

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO**

NOURISH OUR NEIGHBORS, a)	
nonprofit corporation,)	
)	Case No. 3:24-cv-299
Plaintiff,)	
v.)	
)	COMPLAINT FOR
CITY OF DAYTON, OHIO, and)	DECLARATORY AND
SHELLEY DICKSTEIN, in her official)	INJUNCTIVE RELIEF
capacity as the City Manager for the)	
City of Dayton, Ohio,)	
)	
Defendants.)	
)	
)	

INTRODUCTION

1. Nourish Our Neighbors (NON) is an organization of volunteers who want to ensure that people in their community do not go hungry. But a Dayton permit scheme effectively prohibits them from engaging in such charity and from expressing their deeply held belief that both society and the government are failing the City’s homeless.

2. Many people are concerned about the rising homeless population in Dayton. Nourish Our Neighbors is doing something about it. Its members partner with local barbers to offer haircuts, hand out basic hygienic products, and assist people with finding permanent housing and social services. Its most fundamental service is sharing food once a month with people who would otherwise go hungry.

3. A key part of the group's mission is leaving the places where they serve better than they found them. Its members ensure that the food they hand out is safe and that no trash is left behind.

4. Yet, the City of Dayton enforces a needless and costly permit requirement that significantly impairs NON's mission. One of its members was even put in handcuffs for handing a burrito to a homeless man without the required permit.

5. Dayton's laws violate NON's rights to free expression and to engage in charity. They also unjustly target organizations that serve the homeless. Accordingly, they should be declared unconstitutional and enjoined under the First and Fourteenth Amendments to the United States Constitution.

JURISDICTION AND VENUE

6. Plaintiff brings this civil rights lawsuit pursuant to 42 U.S.C. § 1983 for violations of the rights secured by the First and Fourteenth Amendments to the United States Constitution.

7. Jurisdiction over Plaintiff's claims for declaratory and injunctive relief is vested in this Court by 28 U.S.C. § 1331 (federal question jurisdiction), § 1343 (civil rights jurisdiction), and §§ 2201–2202 (the Declaratory Judgment Act).

8. Venue is proper in this Court, pursuant to 28 U.S.C. § 1391(b), on the grounds that all or a substantial part of the acts giving rise to Plaintiff's claims occurred in Dayton, Ohio, which is located in the Southern District of Ohio.

PARTIES

Plaintiff

9. Plaintiff Nourish Our Neighbors (NON) is a 501(c)(3) nonprofit corporation registered in Ohio. It was formally established in January 2024, but the volunteers behind NON have provided services to the homeless together in Dayton, Ohio, for over three years. Through its charitable work, NON's members express their belief that society has failed and overlooked its most vulnerable citizens.

Defendants

10. Defendant City of Dayton is a municipality in the Southern District of Ohio.

11. Defendant Shelley Dickstein is the City Manager for the City of Dayton. In her official capacity, Ms. Dickstein maintains ultimate responsibility for granting or denying permits for those intending to feed or hand out clothing or hygiene products to the homeless in the City of Dayton. Defendant Dickstein is sued in her official capacity.

12. Defendants are empowered to enforce the permit requirement under Dayton's City Ordinance § 137.21(A), and to enjoin, fine, and prosecute NON and others similarly situated for providing food and services to the homeless in downtown Dayton.

I. FACTUAL ALLEGATIONS

NOURISH OUR NEIGHBORS WISHES TO PROVIDE SAFE, CLEAN, AND DESPERATELY NEEDED MEALS AND SERVICES TO DAYTON'S HOMELESS

13. Nourish Our Neighbors' members volunteer for the organization because they have a passion for bettering their community and helping the homeless. They believe this population has been underserved both by society and by the government. And they don't want to see anyone go hungry.

14. The volunteers have been working together informally for over three years, but came together in January 2024 to establish NON, which now has roughly 30 volunteers.

15. Historically, NON has provided meals, clothing, and basic hygiene products. It also helps those in need access social services and secure permanent housing and partners with local barbers and other businesses to offer free haircuts and other services.

16. NON relies entirely on donations from its volunteers and members of the community. It does not have the resources to buy a piece of property. Instead, meets the homeless population where it is. Because Dayton's homeless

congregate around the central area of Courthouse Square, NON travels there to offer its services rather than a less urban setting where it would be less effective.

17. NON and its volunteers always make sure to leave places cleaner than they found them. They pick up trash before any service starts and they engage in an extensive cleanup after each service. NON sends volunteers a block in every direction after each meal service to ensure that anyone who received food does not leave wrappers or trash behind.

18. NON's food safety standards are the same as those used by restaurants in Dayton. It checks its food and service plan with a volunteer county health inspector to ensure the safety of its meal service.

19. If allowed to operate free of the onerous permit requirement, NON intends to provide meals and services to the homeless in a safe and sanitary manner.

THE CHALLENGED ORDINANCE

20. Despite growing hunger and homelessness, Dayton's City Ordinance § 137.21(A) forbids anyone—even experienced and responsible nonprofit organizations that pose no threat to the public—from providing aid to the homeless in downtown Dayton without the City Manager's prior approval.

21. Section 137.21 requires a single-use, \$50 permit for any individual or group that wishes to “prepare or distribute food, clothing or toiletries in a public place within the central area of the city without a permit.”

22. This single-use permit lasts just six hours. Thus, applicants must submit a new application and pay another \$50 fee for each service they provide.

23. In order to receive a single-use permit, the applicant must provide six categories of information: “(1) Type and quantity of food, clothing and toiletries applicant intends to prepare and/or distribute in a public place within the central area of the city; (2) Location of public place where applicant intends to prepare and/or distribute food, clothing and toiletries within the central area of the city; (3) Date and time applicant intends to prepare and/or distribute food, clothing and toiletries in a public place within the central area of the city; (4) Number of persons applicant intends to use preparing and/or distributing food, clothing and toiletries in a public place within the central area of the city and the estimated number of recipients of food, clothing and toiletries; (5) Location and number of toilet facilities, if any, applicant shall make available for use by persons consuming food prepared and/or distributed by the applicant in a public place within the central area of the city; and (6) Arrangements, if any, made by applicant to provide parking, traffic and crowd control and safety, and trash and litter collection and disposal, during and immediately after the

preparation and/or distribution of food, clothing and toiletries in a public place within the central area of the city.” Dayton City Ord. § 137.21(B).

24. The City Manager has discretion to deny the permit application within seven days if the Dayton Police or the Director of Public Works provides evidence that the application is “inadequate” in any way. Dayton City Ord. §§ 137.21(C), (D). “Inadequate” is not defined in the ordinance.

25. Each permit costs at least \$50—with a \$250 refundable deposit required in the event of any previous violations. A permit expires after only six hours. Dayton City Ord. § 137.21(E). Thus, an organization wishing to help the homeless on a daily basis would pay at least \$1,500 per month in permitting fees and up to \$7,500 a month in deposits. These costs are prohibitive for small organizations whose budgets are already stretched to meet the needs of Dayton’s homeless.

26. For NON, which engages in feedings about once a month, the fees associated with securing a permit would mean forgoing at least an entire feeding each year, leaving 150 people without food.

27. The permit requirement also requires sourcing port-a-potties, which is time-consuming and cost-prohibitive.

28. By the text of the ordinance, NON’s members are forbidden from even handing their leftovers to a hungry person outside a restaurant or offering a granola bar at a traffic light without first procuring a \$50 permit. If any

citizen failed to get a permit for those simple gestures, he or she would have committed a misdemeanor. Dayton City Ord. § 137.21(H).

29. The time and costs associated with the permit requirement not only significantly burden NON's ability to provide its services but also conflict with NON's members' sincerely held beliefs. In their view, it is contrary to NON's mission to secure a permit when the people it serves do not get the luxury of permits or even the essentials needed to live.

30. As one member explained: "We are . . . concerned with what acquiring permits would do to our existing relationships with the people we service. We have set the precedent that if they are not safe from police brutality and harassment then we aren't either and we won't use resources we have that they don't to make ourselves safer when we willingly put ourselves in their environment. The moment we leave—they are susceptible to arrest, tickets, harassment etc. We've shown our unhoused neighbors we will always stand with them on equal footing."

31. In addition, NON has seen Dayton police show up shortly before permitted events and shoo away the very people the organization intends to serve. The permit requirement therefore stands as a significant impediment to NON's mission.

**ENFORCEMENT OF THE PERMIT
REQUIREMENT AGAINST NON**

32. The volunteers behind NON had been offering free meals in downtown Dayton for two years without a permit before the City stepped up its enforcement.

33. At the time, NON had begun to attract media attention for its charitable works.

34. On information and belief, the City of Dayton enforced the permit requirement to prevent further media coverage of the problem of homelessness in its downtown area.

35. On April 7, 2024, Nourish Our Neighbors was distributing food in Courthouse Square when a police officer approached and ordered the volunteers to stop on the basis that they lacked a permit under Dayton City Ordinance § 137.21(A).

36. While the police officer was speaking with some NON volunteers, a homeless man approached a short distance away and a volunteer handed the man a burrito.

37. The officer handcuffed the volunteer and put him into the back of a police car. After detaining the volunteer for at least half an hour, the police released him without charges.

38. In the wake of this detention, Nourish Our Neighbors has struggled furthering its mission. Many volunteers are not willing to risk arrest for handing out food, and the homeless population is skittish about increased interactions with police. As a result, even though the homeless problem in Dayton remains, demand for services has nearly halved—from an average of 150 recipients per service to 75 recipients per service.

39. Given the arrest, NON is subject to the increased deposit requirements under the challenged ordinance.

**CLAIMS FOR RELIEF
FIRST CAUSE OF ACTION
(First Amendment)**

40. Dayton’s permit requirement violates Nourish Our Neighbors’ right to expression by prohibiting it from engaging in expressive conduct without prior approval from a government official.

41. Sharing food, which is core to Nourish Our Neighbors’ mission, is expressive conduct. NON expresses the message that society has failed the less fortunate by publicly offering food to its homeless “neighbors.”

42. It is committed to standing on equal footing with the homeless and therefore refuses to secure a permit that would insulate it from liability while leaving the homeless even more vulnerable.

43. The permit requirement is a prior restraint on Plaintiff’s expression, and it specifically targets that expression.

44. The permit requirement is content- and speaker-based. It has not been applied to people who want to share food at birthday parties or barbeques, have family get togethers or picnics, or offer and share gifts or clothing in any other context—even in public. Instead, it stifles this expressive conduct only when it applies to the homeless.

45. The City has unfettered discretion to deny a permit applicant. So long as the City deems the application “inadequate” in any respect—a vague and undefined term—it may deny a permit.

46. Dayton cannot show a substantial or compelling interest in enforcing the permit requirement against Plaintiff, nor can it show the requirement is narrowly drawn.

47. Nourish Our Neighbors follows the same food sanitation practices as restaurants in Dayton. The permit requirement, as applied to NON, does nothing to further any government interest in cleanliness, because NON’s volunteers always leave the public space cleaner than when its volunteers arrive. Nor is the requirement tailored to food safety. On its face, its requirements do nothing to ensure that people are offering safe food.

48. There are less restrictive means available to achieve the City’s interests, including enforcing its litter laws. Because the permit requirement does not serve any government interest and is inadequately tailored, it violates the First Amendment.

**SECOND CAUSE OF ACTION
(Equal Protection)**

49. Dayton's requirement that people secure a permit to engage in charity violates Nourish Our Neighbors' Fourteenth Amendment right to equal protection under the law.

50. The ordinance specifically targets feeding the homeless and has not been enforced against any group except those who seek to help the homeless.

51. It has not been applied against those who hold birthday parties or picnics in parks or by the river or otherwise share food.

52. The same rationales that purportedly require a permit to feed or clothe the homeless also apply to any group activity that involves sharing food, clothing, or other gifts. This unequal treatment is not related to any rational, let alone significant or compelling, government interest.

53. NON abides by all relevant health, safety, and sanitation laws, and it collects all trash prior to closing its events. NON's members leave the park in better condition than when they arrived.

54. Thus, on its face and as applied to NON, the permit requirement violates the Equal Protection Clause of the Fourteenth Amendment.

**THIRD CLAIM FOR RELIEF
(Due Process)**

55. The permit requirement violates Plaintiff's right to engage in charity.

56. The Due Process of Law Clause of the Fourteenth Amendment protects the liberty of individuals, including their fundamental rights, free from irrational, arbitrary, hostile, or otherwise undue government interference. The right to engage in charity is one of the rights retained by the people under the Ninth Amendment. And the Fourteenth Amendment protects the rights explicitly set out in the Constitution as well as unenumerated rights.

57. The practice of charity is deeply rooted in this nation's history and tradition. Americans have engaged in charity and self-help in their communities since before the Founding.

58. No matter how the right to charity is defined, it must include the most basic gesture of humanity toward the less fortunate: sharing food and feeding the hungry.

59. Because Dayton's permit requirement restricts a fundamental right, it must pass strict judicial scrutiny. But it cannot stand up to even the more lenient rational basis standard.

60. As discussed above, the permit requirement does not serve any conceivable government interest.

61. The desire to remove a disfavored group from a certain area, or to prevent media coverage of poverty in the downtown area, is not a legitimate government end. But even if it were, the homeless population does not stay in downtown Dayton solely because of a once-a-month food service.

62. NON is suffering and will continue to suffer substantial and irreparable harm until the arbitrary, irrational, and fundamentally unfair procedures established by Dayton City Ordinance § 137.21(A) are declared unlawful and enjoined by this Court.

II. REQUEST FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the following relief:

A. An entry of judgment declaring that the permit requirement established by Dayton City Ordinance § 137.21 violates the First Amendment, as well as the Due Process and Equal Protection Clauses of the Fourteenth Amendment;

B. An entry of a permanent injunction enjoining Defendants from enforcing the permit requirement of Dayton's City Ordinance § 137.21;

C. An award of costs and attorney's fees pursuant to 42 U.S.C. § 1988;
and

D. Any such other relief as the Court may deem just and proper.

Respectfully submitted this 19th day of November, 2024.

PACIFIC LEGAL FOUNDATION

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