

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

JOHN MANCINI, et al.,)	CASE NO. 1:17 CV 410
)	
Plaintiffs,)	
)	
v.)	JUDGE DONALD C. NUGENT
)	
CITY OF CLEVELAND, et al.,)	<u>ORDER</u>
)	
Defendants.)	

This matter is before the Court on the Emergency Motion for Temporary Injunctive Relief filed by Plaintiffs, John Mancini and Northeast Ohio Coalition for the Homeless. (Docket #10.) Plaintiffs ask for an emergency order temporarily halting enforcement of the City of Cleveland’s Aggressive Solicitation Ordinance Section 605.031 and Highway Safety Ordinance Section 471.06 (“the Ordinances”). The Ordinances prohibit aggressive panhandling and prohibit panhandling in certain areas of the City. Plaintiffs argue that the Ordinances at issue are unconstitutional, content-based restrictions on the right to free speech – prohibiting individuals from communicating information about their poverty to others.

According to the Complaint, Mr. Mancini is a disabled veteran who regularly panhandles in the City of Cleveland – typically on downtown sidewalks near the roadway – to collect donations from drivers stopped at traffic lights. In December 2016 and January 2017, Mr. Mancini was ticketed four times and convicted once for violating the Ordinances. Plaintiffs allege that since being ticketed and filing this lawsuit, Mr. Mancini has been harassed and

threatened with arrest by the police and now is afraid to panhandle in downtown Cleveland. Plaintiffs ask the Court to temporarily halt enforcement of the Ordinances and to prohibit Defendants from engaging in retaliation against Plaintiffs for filing this action. Plaintiffs argue that they have demonstrated irreparable harm – asserting Mr. Mancini faces both a Constitutional deprivation of his free speech rights, as well as a loss of income.

Defendants filed their Brief in Opposition on March 16, 2017. (Docket #12.) Defendants argue Plaintiffs have failed to demonstrate they will suffer irreparable harm should their request for an injunction be denied. Further, Defendants argue that any alleged contact that Cleveland police have had with Mr. Mancini since Plaintiffs filed this lawsuit was the result of Mr. Mancini panhandling in prohibited areas and that no citation was ultimately issued. Defendants maintain that Mr. Mancini is legally permitted to panhandle throughout the City of Cleveland, with the limited exceptions related to safety as set forth in the Ordinances, and that Mr. Mancini has failed to demonstrate why he is unable to panhandle within the confines of the Ordinances or how complying with the Ordinances impacts the supplementation of his income. Defendants argue that the relief requested by Plaintiffs would result in substantial harm to the Citizens of Cleveland – asserting that the Ordinances are critical to the City’s ability to protect the public; that no public interest would be served by an injunction; and, that an injunction would encourage aggressive solicitation and interfere with traffic safety.

Conclusion

Rule 65(b) of the Federal Rules of Civil Procedure permits a party to seek injunctive relief to prevent immediate and irreparable injury. A court considers four factors in determining whether to grant the extraordinary remedy of injunctive relief: (1) whether the movant has a strong likelihood of success on the merits; (2) whether the movant would suffer irreparable injury without the injunction; (3) whether issuance of the injunction would cause substantial

harm to others; and (4) whether the public interest would be served by issuance of the injunction. *Chabad of S. Ohio & Congregation Lubavitch v. City of Cincinnati*, 363 F.3d 427, 432 (6th Cir. 2004).

Plaintiffs have failed to demonstrate irreparable injury will result from the City's continued enforcement of the Ordinances at issue and issuing an injunction prior to a determination on the merits of Mr. Mancini's Constitutional claims would significantly impact the City's asserted concerns of protecting public safety and serving the public interest. While the Parties disagree as to whether Mr. Mancini was in violation of the City's panhandling Ordinance on Marcy 11, 2017 when he alleges Cleveland police officers approached him regarding panhandling and mentioned this lawsuit, Mr. Mancini was not issued a citation and Defendants indicate in briefing that Mr. Mancini may continue to panhandle within the City in a manner and in areas consistent with the Ordinances as written. Further, if successful on the merits of his claims, any loss of income alleged by Mr. Mancini as a result of the Ordinances would be addressed as potential damages.

A status conference remains set for April 10, 2017, at which time the Parties shall agree on a briefing schedule and, barring any unforeseen complications, the Court will rule expeditiously on the merits of Plaintiffs' claims thereafter.

Plaintiffs' Emergency Motion for Temporary Injunctive Relief (Docket #10) is hereby DENIED.

IT IS SO ORDERED.

s/Donald C. Nugent
DONALD C. NUGENT
United States District Judge

DATED: April 7, 2017