

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
TOLEDO DIVISION

DAD'S PLACE OF BRYAN OHIO,

Plaintiff,

v.

CITY OF BRYAN; MAYOR CARRIE  
SCHLADE, *in her official and personal  
capacities*; JAMIE MENDEZ, *in his official and  
personal capacities*; ANDREW J. WATERSON,  
*in his official and personal capacities*, DOUG  
POOL, *in his official and personal capacities*,

Defendants.

Civil Action No. 3:24-cv-00122-JZ

JURY TRIAL REQUESTED

**MOTION AND BRIEF IN  
SUPPORT OF PLAINTIFF'S  
MOTION FOR ORDER TO  
SHOW CAUSE OR FOR A  
TEMPORARY RESTRAINING  
ORDER AND PRELIMINARY  
INJUNCTION**

**INTRODUCTION**

Earlier today, the parties to this case held a Zoom conference with Magistrate Clay to see if differences could be worked out regarding the church's activity and the pending lawsuit. Counsel believes said conference would qualify as a "meet and confer" that this Court would undoubtedly want to occur before a Motion such as this one is filed. In addition, counsel believes that criminal charges are imminent, and therefore see it as their duty to their client to bring this Motion to the Court as soon as possible.

On January 24, 2024, this Court issued a clear and unambiguous Order forbidding Defendants from enforcing any alleged violations of the City's zoning or fire codes

without this Court's approval or the Church's agreement. Dkt. 5. Defendants are disregarding and willfully violating that Order by continuing to enforce the City's ordinances against Dad's Place and issuing a new citation against the Church for the very same 24-hour ministry that is the subject matter of this Court's Order. The Church now faces the threat of a \$1,000 per day fine if it does not cease its 24-hour ministry by May 1, 2024. Dad's Place therefore respectfully requests that the Court set a hearing on this matter and order the Defendants to show cause as to why they should not be held in contempt on the following grounds:

- Failure to comply with this Court's Order forbidding Defendants from enforcing any alleged violations of the City's zoning or fire codes without this Court's approval or the Church's agreement;
- Failure to comply with this Court's Order requiring Defendants to contact the Court to schedule a conference for any alleged urgent safety need to enforce the City's fire code.

Alternatively, Plaintiff hereby renews its previously filed motion for temporary restraining order and preliminary injunction and requests that the Court enjoin Defendants from unlawfully enforcing or applying the City's ordinances against the Church. Counsel for both parties met on April 25, 2024 in an attempt to resolve their differences but were unable to do so, leaving the Church no option but to seek this emergency relief. A Memorandum in support of this Motion follows.

## **FACTUAL BACKGROUND**

On January 23, 2024, this Court held a Zoom conference with the parties in response to a motion for a temporary restraining order and preliminary injunction filed by the Church seeking to enjoin Defendants from taking any enforcement action against the Church based on alleged violations of the City's fire and zoning codes. Dkt. 5. Counsel for both parties agreed to maintain the "status quo" pending further briefing and a hearing on the Church's Motion. Pursuant to this status quo agreement, the Court ordered the Church to continue its represented efforts to make its facilities as safe as possible. *Id.* As for Defendants, the Court held that reasonable "fire inspections are permitted," it unambiguously specified that Defendants "shall not enforce any alleged violations of the fire or zoning codes without Court approval or agreement of Plaintiff." *Id.* It went on to address the event of an alleged emergency health and safety issue by explaining "[s]hould Defendant find an urgent safety need to enforce the fire code, counsel should jointly contact Chambers to schedule another conference." *Id.*

In the three months since this Court issued its Order, the Church has continued its efforts make its building as safe as possible and to work cooperatively with the City as much as possible. To this end, the Church has cured all previously alleged fire code violations, as conceded by the City in a fire inspection report dated March 5, 2024.<sup>1</sup> The

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<sup>1</sup> The Church notes that while the March 5, 2024 fire inspection did not violate the letter of the Order, which permits such inspections, it did violate the spirit of it. City officials arrived at the Church at 5:30am without providing any notice to the Church or its counsel that they would be conducting such an inspection at such an unusual time despite

Church also filed an Application for Certificate of Occupancy with the Ohio Department of Commerce, Division of Industrial Compliance seeking to obtain the State's approval to operate its 24-hour ministry. As of the date of this filing, the State is still processing the Church's application.

Additionally, the Church engaged in good faith settlement discussions with Defendants at a Mediation with Magistrate Judge Clay on February 1, 2024. Hoping to resolve this case and in reliance on Defendants' representations to this Court that they would take no further enforcement actions against the Church before this Court held a hearing on the Church's motion for a preliminary injunction, the Church agreed to cancel the preliminary injunction hearing originally scheduled before this Court on March 4, 2024. With the understanding that the parties had agreed to maintain the status quo as set forth in the parties' correspondence with the Court and the Court's previous Order, the Court denied the Church's motion for a preliminary injunction without prejudice on February 26, 2024. The Court reiterated its understanding that the parties were "continu[ing] to work together cooperatively" in a March 26, 2024 docket entry ordering another status update at the end of May.

However, the City's latest actions indicate it is not working cooperatively with the Church as it represented to both the Court and this Magistrate. It has instead renewed its

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Defendants' counsel representing to the Court and the Church that notice would be given prior to conducting any inspections.

efforts to shut down the Church's 24-hour ministry. On April 24, 2024, Defendant Poole, Assistant Fire Chief Jeremy Miklovic, and City police officer arrived at Dad's Place at 5:30am for an unannounced inspection. They claimed this inspection was a follow-up to the City's previous unannounced 5:30am inspection on March 5, 2024, but the report from that inspection indicated no further inspection was to be scheduled. After completing the inspection, the City issued a citation to the Church alleging two fire code violations: (1) the City renewed its previous position that the Church's 24-hour ministry constitute an unlawful change of use; and (2) the City alleged for the first time that the Church must install an automatic sprinkler system in its building. The citation goes on to threaten fines of \$1,000 per day if the Church does not immediately halt its 24-hour ministry beginning on May 1, 2024. It further threatens an additional \$1,000 fine if the Church does not immediately post the citation in a prominent location. At no point prior to this inspection did the City give any indication that it intended to institute any new enforcement actions against the Church. Nor did the City provide any notice to the Court of its intent to do so.

This latest enforcement action comes on the heels of an immense tragedy suffered by the Church last week. Jamy Shaffer was a congregant who had been previously participating in the Church's Rest and Refresh ministry each night. While staying at the Church overnight, the congregation discovered that Mr. Shaffer suffered from a medical condition that caused him to have seizures while he slept. Wishing to avoid any future

enforcement actions by the City for Mr. Shaffer's repeated stays at the Church overnight, the Church arranged for Mr. Shaffer to stay in an apartment the Church was leasing for one of its ministry volunteers. Mr. Shaffer stated he preferred staying at the Church and felt safer staying at the Church because he did not want to be alone at night given his medical condition. However, fearing retribution by the City, the Church asked Mr. Shaffer to set aside his reservations and relocate to the apartment. Tragically, on April 12, 2024, Mr. Shaffer suffered another seizure episode while staying alone at the apartment and passed away. But for the City's pressure on the Church over the last several months to cease its 24-hour ministry, Mr. Shaffer would have been at the Church on the night he passed and would have been able to obtain life-saving medical treatment because of the presence of other congregants. Moreover, the City's repeated unannounced inspections and threats of new enforcement actions against the Church has traumatized its congregants and deprived them of what little peace of mind they possessed given their various dire life circumstances that led them to come to the Church.

### GOVERNING LAW

"Courts have inherent authority to enforce their judicial orders and decrees in cases of civil contempt." *Liberis v. Craig*, 1988 WL 37450, at \*5 (6th Cir. 1988). And "[c]ontempt is serious." *Gascho v. Glob. Fitness Holdings, LLC*, 875 F.3d 795, 799 (6th Cir. 2017); see also *Int'l Longshoremen's Ass'n, Local 1291 v. Phila. Marine Trade Ass'n*, 389 U.S. 64, 76 (1967) (describing a court's contempt power as a "potent weapon"). This is

especially true when such an order is necessary to remedy unconstitutional actions. The need to remedy an unconstitutional condition provides the Court with “an additional basis for the exercise of broad equitable powers.” *Spallone v. United States*, 493 U.S. 265, 276 (1990).

A party seeking a civil contempt order “must demonstrate by clear and convincing evidence that the opposing party knowingly violated a definite and specific order of the court.” *Gascho*, 875 F.3d at 800. Thus, a party must present clear and convincing evidence that (1) there is “a definite and specific order of the court requiring [defendants] to perform or refrain from performing a particular act”; (2) that defendants had “knowledge of the court’s order”; and (3) that defendants violated that order. *NLRB v. Cincinnati Bronze, Inc.*, 829 F.2d 585, 590 (6th Cir. 1987). Clear and convincing evidence exists when the movant “place[s] in the ultimate factfinder an abiding conviction that the truth of its factual contentions are highly probable.” *Colorado v. New Mexico*, 467 U.S. 310, 316 (1984).

The “definite and specific” requirement means that defendants “fully under[stood] the meaning of a court order and yet [chose] to ignore its mandate.” *Gascho*, 875 F.3d at 800. If the movant demonstrates that defendants knowingly violated a definite and specific order of the court, “the onus shifts to [defendants] to demonstrate that [they were] unable to comply with the court’s order.” *Id.* They “must show categorically and in detail why [they are] unable to comply with the court’s order.” *NLRB v. Bannum, Inc.*, 93 F.4th 973, 980 (6th Cir. 2024). The burden of proving impossibility of complying with

an order “is difficult to meet.” *Glover v. Johnson*, 934 F.2d 703, 708 (6th Cir. 1991). Notably, defendants’ alleged good-faith effort to comply with a court order is not a defense to a civil contempt action. *Id.*

Civil contempt sanctions serve both “to coerce an individual to perform an act” and “to compensate an injured complainant.” *United States v. Bayshore Assocs., Inc.*, 934 F.2d 1391, 1400 (6th Cir. 1991). “[W]illfulness is not an element of civil contempt, but the state of mind of the contemnor is relevant . . . in the consideration of sanctions.” *Gnesys, Inc. v. Greene*, 437 F.3d 482, 493 (6th Cir. 2005). To these ends, a court should “frame [the] sanctions so that they fit the violation in question.” *Am. Consol. Indus. V. Blasingim*, 2022 WL 17687491 at \*24 (N.D. Ohio Dec. 15, 2022). “In fashioning sanctions for civil contempt, district courts should consider the character and magnitude of the harm threatened by continued contumacy, and the probable effectiveness of any suggested sanction in bringing about the result desired.” *United States v. United Mine Workers of Am.*, 330 U.S. 258, 304 (1947).

## ARGUMENT

### **A. Defendants’ disregard of this Court’s Order necessitates a finding of contempt.**

On January 24, 2024, this Court issued an Order forbidding Defendants from “enforce[ing] any alleged violations of the fire or zoning codes without Court approval or agreement of Plaintiff” and requiring the parties to “jointly contact [the Court] to schedule another conference” if Defendants alleged the existence of “an urgent safety



need to enforce the fire code.” Dkt. 5. The Order thus unambiguously forbids Defendants from doing the very thing they have now done by enforcing alleged fire code violations against the Church without this Court’s approval or the Church’s agreement. Moreover, the Defendants made no efforts to schedule a conference with the Court to discuss these new alleged violations. Defendants cannot argue they did not know about the Order or its requirement because the Order was created based on Defendants own representations and with Defendants’ express agreement to abide by the Order.

Further, the Court has given no indication that this Order was no longer in effect while the parties engaged in settlement discussions, so the burden is now on Defendants to explain why they can no longer comply with the Order’s requirement that they contact the Court to schedule a conference before pursuing any enforcement action against the Church. This is a burden they cannot meet. The status quo of the Church operating its 24-hour ministry has remained the same for the last three months. If anything, the Church has made its building even safer by curing all previously alleged fire code violations. The Church has also leased multiple apartments for use by the Church’s volunteers or other congregants who might find themselves in need of a temporary residence. Additionally, the Church has filed an application with the Ohio Department of Commerce seeking to further confirm the lawfulness of its ministry. There is no emergency that has prompted the City’s actions that has not existed for the last few months except for the City’s enduring and overt hostility to the Church’s ministry. The City’s actions have already led

to the death of one congregant and could lead to more tragedies if the City succeeds in shutting the Church's doors.

Combining the very real life-or-death consequences of Defendants' actions with the Church's fundamental rights under the First Amendment and Ohio law to engage in religious exercise, the magnitude of the irreparable harm threatened by Defendants' continued defiance of this Court's order is substantial and imminent. This Court must put a stop to Defendants' egregious efforts halt a religious ministry that seeks nothing more than to be a blessing to the most vulnerable in the Bryan community. Considering this Court's broad discretion to fashion a remedy that will prompt Defendants' compliance, Plaintiffs defer to the Court to implement appropriate sanctions that will put an end to Defendants' injurious behavior.

**B. Alternatively, this Court should enter a temporary restraining order and preliminary injunction to preserve the status quo.**

Should this Court hold that contempt sanctions are not justified by Defendants' conduct, the Church alternatively renews its previous request that the Court issue a temporary restraining order and preliminary injunction for the reasons and on the terms set forth in the Church's previous filings, which it hereby incorporates by reference. *See* Dkt. 2. The Church additionally requests that no further inspections of the Church take place without Defendants first obtaining leave from the Court or agreement by the Church. The Church faces the imminent threat of new enforcement actions by the City on May 1, 2024 and new sanctions, including daily fines of \$1,000 and new criminal

charges, absent relief from this Court. Moreover, forcing the Church's congregants back on the streets will leave these vulnerable people with nowhere to go and no one to care for them. At a minimum, this Court should reaffirm its previous Order and require all parties to maintain the status quo until this dispute can be fully briefed and heard by this Court.

### CONCLUSION

For these reasons, Dad's Place respectfully request that the Court enter an order directing Defendants to show cause why they should not be held in contempt and sanctioned for failing to comply with the Court's January 24, 2024 Order, as described above.

Alternatively, and for the reasons set forth in its previous motion, the Church renews its request for a temporary restraining order and preliminary injunction to enjoin the Defendants, their officers, agents, and employees, and all other persons acting in concert with them from enforcing the City's ordinances against the Church, so that:

1. Defendants must not prohibit the Church from keeping its doors open 24 hours a day to provide shelter to people.
2. Defendants must not prohibit the Church from using the entirety of its property for religious purposes.
3. Defendants must not conduct any further inspections of the Church's property without first obtaining leave from the Court or agreement from the Church.

4. Defendants must treat the Church on equal terms with other secular or nonreligious assemblies or institutions.
5. Defendants must provide a reasonable accommodation such that the handicapped who take shelter in the Church may continue to use and enjoy their dwelling in the Church.

Dated: April 25, 2024

/s/ Philip D. Williamson

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*Counsel for Plaintiff Dad's Place of Bryan, Ohio*

*\*Pro Hac Vice*

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was filed with the Court's ECF system this 25<sup>th</sup> day of April, 2024. Parties may access the filing via that system.

/s/ Stephen D. Hartman