

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

<b>Nicholas Hudnell</b>	)	Case No. 1:20-cv-01220
	)	
And all those similarly situated	)	JUDGE:
	)	
<i>Plaintiffs,</i>	)	
v.	)	<b>MOTION FOR</b>
	)	FOR <i>TEMPORARY RESTRAINING</i>
<b>City of Cleveland, Ohio</b>	)	<i>ORDER</i> (WITHOUT NOTICE)
	)	
	)	
	)	<b>TO ENJOIN AND RESTRAIN</b>
	)	<b>ENFORCEMENT AND</b>
	)	<b>IMPLEMENTATION OF CURFEWS</b>
	)	<b>UNDER MAYOR JACKSON’S</b>
	)	<b>CURRENT PROCLAMATION OF</b>
	)	<b>CIVIL EMERGENCY (UNCIVIL</b>
	)	<b>UNREST</b>

Now come the Plaintiffs Nicholas Hudnell and Mark S. Ondrejch on behalf of themselves and all those similarly situated (collectively “Plaintiffs”) to hereby move pursuant to Fed. R. Civ. P. 65 for a TEMPORARY RESTRAINING ORDER (WITHOUT HEARING OR NOTICE) against Defendants City of Cleveland, Frank G. Jackson, Michael McGrath, Calvin D. Williams, Mike DeWine, Richard S. Fambro, Armond Budish and David G. Schilling Jr. (in their official capacities as set out in the above caption; collectively referred to a “Defendants”) to restrain them from implementing (or otherwise ordering them to cease) any further curfews in the city of Cleveland for the reasons set out in Counts 1-10 of the Complaint (including the 8:00 p.m. curfew today). For the reasons set out in the Complaint and pursuant to application of the law cited therein, this motion should be GRANTED.

Furthermore, this Court should not require Plaintiffs to file a bond because this Temporary Restraining Order is filed to protect and restore the Constitutional rights and similarly-situated persons (or a nominal bond). This is not a case where Plaintiffs are seeking property or money from the other party.

This Court should issue the Temporary Restraining Order IMMEDIATELY issue the TRO; otherwise, the Constitutional rights of the citizens of Cleveland will continue to be infringed upon again beginning at 8:00 p.m. tonight (One hour from now). The undersigned has contacted the attorneys for the city of Cleveland and has e-mailed a copy of the complaint to them prior to filing the Complaint and this Motion.

### MEMORANDUM<sup>1</sup>

#### **I. The Unconstitutional Curfew Proclamation**

On or about May 31, 2020 at 8:00 p.m., the Mayor signed a *Second Modification* to the Proclamation extending the curfew imposed on the Central Business District to also include the W. 25<sup>th</sup> Market District until 8:00 p.m. on Tuesday, June 2, 2020 (hereinafter the “Proclamation”). See *Exhibit 2* attached hereto and incorporated herein.

1. Under the Proclamation:

“All persons are prohibited from walking, running, loitering, standing or driving/motoring, (except for vehicles on Route 2; I-77; I-71; I-90; I-480 West Lee Road Exit Ramp; I-90 East West 25<sup>th</sup> Street Exist and I-490 West at W. 7<sup>th</sup> Street Exit) upon any alley, street, highway, public property or vacant premises within the Area, excepting persons officially designated by the Mayor to perform duties with reference to the Civil Emergency, persons traveling to and from their residence located within the Area or a place of refuse, persons traveling to and from their residence located within the Area or a place of refuge, persons traveling for medical care and/or safety should they be unable for reasons of health or safety to remain in their residence, and persons traveling to and from their place of employment during regular business hours. All persons are asked to remain within their residences

---

<sup>1</sup> The Authorities cited in the Verified Complaint are incorporated herein.

during the curfew unless remaining in their residences could constitute a risk to health or safety.”

On or about 10:00 a.m. on June 2, 2020, the City announced a ***Third modification*** of the Proclamation that the restrictions imposed by the Proclamation will be extended past 8:00 p.m. on June 2 as follows:

- i. The areas subject to the restrictions will remain under curfew until 6:00 a.m. on June 3.
- ii. The areas subject to the restrictions will then be under curfew from 8:00 p.m. until 6:00 a.m. on June 3, 2020 through June 5, 2020.
- iii. Additional exceptions were made to residents of the restricted areas as set out on the attached map including the Central Business District and the W. 25<sup>th</sup> Market District.

See Proclamation at Third modification, attached hereto and incorporated herein as ***Exhibit 3***.

This Court should restrain enforcement of the curfew because it unconstitutionally infringes upon the Plaintiffs’ substantive fundamental rights. Under the Due Process Clause of the Fourteenth Amendment contains a substantive component that "provides heightened protection against government interference with certain fundamental rights and liberty interests." *Washington v. Glucksberg* (1997), 521 U.S. 702, 720, 117 S. Ct. 2258, 2267, 138 L. Ed. 2d 772, 787 This doctrine of substantive due process forbids the government from infringing upon these fundamental liberty interests *at all*, regardless of the procedure provided, unless the infringement survives strict scrutiny; that is, the government's infringement must be "narrowly tailored to serve a compelling state interest." *Reno v. Flores* (1993), 507 U.S. 292, 302, 113 S. Ct. 1439, 1447, 123 L. Ed. 2d 1, 16.

Here, Defendants cannot show, a compelling governmental interest to implement the curfew measures discussed in this Complaint against Plaintiffs (and others) because it cannot and has cannot articulate facts to support an interest compelling enough to impose this very restrictive curfew on the Central Business District and W. 25<sup>th</sup> Market Street District in addition to closing

access to and from those areas. It is a fact that there has been no widespread civil unrest in the city of Cleveland Central Business District since about daylight on Sunday. Further, it is a fact that there has been no unrest in what the Proclamation describes as the W.25<sup>th</sup> Market District. The curfew does not advance a compelling government interest.

Additionally, the curfews implemented in the Proclamation and the enforcement thereof are not narrowly tailored to serve any compelling state interest because the curfews prevent Plaintiffs (and others) from walking, driving, running or otherwise freely traveling around the city's curfew districts without being subject to being stopped by police or National Guard troops and forced to provide identification to prove that he or she is in the curfew area for the limited reasons permitted under the latest Proclamation.

The requirements for issuance of this Temporary Restraining Order are satisfied. See Verified Complaint at ¶¶155-165. The vindication of citizens' Constitutional rights is always in the public interest. The Plaintiffs should not be required to abide by a curfew. Providing papers, proving one's identity and being required to have a specific purpose for walking around one's neighborhood at an arbitrarily-designated time is not something that a citizen of this country should be required to do except in the most dramatic circumstances. The creation of a police state such as this is antithetical to American values. This imposition of martial law by the Mayor must be stopped immediately.

Therefore, Plaintiffs respectfully request that this Court IMMEDIATELY a Temporary Restraining Order against ALL Defendants as follows:

- 1) Issue ***Temporary Restraining Order immediately injoining and*** restraining the implementation of the curfew(s) currently scheduled to be implemented in the city of Cleveland,

Cuyahoga County, Ohio under the latest version of the Proclamation (currently set to go into effect at 8:00 p.m. tonight and each night thereafter through June 5, 2020).

- 2) Issue a ***Temporary Restraining Order immediately*** prohibiting Defendants and Defendants' agents from enforcing any curfew in the city of Cleveland, Cuyahoga County, Ohio under the Proclamation;
- 3) Issue a ***temporary restraining order*** prohibiting Defendants from enforcing or relying on the Proclamation (and curfew sought to be imposed thereunder) to search, seize, arrest, prosecute, fine, imprison, intimidate, threaten or otherwise punish Plaintiffs and similarly-situated individuals in the curfew zones and anywhere else in the city;
- 4) Grant to Plaintiffs against Defendants ***such other and further relief*** as this Court deems just and proper at law and/or equity to prevent further constitutional violations by the Defendants and their agents.
- 5) Waive the requirement of bond or permit Plaintiffs to file nominal bond.

Respectfully submitted,

/s/ Mark S. Ondrejch  
Mark S. Ondrejch (0082170)  
THE ONDREJECH LAW FIRM LLC  
Hoyt Block Building  
700 West Saint Clair Ave., Suite 110  
Cleveland, Ohio 44113-1448  
Office Phone: (440) 356-2700 ext. 1003  
Mobile: (330) 441-2027  
Facsimile: 1.888.577.4491  
[mark@o-lawfirm.com](mailto:mark@o-lawfirm.com)

*Attorneys for Plaintiffs*

CERTIFICATE OF SERVICE

Plaintiff has served *City of Cleveland* attorneys Elana Boop and Stewart L. Hastings with this Motion for Temporary Restraining Order (without notice or hearing) this 3<sup>rd</sup> day of June, 2020.

/s/ Mark S. Ondrejch  
Mark S. Ondrejch (0082170)

MSO

[https://d.docs.live.net/d547f3efb4324532/cases -- current/00642 - cleveland citizens \(chall emerg order\)/2020.06.01 complaint v. cleveland emergency proclamation.docx](https://d.docs.live.net/d547f3efb4324532/cases--current/00642-cleveland-citizens(chall-emerg-order)/2020.06.01-complaint-v.-cleveland-emergency-proclamation.docx)



CITY OF CLEVELAND  
Mayor Frank G. Jackson

**PROCLAMATION OF CIVIL EMERGENCY**  
**(Civil Unrest)**  
Third Modification

**RECITALS**

1. Commencing at 8:00 p.m. on May 30, 2020 and continuing to 8:00 a.m. on May 31, 2020; and commencing at 12:00 p.m. on May 31, 2020, and continuing to 8:00 a.m. on June 1, 2020; and commencing at 8:00 a.m. on June 1, 2020 and continuing to 6:00 a.m. on June 3, 2020; and commencing from June 3, 2020 to June 5, 2020, the Restricted Area will be open for ordinary business activity from 6:00 a.m. to 8:00 p.m. and under curfew restrictions from 8:00 p.m. to 6:00 a.m. the citizens of the City of Cleveland are experiencing a civil emergency due to violence and unrest.
2. The problems experienced as a result of this situation endanger the health, safety, and welfare of persons and property within the City of Cleveland and potentially hinder the execution of the ordinances of the City, the laws of the State of Ohio and of the United States.

**PROCLAMATION**

NOW, THEREFORE, I, Frank G. Jackson, Mayor of the City of Cleveland, under and by the virtue of the authority vested in me by the Ohio Constitution, the Charter and laws of the City of Cleveland do hereby proclaim that a State of Civil Emergency exists within the City of Cleveland due to violence and unrest.

A. **AREA AFFECTED BY THIS PROCLAMATION**

I hereby proclaim that the Central Business District within the municipal boundaries of the City of Cleveland and W. 25<sup>th</sup> Market District, as shown on the attached maps, are covered by this proclamation.



**B. DECLARATION OF CURFEW**

Within the Areas, this modified curfew is hereby proclaimed commencing at 8 pm on May 31, 2020 and continuing as stated above or upon the issuance of a proclamation by the Mayor that a Civil Emergency no longer exists, whichever occurs first. All persons are prohibited from walking, running, loitering, standing or driving/motoring, (except for vehicles on Route 2; I-77; I-71; I-90; I-480 West Lee Road Exit Ramp; I-90 East West 25<sup>th</sup> Street Exit and I-490 West at W. 7<sup>th</sup> Street Exit) upon any alley, street, highway, public property or vacant premises within the Restricted Area, excepting persons officially designated by the Mayor to perform duties with reference to the Civil Emergency, persons traveling to a place of refuge or lodging, medical facilities for doctor appointments or care, and all credentialed press/media and medical personnel traveling to and from their place of employment.

- Residents within the Restricted Area needing to travel in and out will be permitted to return with proper identification and/or proof of residency within the Restricted Area. Pedestrian traffic within the Restricted Area is permitted for limited instances, including pet relief and essential travel, such as medical appointments or to obtain food. However, all residents are asked to remain within their homes as much as possible for the duration of the curfew.
- All credentialed press/media are a permitted exception to this Proclamation of Civil Emergency (Civil Unrest) and are permitted to report within the Restricted Area.

**C. BUSINESS CLOSING**

All businesses and places of employment located within the Area are urged to close their business during the hours for which a curfew has been proclaimed.

**D. LAW ENFORCEMENT ASSISTANCE**

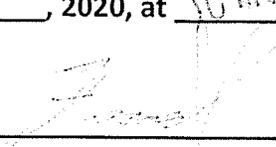
All regular and auxiliary law enforcement agencies and organizations within and without the City of Cleveland are encouraged to assist in preserving the peace within the City of Cleveland by coordinating activities with Federal, State, and local officials.

**E. DURATION OF CIVIL EMERGENCY**

The State of Civil Emergency proclaimed pursuant to this proclamation shall terminate as

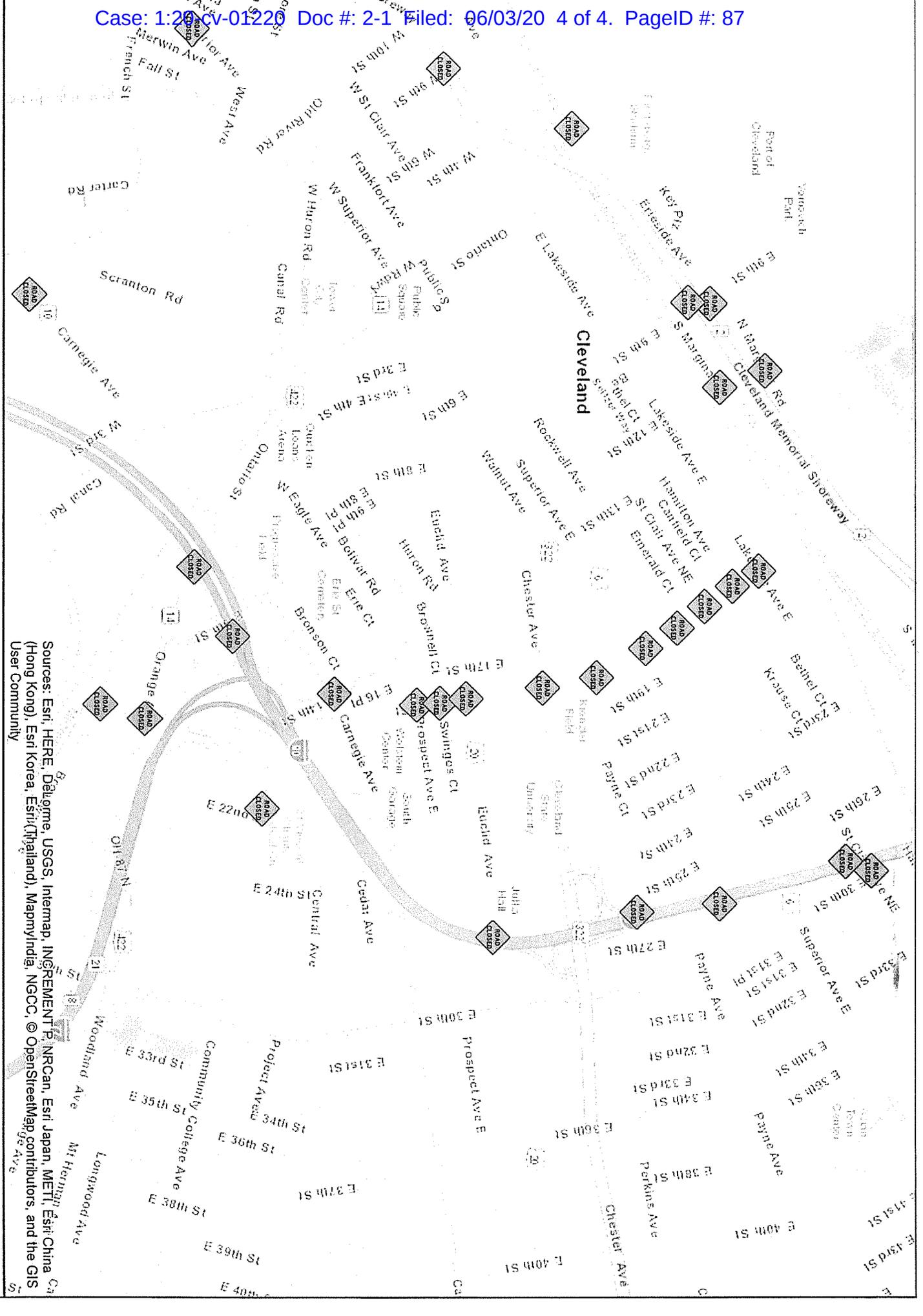
stated above or upon the issuance of a proclamation by the Mayor that a Civil Emergency no longer exists, whichever occurs first.

I, Frank G. Jackson, Mayor of the City of Cleveland, State of Ohio, affix my signature to this Proclamation this 21<sup>st</sup> day of JUNE, 2020, at 10 AM o'clock a.m./p.m.

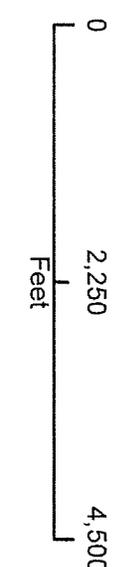
  
\_\_\_\_\_  
Frank G. Jackson  
Mayor



# Downtown Road Closures (Revised)



Legend  
Road Closed



Sources: Esri, HERE, DeLorme, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand), MapmyIndia, MapmyIndia, NGCC, © OpenStreetMap contributors, and the GIS User Community

City of Cleveland Office of Emergency Management makes no warranties or guarantees, either expressed or implied as to the completeness, accuracy, or correctness of the data portrayed in this product, nor accepts any liability, arising from any inaccuracy, incompleteness, or misleading information contained herein. All information, data, and databases are provided as is, with no warranty, expressed or implied, including but not limited to, fitness for a particular purpose.

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

NICK HUDNELL, et al.,

)

**CASE NO. 1:20-cv-01220**

Plaintiffs,

)

)

**JUDGE:**

v.

)

)

City of Cleveland et al.,

)

)

Defendant.

)

)

**ORDER**

On VERIFIED COMPLAINT of Plaintiffs, pursuant to Rule 65 of the Federal Rules of Civil Procedure, this Court hereby Orders that Defendants City of Cleveland, Mayor Frank G. Jackson, Michael McGrath, Calvin D. Williams, Unknown Law Enforcement Officers 1-100, Mike DeWine, Richard S. Fambro, Armond Budish, David G. Schilling Jr., and their agents are hereby temporarily restrained and enjoined as follows:

1) From enforcing any and all curfew(s) in force under the Proclamation as of the date and time of this Order;

2) Defendants and Defendants’ agents are hereby restrained and enjoined from enforcing any further curfews or other orders that infringe on the Constitutional rights of the Plaintiffs and citizens of the city of Cleveland, Cuyahoga County, Ohio that is set out under Proclamation by the Mayor of Cleveland, Defendant Frank G. Jackson.

3) Defendants are hereby restrained and enjoined from enforcing any curfew sought to be imposed under the current Proclamation or any other subsequent or similar Proclamation that purports to search, seize, arrest, prosecute, fine, imprison, threaten or otherwise punish/sanction Plaintiffs and similarly-situated individuals;

4) Plaintiff shall not be required to post bond because this injunctive relief is requested to restore them to their constitutional rights and is not in an action for possession of money or property between the parties.

IT IS SO ORDERED.

\_\_\_\_\_  
**JUDGE**

\_\_\_\_\_  
**DATE**