

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

Brandalyn Orchard, and	)	
	)	
Edward Gillespie	)	
	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. 1:13-cv-185
	)	
City of Miner, Missouri,	)	
	)	
John Doe I, an officer of the City of Miner	)	
Police Department, in his individual	)	
capacity, and	)	
	)	
John Doe II, an officer of the City of Miner	)	
Police Department, in his individual	)	
capacity;	)	
	)	
Defendants.	)	

**VERIFIED COMPLAINT FOR DECLARATORY JUDGMENT, INJUNCTIVE  
RELIEF, AND DAMAGES PURSUANT TO 42 U.S.C. § 1983**

Plaintiffs, for their Complaint against Defendant, state as follows:

**INTRODUCTION**

1. Plaintiffs, who are homeless, held a sign reading “Traveling. Anything helps. God Bless” as they stood in the City of Miner. Police officers threatened them with arrest under unconstitutional ordinances that prohibit vagrancy, loitering, begging, and even “talk[ing] to the public upon any subject on the streets or sidewalks of the town without written permission from the Board of the Trustees of the Town of Miner.” Taking Miner’s police officers word as true, Plaintiffs left town and

have not returned. Less than three weeks later, Miner denied it has any such ordinances. The threatened enforcement of the ordinances violated Plaintiffs' constitutional rights and caused them to modify their behavior. The ordinances themselves are facially unconstitutional. Also unconstitutional is the threatened enforcement of ordinances that are not in effect.

### **JURISDICTION AND VENUE**

2. This Court has jurisdiction pursuant to 42 U.S.C. § 1983 over Plaintiffs' claims of a deprivation of a right, privilege, or immunity secured by the Constitution under color of state law.
3. In addition, this Court has original jurisdiction pursuant to 28 U.S.C. § 1331 over Plaintiffs' civil action arising under the Constitution of the United States.
4. In addition, this Court has jurisdiction pursuant to 28 U.S.C. § 1343(a)(3) to redress the deprivation, under color of state law, of any right, privilege, or immunity secured by the Constitution of the United States.
5. Venue lies in the United States District Court for the Eastern District of Missouri because a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in the County of Scott, Missouri. 28 U.S.C. § 1391(b)(2).
6. Divisional venue is in the Southeastern Division because the events leading to the claim for relief arose in the County of Scott and Defendants are located in the County of Scott. E.D.Mo. L.R. 2.07(A)(3), (B)(2).

### **PARTIES**

7. Plaintiff Brandalyn Orchard is a resident of the State of Missouri.
8. Plaintiff Edward Gillespie is a resident of the State of Missouri.

9. Defendant City of Miner, Missouri, is a municipal corporation and political subdivision of the State of Missouri.
10. Defendant John Doe I was at all times relevant to this Complaint a law enforcement officer for the City of Miner, whose name is not known to Plaintiffs. On September 26, 2013, he encountered Plaintiffs and interacted with them as described in this Complaint. He is sued in his individual capacity.
11. Defendant John Doe II was at all times relevant to this Complaint a law enforcement officer for the City of Miner, who name is not known to Plaintiffs. On September 26, 2013, he encountered Plaintiffs and interacted with them as described in this Complaint. He is sued in his individual capacity.

#### **FACTUAL ALLEGATIONS**

12. Plaintiffs are homeless and travel throughout Missouri, primarily by hitchhiking.
13. On September 26, 2013, Plaintiffs were in the City of Miner, located at the corner of Matthews Lane and Malone Avenue.
14. Plaintiffs held a sign that read: "Traveling. Anything helps. God Bless."
15. At or around 3:00 pm, John Doe I, who identified himself as a police officer of the City of Miner, approached Plaintiffs.
16. Doe I told Plaintiffs that begging is prohibited in the City of Miner.
17. Plaintiff Orchard asked Doe I what ordinance she and Plaintiff Gillespie were allegedly violating.
18. Doe I left the scene and returned to provide Plaintiffs with highlighted copies of three alleged ordinances.

19. Doe I provided alleged ordinances to Plaintiffs indicating that the law of the City of Miner provided as follows:
  - a. “VAGRANCY. No person shall be found wandering about from place to place without a settled abode or visible means of support.”
  - b. “BEGGING, ETC. It shall be unlawful for any person to solicit alms or to beg upon the streets or sidewalks of the town; nor shall any person play any musical instrument or talk to the public upon any subject on the streets or sidewalks of the town without written permission from the Board of Trustees of the Town of Miner.”
  - c. “LOITERING. No person shall be found [*sic*] loitering, lounging about or loafing in any shed, lumber yard, railroad station, waiting room, freight room, warehouse, public building, or on any street, sidewalk, or public way or place, not giving a good account of himself.”
20. Doe I informed Plaintiffs that they were in violation of the highlighted ordinances.
21. As Doe I was providing the alleged ordinances to Plaintiffs, another police officer of the City of Miner, John Doe II, arrived on the scene.
22. Doe II identified himself as a police officer of the City of Miner.
23. Doe II told Plaintiffs that they had five minutes to leave town or they would be arrested for violating the alleged ordinances.
24. As a result of the foregoing, Plaintiffs, reasonably fearing arrest, left the town.

25. Plaintiffs have not returned to City of Miner since September 26, 2013, because they fear arrest under the alleged ordinances for peacefully standing and expressing themselves.
26. Plaintiffs would return to the City of Miner but for the representations by Doe I and Doe II that Plaintiffs' expressive activity and presence were in violation of the laws of the City of Miner and would subject them to arrest.
27. On October 16, 2013, counsel for Plaintiffs made a request to the custodian of records for the City of Miner for "copies of any ordinances or policies related to begging, loitering, or vagrancy."
28. On October 17, 2013, Danielle Patrick, in her capacity as City Clerk for City of Miner, responded in writing: "At this time the City of Miner does not have any policies or ordinances relating to begging, loitering, or vagrancy."
29. At all times relevant to this Complaint, Defendants acted under color of law.
30. Plaintiffs have been harmed by the above-described actions, including by losing their constitutional rights and by the chilling effect the above-described actions have had upon them.
31. Plaintiffs have been harmed by the policies or customs of the City of Miner, including by losing their constitutional rights and by the chilling effect the above-described action have had upon them.

**COUNT I**

*42 U.S.C. § 1983*

*Claims Against Defendants Doe I and Doe II*

32. Plaintiffs repeat, re-allege, and incorporate by reference the allegations in the foregoing paragraphs of this Complaint as fully set forth herein.

33. Defendant Doe I violated Plaintiffs' rights under the First and Fourteenth Amendments by directing Plaintiffs to cease engaging in protected activity because of alleged violations of policies or customs of the City of Miner that any reasonable officer would know are unconstitutional.
34. In the alternative, Defendant Doe I violated Plaintiffs' rights under the First and Fourteenth Amendments by directing Plaintiffs to cease engaging in protected activity because of alleged violations of ordinances that were not, in fact, in effect.
35. Defendant Doe II violated Plaintiffs' rights under the First and Fourteenth Amendments by threatening to arrest Plaintiffs if they did not leave town because of alleged violations of policies or customs of the City of Miner that any reasonable officer would know are unconstitutional.
36. In the alternative, Defendant Doe II violated Plaintiffs' rights under the First and Fourteenth Amendments by threatening to arrest Plaintiffs if they did not leave town because of alleged violations of ordinances that were not, in fact, in effect.

WHEREFORE Plaintiffs pray this Court:

- A. Enter judgment in favor of Plaintiffs and against Defendants Doe I and Doe II;
- B. Issue preliminary and permanent injunctions and, if necessary, a temporary restraining order enjoining enforcement of the challenged policies and customs;
- C. Award Plaintiffs damages, including nominal, compensatory, and punitive damages, to be paid by Doe I and Doe II;

- D. Award Plaintiffs' costs, including reasonable attorneys' fees, pursuant to 42 U.S.C. § 1988; and
- E. Allow such other and further relief to which Plaintiffs may be entitled.

**COUNT II**  
*42 U.S.C. § 1983*  
*Claims Against Defendant City of Miner, Missouri*

- 37. Plaintiffs repeat, re-allege, and incorporate by reference the allegations in the foregoing paragraphs of this Complaint as fully set forth herein.
- 38. In the actions described herein, Defendants Doe I and Doe II were carrying out the policies or customs of the City of Miner.
- 39. In the alternative, the City of Miner failed to provide adequate training or supervision to Defendants Doe I and Doe II, which caused Defendants Doe I and Doe II to be unaware that the policies and customs described herein and that the actions of Defendants Doe I and Doe II are unconstitutional and to violate Plaintiffs' constitutional rights.
- 40. In the alternative, the ordinances described herein represent the policy of the City of Miner and are unconstitutional on their face and as applied to Plaintiffs.

WHEREFORE Plaintiffs pray this Court:

- A. Enter judgment in favor of Plaintiffs and against Defendant City of Miner, Missouri;
- B. Enter declaratory judgment, pursuant to 42 U.S.C. § 1983, that the policies and customs described herein are unconstitutional;
- C. Issue preliminary and permanent injunctions and, if necessary, a temporary restraining order enjoining enforcement of the challenged

policies and customs;

- D. Award Plaintiffs damages, including nominal and compensatory damages, to be paid by City of Miner, Missouri;
- E. Award Plaintiffs' costs, including reasonable attorneys' fees, pursuant to 42 U.S.C. §1988; and
- F. Allow such other and further relief to which Plaintiffs may be entitled.

Respectfully submitted,

/s/ Anthony E. Rothert  
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Attorneys for Plaintiffs



**Verification**

I have studied the allegations of the Verified Complaint and, pursuant to 28 U.S.C.

§ 1746, I declare under penalty of perjury that the foregoing is true and correct based upon my personal knowledge.

12/12/13  
Date

/s/ Brandalyn Orchard  
Brandalyn Orchard

12/12/13  
Date

/s/ Edward Gillespie  
Edward Gillespie