IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT
HAMILTON COUNTY, OHIO

STATE OF OHIO *ex rel.* NEW PROSPECT BAPTIST CHURCH, 1580 Summit Road Cincinnati, Ohio 45237 Relator, vs. HON. ROBERT P. RUEHLMAN, JUDGE, HAMILTON COUNTY COURT OF COMMON PLEAS, Hamilton County Courthouse 1000 Main Street, Room 300 Cincinnati, Ohio 45202 Respondent.	Case No.: _____ Original Action in Mandamus and Prohibition

MOTION FOR PEREMPTORY WRIT OF MANDAMUS AND/OR PROHIBITION, OR FOR AN ALTERNATIVE WRIT

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INTRODUCTION

This petition for a writ of mandamus and/or prohibition challenges a series of injunctions of impermissibly broad scope issued by a judge on the Hamilton County Court of Common Pleas ("Respondent") outside of the confines of a proper case. Relator New Prospect Baptist Church ("New Prospect") requests that this Court issue an extraordinary writ compelling Respondent to withdraw or strike these improper orders, and/or prohibiting their enforcement.

Procedural due process forms the bedrock of our judicial system. As a reflection of their core function, courts are only authorized to resolve disputes between adversaries, relying on the clash of interests to crystalize the issues before the court. Judges are not legislators, and have no authority to issue decisions except when necessary to resolve a specific dispute properly brought. Another fundamental principle of our judicial system is that court-ordered relief only binds those who are properly made part of a case and who have a chance to respond to the evidence leveled against them.

These constitutionally-mandated procedural protections were entirely abandoned in case number A1804285 in the Hamilton County Court of Common Pleas. This case was "litigated" between two friendly parties: Hamilton County and the City of Cincinnati. Though nominally adversaries, the City and the County agreed on everything, from the pre-litigation planning stages though the conclusion. Both sought precisely the same outcome and remedy: forbidding people experiencing homelessness from seeking shelter in tents anywhere within the City and County borders. Rather than appropriately respond to the policy issue before it, the City worked with the County to manufacture a lawsuit and usurp the power of the court to decree homelessness policy for the entire County.

And the Respondent acquiesced to this scheme. Despite the absence of a justiciable controversy, and despite the absence of a viable legal basis, Respondent issued three temporary restraining orders and then a permanent injunction that forbids anyone, anywhere in the County – even on private property, and even outside City limits – from seeking refuge in an encampment. None of the people experiencing homelessness whose liberty interests were curtailed were named in the suit or given a chance to respond to the proceedings. Nor did any of the thousands of private property owners who have now had their property rights limited by the Court's order receive notice of the case or have an opportunity to defend their own interests.

The permanent injunction is breathtaking in scope. *See* Exhibit A. Rather than applying to a specific location based on credible information that a nuisance exists, the injunction applies to all encampments anywhere in the County, deeming each and every encampment a nuisance *per se*. It commands the Cincinnati Police Department and the County Sheriff's Office to maintain all spaces in the County free of "unlicensed" encampments, and then orders the summary arrest of anyone who facilitates such an encampment in the County for contempt of court. It also directs the City Police and the County Sheriff to seize tents without notice, and authorizes their destruction if they are not claimed within 60 days.

Relator New Prospect Baptist Church observes a religious mandate that includes serving those in need in the greater Cincinnati area. As part of its mission, New Prospect has endeavored to offer its private property as a refuge for people experiencing homelessness. Yet under the terms of Respondent's permanent injunction, Relator is prohibited from offering its campground as sanctuary to people experiencing homelessness. There is no legal or logical basis on which a judge is empowered to restrict the liberty and property rights of churches and others throughout the County in a lawsuit involving only the County and the City. Relator asks this Court to issue a

writ to prevent enforcement of these injunctions, which Respondent had no power to issue or enforce.

FACTUAL BACKGROUND

I. City and County Officials Employ Collusive Litigation in Lieu of a Legislative Approach to Address Homelessness in Hamilton County.

Hamilton County has one of the highest rates of homelessness in the State of Ohio. For example, on a single day in 2016, more than one thousand people in the County were identified to be sleeping in a place not meant for human habitation, while an additional six thousand people sought refuge in an emergency shelter. https://www.strategiestoendhomelessness.org/wp-content/uploads/2016-progress-report-on-ending-homelessness.pdf. The need outpaces the resources available, and emergency shelters in the County are often at or over capacity. Although it is not optimal, seeking shelter in an encampment is far safer than individual camping or sleeping "rough," and several studies have shown that encampments serve numerous benefits for people experiencing homelessness and the community.[1]

This case, however, is not about the merits of different policy responses to homelessness, but rather about who has the power to decree such policy and the process by which those decisions are made. Throughout July 2018, Cincinnati city officials and members of City Council engaged in debate about how the City should respond effectively and compassionately to the issue of people experiencing homelessness in their community. For example, the

[1] Evanie Parr and Sara Rankin, "It Takes a Village: Practical Guide for Authorized Encampments," SSRN Scholarly Paper (Seattle University Law School, May 3, 2018), https://papers.ssrn.com/abstract=3173224; Samir Junejo, Suzanne Skinner, and Sara Rankin, "No Rest for the Weary: Why Cities Should Embrace Homeless Encampments," SSRN Scholarly Paper (Seattle University Law School, May 9, 2016), https://papers.ssrn.com/abstract=2776425.r; National Law Center On Homelessness & Poverty, Tent City, USA, The Growth of America's Homeless Encampments and How Communities are Responding, https://www.nlchp.org/Tent_City_USA_2017.

Cincinnati City Council held a special session on July 19 to debate appropriate policy responses to the City's persistent homelessness. *See* https://archive.org/details/10180719CounSM (recording of July 19, 2018 special session).

By the beginning of August, Cincinnati Mayor John Cranley and the Acting City Manager – apparently growing impatient with the ongoing policy debate – turned to the courts. On August 3, 2018, Mayor Cranley issued a striking statement, declaring that he had expressly invited the Hamilton County Prosecutor to concoct a lawsuit against the City:

> This afternoon, I also asked for and have obtained the assistance of Hamilton County Prosecutor Joe Deters. Prosecutor Deters will be filing actions in state court and we will file motions in federal court. I thank Prosecutor Deters for his help in this matter. Together we will continue to pursue all strategies to end this unsafe practice. I ask for patience as we pursued (sic) appropriate court orders.

https://www.cincinnati.com/story/news/2018/08/03/cincinnati-homeless-file-lawsuit-agains-city/897918002/. The following day, the Civil Chief for the City of Cincinnati Law Department forwarded emails to the Hamilton County Prosecutor's office with the City Law Department's work product attached to it – to provide the County with materials to use in its lawsuit against the City. *See* Affidavit of Joseph Mead, attached hereto ("Mead Aff."), Exhibit A (emails).

Then, on August 6, 2018, as requested by the Mayor, the County Prosecutor filed its lawsuit against the City. The case was assigned to the Honorable Robert Ruehlman in the Hamilton County Court of Common Pleas. The complaint asserted that a specific location, where an encampment had been set up, constituted a nuisance under Ohio Revised Code 3719.10 and Chapter 3767, which allow for abatement of a premises where a felony drug activity occurred. There was no evidence that even a single arrest had been made or criminal charge filed. Nevertheless, the County averred there was ample evidence that felony drug activity was related

to the encampment. At no time did the City contest these barren allegations, or, for that matter, file any response at all.[2]

II. Respondent Enters a Series of Plainly Overbroad Orders Restricting the Rights of Numerous Non-Parties.

On the same day that the litigation was initiated, the County sought an ex parte temporary restraining order, which Respondent entered almost immediately. The order proclaimed that any individual seeking shelter in a tent within the specific area covered by the injunction was subject to arrest for violating the order. The order also prohibited City of Cincinnati officials from "encouraging" campers. The order set a hearing for August 20, 2018, to decide whether the injunction would be continued. *See* Mead Aff., Exhibit B (Ex parte restraining order, August 6, 2018).

Although it never amended its pleadings, the County sought a series of ever-expanding restraining orders over the next few days, going far beyond what the complaint had alleged or sought, in terms of the activity and geography covered. Respondent granted each successive order within minutes of its filing, apparently without any hearing or deliberation.

The first expansion of the order applied to encampments in most of the public spaces in the City of Cincinnati. Mead Aff., Exhibit B. (Ex parte restraining order, August 7, 2018). A subsequent order applied to all public spaces in the entire County, even those outside of the City

[2] Meanwhile, on August 2, 2018, a person living in a tent filed a federal lawsuit in the United States District Court for the Southern District of Ohio against the City of Cincinnati. *See Phillips v. City of Cincinnati*, No. 1:18-cv-00541 (S.D. Ohio). The federal lawsuit alleges, among other things, that the City violated the Constitution by adopting a policy of threatening people with arrest for sleeping in public when shelter is not available as a practical matter. *See, e.g.*, *Martin v. City of Boise, Idaho*, 902 F.3d 1031 (9th Cir. 2018) ("[A]n ordinance violates the Eighth Amendment insofar as it imposes criminal sanctions against homeless individuals for sleeping outdoors, on public property, when no alternative shelter is available to them."). The substantive constitutional defects of the City's policies are being litigated in federal court, and are not part of this petition.

limits not owned or maintained by the City. *Id.* (Ex parte restraining order, August 9, 2018). There was no allegation or evidence that encampments in other parts of the City or County were the site of felony drug activity. Nor was there any attempt to explain why the City of Cincinnati was the appropriate defendant for an order that applied to private citizens, or one that applied outside of City limits.

On August 16, 2018 – just 10 days after the County commenced the litigation – the case culminated with a joint request by the County and City for a permanent injunction. Again, Respondent complied, entering the injunction immediately. This request was the first, and the only, time that the City participated in any way in the lawsuit. The permanent injunction applies everywhere in the County – on public land, on private land, and even outside City limits – and enjoins anyone from seeking shelter in an "encampment" (an undefined term) anywhere in the County. Specifically, the permanent injunction decreed that:

- The "illegal encampments"—an undefined term—are "a moving nuisance that constitute a hazard to the health and safety of the general public[.]" Order at Findings of Fact ¶ 4.
- The court "exercise[ed] its county wide jurisdiction over encampments on public property and privately owned unlicensed parks, camps, [and] park-camps located anywhere within Hamilton County, Ohio." Order at Findings of Fact ¶ 6.
- The "illegal encampments" are to be "cleared through any lawful means necessary, including arrest for obstruction of official business in execution of this lawful order." Order at 4.
- Any "tent or other shelter" found on "the premises subject to this Order within the City of Cincinnati shall be seized by the City," while "[a]ny tent or other shelter found on the

premises subject to this Order outside the city of Cincinnati shall be seized by the Sheriff[.]" *Id.*

- The City and/or the Sheriff were to "through lawful means, cause the removal of any other existing or future encampments on an unlicensed park, camp, or park-camp that has no running water or toilet facilities and other requirements set out in O.A.C. 3701-25-01 et seq. and exists on private land in, respectively, the city of Cincinnati and Hamilton County, Ohio." *Id.* In effect, this portion of Respondent's order purported to apply numerous regulations contained in O.A.C. 3701-25-01 to any unlicensed camp – even if that camp was otherwise not required by Ohio law to adhere to those regulations.
- The court retained jurisdiction to enforce compliance with the injunction, which remains in effect and is being actively enforced by law enforcement.

See Petition Exhibit 1.

Every injunction entered in this matter applies to and affects the rights of countless non-parties who were not named in the case or in any of the evidence, who are not acting in concert with any party, and who received no formal notice of the case or opportunity to participate.[3] In fact, campers who are experiencing homelessness are the primary target of each injunction. Indeed, the portion of the injunctive relief that applies to the City – the actual defendant – is derivative, as it relates only to the actions of third parties: the City is directed to seize property of non-parties and arrest non-parties if they continue to seek shelter in encampments. Far from

[3] Early in the case, as required by state law, R.C. 3767.04(B)(1), the court scheduled a hearing on August 20, on the County's motion for a preliminary injunction. When people learned of these injunctions through the Greater Cincinnati Homeless Coalition, they showed up at the scheduled hearing hoping to be heard. However, because the County and the City had already agreed to a permanent injunction, the hearing was abruptly cancelled and no one was allowed to address the court.

being restrained by the injunction, the injunction functions to give the City (and the County) far greater powers to arrest non-parties and restrict their behavior than it had prior to the proceeding.

III. Relator is Precluded from Fulfilling Its Religious Mission to Provide Aid to Persons in Need.

Established in 1919, Relator New Prospect Baptist Church ("New Prospect") has consistently adhered to its mission of helping persons in need, including providing aid for persons experiencing homelessness. In its previous location in the Over-the-Rhine neighborhood of Cincinnati, New Prospect routinely provided camping space on its privately-owned land for persons in need, free of charge. In 2013, New Prospect relocated its church to its current place, and has taken steps to continue the same service on an approximately four-acre dedicated campground. *See* Affidavit of Damon Lynch, III, attached hereto. New Prospect has not obtained a license for its campground because, under state law, any such free-of-charge "campground" is exempt from the licensing and regulatory scheme that applies to paid facilities. *See id.*; R.C. 3729.05(A)(3) ("no person who neither intends to receive nor receives anything of value … in connection with the use of a … [park-camp] is required to procure a license"); *see generally* Ohio Adm. Code 3701-25-01 (campground regulations, adherence to which is required to obtain a license).

Respondent's final permanent injunction presents a serious and formidable roadblock for New Prospect's mission. By its plain terms, that order deems *any* encampment of persons experiencing homelessness to be a nuisance. The order threatens with summary arrest and contempt charges anyone who seeks to provide such an encampment – even if such a person was not a party to the original lawsuit. Further, under the order, New Prospect is now subject to the numerous and burdensome requirements placed on paid camping facilities, including the

requirement to obtain a license, that it otherwise would not have to meet, and it would be subject to summary enforcement without notice or opportunity to be heard, on pain of arrest.

In short, the order flatly makes New Prospect's religious mission, even if conducted charitably on its own private property, into a criminal act. New Prospect brings this action to vindicate its interests in furthering its religious and charitable mission to serve those in need and to speak out on their behalf, and to use its property as it deems fit without risking arrest and contempt proceedings. New Prospect is therefore an appropriate relator for this action. *See* R.C. 2731.02 (action for extraordinary writ may be brought "on the information of the party beneficially interested").

LAW AND ARGUMENT

I. An Extraordinary Writ is an Appropriate Mechanism for New Prospect to Challenge the Common Pleas Court's Overreach.

As discussed below, the Hamilton County Court of Common Pleas lacked both jurisdiction over the case and the corresponding power to issue these sweeping injunctions. First, Ohio courts are only empowered to resolve disputes between adversaries. *State ex rel. Barclays Bank PLC v. Hamilton Cty. Court of Common Pleas*, 74 Ohio St.3d 536, 542 (1996). The County and the City were not adversaries in any sense of the word. Second, the legal theory of nuisance – nominally invoked by the parties – cannot be applied to hold a city liable for the behavior of citizens in public spaces. *E.g.*, *Vonderhaar v. Cincinnati*, 191 Ohio App.3d 229, 237, 2010-Ohio-6289, ¶ 31 (1st Dist.) (holding Ohio law "no longer imposes liability against a political subdivision for 'nuisance.'"). Third, the Court plainly lacked jurisdiction to issue an injunction binding non-parties that applied outside of public property owned by the City. *E.g., Planned Parenthood Ass'n of Cincinnati, Inc. v. Project Jericho*, 52 Ohio St.3d 56, 61 (1990).

An extraordinary writ is an appropriate vehicle for a beneficially interested party to challenge these jurisdictional infirmities. *See, e.g., State ex rel. Lanham v. Smith*, 110 Ohio St.3d 1453 (2006) (granting mandamus to quash non-party subpoena); *State ex rel. Barclays Bank PLC v. Hamilton Cty. Court of Common Pleas*, 74 Ohio St.3d 536, 542 (1996). Being bound by a permanent injunction that criminalizes its religious mission and the people that it seeks to serve; that imposes new restrictions on the use of its property; and that subjects it and its officers to a risk of summary arrest and contempt of court if it is found to violate the terms of the order, New Prospect is an appropriate party to challenge the Respondent's lack of jurisdiction.

II. Ohio Courts Lack Jurisdiction Over Non-Adversarial Lawsuits Such As This One

The Court lacked jurisdiction because there was no justiciable controversy between the County and the City. The Ohio Constitution limits the jurisdiction of the Court of Common Pleas to "justiciable matters," Ohio Constitution, Article IV, Section 4, which "mean[s] the existence of an actual controversy, a genuine dispute between adverse parties." *Waldman v. Pitcher*, 70 N.E.3d 1025, 1030, 2016-Ohio-5909, ¶ 21 (1st Dist.). "It has been long and well established that it is the duty of every judicial tribunal to decide actual controversies between parties legitimately affected by specific facts and render judgments which can be carried into effect… Actual controversies are presented only when the plaintiff sues an adverse party." *State ex rel. Barclays Bank PLC v. Hamilton Cty. Court of Common Pleas*, 74 Ohio St.3d 536, 542 (1996); *see also, e.g., Cyran v. Cyran*, 152 Ohio St.3d 484, 487 (2018) ("The role of courts is to decide adversarial legal cases…"); *Kincaid v. Erie Ins. Co.*, 128 Ohio St.3d 322, 326, 2010-Ohio-6036, ¶ 20 (court lacked jurisdiction when there was "no actual controversy between adverse parties"); *Mallory v. Cincinnati*, 1st Dist. No. C-110563, 2012-Ohio-2861, ¶ 17 (rejecting lawsuit between the Cincinnati Mayor and the City of Cincinnati); *State ex rel. Draper v. Wilder*, 145 Ohio St. 447,

455 (1945) (jurisdiction depends on a "genuine controversy involving justiciable rights between adverse parties").

The County and the City – the sole parties to the proceedings below – were not adversaries in any sense. Both wanted to rid their jurisdictions of encampments by people experiencing homelessness. Both had the same interest in obtaining the injunction. Both looked to Respondent to create sweeping new law and a grant of broad new powers, rather than pursue these objectives through their previously existing – but politically accountable – legislative and law enforcement powers. Simply put, the Hamilton County Common Pleas Court did not resolve a dispute between the City and County when it exercised its jurisdiction to issue the injunctions challenged here. Rather, it permitted its equitable powers to be co-opted to facilitate the conclusion that both parties desired when they initiated the lawsuit.

Public admissions by the Cincinnati Mayor about the lawsuit unambiguously demonstrate that the County's lawsuit was a sham. Truly adverse defendants do not reach out to "ask[]" a plaintiff to sue them. They do not "thank" the opposing party for their "help" by bringing the lawsuit. And they do not describe adversarial litigation as working "[t]ogether" to accomplish a common end. Moreover, the brief procedural history of the lawsuit further confirms the lack of any real dispute between the parties. There was no responsive pleading, no opposition brief, no defensive argument of any sort from the City. Indeed, the lawsuit consisted exclusively of a series of ever-expanding requests for injunctions that went unopposed by the nominal defendant, the City. These injunctions were exactly what the City desired when it asked to be sued in the first place.

Having adverse parties with a genuine dispute has long been one of the defining characteristics of any matter fit for judicial resolution. *E.g.*, *Clifton v. Blanchester*, 131 Ohio

St.3d 287, 289, 2012-Ohio-780, ¶ 15 (parties must have "such a 'personal stake in the outcome of the controversy … as to ensure that 'the dispute sought to be adjudicated will be presented in an adversary context and in a form historically viewed as capable of judicial resolution.'") (quotations omitted; alteration in original). Our adversarial system relies on diverging interests to provide the sharpest presentation of the law and facts. *Racing Guild of Ohio, Local 304, Service Employees Intern. Union, AFL-CIO, CLC v. Ohio State Racing Comm'n*, 28 Ohio St.3d 317, 321 (1986) ("[C]oncrete adverseness [] sharpens the presentation of issues upon which the court so largely depends for illumination.") (quotation omitted). Without a plaintiff who has been harmed by a defendant, and who is seeking relief from that defendant, the court is left with what happened here: a sweeping declaration of policy untethered to any particular facts brought before the court, bypassing the politically accountable units of government. *Chicago & G.T. Ry. Co. v. Wellman*, 143 U.S. 339, 345 (1892) ("[i]t never was the thought that, by means of a friendly suit, a party beaten in the legislature could transfer to the courts an inquiry as to the constitutionality of the legislative act."). Remarkably, the injunctions did not purport to remedy any injury that the County had suffered at the hands of the City, but simply expanded the authority of both the County and the City at the expense of people who were not part of the case. This is not the proper role of courts.

Indeed, the entire proceeding before Respondent appears to be nothing more than a collusive suit – a particularly problematic form of non-adversarial suit that is brought in order to adjudicate the rights of non-parties. Stated succinctly, collusively engaging in litigation to achieve a common goal does not create a justiciable controversy: it represents the polar opposite of one. Neither federal nor Ohio courts condone such an abuse of the judiciary; on the contrary, they deplore it. *E.g.*, *Lord v. Veazie*, 49 U.S. 251, 255 (1850) ("And any attempt, by a mere

colorable dispute, to obtain the opinion of the court upon a question of law which a party desires to know for his own interest or his own purposes, when there is no real and substantial controversy between those who appear as adverse parties to the suit, is an abuse which courts of justice have always reprehened"); *Hodesh v. Korelitz*, 123 Ohio St.3d 72, 75, 2009-Ohio-4220, ¶ 9 ("All settlement agreements in Ohio must be free from collusion."). All courts of this state have the duty and responsibility to remain vigilant for such abuses of the judicial process. *See, e.g.*, *Kirchner v. Crystal*, 15 Ohio St.3d 326, 329 (1984); *Tucker v. Tucker*, 143 Ohio St. 658, 660 (1944) ("The court will always scan waiver of process, entry of appearance, withdrawal of answer, consent to a trial without contest and like steps in determining whether in the light of all the circumstances collusion exists between the parties and will dismiss the action when collusive conduct is shown"). Because the County and the City have no disagreement and no adverse interest, this action should not have been tolerated in the first instance.

III. The Court Lacked Jurisdiction to Impose Nuisance Liability on the City

Second, the Court lacked subject matter jurisdiction to impose nuisance liability against the City for conduct of residents on sidewalks and other public spaces. As the Supreme Court and this Court have held repeatedly, municipalities are immune from nuisance suits under Revised Code § 2744.02(B)(3). *E.g.*, *Vonderhaar v. Cincinnati*, 191 Ohio App.3d 229, 237, 2010-Ohio-6289, ¶ 31 (1st Dist.) (holding Ohio law "no longer imposes liability against a political subdivision for 'nuisance.'"); *accord, e.g.*, *Howard v. Miami Twp. Fire Div.*, 119 Ohio St.3d 1, 5, 2008-Ohio-2792, ¶ 24; *Hunsche v. Loveland*, 133 Ohio App.3d 535, 540 (1st Dist. 1999). Even apart from immunity, by their plain terms Section 3719.10 and Chapter 3767 do not allow an action to be brought against a unit of government. For example, Chapter 3767 defines its scope to "persons" meaning "any individual, corporation, association, partnership, trustee, lessee, agent, or assignee," R.C. 3767.01(B), and it has been settled for 60 years that "municipal

corporations … are not subject to the prohibitions and penalties of Chapter 3767, Revised Code, for the maintenance of nuisances." 1958 Op. Att'y Gen. No. 1958-1647.

Indeed, it would be absurd to hold the City (and, by extension, its taxpayers) liable in a nuisance suit for the conduct of unrelated third parties simply because the conduct fortuitously occurred in a public City space. Nothing in the Ohio statutes contemplate holding a City responsible for the conduct of its residents on sidewalks. The Court plainly lacked jurisdiction to entertain this nuisance suit against the City, which should have been dismissed.

IV. The Court Lacked Jurisdiction to Issue an Injunction of County-Wide Scope that Purports to Bind Innumerable Non-Parties

Finally, even if the Court had, in a proper case, obtained jurisdiction over such a lawsuit, the Court lacked jurisdiction to issue an injunction binding non-parties – including New Prospect – that are not in cooperation with the named defendant. *See, e.g.*, *Maryhew v. Yova*, 11 Ohio St.3d 154, 159 (1984) (court lacks jurisdiction over person not validly served). "[N]othing is more common than for the denial of an injunction to harm innocent nonparties." *Blankenship v. Blackwell*, 103 Ohio St.3d 567, 574, 2004-Ohio-5596, ¶ 31 (quotation omitted). And it is well-established that only named parties and those in concert with them may be bound by an injunction. *E.g.*, Civ. R. 65(D); *Planned Parenthood Ass'n of Cincinnati, Inc. v. Project Jericho*, 52 Ohio St.3d 56, 61 (1990); *Midland Steel Prods. Co. v. U.A.W. Local 486*, 61 Ohio St.3d 121, 126 (1991).

"Binding nonparties to an injunction without notice and a right to be heard presents significant due process concerns … it is error to enter an injunction against a nonparty without having made such a determination in a proceeding in which the person or entity was a party." *Columbus Homes Ltd. v. S.A.R. Constr. Co.*, 10th Dist. Nos. 06AP-759, 06AP-760, 2007-Ohio-1702, ¶ 32. The Supreme Court of Ohio has explicitly ruled that a writ of prohibition is

appropriate to prevent enforcement of an order against a person who "was not served with a summons, did not appear, and was not a party." *State ex rel. Doe v. Capper*, 132 Ohio St.3d 365, 368, 2012-Ohio-2686, ¶ 15.

To apply the Court's relief to unnamed people throughout an entire County who have not participated in the lawsuit would not only violate well-accepted principles that constrain the exercise of judicial power, but also violate the Constitutional due process rights of those purportedly bound who have lacked a chance to respond to the evidence presented. *See, e.g.*, *State v. Cowan*, 103 Ohio St.3d 144, 146, 2004 -Ohio- 4777, ¶ 8.

Not only were numerous non-parties purportedly enjoined by Respondent, but the permanent injunction was untethered to any of the allegations in the case and had no apparent connection to the named defendant. Indeed, there was no logical connection between the named defendant (the City of Cincinnati) and the relief ordered (enjoining behavior on private property and applying even outside of City limits).

The impact of Respondent's order on New Prospect illustrates the order's enormously overbroad scope. Although New Prospect was never made party to the lawsuit and had no opportunity to be heard, it is now subject to a sweeping injunction that threatens it, and any of the people that it would seek to serve, with contempt of court. *See generally supra*. To impose such a broad, county-wide restriction on innumerable private actors like New Prospect is the function of a legislature, not a court. Under clearly established principles of jurisdiction and due process, Respondent should have dismissed the lawsuit for want of jurisdiction, and left the policy decision on how to respond to homelessness in the hands of the politically-accountable City Council.

CONCLUSION

For the foregoing reasons, Relator New Prospect Baptist Church requests that this Court issue a peremptory writ of mandamus and/or prohibition, or else issue an alternative writ, to compel the Honorable Judge Robert P. Ruehlman to (i) strike the improper injunctions issued in *State ex rel. Deters v. City of Cincinnati*, No. A1804285 (Hamilton C.P.), including the permanent injunction entered in that action on August 16, 2018, and/or prohibit the enforcement of these injunctions, and (ii) dismiss that action for lack of subject matter jurisdiction.

Respectfully submitted,

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