

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO**

JACQUELINE STOWERS

43565 State Route 303
LaGrange, OH 44050

JOHN STOWERS

43565 State Route 303
LaGrange, OH 44050

CYNTHIA FRANTZ

53 King Street
Oberlin, OH 44074

-and-

MANNA STOREHOUSE, LLC

43565 State Route 303
LaGrange, OH 44050

Plaintiffs,

-VS-

DIRECTOR ROBERT BOGGS

OHIO DEPARTMENT OF AGRICULTURE

8995 East Main Street
Reynoldsburg, Ohio 43068

-and-

**LORAIN COUNTY GENERAL HEALTH
DISTRICT**

9880 South Murray Ridge Road
Elyria, Ohio 44035

Defendants.

)
) **Case No. 1:09-cv-264**

)
) **Hon. Kathleen O'Malley**

)
) **FIRST AMENDED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

)
) **MOTION FOR PRELIMINARY
INJUNCTION**

)
) **WRIT OF REPLEVIN**

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PARTIES

1. Plaintiffs John and Jacqueline Stowers (hereinafter Plaintiffs) are residents of Lorain County, Ohio.
2. The Stowers family, resides at 43565 State Route 303, in LaGrange, Ohio, and is comprised of eight children, seven of whom live in the home with John and Jacqueline Stowers. The families' oldest son is serving in Iraq, and his wife and three young children are currently staying at the residence as well.
3. For approximately four years Plaintiffs have operated an organic food cooperative and/or buying club, named Manna Storehouse (hereinafter "the co-op"), on their property.
4. Manna Storehouse is a membership organization, insofar as you must be a member of the co-op to obtain food from it.
5. Manna Storehouse distributes a variety of food, including wheat, flour, sugar, grass-fed beef, lamb, turkey, and eggs from free range chickens.
6. A significant amount of this food is purchased from local farmers whose farming practices coincide with what members, including the Stowers, demand.
7. The co-op takes orders from members, acquires the food that is ordered, and then distributes it to members of the co-op in a manner that reflects members' orders.
8. In distributing co-op food, Manna Storehouse sometimes takes money from members prior to ordering, sometimes is paid in full after distributing the order, and sometimes allows members to pay and pick up the food in installments, if that member has a lack of freezer space.
9. Plaintiff Cynthia Frantz is a resident of Oberlin, Lorain County, Ohio.
10. Ms. Frantz is a member of Manna Storehouse.
11. Ms. Frantz is committed to buying locally grown and organic food, and approves of the sources from which Manna Storehouse acquires food.
12. The sources from which Manna Storehouse acquires food would either not deal with the Ms. Frantz directly or are otherwise unavailable to Ms. Frantz.
13. To maintain her membership with Manna Storehouse, Ms. Frantz fills out a form and pays a small membership fee.
14. In her interactions with Manna Storehouse, Ms. Frantz places an order through Manna Storehouse, and Manna Storehouse then acquires food to satisfy Ms. Frantz's order. Ms. Frantz does not make retail purchases from Manna Storehouse.

15. Defendant Lorain County Health Department, also known as the Lorain County General Health District, is according to its website, “responsible for preventing disease and promoting health in Lorain County except for the cities of Elyria, Lorain, Avon Lake, and Vermilion.”
16. Defendant Ohio Department of Agriculture, amongst other things, creates and enforces regulations concerning consumer and farmer protection, the conduct of county and independent fairs, food safety, herd and flock health, protection of plants from pests, and departmental procedures.
17. Both the Lorain County Health Department and the Ohio Department of Agriculture enforce R.C. 3717, which provides for licensure and regulation of a “retail food business,” and is the law under which the December 1, 2008 raid, search, and seizure on Manna Storehouse and the personal residence of Jacqueline and John Stowers was conducted.

JURISDICTION

18. R.C. 2721.02(A) vests courts with the authority to “declare rights, status, and other legal relations whether or not further relief could be claimed.” More specifically, R.C. 2721.03(A) provides that “any person whose rights, status, or other legal relations are affected by a constitutional provision, statute, * * * municipal ordinance, township resolution, contract, or franchise may have determined any question of construction or validity arising under the instrument, constitutional provision, statute, rule, ordinance, resolution, contract, or franchise and obtain a declaration of rights, status, or other legal relations under it.”
19. In this case, Plaintiffs are in imminent danger of criminal prosecution, fines, and injunction of their legitimate behavior as those penalties are authorized under R.C. 3717.
20. Imminent danger is demonstrated by the fact that the Stowers and Manna Storehouse have already been subjected to one unlawful raid, search, and seizure related to purportedly stopping them from running a “retail food establishment” without a license. After this event, a local prosecutor boasted that he would file criminal charges against the The Stowers.
21. This action challenges the validity of R.C. 3717 as applied to Plaintiffs.

FACTS

22. On December 10, 2007, Jacqueline Stowers transmitted a letter addressed to Dorothy Kloos, registered sanitarian with the Lorain County General Health District, requesting clarification as to (1) if, and if so why, the Lorain County GHD believed the Stowers co-op constituted a retail food establishment; and (2) why the Lorain County GHD believed that the Stowers’ co-op was not exempted from such licensing requirements. This letter was sent and received via certified mail.
23. Neither the LCGHD nor Ms. Kloss responded to Ms. Stowers’ inquiry.

24. Rather than responding, on December 1, 2008, police raided not just the Manna Storehouse component of the Stowers property, but also raided the Stowers' personal residence.
25. To conduct the raid, on November 26, 2008 Ohio Department of Agriculture agent William Lesho swore out an affidavit before Lorain County Court of Common Pleas Judge Edward Zaleski, and obtained a search warrant.
26. The November 26, 2008 affidavit makes numerous conclusory and unsubstantiated claims, including that the Stowers' private residence contains business records, and must be searched and seized, and that all food within the Stowers' private residence was "for sale."
27. The affidavit used to procure the search warrant was based on conjecture, rather than on personal knowledge.
28. The affidavit does not indicate that the Stowers are dangerous.
29. The affidavit does not indicate that the Stowers will destroy evidence.
30. The affidavit does not indicate that there are any exigent circumstances related to executing a search warrant at the Stowers' property that would warrant using force or threats to execute the warrant.
31. Some of the police who participated in the raid believed that they were raiding a "crack-house."
32. ODA agent Lesho was not permitted to become a member of the co-op when he tried to join.
33. ODA agent Lesho was not permitted to buy beef from the co-op, as he sought to do, because, as Plaintiffs' explained, they do not sell beef to anyone off of the street, but rather, it must be jointly ordered by members of the co-op.
34. After these rejections, ODA agent Lesho continued come to Plaintiffs' private property, refused to leave, and after being asked to leave and pretending to leave, trespassed back onto Plaintiffs' private property, including an unlawful invasion of Plaintiffs' home by stealth.
35. The applicable search warrant was expired when served on Plaintiffs.
36. The police knocked on the door, and Katie Stowers opened.
37. Katie Stowers did not refuse to allow police to enter the home.
38. Before Katie Stowers could respond to the police inquiry, and before there was enough time for her to register anything other than shock, police shoved Katie Stowers to the side, and immediately entered the residence, without first announcing (1) that they were police; or (2) the purpose of the visit.

39. A reasonable amount of time did not elapse before the police forced their way into the home without permission.
40. During the raid, at least one, if not several police entered the home with guns drawn, and the Stowers home was surrounded by police who also had guns drawn.
41. Once having obtained entry into the home, the lead officer on the raid, with his gun drawn, swiftly and immediately moved to the upstairs of the home, where he found 8 small children in the middle of a home-schooling lesson.
42. The officer used physical force to get Jacqueline Stowers and her children down the stairs.
43. The officers held the Stowers family captive in their living room for in excess of six hours.
44. During the time that the Stowers were held captive, police and Ohio Department of Agriculture agents, directed by agent William Lesho, searched not just the Manna Storehouse portion of the Stowers' property, but also the Stowers' entire personal residence, and their entire 26 acre property.
45. The police and Ohio Department of Agriculture agents seized the Stowers' personal family computers, personal cell phones, and personal food supply.
46. Plaintiffs investigate the farming practices of the sources from which the co-op derives its food to ensure that practices are consistent with members' desires.
47. Co-op members have sought out Plaintiffs' as a result of Plaintiffs' careful research into the farming practices of co-op food sources, and have voluntarily entered into co-op contracts with Plaintiffs.
48. Prior to a prospective member joining the co-op, Plaintiffs explain where the food comes from and how it is stored once it is delivered or picked up.
49. There are no members of the co-op under 18 years of age.
50. Plaintiffs are selective in their membership criteria, and do not permit individuals who they view as having low moral character to be members of their co-op.
51. There is a co-op membership form that any prospective member must review and fill out prior to ordering food through the co-op.
52. Any co-op agreement or transaction is the product of a voluntary contract.
53. A significant majority of the co-op's members place orders weekly, meaning that there is often a significant amount of food on the property that has been delivered for members, but has not yet been picked-up by them.
54. All food on the Stowers' property is either (1) the Stowers' own food for personal family consumption; or (2) belongs to co-op members, and is being stored there temporarily while awaiting pickup.

55. Much of the property seized in December of 2008 had nothing to do with the Stowers' organic food co-op that was the subject of the search and seizure.
56. There has never been a complaint filed or otherwise lodged against Manna Storehouse or the Stowers, by any government agency or private individual, related to the quality or healthfulness of the food distributed through the co-op.
57. Under R.C. 3717(C) "Retail food establishment" means a premises or part of a premises where food is stored, processed, prepared, manufactured, or otherwise held or handled for retail sale.
58. Under R.C. 3717(C)(1), "retail" means "the sale of food to a person who is the ultimate consumer."
59. Under definitions provided in the Ohio Administrative Code, Plaintiffs do not and have not engaged in the "sale" of food, nor are Manna Storehouse members "consumers."
60. R.C. 3717.21 provides that "no person shall operate a retail food establishment without a license."
61. The licensing requirements to become licensed as a "retail food establishment" under R.C. 3717 include, pursuant to R.C. 3717.09 and R.C. 3717.07, respectively (1) completion of "approved courses of study for certification in food protection as it pertains to retail food establishments and as it relates to food service operations;" and (2) payment of a significant licensure fee. Even then, approval is subject to administrative discretion.
62. R.C. 3717.22(B) provides a listing of 16 exemptions to the licensure requirement for "retail food establishments."
63. R.C. 3717.99 provides for criminal prosecution of those who operate a "retail food establishment" without a license.

UNLAWFUL SEARCH AND SEIZURE

64. Plaintiffs hereby incorporate by reference all previous paragraphs as if written herein.
65. There is no evidence in the affidavit used to procure the search warrant, or otherwise, that any member of the Stowers family is or was armed or dangerous.
66. There is no testimony in the affidavit used to procure the search warrant, or otherwise, that any member of the Stowers family has or would destroy evidence if, in executing the warrant, officers were to make a calm, peaceful and consented-to entry into and search and seizure of the Manna Storehouse and Stowers' private residence in the course of executing the search warrant.
67. There is no evidence whatsoever, to support anything other than a calm, peaceful and consented-to entry into, and search and seizure of, the Manna Storehouse and the Stowers' private residence.

68. The enforcement officers made a haphazard unannounced entry into the property with guns drawn, as other officers surrounded the property, with guns drawn.
69. This haphazard entry included a failure of the officers to announce and identify themselves as police officers. This failure is compounded by the fact that the lead officer serving the search warrant was wearing black military fatigues, rather than a standard police uniform, and had his weapon drawn.
70. Enforcement officers confiscated the family's personal food supply, personal computers, and personal cell phones.
71. Given the evidence, or lack thereof, supporting the search warrant, the manner in which the search warrant was executed against the Stowers and Manna Storehouse on December 1, 2008 is unreasonable under Section 14, Article I of the Ohio Constitution, and constitutes a violation of the aforesaid plaintiffs' rights under the Ohio Constitution.
72. The manner in which the search warrant was executed against the Stowers on December 1, 2008 risks injury to not only the residents, but to the police, and instills, and did actually instill unnecessary shock, fright, embarrassment and indignity on the Stowers.
73. A raid, search and seizure, even if executed pursuant to a valid search warrant, is unconstitutional where immediate and unconsented-to entry is made into a private residence, with guns drawn, where there is no indication in the affidavit supporting the search warrant or otherwise, that there are exigent circumstances warranting such an entry i.e. that the subjects of the search warrant are either dangerous or a threat to destroy evidence.
74. The search and seizure protections provided by the Ohio Constitution are roader and more protective than their federal counterparts.

UNLAWFUL EXERCISE OF ADMINISTRATIVE AUTHORITY

75. Plaintiffs hereby incorporate by reference all previous paragraphs as if written herein.
76. The Ohio Department of Agriculture and/or the Lorain County General Health District (hereinafter LCGHD) acted beyond the scope of its administrative authority when it directed the police raid, search, and seizure on the Stowers' property and private residence.
77. R.C. 3717.13 permits the Ohio Department of Agriculture and county health departments to contract with police and others to assist in "performing routine services in the administration and enforcement of [Chapter 3717]."
78. Forceful raids and sweeping searches and seizures are not "routines services in the administration and enforcement of [Chapter 3717]," and thus neither the Ohio Department of Agriculture or any county health department may contract with police to authorize a forceful and sweeping raid, search, and seizure, pursuant to executing a search warrant or otherwise.

79. The Ohio Department of Agriculture and/or the LCGHD exceeded the scope of the authority delegated to it by the Ohio Legislature when it contracted for the forceful and sweeping raid, search, and seizure of the Manna Storehouse.
80. The Ohio Department of Agriculture and/or the LCGHD exceeded the scope of the authority delegated to it by the Ohio Legislature when it contracted for the forceful and sweeping raid, search, and seizure of the Stowers' private residence.

EQUAL PROTECTION

81. Plaintiffs hereby incorporate by reference all previous paragraphs as if written herein.
82. Activities of the Stowers and/or the Manna Storehouse include buying local food from farmers, growing their own food on their own farm, consuming, as a family, food they have grown and purchased, and distributing excess food that they have grown or purchased to members of their co-op in prearranged amounts. This activity is entirely different than operating retail food establishment.
83. The Stowers and/or Manna Storehouse cannot reasonably be classified as a "retail food establishment" because it does not store, process, prepare, manufacture or otherwise handle food for retail sale.
84. To the extent that the Stowers and/or Manna Storehouse could be construed to store, process, prepare, manufacture or otherwise handle food for retail sale, its limited range of co-op activities overlaps only minimally, if at all, with these retail food establishment activities.
85. R.C. 3717, as applied to the Stowers and/or Manna Storehouse treats entities that are entirely different, such as large commercial grocery stores and the Stowers family co-op, as though they are exactly alike.
86. The Stowers and/or Manna Storehouse are exempt from the application of R.C. 3717.21.
87. One of any number of exemptions articulated in R.C. 3717.22 applies to the Stowers and/or the Manna Storehouse.
88. R.C. 3717.22 creates myriad exception the licensing requirement for parties that are similarly situated, in terms of their practices, to the Stowers and/or Manna Storehouse.
89. There is no rational distinction between some of the entities that are classified as exempt from the need for retail food establishment licensure under R.C. 3717.22 and the Stowers and/or the Manna Storehouse, insofar as the protection of public health and safety is not effectuated more by regulating Manna Storehouse than it would be buy regulating some of the exempt entities.
90. In the absence of a non-arbitrary distinction, the only remaining purpose of the licensure requirement and its attendant exemptions is economic protectionism, favoring some suppliers to the detriment of others.

91. Protecting discrete interest groups from economic competition is not a legitimate governmental purpose, as required to survive rational basis review under the equal protection and due process clauses of the Ohio Constitution.
92. If the co-op operation is viewed as an occupation or profession, then R.C. 3717, as applied to the Stowers, implicates and violates their fundamental right, under the Ohio Constitution, to earn a living.
93. Members of Manna Storehouse have a right to acquire food, for personal consumption, from Manna Storehouse, just as they would from a neighbor, a local farmer, a grocery store, or elsewhere; and the effect of R.C. 3717, as applied, is to prohibit exercise of that right.
94. Insofar as application of R.C. 3717 influences the rights of Manna Storehouse members, it treats similarly situated parties differently, or in the alternative, treats differently-situated parties similarly.
95. The Equal Protection clause of the Ohio Constitution is broader and more protective than its federal counterpart.
96. R.C. 3717, as applied to all plaintiffs in this case is violative of Section 2, Article I of the Ohio Constitution.

DUE PROCESS

97. Plaintiffs hereby incorporate by reference all previous paragraphs as if written herein.
98. Activities of the Stowers and/or the Manna Storehouse include buying local food from farmers, growing their own food on their own farm, consuming, as a family, food they have grown and purchased, and distributing excess food that they have grown or purchased to members of their co-op in prearranged amounts.
99. R.C. 3717 is intended to regulate large commercial grocery stores rather than family-run organic food co-ops, and the Stowers and/or Manna Storehouse are exempted from the licensure requirement because they only engage in shared ordering of organic food, and the growing of their own food on their own farm.
100. Protecting a discrete interest group from economic competition is not a legitimate governmental purpose, as required to survive rational basis review under equal protection and due process clauses.
101. The Stowers and/or Manna Storehouse is exempted from the licensing requirement because they are a membership organization, and do not solicit the general public.

102. Members of the co-op, such as Ms. Frantz, solicit Manna Storehouse and the Stowers, and when they join as a member of the co-op, they agree that they are knowledgeable about the products they are getting, aware of any risks, and disclaim those risks.
103. If the co-op operation is viewed as an occupation or profession, then R.C. 3717, as applied to the Stowers, implicates and violates their fundamental right to earn a living.
104. The Due Process protections of the Ohio Constitution are broader and more protective than its federal counterpart.
105. R.C. 3717, as applied to all plaintiffs in this case, is violative of Section 16, Article I of the Ohio Constitution.

UNLAWFUL APPLICATION OF STATE POLICE POWER

106. Plaintiffs hereby incorporate by reference all previous paragraphs as if written herein.
107. Activities of the Stowers and/or the Manna Storehouse include buying local food from farmers, growing their own food on their own farm, consuming, as a family, food they have grown and purchased, and distributing excess food that they have grown or purchased to members of their co-op in prearranged amounts.
108. Activities of Manna Storehouse members, such as Ms. Frantz, include acquiring the aforesaid food from Manna Storehouse by ordering it ahead of time, and picking it up and paying for their share of it at Manna Storehouse.
109. The licensing requirements to become licensed as a “retail food establishment” under R.C. 3717 include, pursuant to R.C. 3717.09 and R.C. 3717.07, respectively (1) completion of “approved courses of study for certification in food protection as it pertains to retail food establishments and as it relates to food service operations;” and (2) payment of a significant licensure fee. Even then, approval is subject to administrative discretion.
110. As applied to all plaintiffs, the state’s exercise of its police power offends against the guaranties of the rights of private property and its corollary-freedom of contract-contained in Sections 1, 16 and 19, Article I of the Ohio Constitution.
111. The licensing requirements, as applied to the Stowers and/or Manna Storehouse, are unreasonable and arbitrary, do not confer upon the public a benefit commensurate with its burdens upon private property, are not suitable to the ends in view, are not impartial in operation, are unduly oppressive upon individuals, have no real and substantial relation to their purpose, and interfere with private rights beyond the necessities of the situation.
112. As applied to all plaintiffs, the state’s exercise of its police power is not, in this case, exercised in the interest of public health, safety, morals or welfare.

113. The burdens of R.C. 3717 are unduly oppressive upon all plaintiffs and they interfere with the rights of private property and the freedom of contract beyond the necessities of the situation. The ordinance is therefore invalid as applied to all plaintiffs, as it is in contravention of the Ohio Constitution.
114. R.C. 3717, as applied to all plaintiffs, is not a valid exercise of the police power because it bears no real and substantial relation to the health, safety, morals or general welfare of the public.
115. R.C. 3717, as applied all plaintiffs, is unrelated to the state's interest in public health and consumer protection because all of the recipients of food are members of the co-op and not arms-length purchasers, who have sought out the co-op, and who have indicated that they are fully informed on the food and how it is stored.
116. There has never been a complaint filed or otherwise lodged against Manna Storehouse or the Stowers, by any government entity or private individual, related to the quality or healthfulness of the food distributed through the co-op.
117. The means sought to regulate the Stowers and/or Manna Storehouse has the actual effect of impeding public health and safety.
118. As applied to Cynthia Frantz, the state police power does not validly extent to as to prohibit her from acquiring food, for personal consumption, from a source of her choice.

INALIENABLE AND RETAINED RIGHTS

119. Plaintiffs hereby incorporate by reference all previous paragraphs as if written herein.
120. Section 1, Article I of the Ohio Constitution provides that “[a]ll men are, by nature, free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and seeking and obtaining happiness and safety,” while Section 20, Article I protects rights not specified elsewhere, but retained by the people.
121. The rights to, amongst other things, (1) buy food directly from local farmers; (2) distribute locally-grown food to neighbors; (3) grow and consumer one's own food; (4) grow and distribute one's own food; and (5) pool resources to purchase in food in bulk are fundamental inalienable rights exercised by Ohioans prior and contemporaneous to Ohio's 1851 Constitution, and these are rights reserved to the people, and are part of their general liberty, including their freedom to contract for legal purposes.
122. The right of unthreatening, peaceful citizens to be free from paramilitary police raids, searches, and seizures is a right protected by Section 1, Article I, and Section 20, Article I of the Ohio Constitution.
123. The right to acquire food, for personal consumption, from the source of one's choice, is a right protected by Sections 1 and 20 of Article I of the Ohio Constitution.

124. The conduct of the defendants violated the Plaintiffs' rights under the Ohio Constitution.
125. R.C. 3117, as applied to all plaintiffs in this case, violates their rights under the Ohio Constitution.

WRIT OF REPLEVIN AND MANDAMUS

126. Plaintiffs hereby incorporate by reference all previous paragraphs as if written herein.
127. Public officials are in possession of the property seized during the unlawful seizure, are not entitled to possession of that property, and have a legal and statutory duty to return it.
128. The Stowers' food, records, personal computers and personal cell phones were unlawfully seized.
129. Although the Stowers' personal computers and cell phones have been returned, Plaintiffs' food and records have been, and are still being unlawfully detained.
130. Plaintiffs have a legal right to immediate possession of their food and records.
131. For the reasons articulated herein, Plaintiffs are entitled to the immediate return of the specified property seized in the unlawful search, seizure, and taking, or to compensation for that seizure and taking.

TAKING OF PRIVATE PROPERTY WITHOUT COMPENSATION

132. Plaintiffs hereby incorporate by reference all previous paragraphs as if written herein.
133. Personal property seized from the Stowers includes the families' significant food supply, personal cellular phones, and personal computers.
134. The value of the food taken totals approximately \$10,015.00. Of this amount, \$8,030 was for personal and family use. The reason this amount this value is so significant is because (1) ten children currently live with the Stowers; and (2) the Stowers had recently taken much of their personal herd of sheep to the butcher, which furnished a year's supply of meat for the family.
135. Much of the remaining amount of food was earmarked for pick-up by co-op members, based on prearranged orders, or had been forgotten by previous co-op members who had come to pick up their orders.
136. The food taken was not an is not inherently illicit, so as to be subject to forfeiture
137. Section 19, Article I of the Ohio Constitution, which provides, "Private property shall ever be held inviolate, but subservient to the public welfare. * * * [W]here private

property shall be taken for public use, a compensation therefor shall first be made,” deems private property rights fundamental, and provides stronger protection to private property rights than does the corollary provision of the federal constitution.

138. R.C. 3717 was used to wrongfully deprive the Stowers and/or Manna Storehouse of private property without compensation.
139. Aforesaid property has been unlawfully detained.
140. R.C. 3717, as it has been applied to the Stowers and/or Manna Storehouse, interferes with the fundamental right to acquire, use, and possess private property.
141. The Property, if properly taken at all, was taken for a “public use.”
142. The Stowers, and/or Manna Storehouse, are entitled to compensation for the private property taken, or to return thereof.

MOTION FOR PRELIMINATRY INJUNCTIVE RELIEF

143. Plaintiffs hereby incorporate by reference all previous paragraphs as if written herein.
144. A preliminary injunction is necessary to preserve and protect the ability of the court to provide an effective judgment and meaningful relief to Plaintiffs, because the threat of future prosecution and police seizure of personal food supply chills their ability to engage in co-op-related activity, and to determine whether they can raise, obtain, and/or store food for personal and co-op use.
145. There is a substantial likelihood of success on the merits in this case, the movant will suffer an irreparable injury if the defendants’ conduct is not enjoined, a preliminary injunction would not harm third parties, and the interest of the public will be served by granting a preliminary injunction.
146. In balancing the equities involved, both preliminary and permanent injunctive relief is necessary.

ATTORNEYS FEES

147. Plaintiffs hereby incorporate by reference all previous paragraphs as if written herein.
148. Plaintiffs are entitled to attorneys’ fees under R.C. 2335.39, the Equal Access to Justice Act.

WHEREFORE, Plaintiffs hereby demand judgment as follows:

1. A declaration that the manner in which the pertinent Search Warrant was executed on December 1, 2008, and the attendant search and seizure were unconstitutional;

2. A declaration that R.C. 3717 is unconstitutional as applied to Plaintiffs;
3. A declaration that the rights acquire and distribute food for personal consumption is a right protected by the Ohio Constitution;
4. Return of property seized during the December 1, 2008 search and seizure;
5. An injunction against the use of any further unconstitutional searches and seizures against them and similarly-situated parties;
6. An injunction against all similar unconstitutional searches and seizures directed by administrative agencies;
7. An injunction against further enforcement of R.C. 3717 against all plaintiffs and similarly-situated parties;
8. Attorneys fees warranted under applicable laws.

Respectfully submitted,

/s/ Maurice A. Thompson
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CERTIFICATE OF SERVICE

A copy of the foregoing was served upon the following this 3rd day of March, 2009:

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