

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

CHOSEN 300 MINISTRIES, INC.,	:	
REVEREND BRIAN JENKINS,	:	
Individually and as Executive Director	:	Civil Action No. 12-
of Chosen 300 Ministries,	:	
THE WELCOME CHURCH,	:	
REVEREND VIOLET LITTLE,	:	
Individually and as Pastor	:	
of The Welcome Church,	:	
THE KING’S JUBILEE.	:	
REVEREND CRANFORD COULTER,	:	
Individually and as Pastor	:	
of The King’s Jubilee,	:	
PHILLY RESTART, and	:	
ADAM BRUCKNER,	:	
Individually and as Director of	:	
Philly Restart,	:	
Plaintiffs	:	
v.	:	
CITY OF PHILADELPHIA and	:	
MAYOR MICHAEL NUTTER,	:	
In his official capacity as the Mayor of	:	
the City of Philadelphia,	:	
Defendants	:	

**COMPLAINT
Introduction**

1. The plaintiffs are churches and church leaders devoutly committed to the plight of those in need. For more than a decade, the plaintiffs have operated programs that distribute free food in public parks in Philadelphia. Plaintiffs perform this mission as an essential part of their religious worship. Food sharing programs for the homeless also express an important message about the desperate circumstances of the poor. The programs have been hugely successful, furthering the religious mission of the plaintiffs and providing, at no cost to the City, a needed

social service. The programs have functioned continuously without significant interference by government officials or adverse effect on the public interest.

2. In the weeks preceding the opening of Philadelphia's newest cultural attraction – the Barnes Foundation at 20th Street and the Benjamin Franklin Parkway – the City amended municipal law in a manner expressly designed to shut down the plaintiffs' food sharing programs. The Mayor announced that the ban on "public feeding" is effective June 1, 2012, and that legal sanctions will be imposed on programs that continue to operate. The governmental action will violate the plaintiffs' rights under the Free Exercise and Free Speech Clauses of the First Amendment and the Pennsylvania Religious Freedom Protection Act.

3. Plaintiffs bring this action for injunctive and declaratory relief to prevent the immediate threat of interference with their constitutional and statutory rights by the City of Philadelphia.

Jurisdiction

4. This action is brought pursuant to 42 U.S.C. §1983. Jurisdiction is founded upon 28 U.S.C. §§1331 and 1343(1), (3), (4) and the aforementioned statutory provision. Plaintiffs further invoke the supplemental jurisdiction of this Court under 28 U.S.C. §1367(a) to hear and adjudicate state law claims.

Parties

5. Plaintiff Chosen 300 Ministries, Inc. is a non-profit religious organization with principal offices in the City of Philadelphia and recognized under the laws of the Commonwealth of Pennsylvania.

6. Plaintiff Reverend Brian Jenkins is the Executive Director of Chosen 300 Ministries,

Inc., a resident of the Eastern District of Pennsylvania, and at all times relevant to this action resided in Philadelphia, Pennsylvania.

7. Plaintiff The Welcome Church is a non-profit religious organization with principal offices in the City of Philadelphia and recognized under the laws of the Commonwealth of Pennsylvania.

8. Plaintiff Reverend Violet Little is Pastor of The Welcome Church, a resident of the Eastern District of Pennsylvania, and at all times relevant to this action resided in Philadelphia, Pennsylvania.

9. Plaintiff The King's Jubilee is a non-profit religious organization with principal offices in Souderton, Pennsylvania, and recognized under the laws of the Commonwealth of Pennsylvania.

10. Plaintiff Cranford Coulter is Pastor of The King's Jubilee, a resident of the Eastern District of Pennsylvania, and at all times relevant to this action resided in Philadelphia, Pennsylvania.

11. Plaintiff Philly Restart is a non-profit religious organization with principal offices in the City of Philadelphia and recognized under the laws of the Commonwealth of Pennsylvania.

12. Plaintiff Adam Brucker is Director of Philly Restart, a resident of the Eastern District of Pennsylvania, and at all times relevant to this action resided in Philadelphia, Pennsylvania.

13. Defendant City of Philadelphia is a political subdivision of the Commonwealth of Pennsylvania and operates and funds all municipal governmental operations in the County of Philadelphia.

14. Defendant Michael Nutter is the Mayor of the City of Philadelphia and is and was at

all times relevant to this action the final decision-maker for all municipal governmental operations in the County of Philadelphia. He is being sued in his official capacity as Mayor of the City of Philadelphia.

15. At all relevant times, all Defendants were acting under color of state law.

16. At all relevant times, the actions taken by all Defendants deprived the plaintiffs of their constitutional and statutory rights.

Factual Allegations

17. Fairmount Park, a 9,200 acre expanse operated by the Philadelphia Department of Parks and Recreation, is the principal public park system in Philadelphia. For more than 150 years, it has served as a venue where the public enjoys family and other social gatherings, sporting events and picnics. It is a public forum where individuals and groups congregate to express views on important social and political issues. The park is used by religious groups for gatherings, prayer, and to further religious missions. As in most urban areas, the parks are frequented by the homeless, who seek haven in the quiet and safety of parks for rest and sleep.

18. The Fairmount Park system is so extensive that there are virtually no large green public areas in Philadelphia, particularly in Center City, that are not part of Fairmount Park.

19. The plaintiffs have for many years regularly conducted programs that share or donate food to the homeless at locations along the Benjamin Franklin Parkway in Philadelphia. The principal purpose of these programs is religious observance, the act of providing prayer and sustenance for the poor. The programs also convey an important message to the public about the plight of the homeless and the importance of compassion toward those in need.

20. The plaintiffs undertake the food sharing programs in Fairmount Park as a central

part of their religious observance.

21. For more than a decade, the plaintiffs have provided food to the homeless as part of deeply held and central religious practices. Chosen 300 Ministries views the free food distribution programs as central to its religious mission to “Unite the body of Christ to reach the world.” The Welcome Church undertakes the food sharing as “an extension of our religious communion service.” Similarly, The King’s Jubilee considers the program “religious worship” conducted on “sacred ground,” and the stated religious purpose of the weekly program of Philly Restart is “Love thy neighbor as thyself.”

22. The principal objective of each plaintiff – and the means by which they choose to worship and observe their religious beliefs – is the act of providing food to the poor and homeless.

23. Plaintiffs hold their programs in the park area because there are virtually no other centrally located public areas in Philadelphia where they can gather, pray and share meals with the homeless in a pleasant and dignified setting. Indeed, the homeless frequented the area along the Benjamin Franklin Parkway long before the food sharing programs were initiated which is one of the reasons that the plaintiffs chose that area to run their programs.

24. The plaintiffs’ long experience in providing food to the homeless has shown that many homeless will not enter indoor facilities where free food is offered. Some homeless report that food served at indoor locations is not particularly good or has made them sick; others are simply afraid to enter indoor settings. Many have had negative experiences in shelters which they believe are unsafe, unwelcoming and/or unhealthy.

25. Plaintiffs also believe that sharing food in a centrally located public place – rather

than a remote indoor location – serves the critical purpose of bringing widespread attention to the plight of the homeless. The programs elicit sympathy and understanding for the difficult circumstances of the homeless, and prompt some members of the public to take action on their behalf. The new City policy will interfere with the plaintiffs' rights to free speech and expression without cause or justification.

26. Plaintiffs do not take issue with the need to comply with legitimate health and safety protocols, which is precisely why they have always complied with generally health and accepted standards. Plaintiffs clean the vicinity of their programs after they have served food, and leave the area cleaner than before the food is served.

27. In the past, the City has not taken legal action to ban the use of the parks along the Benjamin Franklin Parkway by religious groups who offer free food sharing programs.

28. In the weeks preceding the opening of the Barnes Foundation, City policy dramatically changed. In a series of official actions, the City has taken steps to shut down the plaintiffs' food distribution programs with the apparent objective of removing the programs (and thus homeless persons) from the area along the Benjamin Franklin Parkway.

29. On March 15, 2012, Mayor Nutter announced that the City will ban the food distribution programs from all City parks effective June 1, 2012. Mayor Nutter made clear the City's intent to eliminate what he termed "outdoor feeders," asserting that the practice lacks "dignity" and a proper concern with "health and safety" issues, and should therefore be replaced by regulated "indoor feedings."

30. The specific intent of the new City policy is to target the plaintiffs' programs in Fairmount Park.

31. As an interim measure, the Mayor announced that the “outdoor feeding” programs will be required to relocate to the City Hall apron adjacent to the site of current construction at Dilworth Plaza.

32. At about the same time, the Department of Parks and Recreation issued a regulation that bars “outdoor feedings” in all City parks. A plain reading of the regulation makes clear that the provision targets programs that distribute free food to the poor.

33. This regulation prevents the plaintiffs from serving free food to the homeless at their current location, or at any other outdoor public green space in the Center City area.

34. On March 23, 2012, the Philadelphia Department of Health promulgated new regulations on “Outdoor Public Serving of Food.” The regulations closely track in all critical respects the language used by the Mayor and the new Department of Parks and Recreation rules governing the distribution of free food, and impose burdensome restrictions on the activities of the plaintiffs that are not imposed on the many secular groups that share or sell food in Fairmount Park.

35. Mayor Nutter explicitly stated that the new regulations are intended to address the free food programs for the homeless and will not affect picnics, commercial vendors, permitted events or, by implication, the giving of food to anyone other than the homeless.

36. The regulations and the Mayor’s policy statements were carefully coordinated and specifically directed at the free food sharing programs. They make explicit exceptions designed to allow social, family or business picnics, outdoor commercial food service, and permitted events. The exemptions from the prohibition of “public feeding” make clear that the effort to target the plaintiffs’ religious practices is not generally applicable. The City has provided

exceptions to the ban on "public feeding" for favored secular groups, while barring comparable religious undertakings.

37. While the Mayor claims that the new policy was intended to advance the "dignity" of the homeless, his decision to relocate all "outdoor feedings" from the park to "City Hall apron" demonstrates an altogether different motive. The City Hall apron is surrounded by heavy traffic at all hours, the surface is comprised of concrete slabs, the construction at Dilworth Plaza produces noise and dust throughout the day, and there are few places to sit. The parks along the Benjamin Franklin Parkway, on the other hand, are landscaped with generous grassy expanses, ample bench seating, far less traffic and noise and, on the whole, is a far more pleasant and dignified place to eat a meal.

38. The amended regulations, the Mayor's policy statements, and the timing of the City's actions demonstrate a determination to remove from the vicinity of the Barnes Foundation those that some view as undesirable to the public image of the City of Philadelphia.

39. The City policy does not further a compelling state interest in a narrowly tailored fashion.

40. The City policy does not further a significant state interest and does not provide ample alternative channels for the plaintiffs to disseminate their message of the desperate circumstances of the poor and the need for compassion.

41. The City policy directly interferes with the plaintiffs' protected free speech and expression rights in the absence of a compelling or significant governmental interest.

42. The City's imminent plan to curtail and shut down the plaintiffs' food sharing programs in Fairmount Park violates the Free Exercise Clause of the First Amendment.

43. The City's imminent plan to curtail and shut down the plaintiffs' food sharing programs in Fairmount Park violates the Pennsylvania Religious Freedom Protection Act.

44. The City's imminent plan to curtail and shut down the plaintiffs' food sharing programs in Fairmount Park violates the Free Speech Clause of the First Amendment.

45. The actions and conduct of the defendants fail to provide the plaintiffs equality of opportunity in the exercise of their First Amendment rights, and thus violates the Equal Protection Clause of the Fourteenth Amendment.

46. Plaintiffs will suffer irreparable harm in violation of their constitutional and statutory rights if the City is not enjoined from the effort to ban the plaintiffs from the public parks of Philadelphia.

47. The harm to the plaintiffs by denying injunctive relief outweighs the harm to the defendants by granting such relief, and injunctive relief would serve the public interest.

Count I – Federal Constitutional Violation

48. Plaintiffs incorporate by reference paragraphs 1-47 of the Complaint.

49. The practices, policies, acts and omissions alleged in this Complaint are in violation of the First and Fourteenth Amendments to the United States Constitution in that they deprive the plaintiffs of their rights to the free exercise of religion. If appropriate declaratory and injunctive relief that is necessary to enjoin the City's plan to curtail and eliminate the plaintiffs' food sharing programs is not granted, the harms suffered will be irreparable, as the unconstitutional policies and practices will continue to exist for the foreseeable future.

Count II – Federal Constitutional Violation

50. Plaintiffs incorporate by reference paragraphs 1-49 of the Complaint.

51. The practices, policies, acts and omissions alleged in this Complaint are in violation of the First and Fourteenth Amendments to the United States Constitution in that they deprive the plaintiffs of their rights to freedom of speech and expression. If appropriate declaratory and injunctive relief that is necessary to enjoin the City's plan to curtail and eliminate the plaintiffs' food sharing programs is not granted, the harms suffered will be irreparable, as the unconstitutional policies and practices will continue to exist for the foreseeable future.

Count III-State Law Claims

52. Plaintiffs incorporate by reference paragraphs 1-51 of the Complaint.

53. The policies and practices alleged in this Complaint deprive the plaintiffs of their rights under the Pennsylvania Religious Freedom Protection Act (“PRFPA”), 71 Pa.C.S. §2401, et seq., and the Constitution and the laws of the Commonwealth of Pennsylvania to the free exercise of religion. Plaintiffs, through their counsel, pursuant to 71 Pa.C.S. §2401, et seq., provided notice to the City of the intent to file the instant legal action. If appropriate declaratory and injunctive relief that is necessary to enjoin the City's plan to curtail and eliminate the plaintiffs' food sharing programs is not granted, the harms suffered will be irreparable, as the unconstitutional policies and practices will continue to exist for the foreseeable future.

Relief

Wherefore, the plaintiffs request the following relief:

1. A declaratory judgment that the City practices and policies alleged in this Complaint are unconstitutional;
2. A permanent injunction prohibiting the defendants from the implementation or application of the policies and practices alleged in this Complaint, and specifically an Order barring the defendants from preventing the plaintiffs from conducting their food sharing programs in Fairmount Park;
3. Reasonable attorney's fees and costs; and
4. All other appropriate relief.

S/ Paul Messing
Paul Messing
No. 17749
KAIRYS, RUDOVSKY,
MESSING & FEINBERG, LLP
718 Arch Street, Suite 501S
Philadelphia, PA 19106
(215) 925-4400
Counsel for Plaintiffs

S/ Seth Kreimer
Seth Kreimer
No. 26102
3400 Chestnut Street
Philadelphia, PA 19104
Counsel for Plaintiffs

S/ Mary Catherine Roper
Mary Catherine Roper
No. 71107
AMERICAN CIVIL LIBERTIES UNION
125 South 9th Street, Suite
Philadelphia, PA 19106
(215) 592-1513
Counsel for Plaintiffs