

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

FILED  
SEP 27 PM 1:30  
CLERK U.S. DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
CLEVELAND

NORTHEAST OHIO COALITION FOR )  
THE HOMELESS )  
and )  
RICHARD CLEMENTS )  
and )  
FRUIT OF ISLAM OF MUHAMMAD'S )  
MOSQUE NO. 18 )  
and )  
STEVEN D. HILL, )  
Plaintiffs, )  
vs. )  
THE CITY OF CLEVELAND, OHIO, )  
Defendant. )

**1:94CV 2008**

Civil Action No. \_\_\_\_\_

**JUDGE ALDRICH**

Judge \_\_\_\_\_

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

I. INTRODUCTION

1. This is a civil action for declaratory and injunctive relief that seeks to halt the City of Cleveland's unconstitutional enforcement of a peddling ordinance -- and its \$50.00 license fee -- against those who sell or distribute newspapers on public sidewalks.

2. Despite 51 years of judicial precedent barring the application of such license fees against newspaper street vendors,

and despite being apprised of the governing case law, the City persists in enforcing its ordinance against two groups: those who distribute The Homeless Grapevine and those who sell a Nation of Islam publication known as The Final Call.

## II. JURISDICTION, VENUE, AND PARTIES

### A. Jurisdiction

3. Plaintiffs bring this action to protect rights conferred by the First and Fourteenth Amendments to the U.S. Constitution and Article I, Section 11 of the Ohio Constitution.

4. This Court has jurisdiction under 28 U.S.C. § 1331, in that it arises under the Constitution of the United States; under 28 U.S.C. § 1343(a)(3), in that it is brought to redress deprivations, under color of State authority, of rights, privileges, and immunities secured by the United States Constitution; under 28 U.S.C. § 1343(a)(4), in that its purpose is to secure equitable relief under Acts of Congress -- specifically, 42 U.S.C. § 1983 -- providing for the protection of civil rights; under 28 U.S.C. § 2201(a), in that one of its purposes is to secure declaratory relief; and, finally, as to our claims under the Ohio Constitution, under the doctrine of pendent jurisdiction.

B. Venue

5. Venue is proper in this Court under 28 U.S.C. § 1391(b) because the Defendant is situated in this District and because Plaintiffs' claims arose here.

C. Parties

6. Plaintiff Northeast Ohio Coalition for the Homeless ("NEOCH") is a non-profit advocacy group for the homeless. NEOCH publishes a newspaper known as The Homeless Grapevine.

7. Plaintiff Richard Clements is a resident of Cleveland who, over the past several years, has frequently been homeless. Mr. Clements often distributes The Homeless Grapevine -- and, for distributing that newspaper, he has been ticketed and prosecuted by the City of Cleveland for "peddling without a license."

8. Plaintiff Fruit of Islam of Muhammad's Mosque No. 18 ("Fruit of Islam") is a non-profit membership organization that is affiliated with the Nation of Islam. Fruit of Islam members disseminate the Nation of Islam's political and religious message by selling a variety of publications -- including a newspaper known as The Final Call -- and also by selling audio and video tapes of speeches by Nation of Islam leaders, primarily Minister Louis Farrakhan.

9. Plaintiff Steven D. Hill is a Fruit of Islam member. For selling The Final Call, he has frequently been ticketed and

prosecuted by the City of Cleveland for "peddling without a license."

10. Defendant City of Cleveland ("the City") is a charter municipality organized pursuant to the Home Rule provisions of Article XVIII, Section 7 of the Ohio Constitution.

### III. FACTS

#### A. The Homeless Grapevine

11. The Homeless Grapevine is distributed exclusively by homeless and/or destitute individuals. NEOCH's purpose in publishing the Grapevine is twofold: to publicize the plight of the homeless, and to provide homeless persons with a vehicle for soliciting charitable donations by which to maintain their individual sustenance. (Affidavit of Bryan Gillooly, NEOCH's Executive Director, at ¶ 3. The Gillooly Affidavit is attached to this Complaint as Exhibit A.)

12. Those who distribute the Grapevine obtain copies from NEOCH for 10 cents apiece. They distribute the newspaper on public sidewalks, offering it to passers-by in exchange for charitable donations. The Grapevine bears no sale price; instead, each issue contains the following language in the upper right-hand corner of its cover page: "Donations Only[;] \$1.00 Suggested." (The cover of a recent Grapevine issue is attached to this Complaint as Exhibit B.) All such donations remain with the homeless

individual. They are not to be returned to NEOCH. (Gillooly Affidavit, ¶¶ 4, 6.)

13. Over the past few months, Grapevine distributors have notified NEOCH that Cleveland police officers are requiring them to produce a peddler's license. When the distributor acknowledges that he does not have such a license, the officer orders him to cease distributing the Grapevine. Some have received tickets for peddling without a license. (Gillooly Affidavit, ¶ 7.)

14. The \$50.00 fee for obtaining a peddler's license (Cleveland Municipal Code § 675.03(f)) is far beyond the means of most, if not all, Grapevine distributors. Moreover, such a fee would destroy any economic incentive that a homeless and/or destitute person would have for distributing the Grapevine in the first place. (Gillooly Affidavit, ¶ 8.)

15. NEOCH is financially incapable of purchasing a peddler's license for each of the individuals who distribute the Grapevine. (Gillooly Affidavit, ¶ 9.)

16. Third District Police Commander Martin Flask, who oversees Cleveland's downtown area, has acknowledged that his officers are enforcing the peddler's license fee against Grapevine distributors. (Vendor Law Hurts Paper, [Cleveland] Plain Dealer, June 22, 1994 -- attached to this Complaint as Exhibit C.)

17. On May 17, 1994, Plaintiff Clements was distributing copies of the Grapevine when he received a ticket for peddling

without a license. His lawyers moved to dismiss the prosecution and, on August 8, City prosecutors voluntarily dropped the charges. (Cleveland Ducks Ruling on Homeless Peddlers, [Cleveland] Plain Dealer, Aug. 9, 1994 -- attached to this Complaint as Exhibit D.)

18. Despite the dismissal of those charges, Cleveland Safety Director William Denihan asserted only seven days later that police will continue enforcing the peddler's license fee against Grapevine distributors. (Grapevine Pressed for Cash, Like Homeless, [Cleveland] Plain Dealer, Aug. 16, 1994 -- attached to this Complaint as Exhibit E.)

19. Two days after Mr. Denihan's assertion, undersigned counsel sent a demand letter to City officials. The letter enclosed a legal brief demonstrating that enforcement of the peddler's license fee against Grapevine distributors is barred by both the First Amendment to the U.S. Constitution and Article I, § 11 of the Ohio Constitution. The letter urged City officials to cease enforcement of the peddler's license fee against Grapevine distributors. (A copy of the demand letter, dated August 17, 1994, is attached to this Complaint as Exhibit F.)

20. Seven days after her office received the demand letter, Chief Assistant City Law Director Kathleen Martin asserted that Grapevine distributors still face prosecution for peddling without a license. (Man Says He Was "Dumped" by Police, [Cleveland] Plain Dealer, Aug. 25, 1994 -- attached to this Complaint as Exhibit G.)

21. If the City continues to enforce its peddler's license fee against Grapevine distributors, publication and distribution of the newspaper will be forced to cease. The costs imposed by such regulation will be so prohibitive -- both to NEOCH and to the homeless individuals who distribute the Grapevine -- that NEOCH will have no choice but to abandon the enterprise. (Gillooly Affidavit, ¶ 10.)

**B. The Final Call**

22. The Final Call is one of the primary means by which the Nation of Islam disseminates its religious and political message. Here in Cleveland, The Final Call is sold on public streets and sidewalks by Fruit of Islam members. (The front cover of a recent Final Call issue is attached to this Complaint as Exhibit H.)

23. Final Call vendors keep only a fraction of their sales proceeds, delivering the remainder to Mosque No. 18. Though the newspaper is sold for \$1.00, vendors earn only 30 cents for each copy they sell. Moreover, Fruit of Islam members are expected to donate \$50.00 per week to the Mosque. Under these arrangements, Final Call vendors are able to maintain only a subsistence living. Accordingly, the \$50.00 fee that the City requires for a peddler's license is beyond the means of most, if not all, Final Call vendors. (Affidavit of Steven D. Hill, ¶ 6. The Hill Affidavit is attached to this Complaint as Exhibit I.)

24. Plaintiff Steven D. Hill is a Fruit of Islam member who regularly sells The Final Call on the public streets and sidewalks of Cleveland. He does not have a peddler's license. He cannot afford the \$50.00 fee that the City requires for such a license. (Hill Affidavit, ¶¶ 3-4.)

25. Over the past three years, Plaintiff Hill has been ticketed and prosecuted numerous times for "peddling without a license." At the moment, at least two such prosecutions are pending against him. (Hill Affidavit, ¶ 4.) Both of those prosecutions stem from tickets issued after undersigned counsel's August 17, 1994 demand letter to City officials. That demand letter specifically referred not only to The Homeless Grapevine, but also to "Nation of Islam publications." (See page 1 of the demand letter, attached as Exhibit F.)

26. Whenever Plaintiff Hill has received a ticket for peddling without a license, the only items he was offering for sale were The Final Call and/or audio and video tapes of speeches by Nation of Islam leaders, primarily Minister Louis Farrakhan. (Hill Affidavit, ¶ 5.)

27. Plaintiff Hill's experience is hardly unique; his brethren in the Fruit of Islam are likewise frequently ticketed and prosecuted for peddling without a license.



IV. CLAIMS FOR RELIEF

COUNT I

(Federal Speech and Press Claims  
Under the First Amendment)

28. The City's enforcement of its peddler's license fee against Plaintiff Clements and others who distribute The Homeless Grapevine violates their rights to freedom of speech and press under the First and Fourteenth Amendments to the U.S. Constitution.

29. The City's enforcement of its peddler's license fee against those who distribute The Homeless Grapevine violates the speech and press rights of NEOCH under the First and Fourteenth Amendments to the U.S. Constitution.

30. The City's enforcement of its peddler's license fee against Plaintiff Hill and other Fruit of Islam members who sell The Final Call violates their rights to freedom of speech and press under the First and Fourteenth Amendments to the U.S. Constitution.

31. The City's enforcement of its peddler's license fee against those who sell The Final Call violates the Fruit of Islam's speech and press rights under the First and Fourteenth Amendments to the U.S. Constitution.

COUNT II

(Pendent State Law Claims Under  
the Ohio Constitution)

32. The City's enforcement of its peddler's license fee against Plaintiff Clements and others who distribute The Homeless Grapevine violates their rights under Article I, § 11 of the Ohio Constitution to freely speak, write, and publish their sentiments on all subjects.

33. The City's enforcement of its peddler's license fee against those who distribute The Homeless Grapevine violates NEOCH's right under Article I, § 11 of the Ohio Constitution to freely speak, write, and publish its sentiments on all subjects.

34. The City's enforcement of its peddler's license fee against Plaintiff Hill and other Fruit of Islam members who sell The Final Call violates their rights under Article I, § 11 of the Ohio Constitution to freely speak, write, and publish their sentiments on all subjects.

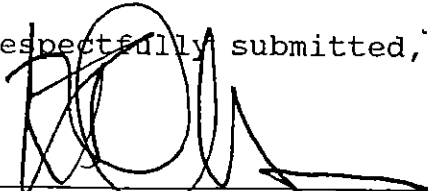
35. The City's enforcement of its peddler's license fee against those who sell The Final Call violates the Fruit of Islam's right under Article I, § 11 of the Ohio Constitution to freely speak, write, and publish its sentiments on all subjects.

V. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand that judgment be entered against the Defendant City of Cleveland. Specifically, Plaintiffs demand such declaratory, injunctive, and other relief as follows:

- (a) A declaratory judgment that the City's enforcement of its peddler's license fee against Plaintiffs violates the First and Fourteenth Amendments to the U.S. Constitution and Article I, § 11 of the Ohio Constitution.
- (b) Preliminary and permanent injunctions ordering the City -- and all officers, employees, and agents under its supervision or control -- to cease enforcing its peddler's license fee not only against these Plaintiffs but also against anyone else who endeavors to sell or distribute on the public streets and sidewalks of Cleveland The Homeless Grapevine, The Final Call, or any other materials by which NEOCH or the Nation of Islam seek to disseminate their respective viewpoints.
- (c) An award of attorney fees, pursuant to 42 U.S.C. § 1988, and costs.
- (d) An order granting Plaintiffs such other and further relief as this Court deems proper.

Respectfully submitted,



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Attorneys for Plaintiffs on Behalf  
of the American Civil Liberties  
Union of Ohio Foundation, Inc.

KFO708.18

EXHIBITS

IN THE MUNICIPAL COURT OF CLEVELAND  
CUYAHOGA COUNTY, OHIO

STATE OF OHIO, )  
 )  
 Plaintiff, ) CASE NO. 94-CRB-12401  
 )  
 v. ) JUDGE ADRINE  
 )  
 RICHARD CLEMENTS, )  
 )  
 Defendant. )

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AFFIDAVIT OF BRYAN GILLOOLY

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STATE OF OHIO )  
 ) SS:  
 COUNTY OF CUYAHOGA )

BRYAN GILLOOLY, being first duly cautioned and sworn upon oath, deposes and says:

1. I am making this affidavit based upon personal knowledge, and I am competent to testify regarding the matters described below.
2. I am the Executive Director of NEOCH, the Northeast Ohio Coalition for the Homeless. NEOCH is a 501(c)(3) non-profit organization, which serves as an advocacy group for the homeless.
3. NEOCH publishes a newspaper that is called The Homeless Grapevine. It is distributed exclusively by homeless individuals.

EXHIBIT A

Our purpose in publishing the Grapevine is twofold: (1) to publicize the plight of the homeless, and (2) to provide homeless persons with a vehicle for soliciting charitable donations by which to maintain their individual sustenance.

4. Homeless individuals who wish to distribute the Grapevine can obtain copies from NEOCH for ten cents apiece. After obtaining these copies, the homeless individual is free to use them for the purpose of obtaining charitable donations. He does not "sell" the Grapevine; rather, he distributes it to passers-by in the hope that they will give him a charitable donation in return. The Grapevine bears no sale price; instead, each issue contains the following language in the upper right-hand corner of its cover page: "Donations Only[;] \$1.00 Suggested."

5. Thus, the Grapevine is not sold; it is given away in exchange for a hoped-for donation. We print "\$1.00 Suggested" so that passers-by may be inclined to give an amount that will help the homeless individual provide for his own sustenance. But these donations are optional. We instruct each of our distributors not to dicker about money with those who request a copy of the Grapevine. The "suggestion" on the paper's masthead is meant to leave passers-by free to decide for themselves whether to donate money, and, if so, how much.

6. All such donations remain with the homeless individual. They are not to be returned to NEOCH.

7. Over the past few months, homeless individuals who distribute the Grapevine have told me that Cleveland police

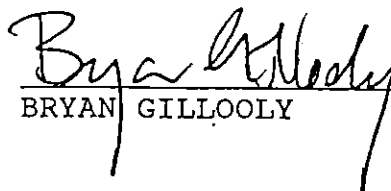
officers are requiring them to produce a peddler's license. When the homeless individual acknowledges that he does not have such a license, the officer orders him to cease distributing the Grapevine. Some have received tickets for peddling without a license.

8. The \$50.00 fee for obtaining a peddler's license (Cleveland Municipal Code § 675.03(f)) is far beyond the means of most, if not all, of the homeless with whom I work. Moreover, such a fee would destroy any economic incentive that a homeless person would have for distributing the Grapevine in the first place.

9. NEOCH is financially incapable of purchasing a peddler's license for each of the homeless individuals who distribute the Grapevine.


10. If a peddler's license is actually required of those who distribute the Grapevine, I can predict with perfect confidence that publication and distribution of our newspaper will be forced to cease. The costs imposed by such regulation will be so prohibitive -- both to NEOCH and to the homeless individuals who distribute the Grapevine -- that we will have no choice but to abandon the enterprise.

Further affiant sayeth naught.

  
BRYAN GILLOOLY

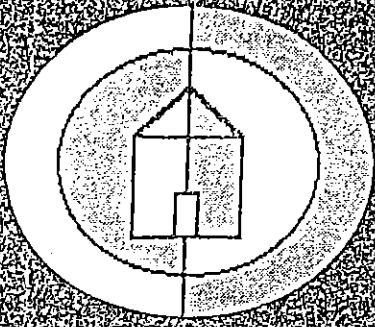


SWORN TO BEFORE ME, and subscribed in my presence by the  
said BRYAN GILLOOLY, this 20th day of June, 1994.

A handwritten signature in black ink, appearing to be 'K. F. O'Neill', written over a horizontal line.

NOTARY PUBLIC

KEVIN F. O'NEILL, Attorney at Law  
Notary Public, State of Ohio  
My Commission has no expiration date  
Section 147.03 O.R.C.



Donations  
Only  
\$1.00  
Suggested

# The Homeless Grapevine

The Street Newspaper and Voice of the Poor

Issue 5

## Like Other Homeless People, I'm Looking for a Job

by Bob Boclear

I was born in Granada, Mississippi, in 1951. I moved to Cleveland in 1960. I completed the twelfth grade through GED. My occupation is a tractor-trailer driver. I was married, had children and now have grandchildren. I was divorced after 20 years of marriage.

I lived what's considered to be a normal, decent life. You know: job, family, community involvement. For many years, things were good. Then, things began to change.

My marriage started going bad, and my job moved out of state. I began drinking more and started doing drugs. Divorce occurred, and my children left. I really began not to care. I lost my respect, self-esteem and whatever else you can lose when you're failing. Anyway, I became homeless and for a good while I wallowed in my



To reach Mr. Boclear with a job opportunity, call his voice mail at (216) 344-1580.

sorrow and pity. There were times when I asked for food, and what was said to me was, "Get a job you damn bum!" More often than not, we are treated as the worst.

Further down the road, I met people who cared and were concerned. It gave me hope and a desire to help myself. Don't get me wrong--it's not easy coming up and I'm not out of this yet. But at least now I'm giving myself the chance.

Before I end my article, I would like to thank NEOCH and its staff for what I call CURE: caring, understanding, respect and encouragement. Thank you NEOCH, and may God bless you.

Take a look at pages 6 and 7 for other featured individuals seeking employment!

## Cleveland Homeless Receive Voice Mailboxes, Free Access

Cleveland's homeless are receiving 50 voice mailboxes with free 800-number access to help them connect with jobs, housing and human services.

Cleveland Mayor Michael R. White claims that the free 800-number access line will help make the project work. Other cities have used voice mailboxes for the homeless, but Cleveland is believed to be one of the first to provide much-needed free access.

"While homeless people obviously don't have phones,

they often cannot spare the quarters for pay phones while seeking jobs and permanent housing," White said.

The pilot project, run by the Cleveland/Cuyahoga County Office of Homeless Services, is made possible by the Ameritech Ohio Foundation. The Communications Workers of America have agreed to provide training in the use of the system at shelters and agencies.

Cuyahoga County Commission President Timothy F. Hagan feels that the educational aspect being provided by the Communication Workers of America is a key to the project's success. "Training people to use voice mailboxes will help make the most of the technology," said Hagan.

# Vendor law hurts paper

Court may hear Homeless Grapevine case

By ALANA MIKKELSEN  
PLAIN DEALER REPORTER

## CLEVELAND

Richard Clements was a panhandler before he began distributing the Homeless Grapevine, a local newspaper by and about Cleveland's street people.

Now, instead of asking people to give him money for nothing, he gives out the newspaper — published by a non-profit organization — in exchange for whatever donation passers-by deem fair.

But tighter police enforcement of the city's peddling ordinance might threaten that avenue of revenue for Clements and more than 300 other distributors of the Grapevine. On May 17, Clements was ticketed for peddling without a license in Public Square.

The American Civil Liberties Union of Ohio has intervened.

In a petition filed yesterday with Cleveland Municipal Court, the ACLU asked that criminal charges against Clements be dismissed.

"If the court doesn't go our way, it will effectively shut down the publication of the Homeless Grapevine and deprive homeless people of a dignified way of soliciting donations," ACLU attorney Ke-

vin O'Neill said.

Peddler's licenses are required of any person wishing to sell goods on city streets. For \$50, a vendor gets an identification card and a permit that helps city officials keep track of street peddlers and provides a way to act on customer complaints.

O'Neill said that in the past three months, city police have been applying the ordinance against Grapevine distributors, possibly to clear homeless people from downtown streets.

In the petition, he argued the local ordinance doesn't apply to Grapevine distributors because they ask for donations rather than sell the paper for a specific price.

O'Neill also argued that requiring a license to distribute the paper is a violation of the First Amendment and constitutes a prior restraint against the Grapevine's publication. Neither the street people themselves nor the Northeast Ohio Coalition for the Homeless — which sells the newspapers to distributors for 10 cents a copy — can afford the \$50 license fee for each distributor, he said.

SEE LICENSE/2-B

# Vendor law threatens newspaper

LICENSE FROM 1-B

"Fifty dollars is a king's ransom for a homeless guy," O'Neill said. "You might as well ask him to buy a Lear jet."

Third District Commander Marty Flask, who oversees the downtown area, said his officers are simply enforcing the peddler's ordinance. He could not verify whether there had been a recent increase in such citations, but he said his office has received a number of complaints about aggressive distributors of the newspaper.

Flask said visitors and local em-

ployers and employees have complained about distributors standing in their way and intimidating them.

William M. Denihan, the city's safety director, said he has received letters from people "terribly fearful" that panhandlers pose a "terrible threat." He said people want to know what the city is doing about the problem.

Denihan denied the ordinance was being used specifically against homeless people. He said any peddler who threatened the public welfare by forcing a pedestrian into the street to avoid either a kiosk or an aggressive salesperson would forfeit a chance at a license for that area.

O'Neill said his case was a way to "challenge the city's power to use this ordinance against homeless people."

Bryan Gillooly, executive director of the coalition for the homeless, said other "street newspapers," notably StreetNews out of New York, have been the targets of city ordinances. He said wherever there are street people, there is the impression that they are a hindrance.

"People feel it discourages customers from coming into their business . . ." Gillooly said. "There is also a general feeling that homeless people are criminals."

# Cleveland ducks ruling on homeless peddlers

By JAMES EWINGER  
PLAIN DEALER REPORTER

CLEVELAND — The city asked a municipal judge yesterday to dismiss a charge against a homeless man accused of violating the city's peddling ordinance while pitching the *Homeless Grapevine*.

City prosecutors said they couldn't prove their case.

Thus ended the battle over whether Richard Clements could sell the newspaper with a small technical victory for the American Civil Liberties Union. But ACLU lawyers and city prosecutors said a larger war had yet to begin.

ACLU lawyers were prepared to defend Clements, saying the city had stepped on his constitutional rights to free speech. Prosecutors said the issue was the city's ability to guarantee pedestrians the right to walk city sidewalks without being accosted by aggressive peddlers.

Police could still arrest homeless people who sell the *Homeless Grapevine* — even though Clements won't hand out any more of the papers.

"I'm tired of fighting. Tomorrow it will be the same thing. 'Where's your vendor's license?' I don't have one," said Clements, 44, who is no longer homeless. "I had less conflict dealing with the (peddlers) cup than I did with the papers."

Just what police will do with future cases is not known.

Only the homeless pitch the *Grapevine*, a quarterly newspaper published by the Northeast Ohio Coalition for the Homeless. Distributors get the first 10 copies of the paper for free, then pay 10-cents for each additional copy. They ask for a \$1 donation for the paper.

SEE HOMELESS/6-B

# Cleveland dodges ruling on homeless peddlers

HOMELESS FROM 1-B

In court yesterday, Assistant City Prosecutor Carol Skutnik told Municipal Judge Ronald Adrine the city wanted to drop the case because there wasn't enough evidence — despite complaints from police and downtown pedestrians.

Adrine agreed there wasn't enough evidence to find Clements guilty — and thus the constitutional issue wouldn't have played a role in the case. He suggested the ACLU should discuss the law with the City Council.

ACLU lawyer Kevin F. O'Neill begged Adrine yesterday to reconsider so Adrine could decide the constitutional issue.

After the hearing, Skutnik said the city didn't want to shut down the paper. She said anyone could grab a stack of the papers, however, and use them as a cover to aggressively panhandle.

Police Sgt. Ann Reilly said some of homeless people complain that some people who pitch the newspaper aren't homeless.

Skutnik said *Grapevine* handlers get around the peddlers ordinance by telling the city they don't demand donations beyond the 10-cent cover price, then withhold

Skutnik said the city didn't want to shut down the paper. She said anyone could grab a stack of the papers, however, and use them as a cover to aggressively panhandle.

the paper unless people give them a dollar.

O'Neill said legal decisions have supported the *Grapevine* practices for 50 years. Governments have tried to regulate unpopular groups by tethering their right to distribute pamphlets and publications, he said.

The local ACLU chapter is investigating similar complaints about the city's restrictions on the Fruit of Islam and its right to distribute publications in the city, O'Neill said.

The Associated Press contributed to this story.



Richard Clements leaves the Justice Center after a judge dismissed charges against him. He faced charges of violating the city's peddling ordinance for distributing the *Homeless Grapevine*, a quarterly newspaper published by the Northeast Ohio Coalition for the Homeless.

8/16/94

EXHIBIT E

# Grapevine pressed for cash, like homeless

By PAULO CAMARGO  
PLAIN DEALER REPORTER

CLEVELAND — The Homeless Grapevine won a battle of sorts last week, but it could turn out to be a hollow victory.

Cleveland prosecutors decided Aug. 8 to dismiss a charge against a homeless man accused of selling the newspaper without a city peddler's license since they couldn't prove their case. Police said they would continue to enforce the peddling law.

But there may not be a newspaper around for the homeless to sell and the city to try to regulate.

The paper's publisher, the Northeast Ohio Coalition for the Homeless, said it didn't have enough money to print the next issue. Even if the coalition managed to raise money for the September edition, it still must scramble to find long-term funding and staff to keep the Grapevine going in the months ahead.

The quarterly paper is intended to give homeless people a product to sell as an alternative to outright panhandling.

Distributors pay 10 cents per copy, sell each paper for \$1 and keep the 90-cent profit to raise money for basic expenses. The Grapevine contains articles by and about the homeless, issues affecting street people, and ads for services and skills that homeless people can provide.

Since the first issue was published, in spring 1993, the coalition has had trouble raising enough money to have a new issue on the streets every three months. About 20% of the cost of publishing is funded by donations; the rest comes from sales of the paper.

The funding problem has worsened lately. Bryan Gillooly, the homeless coalition's director, said it will cost at least \$2,000 to print 18,000 copies of the next issue; the organization has only been able to raise \$1,800.

"It should be out in the streets

by September, and we do not have the money yet," Gillooly said. Even though \$200 may not like a large amount to raise, the organization's problems don't end there.

For months now, Gillooly has been the only staff member working on the paper. He gathers files, designs the pages, and drives the copies to the B Cosgrove Center, where the distributed among the homeless

SEE GRAPEVINE

# The Grapevine pressed for cash

GRAPEVINE FROM 1-B

Gillooly said he can no longer handle the whole project by himself because of his other work at the coalition. However, the organization can't afford to hire more staff to run the paper.

"We need at least one person working full time and that will cost us around \$20,000 a year. Unless the community supports us, the Homeless Grapevine may not have a new issue," Gillooly said.

Gillooly said the financial situation had become so serious that the coalition stopped giving 10 free copies to first-time vendors, who usually don't have any money to pay the 10 cents charged per paper.

He said the coalition was trying to get grants from different charitable institutions for long-term operation of the paper. "We are filling out the applications, but we don't think there'll be any answers before the next issue is due," Gillooly said.

Gillooly said the Grapevine is sold by about 300 vendors, although not all work regularly. He estimates 20 to 25 people currently sell the paper daily in Cleveland and the suburbs. "They come and go as they need money," he said.

One person who has depended on the Grapevine to get by is Michael DuBose, a 30-year-old unemployed truck driver. He has sold the paper on the streets of downtown Cleveland for two months.

He is still homeless, but the money he makes — about \$15 a day — has helped him buy food and clothing and pay for transportation.

"I can even save some to get a place to live in the near future," DuBose said.



ANDREW CHERANIC/PLAIN DEALER PHOTOGRAPHER

Bryan Gillooly, director of the Northeast Ohio Coalition for the Homeless, is concerned about the future of the organization's newspaper.

"If the coalition runs out of money and stops printing the paper, many will resort to a life of crime," DuBose said. "I will try to (work for) temporary services, like door-to-door landscaping."

Even if the homeless coalition solves its money woes, vendors may still have problems selling the paper.

Cleveland Safety Director William Denhan said last week that police will continue enforcing the city's peddling ordinance, which requires vendors to have a \$50 license to sell the papers.

Vendors caught selling papers without the license will be warned, and if they remain in the streets, they will receive a citation, Den-

han said. Gillooly said the city can't require a license because the newspaper is not merchandise like a baseball cap or a flag.

"If the police try to stop the vendors from selling the paper, they will be stepping on the constitutional rights to free speech," Gillooly said.

8/16/94



AMERICAN CIVIL LIBERTIES UNION OF OHIO FOUNDATION

1223 West Sixth Street • Cleveland, Ohio 44113-1353 • 216/781-6276 • 216/781-6278 • FAX 216/781-6438

HAND-DELIVERED

August 17, 1994

Sharon Sobol-Jordan  
Law Director  
City of Cleveland  
City Hall  
601 Lakeside Avenue  
Cleveland, Ohio 44114

Re: Enforcement of Peddler's License Fee Against  
Those Who Distribute or Sell Newspapers on  
Public Sidewalks

Dear Ms. Sobol-Jordan:

It has come to our attention that Cleveland police officers have been enforcing the peddler's ordinance -- and its requirement of a \$50.00 fee -- against those who sell or distribute newspapers on public sidewalks. Specifically, city police have ticketed, and city prosecutors have pressed charges against, members of two unpopular groups: those who distribute The Homeless Grapevine and those who sell Nation of Islam publications. On behalf of the American Civil Liberties Union of Ohio, I recently defended a homeless man who was ticketed for "peddling without a license" while distributing the Grapevine. I moved to dismiss -- arguing, inter alia, that enforcement of such a license fee against newspaper sellers or distributors is barred by the First Amendment -- and the City Prosecutor's Office dropped the charges. My motion and its supporting brief -- to which the prosecution never replied -- are enclosed for your review.

Even a casual perusal of my brief will make one thing very clear: Enforcement of a peddler's license fee in the manner described above is absolutely foreclosed by both the First Amendment to the U.S. Constitution and Article I, § 11 of the Ohio Constitution. This is not a recent development. It is a matter of black-letter law, based on 51 years of judicial precedent. The U.S. and Ohio Supreme Courts have held so. And it is irrelevant, for constitutional purposes, whether the individual is selling his newspapers or merely giving them away.

EXHIBIT F

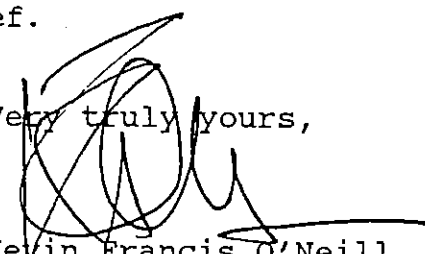
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Given this background, I was surprised to see some remarks in yesterday's Plain Dealer attributed to Safety Director William Denihan. (I've enclosed a copy of the article.) Mr. Denihan purportedly asserts that police will continue enforcing the peddler's license fee against those who distribute the Grapevine. Perhaps Mr. Denihan was misquoted. Or perhaps he announced the enforcement policy without any knowledge of the judicial precedent that governs this question. I telephoned Mr. Denihan twice yesterday morning, but he did not favor me with a reply.

We at the ACLU are not inclined to assume that government officials act in bad faith -- and we will not assume so here. We expect, however, that the City's executive branch will behave responsibly now that it has been apprised of the controlling case law.

Accordingly, the ACLU will closely monitor police enforcement of the peddler's license fee -- and we expect that it will not be used to intimidate or prosecute those who sell newspapers on public sidewalks. If such enforcement continues, we will defend anyone who seeks our assistance. Moreover, we will not hesitate to bring such enforcement to a halt by filing a civil action for declaratory -- and, if necessary, injunctive -- relief.

Very truly yours,



Kevin Francis O'Neill  
State Legal Director

KFO:jbk:703.18

Enclosures (2)

cc: Michael R. White, Mayor, City of Cleveland (w/encl.) (hand-delivered)  
William Denihan, Safety Director, City of Cleveland (w/encl.) (hand-delivered)  
Patrick Oliver, Chief of Police, City of Cleveland (w/encl.) (hand-delivered)  
Carolyn W. Allen, Chief Prosecutor, City of Cleveland (w/encl.) (hand-delivered)  
Bryan Gillooly, Executive Director, Northeast Ohio Coalition for the Homeless (w/o encl.) (by regular mail)  
Minister Roland Muhammed, Nation of Islam (w/o encl.) (by regular mail)



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Christine Link, Executive Director, ACLU of Ohio (w/o encl.)  
Paul Moke, President, ACLU of Ohio (w/encl.) (by regular mail)  
Peter Joy, General Counsel, ACLU of Ohio (w/o encl.) (by  
regular mail)  
Thomas Buckley, General Counsel, ACLU Cleveland Chapter (w/o  
encl.) (by regular mail)

# Man says he was 'dumped' by police

## ACLU may sue for the homeless

By MARK ROLLENHAGEN

PLAIN DEALER REPORTER

CLEVELAND. — John Mungai says a Cleveland police officer handcuffed him and threatened to throw him in jail because he was hawking the Homeless Grapevine newspaper in the Flats Saturday night.

Mungai, a homeless man who says he sleeps in the cab of an old dump truck parked at a West Side construction company, contends the officer threw his 38 newspapers in the trash.

But instead of being hauled off to jail, Mungai says, he was put in a police van about 10 p.m. and driven to Max S. Hayes Vocational High School at 4600 Detroit Ave. — some 40 blocks from the Flats — and dropped off in the rain.

Mungai said he asked the van drivers why they dropped him at the school and they told him: "This is not a taxi."

Police Cmdr. Martin Flask said one of the officers who was operating the police van in the Flats Saturday night said no one was taken to the area of the school where Mungai says he was dropped off.

Flask said the van did take two unidentified men to a homeless shelter near E. 17th St. and Superior Ave. about 10 p.m. at the request of off-duty police officers working security in the Flats.

But the American Civil Liberties Union says Mungai may be the latest victim of "dumping," the term the ACLU uses to describe incidents in which police remove homeless people from the downtown or Flats area, drive them to a distant part of town and drop them off.

"It's kidnapping," said Kevin O'Neill, legal director of the Ohio chapter of the ACLU.

O'Neill said the ACLU has affidavits from three other homeless people who say police have dumped them in the last year, and the organization plans to file a federal lawsuit against the city next month.

O'Neill said he is especially concerned because Mungai's alleged "dumping" came just three days after O'Neill sent a letter to the Cleveland law department threatening a federal lawsuit if police cited anyone for violating the city's peddling ordinance if they distributed the Grapevine.

The ACLU had represented another homeless man, Richard Clements, in defending a citation for selling the Grapevine without a \$50 peddler's license. Municipal Judge Ronald Adrine dismissed the citation Aug. 8 at the request of city prosecutors. The dismissal came without the judge ruling on the ACLU's claim that applying the peddling law to newspapers violates free-speech rights.

Kathleen Martin, chief assistant city law director, yesterday said the city disagrees with the ACLU's contention and that people selling newspapers without a vendor's license could still be prosecuted.

Mungai said the officer who handcuffed him and threw his papers in the garbage wore badge No.

8/25/94

## Man says he was 'dumped'

PEDDLING FROM 1-B

Timothy Gaertner, who wears Badge No. 405, said he told a homeless man carrying the Grapevine to leave the area because he was begging for money. Gaertner said he did not handcuff the man or throw his papers away.

"That just didn't happen," Gaertner said.

Gaertner said the homeless man walked away from the area after they talked and Gaertner did not

see him again after that.

Flask said police have investigated a few prior reports of "dumping" but could not substantiate any of them. He said all but one of the reports had come from news media reporters.

The only exception was a complaint made by Clements, the man cited under the peddling law. Flask said that complaint was reviewed by police and a civilian review board and no action was taken against the accused police officer.

EXHIBIT G

**WE MUST FIRST BE BROTHERS**  
by the Honorable Elijah Muhammad - pg. 19

**FULFILLING THE VISION**  
by Minister Louis Farrakhan - pg. 20

# The Final Call

VOLUME 13, NUMBER 25

SEPTEMBER 26, 1994

U.S. \$1.00

## MINISTER FARRAKHAN



Minister Louis Farrakhan

and Black  
entertainers promote

# SAVING



Johnny Gill

# THE



Stephanie Mills

# FAMILY

story begins on page 3



LeVert



Chuck D



Ice Cube



Bill Bellamy



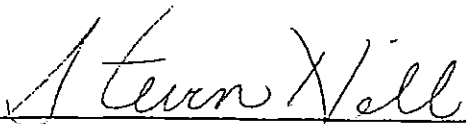
Tommy Davidson




5. Whenever I have received such a ticket, the only items I was offering for sale were The Final Call and/or audio and video tapes of speeches by Nation of Islam leaders, primarily Minister Louis Farrakhan.

6. The Final Call is distributed exclusively by Nation of Islam members. We keep only a fraction of our sales proceeds, delivering the remainder to the mosque. Though The Final Call is sold for \$1.00, vendors earn only 30 cents for each copy they sell. Moreover, members of Mosque No. 18 are expected to donate \$50.00 per week to the mosque. Under these arrangements, Final Call vendors are able to maintain only a subsistence living. Accordingly, the \$50.00 fee that the City of Cleveland requires for a peddler's license is beyond the means of most, if not all, Final Call vendors.

Further affiant sayeth naught.

  
\_\_\_\_\_  
STEVEN D. HILL

SWORN TO BEFORE ME and subscribed in my presence by the said STEVEN D. HILL, this 23rd day of September, 1994.

  
\_\_\_\_\_  
NOTARY PUBLIC

KEVIN F. O'NEILL, Attorney at Law  
Notary Public, State of Ohio  
My Commission has no expiration date  
Section 147.03 O R C

KFO-0053