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United States District Court, C.D. California.

COALITION FOR HUMANE IMMIGRANT RIGHTS OF LOS ANGELES
v.
BURKE

No. CV 98–4863–GHK.
|
Oct. 29, 1999.

Attorneys and Law Firms

Beatrice Herrera, Deputy Clerk, for Plaintiff.

I. Background and Procedural History

Opinion

KING, J.

***1** On May 31, 1994 the Board of Supervisors of the County of Los Angeles ("the County") adopted Ordinance No. 94–0043. Complaint ¶ 9. The ordinance took effect on July 1, 1994. *Id.* Ordinance No. 94–0043 added two sections to the Los Angeles County Code. The first, Section 13.15.011, provides:

> It shall be unlawful for any person, while standing in any portion of the public right-of-way, including but not limited to public streets, highways, sidewalks and driveways, to solicit, or attempt to solicit, employment, business, or contributions of money or other property, from any person traveling in a vehicle along a public right-of-way, including, but not limited to, public streets, highways or driveways. The provisions of this Section shall only be operative in the unincorporated areas of the County.

The second, Section 13.15.012, provides:

> It shall be unlawful for any person, while the occupant of a moving vehicle, to solicit, or attempt to solicit, employment, business, or contributions of money or other property, from a person who is within the public right-of-way, including but not limited to a public street, highway, sidewalk, or driveway. The provisions of this Section shall only be operative in the unincorporated areas of the County. [1]

Complaint, Ex. A.

Plaintiffs in this action are the Coalition for Humane Immigrant Rights of Los Angeles ("CHIRLA") and Sindicato de Trabajadores Por Día ("Sindicato"). CHIRLA is a non-profit corporation. Complaint ¶ 2. As part of its efforts to secure the rights of immigrant workers, it operates a "Day Laborer Organizing Project." *Id.* CHIRLA alleges that Ordinance No. 94–0043 has forced it to devote significant resources to addressing the needs of day laborers who want to make their availability for work known in ways prohibited by the ordinance. *Id.*

Sindicato is an unincorporated association whose goals are to defend the rights of day laborers. Complaint ¶ 3. Its members and officers are all day laborers who regularly seek day work in the County, and who want to make their availability for day work known in ways prohibited by Ordinance No. 94–0043. *Id.*

Plaintiffs filed suit on June 17, 1998. They name as defendants the five Supervisors of the County of Los Angeles, in their official capacities. Plaintiffs allege three claims:

(1) 42 U.S.C. § 1983 (First and Fourteenth Amendments), based on Section 13.15.011;

(2) 42 U.S.C. § 1983 (First and Fourteenth Amendments), based on Section 13.15.012; and

(3) 28 U.S.C. § 2201 (declaratory relief).

Plaintiffs allege that Sindicato members and others served by CHIRLA have obtained, and desire to continue to obtain, work by expressing their availability for employment in ways prohibited by Ordinance No. 94–0043. Complaint ¶ 12. They allege that Ordinance No. 94–0043 subjects them to the danger of arrest, fines and other penalties if they engage in protected speech. Complaint ¶ 13. They seek:

***2** (1) A permanent injunction against enforcement of Sections 13.15 .011 and 13.15.012;

(2) Damages caused by enforcement and threatened enforcement of these Sections; and

(3) A declaration that these Sections are null and void as unconstitutional under the First and Fourteenth Amendments; and

(4) Attorneys' fees, costs, and expenses under 42 U.S.C. § 1988.

Defendants answered the complaint on September 4, 1998. On April 2, 1999, we ordered the parties to file a joint brief setting forth their positions on whether Ordinance No. 94–0043 is content-neutral or content-discriminatory. The parties did so, and we heard argument on June 7, 1999.

At the June 7 hearing, we further ordered the parties to brief how the "secondary effects" doctrine might apply to the content-discrimination issue in this case. The parties did so, and we heard argument on October 18, 1999. We now rule on the content-discrimination issue.

II. Discussion

The parties agree that Ordinance No. 94–0043 regulates the time, place and manner of expression in traditional public fora, including public sidewalks, where the government's ability to regulate speech is most restricted. Jt. Brief Re. Content Discrimination at 1:4–9.

"[E]ven in a public forum the government may impose reasonable restrictions on the time, place, or manner of protected speech, provided the restrictions *'are justified without reference to the content of the regulated speech,* that they are narrowly tailored to serve a significant governmental interest, and that they leave open ample alternative channels for communication of the information ." ' *Ward v. Rock Against Racism,* 491 U.S. 781, 791 (1989) (emphasis added) (quoting *Clark v. Community for Creative Non–Violence,* 468 U.S. 288, 293 (1984)). Only the first of these three requirements is before us now.

A. Solicitation and Content Discrimination

Plaintiffs contend that Ordinance No. 94–0043 is content-discriminatory because it targets only solicitation speech. Under the ordinance, according to Plaintiffs, one can stand in the public right of way and address the occupants of moving vehicles with political speech, artistic speech, religious speech, or various other forms of speech, but one cannot solicit, or attempt to solicit, employment, business, or contributions of money or other property.

In a broad sense, a speech restriction is content-based if an officer seeking to enforce the restriction "would need to examine the contents" of the speech to determine whether it was prohibited. *S.O.C., Inc. v. County of Clark,* 152 F.3d 1136, 1145 (9 th Cir.1998); *see also Crawford v. Lundgren,* 96 F.3d 380, 384 (9 th Cir.1996). Here, an officer seeking to enforce Ordinance No. 94–0043 against a person standing in the right of way who is communicating with the occupant of a moving vehicle would need to determine whether the speaker was soliciting, as opposed to engaging in political protest, criticizing the listener's driving, or engaging in some other form of expression. Therefore, as an initial matter, the ordinance appears to be content-discriminatory. *See International Soc'y for Krishna Consciousness v. Lee,* 505 U.S. 672, 705–06 (1992) (Kennedy, J., concurring) (stating that an airport regulation prohibiting "all speech that requested the contribution of funds" would be content-based, but concluding that the regulation at issue was content-neutral because it reached only solicitation that led to the immediate exchange of money—an "element of conduct" unrelated to the "message, idea, or form" of the restricted speech); *Carreras v. City of Anaheim,* 768 F.2d 1039, 1048 (9 th Cir.1985) ("the ordinance worked an impermissible content discrimination by singling out for regulation speech

that involves soliciting donations") (citation and footnote omitted).

***3** The fact that Ordinance No. 94–0043 affects communications "solely on the basis of content, however, is not quite the end of the inquiry." *Crawford,* 96 F.3d at 384–85. As the *Crawford* court went on to explain:

> Some regulations which are seemingly content-based are analyzed as content-neutral regulations if the government shows that they are justified by a desire to eliminate a "secondary effect"—an undesirable effect only indirectly related to the content or communicative impact of the speech.

Id. at 385 (citing *City of Renton v. Playtime Theatres, Inc.,* 475 U.S. 41, 47–49 (1986)).

We now address whether the secondary effects doctrine renders Ordinance No. 94–0043 content-neutral.

B. Secondary Effects

1. The Doctrine

In *Renton,* the Supreme Court upheld a city ordinance restricting the location of adult theaters, holding that the ordinance was content-neutral because it was directed not at the content of the movies shown in the theaters, but at the "secondary effects" that adult theaters allegedly produced in surrounding neighborhoods. *Renton,* 475 U.S. at 48.

As a plurality of the Court later observed, the *Renton* ordinance restricted "speech by reference to the type of movie theater involved, treating 'theaters that specialize in adult films differently from other kinds of theaters." ' *Boos v. Barry,* 485 U.S. 312, 320 (1988) (quoting *Renton*). Nonetheless, the *Renton* Court treated the ordinance as if it were content-neutral because "[t]he content of the films being shown inside the theaters was irrelevant and was not the target of the regulation." *Boos,* 485 U.S. at 320. Rather, "the ordinance was aimed at the 'secondary effects of such theaters in the surrounding community,' effects that are almost unique to theaters featuring sexually explicit films, i.e ., prevention of crime, maintenance of property values, and protection of residential neighborhoods." *Id.* (quoting *Renton,* 475 U.S. at 47) (citation omitted).

2. Applying the Doctrine to Ordinance No. 94–0043

Here, Plaintiffs argue that we should not analyze Ordinance No. 94–0043 under the secondary effects doctrine because the doctrine does not apply to solicitation. Plaintiffs contend that the secondary effects doctrine applies only to "disfavored" or "proscribable" speech, as evidenced by the fact that courts generally have applied the doctrine in cases involving adult businesses.

Our reading of the case law leads us to conclude that the secondary effects doctrine is not so circumscribed. First, the *Boos* plurality assumed that the doctrine could apply even to a law that prohibited picketing of foreign embassies —"classically political speech" located "at the core of the First Amendment." *Boos,* 485 U.S. at 318. Plaintiffs correctly point out that the *Boos* plurality's assumption was only dictum, as the plurality decided that the law at issue was not directed at secondary effects in any event. *Id.* at 321. Nonetheless, we are inclined to give the plurality's view significant weight. Plaintiffs also point out that Justice Brennan, concurring in *Boos,* criticized the plurality's implicit expansion of the secondary effects doctrine beyond adult businesses. *Id.* at 334–38. Justice Brennan's chief concern, however, was that the secondary effects doctrine should not be extended to political speech, where the doctrine could give the government great power to "squelch opposition" by claiming that restriction was motivated by a desire to reduce secondary effects. *Id.* at 336–38.

***4** Second, we disagree with Plaintiffs' assertion that the Court rejected the *Boos* plurality's view in *R.A.V. v. City of St. Paul,* 505 U.S. 377, 382–89 (1992). Plaintiffs contend that the *R .A.V.* Court suggested that the secondary effects doctrine applies only in the context of certain "proscribable" forms of speech, notably obscenity, fighting words, and defamation. In our reading, *R.A.V.* held that even within a category of "proscribable" speech, government cannot decide which speech to prohibit based on its viewpoint. The Court's discussion of secondary effects comes in the midst of a passage describing ways in which a court could constitutionally differentiate between certain subclasses of

proscribable speech. *Id.* at 387–89. As an example of such permissible differentiation, the Court suggested that it would be constitutional to prohibit only one subclass of proscribable speech if that subclass "happens to be associated with particular 'secondary effects' " not associated with other subclasses of proscribable speech. *Id.* at 389. The Court thus stated that the secondary effects doctrine applies to proscribable speech, not that it does *not* apply to other speech. This is especially evident given that the preceding paragraph of *R.A.V.* discusses ways in which the government may draw content-based distinctions within the category of commercial speech, *id.* at 388–89, which category Plaintiffs here admit is not "proscribable." [2]

Third, the Court assumed that the secondary effects doctrine applied to commercial speech in *City of Cincinnati v. Discovery Network,* 507 U.S. 410, 430 (1993). In *Discovery Network,* the Court struck down an ordinance that prohibited newsracks dispensing commercial publications, but not those dispensing traditional newspapers. The Court considered Cincinnati's secondary effects argument but rejected it, stating that "there are no secondary effects attributable to respondent publishers' newsracks that distinguish them from the newsracks Cincinnati permits to remain on its sidewalks." [3] *Id.*

Finally, the Supreme Court has observed that solicitation is prone to cause traffic congestion when conducted in a busy thoroughfare, because a successful solicitation may require the listener to stop and exchange money or other materials. *Heffron v. International Soc'y for Krishna Consciousness,* 452 U.S. 640, 653 (1981); *see also United States v. Kokinda,* 497 U.S. 720, 736 (1990) (plurality opinion) (stating, in dictum, that prohibition of solicitation was content-neutral because it was premised partly on "the fact that solicitation is inherently more disruptive" than some other speech activities). While *Heffron* predated the secondary effects doctrine, and *Kokinda* did not apply it, these cases point out that solicitation tends to cause problems that may be characterized as secondary effects. *See Boos,* 485 U.S. at 321 (plurality opinion) (indicating that "congestion" and "interference with ingress or egress" may be secondary effects). This suggests that the secondary effects doctrine provides an appropriate baseline for evaluating a restriction on solicitation.

***5** For these reasons, we conclude that the secondary effects doctrine applies to this case.

3. The *Colacurcio* Test for Whether a Law Targets Secondary Effects

In *Tollis Inc. v. San Bernardino Cty.,* 827 F.2d 1329, 1332 (9th Cir.1987), the Ninth Circuit stated that "[i]f the ordinance is predominantly aimed at the suppression of first amendment rights, then it is content-based and presumptively violates the first amendment. If, on the other hand, the predominant purpose of the ordinance is the amelioration of secondary effects, then the ordinance is content-neutral and the court must determine whether the ordinance passes constitutional muster as a content-neutral time, place, and manner regulation." (Internal citations to *Renton* omitted.) Finding that the restriction of speech is "a 'motivating factor' in enacting an ordinance is not of itself sufficient to hold the regulation presumptively invalid." *Colacurcio v. City of Kent,* 163 F.3d 545, 551 (9th Cir.1998).

The government, however, bears the burden of proving that a speech regulation is "justified by a desire to eliminate a 'secondary effect." ' *Crawford,* 96 F.3d at 384. To carry this burden, the government may rely on "evidence 'reasonably believed to be relevant to the problem that the city addresses," ' *Colacurcio,* 163 F.3d at 551 (citing *Renton,* 475 U.S. at 51–52), including the "experiences of other jurisdictions." *Id.* (citing *Renton*). In determining whether a law's purpose is to alleviate secondary effects, a court should look to " 'all objective indicators of intent," ' such as (1) the face of the statute; (2) the effect of the statute; (3) comparison to prior law; (4) facts surrounding enactment; (5) the stated purpose; and (6) the record of proceedings. *Id.* at 552 (quoting *City of Las Vegas v.. Foley,* 747 F.2d 1294, 1297 (9th Cir.1984). [4]

4. Applying the *Colacurcio* Test

a. The Claimed Secondary Effects

Defendants claim that "threats to public health and safety" are the secondary effects that Ordinance No. 94–0043 was enacted to alleviate. Joint Appendix ("App.") Ex. B at 2. More specifically, Defendants contend that the ordinance is intended to combat (1) threats to "[t]raffic flow and safety"; (2) harassment of motorists, residents, and patrons of commercial establishments; (3) depositing

of trash by curbside solicitors; and (4) the problem of solicitors "defecating and urinating in the areas where these solicitations have occurred." Jt. Brief on Secondary Effects at 19–20.

"[C]ongestion," "interference with ingress or egress," and "visual clutter" can be secondary effects. *See Boos,* 485 U .S. at 321 (plurality opinion). Therefore, we conclude that at least the County's alleged problems with traffic flow and safety, as well as the depositing of trash and other waste, qualify as secondary effects.

b. Evidence of Legislative Purpose

Although we discuss in turn each of the factors that *Colacurcio* listed as "objective indicators" of a legislature's purpose to target secondary effects, we emphasize that much of the evidence in the record does not fall neatly into one or another of the *Colacurcio* factors. Indeed, the *Colacurcio* court itself did not conduct a strict factor-by-factor analysis of the evidence that it found relevant in determining the purpose of the ordinance it addressed. While we use the individual *Colacurcio* factors to guide our discussion here, our inquiry into the "predominant purpose" behind Ordinance No. 94–0043 has led us to examine the record as a whole, and not mechanically apply a checklist of indicators.

***6** (1) Face of the ordinance. The two operative sections of Ordinance No. 94–0043, Section 13.15.011 ("011") and Section 13.15 .012 ("012") are mirror images of each other. Section 011 prohibits "any person" who is "standing in any portion of the public right-of-way" from soliciting or attempting to solicit "employment, business, or contributions of money or other property, from any person traveling in a vehicle along a public right-of-way." Section 012 prohibits any "occupant of a moving vehicle" from doing the same with regard to "a person who is within the public right-of-way." Facially, therefore, the ordinance appears to be directed at alleviating potential problems caused by communications between people in moving vehicles and people on the street, and not at suppression of solicitation speech due to disagreement with its content. The fact that the ordinance is directed only at solicitation, as opposed to other forms of speech, does not mean that the predominant purpose of the ordinance was not to target secondary effects. There is no evidence in the record that any form of speech other than solicitation was actually contributing to the secondary effects that the County claims it was seeking to prevent. *Cf. Discovery Network,* 507 U.S. at 429, discussed *supra* note 3. This element cuts in favor of Defendants.

(2) The effect of the statute. *Colacurcio* gives little indication of what effect this factor is intended to measure. Plaintiffs argue that the ordinance's effect is "discriminatory because it targets only one kind of solicitation speech—day laborer' speech." Plaintiffs' Supp. Brief Re. Secondary Effects at 4:18–19. Assuming that Ordinance No. 94–0043 does affect day laborers more than others, that does not necessarily tend to show that the ordinance is predominantly aimed at suppressing free speech rights. It is just as likely that day laborers are affected most prominently because day laborers' solicitation was the most prevalent form of solicitation made illegal by the ordinance, and was a chief cause of the secondary affects allegedly targeted by the ordinance. To the extent that the record contains any evidence relevant to this factor, we conclude that this factor is neutral.

(3) Comparison to prior law. There is no evidence in the record about prior laws restricting curbside speech in the County. The Defendants do say that they relied on "the experience and work of other similarly situated jurisdictions, including the City of Agoura Hills, the City of Brea, and the City of Laguna Beach. " App. Ex. A at 2.

Laguna Beach's "Employment Solicitation" ordinance is in the record. App. Ex. F at 88–90. As the title suggests, Laguna Beach's law criminalizes only employment solicitation, making it facially more content-based than the ordinance here. The County's ordinance tracks the language of Agoura Hills' ordinance, which was upheld against a constitutional challenge about one month before the County passed Ordinance No. 94–0043. *Juan Xilaj–Itzep v. City of Agoura Hills,* 24 Cal.App.4th 620 (1994). The fact that the County looked to other regulations, and apparently made an effort to imitate an ordinance that was found constitutional, cuts in the County's favor in the *Colacurcio* analysis. *See* 163 F.3d at 553 ("The record indicates that the City devoted considerable resources to developing an ordinance that would be constitutionally sound. Kent's distance requirements were modeled after regulations upheld in Kitsap County, Bellevue, King County, and Kelso.").

***7** (4) Facts surrounding enactment. Plaintiffs make much of the County's admission that it did not consult any "written

studies or reports relating to traffic safety problems." App. Ex. B at 8 (Defendants' first amended responses to Plaintiffs' first request for admissions).

In *Colacurcio,* the Ninth Circuit noted that the defendant city relied "on a comprehensive study of adult entertainment businesses and their secondary impacts," and that reliance on formal studies could be an indicator of a permissible legislative purpose. 163 F.3d at 553. Here, the County points only to other, more anecdotal types of evidence that it relied upon in enacting Ordinance No. 94–0043, such as constituent complaints about traffic and other problems, App. Exs. C, F, and newspaper articles describing the curbside solicitation situation. App. Ex. E. While possibly not evidence that would be admissible in court, this information qualifies as "evidence 'reasonably believed to be relevant to the problem that the city addresses." ' *Colacurcio,* 163 F.3d at 551 (citing *Renton,* 475 U.S. at 51–52).

The County also points to information about experiences that other, nearby jurisdictions allegedly were having with curbside solicitation. For example, the County claims it considered letters written by residents of Agoura Hills about the solicitation issue. Like the comments of some constituents at the County Board's May 24, 1994 hearing, discussed below, some statements in the letters from Agoura Hills may reflect animosity toward day laborers. Other statements, however, reflect concern with the secondary effects identified by the County. *See, e.g.,* App. Ex. D at 70 (letter stating that solicitors "lung [e] at cars when they slow down at driveways[,] causing safety problems and traffic congestion"). Again, while this information might not be admissible under the Federal Rules of Evidence, the County could take it into account when considering Ordinance No. 94–0043.

Still, compared to reliance on a "comprehensive study," these bases of information are weaker circumstantial evidence that the County was in fact targeting secondary effects with its ordinance. This element cuts somewhat in Plaintiffs' favor.

(5) The stated purpose. The statement of legislative purpose for Ordinance No. 94–0043, which evidently tracks the statement in Agoura Hills' ordinance, states that "large groups of persons congregate in certain areas on a daily basis and solicit, or attempt to solicit, employment, business or contributions from the occupants of vehicles on streets," and that this "impedes the flow of traffic." Jt. Brief Re. Secondary Effects at 23:22–24:7. As Plaintiffs concede, this element cuts in favor of Defendants. Plaintiffs' Supp. Brief Re. Secondary Effects at 4:13–15.

(6) Record of proceedings. Several constituent speakers at the County Board's May 24, 1994 hearing said that they supported Ordinance No. 94–0043 because of traffic congestion and other secondary effects that they said were caused by curbside solicitation. *See, e.g.,* App. Ex. C at 30:25–27. [5] Some of the constituents who spoke at the hearing, however, said that they favored the ordinance because, in essence, they disliked illegal immigrants, presumed that the solicitors were here illegally, and did not think illegal immigrants should be allowed to seek employment. *See, e.g., id.* at 23:18–27.

***8** Nonetheless, we cannot necessarily ascribe an impermissible purpose held by some constituents to the legislators who actually passed the law. *Cf. Colacurcio,* 163 F.3d at 552 (stating that subjective statements of legislators themselves "are relevant if they show objective manifestations of an illicit purpose, such as a departure from normal procedures or a sudden change in policy"). There is no evidence here that the suspect purposes of some constituents were shared by the Board or caused the Board to depart from its normal procedures or policy in passing the ordinance. In fact, Supervisor Burke emphasized during the May 24, 1994 hearing that the ordinance would apply to solicitors of any ethnic or national background. App. Ex. C at 45:10–16.

After considering all relevant factors, we conclude that the County has shown that its predominant purpose in passing Ordinance No. 94–0043 was to alleviate secondary effects such as traffic problems, and that we therefore should treat the ordinance as content-neutral.

This does not in any way suggest, however, that we necessarily will find the ordinance constitutional under the remaining elements of the time, place, and manner test: that the ordinance is narrowly tailored to serve a significant government interest, and that it leaves open ample alternative avenues of communication.

III. Disposition

We conclude that Ordinance No. 94–0043 is CONTENT–NEUTRAL.

IT IS SO ORDERED.

All Citations

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Footnotes

1 Ordinance No. 94–0043 also amended Section 13.15.010 of the Los Angeles County Code. As amended, Section 13.15.010 defines "employment," "solicit," and "business" for purposes of Sections 13.15.011 and 13.15.012. In particular, "solicit" is defined as "any request, offer, enticement, or action which announces the availability for or of employment, the sale of goods, or a request for money or other property, or any request, offer, enticement or action which seeks to purchase or secure goods or employment, or to make a contribution of money or other property." A solicitation "shall be deemed complete when made, whether or not an actual employment relationship is created, a transaction is completed, or an exchange of money or other property takes place." Los Angeles County Code § 13.15.010(B).

2 Moreover, the adult theater cases themselves show that the secondary effects doctrine is not limited to "proscribable" speech. The governments involved in these cases do not allege that the theaters are providing obscene fare; if the movies shown were obscene, the governments could just ban them outright. While the speech involved in the adult theater cases may be of relatively low First Amendment value, *Colacurcio,* 163 F.3d at 550, it has not been held to be *per se* obscene or otherwise "proscribable."

3 Cincinnati evidently had pointed to detrimental secondary effects on "safety and esthetics." *Discovery Network,* 507 U.S. at 429. It was patently obvious, however, that Cincinnati's ban on commercial newsracks would have little effect on the total number of newsracks in the city; there were at least 1,500 non-commercial newsracks in Cincinnati, and only 62 commercial ones. *Id.* at 417. In this case, as discussed in Part II.B.4.b below, the County received information that solicitation was causing secondary effects such as traffic congestion, and there is no evidence in the record that other types of communication were causing similar secondary effects.

4 Plaintiffs argue that under *Acorn Investments, Inc. v. City of Seattle,* 887 F.2d 219 (9 th Cir.1989), the County as an initial matter "must prove the existence of the 'secondary effects' it is seeking to prevent." *Id.* at 222 (citing *Renton,* 475 U .S. at 50–51). The Ninth Circuit made this statement, however, in the context of determining whether Seattle had a "substantial governmental interest" in regulating the adult businesses at issue in *Acorn Investments. Id.* At this stage, we are determining only whether Ordinance No. 94–0043 is content-neutral or content-discriminatory—the first element of the time, place, and manner test.

Granted, the elements of the time, place, and manner test are not entirely discrete. For example, *Colacurcio* suggests that a city's reliance "on the experience of other jurisdictions" is relevant in determining whether the "predominant purpose" of an ordinance is to alleviate secondary effects. *Colacurcio,* 163 F.3d at 551. *Renton,* however, looked at the defendant city's reliance on other jurisdictions' experiences in the context of determining whether there was a substantial governmental interest behind the city's ordinance. 475 U.S. at 51–52.

We conclude that the presence or absence of evidence of secondary effects is relevant at this stage in that it provides circumstantial evidence of what the County's actual purpose was in enacting Ordinance

No. 94–0043. Were there absolutely no evidence of the secondary effects that the County claims it was trying to prevent, that would indicate very strongly that the predominant purpose of the ordinance was not to address the alleged secondary effects. At this stage, however, we do not evaluate whether the County has "proved" the existence of secondary effects. Should this case proceed to a consideration of the remaining elements of the time, place, and manner test, the County's evidence of actual secondary effects will be important in determining whether Ordinance No. 94–0043 is narrowly tailored to serve a substantial government interest.

5 One speaker at the hearing, the executive director of the ACLU of Southern California, stated that she had "never observed any interference with traffic. App. Ex. C. at 34:15–16.

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