

AUG 23 1966

FILED

A. DALLAM O'BRIEN, JR.

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

ROBERT HICKS, individually and
on behalf of all others similarly
situated,

Plaintiff,

V.

JESSE CUTRER, individually and in
his capacity as Mayor and a Member
of the Commission Council of
Bogalusa, Louisiana; ARNOLD SPIERS,
individually and in his capacity as
Public Safety Commissioner and a
Member of the Commission Council of
Bogalusa; MARSHALL HOLLOWAY, JAMES K.
TALBOT, ANDY OVERTON, individually
and as Members of the Commission
Council of Bogalusa; and CLAXTON
KNIGHT, individually and in his
capacity as Police Chief of Bogalusa,

Defendants.

CIVIL ACTION

NUMBER:

66-225

COMPLAINT

I. Jurisdiction

1. This is a class action for declaratory and
injunctive relief pursuant to 28 U.S.C. Sections 2201
and 2202 and 42 U.S.C. Sections 1981 and 1983. It seeks
a judgment declaring Article 83 of the Municipal Criminal
Code of the City of Bogalusa, Louisiana unconstitutional
on its face and as applied to plaintiff and those
similarly situated, and seeks a preliminary and per-
manent injunction against the enforcement of this
regulation. Jurisdiction on this Court is conferred by
28 U.S.C. Sections 1331 and 1343.

II. Parties

2. Plaintiff, Robert Hicks, is a Negro, a citizen
of the United States, a resident of the City of Bogalusa,
Louisiana, and an officer of the Bogalusa Voters League.

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He sues herein on his own behalf and on behalf of all other Negro residents of the City of Bogalusa, Louisiana, who constitute a class too numerous to bring before this Court. There are common questions of law and fact affecting all members of the class, and common relief is sought. The class is adequately represented by the plaintiff.

3. Defendants Jesse H. Cutrer, Arnold Spiers, Marshall Holloway, James K. Talbot and Andy Overton are the members of the Commission Council of Bogalusa, Louisiana. The Commission Council is authorized by the statutes of the State of Louisiana, and the Charter of the City of Bogalusa to enact and to administer the ordinances of the City of Bogalusa. These defendants are sued individually and in their capacities as members of the Commission Council.

4. Defendant Cutrer is the Mayor of Bogalusa, Louisiana, authorized, empowered, and directed by the statutes of the State of Louisiana to administer the ordinances and affairs of the City of Bogalusa and to supervise all officers and employees of the City. Defendant Cutrer is also sued in his capacity as Mayor of the City of Bogalusa, Louisiana.

5. Defendant Spiers is the Commissioner of Public Safety of Bogalusa. He is sued in this capacity as well. Defendant Claxton Knight is the Chief of Police of Bogalusa. He is sued in his individual and official capacities. Defendants Spiers and Knight are the chief law enforcement officials of that city. They have direct supervision and control over all law enforcement officers of the city.

III. Factual Allegations

6. Since February, 1965, plaintiff and the members of the Bogalusa Voters League have been engaged in peaceful activities in the City of Bogalusa designed to encourage Negroes to register and to vote, to assure compliance of public facilities and accommodations with Title II of the Civil Rights Act of 1964, and to achieve equal employment and educational opportunities, due process of law and equal protection of the laws for Negroes in Bogalusa, Louisiana. These activities include, but are not limited to, voter registration campaigns, peaceful attempts to secure service at establishments covered by Title II, and peaceful demonstrations and parades to protest discrimination, segregation and the denial of constitutional rights and equal opportunities to the Negro citizens of Bogalusa.

7. On April 7, 1965, the Commission Council of the City of Bogalusa enacted an ordinance (No. 709, Chapter 18, Section 38, City of Bogalusa Code) with the purpose and effect of preventing the Negro citizens of Bogalusa from exercising their constitutionally protected rights of free speech, free assembly, and freedom to petition for redress of their grievances. This ordinance declared it unlawful to disturb the peace by:

"Crowding or congregating with others on a public street or public right of way, or sidewalk within the City or in any public place of any character within the City, and failing or refusing to move on, or disperse and move on, when ordered to do so by any law enforcement officer."

8. On June 3, 1965, proceedings were instituted in this Court (Civil Action Number 15672 C) challenging the constitutionality of this ordinance. Before a decision was rendered by the Court, the ordinance was

repealed. The Federal Court proceeding was voluntarily dismissed on June 23, 1966.

9. Article 83 of the Municipal Criminal Code of Bogalusa was adopted on October 5, 1965. It provides in pertinent part as follows:

"D. No parades, demonstrations, processions, or marches shall be permitted on Columbia Street between its intersection with Sixth Street and Willis Avenue, or on any other street intersecting Columbia Street and Willis Avenue between the intersections of Columbia Street and Sixth Street and Columbia Street and Willis Avenue between the hours of 6:00 A.M. and 8:00 A.M., and between the hours of 12:00 Noon and 2:30 P.M., and between the hours of 4:00 P.M. and 5:30 P.M., and between the hours of 9:30 P.M. and 10:30 P.M.

"E. No person or persons, groups, organizations or corporations shall hold a parade, march, or demonstration within the city limits of this municipality between the hours of 6:00 P.M. and 8:00 A.M.

"F. Exceptions:

"This article shall not apply to:

"(1) Funeral processions.

"(2) Students going to and from school classes or participating in educational activities, providing such conduct is under the immediate direction and supervision of the proper school authorities.

"(3) A governmental [sic] agency acting within the scope of its functions."

The full text of Article 83 is appended to this complaint.

10. At the time of the adoption of Article 83 of the Bogalusa Municipal Criminal Code on October 5, 1965, an entirely new criminal code was adopted by the city to supplant the existing municipal regulations. The newly

adopted Criminal Code was based upon the Model Municipal Code, published by the Louisiana City Attorneys' Association, the Louisiana Municipal Association and the Junior Bar Section of the Louisiana State Bar Association. (See Municipal Criminal Code of the City of Bogalusa, Preface (October 5, 1965)). Section E of Article 83 of the Code is not included in the Model Code but was specially added by the Commission Council of Bogalusa. This provision was adopted with the purpose and effect of preventing parades and marches in the evening hours, after the Bogalusa Voters League had announced its intention to engage in this activity.

11. The purpose and effect of Article 83 (E)'s absolute prohibition on marches and parades after 6:00 p.m. is to foreclose these activities absolutely during the only hours in which many Negro citizens can participate in them, consistent with their employment, religious and other obligations. Moreover, Article 83 (E) prohibits peaceful protests during the hours when the grievances of the protest can best be communicated to the residents of the City.

12. Article 83 (D) severely circumscribes the right to picket and parade from the hours of 8:00 a.m. to 6:00 p.m. by prohibiting the use of a major portion of Columbia Road and the surrounding area between the hours of 12:00 noon and 2:30 p.m. and between the hours of 4:00 p.m. and 5:30 p.m. No effective parade, such as those previously conducted by the Bogalusa Voters League, can be organized during these hours (a) because the prohibited area is the main business district of the city, (b) because the prohibited area is adjacent to the Crown Zellerbach plant, the object of many grievances connected with equal employment opportunities, (c) because it is impossible to get across the Bogue Lusa Creek, which separates the northern and southern portions of Bogalusa, without crossing the prohibited area.

Thus paragraph D of Article 83 prevents marches, during the hours specified, from the Negro neighborhood on the southern end of the city to the municipal buildings, the Plaza Shopping Center or the Negro Church or neighborhood on the northern end of the City. In addition, the ordinance prohibits, during the hours specified, parades in a major Negro neighborhood, itself. Plaintiff does not at this time challenge the validity of paragraph D of Article 83. However, the suppressive effect on First and Fourteenth Amendment rights of the absolute prohibition on parades and picketing after 6:00 p.m. contained in paragraph E is heightened and underscored by the restrictions of paragraph D.

13. The Negro citizens of Bogalusa have long been subject to violence, terror, intimidation and harassment. See, e.g., United States v. Original Knights of the Ku Klux Klan, 34 U.S.L. Week 2306 (E.D. La. 1965); Hicks v. Knight, et al., Civil Action No. 15,727, Injunction July 10, 1965; First Contempt Citation, July 30, 1965; Second Contempt Citation, under advisement; New Orleans Times-Picayune, July 31, 1966, p. 1 (Night Slaying of a Negro Resident of Bogalusa). Consequently, Negroes are fearful of walking alone on the streets of Bogalusa at night. Evening marches are a necessary prerequisite to the creation of attitudes in both the white and Negro communities of Bogalusa that will allow Negroes free access to the city streets.

14. On August 1, 1966, pursuant to the conditions precedent for any parade or march contained in Article 83 (B) of Municipal Criminal Code of Bogalusa, plaintiff notified Defendant Knight, in the latter's capacity as Chief of Police of Bogalusa, of the intention of the Bogalusa Voters League to conduct a march or parade after 6:00 p.m. on August 2, 1966. The same day, defendant Knight informed plaintiff that, in light of

the provisions of Article 83 (E), the parade would not be permitted. The proposed march was then cancelled. On other occasions, defendant Knight has informed plaintiff or others similarly situated that they may not march or parade on the streets after 6:00 p.m. Defendants have made clear their intention to arrest and prosecute plaintiff and those similarly situated for any violation of Article 83 (E).

IV. Constitutional Violations

15. Section E of Article 83 is invalid on its face and as applied to plaintiff and those similarly situated as an unreasonably broad restriction and abridgement of their First Amendment rights, specifically the right to free speech, to peaceably assemble, and to engage in orderly marches to protest grievances.

16. Article 83 on its face violates the equal protection clause of the Fourteenth Amendment, in that it permits funeral processions and marches or parades connected with educational or governmental functions after 6:00 p.m., while prohibiting all other marches or parades during this period.

17. Article 83 (E) violates the First Amendment and the due process clause of the Fourteenth Amendment, in that its prohibition of "demonstrations" and its apparent application to indoor, as well as outdoor meetings does not provide a clear standard for distinguishing between lawful and unlawful conduct. By its terms the ordinance can be applied to prohibit activities that can not be restricted or regulated consistent with the First Amendment.

18. There is an actual controversy between the parties, as hereinbefore set forth. Unless Article 83 (E) is declared void and unconstitutional, and the defendants are enjoined from enforcing it, plaintiff and those similarly situated will be arrested and tried for exercising rights guaranteed to them by the Constitution of the United States. Enforcement of Article 83 (E) against plaintiff and those similarly situated would deprive them of rights secured by the Constitution and laws of the United States. Plaintiff has no adequate remedy at law and will suffer irreparable injury unless a preliminary and a permanent injunction are granted.

WHEREFORE, plaintiff respectfully prays that:

A. A declaratory judgment be issued declaring Article 83 (E) of the Municipal Criminal Code of Bogalusa void on its face and as applied to plaintiff and those similarly situated as violative of the First and Fourteenth Amendments of the United States Constitution;

B. A permanent injunction be issued enjoining and restraining the defendants from enforcing Article 83 (E) or from making any arrests or instituting any prosecutions thereunder;

C. Pending the hearing and determination of the prayers for permanent relief, a preliminary injunction be issued enjoining and restraining the defendants from enforcing Article 83 (E) or from making any arrests or instituting any prosecutions thereunder;

D. Plaintiff be awarded costs of this proceeding;

E. Plaintiff be awarded such other relief as this Court may deem proper.

RESPECTFULLY SUBMITTED

COLLINS, DOUGLAS & ELIE
2211 Dryades Street
New Orleans, Louisiana

BY: Nils R. Douglas
NILS R. DOUGLAS

RICHARD B. SOBOL
c/o Lawyers Constitutional
Defense Committee
2209 Dryades Street
New Orleans, Louisiana
523-1797

Attorneys for Plaintiff

OF COUNSEL:

ALVIN J. BRONSTEIN
c/o Lawyers Constitutional
Defense Committee
603 North Farish Street
Jackson, Mississippi

DATED: August 13, 1966.

VERIFICATION

I, Nils R. Douglas, of lawful age, first being duly sworn upon oath, depose and say:

That I am a member of the bar of Louisiana, and of the United States District Court for the Eastern District of Louisiana;

That I am the duly authorized attorney for plaintiffs herein and am authorized to prepare and verify the annexed complaint;

That I have read the annexed complaint and know the contents thereof;

That the facts stated therein are upon information and belief true as stated.

Nils R. Douglas
NILS R. DOUGLAS

SWORN TO AND SUBSCRIBED

BEFORE ME THIS 23 DAY

OF AUGUST, 1966.

John E. Elie
NOTARY PUBLIC

(SEAL)

THE MUNICIPAL CRIMINAL Code
OF BOGALUSA

adopted October 5, 1965

Article 33. Regulating parades.

A. No person or persons, groups, organizations, or corporations shall participate in, aid, form or start any parade, demonstration, procession or march within the city limits of this municipality unless they shall have given the Commissioner of Public Safety or the Chief of Police twenty-four hours' notice of such parade, demonstration, procession or march.

B. Any person or persons, groups, organizations, or corporations shall at the time of giving such notice, file the following information in writing with the Commissioner of Public Safety or the Chief of Police:

(1) Time and date of such parade, demonstration, procession, or march.

(2) Proposed route of parade, demonstration, procession, or march.

(3) Approximate number of persons to participate in such parade, demonstration, procession or march.

(4) The name and address of at least one person responsible for the orderly conduct of the parade, demonstration, procession, or march.

C. Failure of any person or persons, group, organizations, or corporations to give the proper notice and information as set forth in sections A and B above shall be grounds for denial by the Commissioner of Public Safety or the Chief of Police of this municipality of the use of public streets and sidewalks for such parade, demonstration, procession, or march.

D. No parades, demonstrations, processions, or marches shall be permitted on Columbia Street between its intersection with Sixth Street and Willis Avenue, or on any other street intersecting Columbia Street and Willis Avenue between the intersections of Columbia Street and Sixth Street and Columbia Street and Willis Avenue between the hours of 6:00 A.M. and 8:00 A.M., and between the hours of 12:00 Noon and 2:30 P.M., and between the hours of 4:00 P.M. and 5:30 P.M., and between the hours of 9:30 P.M. and 10:30 P.M.

E. No person or persons, groups, organizations or corporations shall hold a parade, march, or demonstration within the city limits of this municipality between the hours of 6:00 P.M. and 8:00 A.M.

F. Exceptions:

This article shall not apply to:

(1) Funeral processions.

(2) Students going to and from school classes or participating in educational activities, providing such conduct is under the immediate direction and supervision of the proper school authorities.

(3) A governmental agency acting within the scope of its functions.

G. Penalty.

Whoever violates the provisions of this article shall be fined not more than one hundred dollars, or shall be confined for not more than ninety days, or both.

INSTRUCTIONS FOR SERVICE

Please serve the complaint and motion and notice of motion for a preliminary injunction on Jesse Cutrer, Arnold Spiers, Marshall Holloway, James K. Talbot and Andy Overton at the Bogalusa City Hall and Claxton Knight of the Bogalusa Police Station or at the following alternative addresses:

Arnold Spiers	Byrd Avenue, Bogalusa, Louisiana
Marshall Holloway	254 Cedar Road, Bogalusa, Louisiana
James K. Talbot	409 Superior Avenue, Bogalusa, La.
Andy Overton	408 Columbia or 608 Erie, Bogalusa, La.