IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FRANK COLLIN, et al.,	)	
	)	
Plaintiffs,	)	
	)	
-vs-	)	NO. 77 C 2982
	)	
ALBERT SMITH, etc., et al.,	)	
	)	
Defendants.	)	

MEMORANDUM OPINION AND ORDER

Plaintiffs, the National Socialist, or Nazi, Party of America, and Frank Collin, a member of the party's Chicago branch, seek by this action to void three ordinances of the Village of Skokie on First and Fourteenth Amendment grounds. Defendants are the Village, Albert Smith, its President, Harvey Schwartz, its Corporation Counsel, and John N. Matzer, Jr., its Village Manager. Now before the court is plaintiffs' motion for a preliminary injunction against enforcement of the ordinances pending final resolution of the case.

In order to resolve this motion, this case must be viewed in the context of the continuing controversy between the parties. Skokie is a predominantly Jewish community on Chicago's north side. In April of this year, plaintiffs announced their intent to hold a public assembly in front of the Skokie Village Hall. Skokie then obtained an injunction against the meeting from the Circuit Court of Cook County, which injunction was later extended to cover any further assemblies by plaintiffs pending further order of the court. The basis for the injunction was the likelihood that a

public display of Nazi regalia in Skokie would lead to an uncontrollably violent reaction from Village residents, many of whom were or had relatives who were imprisoned in German concentration camps during the Second World War.

Plaintiffs appealed the injunction order to the Illinois Appellate Court, which denied a stay pending the appeal. Dkt. Nos. 77-628 and -662. On writ of certiorari, the United States Supreme Court reversed and ordered the court to either stay the injunction or expedite appellate review. 45 U.S.L.W. 3820 (June 14, 1977). On remand, the Appellate Court chose the latter course, and on July 12 modified the injunction to prohibit only the display of the swastika symbol by plaintiffs. The Illinois Supreme Court granted leave to appeal, but denied a stay. Mr. Justice Stevens, sitting as Circuit Justice, also denied a stay. The case was argued in the Supreme Court on September 20, 1977, and is awaiting decision.

While this litigation was taking place, Skokie enacted the three ordinances in question on May 2. Ordinance #77-5-N-994 requires that a permit be obtained before holding any parade or public assembly within the Village. Ordinance #77-5-N-995 prohibits the dissemination within the Village of any materials which promote or incite hatred based on race, national origin, or religion. Ordinance #77-5-N-996 prohibits any demonstrations by members of political parties wearing military-style uniforms. Although the Nazi party is nowhere mentioned, the subject matter of these ordinances and the context in which they were enacted make it clear

that they were directed against plaintiffs. Plaintiffs allege that they applied for a permit to hold a public assembly under #994 on June 22, which was refused by defendant Matzer because party members planned to wear uniforms in violation of #996.

Plaintiffs' brief in support of a preliminary injunction is devoted entirely to an attempt to show that the ordinances are so clearly unconstitutional that plaintiffs are overwhelmingly likely to prevail on the merits in the final resolution of this case. For purposes of this motion, the court will assume arguendo that plaintiffs are likely to succeed on the merits. Nevertheless, the motion for a preliminary injunction will be denied. Likelihood of success on the merits is only one of the prerequisites for the grant of preliminary injunctive relief. The basic purpose of a preliminary injunction is to prevent a party suffering a harm during the pendency of a case which the final judgment in the case will be unable to remedy. Plaintiffs have failed to convince the court that they are threatened with such irreparable harm.

In their reply brief, plaintiffs argue that the deprivation of their First Amendment right to assemble and express their views on questions of public importance is in itself an irreparable harm, citing A Quaker Action Group v. Hickel, 421 F.2d 1111, 1116 (D.C.Cir. 1969). The Quaker Action Group court specifically declined to lay down a flat rule that First Amendment claims always involve a threat of irreparable harm. Instead it relied on the well-established rule that the grant of preliminary relief is within the sound discretion of the district court, and noted that the case involved demonstrations of substantial size, linked to

specific timely issues, and requiring considerable advance planning. This is not a comparable case. There is no indication that plaintiffs wish to express their opinion on a particular issue which will become moot by the time this case is resolved. The only specific issue mentioned in the briefs which plaintiffs wish to address is an existing Skokie park ordinance requiring demonstrators to obtain insurance to cover damages to the parks. Plaintiffs will not be denied an opportunity to express their opinion of this ordinance if they are denied preliminary injunctive relief. Nor do plaintiffs have the same need for advance planning that influenced the court in Quaker Action Group. They are not planning a major demonstration involving hundreds of participants from across the nation, as was the Quaker Group. They wish to hold small assemblies, attended by local members of what appears to be a small, well organized group that can be mobilized on short notice.

The pendency of the state court proceedings between the parties is another factor influencing the court to deny preliminary relief. Although that case raises different issues, and the outcome of this case does not depend in any way upon the Illinois Supreme Court's decision, the fact that there are additional legal obstacles, over which this court has no control, to plaintiffs' plans to demonstrate in Skokie makes it less urgent for this court to grant interim relief.

Finally, the fact that plaintiffs have rested both their argument in the case in chief and their motion for summary judgment almost exclusively on the facial unconstitutionality of the challenged ordinances means that in order to grant a preliminary in-

junction the court would in effect have to resolve the merits of the case. This was the reason given by Mr. Justice Stevens for denying a stay of the state court injunction, and it is equally persuasive in this case. If this court must determine the constitutionality of the challenged ordinances, it would prefer to wait until it has had an opportunity to examine the evidence and briefs the parties will wish to submit.

It is undoubtedly true that any citizen is gravely injured whenever he is prevented from speaking out on issues of public importance, even on a temporary basis. It was this injury that led the Supreme Court to take the unusual step of immediately reviewing an intermediate state appellate court's denial of a stay. But it must be noted that on remand the Court gave the Illinois court the choice of granting either interim relief or an expedited hearing on the merits. Likewise, in this case the court conludes that an expedited hearing on the merits will adequately protect plaintiffs' constitutional rights, and after consultation with counsel the court will take appropriate steps to insure that the merits of this controversy are promptly submitted for consideration.

Accordingly, it is hereby ordered that plaintiffs' motion for a preliminary injunction be denied.

ENTER:

BERNARD M. DECKER

United States District Judge

DATED: October 21, 1977.