintiff”), who is a member of Freedom from Religion Foundation, Inc. (“FFRF”) claims that the City of Warren (“City”) and James R. Fouts, its Mayor, (“Mayor”) (collectively “Defendants”) violated the First Amendment by denying him permission to place a “reason station” in the interior atrium of City Hall (“atrium”). Plaintiff requested to use the reason station in the atrium as the pulpit from which he will espouse his belief that there is no God. Plaintiff wants to “reason with” believers and have “philosophical discussions” with passersby in the atrium. [See Docket 1, ¶ 30]. Plaintiff also seeks to distribute information provided by the FFRF to advance its atheist message. *Id.* ¶ 31.

This is not the first time Plaintiff has sued Defendants in regard to its use and control over the atrium which is the living room of the City’s home. In 2011, Marshall (with the FFRF as co-Plaintiff) challenged the City’s right to have a holiday display in the atrium. *Freedom from Religion Found., Inc. v. Warren*, 873 F. Supp. 2d 850 (E.D. Mich. 2012) (“Marshall I”). In “Marshall I”, the Plaintiff’s claims were, as here, based on the freedom-from-establishment and free-speech guarantees of the First Amendment and followed the Defendants’ rejection of his request that the City modify a holiday display in the atrium. *Id.* Both this Court



and Sixth Circuit rejected the Plaintiffs' claims. *Id.*, *Freedom from Religion Foundation, Inc. v. Warren*, 707 F.3d 686 (6<sup>th</sup> Cir. 2013).

Since the issues determinative of this case have already been decided against Plaintiff by prior decisions of this Court and Sixth Circuit, Plaintiff cannot establish a likelihood of success on the merits. Plaintiff's request for a preliminary injunction is frivolous, and this Court should deny it.

**I. STATEMENT OF FACTS AND LAW APPLICABLE TO PLAINTIFF'S LIKELIHOOD OF SUCCESS ON THE MERITS**

On August 14, 2014, Defendants filed a Motion for Summary Judgment. The facts and law applicable to Defendants' Response to Plaintiff's Motion for Preliminary Injunction are set forth in Defendants' Brief in Support of Motion for Summary Judgment. **Doc # 8**. Defendants incorporate by reference the facts and law as set forth in its Brief in Support of Motion for Summary Judgment.

**II. STANDARDS FOR GRANTING INJUNCTIVE RELIEF**

The issuance of a preliminary injunction is governed by Fed. R. Civ. P. 65. There are four factors to be balanced when considering a motion for a preliminary injunction: "(1) whether the movant has a strong likelihood of success on the merits; (2) whether the movant would suffer irreparable injury without the injunction; (3) whether issuance of the injunction would cause substantial harm to others; and (4) whether the public interest would be served by issuance of the

injunction.” *Rock and Roll Hall of Fame & Museum, Inc. v. Gentile Prods.*, 134 F.3d 749, 753 (6<sup>th</sup> Cir. 1998).

“[A] preliminary injunction is an extraordinary and drastic remedy ... that should not be granted unless the movant, *by a clear showing*, carries [this heavy] burden of persuasion.” *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (internal citations and quotation marks omitted), *Leary v. Daeschner*, 228 F.3d 729, 739 (6<sup>th</sup> Cir. 2000) citing *Lujan v. National Wildlife Fed’n*, 497 U.S. 871 (1990), *Leach v. Ford Motor Co.*, 299 F. Supp. 2d 763, 769 (E.D. Mich. 2004).

A preliminary injunction is “the strong arm of equity” which should not be extended to cases which are doubtful or do not come within well-established principles of law. *Detroit Newspaper Publishers Ass’n v. Detroit Typographical Union No. 18*, 471 F.2d 872, 876 (6<sup>th</sup> Cir. 1972) (internal citations and quotation marks omitted). The standard of proof required for the Plaintiff to obtain a preliminary injunction is more stringent than the proof required to survive a summary judgment motion. *Daeschner*, 228 F.3d at 739.

Moreover, the movant’s burden is substantially heightened when, as here, the plaintiff seeks some relief other than the maintenance of the status quo. Here, Plaintiff seeks a mandatory injunction that changes the status quo; i.e., for the Court to order the placement of the reason station in the atrium. Where the movant seeks to achieve more than the status quo, its burden is substantially heightened:

In cases, such as here, where plaintiff seeks preliminary injunctive relief not to maintain the status quo but rather to alter it so that he receives essentially all of the relief to which he would be entitled after a successful trial on the merits, plaintiff must “satisfy an even heavier burden of showing that the four factors listed above weigh heavily and compellingly in plaintiff’s favor before such an injunction may be issued.”

*Neveaux v. Webcraft Technologies, Inc.*, 921 F. Supp. 1568, 1571 (E.D. Mich. 1996) quoting *SCFC ILC, Inc. v. VISA USA, Inc.*, 963 F.2d 1096, 1098 (10<sup>th</sup> Cir. 1991).

**A. PLAINTIFF CANNOT DEMONSTRATE A STRONG LIKELIHOOD OF SUCCESS ON THE MERITS**

For all of the reasons set forth in its Motion and Brief in Support of Motion for Summary Disposition, **Docket # 8**, even absent the heightened proofs he is required to submit, Plaintiff cannot make the showing necessary for the issuance of a preliminary injunction. Balancing all of the equitable factors demonstrates that a preliminary injunction is wholly unwarranted.

**B. THE EQUITIES DO NOT FAVOR INJUNCTIVE RELIEF**

**(1) Plaintiff Will Not Suffer Irreparable Injury Absent Preliminary Injunctive Relief.**

Plaintiff has no legitimate basis for claiming that his constitutional rights are being violated by the City’s rejection of his request to place a reason station in the atrium. What he is seeking in his Complaint and by filing of the request for preliminary injunction is to turn the limited public or non-public space of the

atrium into a public forum for debate where all comers must be allowed to speak regardless of the disruptiveness they may cause. By his past conduct, Plaintiff has established that he intends to mock others who believe in a higher power and to intimidate others while they invoke their constitutional right to the free exercise of their religion. He desires to remove from the City the ability to (dis)approve usage of the atrium which is not in accord with its purpose as the workplace for its employees and offices of the City. Noteworthy too, is that Plaintiff seeks to compel the placement of the reason station in the atrium, even though he never paid the required fees, deposit, or submitted the necessary proof of insurance. [See **Dkt #11-10**].

There is no emergency here. There is also no looming irreparable harm – there is only Plaintiff’s intolerance of others.

(2) **The Issuance of Injunctive Relief Will Cause Substantial Harm to Others.**

An injunction would infringe on the rights of the people who requested that the City allow them to place the prayer station in the atrium, the people who staff that station, and all of the people who use the station or who may want to use the prayer station in the future. Plaintiff wants to install a reason station in proximity of the prayer station seemingly for the sole purpose of arguing with believers. He wants to pass along mocking messages from the Freedom From Religion

Foundation (“FFRF”) and poke fun at those who have a belief in God. (See, Statement of Facts, Defendants’ Motion for Summary Judgment, **Docket 8**). Issuance of an injunction mandating that a reason station be placed in the atrium in juxtaposition to the prayer station will cause substantial harm to all of these groups, because Plaintiff seeks to intimidate others from approaching the prayer station.

**(3) The Public Interest Will Not Be Served by Injunctive Relief.**

Plaintiff seeks to intimidate others from engaging in their exercise of religion. The public interest will not be served by allowing him to do so.

**CONCLUSION**

For the foregoing reasons, Defendants request that this Court deny Plaintiff’s Motion for Preliminary Injunction, and grant such other and further relief as may be appropriate.

Respectfully Submitted,

BERRY MOORMAN P.C.

Dated: August 22, 2014

/s/ Sheryl A. Laughren  
Sheryl A. Laughren (P 34697)  
Attorneys for Defendant James R. Fouts  
535 Griswold, Suite 1900  
Detroit, Michigan 48226  
(313) 496-1200  
slaughren@berrymoorman.com

WARREN CITY ATTORNEY'S OFFICE

/s/ David L. Griem

David L. Griem (P23187)

Caitlin Creed Murphy (P75741)

Attorneys for Defendant City of Warren

One City Square, Suite 400

Warren, MI 48093

(586) 574-4671

[dgriem@cityofwarren.org](mailto:dgriem@cityofwarren.org)

[cmurphy@cityofwarren.org](mailto:cmurphy@cityofwarren.org)

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

DOUGLAS MARSHALL,

Plaintiff,

v.

Case No: 2:14-cv-12872-MOB-MJH

CITY OF WARREN and  
JAMES R. FOUTS, in his individual  
Capacity and in his official capacity  
as Mayor of Warren,

Hon: Marianne O. Battani

Magistrate Judge: Michael J. Hluchaniuk

Defendants.

---

**CERTIFICATE OF SERVICE**

I hereby certify that on August 22, 2014, I electronically filed DEFENDANTS' RESPONSE TO PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION AND BRIEF IN SUPPORT THEREOF and this CERTIFICATE OF SERVICE with the Clerk of the Court using the ECF system which will send notification of such filing to the following: DANIEL S. KOROBKIN (P72842), MICHAEL J. STEINBERG (P43085), KARY L. MOSS (P49759), WILLIAM A. WERTHEIMER (P26275), DAVID L. GRIEM (P23187) and CAITLIN CREED MURPHY (75741).

By: /s/ Sheryl A. Laughren  
Sheryl A. Laughren (P 34697)  
Berry Moorman P.C.  
Attorneys for Defendant James R.  
Fouts  
535 Griswold, Suite 1900  
Detroit, Michigan 48226  
(313) 496-1200

Dated: August 22, 2014