

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO

Jason Woodland
1307 W. Third Ave.
Columbus, OH 43212

And all those similarly situated

Plaintiff,

v.

City of COLUMBUS, OHIO
90 W. Broad St.
Columbus, OH 43215

and

Andrew Ginther (in his official capacity as
Mayor of the City of Columbus, Ohio)
90 W. Broad St.
Columbus, OH 43215

) JUDGE:
)
)
) Case No.: 20-CV-02949
)
) **VERIFIED COMPLAINT**
) **FOR TEMPORARY RESTRAINING ORDER**
) **(WITHOUT NOTICE)**
) **INJUNCTIVE RELIEF**
) **AND**
) **DECLARATORY JUDGMENT**
)
) **CLAIM OF**
) **UNCONSTITUTIONALITY**
)
) **TO DECLARE THE CITY OF**
) **COLUMBUS EMERGENCY ORDER**
) **OF CIVIL EMERGENCY TO BE**
) **UNCONSTITUTIONAL AND FOR AN**
) **INJUNCTION TO RESTRAIN ITS**
) **CURFEWS**
) **AND**
) **ITS ENFORCEMENT**
)
)

Now come the Plaintiff Jason Woodland on behalf of himself and all those similarly situated (collectively "Plaintiff") to hereby state as and for their Complaint against Defendants City of Columbus and Andrew Ginther, as follows (in their official capacities as set out in the above caption; collectively referred to a "Defendants"):

PARTIES

Plaintiff

1. Plaintiff, Jason Woodland is an adult individual citizen and resident in the city of Columbus, county of Franklin, state of Ohio who resides in the Fifth by Northwest neighborhood of Columbus.
2. The class is so numerous that joinder of all members is impracticable.
3. There are questions of law or fact common to the class.
4. The claims or defenses of the representative parties are typical of the claims or defenses of the class.
5. The representative parties will fairly and adequately protect the interests of all similarly situated citizens of the class of persons subject to the Order and its enforcement in Columbus, Franklin County, Ohio.
6. Questions of law or fact are common to all class members and predominate over any questions affecting only individual members.

Defendants

7. Defendant, City of Columbus is a municipal corporation and political subdivision of the state of Ohio.
8. Defendant Andrew Ginther is the mayor of the city of Columbus and as such oversees law enforcement, policy, and other personnel for the city of Columbus, Ohio.
9. Under the Order, the Defendants and their agents assert that they can arrest and sanction all persons who violate the curfew set out in it simply for being outside his residence throughout the city of Columbus without due process of law. This order is indefinite, it has no expiration date.

10. Under the Order and its enforcement, the fundamental rights of the Plaintiff have been violated and are continuing to be violated through the arbitrary imposition of the Order under which law enforcement agents have been interpreting to mean strict liability for any acts by Plaintiff and similarly situated persons who would engage activity contrary to the curfew in the Order, even if they do not commit any crime under a duly-authorized legislative enactment.

JURISDICTION AND VENUE

11. This Court has jurisdiction over this controversy because it involves a federal question under 28 U.S.C. § 1331.

12. This Court can exercise supplement jurisdiction to adjudicate all of Plaintiff's state-law claims because they are substantially related to the original federal claims under 28 U.S.C. § 1367.

13. The Court has personal jurisdiction over all Defendants because they all conduct business within the Southern District of Ohio in Columbus, Franklin County, Ohio.

14. Venue is proper because the facts out of which the claims arose took place in Columbus, Franklin County, Ohio, and it continues to take place there.

FACTUAL ALLEGATIONS

Background

15. On May 25, 2020, while effectuating a purported arrest, a Minneapolis policeman named Derek Chauvin pressed his knee into the neck of an African American adult individual citizen named George Floyd for eight minutes and forty-six (46) seconds, and Floyd was later pronounced dead, reportedly and allegedly as a result of the pressure that Chauvin applied to his neck. Chauvin has been rightfully charged with 2nd degree murder.

16. The events very briefly described in the preceding averment were memorialized on video and shown widely throughout the media in the United State of America, the state of Ohio, the city of Columbus, Franklin County, and all over the world.

17. On or about the afternoon of Thursday May 28, 2020 at about 5:00 p.m. many citizens and residents of the city of Columbus and the surrounding areas assembled at the Ohio Statehouse in the city of Columbus, Franklin County, Ohio to protest (“the Protest”) the actions of Officer Chauvin and advocate against police brutality.

18. At some point during the protest, confrontations by and among those mixed in with the Protest crowd and law enforcement officers took place near the Ohio Statehouse and law enforcement began to deploy numerous crowd-control weapons toward the Protest.

19. At or about the same time, on information and belief, individuals who had mixed into the crowd of protesters began to confront law enforcement verbally while others vandalized businesses in Downtown Columbus and in the Short North area.

The Indefinite, City-Wide Curfew

20. On May 30, 2020, the mayor of the city of Columbus, Ohio, The Honorable Andrew Ginther (the “Mayor”), signed a document titled “State of Emergency: Order Declaring a Curfew in the City of Columbus, Ohio” (the “Order”) ordering an indefinite curfew from 10:00 p.m. until 6:00 a.m. “on *all public places* in the city of Columbus, Ohio until the *Mayor declares the emergency to be over and/or this order is otherwise rescinded.*” See *Exhibit 1* (the “Order”) attached hereto and incorporated herein.

21. The Mayor has extended the curfew above curfew to the present day and it is currently being enforced.

22. The curfews discussed above amount to an indefinite curfew continuing today and into the future based on the events of May 28, 2020 to June 2, 2020.

23. On information and belief, there have been no clashes between police and protestors since early Wednesday, June 3, 2020, yet the Mayor has continually refused to rescind the Order. See

Exhibit 2 (Article: Columbus Dispatch, “Columbus protests are peaceful, so why is there still a curfew?”)

24. Under the Order, the determination of whether the curfew will be in place for subsequent dates is arbitrary and capricious.

25. The determination of whether the curfew is necessary is not determined by any objective criteria, but is arbitrary and capricious in violation of the United States Constitution, the Ohio Constitution, the Charter of the City of Columbus and the Codified Ordinances of the City of Columbus, and the procedural and substantive due process rights of Plaintiff.

26. To the extent that the City may argue that there is a permissible way for the Mayor to declare a Civil Emergency exists, such a claim has no basis in fact because the Mayor as he has not made a showing that there is any clear and present danger currently to the city of Columbus presently that would constitute a compelling governmental interest to impose this indefinite, city-wide curfew under the Order.

27. The indefinite, city-wide curfew is not narrowly tailored to achieve the governmental interest set out in the Order.

Application of Curfew to Plaintiff Woodland

28. Implementing the curfew under the Order, law enforcement officers under Defendants’ control have arrested and/or threatened to arrest people who happened to be in public anywhere within the city of Columbus.

29. At Mayor Ginther’s request, Governor Mike DeWine activated the Ohio National Guard and ordered them to occupy the city of Columbus.

30. Law enforcement officers and Ohio National Guard (collectively herein “law enforcement personnel or officers”) troops took to the City to enforce the Order.

31. Under the curfews imposed and continuing to be imposed, the Plaintiff is subject to arrest for traveling within, into or out of the city of Columbus unless he can prove the reason for his travel is one of those exempt from the curfew in the Order. See, *Exhibits 1*.

32. Under the indefinite Order, Plaintiff Woodland is barred from being out in public anywhere in the city of Columbus during the curfew.

33. Under the indefinite Order, Plaintiff Woodland is barred from speaking in public anywhere in the City of Columbus during the curfew.

34. Under the indefinite Order, Plaintiff Woodland is barred from constitutionally protected conduct anywhere in the City of Columbus during the curfew.

35. Under the indefinite Order, Plaintiff Woodland has had his 14th Amendment procedural due process unconstitutionally curtailed.

36. Under the indefinite Order, Plaintiff Woodland is barred his 4th Amendment right to freedom from unreasonable searches and seizures in public anywhere in the City of Columbus during the curfew.

37. Under the indefinite Order, Plaintiff Woodland is barred from his right to freely travel in public anywhere in the City of Columbus during the curfew.

38. Under the indefinite Order, Plaintiff Woodland is barred from his right to property during the curfew.

39. Under the indefinite Order, Plaintiff Woodland is barred from his equal protection under the law and subject to selective enforcement in the City of Columbus during the curfew.

Application of the Orders to the Plaintiff

Plaintiff and Similarly Situated Persons

40. While a facial challenge invokes the rights of others, an as-applied challenge is confined to the circumstance of the plaintiff. See *John Doe No. 1 v. Reed*, 130 S. Ct. 2811, 2817, 177 L. Ed. 2d 493 (2010).

41. The Order is unconstitutional as to all Plaintiff listed here and all other residents and business owners in Columbus, Ohio on its face.

42. The Order has enacted unconstitutional curfews that are being enforced by all Defendants and the agents under their command and control under the Order.

43. The enforcement of the curfew under the Order violates the constitutional rights of all persons who reside in the entire city and all similarly situated to Plaintiff and such violations are contemplated to be used to fine, arrest, harass, falsely seize, search, and impede the travel and freedom thereto, right to free speech and assembly for Plaintiff and all other similarly situated.

44. The Order under which the curfews are enacted is vague, overbroad and violative of the rights of the substantive and procedural due process rights of Plaintiff and all similarly situated under the Fourteenth Amendment of the U.S. Constitution.

Irreparable Harm to all Plaintiff

45. As a direct and proximate result of the actions of the Defendants and their agents, all Plaintiff and all similarly situated persons have been harmed irreparably, continue to suffer irreparable harm, so long as the unconstitutional conduct, practices, restrictions, threats, intimidation, and harassment of Plaintiff enforcing the curfews under color of the Order persists or are ordered and/or are ordered to recur.

46. The harm referenced above shall continue until such time as the curfew(s) set out in the Order (or any subsequent order imposing a curfew) in the city of Columbus, Franklin County, Ohio is in place.

CAUSES OF ACTION

COUNT 1

Right to Freedom

under

Article I, § 1 of the Ohio Constitution

47. Plaintiff incorporates all the other averments of this Complaint as if it had been fully rewritten here.

48. Article I, Section 1 of the Ohio Constitution states: “All men are, by nature, free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and seeking and obtaining happiness and safety.” OH. CONST. ART. I, § 1.

49. Under the Order, Plaintiff (and similarly situated persons) has been denied and are continuously being denied the inalienable 1 rights under Article I, Section 1 of the Ohio Constitution.

50. By enforcing the Order, Defendants are unconstitutionally abridging the rights guaranteed to all Plaintiff under Article I, Section 1 of the Ohio Constitution as the Order by denying the Plaintiff his rights to be free and independent by prohibiting numerous freedoms of the Plaintiff as set out in the Order.

51. As a direct and proximate cause of the Order and its application by all Defendants and their agents, Plaintiff (and similarly situated persons’) constitutional rights to freedom under Article I, Section 1 of the Ohio Constitution have been abridged continues to be wrongfully abridged.

52. **Wherefore**, this Court should award Plaintiff a Declaratory Judgment declaring that the Order is unconstitutional on its face and as applied in such a manner to Plaintiff that it infringes upon their fundamental constitutional rights under Article I, Section 1 of the Ohio Constitution and enjoin the Order’s further enforcement.

COUNT 2

Freedom of Speech and Assembly and of Association
under

Article I, § 3 and Article I, §11 of the Ohio Constitution and U.S. Const. Amend. I

53. Plaintiff incorporates all the averments of this Complaint as if it had been fully rewritten here.

54. The First Amendment to the United States Constitution: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." U.S. Const. AMEND. I.

55. Article I, Section 11 of the Ohio Constitution states, in pertinent part: "Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of the right; and no law shall be passed to restrain or abridge the liberty of speech, or of the press. Oh. Const. Art. I, § 11.

56. The Order has infringed the Plaintiff rights to freedom of speech, assembly and association guaranteed under the First Amendment of the U.S. Constitution and Article I, Section 11 of the Ohio Constitution by creating curfews in the city of Columbus and such limitations are not sufficiently narrowly tailored to achieve a compelling government interest. See, *Grayned v. City of Rockford*, 408 U.S. 104, 116-117, 92 S. Ct. 2294, 2303-2304, 33 L. Ed. 2d 222, 232-233, 1972 U.S. LEXIS 26, *21-23 (U.S. June 26, 1972) ("Our cases make clear that in assessing the reasonableness of a regulation, we must weigh heavily the fact that communication is involved; the regulation must be narrowly tailored to further the State's legitimate interest. Access to the "streets, sidewalks, parks, and other similar public places . . . for the purpose of exercising [First Amendment rights] cannot constitutionally be denied broadly . . ." Free expression "must not, in the guise of regulation, be abridged or denied.")

57. By enforcing the curfew set out in the Order, Defendants have violated -- and continue to violate -- the fundamental rights of Plaintiff (and similarly situated persons) to exercise his rights of free speech, expression assembly and association under the First Amendment to United States Constitution and Article I, Section 11 of the Ohio Constitution in the areas restricted by the Order during the curfew.

58. One of the freedoms guaranteed by the First Amendment to the U.S. Constitution is the right to associate for the purpose of engaging in expressive activity protected by the First Amendment. *State v. Burnett*, 93 Ohio St.3d 419, 424-425, 2001-Ohio-1581, 755 N.E.2d 857 citing *Dallas v. Stanglin*, 490 U.S. at 24, 109 S. Ct. at 1595, 104 L. Ed. 2d at 25. This includes rights of free speech, assembly, petition for the redress of grievances, and the exercise of religion. *Id.*

59. Another type of freedom of association is the right to associate for the purpose of personal relationships. *Burnett, supra* at 424.

60. The Order in this case has unconstitutionally abridged Plaintiff's freedom of speech, association and assembly under the First Amendment by applying a city-wide curfew in the city of Columbus in the areas designated in the Order, which prevents Plaintiff (and similarly situated residents) from engaging in free speech, association or assembly in those areas during the curfew.

61. The Order in this case has unconstitutionally abridged Plaintiff' freedom of speech, association and assembly under the First Amendment by applying a blanket curfew in the entire city of Columbus in the areas designated in the Order, which has been enforced to prevent Plaintiff (and similarly situated residents) from engaging in the activities of daily living unless permitted by law enforcement or specifically accepted by the Order.

62. As a direct and proximate result of the Defendants acts continually violating the Plaintiff' fundamental rights of freedom, speech, association, and expression.

63. **Wherefore**, this Court should award Plaintiff a Declaratory Judgment declaring that the Order is unconstitutional because it infringes upon these fundamental constitutional rights of Plaintiff and this Court should issue a *temporary restraining order*, preliminary injunction, and permanent injunction to restrain enforcement of any further curfews under the Order by Defendants.

COUNT 3
Overbreadth

64. Plaintiff incorporates all the preceding averments of this Complaint as if it had fully rewritten here.

65. A statute or ordinance is be overbroad "if in its reach it prohibits constitutionally protected conduct." *State v. Shay*, 151 Ohio App.3d 538, 2003-Ohio-555, 784 N.E.2d 1186, ¶ 17 (8th Dist.) citing *Grayned v. Rockford* (1972), 408 U.S. 104, 114, 92 S. Ct. 2294, 2302, 33 L. Ed. 2d 222, 231; *Columbus v. Trzebuckowski* (1999), 85 Ohio St.3d 524, 528, 1999 Ohio 285, 709 N.E.2d 1148.

66. As discussed throughout this Complaint, the Order imposes curfews that infringes the constitutionally protected conduct of the Plaintiff under the First Amendment and other fundamental rights.

67. The curfew does not protect a legitimate governmental interest and is not

68. Wherefore, the Order is overbroad, and this Court should declare the Order to be unconstitutionally Overbroad on its face and as applied and grant injunctive relief restraining its enforcement that is prayed for hereunder.

COUNT 4
Vagueness and 14th Amendment Procedural Due Process

69. It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined. *Grayned v. City of Rockford*, 408 U.S. 104, 108, 92 S.Ct. 2294, 33 L.Ed.2d 222 (1972).

70. As the *Grayned* Court explained: "Vague laws may trap the innocent by not providing fair warning. Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an *ad hoc* and subjective basis, with the attendant dangers of arbitrary and discriminatory application. Third, but related, where a vague statute "abut[s] upon sensitive areas of basic First Amendment freedoms," it "operates to inhibit the exercise of [those] freedoms." Uncertain meanings inevitably lead citizens to "'steer far wider of the unlawful zone' . . . than if the boundaries of the forbidden areas were clearly marked." *Grayned v. City of Rockford*, 408 U.S. 104, 108-109, 92 S. Ct. 2294, 2299, 33 L. Ed. 2d 222, 227-228, 1972 U.S. LEXIS 26, *7-10 (U.S. June 26, 1972).

71. A statute must be carefully drawn or authoritatively construed to punish only unprotected conduct and not be susceptible of application to protected expression. *State v. Williams*, 148 Ohio App.3d 473, 522, 2002-Ohio-3777, 773 N.E.2d 1107, ¶ 15 (10th Dist.)

72. To withstand a challenge under the vagueness doctrine, Ohio law dictates an ordinance must: (1) provide *fair warning* to the ordinary citizen of what conduct is proscribed; (2) preclude arbitrary, capricious and discriminatory enforcement and (3) the ordinance must not impinge constitutionally-protected rights. *Viviano v. City of Sandusky*, 2013-Ohio-2813, 991 N.E.2d 1263 (5th Dist. 2013), citing *Grayned v. City of Rockford*, 408 U.S. 104, 108, 92 S.Ct. 2294, 33 L.Ed.2d 222 (1972).

73. The failure to provide fair notice of the curfew by late publication and notice of the Order.

74. Second, the curfews enacted under the Order do not preclude arbitrary, capricious and discriminatory enforcement because it is permitting individual law enforcement personnel discretion to arrest or not arrest citizens who are merely on the street walking to retrieve property or getting exercise and/or conducting other activities of daily living.

75. The Order and its curfews infringe upon the constitutionally protected rights of all Plaintiff by proscribing constitutionally protected activity such as walking down the street, using public space to demonstrate peacefully, and associating with other people within the City of Columbus

76. Wherefore, this Court should declare the Order to be unconstitutionally Vague and, on its face, and as applied and grant injunctive relief restraining enforcement of the curfews hereunder by the Defendants and their agents.

COUNT 5
Freedom from Unreasonable Searches and Seizures
Under
Article I, §14 and U.S. Const. AMEND. IV

77. Plaintiff incorporates all the averments of the preceding averments of this Complaint as if they have each been fully rewritten here.

78. Article I, § 14 of the Ohio Constitution states: “ The right of the people to be secure in their persons, houses, papers, and possessions, against unreasonable searches and seizures shall not be violated; and no warrant shall issue, but upon probable cause, supported by oath or affirmation, particularly describing the place to be searched and the person and things to be seized.”

79. The Fourth Amendment to the United States Constitution states: “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.” U.S. CONST. AMEND IV.

80. Under *Terry v. Ohio*, the state must have individualized, articulable suspicion that an individual is or may be engaged in criminal activity to stop said person for investigative purposes.

81. “A police officer has probable cause only when he discovers reasonably reliable information that the suspect has committed a crime. *Gardenhire v. Schubert*, 205 F.3d 303, 318 (6th Cir.2000).

82. Plaintiff and those similarly situated individuals are subject to this violation of rights guaranteed under Article I, Section 14 of the Ohio Constitution and the Fourth Amendment of the United States Constitution, which is incorporated to the States through the Fourteenth Amendment to the U.S. Constitution, so long as the Order remains in place.

83. Defendants have violated all Plaintiff’s right to be free from unreasonable search and seizure by stopping all persons who attempted to enter into the City of Columbus without reasonable, particularized suspicion of criminal activity by Plaintiff and the imminent threat of such violation of rights continues unless and until this Court declares the Order unconstitutional and restrains further conduct as requested herein.

84. **Wherefore**, this Court should award Plaintiff a Declaratory Judgment declaring that the Order is unconstitutional on its face and as applied in such a manner that it infringes upon the fundamental constitutional rights of Plaintiff and Restraining its enforcement.

COUNT 6
Right to Freely Travel

Under
Article I, §14 and U.S. Const. AMEND. V and U.S. Const. Amend IX and U.S. Const. Amend XIV and the Common Law

85. Plaintiff incorporate all the other averments of this Complaint as if they had been fully rewritten here.

86. Plaintiff all have a right to freely travel under the Fifth Amendment and Fourteenth Amendments to the United States Constitution and, at the least, it is an unenumerated right that it

is so rooted in the history and traditions and conscience of our people as to be ranked fundamental. See, *State v. Burnett*, 93 Ohio St.3d 419, 428, 2001-Ohio-1581, 755 N.E.2d 857 citing e.g., *Kent v. Dulles* (1958), 357 U.S. 116, 125, 78 S. Ct. 1113, 1118, 2 L. Ed. 2d 1204, 1210 ("The right to travel is a part of the 'liberty' of which the citizen cannot be deprived without the due process of law under the Fifth Amendment"); *Williams v. Fears* (1900), 179 U.S. 270, 274, 21 S. Ct. 128, 129, 45 L. Ed. 186, 188 ("the right to remove from one place to another according to inclination, is an attribute of * * * liberty * * * secured by the Fourteenth Amendment"); *Michael H. v. Gerald D.* (1989), 491 U.S. 110, 122, 109 S. Ct. 2333, 2342, 105 L. Ed. 2d 91, 105, quoting *Snyder v. Massachusetts* (1934), 291 U.S. 97, 105, 54 S. Ct. 330, 332, 78 L. Ed. 674, 677 (Cardozo, J.).

87. The Ninth Amendment to United States Constitution states that: "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." U.S. Const. Amend IX.

88. The Supreme Court of Ohio has stated that the right to travel freely is a fundamental right for every citizen of this State. *State v. Burnett*, 93 Ohio St.3d 419, 428, 2001-Ohio-1581, 755 N.E.2d ("Every citizen of this state, much like the citizens of this Nation, enjoys the freedom of mobility not only to cross our borders into our sister states, but also to roam about innocently in the wide-open spaces of our state parks or through the streets and sidewalks of our most populous cities.")

89. Under the Order, the Plaintiff⁷ (and all others similarly situated) fundamental right to freely travel is unconstitutionally abridged by the curfews created by the Orders as Defendants have ordered the law enforcement personnel under their control and command to stop all citizens and prevent them from moving into and out of the area.

90. As a direct and proximate result of the Order issued by Defendants City and Mayor and its application and enforcement by all Defendants and their agents in law enforcement and otherwise, have violated the fundamental right to travel of all Plaintiff has been unconstitutionally infringed and such infringement continues into the future as the Order remains in effect.

91. **Wherefore**, this Court should award Plaintiff a Declaratory Judgment declaring that the Order is unconstitutional on its face and as applied in such a manner that it infringes upon the fundamental constitutional rights, including the right to travel.

COUNT 7
Right to Property

92. Plaintiff incorporate all the other averments of this Complaint as if they had been fully rewritten here.

93. "Ohio has always considered the right of property to be a fundamental right. There can be no doubt that the bundle of venerable rights associated with property is strongly protected in the Ohio Constitution and must be trod upon lightly, no matter how great the weight of other forces."

94. Further, Ohio courts apply a higher level of scrutiny to such claims regarding property rights, and homeowners who have acted without knowledge or intent to enjoy greater protections. *Yoder v. City of Bowling Green*, 2019 U.S. Dist. LEXIS 16549, at p. 10, citing *Mariemont Apartment Ass'n v. Village of Mariemont*, 2007-Ohio-173, 2007 WL 120727, at *7 (Ohio Ct. App.)

95. Before the police power can be exercised to limit an owner's control of private property, it must appear that the interests of the public require its exercise and the means of restriction must ***not be unduly oppressive upon individuals***. *State ex rel. Pizza v. Rezcallah*, 84 Ohio St.3d 116, 131, 1998-Ohio-313, 702 N.E.2d 81, citing *Froelich v. Columbus* (1919), 99 Ohio St. 376, 124 N.E. 212 (Emphasis added).

96. The curfew created under the Order and Defendants' enforcement of the same have been denied Plaintiff their right to property by preventing his businesses from earning money from patrons between 10:00 p.m. to 6:00 a.m. while the Order is in place.

97. **Wherefore**, this Court should award Plaintiff a Declaratory Judgment declaring that the Order is unconstitutional because it infringes upon the fundamental constitutional rights of Plaintiff, including the right to property and grant the injunctive relief against the curfews in the Order.

COUNT 8

Substantive Due Process Violations Under the 14th Amendment

98. All the preceding averments are fully rewritten here.

99. The Due Process Clause of the Fourteenth Amendment contains a substantive component that "provides heightened protection against government interference with certain fundamental rights and liberty interests." *Washington v. Glucksberg* (1997), 521 U.S. 702, 720, 117 S. Ct. 2258, 2267, 138 L. Ed. 2d 772, 787.

100. This doctrine of substantive due process forbids the government from infringing upon these fundamental liberty interests *at all*, regardless of the procedure provided, unless the infringement survives strict scrutiny; that is, the government's infringement must be "narrowly tailored to serve a compelling state interest." *Reno v. Flores* (1993), 507 U.S. 292, 302, 113 S. Ct. 1439, 1447, 123 L. Ed. 2d 1, 16.

101. Defendants have not shown, and cannot show, a compelling governmental interest to implement the curfew measures discussed in this Complaint against Plaintiff because it cannot and has not articulated facts to support an interest compelling enough to impose this very restrictive curfew on the entire city of Columbus.

102. The curfews implemented in the Order and the enforcement thereof are not narrowly tailored to serve any compelling state interest because the curfews prevents Plaintiff (and others) from engaging in speech, association, expression, traveling to/from/within and generally carrying on the activities of their daily lives in the restricted zones without being subject to be stopped by law and required to prove identity, residence/work address, and state the reason for being in the area.

103. The Defendants can protect the city with less restrictive measures than the strict curfews in the Order.

104. As a direct and proximate cause of the implementation of the curfew on its face and as applied, the constitutional rights of Plaintiff and similarly situated persons have been unconstitutionally infringed by the violation of their fundamental rights to freedom, free speech, association, travel, property and right to be free from unreasonable search and/or seizure.

105. **Wherefore**, this Court should award Plaintiff a Declaratory Judgment declaring that the Order is unconstitutional because it infringes upon the fundamental constitutional rights of Plaintiff, including the right to property.

COUNT 9

Equal Protection/Selective Enforcement

106. Plaintiff incorporates all the averments of this Complaint as if it had fully rewritten them here.

107. On information and belief, the curfews under the Order are being selectively enforced against the rights of the citizens in the restricted areas in violation of the rights of the Plaintiff and all those similarly situated.

108. **Wherefore**, this Court should award Plaintiff a Declaratory Judgment declaring that the Order, and curfews to be imposed and enforced thereunder are unconstitutional because they violate the Plaintiff and similarly situated individuals' rights to equal protection under the law.

COUNT 10

Lack of Legal Authority to Order and Enforce the Curfew Order

109. Plaintiff incorporates all the averments of this Complaint as if it had fully rewritten them here.

110. The Defendants do not have the legal authority to authorize or enforce the Order.

111. Indeed, the Mayor does not have the legal authority under the U.S. Constitution, Ohio Constitution, Ohio Revised Code, the Charter of the City of Columbus or the Codified Ordinances of the city of Columbus to issue an Order enacting the curfews set out therein under the circumstances where there has not been violence or unrest for several days as here.

112. By issuing the Order, the Mayor has violated the Separation of Powers doctrine that delegates the legislative action to the City Council, the legislative body.

113. By issuing the Order the Mayor has, without authority to do so, infringed upon the fundamental rights of Plaintiff and all similarly situated persons Order.

114. By enforcing the Orders all Defendants have infringed upon the fundamental rights of Plaintiff and others similarly situated.

115. To the extent the Mayor claims some sort of power to infringe fundamental rights by unilateral Order in the event of an Emergency (there is not such authority), then such emergency is not present because there is no clear and present danger as no violence related to the protesting has taken place for about 3 days.

116. **Wherefore**, this Court should award Plaintiff a Declaratory Judgment declaring that the Order is invalid and unconstitutional because the Mayor of the city of Columbus is without authority to block the and deprive the citizens therein such as Plaintiff of their fundamental rights.

Relief Requested

Declaratory Judgment

117. Plaintiff incorporates all the preceding averments of this Complaint as if it had fully rewritten here.

118. There exists a controversy between the Plaintiff and Defendants that is on-going arising out of the Order (and its current and subsequent modifications), the curfew established under it and its enforcement by Defendants because the Order causes an on-going deprivation of the Constitutional rights of the Plaintiff.

119. For the reasons set out in this Complaint, this Court should declare the rights of the parties hereto, and in so doing, declare the Order unconstitutional and the curfews imposed thereunder to be unconstitutional and/or otherwise void.

120. For the reasons set out in this Complaint, this Court should declare the rights of the parties hereto, and in so doing, declare the Order unconstitutional and any sanctions imposed thereunder to be unconstitutional and/or otherwise void.

Request for Temporary Restraining Order (without notice or hearing)
Preliminary Injunction
Permanent Injunction

121. Plaintiff incorporate all the averments of this Complaint as if it has been fully re-written here.

122. Plaintiff request a temporary restraining order, preliminary injunction, and ultimately a permanent injunction to order defendants to stop unreasonably abridging the Plaintiff' constitutional rights as set out above.

123. Plaintiff's Verified Complaint demonstrates that a denial of this request for injunction will cause irreparable harm because their claims are based on a violation of their fundamental rights. See, *Overstreet v. Lexington-Fayette Urban Cty. Govt.*, 305 F.3d 566, 578 (6th Cir.2002), citing e.g., *Connection Distrib. Co. v. Reno*, 154 F.3d 281, 288 (6th Cir. 1998) (recognizing that the loss of First Amendment rights, for even a minimal period of time, constitutes irreparable harm) (citations omitted); *Covino v. Patrissi*, 967 F.2d 73, 77 (2d Cir. 1992) (holding that Plaintiff may establish irreparable harm based on an alleged violation of their Fourth Amendment rights); *McDonell v. Hunter*, 746 F.2d 785, 787 (8th Cir. 1984) (finding that a violation of privacy constitutes an irreparable harm).

124. A denial of the injunctive relief requested here has caused and will continue to cause irreparable harm to Plaintiff because it will permit defendants and their agents to continue to violate Plaintiff's Constitutional rights, and to enforce an unconstitutional curfew under a void Order.

125. There is a substantial likelihood that Plaintiff will prevail on the merits of this action because the facts that will be proved (and which have been attested to by Verification here) demonstrate that Defendants are violating the constitutional rights of the Plaintiff (and those similarly situated) by violating fundamental rights and/or by attempting to enforce void laws.

126. Issuance of the temporary restraining order requested will not harm third parties as there has been no civil unrest sufficient to justify any curfew since about Wednesday, June 3, 2020 and the Defendants and their agents will still be permitted to protect the public from any unrest that may possibly occur by utilizing less restrictive measures than the curfew set out in the Order.

127. The public interest will be served by granting the requested injunctive relief as it is "it is always in the public interest to prevent the violation of a party's constitutional rights." *Preterm-*

Columbus v. AG, 2020 U.S. Dist. LEXIS 71706, *55 (S.D. Ohio April 23, 2020), citing *Liberty Coins, LLC v. Goodman*, 748 F.3d 682, 690 (6th Cir. 2014).

128. There is no adequate remedy at law to redress the Plaintiff's grievances. Instead, the harm may only be remedied by an injunction from this Court that immediately enjoins the Defendants from enforcing the curfew and permanently enjoins them from introducing other curfews that violate Plaintiff's fundamental rights and that restrains them from imposing criminal, civil or other sanctions against Plaintiff and all other similarly situated persons.

129. The Court should issue the temporary restraining order requested hereunder without written or oral notice to the Defendants under Fed. R. Civ.P. 65(b)(1) because the certifications and verifications attached hereto meet the legal requirements of Fed.R.Civ.P. 65(b)(1)(A) and (B).

130. Therefore, Plaintiff respectfully requests injunctive relief ordering return of the funds, such as a temporary restraining order, preliminary injunction, and ultimately a permanent injunction against ALL DEFENDANTS to ORDER them to refrain from engaging in conduct that violates the fundamental rights of the citizens of Plaintiff and those similarly situated in Columbus, Franklin County, Ohio.

131. This Court should waive the posting of bond under Civ.R. 65(E) for the injunctive relief requested this is about Constitutional rights and not the possession or disbursement of money or property between Plaintiff and Defendants.

Damages

132. Plaintiff incorporate by reference all the above averments as if fully rewritten herein.

133. Plaintiff Woodland seeks damages in an amount to be proved at trial as compensation for his false arrest and false imprisonment as set out herein above.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully request that the Court enter judgment against Defendants jointly and severally as follows:

- 1) Declaratory Judgment that the Order and the city-wide, indefinite curfew imposed thereunder is Unconstitutional on its face and/or as applied to Plaintiff (and all others similarly-situated) because it is: (a) void; (b) overbroad; (c) violates the separation of powers; and (d) violates the fundamental rights of the Plaintiff and similarly situated persons (e) violates equal protection; and (f) violates procedural due process due to vagueness; and
- 2) Issue ***Temporary Restraining Order immediately*** restraining and ending the implementation of the CURFEW CURRENTLY BEING IMPLEMENTED in the city of Columbus, Franklin County, Ohio under the latest version of the Order (it is currently in effect as of 10:00 p.m. tonight and continuing until 6:00 a.m. and then to be in place from day-to-day thereafter).
- 3) Issue a ***Temporary Restraining Order immediately*** prohibiting Defendants and Defendants' agents from enforcing any curfew in the city of Columbus, Franklin County, Ohio under the Order or any subsequent modification thereto that is based on the reasons set forth in the Order then a *preliminary injunction and permanent injunction* prohibiting further unconstitutional curfews;
- 4) Issue a Declaratory Judgment stating that Defendants do *not* have the power to stop, search, seize, arrest, fine or otherwise sanction any of the Plaintiff or similarly situated persons in the city of Columbus for alleged violations of the unconstitutionally-imposed curfew and other restrictions set out in the Order;
- 5) Issue a ***temporary restraining order, preliminary and permanent injunction*** prohibiting Defendants from enforcing or relying on the Order (and curfew sought to be imposed thereunder) to search, seize, arrest, prosecute, fine, imprison, intimidate, threaten or otherwise punish Plaintiff and similarly-situated individuals;

- 6) Grant to Plaintiff against Defendants *such other and further relief* as this Court deems just and proper at law and/or equity.
- 7) Order Defendants to pay to Plaintiffs' courts costs and reasonable attorney's fees.

Respectfully submitted,

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