

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAI‘I

EDWARD ODQUINA,

Plaintiff,

vs.

CITY AND COUNTY OF
HONOLULU, a municipal corporation;
AND HOLLY T. SHIKADA in her
official capacity as the Attorney General
of the State of Hawai‘i,

Defendants.

Case No. 22-cv-407-DKW-RT

**ORDER DENYING PLAINTIFF’S
MOTIONS FOR PRELIMINARY
INJUNCTION AND TEMPORARY
RESTRAINING ORDER**

In January 2021, Plaintiff Edward Odquina applied to the City and County of Honolulu (the “City”) for a personalized license plate with the letter combination “FCKBLM.” The first three letters are an implied expletive, and the second three letters refer to the movement and organization known as Black Lives Matter. Dkt. No. 1 ¶ 44. The City mistakenly issued the plate to Odquina in violation of State and City rules. After realizing the error, the City recalled the plate, directed Odquina to surrender it by August 19, 2021, and notified Odquina that his non-compliance could result in citation, penalty and possible seizure or impoundment of his vehicle. Notwithstanding these warnings, Odquina has

refused to surrender the plate and has been unable to renew his vehicle registration as a result.

On September 9, 2022, Odquina filed a Complaint, a Motion for Temporary Restraining Order (“TRO Motion”) and a Motion for Preliminary Injunction (“MPI”) against the City and State (collectively, “Defendants”). Odquina claims violations of his right to free speech under the First Amendment and seeks declaratory relief, damages, and an order enjoining Defendants from enforcing those rules that inhibit his ability to keep his desired vanity plate. Complaint, Dkt. No. 1; TRO Motion, Dkt. No. 2; MPI, Dkt. No. 3.

The Court DENIES the MPI because Odquina is not likely to succeed on the merits of his free speech claims for two reasons. First, license plate alphanumeric, even personalized ones, are government speech not subject to First Amendment review. Second, even if that were not the case, as Odquina contends, the government’s rules concerning nonpublic forum speech on vanity plates are reasonable and viewpoint-neutral. Odquina, in short, does not have a constitutional right to a license plate containing profanity.

LEGAL STANDARD

“A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an

injunction is in the public interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).¹

RELEVANT FACTUAL BACKGROUND

I. State and City Rules for Vanity Plates

All license plates issued in the State of Hawai‘i must follow a certain standardized style. Pursuant to Hawai‘i Revised Statutes (“HRS”) § 249-9, *et seq.*, the plates must:

- (1) Bear the word “Hawaii” along the upper portion of the plate and the words “Aloha State” along the lower portion of the plate;
- (2) Have a distinct contrast between the color of the plate and the numerals and letters thereon; and
- (3) Be of such shape, size, and color, and with such arrangements of letters and numbers as may, subject to sections 249-1 to 249-13, be determined by the directors of finance of each county through majority consent.

[Further, t]he numerals on all such plates shall be not less than three inches in height and the strokes thereof not less than three-eighths inch in width

HRS § 249-9.

¹The standards for a preliminary injunction and TRO are substantially the same. *Stuhlberg Int’l Sales Co., Inc. v. John D. Brush & Co., Inc.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001), *overruled on other grounds by Winter*, 555 U.S. at 20. The purpose of a TRO, as opposed to a preliminary injunction, is to preserve the status quo and prevent irreparable harm before a preliminary injunction hearing can be held. *Granny Goose Foods*, 415 U.S. 423, 439 (1974); *see also Reno Air Racing Ass’n v. McCord*, 452 F.3d 1126, 1130–31 (9th Cir. 2006). Here, since a hearing on this matter is unnecessary and has been vacated, and the MPI is DENIED herein, Odquina’s TRO Motion, Dkt. No. 2, is also DENIED AS MOOT.

That said, the State provides several opportunities for owners of motor vehicles to personalize their license plates. For example, organizations may submit special license plate decal designs to the City for approval. The decal may not “obstruct the visibility of the number or letters or any other information that is required by law to be on the license plate,” such that the license plate continues to be “readily identifiable and distinguishable under actual traffic conditions,” and the designs may not “[r]epresent any obscene or degrading image, idea, word, or phrase,” among other restrictions. HRS § 249-9.3(e). As another example, the State authorizes special plates reflecting certain verifiable distinctions, such as “COMBAT WOUNDED,” “VETERAN,” “PEARL HARBOR SURVIVOR,” “FORMER PRISONER OF WAR,” “COMBAT VETERAN,” “VIETNAM VETERAN,” “KOREA VETERAN,” “WORLD WAR II VETERAN,” “PERSIAN GULF VETERAN,” and “GOLD STAR FAMILY.” HRS § 249-9.2.

Most relevant here, individuals may apply for personalized license plate alphanumeric of their own choosing, known in the common vernacular as vanity plates, provided they comply with the State’s regulations and the City’s more detailed rules. The State’s guidelines provide, in relevant part:

[T]he director of finance may provide, upon request, special number plates. The special number plates shall conform to the requirements provided for the uniform number plates except that the owner may request the choice and arrangement of letters and numbers. The maximum number of letters and numbers shall be six, and only one hyphen will be allowed in addition to and in lieu of the six letters and

numerals. No other punctuation marks shall be allowed. *The director of finance shall not issue special number plates which have the letter and numeral combination of regular plates, are misleading or publicly objectionable.* . . . The director of finance shall adopt rules pursuant to chapter 91 to carry out this section.

HRS § 249-9.1 (emphasis added). The City’s more detailed standards are memorialized in the 1990 and 1994 amended Rules and Regulations of the Department of Finance for the City and County of Honolulu (hereinafter “Rules”). See Declaration of Thomas Farr (“Farr Decl.”), Exhs. A–B, Dkt. Nos. 16-2–3. The Rules provide, in relevant part:

Pursuant to and by virtue of the authority set forth in Section 249-9.1, Hawaii Revised Statutes, the Director of Finance of the City and County of Honolulu, . . . hereby amends his rules and regulations . . . relating to applications for special number plates, to read as follows:

Rule 6.1 Purpose and Scope:

These rules govern the procedures to be followed for the application and issuance of special number plates. . . .

Rule 6.4 Severability:

If any portion of these rules or the applicability thereof should be held invalid for any reason, such invalidity shall not affect other provisions or applications which can be given effect without the invalid provisions or applications and to this end these rules are declared to be severable. . . .

Rule 6.6 Design of Special Number Plates:

1. Special number plates shall conform to all requirements as provided in Section 249-9.1, HRS. . . .

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