

NO.

JEFFERSON CIRCUIT COURT

DIVISION _____

F.I.R.M. INITIATIVE INCORPORATED

PLAINTIFF

V.

**VERIFIED COMPLAINT FOR INJUNCTIVE RELIEF,
TEMPORARY AND PERMANENT**

LOUISVILLE METROPOLITAN POLICE DEPARTMENT
633 W. Jefferson St.
Louisville, KY 40202

SERVE: ROBERT SCHROEDER
 POLICE CHIEF
 633 W. Jefferson St.
 Louisville, KY 40202

AND

LOUISVILLE METRO GOVERNMENT

SERVE: GREG FISCHER, MAYOR
 527 W. Jefferson Street, 4th Floor
 Louisville, Kentucky 40202

DEFENDANTS

* * * * *

Comes the Plaintiff, F.I.R.M. Initiative, Incorporated ("F.I.R.M."), by Verification and by counsel, and for its Complaint against Defendants, the Louisville Metropolitan Police Department ("LMPD") and Louisville Metro Government ("Louisville Metro"), and brings this Lawsuit seeking temporary and permanent injunctive relief regarding and relating to a directive issued by the Defendants and advises the Court as follows:

I. INTRODUCTION

The right to peacefully protest via assembly and speech found in the First Amendment to the United States Constitution is the most fundamental and quintessential of rights guaranteed to Americans and is the bedrock of our democracy. Without free speech and the right to assemble, *i.e.*, to protest, our democracy cannot survive. This lawsuit has been brought by FIRM in an effort to stop the Defendants from suppressing these sacrosanct rights, which attempt by Defendants is a direct violation of Kentucky Statutory Law as well as numerous Sections of the Kentucky Constitution.

II. PARTIES, JURISDICTION AND VENUE

1. Plaintiff, FIRM, is a Kentucky not-for-profit corporation in good standing formed for the purpose of facing, addressing and changing systemic racism and oppression, and in particular, the systemic racism inherent in law enforcement and the culture of violence, aggression and brutality which exists in law enforcement directed in particular against African Americans.

2. Louisville Metro is the governmental entity which encompasses Jefferson County Kentucky and was formed by the General Assembly pursuant to KRS Chapter 67C and is the result of the consolidation of the old City of Louisville and Jefferson County. LMPD is the law enforcement agency of Louisville Metro and is charged with enforcing the laws of the Commonwealth of Kentucky as well as Ordinances enacted by Louisville Metro.

3. This Complaint for Declaration of Rights and Temporary and Permanent Injunctive Relief, is governed by the Kentucky Declaratory Judgment Act, KRS 418.010, *et seq.*; Kentucky Rule of Civil Procedure (“CR”) 57, and CR 65; various sections of the Kentucky Constitution, including Sections 1, 2, 4, 8 and 15; and, the common law of Kentucky.

2. FIRM initiates this Complaint pursuant to, among other authority, KRS 418.040 which provides this Court with authority when a controversy exists to "*make a binding declaration of rights, whether or not consequential relief is or could be*" requested. An actual and justiciable controversy concerning the actions and threatened actions of Defendants as toward FIRM and others similarly situated, which actions would constitute violations of Kentucky constitutional and statutory law, clearly exists in this action. As per CR 65, this Court also has authority to issue a temporary and permanent injunction that restricts or mandatorily directs the performance of certain acts; and, declare a certain order and/or decree issued by LMPD and Louisville Metro in violation of the Kentucky Constitution and Kentucky statutory law.

4. This Court has subject matter over the controversy, personal jurisdiction over the Defendants, and venue is proper as the records in question are located in Jefferson County.

III. FACTS

5. Commencing on or about May 27, 2020, protests began across the United States against systemic racism in law enforcement and other institutions. These protests were brought about by the continued and numerous unjustified killings of African Americans by police, two of the victims having been George Floyd on May 25, 2020 in Minneapolis, MN; and Breonna Taylor in Louisville, Kentucky by several officers employed by LMPD executing a "*no-knock*" warrant which appears to have been based on affidavit that was not true. (hereafter, the "*Movement*") There now exists some evidence the murder of Ms. Taylor was part of a gentrification project in West Louisville, part and parcel of which was a scheme of unlawful aggressive and violent police actions against African American residents in certain neighborhoods designed to force them out.

6. In part because of the murder of Breonna Taylor, widespread protests began in Louisville on or about the date indicated in paragraph 5 above, and have continued each and every day and night since in support of the Movement. The protests in Louisville have been widespread but center around the small park bordered by Sixth Street to the west, the former PNC tower to the east, Liberty Street to the south and Jefferson Street to the north, known as “*Jefferson Square*” (the “*Square*”). On a daily and nighty basis, protestors of all races and from all walks of life congregate in and around the park and commence and conclude marches to and from various areas of the City from the Square.

7. FIRM is one of numerous organizations leading the Movement in Louisville and it and its leadership often organizes and leads marches that originate and terminate at the Square.

8. The marches typically involve individual protesters on foot who are accompanied by individuals in vehicles. The purpose of the vehicles is to protect the protesters from other vehicular traffic and reduce the risk that one or more individuals who do not support the Movement who might be inclined to cause harm to those marching. (*i.e.*, driving into protestors on foot and injuring or killing, something that has happened around the Country on numerous occasions during protests, *e.g.*, Charlottesville, VA almost three years ago to the day, August 12, 2017).

9. LMPD cannot be relied upon to protect FIRM or individual protestors during marches or otherwise as it has demonstrated time and time again it has no interest in protecting protestors. Just by way of example, on June 28, 2020, LMPD apprehended two (2) snipers off the roof of a downtown hotel parking garage who identified as “sovereign citizens” and as members of an unidentified militia group. LMPD failed to advise FIRM or any other protest organizations or protestors of said event and only turned over such information after being sued

by FIRM to compel same pursuant to the Kentucky Open Records Act, KRS 61.870 *et seq.* Saturday, June 27, 2020, and “*take back*” downtown from the protestors. To make matters worse, not only did LMPD fail to arrest and charge the snipers in question, the snipers were actually transported by LMPD to meet their fellow militia members who had dropped them at the parking garage in question.

10. In addition, LMPD has fostered a culture of violence, aggression and brutality directed at peaceful protestors. Much of the violence and civil disturbances during the time period above described has come at the hands of over aggressive and over-militarized police tactics used by LMPD against peaceful protestors. Indeed, on numerous occasions, LMPD has instigated what can only be described as “*Police Riots*”.

11. A Police Riot is a riot carried out by the police; a riot that the police are responsible for instigating, escalating or sustaining as a violent confrontation; an event characterized by widespread police brutality; a mass police action that is violently undertaken against civilians for the purpose of political repression.

12. The term “*Police Riot*” was popularized after its use in the *Walker Report*, which investigated the events surrounding the 1968 Democratic National Convention in Chicago to describe the “*unrestrained and indiscriminate*” violence that the police “*inflicted upon persons who had broken no law, disobeyed no order, made no threat.*”

13. To say that LMPD since the protests began in Louisville in late May of 2020 has taken a page from the Chicago Police from the summer of 1968 would be an understatement. Fortunately for FIRM, other protestors, the Louisville community as a whole, and most importantly, the search for the truth, cell phone cameras, live-streamers and other recording technology now exists that did not in 1968. At some point, a report similar to the *Walker Report* will be issued regarding that which happened in the Movement in Louisville, Kentucky in 2020

which to say the least, will not be a flattering portrayal of LMPD, its leadership and the Mayor of Louisville Metro.

14. Aside from the fact that during the protests LMPD has come to resemble a military force occupying a foreign country exacting violence and aggression against the citizens of that county, most of the information released by LMPD since the protests began in Louisville in late May 2020 has been if not outright false, misleading, incomplete and inaccurate, or otherwise untrue. There have been numerous instances of LMPD furnishing information to local media regarding events which have occurred at and around the Square, or during marches or caravans, that were deliberate fabrications or as noted, completely inaccurate and misleading, the most recent of which gave rise to the event which is the subject of this Lawsuit.

15. On Sunday, August 9, 2020, LMPD/Louisville Metro issued “*Rules of Engagement*” regarding continued protests in Louisville. (the “*ROE*”) The ROE was publicized by LMPD on social media, including on its Facebook Page as well as release publicly and to the mainstream media. A copy of the ROE is appended hereto as Exhibit 1. The ROE included the following prohibitions:

— *All pedestrians must stay out of the streets—staying on sidewalks and following all laws for pedestrian traffic.*

— *Cars and pedestrians will not be allowed to block intersections for any length of time.*

Participants who refuse to comply with any law or lawful order will be eligible for citation and/or arrest.

See, Exhibit 1, emphasis added.

16. The reasons and justifications furnished to the public by LMPD as to the necessity of the ROE are, in keeping with LMPD’s complete and total lack of credibility and transparency, and were false, misleading, inaccurate, untrue and incomplete. That

notwithstanding, on Monday, August 10, 2020, the Mayor of Louisville Metro announced his full support of the ROE.

17. The ROE is in direct violation of Kentucky law as enacted by the General Assembly, *to-wit*, via enactment of KRS 525.140, which provides as follows:

525.140. Obstructing a highway or other public passage.

(1) A person is guilty of obstructing a highway or other public passage when having no legal privilege to do so he, alone or with other persons, intentionally or wantonly renders any highway or public passage impassable without unreasonable inconvenience or hazard.

(2) No person shall be convicted under this section solely because of a gathering of persons to hear him speak or otherwise communicate or solely because of being a member of such a gathering.

(3) An order to disperse issued by a peace officer or other public servant engaged in executing or enforcing the law and addressed to a person whose speech or other lawful behavior attracts an obstructing audience shall not be deemed lawful if the obstruction can be readily remedied by police control of the size or location of the gathering.

(4) Obstructing a highway or other public passage is a Class B misdemeanor.

See, Exhibit 2, copy of KRS 525.140.

18. Thus, KRS 525.140 expressly allows protest and expression of the Rights guaranteed under the Kentucky Constitution— the right of assembly (Section 1) and the rights of free speech (Sections 1 and 8; the right of free speech is so important in Kentucky it is covered by two Sections of the Constitution)— be carried out on the highways and other public passages (*i.e.*, the “*Street*”) *so long as the highway or public passage is not rendered impassable*. Indeed, said statute also implicitly protects these critical Constitutional Rights by proclaiming that an order preventing same by LMPD is unlawful so long as the highway or public passage in question is not rendered impassable.

19. The aforementioned notwithstanding, LMPD and Louisville Metro have attempted to suppress the rights afforded FIRM and all other Kentucky citizens under KRS

525.140 by completely banning protests in the Street and have threatened to arrest and criminally prosecute those who participate in order to carry out and effectuate said attempt. Said attempt is a direct violation of KRS 525.140 and the ROE itself as well as any future order issued to FIRM or other protestors to disperse is and/or would be unlawful as per KRS 525.140(3) and would violate the aforementioned provisions of the Kentucky Constitution as well as Sections 2 (arbitrary power denied) and 15 (laws may only be suspended by the General Assembly).

20. In addition, the actions of LMPD and Louisville Metro in banning an/or attempting to ban protesting in the Street not only violate KRS 525.540, but constitute a crime on the part of LMPD and/or Louisville Metro and any employee of either Defendant who attempts to enforce the ROE as per KRS 522.020, which provides as follows:

KRS 522.020. Official misconduct in the first degree.

(1) A public servant is guilty of official misconduct in the first degree when, with intent to obtain or confer a benefit or to injure another person or to deprive another person of a benefit, he knowingly:

(a) Commits an act relating to his office which constitutes an unauthorized exercise of his official functions; or

(b) Refrains from performing a duty imposed upon him by law or clearly inherent in the nature of his office; or

(c) Violates any statute or lawfully adopted rule or regulation relating to his office.

(2) Official misconduct in the first degree is a Class A misdemeanor.

See, Exhibit 3, copy of KRS 522.020.

21. The action of LMPD and Louisville Metro as above described constitute violations of KRS 522.020(1)(a) and (c) and is a Class A Misdemeanor.

IV. RELIEF SOUGHT

COUNT ONE- DECLARATORY RELIEF- KRS 418.040

22. FIRM incorporates and reiterates herein all prior paragraphs.
23. Based on the aforementioned facts, FIRM is among the class of persons set forth in KRS 418.045 entitled to bring this action, seeking declaratory relief, and an actual controversy exists between the parties entitling it to declaratory relief under KRS 418.040.
24. A justiciable controversy between the parties exists regarding the interpretation and enforcement of the ROE in relations to KRS 525.140 exists, entitling FIRM to relief as follows from the Court:
 - a. For a declaration that the ROE is unenforceable and violates KRS 525.140 as well as the Kentucky Constitution since it prohibits conduct clearly permitted under said statute as well as Sections 1, 2, 4, 8 and 15 of the Kentucky Constitution.
 - b. For a declaration that any attempt by Defendants to enforce the ROE would constitute a crime as per KRS 522.020 as well as a violation by Defendants of Sections 1, 2, 4, 8 and 15 of the Kentucky Constitution.
 - c. That no enforcement action of any kind-- including civil, criminal or administrative-- may be initiated or pursued by Defendants against FIRM or any other person or entity based on the ROE.
25. FIRM is also entitled to recovery of its costs herein expended, including but not limited to attorney fees as per KRS 418.070.

COUNT TWO- TEMPORARY AND PERMANENT INJUNCTIVE RELIEF

26. FIRM incorporates and reiterates herein all prior paragraphs.
27. Based on the aforementioned conduct, action and threats on the part of the Defendants, FIRM is entitled to injunctive relief, both temporary and permanent, directing as follows:

- a. That Defendants shall not take any enforcement action of any kind or nature, civil, criminal and/or administrative against FIRM or its principals or any other person or entity, based on a claim FIRM *et al.*, has violated the ROE.
- b. That Defendants shall not deem FIRM or any other party to be in violation of the ROE by virtue of marching in the Streets or driving vehicles in the Streets to accompany protestors on foot for the purpose of protecting said protestors as above described, so long as said protests comply with KRS 525.140(1).
- c. That any order issued by the Defendants or any agent of the Defendants is unlawful as per KRS 525.140(3) so long as FIRM *et al.* is/are in compliance with KRS 525.140(1).

WHEREFORE, the Plaintiff, F.I.R.M. Initiative Incorporated demands as follows:

- A. Entry of an Order granting it the temporary and permanent injunctive relief as above set forth;
- B. Entry of an Order granting the declaratory relief above set forth, which relief may be granted by the Court via expedited motion practice;
- C. For recovery of its costs, including attorney fees;
- D. For any and all other relief to which it may be entitled.

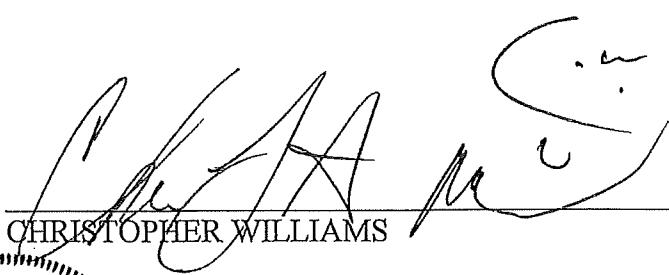
Respectfully submitted,

/s/ David B. Mour
DAVID B. MOUR, Esq.
513 S. Second St.
Louisville, KY 40202
(502) 693.1968

Counsel for Plaintiff F.I.R.M. Initiative Incorporated

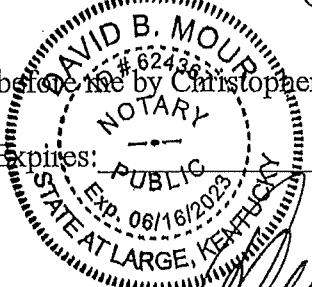
VERIFICATION

I verify the statements contained in this Complaint/Petition are true and accurate to the best of my knowledge and belief.


CHRISTOPHER WILLIAMS

Subscribed and sworn to before me by Christopher Williams on August 11, 2020.

My Commission Expires:




NOTARY PUBLIC, STATE AT LARGE

525.140 Obstructing a highway or other public passage.

- (1) A person is guilty of obstructing a highway or other public passage when having no legal privilege to do so he, alone or with other persons, intentionally or wantonly renders any highway or public passage impassable without unreasonable inconvenience or hazard.
- (2) No person shall be convicted under this section solely because of a gathering of persons to hear him speak or otherwise communicate or solely because of being a member of such a gathering.
- (3) An order to disperse issued by a peace officer or other public servant engaged in executing or enforcing the law and addressed to a person whose speech or other lawful behavior attracts an obstructing audience shall not be deemed lawful if the obstruction can be readily remedied by police control of the size or location of the gathering.
- (4) Obstructing a highway or other public passage is a Class B misdemeanor.

Effective: January 1, 1975

History: Created 1974 Ky. Acts ch. 406, sec. 224, effective January 1, 1975.

522.020 Official misconduct in the first degree.

- (1) A public servant is guilty of official misconduct in the first degree when, with intent to obtain or confer a benefit or to injure another person or to deprive another person of a benefit, he knowingly:
 - (a) Commits an act relating to his office which constitutes an unauthorized exercise of his official functions; or
 - (b) Refrains from performing a duty imposed upon him by law or clearly inherent in the nature of his office; or
 - (c) Violates any statute or lawfully adopted rule or regulation relating to his office.
- (2) Official misconduct in the first degree is a Class A misdemeanor.

Effective: January 1, 1975

History: Created 1974 Ky. Acts ch. 406, sec. 187, effective January 1, 1975.