

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

RAYMOND SAGER, ANTOINE)
RANDLOPH, GARY WEST and)
WILLIAM DUERR, individually)
and on behalf of a class of) Civil Action No.: _____
similarly-situated)
individuals,)
)
Plaintiffs,)
)
v.)
)
CITY OF PITTSBURGH,)
)
Defendant.)
_____)

**PLAINTIFFS' MOTION FOR
TEMPORARY RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION**

1. Plaintiffs hereby move, pursuant to Fed. R. Civ. P. 65, for entry of a Temporary Restraining Order and/or Preliminary Injunction to preliminarily enjoin Defendant, and its officials, employees, agents, assigns and all those working in concert with the City, from:
 - a. conducting property sweeps that confiscate plaintiffs' and other homeless people's property until and unless the City adopts a policy that provides adequate pre-deprivation notice reasonably calculated to inform homeless people 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 plaintiffs and other homeless people.

2. Plaintiffs incorporate herein by reference the facts alleged in the Verified Complaint.
3. Plaintiffs also incorporate herein by reference the legal arguments contained in the Memorandum in Support of Motion for Temporary Restraining Order and/or Preliminary Injunction. Plaintiffs have satisfied the four-part test for granting a preliminary injunction.
4. As is more fully set forth in the accompanying legal memorandum, plaintiffs are likely to prevail on the merits of their Fourth and Fourteenth Amendment claims.
5. Plaintiffs will suffer irreparable harm unless the requested injunctive relief is granted.
6. Since the defendants are governmental units, they have no legally-cognizable interest in unreasonably seizing plaintiffs' personal property or in doing so without attendant due process protections. Granting plaintiffs the requested preliminary relief will not result in any foreseeable, serious harm to defendants or the public.
7. It is in the public interest for government officials to respect all people's constitutional rights, including those who happen to be homeless.
8. On Monday morning, May 5, 2003, plaintiffs, through undersigned counsel, contacted the Solicitor for the

defendant, City of Pittsburgh, to request that the City agree to postpone the sweeps announced for this week until the parties can agree on procedures to protect plaintiffs' constitutional rights. Undersigned counsel also this morning faxed a letter to relevant City officials, a copy of which is attached hereto as Appendix 1. Late this morning, the Solicitor advised the undersigned by telephone that the City would not postpone the sweeps or change its procedures.

9. Plaintiffs' counsel advised defendants' attorney that he would present a request for TRO and/or Preliminary Injunction this afternoon and that he would fax all relevant legal papers as soon as possible.

WHEREFORE, Plaintiffs respectfully request that this Court issue a TRO/preliminary injunction to enjoin Defendant City of Pittsburgh, and its officials, employees, agents, assigns and all those working in concert with the City from:

- a. conducting property sweeps that confiscate plaintiffs' and other homeless people's property until and unless the City adopts a policy that provides adequate pre-deprivation notice reasonably calculated to inform homeless people 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, plaintiffs and other homeless people.

Respectfully submitted,

Witold J. Walczak
PA ID No. 62976
American Civil Liberties Foundation
of PA
313 Atwood Street
Pittsburgh, PA 15213
(412) 681-7864

May 5, 2003

CERTIFICATE OF SERVICE

I, Witold J. Walczak, hereby certify that on this ____ day of May, 2003, a copy of the foregoing Motion for Temporary Restraining Order and/or Preliminary Injunction, along with the Memorandum in support thereof and the Verified Complaint, were faxed to the following:

Jacqueline Morrow, Esq.
Solicitor, City of Pittsburgh
303 City-County Building
414 Grant Street
Pittsburgh, PA 15219
Fax #: 412-255-2285

Attorney for Defendants

Witold J. Walczak

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RESTRAINING ORDER

AND NOW, this ____ day of _____, 2003, after due consideration of Plaintiffs' Verified Complaint, Motion for Temporary Restraining Order and/or Preliminary Injunction and Memorandum in support thereof; and after hearing from defendants' counsel; and plaintiffs having appeared before the Court by their attorney and presented argument; and it further appearing that plaintiffs will suffer immediate and irreparable harm, injury and damage unless defendants are enjoined and restrained as requested in the morion for a temporary restraining order and/or preliminary injunction, it is hereby ORDERED, ADJUDGED and DECREED as follows:

1. The Court makes the following findings:

a. There is a likelihood that plaintiffs will succeed on the merits of their First Amendment claim.

b. Substantial and irreparable injury to plaintiffs and to the public at large will follow unless this Order is entered;

c. As to the relief granted below, greater injury will be inflicted upon plaintiffs and the public by the denial of relief than will be inflicted upon defendants by the granting of relief;

d. Plaintiffs have no adequate remedy at law;
and

e. The public interest will be served by the injunction.

2. A Temporary Restraining Order be, and hereby is, issued, as provided under Fed. R. Civ. P. 65(b), enjoining Defendant City of Pittsburgh, together with its employees, representatives, agents, servants, assigns and all others acting on its behalf or in concert with it, from:

a. conducting property sweeps that confiscate plaintiffs' and other homeless people's property until and unless the City adopts a policy that provides adequate pre-deprivation notice reasonably calculated to inform homeless people 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, plaintiffs and other homeless people.

4. This Temporary Restraining Order shall remain in effect for ____ days.

5. Since no financial harm is likely to result to the Defendants as the result of this injunction, the Rule 65(c) security requirement is hereby waived.

6. A hearing on Plaintiffs' motion for preliminary injunction shall be held at __:___.m. on the ____ day of _____, 2003, in Courtroom ____, U.S. Courthouse, _____

BY THE COURT:

U.S.D.J.