

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION - DAYTON**

MICHAEL A. GALLUZZO  
PLAINTIFF,

VS.

CHAMPAIGN COUNTY COURT  
OF COMMON PLEAS, ET AL.

CASE NO.: C-3-01-174  
CHIEF JUDGE WALTER HERBERT RICE  
MAGISTRATE JUDGE MICHAEL R. MERZ

OBJECTIONS TO MAGISTRATES  
JUDGES DECISION  
DENYING TEMPORARY RESTRAINING  
ORDER

Now comes the Plaintiff Michael A. Galluzzo respectfully objecting to the Magistrate Judge's denial of Requested Temporary Restraining order filed April 27, 2001.

The Plaintiff is currently denied his freedom without response to his constitutional issue before the State Court. For the Plaintiff to remain incarcerated before the State Court has decided his claim and while the appeal process moves forward, the Plaintiff is placed in a position to suffer irreversible and irreparable harm to himself and his family.

The Magistrate Judge found that the Plaintiff "Must first exhaust the remedies available to him in the State Courts." In footnote 3 of the Magistrate Judge's decision he states, ". . . the Magistrate Judge has not attempted a thorough analysis of the motion. Nothing said in the motion suggests the Exhaustion Doctrine is not applicable."

"The irreparability of the harm increases in proportion to its irreversibility." *Id. citing Virginian Railway Co. V. System Federation*, 300 U.S. 515,552 (1937).

It is unsaid that the denial of one's right to freedom by incarceration is irreversible.

"It is clear, however, that the existence of a threat of injury on account of illegal conduct is sufficient to satisfy the injury portion of the standing requirement. Here, Plaintiff has been threatened with the deprivation of his liberty." *Johnson V. Zurz*, 596 F. SUPP. 39 (N.D. Ohio, E.D. 1984)

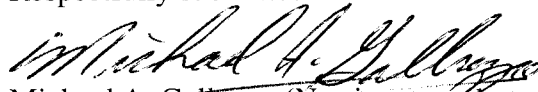
It has not been demonstrated that the actions of the defendants, under color of state law, are completely legal, however, the Federal Court does have jurisdiction to over rule the State Court in such an immediate matter to protect the legal rights of the Plaintiff.

“In any event, however, where a Plaintiff and Plaintiff’s class are faced with incarceration, the liberty interests involved far outweigh the interest of the State.” *Johnson V. Zurz*, supra at 46.

The current incarceration further prohibits the Plaintiff from doing any further research and does not afford the Plaintiff the opportunity to properly present objections.

Whereas the State Courts have not adjudicated the issue of Plaintiff’s underlying deprivation of a protected liberty right to custody of his children, and whereas the success of Plaintiff’s case is probable, which would render the Defendant’s actions illegal, and whereas the Plaintiff is currently deprived his freedom, under the orders of the Defendant Judge Roger B. Wilson, by incarceration in the Tri-County Regional Jail in Mechanicsburg, Ohio, and whereas the continuing incarceration of the Plaintiff would continue to cause irreparable harm to the Plaintiff, his family, and his income, it is hereby requested that the temporary restraining order be granted pending resolution of other said issues in this case.

Respectfully submitted



Michael A. Galluzzo (No signature do to incarceration)  
P.O. Box 710  
St. Paris, OH 43072  
937-663-4505

### CERTIFICATE OF SERVICE

A copy of this motion was mailed to the Defendants by regular U.S. Mail on this

\_\_\_\_\_ day of \_\_\_\_\_, 2001.



Michael A. Galluzzo