

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

TENT CITY ALTERNATIVE TO LSD )  
VIADUCTS and ANDY THAYER, )

Plaintiffs, )

v. )

CITY OF CHICAGO DEPARTMENT )  
OF ADMINISTRATIVE HEARINGS, )  
CITY OF CHICAGO DEPARTMENT )  
OF TRANSPORTATION, CITY OF )  
CHICAGO, )

Defendants. )

No. 17 CV 4518

Hon. Sidney I. Schenkier,  
Presiding Magistrate Judge

**FIRST AMENDED COMPLAINT**

Plaintiffs, TENT CITY ALTERNATIVE TO LSD VIADUCTS and ANDY THAYER, by their undersigned attorneys, complain against the Defendants, CITY OF CHICAGO DEPARTMENT OF ADMINISTRATIVE HEARINGS, CITY OF CHICAGO DEPARTMENT OF TRANSPORTATION, CITY OF CHICAGO, a municipal corporation, as follows:

**Nature of the Case**

1. This lawsuit began as an administrative appeal from a denial of Plaintiffs' Notification of Public Assembly pursuant to § 10-8-334 of the Municipal Code of Chicago (MCC). However, Defendants removed the case to federal court as raising an issue of federal law. Therefore, the case is now more properly a federal civil rights claim.

2. Plaintiffs allege that the City's refusal to approve Plaintiffs' permit

application, in conjunction with the City's planned removal of the homeless "tent city" located under the viaducts at Wilson Avenue and Lawrence Avenue under Lake Shore Drive, violates the First, Fifth, Eighth, and Fourteenth Amendments to the United States Constitution; Article 1, Section 5 of the Illinois State Constitution (hereinafter Illinois Article 1); and Illinois Bill of Rights for the Homeless Act, 775 ILCS 45/1 *et. seq.* (hereinafter Homeless Bill of Rights). Plaintiffs seek declaratory and injunctive relief, as well as monetary damages and reasonable attorneys fees.

### **Jurisdiction and Venue**

3. Jurisdiction is proper in this court pursuant to 28 U.S.C. § 1331 because this case alleges violations of Plaintiffs' rights under federal law and under 42 U.S.C. § 1983. The Court has supplemental jurisdiction over Plaintiffs' state law claims pursuant to 13 U.S.C. § 1367. The Court has the authority to grant declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202.

4. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b), as all the events giving rise to the claims asserted herein occurred in Cook County.

5. The Court has authority to award attorneys' fees pursuant to 42 U.S.C. §1988.

### **Factual Allegations Common to All Counts**

#### **The Parties**

6. Plaintiff Tent City Alternative to the LSD Viaducts is an unincorporated association the members of which include individuals currently

residing in tent communities located under the viaducts of Lake Shore Drive at Lawrence and Wilson Avenues and supportive community members of the Uptown neighborhood of Chicago. (Uptown).

7. Plaintiff Andy Thayer is a 30-year resident of Uptown, a community activist, and a member of Tent City Alternative to LSD.

8. Defendant Department of Administrative Hearings is a division of the City of Chicago responsible for appeals from denials of permit applications, MCC § 10-8-334.

9. Defendant Chicago Department of Transportation (CDOT) is a department of the City of Chicago responsible for issuing permits for public assembly pursuant to MCC § 10-8-334 and public use pursuant to MCC § 10-28-010.

10. Defendant City of Chicago (City) is a municipal corporation, duly incorporated under the laws of the State of Illinois and located in Cook County, Illinois.

11. Defendant Illinois Department of Transportation (IDOT) is a department of the State of Illinois responsible, among other things, for maintenance and repair of the Lake Shore Drive bridges over Lawrence and Wilson Avenues in Chicago.

### **Defendants' History of Harassment of the Homeless**

12. Prior to August 17, 2015, homeless people had set up tent encampments and were sleeping on the sidewalks located under the bridges at Wilson and Lawrence Avenues in Uptown.

13. Prior to August 17, 2015, Defendant City of Chicago, acting through various police officers, had periodically threatened to arrest these homeless people for sleeping on the sidewalk, or to confiscate or destroy their tents and other property.

14. On the night of August 17, 2015, an ad hoc group of homeless and housed Uptown residents planned an overnight protest on the edge of the park near the Wilson Avenue Lake Shore Drive bridge viaduct.

15. Members of the Chicago Police Department threatened to arrest everyone—homeless residents and protesters—when the park closed at 11 pm.

16. As the viaducts under Lake Shore Drive began to fill, several homeless people began to sleep in the public mall space in front of the now-shuttered Stewart Elementary School, 4525 N. Kenmore Avenue (Stewart Mall). Stewart Mall is located across the street from Alderman James Cappleman's office, and is highly visible by the thousands of people who use Uptown's major commercial street, Broadway, daily. In addition to needing safe shelter, the Plaintiffs sought to erect tents in an area that is highly visible to people frequenting the businesses in the Uptown community to draw attention to the lack of affordable housing options and the lack of services available for people experiencing homelessness.

17. From July to September 2016, 20 to 30 homeless residents erected tents and lived on the Stewart Mall, creating a tent city.

18. On September 26, 2016, Morningside Construction Managers, LLC (MCM)—with heavy police presence in tow and under the guise of a public way

permit—fenced off the Stewart Mall, effectively evicting the homeless and the rest of the public from the Stewart Mall. No construction occurred at the adjacent school, nor was any equipment staged in the Stewart Mall, during the entire period of the MCM permit. The MCM permit expired on March 18, 2017 and was not renewed.

19. Sometime during the winter of 2016–17, Plaintiffs learned of a plan by IDOT to reconstruct or otherwise perform substantial repair of the Lake Shore Drive viaducts over Wilson and Lawrence Avenues.

20. The City of Chicago stated that this reconstruction would require the homeless people living under those bridges to move.

21. The City of Chicago has stated that it is not required to find alternative housing for those people displaced by IDOT’s project, nor does it intend to do so.

### **Defendants’ Denial of Plaintiffs’ Permit Application**

22. On March 7, 2017, Plaintiff Andy Thayer (Thayer) on behalf of Uptown Tent Community Organizers (UTCO) filed a Notification of Public Assembly pursuant to MCC § 10-8-334 for the Stewart Mall set to begin the day after the MCM permit expired. The purpose of requesting this permit was two-fold: to provide an alternative location to live for the homeless people living under the Wilson and Lawrence bridges; and to erect a tent city in a highly visible location.

23. On March 15, 2017, CDOT denied Thayer’s permit application, citing unspecified “safety” concerns to justify its tardy response to the application. Under MCC § 10-8-334(b)(2), “[s]uch public assemblies shall be allowed unless the

commissioner notifies, in writing by mail, fax, or e-mail the person or organization giving the notice, within two business days after receipt of notice of the public assembly.” As permitted under MCC § 10-8-334, Thayer appealed the City’s rejection.

24. On March 22, 2017, two days before the appeals hearing was to take place, Thayer received a call from Kelley A. Gandurski, Senior Assistant Corporation Counsel at the Chicago Law Department. She stated that MCM’s permit was “illegal” and that the City had forced MCM to remove the fencing and “no trespassing” signs blocking the Stewart Mall. On this basis, she requested that Thayer withdraw his appeal. Upon confirming that the Stewart Mall was indeed reopened, the next day Thayer withdrew the appeal, noting in an email to Ms. Gandurski that any attempt to close off the Stewart Mall again to the public would be taken as a sign of bad faith and possible legal action.

25. Within two hours after Thayer withdrew the appeal, MCM again erected the fences blocking the Stewart Mall. The next day, Thayer sent another email to the Department of Administrative Hearings requesting a new appeals hearing, which was granted and set for March 30, 2017. Prior to the March 30 hearing, the fences around the mall were again taken down. On March 28, 2017, the City filed a Hearing Memorandum outlining the City's posture on the permit request.

26. At the March 30 hearing, the City successfully moved to dismiss the hearing on the grounds of mootness, arguing that because the Stewart Mall was

already open and accessible to the public, Thayer's public assembly permit was unnecessary.

27. With the appeal of the original permit application mooted, that afternoon Plaintiffs filed a more narrowly tailored Notification of Public Assembly. This permit notification was for a period of six months and included the use of tents by those assembled. On April 3, 2017, the City again denied Plaintiffs' Notification of Public Assembly.

28. Plaintiffs appealed and a full administrative hearing was held on April 12, 2017. On April 11, 2017, less than 24 hours prior to the hearing, the City filed a written motion to dismiss arguing that Plaintiffs' intention to allow for the erection of tents was an illegal, unpermitted act which should vacate the public assembly permit application without right of appeal. Plaintiffs' counsel asked for a continuance to file a written response, but both the request for a continuance and to file a written response to the motion to dismiss were denied.

29. At the hearing, Plaintiffs argued that the City's requirement to obtain a public way use permits pursuant to MCC § 10-28-010 for homeless people to erect tents, which can only be granted by passage of special ordinances by the City Council of Chicago, violated the First and Eighth Amendments to the U.S. Constitution, the broader public assembly protections of Illinois Article 1, the Illinois Homeless Bill of Rights (775 ILCS 45/1), and Chicago's Public Assembly Ordinance (MCC § 10-8-334).

30. The City argued that a tent is a structure under subsection MCC § 10-

28-010(b)(10), and therefore, Plaintiffs were required to apply for a public way use permit rather than a public assembly permit. The City argued that the denial letter provided Thayer with an adequate time and place alternative as required under the ordinance.

31. On April 14, 2017, Senior Administrative Law Judge Frank Lombardo issued the “Findings Decision and Order” (sic) affirming the City's denial of the public assembly permit application.

32. MCC § 10-8-334(b)(2) provides that “[s]uch public assemblies shall be allowed unless the commissioner notifies, in writing . . . that there is a significant public safety issue, limited to those set forth for parades in Section 10-8-330(g)(1)–(4).” CDOT’s and the City’s notice of denial only stated there were “significant public safety issues” but did not state what subsection of MCC § 10-8-330(g)(1)–(4) was applicable nor did it specify what constituted the specific public safety issue. CDOT’s and the City’s failure to provide a legal notice of denial and the misapplication of MCC § 10-8-334 to Plaintiffs resulted in a violation of Plaintiffs’ First Amendment and Illinois Article 1 rights. Notably, in denying the second public assembly permit, the City did not cite any safety issues.

33. MCC § 10-8-334(b)(2) further provides that when an assembly permit is denied, the City shall provide “an alternate date, time, location or route. This alternate, to the extent practicable, shall authorize a public assembly that will have comparable public visibility, and a similar route, location and date to that of the proposed public assembly.” The City’s alternative assembly offered the same dates

and location, but not the same manner or public visibility of Plaintiffs' planned public assembly. As applied to Plaintiffs, the City violated the public assembly ordinance in violation of Plaintiffs' rights under the First Amendment and Illinois Article 1.

34. Nothing in the language of MCC § 10-8-334 prohibits the erection of non-permanent structures as part of a public assembly. On information and belief, significant numbers of public assemblies include the erection of non-permanent structures as part of the assembly that are dismantled at the end of the assembly. Such structures include scaffolding for speakers and elevated stages, all erected on the public way. On information and belief, none of the public assemblies containing such structures obtained public use permits. As applied to Plaintiffs, the City and CDOT's requirement that Plaintiffs obtain a public use permit violated Plaintiffs' rights under the First Amendment and Illinois Article 1.

35. MCC § 10-28-015 provides that applications for public use permits are submitted to the commissioner of business affairs and consumer protection. MCC § 10-28-015(c) provides "[i]f the commissioner finds that the applicant meets the applicable requirements, the commissioner shall provide the application to the alderman of the affected ward. Upon passage of an ordinance approving the application, the commissioner shall issue the public way use permit to the applicant. If approval by ordinance is withheld, the commissioner shall deny the application and shall notify the unsuccessful applicant in writing of the denial within ten business days after the denial."

36. On information and belief, Alderman James Cappleman, alderman of the 46<sup>th</sup> Ward in which the Stewart Mall is located, would not submit an ordinance for public use for an assembly of homeless people including tents to the Chicago City Council.

37. The requirement that a public assembly pursuant to MCC § 10-8-334 with certain types of structures obtain a public use permit pursuant to MCC § 10-28-330 *et. seq.* constitutes an express municipal policy of the City. Such policy subjects the homeless to citations for ordinance violations and possible arrest.

38. The City of Chicago, in general, and Uptown in particular, does not have enough shelter beds to house the homeless. Further, upon information and belief, certain populations of homeless people, such as married couples, are not permitted in any existing shelter.

### **Irreparable Injury to Plaintiffs**

39. As a direct and proximate result of Defendants' unconstitutional application of MCC §§ 10-8-334 and 10-28-010 and violation of the Illinois Homeless Act, the rights of Plaintiffs have been interfered with, and they are in fear of being ticketed, arrested, and deterred from exercising their constitutionally protected First Amendment rights, and their rights to free assembly under Illinois Article 1.

40. As a direct and proximate result of Defendants' unconstitutional application of MCC §§ 10-8-334 and 10-28-010 and violation of the Illinois Homeless Act, the activities of the Plaintiffs have been criminalized and they are being subjected to cruel and unusual punishment in violation of the Eighth Amendment.

41. As a direct and proximate consequence of Defendants' unconstitutional application of MCC §§ 10-8-334 and 10-28-010 and violation of the Illinois Homeless Act, Plaintiffs have suffered monetary damages in fines and court costs and loss of possessions.

42. Plaintiffs have suffered irreparable injury by Defendants' actions and will continue to suffer irreparable injury in the absence of injunctive relief.

43. Plaintiffs lack any adequate remedy at law.

44. The balance of harms weighs in favor of Plaintiffs and against Defendants, as the issuance of the injunctive relief will not adversely affect the public interest.

**Count One**  
**The City's Denial of Plaintiffs' Application**  
**Was Not Justified by the Law or the Facts**

45. Plaintiffs reallege as if they were set forth in full herein all allegations set forth in paragraphs 1–44. Plaintiffs' set forth the following Specification of Errors committed during Plaintiffs' Administrative Hearing appealing the denial of Plaintiffs' notification of public assembly:

46. The failure of the Senior Administrative Law Judge (ALJ) Frank Lombardo to grant Plaintiffs' motion to issue subpoenas for Michael Simon as a witness in accordance with MCC §§ 2-14-076(f) and 2-14-080. Transcript of the Appeals Hearing, April 12, 2017, Case No. 17 PA 000002, page 11, lines 10-17. (hereafter, T. P\_\_, L\_\_). Defendants submitted an affidavit of Mr. Simon that stated that Plaintiffs had not applied for a public use permit pursuant to MCC § 10-28-010.

47. Mr. Simon, the Assistant Commissioner in the Public Way Permits Division of Public Way Infrastructure of the Chicago Department of Transportation, is the city official in charge of granting public use permits pursuant to MCC § 10-28-010. Plaintiffs sought to examine Mr. Simon under oath as to what constituted the specific “public safety issue” which formed the basis of CDOT’s denial of the Plaintiffs’ public assembly notification. Further, Plaintiffs sought to examine Mr. Simon as to the process of obtaining public use permits that require an ordinance of the City Council of Chicago. Plaintiffs sought to incorporate into the record the near impossibility of obtaining a public use permit for anything other than a sidewalk café that results in the de facto criminalization of the homeless organized in tent encampments. This form of criminalization is at the core of Plaintiffs’ arguments of cruel and unusual punishment under the Eighth Amendment to the United States Constitution.

48. The denial of Plaintiffs’ motion was arbitrary resulting in prejudice to the Plaintiffs and an unfair hearing.

49. ALJ Lombardo’s denial of a motion for continuance by Plaintiffs in order for Plaintiffs to respond in writing to Defendants’ Motion to Dismiss. Defendants filed a Motion to Dismiss on April 11, 2017, less than 24 hours before the administrative hearing. This motion included a 10-page memorandum of law and 10 pages of exhibits. T. P 6, L 10-24. Plaintiffs requested a continuance to respond with a memorandum of law to rebut Defendants’ arguments. T. P 5, L 11-24, P 6, L 1-2, P 8, L 12-18. Even though ALJ Lombardo denied the Motion to

Dismiss (T. P 15, L 13), the denial of Plaintiffs' motion for a continuance denied Plaintiffs' the ability to submit a memorandum of law which would be included as part of the record. Once again, this prevented the record from including arguments, reasoning, and legal support for Plaintiffs' position that the denial of the assembly permit violates the First, Fifth, Eighth, and Fourteenth Amendments to the U.S. Constitution and parallel provisions under the Illinois Constitution.

50. The denial of Plaintiffs' motion was arbitrary resulting in prejudice to the Plaintiffs and an unfair hearing.

51. ALJ Lombardo overruled Plaintiffs' objection as to Luis Benitez's qualifications to make a legal interpretation of MCC § 10-28-010(b)(10). Mr. Benitez is the assistant chief engineer and chief bridge engineer for the Chicago Department of Transportation (CDOT) and was qualified as an expert with respect to structural engineering. T. P 25, L 4-18. Mr. Benitez was qualified to testify whether tents are structures. Mr. Benitez was asked by Defendants for an interpretation of whether tents for the proposed homeless encampment are structures for purposes of MCC § 10-28-010(b)(10). T. P 28, L 11-24; P 29, L 12-24. ALJ Lombardo overruled Plaintiffs' objection that this called for a legal conclusion by Mr. Benitez. T. P 30, L 1-11.

52. This arbitrary overruling of Plaintiffs' objection resulted in prejudice to the Plaintiffs and an unfair hearing.

53. ALJ Lombardo overruled an objection by Plaintiffs that Mr. Benitez was not qualified to make a legal conclusion that the term "structure" as defined in

Code Section 13-96-480(a) should apply to the term “structure” in MCC § 10-28-010(b)(10). T. 32, L 3-18.

54. This arbitrary overruling of Plaintiffs’ objection resulted in prejudice to the Plaintiffs and an unfair hearing.

55. ALJ Lombardo sustained an objection by Defendants to part of Plaintiffs’ opening statement that provided background information on the history of the public assembly ordinance. T. P 50, L 13-24, P 51, L 1-4. Denial of presenting background information on the public assembly ordinance deprived Plaintiffs of entering such information in the record for purposes of making arguments of violations of the U.S. Constitution in subsequent proceedings.

56. This arbitrary sustaining of Defendants’ objection resulted in prejudice to the Plaintiffs and an unfair hearing.

57. ALJ Lombardo sustained an objection on relevancy grounds regarding the introduction of evidence of prior public assembly notifications for the same location (*i.e.* the Stewart Mall) as the notification of public assembly under appeal in the hearing. ALJ Lombardo stated, “I’m not going to allow this evidence from a previous hearing. It has no bearing on what the determination will be today.” T. P 53 L 9-24, P 53 L 1-12. The history of prior notifications of public assembly for the Stewart Mall was relevant to establishing Plaintiffs constitutional speech and assembly claims.

58. This arbitrary sustaining of Defendants’ objection resulted in prejudice to the Plaintiffs and an unfair hearing.

59. ALJ Lombardo sustained an objection to Plaintiffs laying a foundation for the notification of public assembly at issue in the hearing. T. P 69, L 9-18.

60. This arbitrary sustaining of Defendants' objection resulted in prejudice to the Plaintiffs and an unfair hearing.

61. ALJ Lombardo denied the admission of exhibits presented by Plaintiffs based on Defendants' objection as to relevancy. T. P 77, L 18. Plaintiffs' proffered exhibits were photographs of the prior homeless tent encampment at the Stewart Mall. Plaintiffs sought to enter the photographs into evidence for purposes of establishing the public safety and accessibility of the Stewart Mall with a homeless tent encampment. T. P 74, L 5-18. Plaintiffs wanted the photographic evidence and testimony related thereto entered into the record for purposes of appealing the permit denial on constitutional grounds.

62. This arbitrary denial of the admission of Plaintiffs' exhibits resulted in prejudice to the Plaintiffs and an unfair hearing.

63. ALJ Lombardo denied Plaintiffs' objection on grounds of relevancy to questions on cross-examination of Plaintiff Thayer whether he had asked Chicago officials, prior to submitting the notification for public assembly, if the City of Chicago was willing to house 40 homeless people. Plaintiffs objected that notification for a public assembly does not require other inquiries of city officials. T. P 97, L 16-24; P 98, L 1-19.

64. This arbitrary overruling of Plaintiffs' objection resulted in prejudice to the Plaintiffs and an unfair hearing.

65. ALJ Lombardo overruled Plaintiffs' objection to the relevancy of Defendants' questions to Plaintiff Thayer in cross-examination as to the extent of his contact with the homeless. Plaintiffs argued that the notification for public assembly was by an organization of the homeless and Thayer's contacts with the homeless was irrelevant. ALJ Lombardo overruled the objection based on the Defendants' argument of developing the record as a defense for constitutional arguments of Plaintiffs on appeal, even though the Plaintiffs were denied the same requests for entering evidence and testimony into the record. See other errors delineated above. T. P 101, L 13-24, P 102, L 1-19.

66. This arbitrary overruling of Plaintiffs' objection resulted in prejudice to the Plaintiffs and an unfair hearing.

67. ALJ Lombardo overruled Plaintiffs' objection based on relevancy to questions regarding Plaintiff Thayer's attitude toward the project to convert the Stewart School into market rate housing. T. P117, L 3-24. ALJ Lombardo also allowed the follow up question to Plaintiff Thayer as to the location of the Stewart School in relation to the Stewart Mall, which left the prejudicial implication that the notification for public assembly was a pretext to stop the Stewart School project. T. P 119, L 2-18.

68. This arbitrary overruling of Plaintiffs' objection resulted in prejudice to the Plaintiffs and an unfair hearing.

69. ALJ Lombardo permitted extensive testimony by Alisa Rodriguez, Deputy Commissioner for the homeless programs of the City of Chicago Department

of Family and Support Services, with respect to services and programs provided by the City of Chicago for the homeless population as well as testimony on the number, characteristics and condition of the homeless population in Chicago. T. P 129-161. Prior to cross-examination of Ms. Rodriquez by Plaintiffs, Plaintiffs noted to ALJ Lombardo that Plaintiffs “were not allowed the same scope of questioning [as conducted by Defendants of Ms. Rodriquez] when we were conducting our direct examination of Mr. Thayer.” T. P 162, L 18-20.

70. ALJ Lombardo erred in not permitting the same scope of questioning Mr. Thayer by Plaintiffs on direct examination as he allowed on the direct examination of Ms. Rodriquez by Defendants. This arbitrary error resulted in prejudice to the Plaintiffs and an unfair hearing.

71. ALJ Lombardo’s interpretation of “structure” to include tents is arbitrary and capricious and has no basis in law or fact.

**WHEREFORE**, Plaintiffs request that this Court:

A. Enter an order reversing the decision of ALJ Lombardo, and granting Plaintiffs’ application for an assembly permit for the Stewart Mall for the location and manner as applied therefore, to run for a period of six months from the date of issuance;

B. Enter judgment for reasonable attorney’s fees and costs incurred in bringing this action; and

C. Grant Plaintiffs any and all other relief as law and justice demand.

## **Count Two**

### **Violation of the Eighth Amendment**

72. Plaintiffs reallege as if they were set forth in full herein all allegations set forth in paragraphs 1–71.

73. The lack of beds in shelters combined with the application of City ordinances in a manner which prohibits homeless people from legally sleeping on public land, results in the criminalization of homeless people based solely on their status as being homeless. The criminalizing of the status of homelessness, rather than any conduct by the homeless, violates the Eighth Amendment’s prohibition on cruel and unusual punishment.

74. On information and belief, the City of Chicago, acting through the Chicago Police Department has consistently and regularly threatened to arrest the homeless Plaintiffs in this action, or otherwise attempted to force them to move their tents and all other personal possessions, and in some instances have actually confiscated their personal possessions, all without a lawful basis for doing so. Such actions of the police constitute policies of the City.

75. The City’s denial of the permit, coupled with the plan by the City and IDOT to reconstruct the Wilson and Lawrence bridges, without providing alternative housing for the Plaintiffs, who include individuals living under those bridges, violates the Eighth Amendment prohibition against cruel and unusual punishment, by criminalizing the status of homelessness.

**WHEREFORE**, Plaintiffs request that this Court:

A. Grant plaintiffs’ appeal to reverse the Department of Administrative

Hearings' affirmation of the Commissioner of the Chicago Department of Transportation's denial of plaintiffs' Notification of Public Assembly and grant said Notification of Public Assembly for the location and manner as applied therefore, to run for a period of six months from the date of issuance;

B. Enter a declaration that MCC §10-8-320 and MCC §10-28-010 as applied to the Plaintiffs violates the Eighth Amendment to the U.S. Constitution;

C. Enter a preliminary and then a permanent injunction barring Defendants from beginning repairs or otherwise taking action to evict the people living under the Lake Shore Drive bridges over Lawrence and Wilson Avenues until alternate living arrangements are made for them; and barring Defendants and their agents, servants, employees and attorneys from applying MCC § 10-8-320 and MCC § 10-28-010 in a manner prohibiting Defendants from erecting tents as applied for in the Notification of Public Assembly;

D. Enter judgment in favor of Plaintiffs and against Defendants for monetary damages to be determined at trial;

E. Enter judgment for reasonable attorney's fees and costs incurred in bringing this action; and

F. Grant Plaintiffs any and all other relief as law and justice demand.

### **Count Three Violation of the First Amendment**

76. Plaintiffs reallege as if they were set forth in full herein all allegations set forth in paragraphs 1–75.

77. Chicago Municipal Code sections 10-8-334 and 10-28-010 as applied to

Plaintiffs violate the First Amendment and constitute an unconstitutional express municipal policy of the Defendants.

78. As applied, these provisions unconstitutionally abridge the Plaintiffs' right to free speech and assembly.

79. As applied, these provisions are not narrowly tailored to meet a significant governmental interest.

80. There are no ample alternatives channels for communication of the Plaintiffs message.

**WHEREFORE**, Plaintiffs request that this Court:

A. Grant Defendants' appeal to reverse the Department of Administrative Hearings' affirmation of the Commissioner of the Chicago Department of Transportation's denial of Defendants' Notification of Public Assembly and grant said Notification of Public Assembly for the dates, location and manner as applied therefore;

B. Enter a declaration that MCC § 10-8-320 and MCC § 10-28-010 as applied to the Plaintiffs violate the First Amendment to the U.S. Constitution;

C. Enter a preliminary and then a permanent injunction barring Defendants and their agents, servants, employees and attorneys from applying MCC § 10-8-320 and MCC § 10-28-010 in a manner prohibiting Defendants from erecting tents as applied for in the Notification of Public Assembly;

D. Enter judgment in favor of Plaintiffs and against Defendants for monetary damages to be determined at trial;

E. Enter judgment for reasonable attorney's fees and costs incurred in bringing this action; and

F. Grant Plaintiffs any and all other relief as law and justice demand.

**Count Four**  
**State Claim: Violation of the Illinois Homeless Act**

81. Plaintiffs reallege as if they were set forth in full herein all allegations set forth in paragraphs 1–80.

82. The Illinois Homeless Act states in “Sec. 5. Legislative intent. It is the long-standing policy of this State that no person should suffer unnecessarily from cold or hunger, be deprived of shelter or the basic rights incident to shelter, or be subject to unfair discrimination based on his or her homeless status. At the present time, many persons have been rendered homeless as a result of economic hardship, a severe shortage of safe and affordable housing, and a shrinking social safety net. It is the intent of this Act to lessen the adverse effects and conditions caused by the lack of residence or a home.”

83. The Illinois Homeless Act states that homelessness “means the status of having or not having a fixed or regular residence, including the status of living on the streets, in a shelter, or in a temporary residence.” Illinois Homeless Act Sec. 10(b).

84. The rights of the homeless pursuant to the Illinois Homeless Act include:

Sec. 10(a)(1): the right to use and move freely in public spaces, including but not limited to public sidewalks, public parks, public transportation, and public

buildings, in the same manner as any other person and without discrimination on the basis of his or her housing status; and

Sec. 10(a)(7): the right to a reasonable expectation of privacy in his or her personal property to the same extent as personal property in a permanent residence

85. The Defendants' policies impede the ability of homeless Plaintiffs to move freely in public spaces in violation of the Illinois Homeless Act.

86. The Defendants' policies prohibit use of public spaces and violate the reasonable expectation of privacy of the homeless Plaintiffs in violation of the Illinois Homeless Act.

**WHEREFORE**, Plaintiffs request that this Court:

A. Grant Plaintiffs' appeal to reverse the Department of Administrative Hearings' affirmation of the Commissioner of the Chicago Department of Transportation's denial of Plaintiffs' Notification of Public Assembly and grant said Notification of Public Assembly for the dates, location and manner as applied therefore;

B. Enter a declaration that MCC § 10-8-320 and MCC § 10-28-010 as applied to the Plaintiffs violates the Illinois Homeless Act;

C. Enter a preliminary and then a permanent injunction barring Defendants and their agents, servants, employees and attorneys from applying MCC § 10-8-320 and MCC § 10-28-010 in a manner prohibiting Defendants from erecting tents as applied for in the Notification of Public Assembly;

D. Enter judgment in favor of Plaintiffs and against Defendants for

monetary damages to be determined at trial;

E. Enter judgment for reasonable attorney's fees and costs incurred in bringing this action; and

F. Grant Plaintiffs any and all other relief as law and justice demand.

Dated: August 1, 2017

Respectfully submitted,

/s/ Alan Mills

/s/ Molly Armour

/s/ Jeffrey Frank

/s/ Adele D. Nicholas

/s/ Susan Hathaway Ritacca  
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