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November 4, 2015

VIA FEDERAL EXPRESS

James I. Peale
Clerk of Court
Cheshire County Superior Court
12 Court Street
Keene, NH 03431

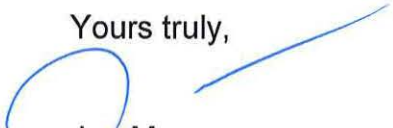
RE: City of Keene v. James Cleaveland, et al
Case Number: 213-2013-CV-00098

Dear Mr. Peale:

Please find enclosed Defendants' Response and attached Memorandum to City of Keene's Requested Relief. Please docket and file in the usual manner.

Thank you for your courtesy and attention to this matter.

Yours truly,


Jon Meyer
jmeyer@backusmeyer.com
JM/pac

Enclosure

cc: Charles Bauer, Esq.
Robert J. Dietel, Esq.
Thomas P. Mullins, Esq.
Ian Freeman, et al

STATE OF NEW HAMPSHIRE

CHESHIRE, SS.

SUPERIOR COURT

CITY OF KEENE

v.

JAMES CLEAVELAND;
GARRETT EAN;
KATE AGER;
IAN BERNARD A/K/A IAN FREEMAN;
GRAHAM COLSON; and
PETE EYRE, PRO SE

Docket No. 213-2013-CV-00098

**ASSENTED-TO MOTION FOR LEAVE TO FILE RESPONSE TO
CITY OF KEENE'S REQUESTED RELIEF**

NOW COMES the Defendants, James Cleaveland, Garrett Ean, Kate Ager, Ian Freeman and Graham Colson, by and through their attorneys, Backus, Meyer & Branch, LLP, and respectfully request leave of this Court to file a brief response (attached) to the City's requested relief, stating as follows:

1. The purpose of this request is to address the specifics of Plaintiff's requested relief. Plaintiff had indicated that it would be requesting spatial separation, but had not provided further specification.
2. Plaintiff's consent to the granting of this Motion.

Respectfully submitted,

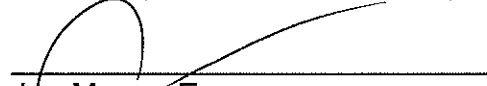
JAMES CLEVELAND
GARRETT EAN
KATE AGER
IAN BERNARD a/k/a IAN FREEMAN
GRAHAM COLSON

By Their Attorneys,

BACKUS, MEYER & BRANCH, LLP

Dated: November 4, 2015

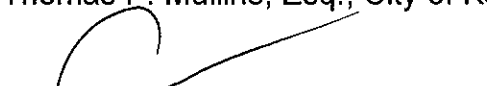
By:



Jon Meyer, Esq.
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CERTIFICATION

I hereby certify that on this 4th day of November, 2015, I mailed by U.S. Postal Service First Class Mail a copy of the foregoing to Charles Bauer, Esq., and Robert Dietel, Esq. counsel for the City of Keene, and Thomas P. Mullins, Esq., City of Keene.



Jon Meyer, Esq.

STATE OF NEW HAMPSHIRE

CHESHIRE, SS.

SUPERIOR COURT

CITY OF KEENE

v.

JAMES CLEAVELAND;
GARRETT EAN;
KATE AGER;
IAN BERNARD A/K/A IAN FREEMAN;
GRAHAM COLSON; and
PETE EYRE, PRO SE

Docket No. 213-2013-CV-00098

**DEFENDANTS' MEMORANDUM IN RESPONSE TO
PLAINTIFF'S REQUESTED RELIEF**

Plaintiff's proposed relief is premised upon its constitutionally unprecedented position of seeking an injunction extending throughout the entire downtown. Its attempt to set other limits creates insoluble practical concerns. In its reduced form, it is largely disconnected from the concerns asserted by the persons it is purported to protect. And as a practical matter, it would be unenforceable.

It has proposed two alternative forms of relief, one requiring Defendants to remain ten feet away at the request of a Parking Enforcement Officer (PEO), and the second that they remain 10 feet away within 15 feet of a parking meter, parking space, or crosswalk. Plaintiff has not established a factual need for either form of requested relief because there is no substantial evidence in the record that any of the Defendants have knowingly remained for any sustained period of time within 10 feet of a PEO. Certainly, that claim was not made at the most recent hearing. And rather than reducing the level of controversy, the requested relief, if granted, has the potential to

increase contention between PEOs and demonstrators, to generate possible contempt proceedings, and to inject this Court into the Defendants' protest activities.

Both forms of requested relief raise grave practical problems. Requiring that Defendants maintain a fixed distance regardless of other circumstances, would itself generate safety issues because it would distract the parties from real safety concerns such as traffic flow, other pedestrians, etc. It would also mean that all communication would have to be by shouting or near shouting. As set forth in the testimony, Defendants typically station themselves in front of the PEOs facing away from them. Thus, unless they are required to walk backwards which would be unsafe, it would be virtually impossible for them to maintain 10 feet of separation since the amount of separation is largely dependent upon the speed of travel of the PEOs. "Solution One" is also constitutionally unprecedented in giving the persons against whom the demonstration is being directed discretion to enforce a spatial separation. The second proposal raises the virtually insoluble problem of trying to determine whether or not a Defendant is within 10 feet of a PEO while also being within 15 feet of the parking meter, metered parking space or crosswalk. As demonstrated at the hearing, measurement of distances without equipment is subjective, and estimates vary widely from witness to witness. "Solution Two" would also substantially undercut the potential for Robin Hooding since the demonstrators would be prohibited from approaching a parking meter or remaining at one if a PEO were within 10 feet. Both "Solutions" permit the Defendants to be "within" 5 feet when passing a PEO. But if this is intended to mean no closer than 5 feet, that would generate additional safety issues since it would likely require the Defendants to get off the sidewalk in order to pass.

The proposed relief requested by the City, beyond its constitutional shortcomings, would raise a series of practical concerns and disputes that would likely set off a new round of hearings without significantly addressing the complaints voiced by the PEOs. It demonstrates that there is no relief possible which would be constitutionally, practically enforceable and narrowly tailored to significant government interests.

Respectfully submitted,


JAMES CLEAVELAND
GARRETT EAN
KATE AGER
IAN BERNARD a/k/a IAN FREEMAN
GRAHAM COLSON

By Their Attorneys,

BACKUS, MEYER & BRANCH, LLP.

Dated: November 4, 2015

By:



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Jon Meyer, Esq.