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COURT OF APPEALS

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**STATE EX REL NEW
PROSPECT BAPTIST
CHURCH
vs.
ROBERT P RUEHLMAN**

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**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

VERIFIED PETITION FOR WRIT OF MANDAMUS AND/OR PROHIBITION

NOW COMES Relator New Prospect Baptist Church (“Relator” or “New Prospect”) and hereby submits, by and in the name of the State of Ohio, the following Petition for Writ of Mandamus:

JURISDICTION AND PARTIES

1. This original action in mandamus seeks a judicial determination by this Court as to whether the Honorable Judge Robert P. Ruehlman of the Hamilton County Court of Common Pleas (“Respondent”) should be compelled to strike, withdraw, and/or refrain from enforcing a series of improper and unlawful injunctions issued in *State ex rel. Deters v. City of Cincinnati*, Case No. A1804285 (Hamilton C.P.).

2. This Court has original jurisdiction over this action under Ohio Constitution § IV.03(B)(1) and Ohio Revised Code §§ 2731.01 *et seq.* This Petition has been verified by affidavit in accordance with Ohio Revised Code § 2731.04.

3. New Prospect is a church, and a nonprofit public charity pursuant to 26 U.S.C. § 501(c)(3), located at 1580 Summit Road, Cincinnati, Ohio, 45237. Pursuant to Ohio Revised Code § 2731.02, New Prospect is a party beneficially interested in this matter, and has standing to commence this action.

4. Respondent is a Judge of the Hamilton County Court of Common Pleas, and has been sued in his official capacity only.

FACTUAL BACKGROUND

The Mayor of Cincinnati Invites Collusive Litigation from the County Prosecutor in Order to Circumvent the Legislative Process

5. Hamilton County has been reported to have 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 as 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>.

6. Several studies have shown that encampments rather than individual camping or sleeping “rough” – though not an optimal solution – do serve numerous benefits for people experiencing homelessness and the community.¹

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),

7. Upon information and belief, following unsuccessful efforts to enact a legislative solution in Cincinnati City Council, in or around the beginning of August 2018, Cincinnati Mayor John Cranley sought other avenues to address Cincinnati's concerns over the issue of homelessness

8. On August 3, 2018, Mayor Cranley issued a statement revealing that he had expressly invited the Hamilton County Prosecutor to commence a collusive lawsuit against the City, in order to have a court order what City Council would not::

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.

9. The following day, upon information and belief, 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 for use in the planned lawsuit against the City.

10. On August 6, 2018, as the Mayor had requested, the County Prosecutor brought a lawsuit against the City of Cincinnati.

11. That case, *State ex rel. Deters v. City of Cincinnati*, was filed in the Hamilton County Court of Common Pleas and assigned to Respondent. 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.

<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.

12. Upon information and belief, at no time did the City contest the allegations made in the County's complaint against it.

Respondent Issues Enormously Overbroad Injunctions Purporting to Bind Innumerable Non-Parties Under Threat of Contempt

13. On the same day that the agreed-upon 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, at 9 am, to decide whether the injunction would be continued.

14. Upon information and belief, as a result of the order, an encampment on Third Street was disbanded, and its residents were forced to seek alternative shelter.

15. Without making any amendment to the pleadings, the County sought a series of ever-expanding restraining orders over the next few days. Respondent granted each successive order within minutes of its filing, apparently without any hearing or deliberation. In fact, the restraining orders appear on the court's docket *before* the County's requests for the orders were even docketed.

16. The first expansion of the order applied to encampments in most of the public spaces in the City of Cincinnati. A subsequent order applied to all public spaces in the entire County, even those outside of the City limits not owned or maintained by the City. There was no allegation or evidence that encampments in other parts of the City or County were the site of felony drug activity.

17. On August 16, 2018 – just 10 days after the County commenced the litigation – the case culminated with a joint request by the County and the City for entry of a permanent

injunction. Again, Respondent entered the injunction immediately. 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. A true and accurate copy of the injunction is attached hereto as Exhibit 1 (the “Order”).

18. Specifically, Respondent held, *inter alia*:

- a. 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.
- b. 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.
- c. That 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.
- d. That 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.*
- e. That the City and/or the Sheriff were, “through lawful means, [to] 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.

19. Every injunction entered in this matter by its terms applies to countless non-parties who were not named in the case or in any of the evidence, who never acted in concert with any party, and who received no formal notice or opportunity to participate in the case.

New Prospect Is Precluded From Providing Aid
in Accordance With Its Mission

20. 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.

21. 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.

22. In or around 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.

23. New Prospect has never obtained any license for its campground.

24. Respondent’s final permanent injunction presents a serious and formidable roadblock for New Prospect’s mission. Under the Order, any encampment of persons experiencing homelessness hosted by New Prospect risks being treated as a nuisance, subjecting

New Prospect and its employees to the threat of arrest and criminal charges, including but not limited to contempt.

25. In effect, the Order construes New Prospect's mission, even if conducted on its own private property in a manner that otherwise complies with the law, to be a criminal act.

26. Accordingly, New Prospect is a party beneficially interested in this matter within the meaning of R.C. § 2731.02.

An Extraordinary Writ Is Necessary and Appropriate to Curtail Respondent's
Violation of Clear Legal Duties

27. Ohio courts lack subject matter jurisdiction over collusive, non-adversarial lawsuits. *State ex rel. Deters v. City of Cincinnati*, Case No. A1804285 (Hamilton C.P.) was such a lawsuit, over which Respondent lacked jurisdiction.

28. The legal theory of nuisance 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. 2010). Nonetheless, Respondent employed just such a theory in entering the Order.

29. Under the Ohio Rules of Civil Procedure and controlling precedent, Ohio courts lack jurisdiction to issue injunctions binding non-parties. *See* Civ. R. 65(D); *Planned Parenthood Ass'n of Cincinnati, Inc. v. Project Jericho*, 52 Ohio St.3d 56, 61 (1990). Nonetheless, the Order purports to apply County-wide, to numerous non-parties.

30. Respondent has a clear legal duty to observe the boundaries of the court's jurisdiction and the Ohio Rules of Civil Procedure. This duty includes refraining from issuance of unlawful, improper, and overbroad injunctions, including the Order.

31. New Prospect does not have a plain and adequate remedy at law.

WHEREFORE, Relator New Prospect Baptist Church demands that a Writ of Mandamus and/or prohibition be issue directing Respondent Hon. Judge Robert P. Ruehlman (i) to strike, withdraw, and/or refrain from enforcing the Order and any other unlawful injunction issued in the matter of *State ex rel. Deters v. City of Cincinnati*, Case No. A1804285 (Hamilton C.P.); and (ii) to dismiss that action for lack of subject matter jurisdiction.

New Prospect further requests such other relief, both legal and equitable, as the Court deems appropriate.

Respectfully submitted,

/s/Joseph Mead

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Attorneys for Relator New Prospect Baptist Church

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STATE OF OHIO *ex rel.*
NEW PROSPECT BAPTIST CHURCH,

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Respondent.

Case No.: _____

Original Action in Mandamus and Prohibition

VERIFICATION AND AFFIDAVIT OF DAMON LYNCH, III

STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

Damon Lynch, III, being first duly cautioned and sworn, deposes and says as follows:

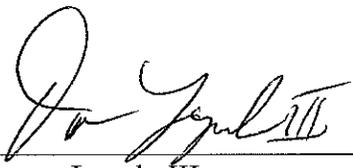
1. I am the pastor of Relator, New Prospect Baptist Church. I am over 18 years of age and competent to make this affidavit.
2. I have read the Verified Petition in this action, and I have personal knowledge of the factual allegations contained within Paragraphs 3 and 20-26.
3. All allegations in the Petition of which I have personal knowledge are true and accurate. As to the remaining allegations, upon information and belief, the statements and averments contained therein are true as I verily believe.

5. 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.

6. 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.

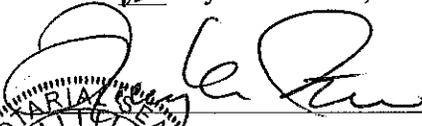
7. New Prospect has not obtained a license for its planned campground.

FURTHER AFFIANT SAYETH NAUGHT.



Damon Lynch, III

Sworn to and subscribed before me
This 18th day of October, 2018.



Tracey L. Bell
Notary Public, State of Ohio
My Commission Expires 06-20-2019



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Respondent.

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Original Action in Mandamus and Prohibition

VERIFICATION AND AFFIDAVIT OF JOSEPH MEAD

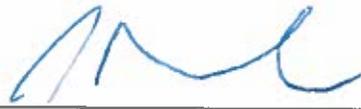
STATE OF OHIO)
) SS:
COUNTY OF CUYAHOGA)

Joseph Mead, being first duly cautioned and sworn, deposes and says as follows:

1. I am an attorney in good standing in the State of Ohio and am counsel for Relator, New Prospect Baptist Church. I am over 18 years of age and competent to make this affidavit.
2. I have read and taken part in drafting the Verified Petition in this action, and I have personal knowledge of the factual allegations made therein, with the exception of those factual allegations contained within Paragraphs 3 and 20-26.
3. All allegations in the Petition of which I have personal knowledge are true and accurate. As to the remaining allegations, upon information and belief, the statements and averments contained therein are true as I verily believe.

4. Exhibit 1 to the Verified Petition is a true and accurate copy of an order entered by Respondent.

FURTHER AFFIANT SAYETH NAUGHT.



Joseph Mead

Sworn to and subscribed before me
This 16th day of October, 2018.



**DORON KALIR, ATTORNEY
NOTARY PUBLIC • STATE OF OHIO
My commission has no expiration date
Section 147.03 O.R.C.**