

<b>JACQUELINE STOWERS</b>	)	<b>Case No.</b>
43565 State Route 303	)	
LaGrange, OH 44050	)	
	)	
<b>JOHN STOWERS</b>	)	<b>Hon.</b>
43565 State Route 303	)	
LaGrange, OH 44050	)	
	)	
<b>-and-</b>	)	
	)	
<b>MANNA STOREHOUSE, LLC</b>	)	
43565 State Route 303	)	
LaGrange, OH 44050	)	<b>COMPLAINT FOR DECLARATORY AND</b>
	)	<b>INJUNCTIVE RELIEF</b>
<b>Plaintiffs,</b>	)	
	)	<b>MOTION FOR PRELIMINARY</b>
<b>-VS-</b>	)	<b>INJUNCTION</b>
	)	
<b>DIRECTOR ROBERT BOGGS</b>	)	<b>WRIT OF MANDAMUS</b>
<b>OHIO DEPARTMENT OF AGRICULTURE</b>	)	
8995 East Main Street	)	
Reynoldsburg, Ohio 43068	)	
	)	Maurice A. Thompson (0078548)
<b>LORAIN COUNTY GENERAL HEALTH</b>	)	1851 Center for Constitutional Law
<b>DISTRICT</b>	)	Buckeye Institute
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	)	Farm-to-Consumer Legal Defense Fund
<b>Defendants.</b>	)	4240 Kendale Road
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## **PARTIES**

1. Plaintiffs John and Jacqueline Stowers (hereinafter Plaintiffs) are residents of Lorain County, Ohio.
2. The Stowers family, as it resides at 43565 State Route 303, in LaGrange, Ohio, is comprised of eight children, seven of whom live in the home with John and Jacqueline Stowers. The families' oldest son is serving in Iraq, and his wife and three young children are currently staying at the residence as well.
3. For approximately four years Plaintiffs have operated an organic food cooperative, named Manna Storehouse, on their property.
4. Manna Storehouse is a membership organization, insofar as you must be a member of the co-op to obtain food from it.
5. Manna Storehouse distributes a variety of food, including wheat, flour, sugar, grass-fed beef, lamb, turkey, and eggs from free range chickens.
6. A significant amount of this food is purchased from local farmers whose farming practices coincide with what co-op members, including the Stowers, demand.
7. The co-op takes orders from members, acquires the food that is ordered, and then distributes it to members of the co-op in a manner that reflects members' orders.
8. In distributing co-op food, Manna Storehouse sometimes takes money from members prior to ordering, sometimes is paid in full after distributing the order, and sometimes allows members to pay and pick up the food in installments, if that member has a lack of freezer space.
9. Defendant Lorain County Health Department, also known as the Lorain County General Health District, is according to its website, "responsible for preventing disease and promoting health in Lorain County except for the cities of Elyria, Lorain, Avon Lake, and Vermilion."
10. Defendant Ohio Department of Agriculture, amongst other things, creates and enforces regulations concerning consumer and farmer protection, the conduct of county and independent fairs, food safety, herd and flock health, protection of plants from pests, and departmental procedures.
11. Both the Lorain County Health Department and the Ohio Department of Agriculture enforce R.C. 3717, which provides for licensure and regulation of a "retail food business," and is law under which the December 1, 2008 raid, search, and seizure on

Manna Storehouse and the personal residence of Jacqueline and John Stowers was conducted.

### **JURISDICTION**

12. R.C. 2721.02(A) vests courts with the authority to “declare rights, status, and other legal relations whether or not further relief could be claimed.” More specifically, R.C. 2721.03(A) provides that “any person whose rights, status, or other legal relations are affected by a constitutional provision, statute, \* \* \* municipal ordinance, township resolution, contract, or franchise may have determined any question of construction or validity arising under the instrument, constitutional provision, statute, rule, ordinance, resolution, contract, or franchise and obtain a declaration of rights, status, or other legal relations under it.
13. In this case, Plaintiffs are in imminent danger of criminal prosecution, fines, and injunction of their legitimate behavior as those penalties are authorized under R.C. 3717.50.
14. Imminent danger is demonstrated by the fact that Plaintiffs have already been subjected to one unlawful raid, search, and seizure related to stopping them from running a “retail food establishment” without a license. After this event, a local prosecutor boasted that he would file criminal charges against the Plaintiffs.
15. This action challenges the validity of R.C. 3717 as applied to Plaintiffs.

### **FACTS**

16. On December 10, 2007, Jacqueline Stowers transmitted a letter addressed to Dorothy Kloos, registered sanitation with the Lorain County General Health District, requesting clarification as to (1) if, and if so why, the Lorain County GHD believed the Stowers co-op constituted a retail food establishment; and (2) why the Lorain County GHD believed that the Stowers’ co-op was not exempted from such licensing requirements. This letter was sent and received via certified mail.
17. Neither the LCGHD nor Ms. Kloss responded to Ms. Stowers’ inquiry.
18. Rather than responding, on December 1, 2008, police raided not just the Manna Storehouse component of the Stowers property, but also the Stowers personal residence.
19. To conduct the raid, on November 26, 2008 Ohio Department of Agriculture agent William Lesho swore out an affidavit before Lorain County Court of Common Pleas judge Edward Zaleski, and obtained a search warrant.

20. The November 26, 2008 affidavit makes numerous conclusory and unsubstantiated claims that are false, including that the Stowers' private residence contains business records, and must be searched and seized, and that all food within the Stowers' private residence was "for sale."
21. The affidavit used to procure the search warrant was based on conjecture, rather than on personal knowledge.
22. The affidavit does not indicate that the Stowers are dangerous.
23. The affidavit does not indicate that the Stowers will destroy evidence.
24. The affidavit does not indicate that there are any exigent circumstances related to executing a search warrant at the Stowers' property that would warrant using force or threats to execute the warrant.
25. The police knocked on the door, and Katie Stowers opened.
26. Police shoved Katie Stowers to the side, and immediately entered the residence, without first announcing (1) that they were police; or (2) the purpose of the visit.
27. During the raid, at least one, if not several police entered the home with guns drawn, and the Stowers home was surrounded by police who also had guns drawn.
28. Once having obtained entry into the home, the lead officer on the raid, with his gun drawn, swiftly and immediately moved to the upstairs of the home, where he found 8 small children in the middle of a home-schooling lesson.
29. The officer used physical force to get Jacqueline Stowers and her children down the stairs.
30. The officers held the Stowers family captive in their living room for in excess of six hours.
31. During the time that the Stowers were held captive, police and Ohio Department of Agriculture agents, directed by agent William Lesho, searched not just the Manna Storehouse portion of the Stowers' property, but also the Stowers' entire personal residence, and their entire 26 acre property.
32. The police and Ohio Department of Agriculture agents seized the Stowers' personal family computers, personal cell phones, and personal food supply.
33. Much of the property seized had nothing to do with the Stowers' organic food co-op that was the subject of the search and seizure.
34. There has never been a complaint filed or otherwise lodged against Manna Storehouse or the Stowers, by any government agency or private individual, related to the quality or healthfulness of the food distributed through the co-op.

35. Under R.C. 3717(C) “Retail food establishment” means a premises or part of a premises where food is stored, processed, prepared, manufactured, or otherwise held or handled for retail sale.
36. Under R.C. 3717(C)(1), “retail” means “the sale of food to a person who is the ultimate consumer.”
37. R.C. 3717.21 provides that “no person shall operate a retail food establishment without a license.”
38. The licensing requirements to become licensed as a “retail food establishment” under R.C. 3717 include, pursuant to R.C. 3717.09 and R.C. 3717.07, respectively (1) completion of “approved courses of study for certification in food protection as it pertains to retail food establishments and as it relates to food service operations;” and (2) payment of a significant licensure fee. Even then, approval is subject to administrative discretion.
39. R.C. 3717.22(B) provides a listing of 16 exemptions to the licensure requirement for “retail food establishments.”
40. R.C. 3717.99 provides for criminal prosecution of those who operate a “retail food establishment” without a license.

#### **UNLAWFUL SEARCH AND SEIZURE**

41. Plaintiffs hereby incorporate by reference all previous paragraphs as if written herein.
42. There is no evidence in the affidavit used to procure the search warrant, or otherwise, that any member of the Stowers family is or was armed or dangerous.
43. There is no testimony in the affidavit used to procure the search warrant, or otherwise, that any member of the Stowers family has or would destroy evidence if, in executing the warrant, officers were to make a calm, peaceful and consented-to entry into and search and seizure of the Manna Storehouse and Stowers’ private residence in the course of executing the search warrant.
44. There is no evidence whatsoever, to support anything other than a calm, peaceful and consented-to entry into, and search and seizure of, the Manna Storehouse and the Stowers’ private residence.
45. The enforcement officers made a haphazard unannounced entry into the property with guns drawn, as other officers surrounded the property, with guns drawn.
46. This haphazard entry included a failure of the officers to announce and identify themselves as police officers. This failure is compounded by the fact that the lead officer serving the search warrant was wearing black military fatigues, rather than a standard police uniform, and had his weapon drawn.
47. Enforcement officers confiscated the family’s personal food supply, personal computers, and personal cell phones.

48. Given the evidence, or lack thereof, supporting the search warrant, the manner in which the search warrant was executed against the Stowers on December 1, 2008 is unreasonable under the Fourth Amendment to the United States Constitution, and Section 14, Article I of the Ohio Constitution, and constitutes a violation of the Stowers' constitutional rights.
49. The manner in which the search warrant was executed against the Stowers on December 1, 2008 risks injury to not only the residents, but to the police, and instills, and did actually instill unnecessary shock, fright, embarrassment and indignity on the homeowner.
50. A raid, search and seizure, even if executed pursuant to a valid search warrant, is unconstitutional where immediate and unconsented-to entry is made into a private residence, with guns drawn, where there is no indication in the affidavit supporting the search warrant or otherwise, that there are exigent circumstances warranting such an entry i.e. that the subjects of the search warrant are either dangerous or a threat to destroy evidence.

#### **UNLAWFUL EXERCISE OF ADMINISTRATIVE AUTHORITY**

51. Plaintiffs hereby incorporate by reference all previous paragraphs as if written herein.
52. The Ohio Department of Agriculture and/or the Lorain County General Health District (hereinafter LCGHD) acted beyond the scope of its administrative authority when it directed the police raid, search, and seizure on the Stowers' property and private residence.
53. R.C. 3717.13 permits the Ohio Department of Agriculture and county health departments to contract with police and others to assist in "performing routine services in the administration and enforcement of [Chapter 3717]."
54. Forceful raids and sweeping searches and seizures are not "routines services in the administration and enforcement of [Chapter 3717]," and thus neither the Ohio Department of Agriculture or any county health department may contract with police to authorize a forceful and sweeping raid, search, and seizure, pursuant to executing a search warrant or otherwise.
55. The Ohio Department of Agriculture and/or the LCGHD exceeded the scope of the authority delegated to it by the Ohio Legislature when it contracted for the forceful and sweeping raid, search, and seizure of the Manna Storehouse.
56. The Ohio Department of Agriculture and/or the LCGHD exceeded the scope of the authority delegated to it by the Ohio Legislature when it contracted for the forceful and sweeping raid, search, and seizure of the Stowers' private residence.

#### **TAKING OF PRIVATE PROPERTY WITHOUT COMPENSATION**

57. Plaintiffs hereby incorporate by reference all previous paragraphs as if written herein.

58. Personal property seized from the Stowers includes the families' significant food supply, personal cellular phones, and personal computers.
59. The value of the food taken includes approximately \$10,015.00. Of this amount, \$8,030 was for personal and family use. The reason this amount this value is so significant is because (1) ten children currently live with the Stowers; and (2) the Stowers had recently taken much of their personal herd of sheep to the butcher, which furnished a year's supply of meat for the family.
60. Much of the remaining amount of foot was earmarked for pickup based on prearranged orders, or had been forgotten by previous co-op members who had come to pick up their orders.
61. The food taken was not an is not inherently illicit, so as to be subject to forfeiture
62. Section 19, Article I of the Ohio Constitution, which provides, "Private property shall ever be held inviolate, but subservient to the public welfare. \* \* \* [W]here private property shall be taken for public use, a compensation therefor shall first be made," deems private property rights fundamental, and provides stronger protection to private property rights than does the Fifth Amendment.
63. R.C. 3717 was used to wrongfully deprive the Stowers and/or Manna Storehouse of private property without compensation.
64. R.C. 3717, as it has been applied to the Stowers and/or Manna Storehouse, interferes with the fundamental right to acquire, use, and possess private property.
65. The Property, if properly taken at all, was taken for a "public use."
66. The Stowers, and/or Manna Storehouse, are entitled to compensation for the private property taken, or for return thereof.

### **EQUAL PROTECTION**

67. Plaintiffs hereby incorporate by reference all previous paragraphs as if written herein.
68. Activities of the Stowers and/or the Manna Storehouse include buying local food from farmers, growing their own food on their own farm, consuming, as a family, food they have grown and purchased, and distributing excess food that they have grown or purchased to members of their co-op in prearranged amounts. This activity is entirely different than operating retail food establishment.
69. The Stowers and/or Manna Storehouse cannot reasonably be classified as a "retail food establishment" because it does not store, process, prepare, manufacture or otherwise handle food for retail sale.

70. To the extent that the Stowers and/or Manna Storehouse could be construed to store, process, prepare, manufacture or otherwise handle food for retail sale, its limited range of co-op activities overlaps only minimally with these retail food establishment activities.
71. R.C. 3717, as applied to the Stowers and/or Manna Storehouse treats entities that are entirely different, such as large commercial grocery stores and the Stowers family co-op, as though they are exactly alike.
72. The Stowers and/or Manna Storehouse are exempt from application of R.C. 3717.21.
73. One of any number of exemptions articulated in R.C. 3717.22 applies to the Stowers and/or the Manna Storehouse.
74. R.C. 3717.22 creates myriad exception the licensing requirement for parties that are similarly situated, in terms of their practices, to the Stowers and/or Manna Storehouse.
75. There is no rational distinction between some of the entities that are classified as exempt from the need for retail food establishment licensure under R.C. 3717.22 and the Stowers and/or the Manna Storehouse, insofar as the protection of public health and safety is not effectuated more by regulating the Manna Storehouse than it would be by regulating some of the exempt entities.
76. In the absence of a non-arbitrary distinction, the only remaining purpose of the licensure requirement and its attendant exemptions is economic protectionism, favoring some suppliers to the detriment of others.
77. Protecting discrete interest group from economic competition is not legitimate governmental purpose, as required to survive rational basis review under equal protection and due process clauses.
78. If the co-op operation is viewed as a occupation or profession, then R.C. 3717, as applied to the Stowers, implicates and violates their fundamental right to earn a living.
79. R.C. 3717, as applied to the Stowers and/or Manna Storehouse, is violative of Section 2, Article I of the Ohio Constitution, and Equal Protection Clause, as applied to the states through the Fourteenth Amendment, of the United States Constitution.

### **DUE PROCESS**

80. Plaintiffs hereby incorporate by reference all previous paragraphs as if written herein.
81. Activities of the Stowers and/or the Manna Storehouse include buying local food from farmers, growing their own food on their own farm, consuming, as a family, food they have grown and purchased, and distributing excess food that they have grown or purchased to members of their co-op in prearranged amounts.



82. R.C. 3717 is intended to regulate large commercial grocery stores rather than family-run organic food co-ops, and the Stowers and/or Manna Storehouse are exempted from the licensure requirement because they only engage in shared ordering of organic food, and the growing of their own food on their own farm.
83. Protecting a discrete interest group from economic competition is not a legitimate governmental purpose, as required to survive rational basis review under equal protection and due process clauses.
84. The Stowers and or Manna Storehouse is exempted from the licensing requirement because they are a membership organization, and do not solicit the general public.
85. Members of the co-op solicit Manna Storehouse and the Stowers, and when they join as a member of the co-op, they agree that they are knowledgeable about the products they are getting, aware of any risks, and disclaim those risks.
86. If the co-op operation is viewed as a occupation or profession, then R.C. 3717, as applied to the Stowers, implicates and violates their fundamental right to earn a living.
87. R.C. 3717, as applied to the Stowers and/or Manna Storehouse, is violative of Section 16, Article I of the Ohio Constitution, and the Due Process Clause of the Fifth Amendment, as applied to the states through the Fourteenth Amendment, of the United States Constitution.

#### **UNLAWFUL APPLICATION OF STATE POLICE POWER**

88. Plaintiffs hereby incorporate by reference all previous paragraphs as if written herein.
89. Activities of the Stowers and/or the Manna Storehouse include buying local food from farmers, growing their own food on their own farm, consuming, as a family, food they have grown and purchased, and distributing excess food that they have grown or purchased to members of their co-op in prearranged amounts.
90. The licensing requirements to become licensed as a “retail food establishment” under R.C. 3717 include, pursuant to R.C. 3717.09 and R.C. 3717.07, respectively (1) completion of “approved courses of study for certification in food protection as it pertains to retail food establishments and as it relates to food service operations;” and (2) payment of a significant licensure fee. Even then, approval is subject to administrative discretion.
91. As applied to the Stowers, the state’s exercise of its police power offends against the guaranties of the rights of private property and its corollary-freedom of contract-contained in Sections 1, 16 and 19, Article I of the Ohio Constitution.
92. The licensing requirements, as applied to the Stowers and/or Manna Storehouse, are unreasonable and arbitrary, do not confer upon the public a benefit commensurate with its burdens upon private property, are not suitable to the ends in view, are not impartial in

operation, are unduly oppressive upon individuals, have no real and substantial relation to their purpose, and interfere with private rights beyond the necessities of the situation.

93. As applied to the Stowers, the state's exercise of its police power is not, in this case, exercised in the interest of public health, safety, morals or welfare.
94. The burdens of R.C. 3717 are unduly oppressive upon the Stowers and/or Manna Storehouse and they interfere with the rights of private property and the freedom of contract beyond the necessities of the situation. The ordinance is therefore invalid as applied to the Stowers and/or Manna Storehouse as it is in contravention of the Ohio Constitution.
95. R.C. 3717, as applied to the Stowers and/or Manna Storehouse, is not a valid exercise of the police power because it bears no real and substantial relation to the health, safety, morals or general welfare of the public.
96. R.C. 3717, as applied to the Stowers and/or Manna Storehouse, is unrelated to the state's interest in public health and consumer protection because all of the recipients of food are members of the co-op and not arms-length purchasers, who have sought out the co-op, and who have indicated that they are fully informed on the food and how it is stored.
97. There has never been a complaint filed or otherwise lodged against Manna Storehouse or the Stowers, by any government entity or private individual, related to the quality or healthfulness of the food distributed through the co-op.
98. The means sought to regulate the Stowers and/or Manna Storehouse has the actual effect of impeding public health and safety.

### **INALIENABLE AND RETAINED RIGHTS**

99. Plaintiffs hereby incorporate by reference all previous paragraphs as if written herein.
100. Section 1, Article I of the Ohio Constitution provides that "[a]ll men are, by nature, free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and seeking and obtaining happiness and safety," while Section 20, Article I protects rights not specified elsewhere, but retained by the people.
101. The rights to (1) buy food directly from local farmers; (2) distribute locally-grown food to neighbors; (3) grow and consumer one's own food; (4) grow and distribute one's own food; and (5) pool resources to purchase in food in bulk are fundamental inalienable rights exercised by Ohioans at the time of its 1851 Constitution that are reserved to the people, and are part of their general liberty.
102. The right of unthreatening, peaceful citizens to be free from paramilitary police raids, searches, and seizures is a right protected by Section 1, Article I, and Section 20, Article I of the Ohio Constitution.

103. The conduct of the defendants violated the Stowers' rights under the Ohio Constitution.
104. R.C. 3117, as applied to the Stowers, violates their rights under the Ohio Constitution.

### **WRIT OF MANDAMUS**

105. Plaintiffs hereby incorporate by reference all previous paragraphs as if written herein.
106. Public officials in possession of the property seized during the unlawful seizure are not entitled to possession of that property, and have a legal and statutory duty to return it.
107. For the reasons articulated herein, Plaintiffs are entitled to the immediate return of the specified property seized in the unlawful search, seizure, and taking.

### **MOTION FOR PRELIMINARY INJUNCTIVE RELIEF**

108. Plaintiffs hereby incorporate by reference all previous paragraphs as if written herein.
109. A preliminary injunction is necessary to preserve and protect the ability of the court to provide an effective judgment and meaningful relief to Plaintiffs, because the threat of future prosecution and police seizure of personal food supply chills their ability to engage in co-op-related activity, and to determine whether they can raise, obtain, and/or store food for personal and co-op use.
110. There is a substantial likelihood of success on the merits in this case, the movant will suffer an irreparable injury if the defendants' conduct is not enjoined, a preliminary injunction would not harm third parties, and the interest of the public will be served by granting a preliminary injunction.
111. In balancing the equities involved, both preliminary and permanent injunctive relief is necessary.

### **ATTORNEYS FEES**

112. Plaintiffs hereby incorporate by reference all previous paragraphs as if written herein.
113. Plaintiffs are entitled to attorneys' fees under R.C. 2335.39, the Equal Access to Justice Act.

WHEREFORE, Plaintiffs hereby demand judgment as follows:

1. A declaration that the manner of in which the pertinent Search Warrant was executed on December 1, 2008, and the attendant search and seizure were unconstitutional.
2. A declaration that R.C. 3117 is unconstitutional as applied to Plaintiffs.
3. Return of property seized during the December 1, 2008 search and seizure.
4. An injunction against the use of any further unconstitutional searches and seizures against them.
5. An injunction against all similar unconstitutional searches and seizures.
6. An injunction against further enforcement of R.C. 3717 against them.
7. Attorneys fees warranted under applicable laws.

Respectfully submitted,

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