APPENDIX A
Supreme Court of Illinois
Jessy Cambel v City of Charleston, IL et. al
Denial of Leave to Appeal

SUPREME COURT OF ILLINOIS

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September 25, 2024

In re: Jessy Cambel, petitioner, v. The City of Charleston, Illinois, et al., etc., respondents. Leave to appeal, Appellate Court, Fifth District. 130591

The Supreme Court today DENIED the Petition for Leave to Appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on 10/30/2024.

Very truly yours,

Cynthia A. Grant

Clerk of the Supreme Court

APPENDIX A

APPENDIX B
Decision of the Appellate Court of Illinois, Fifth District
Jessy Cambel v. City of Charleston, Il et. al
No. 5-23-0054

NO. 5-23-0054

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

JESSY CAMBEL, Plaintiff-Appellant, v. THE CITY OF CHARLESTON, ILLINOIS; BUILDING DEPARTMENT OF THE CITY OF CHARLESTON; and ALEX WINKLER, Building Code Official, Defendants-Appellees.	)	Appeal from the Circuit Court of Coles County. No. 21-MR-25 Honorable Mark E. Bovard, Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.
Justices Moore and McHaney concurred in the judgment.

ORDER

¶ 1 Plaintiff, Jessy Cambel, proceeding *pro se*, advances several procedural and substantive challenges to section 4-6-1(A) of the City Code of Charleston. For the reasons that follow, we affirm.

¶ 2 This appeal arises from an administrative proceeding wherein plaintiff was found to have violated the ordinance of the City of Charleston (City) requiring that weeds and grass be kept shorter than eight inches. On May 10, 2021, the City mailed plaintiff a written notice to appear alleging that on April 30, 2021, and on May 10, 2021, the grass and weeds on her property were over eight inches in height in violation of section 4-6-1(A) of the City Code of Charleston, which provides:

"**4-6-1: WEEDS AND OTHER MATTER:**

A. Controlled: Except as provided in subsection B of this section, no owner and no person in control of any lot, place or area within the city and no agent of such owner or person in control, shall permit on such lot, place or area or upon any abutting area between the right of way line/property line and street surface or pavement, any weeds or grass over 8 inches (8") in height, or deleterious, unhealthful growths or other noxious matter that may be growing, lying, or located thereon." City Code of Charleston Ordinance No. 08-O-19, § 4-6-1(A) (approved July 15, 2008).

¶ 3 During the administrative hearing, Alex Winkler, the City's building code official, testified that on April 30, 2021, his office received complaints of tall grass and weeds on plaintiff's property. Winkler observed plaintiff's property and verified that it was in violation of the ordinance, where the grass and weeds exceeded a height of eight inches. Winkler placed a violation sign in plaintiff's yard. During the hearing, Winkler identified photographs taken at the property.

¶ 4 Winkler further testified that he sent a letter to plaintiff on April 30, 2021, informing her that her property violated the ordinance. The letter indicated that plaintiff had until May 7, 2021, to correct the violation. On May 10, 2021, Winkler reinspected the property and took photographs which demonstrated that the property was not brought into compliance. Winkler returned and took photographs on June 10, 2021, which demonstrated that the grass remained over eight inches tall.

¶ 5 On May 2, 2021, plaintiff wrote a letter addressed to the City Council and the City of Charleston. In the letter, plaintiff advised that the sign placed in her yard violated state and federal law. Plaintiff advised that she was disabled and unable to bring her yard into compliance within the seven-day time frame offered by the City.

¶ 6 Plaintiff testified that her property was historic and under restoration. She argued that the ordinance violated her first amendment freedom of speech and religious rights. She further argued that the ordinance violated the fourteenth amendment equal protection clause because "grass" is a vague term.

¶ 7 Following testimony and arguments, the hearing officer determined that the property

violated the ordinance, where the grass and weeds exceeded eight inches in height. Plaintiff received a $100 fine and a hearing fee of $135.

¶ 8 Plaintiff filed a complaint in the circuit court of Coles County for administrative review against defendants. Following briefing, the circuit court scheduled a hearing on November 15, 2022. The circuit court identified the following issues based on the arguments set forth in plaintiff's complaint and her written arguments: (1) whether plaintiff violated the ordinance; (2) whether the City had authority to enact the ordinance; (3) whether the ordinance violated plaintiff's free speech and religious rights under the first amendment, or her state and federal equal protection and due process rights; and (4) whether the ordinance was unconstitutionally vague on its face or as applied to plaintiff.

¶ 9 The circuit court affirmed the administrative findings and rejected plaintiff's constitutional challenges. First, the court found that the evidence presented clearly showed that plaintiff violated the ordinance by maintaining grass or weeds over eight inches in height. Second, the court found that the Illinois Municipal Code expressly authorized the City to pass ordinances regulating grass and weeds and to provide for the removal of nuisance greenery from any parcel of private property within the City after giving the owner notice to remove the violation. Third, the court found that plaintiff failed to show that growing grass and weeds constituted speech protected by the first amendment. Similarly, the court found that plaintiff failed to establish that growing grass and weeds violated her freedom of religion or otherwise burdened her religious rights. Fourth, the court found that the ordinance was not facially vague, because the intent of the ordinance was to use the plain and ordinary definitions of "grass" and "weeds," and that the ordinance need not define these terms in the manner suggested by plaintiff. The court also found that the ordinance was not vague as applied to plaintiff because there was no evidence of arbitrary enforcement. For these reasons,

the circuit court affirmed the hearing officer's finding that plaintiff violated the ordinance, affirmed the fine and fee totaling $235, and dismissed the action as to Alex Winkler.[1] The court also denied plaintiff's constitutional challenges and request to void the ordinance. Plaintiff timely appealed.

¶ 10 On appeal, plaintiff, proceeding *pro se*, seemingly raises three issues: (1) whether she met her burden to demonstrate that the ordinance violates the first amendment, (2) whether she met her burden to demonstrate that the ordinance violates the fourteenth amendment, and (3) whether the circuit court committed malfeasance and other errors.[2]

¶ 11 Pursuant to the Illinois Municipal Code (65 ILCS 5/1-2.1-1 *et seq.* (West 2020)) and the City's municipal code, the final decision entered by the administrative law officer (ALO) in the administrative proceeding below is subject to judicial review. See *id.* § 1-2.1-7 ("Any final decision by a code hearing unit that a code violation does or does not exist shall constitute a final

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[1]The court noted that defendant Alex Winkler was merely a witness in the administrative hearing and not a proper defendant, and as such, the court could not enter any order or relief against him. Winkler remains a party to this appeal.

[2]In her reply brief, plaintiff raises numerous other issues. Specifically, in reply, plaintiff raises the following: "(1) whether the Ordinance was vague; (2) did Winkler place Cambel and other people at risk when he refused to acknowledge the broken glass, nails and other debris in the yard and demanded it be mowed; (3) did Winkler violate the American Disabilities Act when he refused to acknowledge Cambel's physical limitations and refused to allow reasonable time to safely restore the property; (4) did Winkler engage in a campaign of bullying, harassment and intimidation by intentionally not maintaining the city property around Cambel's home knowing that it was causing her great mental and physical pain and when mowing the foot high weeds and grass on the City parkway, instead of bagging them or sending into the street—sent them onto Cambel's property smothering Cambel's plants, scattering weed and grass seed all over Cambel's property undoing months of landscaping work; (5) did the City violate the First and Fourteen Amendment protections; (6) did the City reduce the value of Cambel's historic property by preventing her from having a historic landscape in keeping with homes built in 1886; (7) did the City knowing the economic, physical and environmental harm of lawns ignore them, force people to pollute and prohibit bio-diversity and natural flood control; (8) is the Ordinance in furtherance of a compelling government interest done by the least restrictive means?" " 'Issues raised for the first time on appeal are waived.' " *Gillard v. Northwestern Memorial Hospital*, 2019 IL App (1st) 182348, ¶ 49 (quoting *Employers Insurance of Wausau v. Ehlco Liquidating Trust*, 186 Ill. 2d 127, 161 (1999)). Moreover, since many of plaintiff's arguments were raised for the first time in her reply brief, said arguments are forfeited and will not be addressed. *Franciscan Communities, Inc. v. Hamer*, 2012 IL App (2d) 110431, ¶ 19. We limit our decision to the arguments properly placed before us in plaintiff's corrected opening brief.

determination for purposes of judicial review and shall be subject to review under the Illinois Administrative Review Law."); *Shachter v. City of Chicago*, 2011 IL App (1st) 103582, ¶ 34. The Illinois Administrative Review Law, in turn, provides that judicial review of an administrative decision "shall extend to all questions of law and fact presented by the entire record before the court," and "[t]he findings and conclusions of the administrative agency on questions of fact shall be held to be *prima facie* true and correct." 735 ILCS 5/3-110 (West 2020); *Shachter*, 2011 IL App (1st) 103582, ¶ 34. "[A] plaintiff to an administrative proceeding bears the burden of proof, and relief will be denied if he or she fails to sustain that burden." (Internal quotation marks omitted.) *Shachter*, 2011 IL App (1st) 103582, ¶ 34. As such, we review these findings to determine if they are against the manifest weight of the evidence. *Id.* ¶ 70.

¶ 12 First, plaintiff argues that the ordinance violates the first amendment. Defendants, on the other hand, contend that plaintiff failed to satisfy her burden to demonstrate that the ordinance violates the first amendment. We agree with defendants.

¶ 13 "In construing the validity of a municipal ordinance, the same rules are applied as those which govern the construction of statutes." *Napleton v. Village of Hinsdale*, 229 Ill. 2d 296, 306 (2008). Like statutes, municipal ordinances are presumed constitutional. *Chicago Allis Manufacturing Corp. v. Metropolitan Sanitary District of Greater Chicago*, 52 Ill. 2d 320, 327 (1972). The party challenging the ordinance has the burden of establishing a clear constitutional violation. *People v. One 1998 GMC*, 2011 IL 110236, ¶ 20. We review the constitutionality of an ordinance *de novo*. *Id.*

¶ 14 The first amendment to the United States Constitution, made applicable to the states through the due process clause of the fourteenth amendment, prohibits governmental action that "abridg[es] the freedom of speech, or of the press; or the right of the people peaceably to assemble,

and to petition the Government for a redress of grievances." U.S. Const., amends. I, XIV. Although the first amendment speaks of the freedom of speech, it also extends to expressive conduct. *Texas v. Johnson*, 491 U.S. 397, 404 (1989). Generally speaking, the first amendment prevents the government from proscribing speech or expressive conduct because of disapproval of the ideas expressed. *City of Chicago v. Pooh Bah Enterprises, Inc.*, 224 Ill. 2d 390, 406-07 (2006). The first amendment does not guarantee the right to employ every conceivable method of communication at all times and in all places. *Heffron v. International Society for Krishna Consciousness, Inc.*, 452 U.S. 640, 647 (1981). For the first amendment to be implicated, actions must constitute protected expressive conduct. See *Rumsfeld v. Forum for Academic & Institutional Rights, Inc.*, 547 U.S. 47, 66 (2006). To meet this standard, plaintiff must show her intent to convey a particularized message and that there is a great likelihood that the message will be understood by those who view it. *Johnson*, 491 U.S. at 404.

¶ 15 Defendants argue that there is little to no likelihood that anyone viewing plaintiff's yard would understand some particularized message that she was intending to express through her overgrown weeds and grass. Rather, the photographs depict grass and weeds in plaintiff's yard that have been left to grow naturally. The grass and weeds have not been mowed, manipulated, or manicured in such a way that might permit an intent to convey a particularized message. We agree with defendants. We find *Gul v. City of Bloomington*, 22 N.E.3d 853 (Ind. Ct. App. 2014), as cited by defendants, persuasive on this point. "There is nothing inherent to an overgrown yard that would lead an average person of ordinary sensibilities to conclude that any message at all was being conveyed ***." *Id.* at 859.

¶ 16 For these reasons, we agree with defendants that plaintiff failed to satisfy her burden to demonstrate that the ordinance violates the free speech protections of the first amendment.

Accordingly, we reject that claim.

¶ 17 Next, plaintiff argues that the free exercise clause of the first amendment protects her right to abstain from performing certain physical acts in accordance with one's beliefs. Plaintiff argues that her faith practices peaceful coexistence with nature. Defendants contend that plaintiff failed to demonstrate that the ordinance impacted her religious beliefs. We agree with defendants.

¶ 18 Religion is a "belief that is sincere and meaningful [and] occupies a place in the life of its possessor parallel to that filled by the orthodox belief in God." *United States v. Seeger*, 380 U.S. 163, 166 (1965). However, beliefs that are "philosophical and personal rather than religious" do not "rise to the demands of the Religion Clauses." *Wisconsin v. Yoder*, 406 U.S. 205, 216 (1972).

¶ 19 In the case before us, plaintiff describes her religion as peaceful coexistence with nature. Although this may demonstrate plaintiff's philosophy, she has not demonstrated that the ordinance had any impact on her religious beliefs. Moreover, the plain language of the ordinance does not target a religious practice and is not aimed at regulating any activity that could be even considered religious. As such, we agree with defendants that plaintiff failed to demonstrate that the ordinance impacted her religious beliefs.

¶ 20 Next, plaintiff argues that the City engaged in discriminatory enforcement of the ordinance in violation of the equal protection clause of the fourteenth amendment. Plaintiff argues that there are landscape grasses up to 10 feet tall in City parks, and that the Kiwanis Park Trail has plants growing over 8 inches tall. Defendants contend that plaintiff failed to meet her burden to demonstrate that the ordinance violates the fourteenth amendment. We agree with defendants.

¶ 21 Equal protection requires that similarly situated individuals will be treated in a similar manner. *People v. Reed*, 148 Ill. 2d 1, 7 (1992). The equal protection clauses of the United States and Illinois Constitutions do not deny the state the power to draw lines that treat different classes

of people differently, but prohibits the state from according unequal treatment to persons placed by a statute into different classes for reasons wholly unrelated to the purpose of the legislation. *People v. Shephard*, 152 Ill. 2d 489, 499 (1992). We use the same analysis in assessing equal protection claims under both the state and federal constitutions. *Reed*, 148 Ill. 2d at 7.

¶ 22 Unequal enforcement of a local ordinance is unconstitutional only if the inequality has some invidious purpose. *Dauel v. Board of Trustees of Elgin Community College*, 768 F.2d 128, 131 (7th Cir. 1985). In order to successfully bring a selective enforcement claim under the equal protection clause, the challenging party must establish (1) that he received different treatment from others similarly situated and (2) the differing treatment was based on clearly impermissible or "invidious" grounds "such as discrimination on the basis of race, religion, the exercise of first amendment rights, or bad faith." *Ciechon v. City of Chicago*, 686 F.2d 511, 523 n.16 (7th Cir. 1982).

¶ 23 The record demonstrates that the City acts under the ordinance in response to resident complaints about tall grass and weeds. Winkler testified that his office received complaints of tall grass and weeds throughout the City, including plaintiff's property, which onset the investigation. As argued by defendants, there is no evidence that plaintiff was singled out because of her membership in any class or because of personal animosity, unpopularity, or some other illegitimate reason offensive to notions of fair play and equal treatment under the law. Therefore, we agree with defendants that plaintiff failed to show the second element of her discriminatory enforcement claim. Accordingly, we reject plaintiff's claim that the City engaged in discriminatory enforcement of the ordinance in violation of the fourteenth amendment.

¶ 24 Plaintiff also argues that the ordinance is vague. "[U]nless a municipal ordinance 'implicates first amendment rights, plaintiff may not, as he did here, challenge the ordinance as

vague on its face.' " *Shachter*, 2011 IL App (1st) 103582, ¶ 83 (quoting *O'Donnell v. City of Chicago*, 363 Ill. App. 3d 98, 105 (2005)). " 'If [the ordinance] does not implicate first amendment rights, plaintiff can only argue that the ordinance is vague as applied to himself, as applied to conduct for which he is being targeted.' " *Id.* (quoting *O'Donnell*, 363 Ill. App. 3d at 105).

¶ 25 Here, plaintiff asserts that the ordinance is unconstitutionally vague on its face. However, plaintiff's conduct, the failure to control weeds and grass on her property, falls within the terms of the ordinance and, as such, does not implicate her first amendment rights. As such, plaintiff has no "standing" to make a facial challenge to those ordinances. See *Owens v. Department of Human Rights*, 403 Ill. App. 3d 899, 927 (2010). Therefore, these constitutional challenges were properly rejected on the merits by the circuit court. Plaintiff seemingly does not raise an as-applied challenge, and as such, we decline to consider the merits of an as-applied vagueness challenge.

¶ 26 Finally, plaintiff makes numerous arguments based on "malfeasance" and errors in the circuit court's order. First, plaintiff argues that the City's defense of an ordinance that harms health and safety which the City has itself continuously violated has caused her harm and constitutes malfeasance. The First District rejected a similar argument in *Shachter*, 2011 IL App (1st) 103582, ¶ 100-01, where our colleagues in the First District determined that a city's prohibition on properties containing weeds averaging over 10 inches tall to be rationally related to a legitimate interest in aesthetics. "It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean ***." *Berman v. Parker*, 348 U.S. 26, 33 (1954). Moreover, it is "well settled that the state may legitimately exercise its police powers to advance esthetic values." *Members of City Council of City of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789, 805 (1984).

¶ 27 Next, plaintiff argues that the circuit court violated its "oath of office" by "mansplaining"

and bringing "politics into the courtroom." Rather, as noted by defendants, the record rebuts plaintiff's position, where the record demonstrates that in response to plaintiff's arguments, the circuit court asked plaintiff whether a conservative municipality where Republican candidates win more than Democrats, such as Charleston, can enact different ordinances than a municipality where Democrats win more often. This question seemingly did not impact the decision of the circuit court, but rather demonstrated an attempt on the part of the circuit court to better understand the numerous arguments plaintiff raised before it.

¶ 28 Plaintiff also argues that although the City was aware of her disabilities, they refused to comply with the Americans with Disabilities Act of 1990 (ADA) (42 U.S.C. § 12131 *et seq.* (2018)), when in her May 2, 2021, letter she requested that the City accommodate her disabilities by giving her more time to complete her landscaping. Title II of the ADA prohibits public entities from denying public services to, or otherwise discriminating against, persons with qualified disabilities on the basis of their disabilities. *Id.* § 12132. Discrimination is defined to include "a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling." *Id.* § 3604(f)(3)(B). The reasonable accommodation requirement under the ADA prohibits the enforcement of zoning ordinances in a way that deprives people with disabilities equal access to housing and requires municipalities to grant variances as necessary. *Oconomowoc Residential Programs, Inc. v. City of Milwaukee*, 300 F.3d 775, 783 (7th Cir. 2002); *Hovsons, Inc. v. Township of Brick*, 89 F.3d 1096, 1104 (3d Cir. 1996).

¶ 29 To prevail on a reasonable accommodation claim against a municipality under either the ADA or the Fair Housing Amendments Act of 1988 (FHAA) (42 U.S.C. § 3601 *et seq.* (2018)) on the basis of enforcement of a residential zoning ordinance, a party must show (1) she is a person

with a disability under the ADA or FHAA, (2) she requested a reasonable accommodation for the disability, (3) the accommodation was necessary, and (4) the municipality refused to make the accommodation. *Hunt v. Aimco Properties, L.P.*, 814 F.3d 1213, 1225 (11th Cir. 2016).

¶ 30 In the case before us, plaintiff failed to make a reasonable request for accommodation. Specifically, plaintiff requested a five- to six-year exemption from the ordinance. "An accommodation is unreasonable if it *** requires a fundamental alteration in the nature of the program." *Oconomowoc Residential Programs*, 300 F.3d at 784. "A zoning waiver is unreasonable if it is so at odds with the purposes behind the rule that it would be a fundamental and unreasonable change." (Internal quotation marks omitted.) *Id.*

¶ 31 For the foregoing reasons and pursuant to Illinois Supreme Court Rule 23(c) (eff. Feb. 1, 2023), we affirm the judgment of the circuit court, confirming the hearing officers' determination that plaintiff violated the ordinance as well as the order imposing a $100 fine and $135 fee.

¶ 32 Affirmed.

APPENDIX C

Decision of the Circuit Court of the Fifth Judicial Circuit

Charleston, Coles County, Illinois

2021 MR 251

Additional material from this filing is available in the Clerk's Office.