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

CRYSTAL JONES 6311 Hough Ave. Cleveland, OH 44103 *Plaintiff,* v. THE CITY OF CLEVELAND c/o Barbara Langhenry, Law Director 601 Lakeside Avenue Cleveland, OH 44114 ANTHONY LUDWIG (individual and personal capacities) 601 Lakeside Avenue Cleveland, OH 44114 PAUL ALCANTAR (individual and personal capacities) 601 Lakeside Avenue Cleveland, OH 44114 *Defendants.*	Case No.: _____ Judge Magistrate Judge
COMPLAINT WITH JURY DEMAND	

NATURE OF THE ACTION

1. The City of Cleveland's Division of Waste Collection has troubling secrets, and malfeasance that threatens the public health—ranging from raccoons (and their entrails) falling from ceilings to water contamination and the unlawful dumping of toxic waste—is just the beginning. The City's secrets also include its efforts to

conceal rather than address these problems when raised internally by its first female full-time heavy machinery operator, plaintiff Crystal Jones.

2. To keep these secrets, the City promulgated a formal Division policy in 2006: "No waste collection employee is to talk to the media." In any capacity. On any subject. Under pain of discipline. Period.

3. The City imposed this unconstituional prior restraint (the "Press Ban") on Division of Waste employees four decades after the Supreme Court celebrated our "profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open."[1]

4. The City imposed the Press Ban three decades after the Supreme Court held that public employees may not "be compelled to relinquish the First Amendment rights they would otherwise enjoy as citizens to comment on matters of public interest," because they are the "members of a community most likely to have informed and definite opinions" on the services the public entrusts to them.[2]

5. The City imposed the Press Ban two decades after this Court annulled a municipal policy requiring public employees to seek permission before talking to the media.[3]

6. The Press Ban is unconstitional. The secrets it conceals threaten vital public interests. It must be annulled and enjoined.

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[1] *New York Times v. Sullivan*, 376 U.S. 254, 270 (1964).

[2] *Pickering v. Board of Education*, 391 U.S. 563, 568, 572 (1968); *see also Lane v. Franks*, 134 S. Ct. 2369, 2379 (2014) ("speech by public employees on subject matter related to their employment holds special value precisely because those employees gain knowledge of matters of public concern through their employment.").

[3] *Spain v. City of Mansfield*, 915 F. Supp. 919, 924 (N.D. Ohio 1996).

PARTIES

7. Plaintiff Crystal Jones is a resident of Cuyahoga County, Ohio, and a City of Cleveland employee. She has been a construction-equipment operator at Cleveland's Ridge Road Transfer Station (the "Facility") for over 16 years, and is intimately and uniquely familiar with the Facility's operations.

8. Defendant City of Cleveland is a municipal corporation under Article XVIII of the Ohio Constitution, and a "person" subject to suit within the meaning of 42 U.S.C. § 1983. The City operates and supervises the Department of Public Works, which includes the Division of Waste ("Waste Division").

9. Defendant Paul Alcantar is currently the Commissioner of the Divison of Waste. At all relevant times, he acted under color of state law and in his official capacity. He is sued in both his official and personal capacities.

10. Defendant Anthony Ludwig is currently the General Superintendent of Operations within the Division of Waste. At all relevant times, he acted under color of state law and in his official official capacity. He is sued in both his official and personal capacities.

JURISDICTION AND VENUE

11. Under 28 U.S.C. §§ 1331, 1343, and 2201, Ms. Jones asserts jurisdiction over federal claims under 42 U.S.C. §§ 1983 and 1988, which provide for attorneys' fees in civil-rights claims.

12. This Court has personal jurisdiction over the Defendants, which is based in this District. Venue is proper under 28 U.S.C. § 1391 because the events giving rise to Ms. Jones's claims took place within this District.

FACTUAL BACKGROUND

The Facility is in shambles and threatens vital public interests.

13. The Facility is a solid-waste transfer facility under Ohio Rev. Code § 3734.01(U). Waste generated elsewhere is discharged at the Facility, where it is then re-loaded into tractor trailers to be transported to a final disposal site, such as a landfill or composting facility. According to a City brochure, the Facility can take in 3,000 tons of waste and recyclables daily. It advertises itself as collecting all those materials "in accordance with EPA compliance standards." *See* **Ex. 1.**

14. The conditions and practices of waste-treatement facilities, including regulatory noncompliance and malfeasance, are quintessential matters of public concern.[4]

15. The Facility's conditions are deplorable, noncompliant, unsafe, and dangerous:

    a. *Prohibited and hazardous materials*. Posted signs restrict the types of materials that may be discharged at the Facility, but the Division frequently accepts materials that are dangerous, toxic, or otherwise prohibited, including asbestos, paint, solvents, liquid waste, animal carcasses (which constitute infectious waste), and construction and demolition debris. Ms. Jones and other employees have been sprayed by toxic chemicals and exposed to dust clouds and air-borne toxins.

    b. *Contaminated water*. Because the Facility permits hazardous or toxic materials to be discharged on the "tipping floor" (where trucks dump their

[4] *See, e.g., Charvat v. E. Ohio Reg'l Wastewater Auth.*, 246 F.3d 607, 617–18 (6th Cir. 2001) ("[R]eports about the sewage-treatment facility's violation of a number of environmental regulations . . . are a perfect example of protected speech that is designed to increase the awareness of regulatory violations and potential threats to the public health and safety of the community."); *Chappel v. Montgomery County Fire Protection Dist. No. 1,* 131 F.3d 564, 578 (6th Cir. 1997) ("Speech on matters directly affecting the health and safety of the public is obviously a matter of public concern.").

waste to be sorted and processed before being shipped out to landfills), when the Facility floods during heavy rains, the resulting contaminated water is pushed through drains into city sewers and groundwater.

c. *Broken ceilings and rodent/racoon infestation*. The City has failed to maintain the Facility office's physical integrity in contravention of Ohio code provisions, allowing rodents and raccoons, and their entrails, to drop into the human environment. Employees have battled animals entering the building through holes in the ceilings, and in one case, an employee was attacked by feral cats.

d. *Inadequate ventilation*. To maintain air quality, fans installed at the Facility are supposed to remove dust particles and noxious odors. Most of these fans are broken and have not been repaired, thus exacerbating human exposure to airborne toxins.

e. *Lack of respiratory equipment*. The City's failure to provide adequate protective respiratory equipment exacerbates the exposure to airborne toxins.

f. *Lack of a spotter*. By failing to dedicate an employee (a "spotter") to the task of watching incoming trucks on the tipping floor, employees are unable to ensure that vehicles do not contain unauthorized materials. The lack of a spotter has contributed to unacceptable levels of unauthorized and hazardous toxins, and commingled trash and recyclables. This commingling costs the City money, as recycling contractors reject such deliveries, increasing waste and depleting natural resources.

16. The conditions at the Facility are such that when Waste Division employees who generally work elsewhere are sent there for an assignment, it is considered punishment, and doctors have treated employees for respiratory and other medical issues contracted at the Facility (including Ms. Jones). At least one employee's doctor excused him from assignments to the Facility due to health effects from the noxious environment.

17. Regulations require Facility workers to log when they accept unauthorized waste, but the City does not train or require them to do so, and they frequently do not.

18. The City contracts, among others, with the following two commercial waste-removal contractors, Republic Services and Fabrizi Disposal. Each has been fraught with complaints:

19. Fabrizi and its associated entities have been the subject of numerous safety complaints around the country over the last 10 years. At least two employees have been killed in work-related injuries; one fell from a truck and another was crushed by an excavator bucket that fell on his head. The Occupational Safety and Health Administration has issued more than a dozen citations for safety violations against Fabrizi and its related entities over the last decade for failing to maintain conditions "free from recognized hazards that were causing or likely to cause death or serious physical harm," failed to train its employees on safety requirements, and sent its employees into hazardous areas without taking

necessary safety precautions. In the last decade alone, OSHA has levied tens of thousands of dollars in fines against Fabrizi and related entities.[5]

20. Republic Services and its affiliates in Ohio also have a well-documented history of safety complaints and violations over the last decade,[6] including the death of a driver who was crushed between his garbage truck and a fence. OSHA issued 11 citations for violations in that period, including improper handling of dangerous liquids and gases.

21. Republic also has a history of environmental violations. A subsidiary in Nevada agreed to $37 million in fines and remediation in 2008 after one of its landfills discharged waste and chemicals into the Colorado River and Lake Mead, contaminating drinking water in three different states. Closer to home, the U.S. Environmental Protection Agency found that a Republic facility in Elyria violated the Clean Water Act in 2015 by discharging excessive amounts of ammonia into the Black River. The EPA discovered similar problems in the past three years alone at Republic facilities in Alabama, California, Idaho, Illinois, Indiana, Kentucky, Virginia, and Washington.

22. The Missouri attorney general has sued Republic, claiming that its failure to follow environmental laws has led to contamination of nearby streams and groundwater. In 2014 alone, Republic entered into seven consent decrees

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[5] https://www.osha.gov/pls/imis/establishment.search?p_logger=1&establishment=fabrizi&State=all&officetype=all&Office=all&p_case=all&p_violations_exist=all&startmonth=12&startday=19&startyear=2007&endmonth=12&endday=19&endyear=2017

[6] https://www.osha.gov/pls/imis/establishment.search?p_logger=1&establishment=republic+services&State=OH&officetype=all&Office=all&p_case=all&p_violations_exist=all&startmonth=12&startday=19&startyear=2007&endmonth=12&endday=19&endyear=2017

requiring it to implement protocols to reduce its contamination of water sources with oil, heavy metals, and fecal bacteria.

Crystal Jones knows the Division's secrets.

23. Plaintiff Crystal Jones joined the Waste Division on September 4, 2001, as a construction-equipment operator at the Facility. She has remained in this position at the Facility for over 16 years.

24. The Waste Division employs roughly 200 individuals. Roughly ten employees work full-time at the Facility, as Ms. Jones does. Other City employees, including truck drivers, laborers, private-trucking-company employees, as well as customers discharging waste, also spend time at the Facility, though their time there is somewhat more limited.

25. As a construction-equipment operator, Ms. Jones is responsible primarily for the following tasks at the Facility:

    a. Using construction equipment to push, stack, load and transport various forms of solid waste, such as garbage, recyclables, tires, and leaves.

    b. On a limited basis, cleaning and maintaining construction equipment, and keeping supervisors and mechanics apprised of the equipment's condition.

    c. Moving dirt, snow, rocks, debris, salt and water around the facility.

26. Ms. Jones's official responsibilities do not include speaking to the media or the public about conditions at the Facility, or setting policy about the Facility or for the Division generally. Nor do her responsibilities include reporting on environmental or safety conditions at the Facility, or on the Facility's compliance with rules and regulations.

27. Most of Ms. Jones's work at the Facility centers around the waste-handling floor, commonly known as the tipping floor—the area, as mentioned above, where trucks dump waste for sorting and processing before it is shipped out to landfills.

28. Working day in and day out at the Facility, at times up to 16 hours in a day, Ms. Jones is among a small group of citizens most likely to have informed opinions about how the Facility operates and how funds allotted to it should be spent.

29. During her 16 years at the Facility, Ms. Jones has learned first-hand about matters of vital public concern, including environmental and safety violations, as well as sex discrimination and harassment. She has long wished to tell the media what she knows, but for fear of retaliation, discipline, and termination by the supervisors who have ignored her, she has remained silent.

The Division puts Crystal Jones in her place.

30. When Ms. Jones began employment at the City in 2001, she was proud of the Division. To her knowledge, she was the City's first female full-time heavy-equipment operator, having completed Local 18's rigorous and grueling training and apprenticeship program for operating engineers – the only African-American woman in her class.

31. Her hire represented an important "first" in a vocation traditionally reserved for men, and she hoped her example, and the City's inclusive and norm-breaking hire, would inspire other women to shrug stereotypes and join her in providing the vital, but grimy and unheralded services upon which Cleveland residents rely to process and disappear the mountains of waste they create.

32. She did not yet know the extent of the Division's malfeasance that press attention—however positive—would threaten to expose. So, a month or so after

she was hired, she made the mistake of suggesting to her supervisor, Defendant Ludwig, that the press, which had provided inspiring coverage of female firefighters and other fissures in the patriarchy, might be interested in reporting on the Division's salutory "first."

33. This marked her first encounter with the Division's culture of secrecy, and the unlawful prior restraints its managers imposed on employees. Defendant Ludwig told Ms. Jones in no uncertain terms that as a Waste Division employee, she was not permitted to speak to the media. Another supervisor, Lucius Williams, also forbade her from speaking to the media.

34. Ms. Jones had no interest in letting the Division's "first" be her "last." She dropped her intention to tell her story to the press.

35. As time went on, the Division's motivation became transparent: press attention, however innocent at first, threatened press attention to a Division fraught with issues of public concern, including workplace discrimination, gender-based harassment, regulatory violations, and threats to the public health.

36. She learned that the City's policy had nothing to do with valid government interests in regulating the workplace environment, or promoting safety and cohesion. For on many subsequent occasions, Mr. Williams and Defendant Ludwig impressed upon Ms. Jones and other employees not only that they were not to speak to the media, but forbidden also from speaking with visitors to the Facility, **particularly EPA inspectors or council members**. It was made clear to Ms. Jones and her co-workers that during such visits, they were to look busy and simply stay on their machines.

The Division keeps Ms. Jones in her place.

37. As one might expect from her role, Ms. Jones is a strong woman. To some of her co-workers and supervisors, a woman who broke gender norms might break the Division's code of secrecy, and they set about trying to cow her into submission.

38. Soon after starting employment, Ms. Jones's co-worker Gary Samuels, the other construction-equipment operator at the Facility, flung 5,000 pounds of waste material with his machine bucket toward the Bobcat machine that Ms. Jones was operating. As it was an open-cab vehicle, the waste material exploded in Ms. Jones's face, entering her nose, mouth, and eyes. Mr. Samuels did this twice, laughing each time.

39. In subsequent years, Samuels continued his hostility, such as by

a. tightening the caps on Ms. Jones's equipment so tight that she needed a pry bar to loosen them—a practice that stopped briefly when then-supervisor Williams caught Samuels in the act, but resumed in 2016 after Williams retired;

b. making sexist statements such as "I should have my wife come up here and slap you down," and "You're only here because you're a woman, not because you know what you're doing"; and

c. taunting Ms. Jones by showing her his paychecks, which reflected that he had been offered to work overtime clearing the streets during the winter, whereas she was never called for such overtime opportunities.

40. Workplace harassment like this is a matter of public concern, but for Ms. Jones, it was her first encounter with the Division's obstinate refusal to correct its

practices. Little to nothing was done to discipline Mr. Samuels for his aggressions, despite Ms. Jones's reports of his hostility.

41. Indeed, the Division ratified Samuels' harassment by perpetuating gender discrimination in his favor, denying Ms. Jones privileges that it allows Samuels. Ms. Jones is no less qualified—indeed, is more qualified—than Samuels, having completed the rigorous Journeyman's Local 18 training program for operating engineers.

42. In addition to being afforded greater overtime opportunities, Samuels has on numerous occasions been permitted wide latitude in working hours (despite the hardship on Ms. Jones, who has missed breaks and doctors' appointments on account of Samuels's irresponsible conduct). Meanwhile, Ms. Jones has been denied the ability to come in an hour late and was disciplined for taking two days off despite having received approval from her supervisor.

43. But sanctioning the clear message Samuels sent that she remained on thin ice was not enough to comfort the Division that she would keep its secrets.

44. So the Division passed a policy to muzzle her.

The Press Ban muzzles Ms. Jones's speech.

45. In February 2006, the City memorialized its prior restraints on Division employees' protected speech in a policy memorandum addressed to "Division of Waste Collection Staff," from then-Commissioner Ronnie Owens. *See* **Ex. 2** (the "Press Ban").

46. The Press Ban prohibits employees in the Division of Waste Collection from "talk[ing] to the media." It opens by stating that Commissioner Owens "would like to reiterate a few of our divisional policies." Among these was a provision

regarding "Media Contact": "**No waste collection employee is to talk to the media**. All media inquiries should be referred to the Assistant Superintendent at the stations, Assistant Commissioner or Commissioner."

47. The memo goes on: "The intention of this memo is to remind you of our Divisional policies in order to ensure a safe working environment. Please keep in mind that **any violation of these and other Divisional policies may lead to disciplinary action**."

48. When Ms. Jones first saw this memorandum, it was posted in the Facility's office, where the assistant superintendent sits.

49. The memorandum was later moved to the wall outside the office, near the time clock where employees clock in and out every day, *i.e.,* a location where employees would be sure to see its edicts.

50. The memo confirmed for Ms. Jones the no-media-contact policy that Defendant Ludwig and Mr. Williams had long impressed upon her and other employees.

51. To Ms. Jones's knowledge and understanding—confirmed by speaking to her current supervisors—the policy remains in effect to this day.

52. Early in her employment, Ms. Jones wished to speak to the media about her professional-"first" story. But over the years, her desire shifted to wanting to speak out about the treatment of women in the male-dominated construction industry, and about the shocking health and safety conditions she has witnessed at the Facility.

53. Her desire to do so (and the public's need for her to do so) only increased with the City's lackluster responses to her internal complaints.

54. The City's speech restrictions, however, including the Press Ban, have forced her to remain silent. And, as described next, the retaliation she faced after reporting many complaints internally only reinforced her fear of the consequences were she to speak to the media.

Ms. Jones's experience of retaliation under Warren Thornton deepens her fear of retaliation were she to defy the Press Ban.

55. The paper policy was still not enough to warrant Ms. Jones' silence. Continuing to sanction Samuels' aggression, the manager of the Facility took a direct role in keeping her in her place.

56. In 2011, Warren Thornton assumed the position of Assistant Superintendent, putting him in charge of the Facility.

57. Mr. Thornton was a racist, a sexist, and a bully. He regularly harassed a female employee, Mary Young (now deceased), physically intimidating her and using profanity. Thornton would regularly use the n-word against the employees, and shout at and berate them. He said to Ms. Jones: "Women don't have any business doing this kind of job."

58. The environment under Thornton was so intolerable that Ms. Jones mustered up the courage to complain about the situation. She submitted a multiple-page letter up the chain of command to her supervisor, Williams, who then gave it to Thornton's superior, Defendant Ludwig. The matter was handled by then-Commissioner Ron Owens—the same Commissioner who inked the Press Ban.

59. While the City suspended Mr. Thornton for 10 days, it permitted him to return to his position at the Facility*, continuing to supervise those whom he had*

previously harassed, including Ms. Jones, who had reported his unlawful conduct.

60. Defendant Ludwig and Commissioner Owens promised Ms. Jones that she would be safe from retaliation, but predictably, this proved untrue.

61. Immediately upon his return, Mr. Thornton targeted Ms. Jones, and did so throughout 2013-14.

a. Thornton followed Ms. Jones around with a tablet and pen, taking notes, threatening her with write-ups, telling her that he would enjoy "breaking her down."

b. He took photographs of her and also carried a tape recorder with him, trying to provoke her so that she would say something inappropriate that he could then record and write her up for.

c. He instructed Ms. Jones's direct supervisor, Williams, to sit in a vehicle and watch her, which was so intimidating that she got into an accident by the end of her shift that day.

d. He forbade her from taking breaks, including lunch breaks, requiring her to run her machine all day and even requiring her to get his permission to use the restroom.

e. He interfered with her work, in one instance stopping her 18 times in a two-hour span, to make it appear she was slow and unable to complete her work in a timely way. (At the time, Thornton was trying to replace Ms. Jones with a male operator.)

f. He gave her false information about whether a particular machine was safe to operate, thus knowingly endangering her life. (She was wary enough to contact the mechanic to confirm before getting on the machine.)

g. He made Ms. Jones undertake other unsafe practices, including piling material too high; doubling up trailers in a tunnel, thus increasing the risk of carbon-monoxide poisoning; spreading recycling material in a way that would damage the equipment; and loading materials even when she and another supervisor, Michael Greene, pointed out there was no light and therefore no visibility. One day Thornton ran in front of, then behind Ms. Jones's machine, chasing her and creating a dangerous situation. He also demanded she engage in wasteful practices, such as mixing recycling with solid waste.

h. He disparaged her to the trucking companies that worked closely with the City to transport waste, so that when she returned from medical leave one day, the owners of the companies were on site to scrutinize her performance.

i. He exacerbated the gender-disparate treatment, among other things, keeping her from receiving training on a new machine that Samuels was permitted to receive and providing uneven resource assistance.

j. He gave her a baseless, poor evaluation. All of her previous evaluations had been positive.

62. The harassment continued unabated for months. As a result of the extreme mental distress, Ms. Jones started therapy, which she must continue to this day.

63. Ms. Jones was unwilling to risk her job, but remained uncowed. So she tried to bring the intolerable working conditions to the attention of someone with power to do something about them. During a two-week period in or around 2013, for

example, Ms. Jones left countless voicemail messages for Defendant Ludwig, at that time the General Superintendent, seeking intervention. She received no response.

64. Finally, backed by her direct supervisor Mr. Williams, in early 2014, Ms. Jones summoned the courage to submit another written complaint against Thornton, this time regarding the retaliatory harassment.

65. As a result of Ms. Jones's complaint, the City found that Thornton had violated the City's workplace-violence policy and demoted him from Assistant Superintendent to foreman.

66. But just as it had in 2012, the City kept Thornton in a supervisory role as a foreman at a different facility.

67. Moreover, despite Ms. Jones's and other employees' additional documentation of Thornton stealing materials from the job, sleeping on the job, and leaving work early, then-Commissioner Randall Scott was uninterested in these reports of malfeasance, which are matters of public concern.

68. Upon information and belief, the City failed to investigate or take any action against Thornton for these acts.

69. Upon information and belief, the City failed to implement any anti-discrimination and anti-retaliation training for Waste Division employees.

70. The message remained clear. Ms. Jones remained unprotected by the Division, and unlike her harassers, would not be given any latitude.

71. Ms. Jones's experience under Warren Thornton only deepened her concern about retaliation were she to engage in prohibited speech.

Ms. Jones' concerns deepen as she learns more.

72. But her stand became known. Many women who worked for the City started to speak to Ms. Jones about their own experiences of harassment working for the City. Most were afraid to speak out, for fear of retaliation. Ms. Jones heard stories such as women repeatedly being called "bitch" or cursed out, being groped by the buttocks and the breasts, having items thrown at them, in the case of one woman being prevented from performing her job because the men were instructed not to inform her of the correct route. Ms. Jones has been harboring their stories for several years, unable to share them due to the restrictions on her speech.

73. She learned other troubling facts directly. Another employee, a truck driver named John Cobb, began to engage in wasteful and unsafe practices and harass Ms. Jones. He refused to follow Ms. Jones's instruction regarding where to dump, making more work for the operators and posing a safety issue, as others were led to think they too could dump wherever they chose. The gender hostility was obvious: he would state, "Don't tell me nothing that woman gotta say," would stick his middle finger up at her, and at one point motioned to her indicating he had "keyed" her car (i.e., ran his key along the paint, scratching it). Her car was in fact keyed.

74. Throughout 2015, Ms. Jones wrote numerous complaints about Cobb's mistreatment and his unsafe practices, but the City sat on the information for over three months.

75. While Ludwig and Commissioner Scott finally determined that Cobb must be accompanied by a foreman whenever he came to the back of the Facility to dump, this was barely enforced, and Cobb continued to dump unescorted.

76. Instead of disciplining Cobb or properly enforcing the rule, in July 2016, Defendant Ludwig told Mr. Williams that if *Ms. Jones* complained again, *she* could be transferred.

77. Again, internal complaints were useless and subjected her to retaliation. Yet, because of the City's speech restrictions, reporting externally would have subjected her to even further retaliation.

Ms. Jones avoids reporters to keep her job.

78. In 2015, Ms. Jones wished to attend a political rally for mayoral candidate Michael Nelson. She planned to meet up there with another female operator and simply wanted to hear what Mr. Nelson had to say, particularly on the issue of respecting female employees.

79. When Ms. Jones heard that TV media were present at the rally, however, she changed her plans and decided not to attend. Although she had no intention then of speaking to reporters, she was nervous that were the cameras to capture her even in the background, her superiors would see her there and assume that she had spoken to the media. She was aware of the retaliation Defendant Ludwig and others were capable of, and she was concerned she could be fired if she so much as appeared in a camera shot.

Ms. Jones' speech is chilled.

80. In the last few years, Ms. Jones has also experienced and observed numerous safety and environmental problems at the Facility (including many she believes are violations of law) about which she wishes to speak up, but is prevented from doing so.

81. In or around 2016, investigative reporter Carl Monday visited the Facility.

82. Ms. Jones observed that Mr. Monday stood next to the sign of all the materials that are prohibited at the Facility. Mr. Monday stood near the sign, but he did not go further inside the facility to view the tipping floor.

83. Ms. Jones wanted badly to tell Mr. Monday, "Look on the floor!" Everything that was listed on the sign as prohibited was on the tipping floor. If she could only get him to look on the tipping floor, she believed, he would see the hazardous and unlawful conditions, and maybe something would be done.

84. Yet Ms. Jones held her tongue. She knew there were other employees in close enough proximity to her that they would overhear or see any contact she might make with Mr. Monday and would report her conduct to her superiors. She knew that, per the Press Ban, she would be disciplined for such contact, and therefore said nothing. And Mr. Monday left the Facility without ever learning the full truth about the Facility's conditions.

85. Ms. Jones instead reported the unsafe conditions up her chain of command.

86. Yet these efforts proved unsuccessful—perhaps unsurprisingly, given the City's lackluster response to previous reports concerning employee safety.

87. From July-September 2016, Ms. Jones submitted written complaints to her then-supervisor Lucius Williams. In September 2016, Williams then typewrote a letter to Defendant Commissioner Alcantar, relaying the health and safety concerns and seeking intervention. As he pointed out, companies such as Republic and Fabrizi were dumping 30-40-yard boxes of drywall that would "dust up the tipping floor to the point where you can't see [your] breath[,]" and dumping blue and red chemicals that seeped into the vehicles, which the operators then had to wash down. "One of the operator[s] has purchased a respirator for their health,"

he wrote. "The material that is being dump[ed] is [a] health hazard[ ] to all of [the] employee[s] here."

88. Despite this alarming report, the City took no action to remedy the unsafe conditions.

89. Instead, weeks later, in October 2016, Ms. Jones received a notice for a pre-discipline conference, charging "attendance abuse" for her allegedly having taken a few too many hours of leave. In fact, her supervisor Williams had approved the leave and, on information and belief, similarly situated male employees were not disciplined for similar supposed infractions.

90. And in or around February 2017, Defendant Ludwig attempted to pin on Ms. Jones a supposed "accident" (as opposed to the less serious "incident") for allegedly damaging a driver's machine when her front wheel touched a piece of metal on the driver's machine, despite the fact that the driver was in the wrong spot, the pad was slippery, and any damage had been minimal and reversible.

91. While Ms. Jones has thus faced efforts to intimidate her for her reports, the City has continued to take no action regarding the safety concerns, despite her continued reports through her current supervisors, Patrick Polowyk and Michael Greene (Mr. Williams retired in November 2016).

92. Recently, Mr. Greene told Ms. Jones that he was going to stop forwarding her complaints.

93. Again, the City has largely ignored the warnings about the Facility's health, safety, and environmental situation. The problems, meanwhile, persist—aided by City policy stifling Ms. Jones's and other employees' speech—to the ongoing detriment of the employees and the public.

Ms. Jones seeks to publicly disclose dangerous conditions at the Ridge Road Transfer Station.

94. Because the City's inaction threatens her own safety and the safety of her colleagues and community, Ms. Jones is no longer willing to limit her reporting to internal mechanisms.

95. She has drafted a complaint to various state and federal agencies, and she wishes to distribute it to local press outlets and directly to the public, including through social media. *See* **Ex. 3 (with attached Exs. A–D)**.

96. If released, the complaint would inform the public of Ms. Jones's concerns about environmental hazards, unsafe working conditions, and government waste.

97. The public needs information about environmental hazards, unsafe working conditions, and government waste "to make informed decisions about the operation of their government."[7]

98. Such questions are matters of public concern.

99. Employees at the Facility are well aware of the information contained in the complaint. Releasing it publicly would not disrupt their ability to perform their responsibilities, undermine any workplace authority, or destroy any working relationships.

100. Ms. Jones's interests in releasing her complaint are co-extensive with the City's; "both want the organization to function in a proper manner."[8]

101. Despite the unquestionable importance of these issues, Ms. Jones's unique ability to inform the public about them, and the absence of any legitimate interest in

[7] *Brandenburg v. Hous. Auth. of Irvine*, 253 F.3d 891, 898 (6th Cir. 2001) (citation omitted).

[8] *Marohnic v. Walker*, 800 F.2d 613, 616 (6th Cir. 1986).

preventing her from disclosing this information, Ms. Jones is afraid to communicate publicly about these problems because of the City's broad speech restrictions preventing employees of the Division of Waste Collection from publicly discussing their work, and the Division's culture leaves her with no doubt that she will be punished.

The Press Ban is an unlawful prior restraint on speech and imposes unconstitutionally overbroad content-based restrictions.

102. The Press Ban is absolute. It does not include any exceptions for any reason. It does not allow the disclosure of public records. It does not allow employees to speak to the press in their capacity as private citizens. It does not allow employees to speak to the press on matters of public concern. It does not allow employees to express their opinion on any number of issues, including—on their own time, as concerned citizens—matters of public concern outside their official duties about which they have gained knowledge through their employment.

103. It imposes a significant burden on "a broad range of present and future expression" in which employees would have an interest.[9]

104. It operates as a "wholesale deterrent to a broad category of expression"[10] by an entire group of employees—roughly 200 potential speakers, the majority of whom are rank-and-file employees who are not in a policy-making role and do not speak for the Division.

[9] *United States v. National Treasury Employees Union*, 513 U.S. 454, 468 (1995).

[10] *Id.* at 467.

105. It is not tailored to prevent only that speech that would disrupt Division operations, divulge confidential information, or advance any other potentially legitimate governmental interest.

106. The memo explicitly warns employees that "any violation" of the Press Ban may "lead to disciplinary actions."

107. The Press Ban purports to prohibit Ms. Jones from telling the press about any of the problems she has observed and about which she has warned the City.

108. Ms. Jones confirmed with supervisors that she would face consequences if she spoke to the media, and that they would if they spoke to the media, too.

109. The Press Ban would also prohibit a substantial amount of other protected speech. In every single case in which a member of the press poses any question to any Waste Division employee, the employee is prohibited from answering, regardless of the capacity in which she speaks, the subject she addresses, or how she might answer.

110. The Press Ban "imposes a significant burden on the public's right to read and hear what [Ms. Jones and any other employee] would otherwise have written and said."[11]

111. The City lacks a legitimate interest that can overcome the significant burdens the Press Ban places on all waste-collection employees in speaking and on the public in hearing what these employees have to say.

112. To the contrary, the public interest in uncensored speech from Division employees is vital. Especially in the complex field of environmental reporting,

[11] *United States v. National Treasury Employees Union*, 513 U.S. 454, 470 (1995).

unofficial information from inside the government is often the only way to inform the public of dangers to the public.[12] Government insiders have been crucial in blowing the whistle on countless environmental hazards, including the Detroit lead crisis,[13] the dangers of dust inhaled at Ground Zero,[14] carcinogenic gas leaking from a DuPont plant in Louisiana,[15] vanadium exposure at American mining facilities in Africa,[16] and plutonium exposure at the Kerr-McGee nuclear plant in Oklahoma.[17]

113. The document promulgating the Press Ban provides that the City's interest in that and other listed policies is "to ensure a safe working environment." That claimed interest is a sham. And because the Ban includes within its broad sweep speech on work-safety concerns, the Press Ban undermines the very interest it purports to serve.

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[12] According to the Society for Environmental Journalists, "In today's political environment, there may be less transparency about government decisions than in recent memory. Moreover, there may be more corruption and abuse of power than many have seen in years. Because the job of the journalist is to enlighten the public about government wrongdoing, whistleblowers and anonymous sources may be needed now more than ever." http://www.sej.org/publications/watchdog-tipsheet/working-leaks-and-whistleblowers-part-one.

[13] http://michiganradio.org/post/after-blowing-whistle-flints-water-epa-rogue-employee-has-been-silent-until-now#stream/0.

[14] http://www.nytimes.com/2006/08/25/nyregion/25toxic.html.

[15] http://www.theadvocate.com/new_orleans/news/communities/article_f17474fc-38be-57eb-973f-5841a2d32b18.html.

[16] http://www.washingtonpost.com/wp-dyn/content/article/2006/07/09/AR2006070900741.html.

[17] https://www.pbs.org/wgbh/pages/frontline/shows/reaction/interact/silkwood.html.

The City also prohibits Ms. Jones from informing the public of the dangerous conditions at the Ridge Road Transfer Station through social media.

114. The City also prohibits Ms. Jones from disclosing her information through social media.

115. A December 12, 2013 policy memo ("the Social Media Ban") promulgated by the Director of Human Resources limits all City employees in their use of any blog or social media platform—including but not limited to Facebook, MySpace, Instagram, Vine, YouTube, and Twitter—"to protect against any negative impact … on the City of Cleveland and its employees." **Ex. 4**.

116. The Social Media Ban prohibits employees from posting certain content.

117. Specifically, the Social Media Ban prohibits employees from posting any "knowingly false, harmful, inappropriate, confidential, or proprietary" information about the City, its agencies, or its employees.

118. The Social Media Ban further prohibits employees from displaying images of the City's uniforms, vehicles, equipment, or facilities "in an inappropriate manner."

119. The Social Media Ban offers no guidance as to how the City defines "negative impact," or what content it deems to be "harmful," "inappropriate," "confidential," or "proprietary."

120. The Social Media Ban does not allow any exception for publishing public records, or for disclosures of matters of public concern.

121. The Social Media Ban prohibits Ms. Jones from posting on social media about any of the problems she has encountered or that are addressed in her letter.

122. The Social Media Ban would also prohibit a substantial amount of other protected speech.

123. City employees face the threat of disciplinary action for posting any "knowingly false" information about the City, even if the statement is satirical, parodic, or otherwise harmless. The First Amendment does not allow the government to prohibit speech simply because it is false.[18]

124. City employees face the threat of disciplinary action for posting any "harmful" information about the City. The First Amendment does not allow the government to prohibit speech simply because it is "too harmful to be tolerated."[19]

125. City employees face the threat of disciplinary action for posting any "inappropriate" information about the City. The First Amendment does not allow the government to prohibit speech simply because it is "inappropriate or controversial."[20]

126. Because of the City's social-media restrictions, Ms. Jones has not even opened a social-media account, for fear that whatever she posts related to her experience and observations at the Facility will be scrutinized and lead to disclinary action, including termination.

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[18] *United States v. Alvarez*, 567 U.S. 709, 722 (2012) ("The Government has not demonstrated that false statements generally should constitute a new category of unprotected speech on this basis.").

[19] *Brown v. Entm't Merchants Ass'n*, 564 U.S. 786, 791 (2011).

[20] *Rankin v. McPherson*, 483 U.S. 378, 378 (1987) ("[T]he inappropriate or controversial character of a statement is irrelevant to the question whether it deals with a matter of public concern").

The City's speech restrictions have chilled and continue to chill Ms. Jones's speech.

127. The City's speech restrictions have discouraged Ms. Jones and other employees from publicly disclosing the dangerous conditions at the Facility.

128. The City's speech restrictions are so broad and so vague that any reasonable person would be wary of engaging in First Amendment–protected activity that an unidentified bureaucrat might consider "harmful" to the city.

129. Because the City's speech restrictions threaten employees with disciplinary action, any reasonable person would be reluctant to put her job in jeopardy by publicly disclosing information of public concern.

130. The City's speech restrictions have chilled Ms. Jones's speech in particular. Aware that disclosing the information would threaten her livelihood, Ms. Jones has been sitting on this information for years, fearful of the consequences of disclosing it outside her chain of command.

131. Only now, after securing legal counsel, has she concluded that she may safely communicate this information publicly without compromising her livelihood.

132. The First Amendment does not require public employees to engage the services of an attorney before speaking on matters of public concern.

Ms. Jones's rights are clearly established.[21]

133. It was clear in 2006 and continues to be clear that the First Amendment protects the speech that the Press Ban prohibits.

[21] "A right is clearly established if there is binding precedent from the Supreme Court, the Sixth Circuit, or the district court itself, or case law from other circuits which is directly on point." *Barrett v. Harrington*, 130 F.3d 246, 264 (6th Cir. 1997).

134. Since *Pickering v. Board of Education*, 391 U.S. 563 (1968), it has been clear that employees' opinions about the proper way to administer government agencies, when conveyed in that employee's capacity as a private citizen, constitutes protected speech.

135. Since *United States v. National Treasury Employees Union*, 513 U.S. 454 (1995), it has been clear that a government ban on employee speech without actual evidence of harms to the government's interests—in that case, a ban on receiving compensation for making speeches or writing articles—effects an unconstitutional prior restraint on speech.

136. In 1996, in *Spain v. Mansfield*, 915 F.Supp. 919 (N.D. Ohio 1996), this district ruled that a fire-department policy requiring the chief's prior written approval before captains or assistant chiefs could publicly communicate about matters involving the department was facially unconstitutional.[22]

137. The Press Ban, because it effects a blanket ban with or without prior approval, restricts even more speech than the fire-department policy struck down in *Spain v. Mansfield*.[23]

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[22] *See also Harman v. City of New York*, (2d Cir. 1998) (holding unconstitutional an agency press policy requiring "[a]ll contacts with the media regarding any policies or activities of the Agency ... be referred to the [ ] Media Relations Office before any information is conveyed by an employee or before any commitments are made by an employee to convey information"); *In re Disciplinary Action Against Gonzalez*, 405 N.J. Super. 336, 350, 964 A.2d 811, 820 (App. Div. 2009) (holding facially unconstitutional a policy prohibiting employee contact with the media without prior approval from the executive director, stating that the regulation "acts as a prior restraint that is overbroad in its scope, potentially acting to chill comment by Commission employees, rendered in a private capacity, about non-confidential matters of public concern").

[23] *See Moonin v. Tice*, 868 F.3d 853, 869 (9th Cir. 2017) (observing that, on the spectrum of workplace regulations, "regimes prohibiting any and all discussion of certain topics with the public" are more severe than those requiring prior approval before speaking).

138. In *International Association of Firefighters Local 3233 v. Frenchtown Charter Township*, 246 F.Supp.2d 734 (E.D. Mich. 2003), the court struck down a policy allowing only the fire chief to speak to the media,[24] a policy nearly on all fours with the Press Ban.

CLAIMS

FIRST CLAIM
FIRST AMENDMENT VIOLATION, 42 U.S.C. § 1983—UNCONSTITUTIONAL PRIOR RESTRAINT ON SPEECH
(AGAINST ALL DEFENDANTS)

139. Ms. Jones incorporates all previous allegations.

140. The Press Ban constitutes a prior restraint on employee speech, because it purports to forbid speech before it is made, and subject speakers to discipline for making it.

141. No valid governmental interest justifies the Press Ban's sweeping restrictions on employee speech. It forbids speech made by employees in their personal capacity on matters of public concern.

142. Ms. Jones was subjected to the Press Ban even before it was codified, and continues to be harmed by its restrictions. She still has not informed the press about the matters of public concern she has learned during the course of her employment, and fears discipline and retaliation for speaking to anyone about it. Only after securing counsel did she feel comfortable sharing her knowledge at all.

[24] The exact language of the policy at issue in *Int'l Ass'n of Firefighters* was as follows: "The Fire Chief... shall be the only authorized person who may release facts regarding fire department matters, fires or other emergencies to the news media. All other personnel shall refer all media inquiries to the Chief... All questions, concerns or issues regarding the policies, procedures, practices and/or operation of the fire department shall be first addressed to the appropriate Union representative. The Union representative and/or executive committee for the Union shall address the issues to the Chief." *Id.* at 736.

143. The Press Ban is unconstitutionally overbroad and imposes an unlawful prior restraint in violation of the First and Fourteenth Amendments to the United States Constitution.

SECOND CLAIM
FIRST AMENDMENT VIOLATION UNDER 42 U.S.C. § 1983—UNCONSTITUTIONAL CONTENT-BASED RESTRICTION ON SPEECH
(AGAINST ALL DEFENDANTS)

144. Ms. Jones incorporates all previous allegations.

145. The Social Media Ban is a content-based restriction on speech because its prohibitions cannot be understood without reference to employee speech.

146. The Social Media Ban provides no guidance that constrains its application to unprotected speech, or speech that the City has a valid or sufficient interest in regulating.

147. Ms. Jones was subjected to the Social Media Ban, and continues to be harmed by its restrictions.

148. The Social Media Ban is unconstitutionally overbroad because it imposes unlawful content-based restrictions on employee speech and permits them to be punished for protected speech in violation of the First and Fourteenth Amendments to the United States Constitution.

PRAYER FOR RELIEF

For the foregoing reasons, Ms. Jones respectfully requests that the Court:

1. Enter judgment in Ms. Jones's favor on all claims for relief.
2. Declare that the Press Ban and Social Media Ban violate the First and Fourteenth Amendments to the United States Constitution, as well as of 42 U.S.C. § 1983.

3. Award injunctive relief barring Defendants from enforcing the Press Ban or Social Media Ban.

4. Award Ms. Jones her reasonable attorneys' fees and all other costs of suit available under 42 U.S.C. §§ 1988 and 1920.

5. Award all other relief in law and equity to which Ms. Jones is entitled and that the Court deems just, equitable, or proper.

JURY DEMAND

Ms. Jones demands a trial by jury on all issues within this Complaint.

Respectfully submitted,

/s/ Sandhya Gupta
Subodh Chandra (OH Bar No. 0069233)
Sandhya Gupta (OH Bar No. 0086052)
Patrick Kabat (NY Bar No. 5280730)
THE CHANDRA LAW FIRM LLC
The Chandra Law Building
1265 W. 6th St., Suite 400
Cleveland, OH 44113-1326
216.578.1700 Phone
216.578.1800 Fax
Subodh.Chandra@ChandraLaw.com
Sandhya.Gupta@ChandraLaw.com
Patrick.Kabat@ChandraLaw.com

Attorneys for Plaintiff Crystal Jones