

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

OCCUPY CINCINNATI <i>Et Al.</i> ,	:	Case No. 1:11cv727
	:	Judge Dlott
Plaintiffs,	:	
V.	:	
CITY OF CINCINNATI <i>Et Al.</i> ,	:	
Defendants.	:	

**FIRST AMENDED COMPLAINT FOR
DECLARATORY, INJUNCTIVE,
AND MONETARY RELIEF**

Plaintiffs Occupy Cincinnati, an Ohio unincorporated association, Sherry L. Baron, Coulter Loeb, Robert Pace, and Michael Burnham, for their cause of action against the City of Cincinnati, the Cincinnati Board of Park Commissioners, Willie F. Carden Jr. in his capacity as Director of the Cincinnati Board of Park Commissioners, Cincinnati Police Department, and James E. Craig, in his capacity as Chief of Police, hereby state as follows:

I. PRELIMINARY STATEMENT

1) This is a civil rights action pursuant to 42 U.S.C. § 1983 brought by Occupy Cincinnati and four of its individual members challenging: 1) the constitutionality of newly-enacted Cincinnati Park Board Rule 21 (“PBR 21”) as applied to Plaintiffs’ desired political protest and assembly at Piatt Park, a well-lit, open, urban park and sidewalk located in the median of a two-way thoroughfare in downtown Cincinnati, and 2) the constitutionality of Cincinnati Municipal Code § 713-3(f) (“CMC 713-3(f)”), both on its face and as applied to

Plaintiffs' expressive activities, to the extent that it closes Fountain Square, Cincinnati's quintessential public forum, to free expression. By this suit, Plaintiffs seek to preserve their First Amendment rights to assemble as free people and to engage in constitutionally-protected political dialogue in traditional public fora around the clock. Plaintiffs seek a declaration that PBR 21 and CMC 713-3(f) are unconstitutional, preliminary and permanent injunctive relief prohibiting their enforcement against Plaintiffs, and monetary damages for the chilling effect imposed by these two enactments on Plaintiffs' protected expression and assembly.

II. JURISDICTION

2) Jurisdiction is conferred on this Court by 28 U.S.C. § 1331; 28 U.S.C. § 1343; 28 U.S.C. § § 2201 and 2202; and by 42 U.S.C. § 1983. This is a lawsuit authorized by law to redress deprivations, under color of state law, of rights, privileges and immunities secured by the First and Fourteenth Amendments of the United States Constitution.

3) Venue in this Court is appropriate as the various actions, ordinances, regulations, rules, and directives from and for which Plaintiffs seek relief occurred or are being enforced within the Western Division of the Southern District of Ohio.

III. PARTIES

4) Plaintiff Occupy Cincinnati is an unincorporated association of individuals headquartered in Cincinnati, Ohio, which was formed by its members for the purposes of organizing for political change, economic justice, and citizen participation in government. Plaintiff Occupy Cincinnati seeks to raise awareness of the issues that it attempts to address by engaging in public protests and marches, by disseminating leaflets and other information to the public, and by engaging other citizens in the process of political dialogue, among other means of constitutionally-protected speech.

5) Plaintiffs Sherry Baron (“Baron”), Coulter Loeb (“Loeb”), Robert Pace (“Pace”), and Michael Burnham (“Burnham”) are natural persons who are individual members of Occupy Cincinnati and residents of the City of Cincinnati, Ohio. (Occupy Cincinnati, Baron, Loeb, Pace and Burnham may be collectively referred to herein as “Plaintiffs”).

6) Defendant City of Cincinnati, Ohio (“City”) is a municipal government and political subdivision in the state of Ohio.

7) Defendants Cincinnati Board of Park Commissioners (“Park Board”) and Cincinnati Police Department (“CPD”) are agencies, divisions, or departments of the City of Cincinnati, created pursuant to the City Charter and Ohio Revised Code. The Park Board is vested with authority to promulgate rules and regulations that apply to all public parks in the City of Cincinnati and with issuing permits for gatherings and events in the Cincinnati parks.

8) Defendant Willie F. Carden Jr. (“Carden”) is the Director of the Park Board.

9) Defendant James E. Craig (“Craig”) is the Chief of Police in the City. He is vested with the authority to enforce all applicable laws within the City of Cincinnati by, among other actions, issuing criminal citations, instituting criminal charges, and effectuating arrests. (City, Park Board, CPD, Carden, and Craig may be collectively referred to as “Defendants”).

IV. FACTS

10) Occupy Cincinnati was formed by its members in September, 2011 for the purpose of holding a political rally and demonstration in a public park on October 8, 2011 and for such other political protest activities as the group may authorize thereafter. The Occupy Cincinnati group identifies itself as an offshoot of the Occupy Wall Street protest that began in New York City and has spawned like-minded political protests in various cities around the United States.

11) Since its inception, Occupy Cincinnati has conducted round-the-clock political demonstrations, first by hosting a march and rally, then later establishing a physical 24-hour-a-day occupation at a downtown park, then even later continuing to engage in chanting, marching, gathering, and other forms of demonstration in various public venues once police raided their encampment. Their activities during the two-week period preceding the filing of this amended complaint fall into three distinct phases: 1) the Initial Rally; 2) the Piatt Park Protest and Arrests; and 3) the Fountain Square Protest and Arrests.

The Initial Rally

12) Occupy Cincinnati first obtained a permit to hold a political rally at Fountain Square, Cincinnati's central town square and the quintessential public forum at which various forms of expression have historically been presented, on October 8, 2011 from 4:00 p.m. through 1:00 a.m. Unlike other public spaces in Cincinnati, Fountain Square is managed by a private development organization, the Cincinnati City Center Development Corporation ("3CDC"). It was 3CDC and not the Park Board that issued the permit for Occupy Cincinnati's demonstration at Fountain Square.

13) On October 8th, Occupy Cincinnati members gathered at Lytle Park in downtown Cincinnati and marched through the City, arriving at Fountain Square at approximately 4:00 p.m. Hundreds of citizens attended the rally, at which time various speakers addressed the group to discuss political and social issues and musical entertainment was presented.

14) Upon the expiration of the Fountain Square permit at 3:00a.m. on October 8th, several members of Occupy Cincinnati remained on Fountain Square, where they peacefully continued to engage in protected speech, conducting discussions among themselves and passersby, wearing expressive clothing including buttons and t-shirts, and displaying signs

containing slogans and other information about economic and political issues for which the members sought redress.

15) At 3:00 a.m. on October 8th, the members of Occupy Cincinnati who remained on Fountain Square were warned by officers from Defendant CPD that Fountain Square was closed for the night, and that the members were subject to citation or arrest if they remained.

16) Upon hearing the warning from the officers from CPD, numerous members of Occupy Cincinnati exited Fountain Square in order to avoid citation or arrest. Many of the members remained on the sidewalk adjacent to Fountain Square, marching continuously. Some members and other persons left the location entirely.

17) Approximately ten members of Occupy Cincinnati remained on Fountain Square after 3:00 a.m. despite the warnings from CPD officers, risking arrest or citation.

18) On Sunday, October 9, 2011, another organization had received a prior permit to conduct an event on Fountain Square. In order to avoid interfering with the use of Fountain Square by another party, the members of Occupy Cincinnati marched to Piatt Park, located at 100 Garfield Place, in order to continue the rally and to further engage in constitutionally protected political speech.

The Piatt Park Protest and Arrests

19) Unlike Fountain Square, Piatt Park is a City-owned public park, managed by the Park Board. Spanning two city blocks, Piatt Park is located in the median between the east- and west-bound lanes of Garfield Place. It is well-lit, open, and unobstructed by vegetation, overgrowth, or large structures. It is bounded by the public library on one end, and the floor of the entire park is covered with concrete walkway. A crosswalk accompanied by illuminated

walk signs directs pedestrian traffic through the park as a quasi-sidewalk down the middle of Garfield Place.

20) The members of Occupy Cincinnati continued their peaceful political demonstration at Piatt Park on Sunday, October 9, 2011, and were joined by additional people through the course of the day. The members and others who had joined continued to engage in protected speech, conducting discussions among themselves and passersby, wearing expressive clothing including buttons and t-shirts, and displaying signs containing slogans and other information about economic and political issues for which the members sought redress.

21) Late on the night of October 9, 2011, officers from the CPD entered Piatt Park and warned the members of Occupy Cincinnati then present that Piatt Park was closed for the night, and that the members were subject to citation or arrest if they remained.

22) The officers providing this warning cited the then-applicable version of Park Board Rule 21 ("PBR 21"), which at the time provided:

RULE 21 Closing Time

The parks shall be closed to the public between 10:00 P.M. and 6:00 P.M. except where otherwise posted on signs and except when different hours are established by resolution of the Park Board or by permit issued to a group by the Park Board for a specific event, and except or [sic] vehicular traffic on through roadways directly connecting to city streets. All persons shall leave the parks at or before closing time.

23) Upon hearing the warning from the officers from CPD, numerous members of Occupy Cincinnati exited Piatt Park and thereby ceased engaging in their desired political expression in order to avoid citation or arrest.

24) Approximately twenty members of Occupy Cincinnati remained at Piatt Park to continue their political demonstration after 10:00 p.m. despite the warnings from CPD officers, thereby risking arrest or citation.

25) At approximately 11:30 p.m. on Sunday, October 9th, officers of CPD proceeded to issue criminal citations to those members of Occupy Cincinnati who remained in Piatt Park.

26) The Occupy Cincinnati members fully and peacefully cooperated with the CPD officers, lining up in an orderly fashion, presenting identification, and submitting to photographing by police on site at Piatt Park. No member of Occupy Cincinnati was physically arrested or removed from Piatt Park, and the members remained in the park peacefully, carrying on political discussions, wearing expressive clothing, and displaying signs containing slogans and other information about economic and political issues for which the members sought redress.

27) Each citation for a violation of PBR 21 carries a fine of \$105.00, plus court costs.

28) On Monday, October 10, 2011, the members of Occupy Cincinnati continued their demonstration at Piatt Park, and were joined by additional people through the course of the day (and many members and other persons came and went during this time). The members and other persons who had joined continued to engage in protected speech, conducting discussions among themselves and passersby, wearing expressive clothing including buttons and t-shirts, and displaying signs containing slogans and other information about economic and political issues for which the members sought redress.

29) Following the issuance of citations on October 9, 2011, the members of Occupy Cincinnati sought a permit for Piatt Park, by submitting a written application in the form required by the Park Board ("Permit Application"). A copy of the permit application is attached to this Amended Complaint as Exhibit A.

30) Some time after 10:00 p.m. on October 10, 2011, officers from the CPD again entered Piatt Park and warned the members of Occupy Cincinnati then present that Piatt Park was closed for the night, and that the members were subject to citation or arrest under PBR 21 if they remained.

31) Just as on the prior night, upon hearing the warning from the officers from CPD, numerous members of Occupy Cincinnati exited Piatt Park and thereby ceased in their desired political expression in order to avoid citation or arrest.

32) On October 10, 2011, some members of Occupy Cincinnati remained at Piatt Park and continued their political demonstration and assembly after 10:00 p.m. despite the warnings from CPD officers, risking arrest or citation.

33) Thereafter, the officers of CPD proceeded to issue citations to those members of Occupy Cincinnati who remained in Piatt Park.

34) The Occupy Cincinnati members once again fully cooperated with the CPD officers, lining up in an orderly fashion, presenting identification, and submitting to photographing by police on site at Piatt Park. No member of Occupy Cincinnati was physically arrested or removed from Piatt Park on October 10, 2011, and the members remained in the park, carrying on political discussions, wearing expressive clothing, and displaying signs containing slogans and other information about economic and political issues for which the members sought redress.

35) On October 11, 2011, Occupy Cincinnati received written notice from the Park Board that its Permit Application had been denied on the basis that the park closes from 10:00 p.m. until 6:00 a.m., despite the express provision in former PBR 21 permitting the Park Board

to extend the closing time provision in its sole discretion. A true and correct copy of the notice is attached to this Complaint as Exhibit B.

36) The pattern of issuing warnings and criminal citations continued with the exception of two evenings through October 20, 2011. The demonstration and political assembly by Occupy Cincinnati members continued throughout the day, and CPD officers appeared at approximately 10:00 p.m. warning that the participants would be subject to citation if they failed to vacate. Some participants left the park upon hearing the warning, thereby self-censoring their political expression, while others remained and continued to engage in political speech and dialogue. Those who remained cooperated with CPD officers to receive citations, but none were physically arrested or removed from Piatt Park prior to October 20, 2011. The demonstration then continued into the night and into the daytime hours after the CPD officers left the scene.

37) There were two exceptions to the pattern of citations that existed prior to October 20th. On October 13, no CPD officers appeared at 10:00 p.m. No warnings were given to the Occupy Cincinnati members or others in Piatt Park, despite their continued presence there and the ongoing demonstration. Occupy Cincinnati members and others continued their demonstration, discussion and expressive conduct through the night and into the morning hours of October 14, 2011 without being warned to leave the park or cited for failing to do so.

38) Plaintiffs then filed their original complaint in this suit on October 17, 2011 and later sought a temporary restraining order seeking to preclude the Cincinnati Police Department from issuing citations or effectuating arrests at Piatt Park. On October 18, 2011, the Court ordered a 28-hour “standstill.” As a result, no citations were issued the evening of October 18th. The police department resumed issuing citations after 10:00p.m. on October 19, 2011.

39) A total of approximately 249 criminal citations for violating the former version of PBR 21 were issued between October 9th and October 19th, carrying fines of \$26,145.00.

40) Thursday, October 20, 2011 marked a dramatic turn in the police department's and the Park Board's treatment of Occupy Cincinnati members. First, at its early morning meeting on October 20th, the Park Board adopted an amended and radically different version of PBR 21, and also amended PBR 29. City officials acknowledged in public comments that the Occupy Cincinnati protests and the instant lawsuit helped motivate the passage of the amendments, and that the same were in direct response to the claims of Occupy Cincinnati. Amended Park Rules 21 and 29 provide:

Rule 21. Closing Time.

The parks shall be closed to the public between 10:00 p.m. and 6:00 a.m. except where otherwise posted on signs and except for vehicular traffic on through roadways directly connecting to city streets. Upon request of the applicant and provided the applicant complies with all obligations set forth herein, a special use permit may extend the closing time to 1:00 a.m., subject to Rule 29, the noise restrictions in Chapter 909 of the Cincinnati Municipal Code, and any other applicable laws. All persons shall leave the parks at or before closing time.

The park board or its agents may close any section or part of any park property to the public at any time and for any interval of time, either temporarily or at regular and stated intervals, for the purpose of maintenance or for the protection of the public health, safety, and welfare.

* * * * *

Rule 29. Special Use Permits.

If a group of 50 or more persons wishes to obtain the exclusive use of an area of park property that has not been designated as an area that may be reserved under Rule 34, that group shall obtain a special use permit.

Applications for special use permits may be obtained from the park board. All applications must be submitted to the park board.

The park board will issue special use permits on a first come, first served basis provided that the applicant satisfies each of the following objective factors:

- (1) The requested location, date, and time are available and the size and type of the requested event does not exceed the carrying capacity of the park;
- (2) The applicant pays the applicable fee set forth in the park board's schedule of fees;
- (3) The applicant obtains any permits or licenses required by the Board of Health, the Cincinnati Department of Buildings and Inspections, the Cincinnati Police Department, the Cincinnati Fire Department, the Ohio Department of Commerce Division of Liquor Control, and any other required permits or licenses; and
- (4) The applicant agrees to comply with all park board rules and regulations and the terms of the permit.

The park board or its authorized agent may revoke or suspend any permit upon violation of any provision of these rules and regulations, the Cincinnati Municipal Code, or any other law.

A true and correct copy of the Park Board Rule Amendment dated October 20, 2011, is attached hereto as Exhibit C.

41) On the evening of October 20th, more than two dozen uniformed officers appeared at Piatt Park, arresting 23 individuals who refused to leave the park and charging them with criminal trespass, a fourth-degree misdemeanor under the Ohio Revised Code. Nearly 200 supporters rallied on the sidewalks surrounding the park, continuing their political chants, waving signs and American flags, singing, and marching well into the evening. After the arrests, police cleared the park of all personal belongings. The police then officially closed the park pursuant to the newly-enacted version of PBR 21 for pressure washing and other cleaning. The park remained closed to the public throughout the following day on October 21st, which was also the morning of the Carl Linder, Jr. funeral procession through the streets of downtown Cincinnati.

42) Many of the Occupy Cincinnati members who were arrested on October 20th and others returned to sidewalks adjacent to Piatt Park on the morning of October 21st. They

continued to conduct political demonstrations from the sidewalk opposite the park until the park reopened, at which time they reconvened at the east end of the park and gathered for meetings, discussion, and protest activity. No tents or other structures were erected in the Park, save one small portable tent that was briefly set up and then dismantled prior to the 10:00p.m. closing time.

43) Nevertheless, the police arrived again on the evening of October 21st and once more arrested those who continued to engage in political demonstration after 10:00p.m. A total of 11 individuals, including one who is wheelchair-bound, were taken into police custody on October 21st and charged with criminal trespass. At the time they were arrested, these individuals were simply engaging in political expression and dialogue in an urban park that functions as a quasi-sidewalk. No tents or other shelter were present and the members were not encamped on public property.

The Fountain Square Protest and Arrests

44) Occupy Cincinnati obtained a permit for a rally on Fountain Square on Saturday, October 22nd that lasted until 3:00a.m. on Sunday, October 23rd. Per CMC 713-3(f), Fountain Square closes at 3:00a.m. During the day on Saturday, October 22nd, Occupy Cincinnati staged various political demonstrations, including a performance art piece critical of corporate greed. Approximately 35 members of the movement continued to gather on Fountain Square past the 3:00a.m. closing time, carrying signs with expressive political messages, circling around each other to debate the problem of corporate greed, and engaging in chants critical of government.

45) At approximately 3:40a.m. on Sunday, October 23rd, after the Fountain Square permit had expired, police arrived on the scene and arrested 11 Occupy Cincinnati members who

refused to leave. They were charged with criminal trespass as well as a minor misdemeanor for violating the closing hours provision in CMC 713-3(f).

46) Sum total, the police arrested 45 protestors engaged in protected political expression over the three evenings and charged them with 56 separate criminal offenses.

The Consequences of Arrests and Citations

47) In an attempt to comply with PBR 21 as amended while also continuing to engage in protected political expression, Occupy Cincinnati submitted a permit application to the Park Board on October 24, 2011 ("Second Park Board Application"). The Second Park Board Application contained a request for a permit to conduct a political meeting, assembly, protest and demonstration in Piatt Park. The application contained no request for permission to camp, to erect structures or tents, or to prepare or serve food, but rather sought only to engage in protected expression and assembly in a public forum. A true and correct copy of the Second Park Board Application is attached hereto as Exhibit D.

48) On October 26, 2011, Occupy Cincinnati received written notice that the Second Park Board Application had been denied. A true and correct copy of the notice of denial is attached hereto as Exhibit E.

49) In an attempt to comply with CMC 713-3(f) while also continuing to engage in protected political expression, Occupy Cincinnati submitted a permit application for the use of Fountain Square on October 24, 2011 ("Fountain Square Application"). The Fountain Square Application contained a request for a permit to conduct a political meeting, assembly, protest and demonstration on Fountain Square. The application contained no request for permission to camp, to erect structures or tents, or to prepare or serve food, but rather sought only to engage in

protected expression and assembly in a public forum. A true and correct copy of the Fountain Square Application is attached hereto as Exhibit F.

50) On October 26, 2011, Occupy Cincinnati received written notice that the Fountain Square Application had been denied. A true and correct copy of the notice of denial is attached hereto as Exhibit G.

51) As a result of these denials, Occupy Cincinnati may not access a traditional public forum past 10:00p.m. or before 6:00a.m. to engage in constitutionally-protected speech and assembly.

52) The denial of these permit applications, coupled with the threat of arrest, citation, and imposition of fines, has imposed a “chilling effect,” whereby individual members of Occupy Cincinnati, including the individual Plaintiffs herein and others, have feared for their safety, liberty, and economic consequences that may be imposed should they choose to exercise fundamental rights of freedom of expression and assembly.

53) As a result of these fears, members of Occupy Cincinnati, including the individual Plaintiffs herein, and others have been forced to self-censor their expression by voluntarily refraining from exercising their protected First Amendment rights.

54) Plaintiff Sherry Baron is an employee of the Center for Disease Control, a federal governmental agency. She has actively participated in the Occupy Cincinnati movement by attending various marches, rallies, and events, but never past the closing hours of Piatt Park and Fountain Square. She fears adverse employment consequences should she be criminally cited or arrested for engaging in protected expression in these public fora.

55) Plaintiff Coulter Loeb is an independent freelance photographer and publisher of a website addressing political issues. He has functioned as a member of the press in

documenting and publishing the political protest activities of the Occupy Cincinnati movement. He desires to continue to document the activities of Occupy in Piatt Park and Fountain Square past their closing hours, but has refrained from doing so due to fear of arrest and citation.

56) Plaintiff Robert Pace is currently unemployed, but has in the past been employed and is currently seeking gainful employment. He has actively participated in the Occupy Cincinnati movement by attending various marches, rallies, and events, but never past 10:00p.m. He fears being cited or arrested for engaging in political expression after 10:00p.m. at Piatt Park and after the Fountain Square closing hours because of the potential adverse consequences criminal charges could have on his job search. He also lacks the ability to pay the \$105 fine associated with a criminal citation under PBR 21 and any additional costs that may be associated with criminal trespass or violations of CMC 713-3(f).

57) Plaintiff Michael Burnham is a professor at an institution of higher learning in the greater Cincinnati area. He has actively participated in the Occupy Cincinnati movement by attending various marches, rallies, and events, but never past 10:00p.m. He fears the adverse consequences of an arrest or citation for engaging in protected expression in Piatt Park or Fountain Square past their closing hours.

58) Each and every one of Plaintiffs has been placed in fear of the consequences of engaging in protected speech by the threat of citation or arrest. Among other things, Plaintiffs fear that citation or arrest may endanger their employment status, endanger their ability to obtain future employment, and will impose an expense that will cause them economic hardship.

59) Each and every one of Defendants wishes to participate in protected speech and association among the members of Occupy Cincinnati gathering at Piatt Park and Fountain

Square in the evening between the hours of 10:00 p.m, and 6:00 a.m., but has elected not to do so because of the threat of citation or arrest.

60) But for the enforcement of PBR 21, CMC 713-3(f), and Ohio's criminal trespass law, each of Plaintiffs and others would participate in ongoing political demonstrations by Occupy Cincinnati at Piatt Park between the hours of 10:00 p.m, and 6:00 a.m. and at Fountain Square between the hours of 3:00a.m. and 6:00a.m.

**COUNT I:
Unconstitutional Closure of Public Fora/Prior Restraint**

61) Plaintiffs hereby incorporate the foregoing allegations by reference as if the same were fully set forth herein.

62) Piatt Park and Fountain square are both traditional public fora, and regulation of protected speech or free assembly therein is subject to the strictest scrutiny.

63) The version of PBR 21 enacted on October 20, 2011 is unconstitutional as applied to Occupy Cincinnati's activities in Piatt Park because it closes a traditional public forum to constitutionally protected expression absent a compelling state interest and because closing the park is not the least restrictive means of achieving that interest. The permitting scheme set forth under PBR 21 and 29 is an impermissible scheme of prior restraint. The interests identified in the preamble to the October 20th version of PBR 21 are not compelling state interests. Neither is closing the park to free speech and assembly for one-third of each day the least restrictive means of addressing the Park Board's stated interests.

64) CMC 713-3(f) is unconstitutional on its face and as applied to Plaintiffs because it closes Fountain Square, Cincinnati's quintessential public forum, to constitutionally protected expression absent a compelling state interest and because closing the square is not the least

restrictive means of achieving that interest. The permitting scheme imposed by CMC Ch. 713 is an impermissible scheme of prior restraint. The interests identified in the ordinance are not compelling state interests. Neither is closing the square to free speech and assembly for three hours each day the least restrictive means of addressing the City's stated interests.

65) PBR 21 and CMC 713-3(f) therefore violate Plaintiffs' rights under the First and Fourteenth Amendments of the U.S. Constitution to free speech, freedom of assembly, and freedom of association.

66) PBR 21 and CMC 713-3(f) also violate Plaintiffs' rights under the Ohio State Constitution to free speech, freedom of assembly, and freedom of association.

67) Unless enforcement of PBR 21 and CMC 713-3(f) against Plaintiffs is preliminarily and permanently enjoined, Plaintiffs will suffer and continue to suffer irreparable harm to their rights of free speech, free association, and free assembly for which no adequate remedy exists at law.

**COUNT II:
Imposition of an Invalid Time, Place, and Manner
Restriction on Expression**

68) Plaintiffs hereby incorporate the foregoing allegations by reference as if the same were fully set forth herein.

69) Even if the October 20, 2011 version of PBR 21 does not improperly close a public forum to expression, thereby subjecting it to strict scrutiny, it nevertheless imposes a constitutionally infirm time, place, and manner restriction on protected expression.

70) The October 20, 2011 version of PBR 21 was adopted for the primary purpose of censoring Plaintiffs' protected expression and is therefore not content-neutral.

71) The interests identified by the Parks Board in the preamble to the October 20, 2011 version of PBR 21 do not constitute substantial government interests, nor are the measures set forth in PBR 21 narrowly tailored to achieve those objectives.

72) The October 20, 2011 version of PBR 21 does not leave open ample, alternative channels of communication because it in effect closes every public forum in Cincinnati for one-third of the day.

73) Similarly, even if CMC 713-3(f) does not improperly close a traditional public forum to expression, thereby subjecting it to strict scrutiny, it nevertheless imposes a constitutionally infirm time, place, and manner restriction on speech.

74) The interests identified by the City in CMC 713-3(f) do not constitute substantial government interests, nor are the measures set forth in the ordinance narrowly tailored to achieve those objectives.

75) CMC 713-3(f) does not leave open ample, alternative channels of communication because it in effect closes Cincinnati's most recognizable public space for a significant portion of each day.

76) PBR 21 and CMC 713-3(f) diminish the quantity and nature of speech by relegating assembly and organized political expression to venues less capable of accommodating collective gatherings and collective speech.

77) PBR 21 and CMC 713-3(f) therefore violate Plaintiffs' rights under the First and Fourteenth Amendments of the U.S. Constitution to free speech, freedom of assembly, and freedom of association.

78) PBR 21 and CMC 713-3(f) also violate Plaintiffs' rights under the Ohio State Constitution to free speech, freedom of assembly, and freedom of association.

79) Unless enforcement of PBR 21 and CMC 713-3(f) against Plaintiffs is preliminarily and permanently enjoined, Plaintiffs will suffer and continue to suffer irreparable harm to their rights of free speech, free association, and free assembly for which no adequate remedy exists at law.

**COUNT III:
Violation of Right of Assembly**

80) Plaintiffs hereby incorporate the foregoing allegations by reference as if the same were fully set forth herein.

81) PBR 21 and CMC 713-3(f) violate Plaintiffs' rights to free assembly and free association under the First Amendment to the United States Constitution and analogous provisions of the Ohio Constitution in the manner set forth in Counts I and II.

82) Unless enforcement of PBR 21 and CMC 713-3(f) against Plaintiffs is preliminarily and permanently enjoined, Plaintiffs will suffer and continue to suffer irreparable harm to their right of free assembly for which no adequate remedy exists at law.

**COUNT IV:
Monetary Damages**

83) Plaintiffs hereby incorporate the foregoing allegations by reference as if the same were fully set forth herein.

84) In denying Plaintiffs' permit applications, and in enforcing P.B.R. 21 and CMC 713-3(f) through the issuance of citations and arrests, Defendants acted under color of law.

85) The denial of Plaintiffs' permit applications, and the enforcement of P.B.R. 21 and CMC 713-3(f) by the issuance of citations and arrests, were undertaken by Defendants Carden and Craig within the scope of their respective duties.

86) The denial of Plaintiffs' permit applications, and the enforcement of P.B.R. 21 and CMC 713-3(f) by the issuance of citations and arrests, denied to Plaintiffs the rights to expression, speech, assembly, and association that are secured by the Constitution and laws of the United States.

87) The denial of Plaintiffs' constitutional rights to engage in protected speech, assembly, and association is a compensable injury that entitles Plaintiffs to monetary damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs Occupy Cincinnati, Sherry L. Baron, Coulter Loeb, Robert Pace, and Michael Burnham each demand judgment as follows:

1) A declaration from this Court that the October 20, 2011 version of PBR 21 and CMC 713-3(f) are unconstitutional on their face and as applied to these Plaintiffs, and hence, are illegal and unenforceable;

2) A preliminary and permanent injunction restraining, prohibiting, and enjoining the City of Cincinnati, the Park Board, the Cincinnati Police Department, their agents and employees and all persons in active concert and participation with the City from enforcing, applying, and implementing PBR 21 and CMC 713-3(f) to prevent protected speech, assembly, and association in Piatt Park and Fountain Square, and directing that Plaintiffs' applications for permits to engage in protected expression at these venues be promptly issued;

3) An award of compensatory damages pursuant to 42 U.S.C § 1983;

4) An award of Plaintiffs' costs in this action and their reasonable attorney's fees pursuant to 42 U.S.C. § 1988; and

5) For such other and further relief in law and or in equity as this Court may deem just and proper.

Respectfully submitted,

/s/ J. Robert Linneman
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CERTIFICATE OF SERVICE

I hereby certify that an exact copy of the foregoing document was provided to Defendants' counsel by electronic mail (e-mail) and via the Court's electronic filing and notification system (CM/ECF) on the 27th day of October, 2011.

/s/ J. Robert Linneman
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