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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Friendly House, et al.,

Plaintiffs,

vs.

Michael B. Whiting, et al.,

Defendants.

No. CV 10-1061-PHX-SRB

**ORDER**

The Court now resolves Plaintiffs’ Motion for Preliminary Injunction of A.R.S. § 13-2928(A) and (B) (“2d PI Mot.”) (Doc. 457).

**I. BACKGROUND**

The facts of this case were set forth in this Court’s Order of October 8, 2010 (“the Order”), which is incorporated fully herein. (*See* Doc. 447, Order at 1-4.) The pertinent details are briefly summarized here. Plaintiffs bring a variety of challenges to Arizona’s Senate Bill 1070 (“S.B. 1070”), the “Support Our Law Enforcement and Safe Neighborhoods Act,” which was signed into law by Governor Brewer on April 23, 2010. S.B. 1070 had an effective date of July 29, 2010; on July 28, 2010, the Court preliminarily enjoined certain provisions of the law from taking effect, in the related case *United States v. Arizona*, CV 10-1413-PHX-SRB.

Plaintiffs in this case also moved for a preliminary injunction as to a number of

1 provisions of the law. (*See* Doc. 235, Pls.’ Mot. for Prelim Inj.) At oral argument on the first  
2 Motion for Preliminary Injunction, counsel for Plaintiffs withdrew their request for an  
3 injunction running to Arizona Revised Statutes (“A.R.S.”) § 13-2928(A) and (B), created by  
4 S.B. 1070. (Order at 35.) In the October 8, 2010, Order, the Court ruled that Plaintiffs’ first  
5 Motion for Preliminary Injunction was moot in light of the injunction entered in *United*  
6 *States v. Arizona*. (*Id.* at 34-35.) The Court also found that Plaintiffs had stated a claim with  
7 regard to their challenge to A.R.S. § 13-2928(A) and (B) on First Amendment grounds. (*Id.*  
8 at 19-20.) Plaintiffs now renew their Motion for preliminary injunctive relief as to A.R.S. §  
9 13-2928(A) and (B). (2d PI Mot. at 2.)

## 10 II. LEGAL STANDARDS AND ANALYSIS

11 Plaintiffs seek to preliminarily enjoin A.R.S. § 13-2928(A) and (B), a request they  
12 withdrew at oral argument on their first Motion for Preliminary Injunction. (*See* Order at 35.)  
13 “A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on  
14 the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that  
15 the balance of equities tips in his favor, and that an injunction is in the public interest.”  
16 *Winter v. Natural Res. Def. Council, Inc.*, 129 S. Ct. 365, 374 (2008) (citations omitted).


17 Plaintiffs withdrew their earlier Motion for preliminary injunctive relief as to these  
18 two provisions on the basis that a finding that Plaintiffs were likely to succeed on the merits  
19 of this claim was foreclosed by the Ninth Circuit Court of Appeals’s decision in *Comite de*  
20 *Jornaleros de Redondo Beach v. City of Redondo Beach*, 607 F.3d 1178 (9th Cir. 2010).  
21 (Order at 35.) The *Redondo Beach* court held that a local ordinance that banned standing on  
22 a street or highway and soliciting employment, business, or contributions from the occupant  
23 of a motor vehicle was a valid, content neutral restriction. 607 F.3d at 1184-93.

24 Plaintiffs now argue that the Court should consider their Motion to enjoin A.R.S. §  
25 13-2829(A) and (B) because the Ninth Circuit Court of Appeals granted rehearing en banc  
26 and ordered the opinion of the three-judge panel not citable. (2d PI Mot. at 2.) The en banc  
27 court heard oral argument on *Redondo Beach* on March 21, 2011, according to the Ninth  
28 Circuit Court of Appeals’s website. *See* Status of Pending En Banc Cases,

1 <http://www.ca9.uscourts.gov/enbanc/> (last visited May 9, 2011). No opinion has yet been  
2 issued. *Id.* The Court concludes that it would not be an efficient use of resources to rule on  
3 Plaintiffs' Motion at this time because the outcome will be at least impacted, if not  
4 determined, by the ruling of the en banc court in *Redondo Beach*. The mere fact that the  
5 Court of Appeals granted rehearing en banc does not, on its own, create a likelihood of  
6 success on the merits of Plaintiffs' First Amendment challenge to A.R.S. § 13-2928(A) and  
7 (B).<sup>1</sup> Furthermore, it would not be in the public interest for the Court to expend time and  
8 resources ruling on the second Motion for Preliminary Injunction now, only to be faced with  
9 a binding opinion from the Court of Appeals on *Redondo Beach* in the near future. The Court  
10 therefore declines to consider Plaintiffs' second Motion for Preliminary Injunction as to  
11 A.R.S. § 13-2928(A) and (B) at this time.

12 **IT IS ORDERED** denying Plaintiffs' Motion for Preliminary Injunction of A.R.S.  
13 § 13-2928(A) and (B) (Doc. 457) without prejudice to its refile at a later time.

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15 DATED this 10<sup>th</sup> day of May, 2011.

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19 Susan R. Bolton  
United States District Judge

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27 <sup>1</sup> The Court also notes that, while it may have determined that Plaintiffs stated a claim  
28 sufficient to survive a challenge under Federal Rule of Civil Procedure 12(b)(6), that does not necessarily lead to the conclusion that Plaintiffs have shown a *likelihood* of success as required for preliminary injunctive relief. (*See* Order at 20); *Winter*, 129 S. Ct. at 374.