

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.: 1:17-cv-00410  
Honorable Donald C. Nugent

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**PLAINTIFFS' EMERGENCY MOTION FOR TEMPORARY INJUNCTIVE RELIEF**

Plaintiffs ask this Court for an emergency order temporarily halting enforcement of content-based, facially unconstitutional ordinances that deprive the most vulnerable residents of Cleveland their Constitutional rights daily, and prohibiting Defendants from engaging in retaliation against Plaintiffs for filing this lawsuit.

Although this court has set a briefing schedule to resolve this case on an expedited basis, Defendants are exploiting this interval to escalate their aggressive enforcement of blatantly unconstitutional laws and to retaliate against a named plaintiff.

This afternoon, two Cleveland Police Department officers spotted Plaintiff John Mancini, followed him to his bus stop, and again commanded him not to panhandle downtown. Even though Mr. Mancini had stopped panhandling by the time the officers arrived, the officers followed and temporarily detained him. During the detention, one of the officers brought up and repeatedly referenced the fact that Mr. Mancini had filed this lawsuit, and proceeded to question Mr. Mancini about his discussions with undersigned counsel in this case.

This detention, harassment, and interrogation, in response to peaceful speech—and in clear retaliation for filing a lawsuit—is completely unacceptable in a free society. Today’s event was a marked escalation from enforcement that Mr. Mancini and other panhandlers face every day: enforcement that persists despite the City’s notice of the glaring Constitutional defects in these ordinances.

If Defendants assume that they can violate Plaintiffs’ Constitutional rights for the next few months until they finish briefing the case, they are mistaken. As the Supreme Court has instructed, “[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality). Courts do not tolerate even the temporary loss of First Amendment rights. Thus, for example, the Sixth Circuit en banc recently held that a group of speakers asked to leave an event had their constitutional rights violated—even though they were deprived of their speech for only a few hours. *Bible Believers v. Wayne County, Mich.*, 805 F.3d 228, 261 (6th Cir. 2015) (en banc). And courts have not hesitated to issue emergency injunctions to prevent limitation of First Amendment rights of only a few weeks, days, or even hours. *See, e.g., Fifth Column v. Village of Valley View, Ohio*, 100 F. Supp. 2d 493, 496 (N.D. Ohio 1998) (entering emergency temporary restraining ordinance against adult entertainment ordinance one day after suit was

filed); *Norfolk v. Cobo Hall Conference and Exhibition Center*, 543 F. Supp. 2d 701 (E.D. Mich. 2008) (entering preliminary injunction to protect right to leaflet for a single, 7 hour period); *Chabad of Southern Ohio v. City of Cincinnati*, 233 F. Supp. 2d 975, 985 (S.D. Ohio 2002) (preliminarily enjoining a law that limited the messages that could be spoken during a 7 week period); *Monaghan v. Sebelius*, 916 F. Supp. 2d 802, 812 (E.D. Mich. 2012) (issuing temporary restraining order to spare for-profit company from even a day of providing insurance that includes contraception to employees).

Indeed, the Supreme Court has made clear that Plaintiffs challenging content-based laws are presumptively entitled to interim injunctive relief while the Defendants attempt to build their evidentiary proof to sustain their heavy burden under strict scrutiny. *Ashcroft v. American Civil Liberties Union*, 542 U.S. 656, 666, 671 (2004). The presumptive unconstitutionality of Cleveland's actions is especially acute in light of the overwhelming judicial precedent against anti-panhandling ordinances like Cleveland's, as cited in Plaintiffs' Motion for a Preliminary Injunction. Nor can there be any plausible claim that the City needs to enforce an obviously unconstitutional set of ordinances, when peer cities such as Akron and Toledo have voluntarily repealed similar laws.

Undersigned counsel have attempted to contact counsel for Defendants by sending an email to all attorneys who have entered an appearance, by emailing the City's Law Director, and by sending a text message to the cell phone of a senior attorney in City's Law Department. However, as of the filing, we have not yet received a response from Defendants.

For these reasons, the Court should enter an order providing interim injunctive relief to the Plaintiffs.

March 11, 2017

Respectfully submitted,

/s/ Joseph Mead

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**Certificate of Service**

I hereby certify that on March 11, 2017, a copy of foregoing Motion, including proposed order, was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. mail. Parties may access this filing through the Court's system.

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

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**NORTHEAST OHIO COALITION** )  
**FOR THE HOMELESS and JOHN** )  
**MANCINI** )  
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 Plaintiff, )  
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 v. )  
 )  
**CITY OF CLEVELAND,** )  
**FRANK JACKSON, In his official** )  
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 Defendants. )  
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**[PROPOSED] ORDER GRANTING TEMPORARY INJUNCTIVE RELIEF**

The matter came before the Court on the Plaintiffs’ Emergency Motion for Temporary Injunctive Relief. After consideration of the parties’ legal arguments, the allegations in the Plaintiffs’ complaint, and the exhibits attached to the Plaintiffs’ motion, the Court concludes that an immediate injunction is needed to prevent the ongoing violation of Constitutional rights until such time as the Court rules on Plaintiffs’ Motion for a Preliminary Injunction.

For the foregoing reasons, the Court grants Plaintiffs’ Emergency Motion for Temporary Injunctive Relief as follows.

It is hereby ORDERED:

(1) Plaintiffs’ Emergency Motion for Temporary Injunctive Relief is GRANTED;

- (2) Defendants, their officers, agents, servants, employees, and attorneys, and other persons who are in active concert or participation with any of the forgoing, are hereby ENJOINED and RESTRAINED from taking additional retaliatory action against Plaintiffs John Mancini;
- (3) Defendants, their officers, agents, servants, employees, and attorneys, and other persons who are in active concert or participation with any of the forgoing, are hereby ENJOINED and RESTRAINED from enforcing, implementing, or applying Cleveland Ordinance § 605.031 and § 471.06(b)-(d);
- (4) 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).
- (5) This Order will remain in effect until the Court's ruling on Plaintiffs' Motion for a Preliminary Injunction.

It is so ordered.

Date: \_\_\_\_\_