

**IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO
CIVIL DIVISION**

CITY OF DAYTON, OHIO

101 W. Third St.

P.O. Box 22

Dayton, OH 45401

:

Case No. 2019 CV

:

Judge

:

Plaintiff/Petitioner,

:

vs.

:

HONORABLE SACRED KNIGHTS

:

**COMPLAINT FOR INJUNCTIVE
AND DECLARATORY RELIEF**

C/O Robert Morgan

P.O. Box 836

Madison, IN 47250

:

:

and

:

ROBERT MORGAN

P.O. BOX 836

Madison, IN 47250

:

:

Defendants/Respondents.

JURISDICTIONAL AND FACTUAL BACKGROUND

1. The City of Dayton, Ohio is a municipal corporation and political subdivision organized and operating pursuant to the Ohio Constitution and the regulations and ordinances of the City of Dayton, Ohio, and is located in Montgomery County, Ohio.
2. Upon information and belief, Defendant Honorable Sacred Knights (“HSK”) is a white supremacist paramilitary organization affiliated with the Ku Klux Klan, based in Madison, Indiana.

3. Upon information and belief, Defendant Robert Morgan of Madison, Indiana, is a member and leader of Defendant HSK.
4. Upon information and belief, Richard W. Preston, Jr., is another known member of Defendant HSK.
5. On or about February 12, 2019, Defendant HSK, through its member and leader, Defendant Robert Morgan, applied to the Board of County Commissioners, Montgomery County, for a permit to host an event on May 25, 2019, at Courthouse Square in Dayton, Ohio (“Event”).
6. Defendants estimated in their permit application that there will be anywhere from 10 to more than 20 members of the group in attendance. Upon information and belief, Defendants propose to engage in a militaristic show of force by bringing an armed group of over 20 individuals to Courthouse Square on May 25.
7. The Defendants have advertised the Event using social media and websites and received a substantial amount of media exposure.
8. Numerous affiliate white supremacist groups have made social media posts indicating that they will attend the Event in support of the HSK.
9. In response to the proposed white supremacist paramilitary display of force, numerous other groups have indicated that they will attend and protest the Event.
10. Given these dynamics, the upcoming Event threatens to endanger human life as well as nearby property, much like the “Unite the Right” rally that occurred in Charlottesville, Virginia, in August of 2017. That rally resulted in death and bloodshed, with more than 70 injured and one person killed. As a result of this mayhem, the Governor was forced to declare a state of emergency in Charlottesville.

11. Defendant HSK member Richard W. Preston, Jr. attended the Unite the Right rally wearing a tactical vest as part of a private militia group and incited violence at the rally. Preston was recently convicted of felonious assault for firing his pistol at an unarmed black male at the rally.

12. Upon information and belief, the HSK have posted six separate videos of cross burning ceremonies on YouTube under the username “Honorable Sacred Knights KKK.” See attached Exhibits A1-A6 (<https://www.youtube.com/watch?v=S5pavz50a-I&t=36s&bpctr=1552314476>; <https://www.youtube.com/watch?v=2Nd0zu4-Yp4&t=52s&bpctr=1552314505>; <https://www.youtube.com/watch?v=7pNWLfDuBqQ&t=5s&bpctr=1552314522>; <https://www.youtube.com/watch?v=7cVwXlNID08&t=142s>; <https://www.youtube.com/watch?v=VTmq4OT3mQA&t=152s&bpctr=1552314570>; <https://www.youtube.com/watch?v=YxJxuv8JCH4&t=165s>)

13. Upon information and belief, the HSK uploaded, on January 26, 2019, a YouTube video threatening to break the law by stating “the law should . . . be broken” when “it’s a necessity—if it’s affecting our race. If it hurts us then you got to stomp a n***er’s head in. I’m not telling you to go out there and do it, but sometimes you got to do things.” See attached Exhibit B (<https://www.youtube.com/watch?v=YjvH0NCIJnw&bpctr=1552314629>).

14. Upon information and belief, the HSK have posted several threatening pictures and videos on their YouTube page, including a photograph of members holding a noose; a graphic of a Klan member pointing a gun at the viewer; a member holding a gun immediately before a graphic displaying the words “TAKE A STAND”; and the burning of a Black Lives Matter flag. See attached Exhibits C1-C5..

(https://www.youtube.com/watch?v=IfH4tOq_Ea8&t=108s&bpctr=1552314663 ;

https://www.youtube.com/watch?v=x-l9eDBa_eo&bpctr=1552314727).

**FIRST CAUSE OF ACTION: ARTICLE 1, SECTION 4 OF THE OHIO
CONSTITUTION – STRICT SUBORDINATION**

15. Plaintiff incorporates the allegations contained in all of the preceding paragraphs into this paragraph as if fully rewritten herein.

16. The establishment of private armies is incompatible with a well-ordered society. As the U.S. Supreme Court has long recognized, “Military organization and military drill . . . are subjects especially under the control of the government of every country. They cannot be claimed as a right independent of law.” *Presser v. Illinois*, 116 U.S. 252, 267 (1886).

17. This vital principle was recently reaffirmed in a suit brought by the City of Charlottesville in the aftermath of the Unite the Right rally: “There appears to be no place or authority for private armies or militia apart from the civil authorities and not subject to and regulated by the federal, state, or local authorities.” *City of Charlottesville v. Pa. Light Foot Militia*, No. CL 17-560, 2018 WL 4698657, at *4 (Va. Cir. Ct. July 7, 2018).

18. The State of Ohio has carefully regulated the circumstances in which military force may lawfully be employed. Article 1, Section 4 of the Ohio Constitution requires that the military be kept in strict subordination to the civil power:

The people have the right to bear arms for their defense and security; but standing armies, in time of peace, are dangerous to liberty, and shall not be kept up; and the military shall be in strict subordination to the civil power.

19. A network of statutory provisions structuring Ohio’s armed forces helps preserve the civil government’s monopoly on organized peacekeeping. State law provides that

“[n]o troops shall be maintained” except those authorized by state and federal law. R.C. 5923.01(E).

20. To achieve state control over military personnel, Ohio’s armed forces must conform to a suite of state-law requirements. For example, the organized militia is to be “governed and disciplined by the military laws of the state, the orders of the commander in chief, acts of congress of the United States pertaining to the organized militia . . . , and the Ohio code of military justice.” R.C. 5923.34.

21. Likewise, the State of Ohio requires its National Guard members to “be uniformed, armed, and equipped with the same type of uniforms, arms, and equipment as is provided to the United States air force or army.” R.C. 5919.25.

22. The Ohio General Assembly has also placed restrictions and requirements upon private security, requiring a license and showing of training, insurance, and passage of an examination. See R.C. 4749.03. Moreover, state statutes make clear that a licensed private security guard is not considered law enforcement, is prohibited from wearing any uniform that could be confused with that of a law enforcement officer, and is subject to criminal prosecution for impersonating a peace officer. See R.C. 4749.08 and R.C. 2923.12.

23. Upon information and belief, none of the Defendants are licensed to act as private security within the State of Ohio.

24. On May 25, 2019, the Defendants propose to bring an armed group of over 20 individuals to Dayton to rally in Courthouse Square. By engaging in a militaristic show of force, Defendants will perform functions reserved for the organized military under Article 1, Section 4 of the Ohio Constitution.

25. Defendants' private military unit will be neither responsible to nor under the command of the civil power in Ohio.
26. Defendants' proposed operation as a military unit, independent of the civil power in Ohio, will violate Article 1, Section 4 of the Ohio Constitution. *See* John Kulewicz, *The Relationship Between Military and Civil Power in Ohio*, 28 Clev. St. L. Rev. 611, 612 (1979) (explaining that Ohio's Strict Subordination Clause "prohibits the existence of an autonomous military force").
27. Given that "there is no authority for such illegitimate militia groups—unregulated by any civil authority—the City must be able to act to keep them out of its boundaries . . . for the safety and peace of mind of its citizens." *Pa. Light Foot Militia*, 2018 WL 4698657, at *5. For "the proliferation of private military organizations" would "threaten[] to result in lawlessness and destructive chaos." *Vietnamese Fishermen's Ass'n v. Knights of the Ku Klux Klan*, 543 F. Supp. 198, 216 (S.D. Tex. 1982).
28. The Strict Subordination Clause of Article I, Section 4 is self-executing, meaning that no further legislation is required to prevent Defendants from engaging in the coordinated use or threatened use of force. *See State v. Williams*, 728 N.E.2d 342, 352 (Ohio 2000); *Pa. Light Foot Militia*, 2018 WL 4698657, at *4 (holding that Virginia's Strict Subordination Clause "is self-executing").
29. Defendants' planned conduct will cause irreparable harm to the Plaintiff, for which no adequate legal remedy exists. Moreover, a violation of Ohio's Constitution, in and of itself, constitutes irreparable harm warranting the issuance of injunctive relief.

SECOND CAUSE OF ACTION: PUBLIC NUISANCE

30. Plaintiff incorporates the allegations contained in all of the preceding paragraphs into this paragraph as if fully rewritten herein.

31. Residents of the City of Dayton have a right “to be free to visit and use the downtown area without fear or intimidation from organized, armed, uniformed, but unofficial military-like groups.” *Pa. Light Foot Militia*, 2018 WL 4698657, at *10.

32. At the upcoming Event, the Defendants plan to engage in paramilitary activity independent of any civil authority in public areas within the City of Dayton. Such activity will constitute “an unreasonable interference with a right common to the general public,” because it will “significantly interfere with public health, safety, peace, comfort or convenience.”

Cincinnati v. Beretta U.S.A. Corp., 768 N.E.2d 1136, 1142 (Ohio 2002).

33. Defendants’ conduct will constitute a public nuisance, and cause irreparable harm to the Plaintiff for which no adequate legal remedy exists.

34. Because the Plaintiff will suffer irreparable harm from the Defendants’ planned conduct, the Court has the authority to enjoin the Defendants from engaging in activity that constitutes a public nuisance.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests an order:

- A. Declaring that Defendants’ conduct in organizing and acting as military units independent of the civil authority in Ohio violates Article I, Section 4 of the Ohio Constitution;
- B. Declaring that Defendants’ conduct in engaging in paramilitary activity constitutes a public nuisance;

- C. Enjoining the Defendants and their directors, officers, agents, and employees from violating Article 1, Section 4 of the Ohio Constitution, and from engaging in conduct that constitutes a public nuisance;
- D. Providing such other and further relief as this Court may deem just and proper.

Respectfully submitted,

BARBARA J. DOSECK
CITY ATTORNEY

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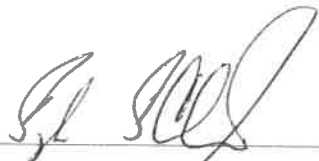
VERIFICATION

STATE OF OHIO)
) ss:
County of Montgomery)

Having been duly cautioned and sworn according to law, Affiant, Sergeant Stephen L. Clark, avers and states as follows:

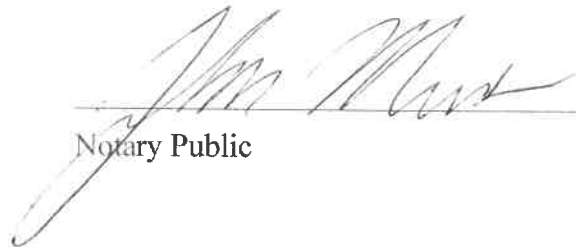
1. Affiant is a sergeant for the Dayton Police Department.
2. Affiant states that he has reviewed the foregoing Verified Complaint, and to the best of his knowledge, all of the information contained herein is true and accurate.

Further Affiant sayeth naught,



Sgt. Stephen L. Clark

Sworn to before me and subscribed in my presence by the said Stephen L. Clark this 13th day of March 2019.



Notary Public

JOHN C. MUSTO, Attorney at Law
Notary Public, State of Ohio
My Commission has no expiration date.
Section 147.03 O. R. C.