

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

CHICAGO FREEDOM SCHOOL, et al.	)	
	)	
Plaintiffs,	)	No:
	)	
v.	)	Judge
	)	
CITY OF CHICAGO, et al.,	)	
	)	
Defendants.	)	

PLAINTIFFS’ MOTION FOR A PRELIMINARY INJUNCTION

Plaintiff Chicago Freedom School (“CFS”), is a well-respected and beloved youth-centered not-for-profit organization that provides critical support and educational programs to young people in the City of Chicago. CFS provides a space where young people and adult allies can study the work of past movements, deepen their understanding of current social problems, build new coalitions, and develop strategies and coalitions for creating a just world. CFS has a long history of supporting campaigns and organizing in opposition to racially motivated police violence and in support of #BlackLivesMatter organizing.

On May 30, 2020, thousands of people came to downtown Chicago to protest the unrelenting police violence, anti-Black racism and white supremacy in Chicago and throughout the U.S. Many of the young people who work with and participate in CFS’ programming joined the demonstrations, and CFS as an organization fully supported people’s condemnation of the police murders of George Floyd, Breonna Taylor, other Black people killed at the hands of police.

On May 30th, CFS opened up its space in support of young people protesting and the demonstrations. It promoted on social media that it was providing space for a brief rest, access to

bathrooms, phone chargers and commercially prepared food.¹ This support and these services furthered CFS' long-standing mission to support Chicago-based social justice movements. In providing such support to protestors and describing its intentions and actions in social media posts, CFS affirmed its support for the protests against racially motivated police violence. These services and these posts were protected First Amendment expressive conduct.

The City of Chicago and members of the Chicago Police Department (CPD) responded to the May 30th uprisings with violence, an arguably unlawful curfew,² road closures and the suspension of public transportation in the downtown area.³ As a result, many of the young people affiliated with CFS were stranded in downtown Chicago without any viable means to get home safely, quickly and without being under the threat of arrest and further police violence. In response, CFS leapt into action and reached out to its community members, who came to CFS premises and provided rides home for young people.⁴

Late in the evening on May 30, in an unlawful, retaliatory response to CFS' political expression and its support of protestors, the City of Chicago—and specifically members of the CPD and the Department of Business Affairs and Consumer Protection (BACP)—conducted an unlawful raid of CFS' space. City officials demanded entry to CFS' space without a warrant, photographed the premises, falsely deemed this not-for-profit youth organization a “food retail establishment” and imposed upon CFS a “CEASE AND DESIST” order that makes serving food on its premises an arrestable offense. The cease and desist order remains in place today, putting

¹ See Group Ex. 1, CFS' Social Media Posts from May 30, 2020.

² Mayor Lightfoot did not issue a tweet announcing the 9 p.m. curfew until 8:40 p.m. that same evening. Chicago's Office of Emergency Communications (“OEMC”) did not issue a tweet announcing the 9 p.m. curfew until 9:04 p.m. that same evening. See Group Ex. 2, Mayor Lightfoot's tweet on May 30, 2020.

³ The OEMC announced *via* tweet that there were no CTA trains or buses running in the Chicago Loop or River North area. In order for people to find a bus they would have to walk miles away from the Loop and River North area to 22nd and Wentworth, Grand Avenue and Halstead and North and Clark for CTA service. See Group Ex. 3, CTA's Tweet.

⁴ See Group Ex. 4, Tweets from Essence Jade at 6:21 p.m., 10 p.m. and 10:46 p.m.

CFS's staff and participants at risk of arrest whenever it provides food for program participants, regardless of the fact that the food is not prepared at CFS. It also threatens to fine CFS \$500 to \$1,000 for every instance when food is provided to people, which could ultimately bankrupt and shut down this not-for-profit entirely.

Pursuant to Rule 65 of the Fed. R. Civ. P., CFS seeks a preliminary injunction ordering the City of Chicago to: (1) rescind the cease and desist order subjecting anyone who serves food on CFS premises to arrest; (2) provide CFS with all pictures (and all existing copies of pictures) taken during the May 30, 2020 raid of CFS; and (3) prohibit CPD and City regulators from conducting future unlawful raids of CFS.⁵

Preliminary injunctions are granted in extraordinary situations where there is a clear showing of need. *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997); *Cooper v. Salazar*, 196 F.3d 809 (7th Cir. 1999). The need here could not be more obvious or more immediate. For close to 20 years, CFS has served as a safe space for young Black and Brown people to seek refuge, educational programs, adult allies and support, and community. Like several other not-for-profit organizations providing services to youth from sports teams to church groups, CFS regularly provides food for participants during trainings, strategy sessions and other community building events. Chicago's imposition of a retaliatory cease and desist order imperils CFS' essential functions and violates CFS' Constitutional rights.

⁵ Prior to filing this motion, undersigned counsel requested that the City voluntarily take these actions. The City failed to respond in a timely manner, thus necessitating the request for emergency relief. See Ex. 5.

FACTUAL ALLEGATIONS

On May 30, 2020, the Chicago Freedom School was open serving as a drop-in center in the midst of the massive demonstrations in Chicago's downtown area attended by thousands of people who were protesting the recent police murders of George Floyd, Breonna Taylor, Tony McDade and other Black people in the City of Chicago and across the U.S.

Specifically, at 5:30 p.m, the CFS announced on Facebook that it was open and offering people a place for "quick release and restoration," access to a bathroom, phone chargers, as well as pizza, stating it was prioritizing space and services for young people and people of color. CFS suggested that if people were interested in donating they could make a small donation at their website to facilitate CFS' ordering pizza and bottled water since it was out of stock.⁶ Minutes before 7 p.m. that day, CFS posted again on Facebook thanking people for helping the CFS open up. The post also thanked people for donating which enabled the CFS employees and volunteers to purchase pizza, snacks and water. The post indicated that the CFS was committed to remaining open until 9 p.m. This post also included photos depicting that CFS was serving commercially bought take-out pizza in take-out boxes, and that it was offering juice packs, Clif bars, bags of peanuts and other snacks. In the background of these photos, there were signs stating "Black Lives Matter" and "Free Them All."⁷ None of the food items depicted in the pictures or distributed at CFS was prepared or packaged at CFS.⁸

Young people, the majority of whom were Black and Brown participants in the protests, visited the CFS for rest, services and the supplies being offered by the CFS. A few of the young people received bandages and antiseptic to tend to wounds they sustained during the

⁶ Group Ex. 1.

⁷ Group Ex. 1.

⁸ See Group Ex. 6, Declaration of Plaintiff Tony Alvarado-Rivera and, Declaration of Plaintiff Jacquelyn Hamilton (to be forthcoming).

demonstrations. In light of suspended CTA service, road closures, lack of taxis and ride share services transporting people from the downtown area, and the sudden imposition of a curfew, several people in the downtown area, including many youth who live on the south and west sides, had no viable means of getting home.⁹ In response, the CFS reached out to supportive community members and asked for people to transport youth at CFS' premises home. Several youth at CFS were using social media to inform others that CFS was arranging for such rides, in addition to providing youth access to food, water and other supplies.¹⁰

At approximately 11 p.m. that night, individual Defendants from the BACP drove to 719 S. State with a Chicago Police Squad and parked next to the building. Upon their arrival at the building, Defendant Does, who were in CPD uniforms, armed, and wearing their riot helmets, walked up to Plaintiff Hamilton who was present at the front entrance of the building. Defendant Does demanded Plaintiff Hamilton allow them to enter the building and into CFS' premises. A Defendant Doe claimed that they received a report that CFS was housing and feeding protestors. Plaintiff Hamilton tried to talk with the Defendant Does and explain the services provided by CFS and ask why they needed to search CFS' premises. The Defendant Does grew increasingly aggressive, repeatedly demanding to enter the building and insisting that Plaintiff Hamilton had to let them in.¹¹

At one point, Defendant Sneed arrived at the entrance of the building and walked in between Plaintiff Hamilton and the Defendant Does and began talking with Hamilton. Defendant Sneed told the Defendant Does to calm down and that he would handle this. As Plaintiff

⁹ *Id.*

¹⁰ See Group Ex. 4.

¹¹ See Group Ex. 6.

Hamilton was asking questions of Defendant Sneed and continuing to refuse the individual Defendants entry, one of the Defendant Does attempted to lunge at Plaintiff Hamilton.¹²

Plaintiff Alvarado-Rivera joined Plaintiff Hamilton at the front entrance of the building and attempted to speak with the individual Defendants. BACP Defendants informed Plaintiffs Alvarado-Rivera and Hamilton that CFS was violating its business license and they needed to inspect CFS' premises immediately. They also reiterated that they had received reports that CFS was housing and feeding protestors. Plaintiffs Alvarado-Rivera and Hamilton repeatedly tried to explain to the individual Defendants that CFS was a not for profit, and it was not a commercial business, to no avail.¹³ Plaintiff Alvarado-Rivera also tried to explain the purposes of CFS and the fact that CFS does not house any individuals. The individual Defendants communicated in an insistent, disrespectful and intimidating manner. They refused to listen to Plaintiff Alvarado-Rivera's description of CFS' activities and demanded entry to CFS' premises. The Defendant Does continued their aggressive push to enter the building and CFS' premises declaring words to the effect of "let's go," "we need to get moving," and "we've been out here long enough."¹⁴

The individual Defendants did not have a warrant to enter and search CFS' premises. There was no probable cause, reasonable suspicion or legal justification to warrant the individual Defendants search of CFS' premises.

BACP defendants, accompanied by Defendant Does, gained access and searched CFS' premises, taking pictures of the interior of CFS' premises, including the pizza boxes and all the pictures on the wall. The individual Defendants did not find any evidence that employees or

¹² See Group Ex. 6.

¹³ *Id.* .

¹⁴ *Id.*..

volunteers of CFS were preparing food at CFS. Neither Plaintiffs Hamilton, Alvarado-Rivera nor any other person present at CFS prepared any food or drink that was provided to any individuals present at CFS on May 30th.¹⁵

Despite the lack of any evidence that food was being prepared at CFS, Defendants Sneed and Navarro, issued an order to “CEASE AND DESIST” to CFS in which they falsely claimed that CFS failed to comply with Chi. Mun. Code § 4-4-10 by “Preparing and serving food on the premises not described in the license for which a Retail Food Establishment Code 1106 is required.” The order to “CEASE AND DESIST” also threatened that CFS would be charged between \$500.00 and \$1,000.00 every single day if CFS continued in the alleged, violations of the Chi. Mun. Code. The “CEASE AND DESIST” order also directed the Superintendent of the Police to “arrest any and all agents, and employees of the CFS if found engaging in the business or occupation of Preparing and Serving food on premises, not described on license without the required Retail Food Establishment license, properly displayed on said premises.” The order indicated that “[t]his order shall remain in full force and effect until the required license has been procured.”¹⁶ As the individual Defendants were leaving the premises, a Defendant from the BACP threatened Plaintiffs Alvarado-Rivera and Hamilton that if they returned and found the food observed on the premises, which included pizza slices located in the restaurant-bought pizza boxes, that Plaintiffs Alvarado-Rivera and Hamilton would be arrested.¹⁷

As part of the CFS’s programming, it regularly provides food to its youth and participants. This food is not prepared and served by CFS nor is it sold to people who participate in its programs. Rather, it is purchased by employees and volunteers at restaurants and stores and

¹⁵ Ex. Group Ex. 6.

¹⁶ See Group Ex. 7, the BACP Cease and Desist Order.

¹⁷ See Group Ex 6.

provided to youth and others in CFS' space for free. Distribution of commercially prepared food is a routine practice at youth organizations, including at the Boys and Girls Clubs of Chicago, YMCAs, and Boys or Girl's Scout troops. Upon information and belief, the BACP has not issued Cease and Desist orders to other youth organizations in the City of Chicago for providing their youth commercially prepared food even though they do not have a Retail Food Establishment License, nor has the BACP required other youth serving organizations to secure Retail Food Establishment Licenses.

ARGUMENT

A plaintiff must show: "(1) some likelihood of succeeding on the merits, and (2) that is has 'no adequate remedy at law'" (3) it will "suffer irreparable harm if preliminary relief is denied." *Abbott Laboratories v. Mead Johnson & Co.*, 971 F.2d 6, 11 (7th Cir. 1992). If the moving party meets this burden, then the court must consider the harm that the nonmoving party will suffer if preliminary relief is granted, balancing such harm against the irreparable harm the moving party will suffer if relief is denied, as well as "the public interest, meaning the consequences of granting or denying the injunction to non-parties." *Id.* at 11-12.

CFS prevails on each factor, as detailed below. Success on the merits is assured because the City of Chicago has retaliated against CFS for its exercise of its right guaranteed by the First Amendment to the U.S. Constitution and imposed upon it an unreasonable infringement of its political expression. CFS faces irreparable harm because ongoing First Amendment violations always constitute irreparable harm and because the cease and desist orders threaten CFS' ability to fulfill its mission. The balance of harms favors CFS because the protection of constitutional rights is always in the public interest. Thus, this Court must act in order to protect CFS from ongoing violations of its First Amendment Rights.

I. CFS Will Succeed on the Merits of Its First Amendment Claims

In order to demonstrate a substantial likelihood of success on the merits, a plaintiff must demonstrate “a plausible claim on the merits.” *Hoosier Energy Rural Elec. Co-op., Inc. v. John Hancock Life Ins. Co.*, 582 F.3d 721, 725 (7th Cir. 2009). Courts should not “improperly equat[e] ‘likelihood of success’ with ‘success.’” *Michigan v. U.S. Army Corps of Eng’rs*, 667 F.3d 765, 782 (7th Cir. 2011) (quoting *University of Texas v. Camenisch*, 451 U.S. 390, 394 (1981)). “[T]he threshold for establishing likelihood of success is low.” *Id.* A plaintiff need “only to present a claim plausible enough that (if the other preliminary injunction factors cut in their favor) the entry of a preliminary injunction would be an appropriate step.” *Id.* at 783. To determine whether a plaintiff’s legal arguments has a likelihood of succeeding, courts use whatever existing test would be employed to decide the merits of the case. *See S./Sw. Ass’n of Realtors v. Evergreen Park, IL.*, 109 F.Supp.2d 926, 927 (N.D. Ill. 2000).

A. CFS’ Claim that the City of Chicago’s Raid of Its Premises and Imposition of a Cease and Desist Order Constitute Unlawful Retaliation in Violation of the First Amendment Will Succeed on the Merits

To succeed on a First Amendment retaliation claim, Plaintiffs must show that the Defendants took action to punish them for engaging in constitutionally protected conduct, such as speech or political expression. *Babcock v. White*, 102 F.3d 267, 275 (7th Cir. 1996). In particular, Plaintiffs must demonstrate that (1) their conduct was constitutionally protected and (2) their conduct “was a ‘substantial factor’ or ‘motivating factor’ in the defendant[s]’ challenged actions.” *Thomsen v. Romeis*, 198 F.3d 1022, 1027 (7th Cir. 2000); *see also Mt. Healthy Bd. of Educ. v. Doyle*, 429 U.S. 274, 287 (1977). Each factor is present here.

1. CFS’ May 30, 2020 Conduct Was Constitutionally Protected

On May 30, 2020, CFS engaged in two types of constitutionally protected conduct. First, CFS engaged in protected political expression when it provided space, support, and food to protesters. Second, CFS voiced its support for the uprisings and its solidarity with protests against racist police violence and in support of #BlackLivesMatter on social media. Each type of conduct is protected by the First Amendment.

CFS' provision of space, food, sustenance, care and transportation to those protesting on Saturday, May 30th was a form of assembly protected by the First Amendment. *See NAACP v. Button*, 371 U.S. 415 (1963). At issue in *Button*, was whether the NAACP's enlistment of plaintiffs for litigation whom they met at community meetings organized to discuss desegregation efforts constituted unlawful solicitation of legal business in contravention of Virginia-state-law protected constitutional expression. The U.S. Supreme Court, in this landmark decision, found that such activity was protected by First Amendment declaring:

the First Amendment also protects vigorous advocacy, certainly of lawful ends, against governmental intrusion. *Thomas v. Collins*, 323 U.S. 516, 537; *Herndon v. Lowry*, 301 U.S. 242, 259-264. Cf. *Cantwell v. Connecticut*, 310 U.S. 296; *Stromberg v. California*, 283 U.S. 359, 369; *Terminiello v. Chicago*, 337 U.S. 1, 4. In the context of NAACP objectives, litigation is not a technique of resolving private differences; it is a means for achieving the lawful objectives of equality of treatment by all government, federal, state and local, for the members of the [Black] community in this country. It is thus a form of political expression.

Button, 371 U.S. at 429. In so ruling, the Supreme Court recognized that expressive conduct protected by the First Amendment comes in many different forms, beyond just the expression of words, but also by acts of association for political ends. As the Court noted:

We need not, in order to find constitutional protection for the kind of cooperative, organizational activity disclosed by this record, whereby [Black people] seek through lawful means to achieve legitimate political ends, subsume such activity under a narrow, literal conception of freedom of speech, petition or assembly. For there is no longer any doubt that the First and Fourteenth Amendments protect certain forms of orderly group activity. Thus we have affirmed the right "to engage in association for the advancement of beliefs and ideas."

Id. at 430.

In addition to its ruling in *Button*, the Supreme Court has repeatedly found that a diverse array of actions undertaken by non-profit and advocacy organizations are protected under the First Amendment. In *NAACP v. Alabama*, 357 U.S. 449, 460 (1958), the Court protected the civil rights organization from revealing its membership lists, affirming the organization’s “freedom to engage in association for the advancement of beliefs and ideas.” *Id.* at 460; *see also Village of Schaumburg v. Citizens for a Better Environment*, 444 U.S. 620, 633 (1980) (finding that soliciting donations and making charitable contributions are protected under the First Amendment); *Thomas v. Collins*, 323 U.S. 516, 538 (1945) (finding that regulations imposed on a union related to member solicitation violated the First Amendment); *Meyer v. Grant*, 486 U.S. 414, 422 (1988) (quoting *Schaumburg*, 444 U.S. at 632) (“ . . . communication of information, the dissemination and propagation of views and ideas, and the advocacy of causes—that are within the protection of the First Amendment.”); *Reed v. Town of Gilbert, Ariz.*, 576 U.S. 155, 163, 164–65 (2015) (holding that a church’s posting of temporary signs to announce services was protected under the First Amendment from a municipal ordinance that imposed “content-based” restrictions); *Citizens United v. Fed. Election Comm’n*, 558 U.S. 310, 365 (2010) (“No sufficient governmental interest justifies limits on the political speech of nonprofit or for-profit corporations”); *In re Primus*, 436 U.S. 412, 428 (1978) (protecting a nonprofit’s solicitation of prospective litigants under the First Amendment as “a form of political expression” and “political association.”); *United Transp. Union v. State Bar of Mich.*, 401 U.S. 576, 585–86 (1971) (“collective activity . . . to obtain meaningful access to the courts is a fundamental right within the protection of the First Amendment.”); *Fed. Election Comm’n v.*

Wisconsin Right To Life, Inc., 551 U.S. 449, 457 (2007) (holding that a nonprofit corporation was protected under the First Amendment to air “issue advocacy... advertisements”).

Here, CFS’ actions when providing protestors with a space to rest, sustenance and other necessities was a form of “orderly group activity” intended to support the movement to eradicate racist police violence and anti-Black racism gripping the nation. The actions also furthered its mission to serve and build the capacities of social justice organizers and leaders. Thus, CFS’ actions were protected First Amendment activity.

CFS’ posts on Facebook regarding its services ensured its community knew that it was open and people were welcome to come to its space for “quick release and restoration,” as well as to use their bathrooms, use their phone chargers and eat pizza was also expressive speech.¹⁸ The posts which included pictures of signs proclaiming “Black Lives Matter” and “Free Them All,” popular affirmations and declarations of the current organizing moment, are also clearly expressive speech. *See Packingham v. North Carolina*, 137 S. Ct. 1730, 1737 (2017); *Doe v. Prosecutor*, 705 F.3d 694, 697 (7th Cir. 2013) (“The statute clearly implicates Doe’s First Amendment rights. . . . [It] precludes expression through the medium of social media. . . .”); *see also Knight First Amendment Inst. at Columbia Univ. v. Trump*, 928 F.3d 226, 236 (2d Cir. 2019) (“As a general matter, social media is entitled to the same First Amendment protections as other forms of media.”). Thus, CFS engaged in constitutionally protected conduct when it posted on its social media that it was serving food and offering shelter to youth trapped downtown in the midst of tense protests on May 30th and it clearly indicated its support of the protests by including the political signs in the posts.

¹⁸ See Group Ex. 1.

2. CFS' Social Media Posts and Political Activities Motivated City Officials Actions on May 30, 2020

CPD and BACP's search of CFS' premises to determine whether CFS was abiding by the Chi. Mun. Code regarding food distribution was an illegal, pretextual justification to punish CFS for its support of protests against police violence and its support of young Black and Brown people who participated in the demonstration that evening. The timing of such an investigation reveals that the individual Defendants did not have valid concerns regarding CFS' actions in distributing commercially prepared food, but instead were seeking to retaliate against CFS' protected expressive conduct.

Plaintiffs may use evidence that infers causation, such as suspicious timing, to show that their protected conduct was a substantial or motivating factor for Defendants' action. *Kidwell v. Eisenhower*, 679 F.3d 957, 966 (7th Cir. 2012) (holding that "suspicious timing... give[s] rise to an inference of causation" when it "follows close on the heels of protected expression," and "the person who decided to impose the adverse action knew of the protected conduct."); *see also Greene v. Doruff*, 660 F.3d 975, 980 (7th Cir. 2011) (finding that "the timing [of Defendant's retaliatory] action" showed Plaintiff's protected speech was a motivating factor for their conduct). Once a Plaintiff makes this showing, the burden rests on the Defendants to demonstrate that they would have taken the same actions even in the absence of a potentially discriminatory motive. *Mays v. Springborn*, 719 F.3d 631, 635 (7th Cir. 2013).

Three facts give rise to powerful inferences that the City retaliated against CFS for its speech and political expressions. First, the raid occurred at 11:00 p.m. at night after CFS had—for hours—publicly documented its support of protestors. Second, upon demanding entry to the premises, a CPD officer explicitly said to Plaintiff Hamilton that CFS was housing and feeding

protestors. Third, the City fails to regulate apolitical groups, including other youth organizations that engage in the exact same conduct that now places CFS employees under threat of arrest.

The timing of Defendants' actions, as well as inconsistencies with typical operating procedures, reveal that they are retaliatory in nature. Defendants—approximately four to five police officers and three city officials from the Department of Business Affairs and Consumer Protection (BACP) —arrived at CFS unannounced and late at night (11:00 p.m.) to conduct a search of the premises and issue a cease and desist order. This “investigation” occurred shortly after CFS made two posts on its Facebook page advertising food and shelter to Black and Brown Chicago youth participating in various protests across the city.

This late raid was a deviation from standard BACP practice. Upon information and belief, administrative investigations related to BACP policy typically occur during normal business hours, not during the weekend or late at night as it did on the night in question. Additionally, the investigation was characterized by an unusually accelerated time frame not consistent with Department standards. These suspicious circumstances paired with the Defendants' accusations that CFS was “housing protestors” provide strong inferences that the “investigation” was in fact discriminatory retaliation against CFS.

It is common knowledge that many advocacy organizations, elected officials and youth services organizations serve food to the youth engaged in their programing. For example, a quick internet search reveals that non-profit Get Behind the Vest hosts a fundraiser pancake breakfast to raise money for police officer equipment and wellness.¹⁹ Saint Paul's Church promotes its youth groups, stating that, once a week, young people gather in the church for “games, pizza,

¹⁹ Jesse Kirch <https://www.msn.com/en-us/health/nutrition/6th-annual-get-behind-the-vest-pancake-breakfast-raises-funds-for-cpd-patrol-officers/ar-BB10iuWj>.

faith, friendship and fun.”²⁰ Chicago Cub Scouts promote a pancake breakfast and park picnic.²¹ These and thousands of other organizations provide food to their constituencies either as fundraising efforts or to support programming. Upon information and belief, the City has not instructed any comparable organizations to cease serving food, or else face arrest. The only difference between these organizations and CFS, is that CFS actively trains movement leaders and supported the protesters demanding transformational change from the City of Chicago.

Indeed, a review of the over 50,000 Chicago-based retail food establishments regulated by the City provides further support for the City’s retaliatory intent.²² Not even one other entity similarly situated to CFS is listed as a retail food establishment. While a handful of schools are so designated almost all of those are licensed in connection with a national food-service corporation. Thus, CFS can easily carry its burden to demonstrate unlawful retaliation in violation of the First Amendment.

B. The Chicago Freedom School Will Prevail on Tts Claim that the City of Chicago’s Regulatory Actions Against It Constitute an Impermissible Infringement on First Amendment Activity

The City of Chicago deemed CFS a food retail establishment and declared that if its employees continued to serve food on its premises, its employees will be subject to arrest. This regulatory action—independent of any retaliation—violates the First Amendment. As fully described above, when CFS engages in the act of serving food to protesters, it is engaging in a political expression. Government regulation of political expression is “sufficiently justified if it is within the constitutional power of the Government; if it furthers an important or substantial

²⁰ Saint Paul’s United Church of Christ, <https://www.spucc.org/connect-learn/youth-groups> (last accessed June 24, 2020).

²¹ Chicago Cub Scouts, <https://chicagocubscouts.com/> (last accessed June 24, 2020).

²² Retail Food Establishments, Chicago Data Portal (June 24, 2020), <https://data.cityofchicago.org/Community-Economic-Development/Retail-Food-Establishments-Chicago/efs4-hghf>.

governmental interest; if the governmental interest is unrelated to the suppression of free expression; and if the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest.” *U. S. v. O'Brien*, 391 U.S. 367, 377 (1968). The City of Chicago’s regulatory acts against the CFS fail this test.

While the City of Chicago has a substantial interest in regulating retail food establishments to ensure the well-being of those served by such establishments, it has *no* legitimate interest in misclassifying CFS as a retail food establishment. Given the City’s historic failure to regulate youth organizations that serve food incidental to their programing, the City simply cannot proffer a legitimate—let alone a substantial—interest in regulating the CFS as a retail food establishment. Finally, the City has imposed on CFS’ political expression of providing food, support and community to protestors the most serious consequence in its arsenal—the threat of an arrest, the levying of criminal charges and the deprivation of CFS employees’ liberty.

When regulating First Amendment activity, “precision of regulation must be the touchstone.” *Nat’l People’s Action v. Vill. of Wilmette*, 914 F.2d 1008, 1011 (7th Cir. 1990). Here, the City of Chicago attempts to chill CFS’ political expression with the blunt hammer of an arrest. But the First Amendment forbids the City from doing so. *Id.* at 1012. (“[R]estrictions on expression must be content-neutral and ‘narrowly tailored to serve a significant governmental interest,’ and they must ‘leave open ample alternative channels’ ...”).

II. Plaintiff Has No Adequate Remedy at Law and Will Suffer Irreparable Harm in the Absence of a Preliminary Injunction

The City of Chicago has deemed CFS’ protected speech and political expression punishable by arrest. This continuing harm is not the sort of injury that can be healed later through monetary damages. No amount of money damages will relieve the CFS of the burdens of

operating under the City's unlawful cease and desist order—only an order from this Court can accomplish this. *See Christian Legal Soc'y v. Walker*, 453 F.3d 853, 859 (7th Cir. 2006) (holding that loss of First Amendment freedoms presumptively constitutes irreparable injury “for which money damages are not adequate”).

The City's continual deprivation of CFS' First Amendment rights, as previously described, is an irreparable harm sufficient to warrant a preliminary injunction. *Higher Soc'y of Indiana v. Tippecanoe Cty., Indiana*, 858 F.3d 1113, 1116 (7th Cir 2017) (“even short deprivations of First Amendment rights constitute irreparable harm”); *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (“The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.”); *Am. Civil Liberties Union of Ill. v. Alvarez*, 679 F.3d 583, 589 (7th Cir. 2012) (same); *Preston v. Thompson*, 589 F.2d 300, 303 n.3 (7th Cir. 1978) (“The existence of a continuing constitutional violation constitutes proof of an irreparable harm, and its remedy certainly would serve the public interest.”).

The fact that CFS employees have not yet been arrested for their political expression does not mitigate the irreparable harm imposed upon CFS' First Amendment Rights. “The Supreme Court has often noted that a realistic threat of arrest is enough to chill First Amendment rights.” *City of Houston, Texas v. Hill*, 482 U.S. 451, 459 n.7 (1987); *Hodgkins ex rel. Hodgkins v. Peterson*, 355 F.3d 1048, 1056 (7th Cir. 2004) (“When the plaintiff has alleged an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute, and there exists a credible threat of prosecution thereunder, he should not be required to await and undergo a criminal prosecution as the sole means of seeking relief.”).

IV. The Balance of Harms Favors the Entry of a Preliminary Injunction

The City would suffer no harm by withdrawing the cease and desist order and allowing CFS to continue to function in the same manner as hundreds of other youth groups throughout the City. On the other hand, the cease and desist order imposes considerable harm on CFS—chilling its political expression, imposing a fear of arrest on its employees and costing CFS to pay excessive fines that could shut it down as a small not-for-profit organization.

Moreover, it is in the public interest to ensure that the City of Chicago does not violate the First Amendment rights of CFS. *See Christian Legal Soc’y*, 453 F.3d at 859 (“injunctions protecting First Amendment freedoms are always in the public interest”); *Alvarez*, 679 F.3d at 590 (7th Cir. 2012) (public interest is not harmed by preliminarily enjoining government action that is probably unconstitutional).

V. The Court Should Waive Bond

Under Federal Rule of Civil Procedure 65(c), district courts have discretion to determine the amount of the bond accompanying a preliminary injunction, and this includes the authority to set a nominal bond. In this case, the Court should waive bond because the requested preliminary injunction is in the public interest, and the injunction is necessary to vindicate constitutional rights. *See Davis v. Mineta*, 302 F.3d 1104, 1126 (10th Cir. 2002) (“minimal bond amount should be considered” in public interest case); *Complete Angler, L.L.C. v. City of Clearwater*, 607 F.Supp.2d 1326, 1335 (M.D. Fla. 2009) (“Waiving the bond requirement is particularly appropriate where a plaintiff alleges the infringement of a fundamental constitutional right.”).

CONCLUSION

For the foregoing reasons, the Court should order an evidentiary hearing on the motion for a preliminary injunction at the earliest possible date and/or enter a preliminary injunction

requiring the City of Chicago to (1) rescind the cease and desist order subjecting anyone who serves food on CFS premises to arrest; (2) provide CFS with all pictures (and all existing copies of pictures) taken during the May 30, 2020 raid of CFS; and (3) prohibit CPD and City regulators from conducting future unlawful raids of CFS.

Respectfully Submitted,

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By: /s/ Sheila Bedi

Joey L. Mogul
People's Law Office
1180 N. Milwaukee Ave.
Chicago, IL 60642
773-235-0070
joeymogul@peopleslawoffice.com

Sheila Bedi
Community Justice and Civil Rights Clinic²³
Northwestern Pritzker School of Law
375 East Chicago Avenue
Chicago, IL 60611-3609
312-503-8576
sheila.bedi@law.northwestern.edu

Counsel for Chicago Freedom School, Tony Alvarado-Rivera and Jacquelyn Hamilton

²³ Northwestern Pritzker School of Law Students Allison Clark, Lucien Ferguson, William Hameline and Taylor Jachman made significant contributions to this brief.