

3. The present lawsuit was filed on January 16, 2024, following a City Council meeting during which the Defendants indicated that they would continue to enforce Wheeling, West Virginia, Municipal Code § 533.18 prior to exemptions being made for approved camping locations and without an increase in the number of beds in Wheeling shelters. At that meeting, Defendant Herron unveiled a new process that the City asked for nonprofits to follow when requesting exemptions to the habitation ban.

4. As described in the Verified Complaint, this left Plaintiffs and the putative class in an impossible situation - by virtue of the limited resources of Wheeling service providers there will inherently be unhoused people without access to indoor shelter in Wheeling. The enforcement of the habitation ban creates a situation where these individuals are displaced with nowhere to go; once they are removed from one location they are barred from sleeping, cooking, and storing property in all other locations in the City of Wheeling.

5. Despite the fact that they had previously made numerous requests for the Defendants to consider exemptions, community members began making requests in the way requested by the Defendants at the January 16th City Council meeting.

6. On information and belief, there was a request made to the City to issue an exemption pursuant to 533.18(e) to exempt an encampment site located near the Nelson Jordan Center in Wheeling.

7. On the afternoon of January 17th, mere hours after the request having been submitted, Defendant Herron responded that “[i]n their current state, I don’t believe that either location [referring to the Nelson Jordan Center and Maintenance Trail sites] warrants an exemption.”

8. Although Defendants claim to have created an exemption process during the January 16th City Council meeting, no formal process was put in place for requesting exemption status. Instead, Defendant Herron left it up to Plaintiffs to interpret this vague exemption process. As stated above, multiple attempts were made both by Plaintiff's counsel and Plaintiffs in order to clarify the exemption process. At no point were Plaintiff or Plaintiff's counsel made aware that a simple email exchange between Defendant Herron and an unnamed third party was the extent of Wheeling's exemption process.

9. Plaintiff's counsel made multiple attempts to reach Defendant's counsel on January 17th in order to discuss the above stated exemption requests. However, Defendant's counsel chose instead chose to ignore those attempts.

10. At approximately 7:00 a.m. on January 18, 2024, police showed up at the Nelson Jordan location. On information and belief, putative class members were given approximately three hours to remove their belongings and told that if they did not comply they would receive citations and fines.

11. While Defendants provided notice for this action, their enforcement of the habitation ban leaves putative class members without remedy - with fewer shelter beds than people and no locations where they are permitted on public property, they have nowhere they can legally engage in the unavoidable realities of needing to eat and sleep. As outlined in Plaintiffs' Verified Complaint, such restriction is unconstitutional and requires remedy by this Court.

12. If the requested remedy is not granted, Plaintiffs and putative class members will be criminalized for existing as unhoused people in the City of Wheeling, and the threat of criminalization will be used to make them abandon their property or leave the City with nowhere to turn.

13. As detailed in the Verified Complaint, Plaintiffs are likely to prevail on the merits of their constitutional claims under both the United States Constitution and the West Virginia Constitution. As thoroughly detailed in the Verified Complaint, there is significant and relevant precedent which makes it appropriate for this Court to find that the habitation ban is unconstitutional.

14. The City of Wheeling has made no effort to identify alternative legal places for its homeless population to move to if encampments are destroyed. Without sufficient beds for Wheeling's homeless population, they are not able to comply with the habitation ban, regardless of the notice they are provided.

17. As described herein the Plaintiffs, and the putative class, will suffer the harm of unconstitutional criminalization unless the requested relief is granted – such harm is severe, unjust, and irreparable.

18. Granting the Plaintiffs the requested preliminary relief will not result in any foreseeable, serious harm to the Defendants or the public. To the contrary, the relief requested by Plaintiffs is contemplated by the challenged ordinance which permits exemptions to be made to the ban.

19. Granting the requested relief is in the public interest, as the public has an important interest in ensuring that the state and government officials respect the constitutional rights of all individuals, including those who are homeless.

20. A Memorandum in Support of this Motion will be forthcoming.

WHEREFORE, Plaintiffs respectfully request that this Court issue a Temporary Restraining Order and Preliminary Injunction halting the enforcement of Wheeling, West Virginia, Municipal Code § 533.18 until such time as the Defendants have met their

constitutional burdens as outlined in Plaintiffs' Verified Complaint – namely that the Defendants exempt certain locations or that there are enough beds in shelters to house the City of Wheeling's homeless population.

Respectfully submitted,
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