

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’ REPLY BRIEF IN SUPPORT OF EMERGENCY MOTION FOR  
TEMPORARY INJUNCTIVE RELIEF**

Plaintiffs asked the Court to enter a temporary restraining order because Mr. Mancini fears being further harassed by law enforcement in retaliation for filing this suit, and being further questioned about his privileged communications with counsel. The City’s response answers none of these concerns, instead claiming a broad right to violate the Constitution as it sees fit while the case is litigated.

*First*, the City contends that there is no irreparable harm. The Supreme Court and the Sixth Circuit have long seen it differently: “The 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); *accord, e.g., Libertarian Party of Ohio v. Husted*, 751 F.3d 403, 412 (6th Cir. 2014) (“to the extent that the LPO can establish a substantial likelihood of success on the merits of its First Amendment claims, it also has established irreparable harm”); *Newsom v. Norris*, 888 F.2d 371, 378 (6th Cir. 1989) (“The Supreme Court has unequivocally admonished that even minimal infringement upon First Amendment values constitutes irreparable injury sufficient to justify injunctive relief.”). There is no exception to this rule for people who face a constitutional injury and a financial injury at the same time. *See Elrod*, 427 U.S. at 373 (holding violation of First Amendment freedoms constituted irreparable harm in context of an employment case); *Newsom*, 888 F.2d at 378 (rejecting argument that “monetary damages and reinstatement subsequent to a trial on the merits would provide an adequate remedy” to constitutional violation). The City’s response simply ignores the Constitutional rights at issue in this case.

*Second*, the City’s argument on the merits of the case largely misses the point. A named plaintiff in a civil rights suit against the City found himself followed by law enforcement, detained, and questioned about his privileged conversations with counsel. The City assumes this is true but does not see anything wrong with it. Contrary to the City’s premise, Mr. Mancini has a right to have confidential communications with his attorneys without being interrogated about them by law enforcement, *c.f., e.g., Kensu v. Haigh*, 87 F.3d 172, 174 (6th Cir. 1996); *Sinclair v. Schriber*, 916 F.2d 1109, 1114 (6th Cir. 1990), and a right to be free from law enforcement actions made in retaliation for his invocation of this Court’s jurisdiction, *see, e.g., Holzemer v. City of Memphis*, 621 F.3d 512 (6th Cir. 2010).

Tellingly, the City’s entire brief fails to cite a single case about Constitutional standards. Instead, previewing its argument on the merits of the underlying lawsuit, the City invokes an

insulting string of stereotypes about the dangers that panhandlers pose.<sup>1</sup> Yet the City’s tale utterly fails to grapple with the scope of the law it defends or the facts of this case. For example, Mr. Mancini was not accused of assault or of holding up traffic, but simply of sitting passively on the sidewalk near the entrance to a closed restaurant—behavior made illegal simply because of the message on his sign. He was simply at the wrong place with the wrong sign.

The City’s arguments about assault and congestion highlight how poorly tailored the Anti-Panhandling laws are to their supposed purposes. For example, enforcing a law against assault is a tailored way to deal with assault; enforcing a content-based speech restriction against sitting on a sidewalk is not. It is no wonder that so many courts have struck down similar laws as unconstitutional, as Plaintiffs have set forth in their motion for a preliminary injunction.

Thus, Plaintiffs ask the Court to temporarily enjoin further retaliation and enforcement of the anti-panhandling laws.

March 19, 2017

Respectfully submitted,

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<sup>1</sup> For example, page 7 of the response brief offers up this strawman: “Mancini’s case presents a demand that he be allowed to intentionally block safe or free passage of individuals throughout the City, prevent citizens from safely passing through vehicles, to approach and follow citizens while they withdraw from their ATMs without consent, and be allowed to engage in physical contact with another person without consent.”

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**Certificate of Service**

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