

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION**

**GERALD O.E. NICKOLI AND ROBIN
L.B. NICKOLI,**
12501 River Road,
Milan, Ohio 44846,

and

**PATRICIA A. SIPP (FKA PATRICIA A.
CHARVILLE), TRUSTEE U/A PATRICIA
A. CHARVILLE, DATED SEPTEMBER
28, 1994 AS TO AN UNDIVIDED ONE-
HALF INTEREST AND PATRICIA A.
SIPP (FKA PATRICIA A. CHARVILLE),
MARK R. CHARVILLE AND DAVID A.
CHARVILLE AS SUCCESSOR
TRUSTEES U/A LEON R. CHARVILLE
DATED SEPTEMBER 28, 1994 AS TO AN
UNDIVIDED ONE-HALF INTEREST**
11615 River Road,
Milan, Ohio 44846,

Plaintiffs,

v.

**BOARD OF PARK COMMISSIONERS,
ERIE METROPARKS**
3910 East Perkins Avenue
Huron, OH 44839,

STEPHEN DICE
In his official capacity as Executive Director
c/o Board of Park Commissioners,
Erie MetroParks
3910 East Perkins Avenue
Huron, OH 44839,

TOM DUSZA
In his official capacity as Park Commissioner
c/o Board of Park Commissioners,
Erie MetroParks
3910 East Perkins Avenue
Huron, OH 44839,

Case No. _____

Judge _____

COMPLAINT

JURY DEMAND
ENDORSED HEREON

MICAH VAUTERS

In his official capacity as Park Commissioner
c/o Board of Park Commissioners,
Erie MetroParks
3910 East Perkins Avenue
Huron, OH 44839,

and

KURT LANDEFELD

In his official capacity as Park Commissioner
c/o Board of Park Commissioners,
Erie MetroParks
3910 East Perkins Avenue
Huron, OH 44839,

Defendants.

Plaintiffs Gerald O.E. Nickoli, Robin L.B. Nickoli (the “Nickolis”), and Patricia A. Sipp (fka Patricia A. Charville), Trustee U/A Patricia A. Charville, dated September 28, 1994 as to an undivided ½ interest, and Patricia A. Sipp (fka Patricia A. Charville), Mark R. Charville and David A. Charville as Successor Trustees U/A Leon R. Charville dated September 28, 1994 as to an undivided ½ interest (the “Charvilles”) (the Nickolis and Charvilles collectively referred to as “Landowners” or “Plaintiffs”), by and through counsel, state as their Complaint against the Board of Park Commissioners, Erie MetroParks; Stephen Dice, Executive Director; Tom Dusza, Park Commissioner; Micah Vawters, Park Commissioner; and Kurt Landefeld, Park Commissioner (collectively “MetroParks” or “Defendants”), as follows:

INTRODUCTION

1. The Nickolis and Charvilles have been engaged in years of litigation against Defendants over MetroParks’ attempt to establish a public bicycle and “leisure” path across their property on the former Milan Canal Corridor (the “Canal Corridor”). Initially joined by

MetroParks in a state court action seeking to divest them of title, Landowners ultimately vindicated their right to ownership of the Canal Corridor in 2005.

2. In complete disregard of the state court decision against it and in favor of Landowners, MetroParks continues to insist that it owns the Canal Corridor and seeks to complete a bicycle and leisure trail from Milan to Huron, Ohio across Landowners' property. Without regard to Landowners' right to ownership and possession, MetroParks has established a 66 to 150 foot wide public park on the Canal Corridor on Landowners' land, cutting Landowners' properties in two and depriving Landowners of access to the Huron River from their properties.

3. At the invitation of MetroParks, the general public has access to Landowner's properties on foot, bicycle or horseback, and MetroParks operates motor vehicles on Landowner's property. MetroParks claims to control all access in, on, over and through this 66 to 150 wide swath of land and the right to assign the rights to control this area to anyone it chooses.

4. Landowners have pursued all available means under state law to obtain compensation from MetroParks for its unlawful taking of Landowners' property. Landowners now turn to this Court to hold MetroParks liable for its unlawful and unconstitutional acts.

FACTUAL BACKGROUND

5. The Canal Corridor is a 150 foot wide strip of land running from the Village of Milan, Ohio to the mouth of the Huron River in the Village of Huron, Erie County, Ohio. The Canal Corridor roughly parallels the Huron River and was the situs of the Nineteenth Century Milan Canal system and later a railroad line used by the Wheeling and Lake Erie Railroad and

successor entities. Landowners purchased the Canal Corridor on their property in 2000 from its then rightful owner, Buffalo Prairie Ltd.

6. The Nickolis have owned land on both sides of the Canal Corridor adjacent to the Huron River in Milan, Ohio, south of Mason Road, for more than twenty-four years. The Nickolis reside on the land, farm the land, and – prior to MetroParks’ seizure of the Nickolis’ property and construction of the trail – enjoyed full use and possession of the land.

7. The Charvilles have owned land immediately abutting the Canal Corridor adjacent to the Huron River in Milan, Ohio, south of Mason Road since 1963. Patricia Sipp and Mark Charville live in the two homes on the property and – prior to MetroParks’ seizure of the Charvilles’ property and construction of the trail – the Charvilles enjoyed full use and possession of the land.

8. Landowners’ ownership of the Canal Corridor was conclusively established by the judgments of the Erie County Court of Common Pleas and the Sixth District Court of Appeals in the case titled *Erie MetroParks Bd. of Commrs v. Key Trust Co. of Ohio, N.A.* (“*Key Trust Litigation*”). In the *Key Trust Litigation*, commenced in 1999, MetroParks sued numerous owners of Canal Corridor property (including the Nickolis and Charvilles) claiming unsuccessfully that the Canal Corridor belonged to it and not the Landowners.

9. In its Complaint in the *Key Trust Litigation*, MetroParks alleged that it was improving the Canal Corridor for use as a recreational trail and that it was entitled to sole and exclusive occupancy of the Canal Corridor.

10. MetroParks then moved for and obtained a temporary restraining order against all of the Canal Corridor landowners, including the Nickolis and Charvilles, to prohibit them from using the Canal Corridor and interfering with MetroParks’ operation of the recreational trail.

11. Ultimately, however, the Court of Common Pleas ruled that MetroParks did not own any of the Canal Corridor by deed, easement, or adverse possession. This matter was twice appealed to the Sixth District Court of Appeals, and the Supreme Court of Ohio later concluded in *State ex rel. Coles v. Granville*:

the Key Trust litigation conclusively determined that the property subject to the board's interests under the railroad lease lay *within the boundaries of the Merry and Townsend parcels...*and [that] **the ultimate emphasis in that litigation [Key Trust] at both the trial and appellate courts [was] on the interests of [MetroParks] being limited to the Merry and Townsend parcels as well as the uncontroverted evidence that none of the relators' property is within either of those parcels.**

116 Ohio St.3d 231, 240 (2007) (emphasis added).

12. None of the Nickolis' land lies in either the Merry or Townsend tracts. None of the Charvilles' land lies in the Merry tract except for .9 acres of the Charvilles' 7.8 acres of Canal Corridor property is in the Townsend tract.

13. Despite a conclusive determination that it did not have any legal rights in the Nickolis' land and only rights in a small portion of the Charvilles' land in the Townsend tract, MetroParks continues its illegal occupation of Landowners' property, refusing to either vacate the land or pay compensation to Landowners for the seizure.

14. In 2003, MetroParks opened the land it seized from the Charvilles and the southern half of the land it seized from the Nickolis to the public.

15. With MetroParks' active encouragement and open invitation, members of the public began using Landowners' land as a public park. MetroParks employed armed deputies to patrol Landowners' land and removed trees and other natural features of the property. These employees of MetroParks actively prohibited Landowners from the quiet enjoyment and use of their property.

16. In 2006, seven of the landowners in the *Key Trust* Litigation sued MetroParks' for its continuing occupation and control of their land in defiance of the rulings in the *Key Trust* Litigation. They commenced a mandamus action against MetroParks in the Supreme Court of Ohio, *State ex rel. Coles v. Granville*, Case No. 2006-1259 ("*Coles*"). While identically situated, Landowners were not among these seven Relators.

17. The Supreme Court of Ohio in *Coles* issued a writ of mandamus and ordered Erie MetroParks to commence condemnation actions against the *Coles* Relators. *See State ex rel. Coles v. Granville*, 116 Ohio St.3d 231, 231, 242 (2007).

18. The Supreme Court of Ohio held that the *Key Trust* Litigation definitively established that MetroParks had no legal interests in the Canal Corridor outside of the Merry and Townsend tracts. *Id.* at 240, 242.

19. Correspondingly, the Supreme Court of Ohio held that the *Key Trust* Litigation preclusively established that the *Coles* Relators had valid ownership interests in their sections of the Canal Corridor physically invaded by MetroParks. *Id.* at 240, 242.

20. As to properties south of Mason Road, the Court recognized that both sides claimed that the *Key Trust* Litigation was "res judicata and establishes their interest in the property south of Mason Road in the canal corridor", *id.* at 238, and held that "relators have

established that the board's construction and use of a recreational trail over their property south of Mason Road resulted in a physical invasion of their property" *Id.* at 240.

21. The Court ruled that the *Key Trust* Litigation was res judicata concerning the parties' interests south of Mason Road and established the *Coles* Relators' valid ownership of the Canal Corridor outside of the Merry and Townsend tracts and that MetroParks' interest was limited to those two named tracts. *Id.* at 238, 240.

22. The rationale of the Court was that a "contrary ruling would . . . ignore both the ultimate emphasis in that litigation at both the trial and appellate courts on the interests of the board being limited to the Merry and Townsend parcels as well as the uncontroverted evidence that none of the relators' property is within either of those parcels." *Id.* at 240.

23. Accordingly, the Court concluded: "relators have established that the board's construction and use of a recreational trail over their property south of Mason Road resulted in a physical invasion of their property and constitutes an involuntary taking entitling them to the requested appropriation proceeding." *Id.*

24. Therefore, as to all *Coles* Relators, the Court ordered MetroParks to commence appropriation actions in order to compensate the Relators for the involuntary taking of their property: "Relators have established that by employing their private property for public use as a recreational trail, [MetroParks] has taken their property. Accordingly, we grant a writ of mandamus to compel the board to commence an appropriation proceeding to compensate them for that taking." *Id.* at 242.

25. In defiance of the court's rulings in *Key Trust* and the decision in *Coles*, MetroParks has refused to vacate or commence condemnation proceedings against Landowners.

26. In January 2009, the remaining Defendants from the *Key Trust* Litigation, including Landowners, filed an original action in mandamus in the Supreme Court of Ohio, Case No. 2009-0026 (the “Nickoli Relators”).

27. On February 25, 2010, the Supreme Court of Ohio, without addressing the merits of the Nickoli Relators’ claims, denied the writ, concluding that the Nickoli Relators’ mandamus complaint was barred by the four-year statute of limitations. *State ex rel. Nickoli v. Erie MetroParks*, 124 Ohio St.3d 449, 457 (2010) (relying on R.C. 2305.09(E) which purports to apply to claims for “relief on the grounds of a physical or regulatory taking of real property”). This decision is the final denial of just compensation to the Landowners for an unconstitutional taking under state procedures.

28. After the Supreme Court of Ohio’s decision, MetroParks has, for the first time, opened to the public the northern portion of the Canal Corridor land owned by the Nickolis.

29. Despite the fact that it does not own the Canal Corridor, MetroParks continues to illegally occupy the property, publicly claims ownership of the property, and seeks to operate a public trail on the property defying the judicial resolution of the ownership of the Canal Corridor in favor of Landowners. MetroParks’ actions are willful, wanton, and have been undertaken with malice.

30. Under federal law, a landowner’s takings claim is not ripe for review until that landowner has pursued state procedures and has been denied compensation. *Coles v. Granville*, 448 F.3d 853, 860-61 (2006). Landowners’ federal takings claim became ripe upon the decision of the Supreme Court of Ohio denying Landowners’ requested writ of mandamus.

31. Landowners now seek the vindication of their constitutional rights by the federal courts.

JURISDICTION AND VENUE

32. Jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1331 because Landowners allege claims under 42 U.S.C. § 1983. Landowners seek redress for continuing violations of their rights under color of law under the Fourth, Fifth and Fourteenth Amendments of the United States Constitution and the common law.

33. This Court has personal jurisdiction over Defendants. MetroParks conducts operations in the Western Division of the Northern District of Ohio and at all relevant times has committed and continues to commit the acts complained of herein in the Western Division. Likewise, upon information and belief, at all relevant times, Defendants MetroParks' Executive Director Dice and MetroParks' Commissioners Dusza, Vawters, and Landefield committed and continue to commit the acts complained of herein in the Western Division.

34. Venue is proper in this Court under 28 U.S.C. § 1391(b) and (c) and Rule 3.8 of the Local Rules of the Northern District of Ohio, Western Division because a substantial part of the events or omissions giving rise to the claims herein occurred in the Western Division, the property that is the subject of this action is situated in the Western Division and because, upon information and belief, all of the Defendants reside in the Western Division.

COUNT ONE: 42 U.S.C. § 1983

**UNREASONABLE SEIZURE OF PROPERTY IN VIOLATION OF FOURTH
AMENDMENT TO THE UNITED STATES CONSTITUTION**

35. Landowners incorporate the allegations contained in paragraphs 1 through 34 as if fully rewritten herein.

36. MetroParks' actions in establishing a bicycle and leisure trail on their property has deprived Landowners of their right to be free from unreasonable seizures guaranteed by the Fourth and Fourteenth Amendments of the United States Constitution.

37. Landowners have a reasonable expectation of privacy in their land seized and a meaningful possessory interest in both the land seized by MetroParks and their additional land invaded by the public as a result of MetroParks' seizure.

38. MetroParks' seizure is unlawful and unreasonable and constitutes an ongoing and continuing violation of the Fourth and Fourteenth Amendments.

39. As a direct and proximate result of MetroParks' seizure, Landowners have sustained and continue to sustain damages, including, but not limited to, damage to the land seized and the residual property, mental distress, attorneys fees, and other damages.

COUNT TWO: 42 U.S.C. § 1983

DEPRIVATION OF PROPERTY AND LIBERTY INTERESTS
WITHOUT PROCEDURAL DUE PROCESS

40. Landowners incorporate the allegations contained in paragraphs 1 through 39 as if fully rewritten herein.

41. Landowners' property and liberty interests are the type protected by the Fifth and Fourteenth Amendments to the United States Constitution.

42. MetroParks has deprived Landowners of their property and liberty interests under color of law without procedural due process in violation of the Due Process Clauses of the Fifth and Fourteenth Amendments to the United States Constitution.

43. Defendants' unlawful seizure and interference with Landowners' use and enjoyment of their land has proximately caused the deprivation of Landowners' property and liberty interests without procedural due process as required by the Constitution.

44. MetroParks' actions were taken in bad faith and were arbitrary, capricious, willful and in violation of the color of controlling law.

COUNT THREE: 42 U.S.C. § 1983

**DEPRIVATION OF PROPERTY AND LIBERTY INTERESTS
WITHOUT SUBSTANTIVE DUE PROCESS**

45. Landowners incorporate the allegations contained in paragraphs 1 through 44 as if fully rewritten herein.

46. Landowners' property and liberty interests are the type protected by the Fifth and Fourteenth Amendments to the United States Constitution.

47. MetroParks deprived Landowners of their property and liberty interests under color of law without substantive due process of law in violation of the Due Process Clause of the Fifth and Fourteenth Amendments to the United States Constitution.

48. MetroParks' illegal seizure of Landowners' private property and continued seizure and occupation of that property (despite the Supreme Court of Ohio affirming the rulings in the *Key Trust* Litigation that MetroParks did not have any ownership or legal possessory interest in the Nickolis' land at all and only an interest in a sliver of the Charvilles' land) have proximately caused the deprivation of Landowners' property and liberty interests without substantive due process in violation of the Constitution.

49. MetroParks' ongoing conduct shocks the conscience, is arbitrary, capricious, willful, and without regard to the facts and circumstances of the case. Additionally, MetroParks' actions were in bad faith and in violation of controlling law.

COUNT FOUR: 28 U.S.C. § 2201 AND OHIO REVISED CODE CHAPTER 2721

**DECLARATORY JUDGMENT THAT OHIO REVISED CODE § 2305.09 IS
UNCONSTITUTIONAL AS APPLIED TO CONTINUOUS PHYSICAL TAKINGS**

50. Landowners incorporate the allegations contained in paragraphs 1 through 49 as if fully rewritten herein.

51. Ohio Revised Code § 2305.09 sets a four-year limitations period for filing an action seeking relief for a physical taking of property by the government.

52. Under Ohio law, title to real estate by adverse possession does not vest by adverse possession until after the passage of twenty-one years.

53. However, if land is illegally seized by the government, Ohio Revised Code § 2305.09 effectively vests title in the government after only four years. The Fifth Amendment and the Fourteenth Amendments of the United States Constitution mandate that no taking can occur without just compensation.

54. By enacting a limitations period for recovery of property physically seized by the government that is less than the twenty-one year adverse possession limitations period, Ohio violates the Fifth and Fourteenth Amendments of the United States Constitution.

55. Landowners are entitled to a declaratory judgment that Ohio Revised Code § 2305.09 is unconstitutional as applied to physical takings where the government seizes a permanent or continuous right to the land (i.e., not a regulatory or temporary taking).

56. Accordingly, pursuant to 28 U.S.C. § 2202 and/or Ohio Revised Code § 2721.09, Landowners are entitled to a declaration ordering that MetroParks must relinquish possession of any and all land seized from Landowners until such time as MetroParks initiates an appropriation action and secures compensation to Landowners and other such further relief as necessary and proper.

COUNT FIVE: 28 U.S.C. § 2201 AND OHIO REVISED CODE CHAPTER 2721

DECLARATORY JUDGMENT THAT OHIO'S MANDAMUS PROCEDURE VIOLATES AND DOES NOT ADEQUATELY PROTECT DUE PROCESS OR THE PRIVILEGES AND IMMUNITIES CLAUSE OF THE UNITED STATES CONSTITUTION

57. Landowners incorporate the allegations contained in paragraphs 1 through 56 as if fully rewritten herein.

58. In *U.S. v. Clarke*, the United States Supreme Court held that the Fifth Amendment of the United States Constitution is self-executing and a landowner is entitled to bring an inverse condemnation action as a result of “the self-executing character of the constitutional provision with respect to compensation” 445 U.S. 253, 257 (1980) (quoting 6 P. Nichols, *Eminent Domain* § 25.41 (3d rev. ed. 1972)).

59. In violation of the Fifth Amendment, Ohio does not recognize inverse condemnation and instead forces a landowner subject to an illegal government seizure of his real property to file an action in mandamus to compel the government to initiate an appropriation action to compensate the landowner for the seizure.

60. To obtain a writ of mandamus, a landowner must show a clear legal right to the relief and that the government has a “clear legal duty” to appropriate the property. The burden of proof is a clear and convincing evidentiary standard, the highest burden of proof applied in civil cases. The United States Supreme Court has held that a preponderance of the evidence standard is appropriate in determining whether a taking under federal law has occurred.

61. If the landowner prevails and obtains the writ, then the landowner must then be made a party to a second lawsuit filed by the government to establish compensation. The second lawsuit to establish compensation is brought only when the government chooses to bring it.

62. By forcing Ohio landowners into a burdensome litigation process and imposing a virtually insurmountable burden of proof, Ohio has violated the procedural and substantive due process rights of Ohio landowners (like Landowners in this case) guaranteed by the Fifth and Fourteenth Amendments of the United States Constitution and violated the Privileges and Immunities Clause of the Fourteenth Amendment of the United States Constitution.

63. Landowners are entitled to a declaratory judgment that Ohio's process for landowners whose land has been seized by a governmental entity without the payment of just compensation is inadequate because the process fails to protect landowners' due process rights, and other rights secured by the United States Constitution.

64. In addition, pursuant to 28 U.S.C. § 2202 and/or Ohio Revised Code § 2721.09, because the Ohio process is inadequate and it is indisputable that Landowners own the land at issue seized by MetroParks, Landowners are entitled to an order that MetroParks must relinquish possession of any and all land seized from Landowners until such time as MetroParks initiates an appropriation action and secures compensation to Landowners and other such further relief as necessary and proper.

COUNT SIX: 28 U.S.C. § 2201 AND OHIO REVISED CODE CHAPTER 2721

**DECLARATORY JUDGMENT THAT LANDOWNERS SHALL HAVE EXCLUSIVE
POSSESSION OF THEIR LAND SEIZED BY METROPARKS UNTIL
COMPENSATION IS SECURED TO LANDOWNERS**

65. Landowners incorporate the allegations contained in paragraphs 1 through 64 as if fully rewritten herein.

66. Article I, § 19 of the Ohio Constitution mandates that except in time of war, other public exigency, or for making or repairing roads open to the public, where private property is

taken for public use, “**compensation therefor shall first be made in money, or first secured by a deposit of money . . .**” (emphasis added).

67. The Fifth Amendment of the United States Constitution mandates that no property “shall be taken for public use, without just compensation.”

68. MetroParks has seized Landowners’ land for a purported public use.

69. MetroParks refuses to pay or secure compensation to Landowners.

70. By refusing to pay or secure compensation to Landowners, MetroParks cannot take Landowners’ property for public use.

71. Since MetroParks cannot seize property for any purpose other than for a public use, Landowners are entitled to a declaratory judgment that MetroParks must vacate Landowners’ land and that Landowners are entitled to exclusive possession of their land.

COUNT SEVEN

ACTION FOR EJECTMENT

72. Landowners incorporate the allegations contained in paragraphs 1 through 71 as if fully rewritten herein.

73. Through its conduct in seizing, occupying, and controlling Landowners’ land, MetroParks has violated Landowners’ possessory rights in their land.

74. Pursuant to Ohio Revised Code § 5303.03, Ohio Revised Code Chapter 2721, and common law, Landowners are entitled to immediate and exclusive possession of their land seized by MetroParks.

75. MetroParks unlawfully held and continues to unlawfully hold possession of a portion of Landowners’ land.

76. MetroParks has unlawfully and forcibly kept Landowners from possessing Landowners' land held by MetroParks.

77. Unable to exercise their right to possess the land, Landowners have suffered damages, including damages to the market value of their land, plus interest, and costs.

COUNT EIGHT

ACTION TO QUIET TITLE

78. Landowners incorporate the allegations contained in paragraphs 1 through 77 as if fully rewritten herein.

79. Pursuant to Ohio Revised Code § 5303.01, Ohio Revised Code Chapter 2721, and common law, Landowners are entitled to an order declaring that under principles of res judicata and collateral estoppel, Landowners are entitled to an order that the title to the land seized by MetroParks is found to be in Landowners free and clear of any claim, right, title, or interest of MetroParks.

80. Accordingly, Landowners are entitled to an order that the title to the land seized be quieted as against MetroParks and in favor of Landowners.

COUNT NINE: 42 U.S.C. § 1983

TAKINGS WITHOUT JUST COMPENSATION

81. Landowners incorporate the allegations contained in paragraphs 1 through 80 as if fully rewritten herein.

82. MetroParks has taken Landowners' private property for public use for a recreational trail and related purposes.

83. MetroParks has deprived and will continue to deprive Landowners of rights and privileges afforded to Landowners under and protected by the United States Constitution.

84. MetroParks' taking of Landowners' private property for public use as a recreational trail constitutes a taking without just compensation in violation of the Fifth and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983.

85. MetroParks' taking is ongoing and has included such recent material acts and damage to Landowners' land as opening the northern portion of the Nickolis' land to the general public.

COUNT TEN

TRESPASS

86. Landowners incorporate the allegations contained in paragraphs 1 through 85 as if fully rewritten herein.

87. MetroParks has intentionally seized and continued to occupy and use Landowners' land without Landowners' permission or authorization.

88. MetroParks lacks any authorization to seize land without first compensating the landowner.

89. MetroParks' ongoing trespass has interfered with and will continue to interfere with Landowners' use of and exclusive right of possession of their land.

90. MetroParks' ongoing trespass has damaged Landowners' land and the market value of it.

COUNT ELEVEN: 42 U.S.C. § 1983

UNEQUAL PROTECTION OF THE LAW

91. Landowners incorporate the allegations contained in paragraphs 1 through 90 as if fully rewritten herein.

92. Landowners have been subjected to unequal treatment of the law under color of law in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

93. MetroParks has intentionally treated Landowners differently than those similarly situated by refusing to compensate Landowners for the seizure of their land whereas it has filed condemnation actions to compensate the *Coles* Relators for the seizure of their land as well as compensated other property owners beyond the *Coles* Relators.

94. MetroParks' actions were taken in bad faith and in violation of controlling law.

95. MetroParks lacks a rational basis for the discriminatory treatment of Landowners.

COUNT TWELVE: 28 U.S.C. § 2201 AND OHIO REVISED CODE CHAPTER 2721

**DECLARATORY JUDGMENT THAT METROPARKS IS VIOLATING
OHIO REVISED CODE § 163.59(J)**

96. Landowners incorporate the allegations contained in paragraphs 1 through 95 as if fully rewritten herein.

97. Ohio Revised Code § 163.59(J) provides: “When any interest in real property is acquired by exercise of the power of eminent domain, the head of the acquiring agency concerned shall institute the formal condemnation proceedings. **No head of an acquiring agency shall intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of the owner’s real property.**” (emphasis added).

98. In direct violation of Ohio Revised Code § 163.59(J), MetroParks has intentionally made it necessary for Landowners to institute legal proceedings to prove the fact of the taking of their real property.

99. Landowners are entitled to a declaratory judgment that MetroParks has violated Ohio Revised Code § 163.59(J).

100. Accordingly, pursuant to 28 U.S.C. § 2202 and/or Ohio Revised Code § 2721.09, Landowners are entitled to an order that MetroParks must relinquish possession of any and all land seized from Landowners until such time as MetroParks initiates an appropriation action and secures compensation to Landowners and other such further relief as necessary and proper, including an award of damages.

PRAYER FOR RELIEF

WHEREFORE, on their claims against Defendants, Plaintiffs respectfully request the following relief:

A. On Count One, compensatory damages, punitive damages as permitted under 42 U.S.C. § 1983 and any other applicable law, plus pre-judgment and post-judgment interest, costs of suit, reasonable attorney's fees pursuant to 42 U.S.C. § 1988, special damages, including reasonable attorney's fees and litigation expenses from previous related litigation.

B. On Count Two, compensatory damages, punitive damages as permitted under 42 U.S.C. § 1983 and any other applicable law, plus pre-judgment and post-judgment interest, costs of suit, reasonable attorney's fees pursuant to 42 U.S.C. § 1988, special damages, including reasonable attorney's fees and litigation expenses from previous related litigation.

C. On Count Three, compensatory damages, punitive damages as permitted under 42 U.S.C. § 1983 and any other applicable law, plus pre-judgment and post-judgment interest, costs of suit, reasonable attorney's fees pursuant to 42 U.S.C. § 1988, special damages, including reasonable attorney's fees and litigation expenses from previous related litigation.

D. On Count Four, a declaratory judgment that Ohio Revised Code § 2305.09 is unconstitutional as applied to physical takings where the government seizes a permanent or continuous right to the land, an order that MetroParks must relinquish possession of any and all

land seized from Landowners until such time as MetroParks initiates an appropriation action and secures compensation to Landowners, reasonable attorney's fees pursuant to 42 U.S.C. § 1988, 28 U.S.C. § 2202, and Ohio Revised Code § 2721.16, special damages, including reasonable attorney's fees and litigation expenses from previous related litigation, and any other necessary and proper relief under 28 U.S.C. § 2202 and Ohio Revised Code § 2721.16.

E. On Count Five, a declaratory judgment that Ohio's process for landowners whose land has been seized by a governmental entity without the payment of just compensation violates and is inadequate in protecting landowners' procedural due process rights protected by the Fifth and Fourteenth Amendments of the United States Constitution and the Privileges and Immunities Clause of the Fourteenth Amendment of the United States Constitution, an order that MetroParks must relinquish possession of any and all land seized from Landowners until such time as MetroParks initiates an appropriation action and secures compensation to Landowners, reasonable attorney's fees pursuant to 42 U.S.C. § 1988, 28 U.S.C. § 2202, and Ohio Revised Code § 2721.16, special damages, including reasonable attorney's fees and litigation expenses from previous related litigation, and any other necessary and proper relief under 28 U.S.C. § 2202 and Ohio Revised Code § 2721.16.

F. On Count Six, a declaratory judgment that MetroParks must vacate Landowners' land and that Landowners are entitled to exclusive possession of their land, reasonable attorney's fees pursuant to 42 U.S.C. § 1988, 28 U.S.C. § 2202, and Ohio Revised Code § 2721.16, special damages, including reasonable attorney's fees and litigation expenses from previous related litigation, and any other necessary and proper relief under 28 U.S.C. § 2202 and Ohio Revised Code § 2721.16.

G. On Count Seven, immediate and exclusive possession of their land seized by MetroParks, compensatory damages, punitive damages as permitted by applicable law, damages to the fair market value for the property seized from Landowners, plus pre-judgment and post-judgment interest, costs of suit, reasonable attorney's fees pursuant to 42 U.S.C. § 1988 and/or Ohio Revised Code § 2721.16, special damages, including reasonable attorney's fees and litigation expenses from previous related litigation.

H. On Count Eight, an order that title to the land seized be quieted as against MetroParks and in favor of Landowners, costs of suit, reasonable attorney's fees pursuant to 42 U.S.C. § 1988 and/or Ohio Revised Code § 2721.16, special damages, including reasonable attorney's fees and litigation expenses from previous related litigation.

I. On Count Nine, compensatory damages for the property taken from Landowners without just compensation and for any damage to Landowners' remaining property, plus pre-judgment and post-judgment interest, special damages, including reasonable attorney's fees and litigation expenses from previous related litigation, punitive damages as permitted under 42 U.S.C. § 1983 and any other applicable law, costs of suit, and reasonable attorney's fees pursuant to 42 U.S.C. § 1988.

J. On Count Ten, compensatory damages, punitive damages as permitted under applicable law, plus pre-judgment and post-judgment interest, costs of suit, reasonable attorney's fees as permitted by law, special damages, including reasonable attorney's fees and litigation expenses from previous related litigation.

K. On Count Eleven, compensatory damages, punitive damages as permitted under 42 U.S.C. § 1983 and any other applicable law, plus pre-judgment and post-judgment interest, an order that MetroParks must relinquish possession of any and all land seized from Landowners

until such time as MetroParks initiates an appropriation action and secures compensation to Landowners, costs of suit, reasonable attorney's fees pursuant to 42 U.S.C. § 1988, special damages, including reasonable attorney's fees and litigation expenses from previous related litigation.

L. On Count Twelve, compensatory damages, punitive damages as permitted under 42 U.S.C. § 1983 and any other applicable law, plus pre-judgment and post-judgment interest an order that MetroParks has violated Ohio Revised Code § 163.59(J), an order that MetroParks must relinquish possession of any and all land seized from Landowners until such time as MetroParks initiates an appropriation action and secures compensation to Landowners and other such further relief as necessary and proper, under 28 U.S.C. § 2202 and Ohio Revised Code § 2721.16, costs of suit, reasonable attorney's fees pursuant to 42 U.S.C. § 1988, special damages, including reasonable attorney's fees and litigation expenses from previous related litigation.

M. As to all Counts, any and all other and further relief as this court deems just and proper.

Dated: May 25, 2011.

Respectfully submitted,

/s/Bruce L. Ingram

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Attorneys for Gerald O.E. Nickoli and Robin L. B. Nickoli and Patricia A. Sipp (fka Patricia A. Charville), Trustee U/A Patricia A. Charville, dated September 28, 1994 as to an undivided one-half interest and Patricia A. Sipp (fka Patricia A. Charville), Mark R. Charville and David A. Charville as Successor Trustees U/A Leon R. Charville dated September 28, 1994 as to an undivided one-half interest

JURY DEMAND

Plaintiffs hereby demand a trial by jury on any and all issues so triable.

/s/ Bruce L. Ingram

Bruce L. Ingram (0018008)