

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO**

**JOHN MANCINI, and
NORTHEAST OHIO COALITION
FOR THE HOMELESS,**

Plaintiffs,

v.

**CITY OF CLEVELAND,
FRANK JACKSON, in his official
capacity as Mayor of Cleveland, and
CALVIN WILLIAMS, in his official
capacity as Chief of Police,**

Defendants.

Civil Action No.:

**PLAINTIFFS' MOTION FOR A TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION**

Plaintiffs John Mancini and the Northeast Ohio Coalition for the Homeless (NEOCH), pursuant to the United States Constitution, Fed.R.Civ.P 65(a), and this Court's equitable powers, respectfully move this Court for a temporary restraining order and for an order for a preliminary injunction, stopping Defendants from enforcing Cleveland's unconstitutional anti-panhandling ordinances, Cleveland Municipal Ordinances §§ 471.06(b)-(d) and 605.031. While Defendants continue their aggressive enforcement of these ordinances, Mr. Mancini, who like many clients and members of NEOCH has been wrongfully ticketed, and increasingly harassed and threatened with arrest, has become too afraid to exercise his free speech rights in downtown Cleveland, and cannot conduct his usual panhandling activity—though he relies on panhandling for his

livelihood. This Motion is supported by the following Memorandum, its accompanying exhibits, and the Complaint. A proposed Order is attached.

February 28, 2017

Respectfully Submitted,

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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I certify that this 28th day of February, 2017, a copy of the foregoing Motion was filed electronically, and that Defendants were served by email, fax, and hand delivery to:

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**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO**

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CITY OF CLEVELAND,)	
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capacity as Mayor of Cleveland, and)	
CALVIN WILLIAMS, in his official)	
capacity as Chief of Police,)	
)	
Defendants.)	

[PROPOSED] TEMPORARY RESTRAINING ORDER

Pending before this Court is Plaintiffs’ Motion for a Temporary Restraining Order and Preliminary Injunction. Upon consideration of the legal arguments, the Complaint filed in this matter, and Plaintiffs’ Motion, Memorandum in Support, and supporting Declarations, this Court finds that a Temporary Restraining Order is needed to prevent the ongoing violation of Plaintiffs’ Constitutional rights. Plaintiffs have shown (1) a likelihood of success on the merits; (2) that they will suffer irreparable harm if a restraining order is not issued; and (3) that the balance of equities and the public interest weigh in favor of granting the Temporary Restraining Order.

Because the burden of defending a content-based restriction on speech is always on the government, Plaintiffs challenging content-based laws like the City of Cleveland’s panhandling ordinances are “deemed likely to prevail” unless the government is able to meet its burden of proof. *Ashcroft v. American Civil Liberties Union*, 542 U.S. 656, 666 (2004). When, as here, “a

party seeks a preliminary injunction on the basis of a potential constitutional violation, the likelihood of success on the merits often will be the determinative factor.” *Ohio State Conference of N.A.A.C.P. v. Husted*, 768 F.3d 524, 560 (6th Cir. 2014) (quotation omitted). All of the factors in this case, together with the ongoing nature of the injury that Plaintiffs continue to sustain, favor the issuance of a temporary restraining order.

The Court finds that Plaintiffs are likely to prevail on their claim that Cleveland’s Municipal Ordinances §§ 605.031 and 471.06(b)-(d) are content-based restrictions on speech that violate the First Amendment. The Court also finds that Plaintiffs are facing continuing irreparable harm if an injunction is not entered immediately. When, as here, “constitutional rights are threatened or impaired, irreparable injury is presumed.” *Id.* at 560. Similarly, an injunction requiring Defendants to follow the Constitution will not harm Defendants. Finally, the Constitution defines the public interest in this case, which favors an injunction preserving Constitutional rights.

For the foregoing reasons, it is hereby ORDERED that:

- (1) Plaintiffs’ Motion for a Temporary Restraining Order is GRANTED, and Defendants, their officers, agents, servants, employees, and attorneys, and other persons who are in active concert or participation with any of the foregoing, are hereby TEMPORARILY RESTRAINED from enforcing, implementing, or applying Cleveland Municipal Ordinances §§ 605.031 and 471.06(b)-(d);
- (2) Plaintiffs’ motion for a preliminary injunction shall be heard on the ___ day of _____, 2017; and
- (3) It is further ORDERED that Plaintiffs are not required to provide security because Defendants are unlikely to sustain costs and damages arising out of this injunction and

because the injunction is in the public interest. *Moltan Co. v. Eagle-Picher Indus., Inc.*,
55 F.3d 1171, 1176 (6th Cir. 1995).

This Temporary Restraining Order will expire on _____ at 5:00 p.m., unless extended
by agreement of the parties or by order of the Court.

It is so ordered.

Date:

UNITED STATES DISTRICT JUDGE