

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
WHEELING DIVISION**

MERVIN B. STURGEON,
on behalf of himself and others similarly situated,

Plaintiff,

Civil Action No.

v.

CITY MANAGER ROBERT HERRON,
individually and in his official capacity,
THE CITY OF WHEELING, its division,
THE WHEELING POLICE DEPARTMENT, and
THE WEST VIRGINIA DIVISION OF HIGHWAYS,
an agency of **THE WEST VIRGINIA DEPARTMENT
OF TRANSPORTATION**

Defendants.

**EMERGENCY MOTION FOR A TEMPORARY
RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

Plaintiff Mervin B. Sturgeon., on behalf of himself and others similarly situated, hereby respectfully moves this Court for a temporary restraining order (“TRO”) pursuant to Rule 65(b) of the Federal Rules of Civil Procedure, to enjoin Defendants, their officials, officers, employees, agents, assigns, and those acting in concert with it, from conducting any property sweeps of homeless persons’ personal property until adequate policies are promulgated to protect and safeguard plaintiff’s Fourth, Fifth and Fourteenth Amendment Rights.

1. Plaintiff incorporates herein by reference the facts alleged in the Verified Complaint.
2. Plaintiff also incorporates herein by reference the legal arguments contained in the Memorandum in Support of Motion for Temporary Restraining Order and/or Preliminary Injunction. Plaintiff has satisfied the four-part test for granting a preliminary injunction.

3. As is more fully set forth in the accompanying legal memorandum, plaintiff is likely to prevail on the merits of his constitutional claims under the Fourth and Fourteenth Amendment of the United States Constitution, and under Article III, Sections One, Six, Ten, and Seventeen of the West Virginia Constitution.

4. Plaintiff will suffer irreparable harm unless the requested injunctive relief is granted.

5. Since the defendants are governmental units, they have no legally-cognizable interest in unreasonably seizing plaintiff's personal property or in doing so without attendant due process protections. Granting plaintiff the requested preliminary relief will not result in any foreseeable, serious harm to defendants or the public.

6. It is in the public interest for government officials to respect the constitutional rights of all individuals, including those who happen to be homeless.

7. On Sunday, April 19, 2020, undersigned counsel contacted the City Manager and City Solicitor for the City of Wheeling to request that the City commit to ceasing destruction of the encampments and the personal property of the residents of the encampment because of the constitutional concerns and in light of COVID-19. *See Exhibit C to Verified Complaint.*

8. The letter to the City Manager stated that encampment residents would be prepared to move forward with litigation if necessary, including seeking a preliminary injunction, if the City would not agree to put a halt to encampment sweeps. *Id.*

9. The City Solicitor responded that she was "reviewing the concerns" outlined in the letter, but did not commit to ceasing the destructions of the encampments. *See Exhibit D to Verified Complaint.*

10. On or around September 1, 2020, Defendants posted a notice near at least two encampments stating that the encampments would be closed and the

residents would not be allowed to return to the site after 5 p.m. on Friday, September 4, 2020.

WHEREFORE, Plaintiff respectfully requests that this Court issue a TRO/preliminary injunction to enjoin Defendant City of Wheeling, and its officials, employees, agents, assigns and all those working in concert with the City, as well as the Division of Highways, from:

(a) conducting property sweeps that confiscate plaintiff's and other encampment residents' property until and unless the City adopts a policy that provides adequate pre-deprivation notice reasonably calculated to inform encampment residents about:

(i) the time, date and location of the sweeps;

(ii) how to retrieve any confiscated property; and

(iii) requires that seized property having any value (either monetary or sentimental) be inventoried and stored in a safe place for thirty days so that the owner will have a reasonable opportunity to claim it; and

(b) destroying any property belonging, or reasonably appearing to belong to, plaintiff and other unhoused people; and

(c) providing that, as recommended by the Centers for Disease Control and Prevention, no such sweeps may be ordered during the pendency of the COVID-19 pandemic unless adequate alternative housing is available and secured.

Respectfully submitted,

by Counsel,

/s/ Loree Stark

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CERTIFICATE OF SERVICE

I, Loree Stark, do hereby certify that on this 2nd day of September, 2020, that I electronically filed a true and exact copy of *Emergency Motion for a Temporary Restraining Order and Preliminary Injunction* with the Clerk of Court using the CM/ECF System and emailed same to:

Robert Herron, City Manager
citymanager@wheelingwv.gov

Rosemary Humway-Warmuth, Esq., Wheeling City Solicitor
rhwarmuth@wheelingwv.gov

Byrd E. White, III, Cabinet Secretary, Commissioner of Highways
DOT.Secretary@wv.gov

/s/ Loree Stark

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