

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

RAVEN WOLF C. FELTON)	
JENNNINGS II,)	
RAYMOND DOUGLAS)	
)	
Plaintiffs,)	
)	
v.)	Case No.
)	
CITY OF UNIVERSITY CITY,)	
MISSOURI)	
)	
Defendant.)	

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. The Delmar Loop (the “Loop”) in University City, Missouri has traditionally been a place where music thrived and musicians’ talents were welcomed. In 2017, one travel website named it a top destination for outdoor musicians.

2. Music is celebrated throughout the Loop: from the “Walk of Fame,” whose honorees include musicians like legendary jazz trumpeter Miles Davis and musical composer Scott Joplin, to the statue of St. Louis’s own Chuck Berry, the renowned singer-songwriter and rock-and-roll pioneer.

3. But this history of celebrating music and musicians came to a halt when University City began enforcing an ordinance and associated policies which effectively shut down the ability of musicians to perform outdoors in the Loop.

4. Plaintiffs Raven Wolf C. Felton Jennings II (“Mr. Jennings”) and Raymond Douglas (“Mr. Douglas”) are musicians who have regularly performed in the Loop. Mr. Jennings

plays multiple instruments and describes his style as “Spiritual Jazz.” Mr. Douglas plays the acoustic guitar in the blues or classic rock styles.

5. Since approximately June 2019, Plaintiffs have each been told repeatedly by Defendant or Defendant’s officers or agents that they are prohibited from playing music in the Loop pursuant to University City Ordinance § 215.720 (the “Ordinance”), which forbids “any person to stand or remain idle . . . in a public place in such manner so as to [o]bstruct any . . . public sidewalk . . . by hindering or impeding or tending to hinder or impede the free and uninterrupted passage of vehicles, traffic or pedestrians”

6. Plaintiffs have, at various times, also been told by Defendant or Defendant’s officers or agents that it is the policy of University City that musicians are only permitted if they are not stationary (the “Musician Non-Stationary Policy”).

7. Plaintiffs have, at various times, also been told by Defendant or Defendant’s officers or agents that the only way they can play music on private property is if the musician gets a permit or the business outside of which they wish to perform is able to get a permit from University City that provides the artist with the City’s permission to play on the business’s private property (the “Musician Permit Policy”).

8. Plaintiffs seek to have this Court declare unconstitutional on its face and as applied to them University City’s Ordinance. Plaintiffs seek to have this Court declare unconstitutional on its face and as applied to them the City’s Musician Non-Stationary Policy, which forbids musicians from performing in the Loop unless not stationary. Plaintiffs seek to have this Court declare unconstitutional on its face and as applied to them the City’s Musician Permit Policy, which forbids musicians from performing in front of businesses unless businesses have permits. Plaintiffs assert that, both individually and taken together, the Ordinance and University City’s

Musician Non-Stationary Policy and Musician Permit Policy unconstitutionally prohibit expression protected under the First Amendment by restricting the ability of Plaintiffs to perform on or adjacent to sidewalks in the Loop.

9. Plaintiffs seek declaratory and prospective relief, nominal damages, and reasonable attorneys' fees under 42 U.S.C. § 1983.

Jurisdiction and Venue

10. Plaintiffs brings these claims pursuant to 42 U.S.C. § 1983 and the First and Fourteenth Amendments to the United States Constitution.

11. The jurisdiction of this Court is proper pursuant to 28 U.S.C. § 1331 because Plaintiffs' action arises under the Constitution of the United States. In addition, this Court has original jurisdiction pursuant to 28 U.S.C. § 1343(a)(3) to redress the deprivation of rights secured by the Constitution of the United States.

12. Venue is proper in the United States District Court for the Eastern District of Missouri pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events giving rise to the claims occurred in University City in St. Louis County, Missouri.

13. Divisional venue is proper in the Eastern Division because the events leading to the claim for relief arose in St. Louis County and the claim for relief itself arose in St. Louis County. E.D. Mo. L.R. 2.07(A)(1), (B)(1).

PARTIES

14. Plaintiff Raven Wolf C. Felton Jennings II is a citizen of Missouri who resides in the City of Rock Hill.

15. Plaintiff Raymond Douglas is a citizen of Missouri who resides in the City of Greendale.

16. Defendant City of University City, Missouri is a political subdivision of the State of Missouri and is participating in and directing law enforcement officers' practice of preventing musicians from performing in the Loop by telling them they are not allowed to play without a permit, by telling the musicians to move along or otherwise forcing the musicians to move along, or by otherwise indicating to the musicians that they are violating University City laws. University City has also established and is participating in and directing other employees' enforcement of the Musician Non-Stationary Policy and Musician Permit Policy.

17. All actions taken by Defendant, its officers, employees, or agents, described herein were taken under color of state law.

FACTS

Plaintiff Raymond Douglas

18. Mr. Douglas is blues guitarist who resides in Greendale, Missouri.

19. He has been publicly performing music for 13 years, including approximately eight years playing unamplified acoustic guitar in the stretch of Delmar Boulevard known as the Loop. Mr. Douglas often played guitar on the sidewalk near the intersection of Delmar Boulevard and Leland Avenue, close to Fitz's restaurant. He performs using the stage name, "Raydle."

20. Since approximately June 2019, Mr. Douglas has been repeatedly disturbed by University City police officers and/or University City police officers have stopped him from playing music in the Loop. He has been repeatedly harassed by University City police officers for playing on the sidewalk in the Loop, he has been told by University City police officers that the city may be issuing permits for musicians, he has been told by a University City City Hall employee that permits are not issued for musicians, he has been told he cannot play while standing still, and he has been repeatedly stopped from playing in the Loop for these reasons.

21. On or about June 28, 2019 in the late morning, Mr. Douglas was playing his acoustic guitar and singing while sitting on a low brick wall outside of Fitz's restaurant with his feet on the public sidewalk.

22. The sidewalk at this location measures approximately twelve feet at its narrowest and approximately 25 feet at its widest.

23. Mr. Douglas did not use a speaker or any amplification.

24. Mr. Douglas was not obstructing any public street, public highway, public sidewalk or any other public place or building by hindering or impeding or tending to hinder or impede the free and uninterrupted passage of vehicles, traffic, or pedestrians.

25. After Mr. Douglas had been playing music for approximately 10 to 15 minutes, a University City police car pulled up nearby and a University City police officer exited the vehicle.

26. The officer told Mr. Douglas that he could not play music while stationary and that he could only play music if he was moving.

27. Following the officer's direction, Mr. Douglas stopped playing music.

28. The officer further told Mr. Douglas that the City Hall of University City might be giving out permits for musicians to perform.

29. Mr. Douglas walked to City Hall and spoke to a University City employee, who told him the city does not provide permits for musicians.

30. Approximately one week later, Mr. Douglas returned to the same location on the sidewalk near the intersection of Delmar Boulevard and Leland Avenue, on the west side of Fitz's, to play music. Mr. Douglas began playing his acoustic guitar and singing.

31. Mr. Douglas did not use speakers or any amplification.

32. Mr. Douglas was not obstructing any public street, public highway, public sidewalk or any other public place or building by hindering or impeding or tending to hinder or impede the free and uninterrupted passage of vehicles, traffic or pedestrians.

33. Mr. Douglas had been playing for approximately 40 to 45 minutes when a University City police car driving east on Delmar Boulevard honked its horn at Mr. Douglas as it drove by.

34. The police car pulled over a short distance away, where another musician was playing on the sidewalk on the east side of Fitz's, near the statue of Chuck Berry.

35. Mr. Douglas walked towards where the police car had stopped. A University City police officer informed both Mr. Douglas and the other musician that they could not play music on the public sidewalk and had to move along.

36. Approximately one week later, Mr. Douglas was playing his acoustic guitar in an outdoor dining space in front of the FroYo at 6329 Delmar Boulevard with the manager's permission. The same police officer who directed Mr. Douglas to cease playing on approximately June 28, 2019 pulled up in a police car.

37. The sidewalk at this location measures approximately 23 feet and eight inches in width.

38. The officer stated to Mr. Douglas that he thought he had previously told Mr. Douglas he was not supposed to be playing music.

39. Mr. Douglas responded that FroYo's manager had a permit. The officer inquired as to whether the permit specifically stated that FroYo could allow musicians to play on the patio or simply allowed people to eat there.

40. The FroYo manager retrieved the permit. The officer told Mr. Douglas and the manager that the permit did not allow Mr. Douglas to play music and he could not play music in the outdoor dining area.

41. The officer further directed Mr. Douglas that he could play music outside of University City's city limits, but that he could not play music on the sidewalks in University City.

42. Mr. Douglas, following the officer's direction, ceased playing music and did not return to play music in University City that day.

43. After this third incident, Mr. Douglas did not return to playing in the University City portion of the Loop to avoid further incidents with University City police until late November.

44. On November 24, 2019, Mr. Douglas was playing acoustic guitar and singing on the public sidewalk in front of Emporium, located at 6254 Delmar Boulevard, on the southeast corner of Delmar Boulevard and Limit Avenue. Mr. Douglas believed this location to be on the east side of the boundary between St. Louis and University City and thus within the City of St. Louis.

45. Mr. Douglas did not use speakers or any amplification.

46. The sidewalk at this location measures approximately twelve feet in width.

47. Emporium had placed a fold-out, chalkboard sign on the sidewalk and against the store's front wall. Mr. Douglas was sitting in a small chair immediately adjacent to the sign and against the front wall.

48. Mr. Douglas was not obstructing any public street, public highway, public sidewalk or any other public place or building by hindering or impeding or tending to hinder or impede the free and uninterrupted passage of vehicles, traffic or pedestrians.

49. At approximately 2:45 p.m. to 3 p.m., Mr. Douglas was approached by Sergeant Lott of the University City Police.

50. Sergeant Lott told Mr. Douglas he could not perform on the sidewalk if he was remaining stationary.

51. Sergeant Lott then told Mr. Douglas that he would need to move along.

52. Mr. Douglas informed Sergeant Lott that he was trying to obey the law and believed that he was located in the City of St. Louis city limits, not in University City. Sergeant Lott stated that Mr. Douglas was in University City.

53. Mr. Douglas asked Sergeant Lott whether he would be cited if he refused Sergeant Lott's order to move along. Sergeant Lott responded that Mr. Douglas would not be cited but would instead be arrested and taken to jail.

54. Following Sergeant Lott's instruction, Mr. Douglas crossed to the north side of Delmar Boulevard and moved to a location within the city limits of the City of St. Louis.

Plaintiff Raven Wolf C. Felton Jennings II

55. Mr. Jennings is a resident of Rock Hill.

56. He is a multi-instrumentalist singer/songwriter who plays a musical style that he describes as "Spiritual Jazz" and has recorded and published two albums.

57. Mr. Jennings has been performing music in the Loop for more than 25 years. Since 2009, he has played music on the paved area adjacent to the public sidewalk under the marquee of Vintage Vinyl, located at 6610 Delmar Blvd. in University City. He plays at this location with the permission of Vintage Vinyl's owner, Tom "Papa" Ray.

58. The pedestrian passageway, including the public sidewalk and private area under the marquee, at this location measures approximately 26 feet in width.

59. Mr. Jennings, Vintage Vinyl, and University City share the belief that the area Mr. Jennings performs in is within Vintage Vinyl's property lines.

60. Mr. Jennings performs with saxophones, flutes, drums, and vocals. He does not use amplifiers.

61. Beginning in approximately July 2019, Mr. Jennings has been repeatedly disturbed by University City police officers and/or University City police officers have stopped him from playing music. He has been told by University City police officers that he cannot play music outside of Vintage Vinyl without a permit and that he cannot play music while standing still, and he has been repeatedly stopped from playing outside of Vintage Vinyl for these reasons. In his attempts to obtain a permit, he was provided a block party permit request by a University City employee, then later told that he cannot play music unless Vintage Vinyl has a conditional use permit.

62. On approximately July 5, 2019, Mr. Jennings was performing at his usual location under the marquee outside Vintage Vinyl.

63. Mr. Jennings did not use a speaker or any amplification.

64. Mr. Jennings was not obstructing any public street, public highway, public sidewalk or any other public place or building by hindering or impeding or tending to hinder or impede the free and uninterrupted passage of vehicles, traffic or pedestrians.

65. Regardless, he was approached by a University City police officer who asked him whether he had a permit.

66. At this time, Mr. Jennings did not have a permit and did not know about any permit requirement.

67. Despite Mr. Jennings' lack of a permit, the University City police allowed him to continue playing music that day.

68. On approximately July 6, 2019, Mr. Jennings was performing at his usual location under the marquee outside Vintage Vinyl.

69. Mr. Jennings did not use a speaker or any amplification.

70. Mr. Jennings was not obstructing any public street, public highway, public sidewalk or any other public place or building by hindering or impeding or tending to hinder or impede the free and uninterrupted passage of vehicles, traffic or pedestrians.

71. At approximately 6:29 p.m., Mr. Jennings was approached by a University City police who asked him whether he had a permit.

72. University City police told Mr. Jennings that he could not play music and he would have to leave.

73. Mr. Jennings left after University City police told him to.

74. After this incident, on approximately July 10, 2019, Mr. Jennings traveled to University City's City Hall to inquire about permit forms.

75. He spoke with Linda Schaeffer, Secretary to the City Manager, who provided him a Block Party Permit Request Form (street performance permit).

76. As part of the Block Party Permit Request Form, University City requires applicants to acquire all the neighbors' signatures of approval (a minimum four houses in both directions/both sides of the street) and the request form must be completed and returned two weeks in advance of the event.

77. Ms. Schaeffer informed Mr. Jennings that as part of this request he would also need a letter of recommendation from Vintage Vinyl.

78. On or about July 11, 2019, Mr. Jennings submitted the completed Block Party Permit Request Form and a letter from Mr. Ray. The letter from Mr. Ray requested that Mr. Jennings “be allowed to continue performing in front of [Vintage Vinyl] at 6610 Delmar.” Mr. Ray added that “as far as ‘impeding foot traffic,’ this [had] never been the case due to Mr. [Jennings], given [Vintage Vinyl’s] physical set-up at 6610” and that “there is enough room for an entire class of elementary children visiting our neighborhood to walk past, with no congestion whatsoever.”

79. On or about July 17, 2019, Mr. Ray received from Ms. Schaeffer an email that Vintage Vinyl would need to apply for a Conditional Use Permit in order for Mr. Jennings to play music outside Vintage Vinyl.

80. On or about July 17, 2019, Clifford Cross, University City’s director of planning and development, also informed Mr. Ray that Vintage Vinyl would need a Conditional Use Permit.

81. University City requires a Conditional Use Permit for “those types of uses which tend to be problematic because they (1) Have a tendency to generate significant traffic volumes and/or turning movements, (2) Have operational characteristics that may have a detrimental impact on adjacent or nearby properties, or (3) Have other characteristics which may impact public health, safety, or welfare” University City Code § 400.2670.

82. As part of the Conditional Use Permit application, University City requires applicants to submit twelve copies of an exacting memo detailing the applicants’ historical information, reasoning for venue location, and the estimated impact of the conditional use such as usual traffic volumes at the location and surrounding areas and how the conditional use will affect traffic flow and volume. University City also requires twelve copies of an accurate site plan,

survey, or diagram drawn to scale containing substantial site details. Additionally, the application must go through a public hearing process and requires a \$250.00 non-refundable fee.

83. At approximately 11 a.m. on or about September 13, 2019, Mr. Jennings was performing at his usual location under the marquee outside Vintage Vinyl.

84. Mr. Jennings did not use a speaker or any amplification.

85. Mr. Jennings was not obstructing any public street, public highway, public sidewalk, or any other public place or building by hindering or impeding or tending to hinder or impede the free and uninterrupted passage of vehicles, traffic or pedestrians.

86. At approximately 6:33 p.m., Mr. Jennings was approached by University City police who asked him if he had a permit.

87. University City police told Mr. Jennings that until Vintage Vinyl had proper approval Mr. Jennings could not play music and would have to leave.

88. Mr. Jennings left after University City police told him to.

89. Between approximately September 13 and approximately November 21, Mr. Jennings did not play music in the Loop to avoid trouble with the police.

90. During or about the week of November 11, 2019, Mr. Jennings returned to University City's City Hall to request a permit application.

91. He spoke with Mr. Cross, who provided him with a conditional use permit application.

92. Mr. Cross informed Mr. Jennings that the application requires a \$250.00 fee, the approval committee meets once a month, and the application must be submitted 15 days in advance.

93. On November 29, 2019, Mr. Jennings was performing at his usual location under the marquee outside Vintage Vinyl.

94. Mr. Jennings did not use a speaker or any amplification.

95. Mr. Jennings was not obstructing any public street, public highway, public sidewalk or any other public place or building by hindering or impeding or tending to hinder or impede the free and uninterrupted passage of vehicles, traffic or pedestrians.

96. Nevertheless, the University City police ordered Mr. Jennings to stop playing.

97. In addition, University City informed Vintage Vinyl that the store, and not Mr. Jennings, needed to obtain a conditional use permit before Mr. Jennings could resume playing on the store's property.

98. On November 30, 2019, Mr. Jennings was performing at his usual location under the marquee outside Vintage Vinyl.

99. Mr. Jennings did not use a speaker or any amplification.

100. Mr. Jennings was not obstructing any public street, public highway, public sidewalk or any other public place or building by hindering or impeding or tending to hinder or impede the free and uninterrupted passage of vehicles, traffic or pedestrians.

101. Again, University City police ordered Mr. Jennings to stop playing.

The Ordinance

102. University City seeks to regulate the obstruction of public places through University City's Ordinance § 215.720.

103. Section 215.720 **Obstructing Public Places** states:

- A. Definition. The following term shall be defined as follows: **PUBLIC PLACE** Any place to which the general public has access and a right of resort for business, entertainment or other lawful purpose, but does not necessarily mean a place devoted solely to the uses of the public. It shall

also include the front or immediate area of any store, shop, restaurant, tavern or other place of business and also public grounds, areas or parks.

- B. It shall be unlawful for any person to stand or remain idle either alone or in consort with others in a public place in such manner so as to:
1. Obstruct any public street, public highway, public sidewalk or any other public place or building by hindering or impeding or tending to hinder or impede the free and uninterrupted passage of vehicles, traffic or pedestrians;
 2. Commit in or upon any public street, public highway, public sidewalk or any other public place or building any act or thing which is an obstruction or interference to the free and uninterrupted use of property or with any business lawfully conducted by anyone in or upon or facing or fronting on any such public street, public highway, public sidewalk, or any other public place or building, all of which prevents the free and uninterrupted ingress, egress and regress, therein, thereon and thereto;
 3. Obstruct the entrance to any business establishment, without so doing for some lawful purpose, if contrary to the expressed wish of the owner, lessee, managing agent or person in control or charge of the building or premises.
- C. When any person causes or commits any of the conditions in this Section, a Police Officer or any Law Enforcement Officer shall order that person to stop causing or committing such conditions and to move on or disperse. Any person who fails or refuses to obey such orders shall be guilty of a violation of this Section.

104. It has been the custom, policy, or practice of Defendant and Defendant's officers and agents since at least June 2019 to enforce § 215.720 against musicians who are standing still in the Loop, thereby effectively preventing these musicians from performing in the Loop.

105. It is University City's stated policy that: "Musicians are only permitted who are not stationary." Exhibit 1, Letter from Assistant to the City Manager of University City dated July 22, 2019.

106. It has been the custom, policy, or practice of Defendant and Defendant's officers and agents since at least June 2019 to enforce this Musician Non-Stationary policy against

musicians who are standing still in the Loop, thereby effectively preventing these musicians from performing in the Loop.

107. It is University City's stated policy that: "If the business owner engages and supports a performer on their own private property, not in the right of way, they may contact the City Manager's office for approval." See Exhibit 1.

108. University City has, at various times, stated that the required permit for a single musician to play music adjacent to the public sidewalk is a Block Party Permit or a Conditional Use Permit.

109. It has been the custom, policy, and practice of University City and its officers and agents since at least June 2019 to require musicians to have a business obtain a permit in order for a musician to play on that business's private property adjacent to the public sidewalk.

CAUSES OF ACTION

COUNT I – University City Ordinance § 215.720

*Violation of the First and Fourteenth Amendments to the U.S. Constitution
Claim for Nominal Damages and Declaratory and Injunctive Relief*

110. Plaintiffs incorporate the allegations set forth above as if set forth herein verbatim.

111. Plaintiffs engaged in constitutionally protected expression when they played music on and adjacent to the sidewalk, a traditional public forum.

112. Plaintiffs have been chilled from engaging in constitutionally protected speech because they reasonably fear citation, arrest, and/or prosecution.

113. Fear of citation, arrest, and/or prosecution under the Ordinance would chill a person of ordinary firmness from continuing to engage in a constitutionally protected activity.

114. The Ordinance directly infringes upon Plaintiffs' Free Speech rights under the First Amendment to the Constitution, incorporated through the Fourteenth Amendment, because it

burdens substantially more speech than is necessary for Defendant to achieve the City's legitimate interest in ensuring the safety and traversability of sidewalks.

115. The Ordinance is neither narrowly tailored nor the least restrictive means to achieve any sufficiently strong government interest, and it does not leave open ample alternative channels for Plaintiffs to communicate.

116. The Ordinance burdens more speech than is necessary because Plaintiffs do not actually obstruct the sidewalks.

117. Unless struck down by this Court, the Ordinance will continue restraining individuals who are exercising or wish to exercise their First Amendment rights, thereby preventing musicians, including Plaintiffs, from playing music in the Loop.

WHEREFORE, Plaintiffs request that this Court:

- A. Enter a declaration, pursuant to 42 U.S.C. § 1983, that University City Code § 215.720 violates the U.S. Constitution both on its face and as-applied because the Ordinance burdens substantially more speech than is necessary for Defendant to achieve any legitimate goals and fails to provide ample alternative channels for communication;
- B. Enter preliminary and permanent injunctions prohibiting Defendant from enforcing the Ordinance;
- C. Award nominal damages, Plaintiffs' costs, including reasonable attorneys' fees under 42 U.S.C. § 1988 and under other applicable law; and
- D. Grant any additional relief this Court finds just and equitable.

COUNT II – University City Ordinance § 215.720

*Violation of the Due Process Clause of the Fourteenth Amendment
Claim for Nominal Damages and Declaratory and Injunctive Relief*

118. Plaintiffs incorporate the allegations set forth above as if set forth herein verbatim.

119. If a statute or ordinance fails to provide the kind of notice that will enable ordinary people to understand what conduct it prohibits, such law is void-for-vagueness in violation of the Due Process Clause.

120. The Due Process Clause requires that the legislature establish minimal guidelines to govern law enforcement in a manner that does not encourage arbitrary and discriminatory enforcement.

121. The Ordinance violates the Due Process Clause because it does not include any guidelines to govern law enforcement.

122. The Ordinance does not include a *mens rea* requirement.

123. The Ordinance contains the phrase “tending to hinder or impede.” This language fails to provide notice to individuals as to what conduct is prohibited by the Ordinance because it is not clear how someone might “tend[] to hinder or impede.”

124. The Ordinance fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct is prohibited and authorizes and encourages arbitrary and discriminatory enforcement.

WHEREFORE, Plaintiffs request that this Court:

A. Enter a declaration, pursuant to 42 U.S.C. § 1983, that University City Code § 215.720 violates the U.S. Constitution both on its face and as-applied because it is unconstitutionally vague;

- B. Enter preliminary and permanent injunctions prohibiting Defendant from enforcing the Ordinance;
- C. Award nominal damages and Plaintiffs' costs, including reasonable attorneys' fees under 42 U.S.C. § 1988 and under other applicable law; and
- D. Grant any additional relief this Court finds just and equitable.

COUNT III – Defendant's Musician Non-Stationary Policy
Violation of the First and Fourteenth Amendments to the U.S. Constitution
Claim for Nominal Damages and Declaratory and Injunctive Relief

125. Plaintiffs incorporate the allegations set forth above as if set forth herein verbatim.

126. Defendant's Musician Non-Stationary Policy, which forbids musicians from playing in the Loop unless they are not stationary, directly infringes upon and chills reasonable persons from engaging in expression protected by the First Amendment.

127. Defendant and Defendant's officers and agents have deprived, and continue to deprive, Plaintiffs of their rights under the First Amendment to the U.S. Constitution, incorporated through the Fourteenth Amendment.

128. Defendant and Defendant's officers' and agents' orders to individuals who are violating no valid law and who are not obstructing or encumbering the passage of persons or vehicles upon, through, or into any street, street corner, business entrance, sidewalk, or other public place to refrain from playing music while stationary on and adjacent to sidewalks and threatening arrest for non-compliance is the cause-in-fact of the constitutional violation.

129. Defendant's policy is neither narrowly tailored nor the least restrictive means to achieve any sufficiently strong government interest, and it does not leave open ample alternative channels for Plaintiffs to communicate.

130. Unless restrained by this Court, Defendant will continue its practice of ordering individuals who are violating no valid law to refrain from playing music while stationary in the Loop and threatening arrest for non-compliance.

WHEREFORE, Plaintiffs request that this Court:

- A. Enter a declaration, pursuant to 42 U.S.C. § 1983, that Defendant's policy forbidding stationary musicians violates the U.S. Constitution both on its face and as-applied to Plaintiffs;
- B. Enter preliminary and permanent injunctions prohibiting Defendant and Defendant's officers, agents, servants, and employees from enforcing any policy forbidding stationary musicians from playing in the Loop;
- C. Award nominal damages, Plaintiffs' costs, including reasonable attorneys' fees under 42 U.S.C. § 1988 and under other applicable law; and
- D. Grant any additional relief this Court finds just and equitable.

COUNT IV – Defendant's Musician Non-Stationary Policy
Violation of the Due Process Clause of the Fourteenth Amendment
Claim for Nominal Damages and Declaratory and Injunctive Relief

131. Plaintiffs incorporate the allegations set forth above as if set forth herein verbatim.

132. Plaintiffs are aware of no valid law that permits Defendant or Defendant's officers or agents to order Plaintiffs not to play music while standing still in the Loop when they are not obstructing or encumbering the passage of persons or vehicles upon, through, or into any street, street corner, business entrance, sidewalk, or other public place.

133. The practice described herein fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct is prohibited and authorizes and encourages arbitrary and discriminatory enforcement.

134. Defendant's policy has been enforced in an arbitrary manner, regardless of the actual impact that a musician has on pedestrian or vehicular traffic.

WHEREFORE, Plaintiffs request that this Court:

- A. Enter a declaration, pursuant to 42 U.S.C. § 1983, that Defendant's policy forbidding stationary musicians violates the U.S. Constitution both on its face and as-applied;
- B. Enter preliminary and permanent injunctions prohibiting Defendant and Defendant's officers, agents, servants, and employees from enforcing any policy forbidding stationary musicians and interpretive policies, customs, and practices;
- C. Award nominal damages, Plaintiffs' costs, including reasonable attorneys' fees under 42 U.S.C. § 1988 and under other applicable law; and
- D. Grant any additional relief this Court finds just and equitable.

COUNT V – Defendant's Musician Permit Policy is an Unconstitutional Prior Restraint
Violation of the First and Fourteenth Amendments to the U.S. Constitution
Claim for Nominal Damages and Declaratory and Injunctive Relief

135. Plaintiffs incorporate the allegations set forth above as if set forth herein verbatim.

136. Plaintiffs are engaged in expression that is protected by the First Amendment when they play music on or adjacent to public sidewalks.

137. Defendant's policy prohibiting musicians who have the property owner's permission from playing unamplified music on private property adjacent to public sidewalks without the City's approval violates the First and Fourteenth Amendments because it is an unconstitutional prior restraint on constitutionally protected speech.

138. Defendant's policy places unbridled discretion in the hands of University City to determine whether Plaintiffs' constitutionally protected speech, expressed through music, will be deemed acceptable by the City to merit a permit.

139. The lengthy, costly, and demanding permitting process has chilled Plaintiffs' free expression, preventing Plaintiffs from performing music in the Loop and thereby exercising their constitutionally protected First Amendment rights.

140. Even if Plaintiffs were given a permit each time they or the property owner applied for one, their speech would be unconstitutionally restrained in the period between when they wished to play music and when they or the business obtained a permit.

141. Defendant's permitting policy also violates the Constitution because it fails to place limits on the time within which the City's decision maker must issue its decision about the permit and it provides no standards or guidance by which decision makers evaluate whether a permit to play music will or will not be approved.

WHEREFORE, Plaintiffs request that this Court:

- A. Enter a declaration, pursuant to 42 U.S.C. § 1983, that Defendant's policies and practices or related interpretive customs, policies, and practices requiring a permit for musicians to play unamplified music on private property adjacent to public sidewalks are an unconstitutional prior restraint;

- B. Enter preliminary and permanent injunctions prohibiting Defendant and Defendant's officers, agents, servants, and employees from enforcing Defendant's policies, customs, and practices of requiring a permit for musicians to play unamplified music on private property adjacent to public sidewalks;
- C. Award nominal damages, Plaintiffs' costs, including reasonable attorneys' fees under 42 U.S.C. § 1988 and under other applicable law; and
- D. Grant any additional relief this Court finds just and equitable.

Dated: April 28, 2020

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