IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Theresa Kennedy and John Plummer, individually and for others similarly situated, *Plaintiffs*, v. City of Chicago, *Defendant*.	Case No. 20-cv-1440 Hon. Thomas M. Durkin

CITY OF CHICAGO'S REPLY IN SUPPORT OF ITS MOTION FOR JUDGMENT ON THE PLEADINGS PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 12(c)

Defendant the City of Chicago ("City"), by its undersigned counsel, respectfully submits this Reply in Support of the Motion for Judgment on the Pleadings Pursuant to Federal Rule of Civil Procedure 12(c) ("Motion"). (Dkt. 188.) In support thereof, the City states:

INTRODUCTION

Plaintiffs' remaining Equal Protection claims should be dismissed on the pleadings for two reasons. First, the alleged "discrimination" in Chicago Police Department Special Order S06-12-02 ("CPD Special Order") between weekday and weekend Chicago warrant arrestees was compelled by Circuit Court of Cook County General Order 2004-02 ("Circuit Court General Order"). The Circuit Court General Order states in no uncertain terms that CPD officers "shall" transport individuals arrested on Cook County warrants on Saturdays, Sundays, and Court Holidays to Central Bond Court. Any alleged constitutional injuries Plaintiffs may have suffered when they were supposedly prevented from posting bond at the police station were caused by the Circuit Court General Order, not the CPD Special Order. (Dkt. 188, Mot. at 7-13.) Second, CPD's decision to issue the CPD Special Order mirroring what is required of it under the Circuit Court General Order passes rational basis review. Holding otherwise would place the City in the untenable position of deciding which court orders to follow, and which to disregard, pitting local and state government against one another. (*Id.* at 13-15.) For these reasons, Plaintiffs' remaining claims should be dismissed with prejudice.

In their Response, Plaintiffs do not challenge the City's plain-language interpretation of the Circuit Court General Order or contend that it does not require police officers to transport those arrested on weekends and Court Holidays to Central Bond Court. Rather, Plaintiffs attack the so-called "vitality" of the Circuit Court General Order by claiming it was superseded by subsequent orders issued by the circuit court, and challenging the presiding judge's authority to issue it. (Dkt.

193, Resp. at 1-3.) Plaintiffs' arguments fail in both respects. None of the orders Plaintiffs discuss in their Response superseded the Circuit Court General Order, nor do they even involve the same subject matter as the Circuit Court General Order. Moreover, well-established Illinois law refutes Plaintiffs' argument that the presiding judge lacked the power to issue the Circuit Court General Order. Accordingly, the Circuit Court General Order was in effect at all relevant times and required CPD to present Plaintiffs to a judge in bond court following their arrests. For the reasons discussed in the Motion and below, the Court should enter judgment on Plaintiffs' remaining Equal Protection claims and dismiss this case with prejudice.

ARGUMENT

I. Judgment should be entered on the pleadings on Plaintiffs' Equal Protection claims because the Circuit Court General Order mandated Plaintiffs' appearances in Central Bond Court.

As the City discussed in the Motion, it may not be held liable under Section 1983 for actions taken pursuant to a state law command. (Dkt. 188, Mot. at 7-10 (citing *Bethesda Lutheran Homes & Servs., Inc. v. Leean*, 154 F. 3d 716, 718 (7th Cir. 1998)).) The Circuit Court General Order, which was effective at all times relevant to Plaintiffs' claims, required CPD officers to transport individuals to Central Bond Court when they are arrested on a Saturday, Sunday, or Court Holiday, as Plaintiffs were here. (*Id.* at 4; Dkt. 188-1, Mot. Ex. A.) The Circuit Court General Order constitutes a state law command under the Seventh Circuit's *Bethesda Lutheran Homes* decision and its progeny because a presiding judge of the Circuit Court of Cook County issued it pursuant to the powers afforded to him by the Illinois Constitution. (Dkt. 188, Mot. at 10-13.) The City therefore may not be held responsible for Plaintiffs' alleged constitutional harms because the "state law is the proximate cause" of their claimed injuries, *not* the CPD Special Order. (*Id.* at 7-8 (quoting *Snyder v. King*, 745 F.3d 242, 247 (7th Cir. 2014)).) Plaintiffs' Equal Protection claims

thus fail as a matter of law.

Plaintiffs disagree, arguing the Circuit Court General Order was not effective at the time of their arrests and because the presiding judge who issued it supposedly lacked the authority to do so. (Dkt. 193, Resp. at 2, 5-12.) As discussed below, Plaintiffs' arguments are unsupported as a matter of fact and law. Plaintiffs have therefore failed to demonstrate why judgment should not be entered on the pleadings on their remaining Equal Protection claims.

A. The Circuit Court General Order was in effect at the time of Plaintiffs' arrests and had not been repealed or superseded by subsequent circuit court orders.

As the City previously discussed, the relevant CPD Special Order complies with the Circuit Court General Order's mandate that individuals be brought to bond court when they are arrested on weekends and Court Holidays—just like Plaintiffs here. (Dkt. 188, Mot. at 9-10.) In their Response, Plaintiffs do not contest that the Circuit Court General Order commands CPD officers to transport individuals arrested on Cook County warrants to Central Bond Court when they are arrested on a Saturday, Sunday, or Court Holiday. Nor do they argue that the Circuit Court General Order does not constitute a command of state law. Plaintiffs instead seek to undermine the Circuit Court General Order by questioning whether it was effective on the dates of their arrests, and claiming—without citation to any legal support—that subsequent orders superseded it. (Dkt. 193, Resp. at 2.) Both points are easily dispelled.

Plaintiffs initially argue that the City failed to present "any evidence" that the Circuit Court General Order "was in force between February 27, 2018 and September 17, 2023, when defendant applied its challenged policy to plaintiffs." (Dkt. 193, Resp. at 2, 10.) Not so. The Circuit Court General Order is a public record of which this Court may take judicial notice. (Dkt. 188, Mot. at 4 n.3.) The Circuit Court General Order itself is sufficient "evidence" of its existence and effectiveness at all times relevant to this lawsuit, just like any other statute or administrative

regulation that has been enacted but not yet repealed.[1] *See Rush Univ. Med. Ctr. v. Sessions*, 2012 IL 112906, ¶ 25 (statute remained in effect until the Illinois General Assembly enacted subsequent legislation repealing the former statute). And contrary to Plaintiffs' contention, the Circuit Court General Order was effective at the time of Plaintiffs' arrests and remains that way at present because it was issued in 2004 and has not been subsequently repealed or superseded.

On this, Plaintiffs incorrectly assert that the Circuit Court General Order was "superseded" by other various general orders and general administrative orders issued by the Circuit Court of Cook County after the Circuit Court General Order was issued in 2004. (Dkt. 193, Resp. at 4-11.) To get there, Plaintiffs discuss numerous general orders issued between 2000 and 2012, most of which do not involve the same subject matter as the Circuit Court General Order, and none of which conflict with or supersede the Circuit Court General Order. (*Id.* at 6-9.)

The general orders Plaintiffs offer concern scheduling initial court appearances for various felony and misdemeanor offenses and the times during which Central Bond Court holds bond hearings on weekdays, weekends, and Court Holidays. (Dkt. 193-2, Pls.' App'x at 1-73.)[2] None of these general orders concern the same subject matter as the Circuit Court General Order, which dictates where CPD "shall" transport an individual arrested on a Cook County warrant. Plaintiffs offer no basis to even infer that these different general orders concerning different subject matters somehow undermine the validity or vitality of the Circuit Court General Order.

Nor do the other general orders cited by Plaintiffs supersede the Circuit Court General Order. The circuit court knows how to supersede general orders when it decides to issue a new

[1] The Circuit Court General Order is publicly accessible on the circuit court's website at https://www.cookcountycourt.org/order/general-order-2004-02-amended-re-cook-county-warrants.

[2] The large majority of Plaintiffs' appendix is comprised of subsequent versions of the same general order regarding the schedule of court appearances for arrests made by CPD. (*See* Dkt. 193-2, Pls.' App'x at 5-19, 21-26, 34-39, 43-73.) These general orders expressly superseded the preceding versions. (*Id.*)

order concerning the same topic. The circuit court frequently indicates when a newly-enacted general order supersedes an older one, and it does so by clearly saying that in the order itself. *See, e.g.*, Cir. Ct. Cook Cnty. Gen. Order 2006-09 ("IT IS FURTHER ORDERED that this General Order supersedes General Order 2005-09"); Cir. Ct. Cook Cnty. Gen. Order 2005-1 ("IT IS FURTHER ORDERED that this General Order supersedes General Order 2000-6, General Order 2004-6, and Amended General Order 2004-6"); Cir. Ct. Cook Cnty. Gen. Admin. Order 2016-08 ("This order supersedes all other orders of this court pertaining to the scheduling of detention hearings for juveniles."); Cir. Ct. Cook Cnty. Gen. Admin. Order 2013-05 ("This order supersedes General Administrative Orders 2012-08 and 2013-01."). Indeed, several of the circuit court orders Plaintiffs attach to their Response contain this clear, unambiguous superseding language. (*See, e.g.*, Dkt. 193-2, Pls.' App'x at 9, 14, 19, 26, 39, 42, 49, 56, 63, 68, 73, 75.)

Although Plaintiffs provide the Court with a glossary of all Cook County circuit court orders, they cannot point to a *single* order containing similar language indicating that the Circuit Court General Order was superseded. Plaintiffs thus ask this Court to deem the Circuit Court General Order repealed or superseded even though the circuit court itself has not done so, and Plaintiffs cannot point to evidence of such a repeal. The Court should decline Plaintiffs' invitation.

Plaintiffs then discuss three general administrative orders that they contend evidence the chief circuit judge's assumption "of the role of scheduling bond court and thereby superseding the earlier orders issued by the Presiding Judge of the First Municipal District." (Dkt. 193, Resp. at 9-11.) Plaintiffs rely on General Administrative Orders 2014-09, 2015-01, and 2015-06. (*Id.*) Plaintiffs conclude that "the Court should view [the Circuit Court General Order] as having been superseded by the General Administrative Orders issued by the Chief Judge of the Circuit Court of Cook County beginning in 2014." (Dkt. 193, Resp. at 11.) Plaintiffs are wrong.

General Administrative Orders 2015-01 and 2014-09 deal with bond hearing schedules at Central Bond Court. (Dkt. 193-2, Pls.' App'x at 74-75.) General Administrative Order 2015-01 expressly superseded General Administrative Order 2014-09 because the former dealt with the exact same subject matter and established a new schedule for bond hearings set forth in the latter. (*Id.*) Both orders dictate the times for holding bond hearings on weekdays, weekends, and Court Holidays for misdemeanor and felony offenses. (*Id.*) Neither order states that it was superseding the Circuit Court General Order at issue here. (*See id.*) And neither order is inconsistent with the Circuit Court General Order. Rather, they may and should be read harmoniously. *See Knolls Condo. Ass'n v. Harms*, 202 Ill. 2d 450, 460 (2002) (laws regarding the same subject "are to be read harmoniously"). These general administrative orders merely set forth *when* bond hearings are held, while the Circuit Court General Order directs *where* an arrestee detained on a Cook County warrant on weekends and Court Holidays shall be transported (*i.e.*, Central Bond Court). Law enforcement agencies like CPD may therefore comply with both orders simultaneously. Accordingly, these general administrative orders do supersede the Circuit Court General Order.

Plaintiffs' reliance on General Administrative Order 2015-06 is similarly misplaced. First and foremost, like the other general orders and general administrative orders Plaintiffs refer to, General Administrative Order 2015-06 does not contain express language stating it supersedes the Circuit Court General Order. That is fatal to Plaintiffs' theory for the reasons discussed above. Equally important, General Administrative Order 2015-06 concerns arrest warrants "issued by an Illinois state court outside of Cook County" (Dkt. 193-2, Pls.' App'x at 76), while the Circuit Court General Order deals with "Cook County Warrants." (*Id.* at 30.)[3] The two orders thus concern two different subject matters, and the mere issuance of a general administrative order about arrest

[3] Judge Feinerman previously entered partial judgment on the pleadings for individuals who were arrested on out-of-county warrants based on General Administrative Order 2015-06. (Dkt. 188, Mot. at 10.)

warrants originating from other counties within Illinois cannot repeal or supersede the Circuit Court General Order's command with respect to Cook County warrants—either expressly, implicitly, or otherwise. General Administrative Order 2015-06 is irrelevant to Plaintiffs' claims because they were not arrested on out-of-county warrants. (*See* Dkt. 136, Mem. Op. at 8.) The Circuit Court General Order is the relevant order and compelled Plaintiffs' appearances in Central Bond Court because they were arrested on Cook County warrants on weekends.

Plaintiffs also attempt to sow doubt as to whether their appearances were mandated by the Circuit Court General Order by arguing that CPD's bail bond manual, which was issued in 2010, allowed police officers to accept bail at the police station. (Dkt. 193, Resp. at 4-5.) This argument is beside the point. Plaintiffs do not allege they were wrongfully detained at the police station in accordance with the bail bond manual. They instead claim that the City violated their constitutional rights by enacting and complying with the CPD Special Order. The CPD Special Order's alleged disparate treatment between weekday and weekend Chicago warrant arrestees arises from the Circuit Court General Order's clear, unambiguous mandate. Thus, it is irrelevant what the bail bond manual supposedly allowed in the past. The focus, rather, is on whether at the time the City took the challenged actions, it had any "discretion that [it] could exercise in the plaintiffs' favor." *Bethesda Lutheran Homes*, 154 F.3d at 718-19. As discussed, the City and CPD had no discretion as to whether to bring Plaintiffs to Central Bond Court.

In a last-ditch effort to save their claims, Plaintiffs ask the Court to deem the Circuit Court General Order superseded by General Administrative Order 2015-06 because, they say, all "reasonable inferences" must be drawn in Plaintiffs' favor on a Rule 12(c) motion for judgment on the pleadings. (Dkt. 193, Resp. at 3 (quoting *Lisby v. Henderson*, 74 F.4th 470, 472 (7th Cir. 2023)).) That general statement of the law is correct but has no application here. Whether or not

the Circuit Court General Order was effective at the time of Plaintiffs' arrests is a question of law for this Court to decide and for which Plaintiffs are not entitled or afforded any reasonable inferences. *See Durrett v. City of Chicago*, No. 19 cv 312, 2019 WL 4034489, at *1 (N.D. Ill. Aug. 27, 2019) ("although a court must accept all factual allegations as true and draw all reasonable inferences in the plaintiff's favor, the court need not do the same for legal conclusions"). In any event, Plaintiffs improperly ask the Court to draw an *unreasonable* inference that the Circuit Court General Order was superseded by other orders concerning different subject matters that do not expressly (or implicitly) supersede the Circuit Court General Order.

The only reasonable interpretation of the relevant facts and law demonstrates that the Circuit Court General Order has remained effective from 2004 to the present. The City and CPD's decision to comply with this valid, state-law command thus defeats Plaintiffs' Equal Protection claims as a matter of law.

B. The presiding judge of the Municipal Division possessed the authority to issue the Circuit Court General Order.

Plaintiffs also claim that then Presiding Judge Wright lacked the authority to issue the Circuit Court General Order. (Dkt. 193, Resp. at 2-3, 11-12.) Specifically, Plaintiffs contend that Presiding Judge Wright "exercised powers that were not his," belonging instead to the chief circuit judge. (*Id.* at 12.) This argument likewise lacks merit.

As the City discussed in the Motion, Illinois courts have consistently held that Supreme Court Rule 21(c) allows chief circuit judges to delegate rule-making power to the presiding judges of different divisions within the circuit court. (*See* Dkt. 188, Mot. at 11-12 (citing *OneWest Bank, FSB v. Markowicz*, 2012 IL App (1st) 111187, ¶ 15)). Tellingly, Plaintiffs do not address or even attempt to distinguish the City's authority on this point. Their silence speaks volumes.

Indeed, in *U.S. Bank, N.A. v. Dzis*, the Illinois Appellate Court rejected the same argument

Plaintiffs make here, finding Rule 21(c) "authorized the presiding judge of the chancery division to enter general orders in the exercise of her general administrative authority." 2011 IL App (1st) 102812, ¶ 20. In so holding, the appellate court cited well-established Illinois precedent where other reviewing courts determined presiding judges possessed the authority to issue general orders. *Id.* Importantly, the appellate court did not discuss or refer to any express delegation of such power issued by the chief circuit judge. *See generally id.*

Thus, contrary to Plaintiffs' assertion, the chief circuit judge need not make a specific delegation of rule-making authority to presiding judges before they may issue general orders. *See, e.g., id.*; *Markowicz*, 2012 IL App (1st) 111187, ¶ 15. Rule 21(c) provided Judge Wright with the authority to promulgate the Circuit Court General Order. *Dzis*, 2011 IL App (1st) 102812, ¶ 20. Plaintiffs' contrary argument is unsupported as a matter of fact and Illinois law.

II. Plaintiffs' Equal Protection claims fail as a matter of law because the alleged discrimination in the Special Order satisfies rational basis review.

Plaintiffs' Equal Protection claims fail for an additional reason. As the City explained in the Motion, the CPD Special Order does not violate Plaintiffs' rights to equal protection under the law because it satisfies rational basis review—the most deferential and least exacting level of judicial scrutiny. (Dkt. 188, Mot. at 13-15.) The alleged discrimination between weekday and weekend Chicago warrant arrestees Plaintiffs take issue with in the CPD Special Order was instituted to comply with the Circuit Court General Order. (*Id.* at 14-15.) The City and CPD's decision to conform to the requirements of the Circuit Court General Order is a rational basis that defeats Plaintiffs' claims as a matter of law. (*Id.*) Moreover, the City and its police officers should not be placed in the untenable position of choosing which court orders to follow and those to willfully disregard—at their own peril. (*Id.* at 11 (discussing enforcement actions for failure to comply with orders issued in accordance with Rule 21(c).) Rather, and as the Seventh Circuit has

previously held, it is "difficult to imagine a municipal policy more innocuous and constitutionally permissible … than the policy of enforcing state law." *Bethesda Lutheran Homes*, 154 F.3d at 718. That is precisely the purpose underlying the CPD Special Order's distinction between weekday and weekend Chicago warrant arrestees; namely, to comply with what the Circuit Court General Order requires of CPD.

As the party asserting an Equal Protection challenge, Plaintiffs bear the burden to eliminate every conceivable justification for the CPD Special Order's purported discrimination—even when opposing a Rule 12(c) motion for judgment on the pleadings. (*Id.* at 13-14 (citing *Srail v. Vill. of Lisle*, 588 F.3d 940, 946-47 (7th Cir. 2009)).) However, Plaintiffs fail to address the City's proffered rational basis, let alone attempt to demonstrate how it is arbitrary or irrational. Plaintiffs' Response instead attacks the Circuit Court General Order's "vitality," and the authority of the judge who issued it. (Dkt. 193, Resp. at 1-3.) Those efforts fall flat for all of the reasons discussed above. (*See* § I, *supra*.) Plaintiffs also failed to acknowledge or distinguish the City's cited authorities holding alleged discriminatory governmental action passed rational basis review because it endeavored to comply with state and federal law, including court orders. (Dkt. 188, Mot. at 14-15.) Plaintiffs have thus completely failed to carry their heavy burden to "negative any reasonably conceivable state of facts that could provide a rational basis for the classification." *Bd. of Trs. of the Univ. of Ala. v. Garrett*, 531 U.S. 356, 367 (2001). The Court should enter judgment on the pleadings on Plaintiffs' Equal Protection claims for this reason, too.

CONCLUSION

For these reasons and those discussed in the Motion, the City respectfully requests that the Court dismiss Plaintiffs' Complaint with prejudice pursuant to Federal Rule of Civil Procedure 12(c), and grant such other and further relief as the Court deems necessary and just.

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Respectfully submitted,

CITY OF CHICAGO

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