

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

JUL 14 1967

DALLAM O'BRIEN, JR.

CLERK

B

ROBERT HICKS

Plaintiff

v.

JESSE H. CUTRER, et al.

Defendants

CIVIL ACTION

NO. 66-225

DIVISION "B"

MOTION TO SUPPLEMENT
PLAINTIFF'S COMPLAINT

Pursuant to the provisions of Rule 15(d) of the Federal Rules of Civil Procedure, 28 U.S.C.A., plaintiff moves to supplement his complaint by adding the following paragraphs:

14A. On July 7, 1967, the Commission Council of the City of Bogalusa enacted a new ordinance dealing with the regulation of parades and the issuance of permits therefor. That ordinance enumerated Ordinance No. 754, repealed Article 83 of the Municipal Criminal Code of the City of Bogalusa, Louisiana, as amended (see paragraph 9 of the Complaint) and reenacted that Article as amended. A copy of this Ordinance is annexed hereto.

14B. On July 7, 1967, the Commission Council of the City of Bogalusa enacted Ordinance No. 755, prohibiting at any time any parade, procession, march or demonstration on Columbia Road between its intersection with Sixth Street

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and Willis Avenue. A copy of this Ordinance is annexed to the Complaint.

14C. The purpose and effect of the Ordinances Nos. 754 and 755 are to prevent and frustrate lawful marches and demonstrations of the Negro citizens of Bogalusa and the Bogalusa Voters League and to prevent those citizens and the League from exercising their constitutionally protected rights of free speech, free assembly, and freedom to petition for redress of their grievances.

14D. In particular, Ordinance No. 755 arbitrarily and unreasonably prohibits all parades, marches, or demonstrations on a portion of Columbia Street which has in the past, and continues to be, an area where Negro citizens and the League wish to give, and have a right to give, public expression to their grievances in a constitutionally-protected fashion. This area on Columbia Street constitutes the main business district of the city and contains many large stores in which Negroes seek employment opportunities. Further, the plant of Crown Zellerbach Corporation, the largest employer in the city and the object of many grievances relating to employment opportunities, is located on Columbia Street within the prohibited zone. Pursuant to the authority of this ordinance, On July 9, 1967, the responsible city officials denied permission to the League to parade on Columbia Street at

2:30 p.m. on the ground that the Ordinance absolutely prohibits any parade or procession on that street at any time.

14E. The new parade permit ordinance, No. 754 contains a number of provisions which seriously and unlawfully restrict the rights of Negro citizens and the League to exercise their rights guaranteed under the First Amendment. First, Article 83D(1) prohibits entirely all parades, processions and marches and also all demonstrations within the city limits between 6:00 p.m. and 8:00 a.m. The purpose and effect of such provision, which is essentially the same as Article 83(E) of the Ordinance enacted on October 5, 1965, is described in paragraph 11. The arbitrary and unlawful nature of such restrictions is even greater at present, inasmuch as the state of Louisiana is on Central Daylight Time, thus providing more than two additional hours of daylight after 6:00 p.m. available for marching during the summer months. Second, under Article 83G, the Chief of Police or Commissioner of Public Safety has the absolute discretion to reject the proposed route of march selected by an applicant and designate and alternative route of march. There are no standards for the exercise of such discretion; it can be based upon the vague and arbitrary standard by "circumstances where the public health, welfare and safety so require." Failure to proceed

along the redesignated route shall constitute a revocation of the permit and shall constitute a violation of the Ordinance. The effect of this provision is to vest in the Chief of Police uncontrolled discretion to deny altogether to Negro citizens and the League the opportunities to express their grievances in the fashion and in the place they desire. Pursuant to this provision, on July 9, 1967, the Chief of Police of Bogalusa exercised this discretion to reroute a parade route selected by the League in its notice of march. Third, Article 83E(3) permits the Chief of Police to deny a permit upon the vague and arbitrary standard that the "conduct of the parade 'would' constitute a violation of an ordinance of the City of Bogalusa, Louisiana, the Constitution and Laws of the State of Louisiana, and the Constitution and Laws of the United States of America...."

17A. Section D(1) of Article 83 is invalid on its face and as applied to plaintiff and those similarly situated as an unreasonably broad restriction and abridgment of their First Amendment rights, specifically the right to free speech, to peaceable assemble, and to engage in orderly marches to protest grievances.

17B. 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 governmental functions

after 6:00 p.m., while prohibiting all other marches or parades during this period.

17C. Article 83 D(1) 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 cannot be restricted or regulated consistent with the First Amendment.

17D. Article 83 E(3), permitting the named public officials to deny a permit upon vague and uncertain standards, and Article 83G, permitting the rerouting of parades on the basis of vague and uncertain criteria, are invalid on their face because they afford unrestricted discretion to deny parade permits and thereby to prohibit activities that cannot be restricted or regulated consistent with the First Amendment.

17E. Ordinance No. 755 is invalid on its face and as applied to plaintiff and those similarly situated as an unreasonably broad restriction and abridgment of their First Amendment rights, specifically the right to free speech, to peaceable assembly, and to engage in orderly marches to protest grievances.

In addition, the prayer for relief is supplemented as follows:

Cl. A declaratory judgment be issued declaring Ordinance No. 755 and Articles 83 D(1), 83 E(3), and 83 G of the Municipal Criminal Code of Bogalusa, as amended in Ordinance No. 754, void on their face and as applied to plaintiff and those similarly situated as violation of the First and Fourteenth Amendments of the United States Constitution; and that a permanent injunction be issued enjoining and reclaiming the defendants from enforcing Ordinance No. 755 and Articles 83 D(1), 83 E(3), and 83 G or from making any arrests or instituting any prosecutions thereunder; and, pending the hearing and determination of the prayers for permanent relief, a preliminary injunction be issued enjoining and restraining the defendants from enforcing Ordinance No. 755 and Articles 83 D(1); 83 E(3) and 83 G or from making any arrests or instituting any prosecutions thereunder.

Respectfully submitted,

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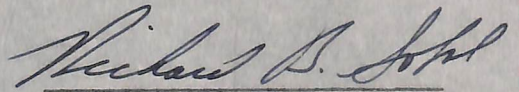
ALVIN J. BRONSTEIN
603 North Farish Street
Jackson, Mississippi 39202

By: Richard B. Sobol
Attorneys for Plaintiff

Dated: July 14, 1967

NOTICE OF MOTION

Please take notice that on July 19, 1967, at the United States District Court in the United States Courthouse, 400 Royal Street, New Orleans, Louisiana, at 10:00 a.m., or as soon thereafter as counsel may be heard, plaintiff will bring the above motion on for hearing.



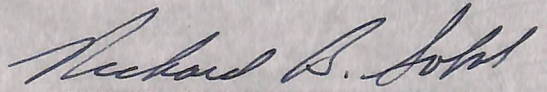
RICHARD B. SOBOL

Attorney for Plaintiff

Dated: July 14, 1967

CERTIFICATE

This is to certify that on the 14th day of July, 1967, a copy of this motion and the supporting memorandum was mailed, first class, special delivery to Robert Rester, Esquire, 311 First Avenue, P. O. Box 1160, Bogalusa, Louisiana, and John N. Gallaspy, 335 Austin Street, Bogalusa, Louisiana, counsel for defendants in this action.



RICHARD B. SOBOL

Attorney for Plaintiff

Exhibit II

ORDINANCE NO. 754

AN ORDINANCE repealing and re-enacting Article 83 of the Municipal Criminal Code of the City of Bogalusa, Louisiana, regulating parades, providing penalties for violation of the Ordinance; repealing any Ordinances or parts of Ordinances in conflict herewith, regulating the effect of the repeal; making the provisions hereof emergency by nature and providing a savings clause.

SECTION 1. BE IT ORDAINED by the Commission Council of the City of Bogalusa, Louisiana, in special session convened, that Article 83 of the Municipal Criminal Code of the City of Bogalusa, Louisiana, which was adopted October 5, 1964, as Ordinance No. 723 is hereby repealed and re-enacted to read as follows, to-wit:

A. Definitions.

(1) "Parade" is any parade, march, ceremony, show, exhibition, pageant, or procession of any kind, or any similar display, in or upon any street, park or other public place in this municipality.

(2) "Parade Permit" is a permit as required by this Article.

(3) "Person" is any person, firm, partnership, association, corporation, company or organization of any kind.

B. Permit Required.

No person shall engage in, participate in, aid, form or start any parade, unless a parade permit shall have been obtained from the Chief of Police or Commissioner of Public Safety.

(1) Exceptions. This Article shall not apply to:

(a) Funeral processions;

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

C. Application.

A person seeking issuance of a parade permit shall file an application with the Chief of Police or Commissioner of Public Safety at the Bogalusa City Jail, Bogalusa, Louisiana.

(1) Filing Period. An application for a parade permit shall be filed with the Chief of Police or Commissioner of

Public Safety not less than twenty-four (24) hours nor more than seventy-two (72) hours before the date on which it is proposed to conduct the parade.

(2) Contents. The application for a parade permit shall set forth the following information:

- (a) The name and address of the person seeking to conduct such parade;
- (b) If the parade is proposed to be conducted for, on behalf of, or by an organization, the name and address of the headquarters of the organization, and of the authorized and responsible heads of such organization;
- (c) The name and address of the person who will be the parade chairman and who will be responsible for its conduct;
- (d) The date when the parade is to be conducted;
- (e) The time when such parade will start and approximate time it will terminate;
- (f) The desired route to be traveled, the starting point and the termination point;
- (g) The approximate number of persons who, and animals and vehicles which, will constitute such parade; the type of animals, and description of the vehicles;

D. Prohibitions.

(1) No parades, demonstrations, processions, or marches shall be permitted within the city limits of this municipality between the hours of 6:00 p.m. and 8:00 a.m.

(2) Not more than one parade can be held within the corporate limits of the City of Bogalusa at the same time by more than one different person, nor by the same person on different routes, when such parades would prevent normal Police protection to the municipality.

E. Standards for Issuance.

The Chief of Police or Commissioner of Public Safety shall issue a permit as provided for hereunder when, from a consideration of the application and from such other information as may otherwise be obtained, he finds that:

(1) The application has been completed and filed within the time specified in Section C(1) of this Ordinance.

(2) The application contains the information required by Section C (2) (a) - (2) (g) of this Ordinance.

(3) When the information in this application shows that the conduct of the parade will not constitute a violation of an Ordinance of the City of Bogalusa, Louisiana, the Constitution and the Laws of the State of Louisiana, and the Constitution and the Laws of the United States of America; nor a violation of the prohibitions contained in Section D of this Ordinance.

F. Notice of Approval or Rejection.

The Chief of Police and/or Commissioner of Public Safety shall give notice of the approval or rejection of the application to the applicant as soon as practical after such decision.

G. Alternative Route.

The Chief of Police or Commissioner of Public Safety shall be empowered to designate a route different from that named by the applicant based on circumstances where the public health, welfare and safety so require, and shall notify the applicant of any such re-routing. Failure of the parade to proceed along such different route shall constitute a revocation of the permit required herein and a violation of this Ordinance.

H. Penalty.

Whoever violates the provisions of this Article shall be fined not more than One Hundred and No/100 (\$100.00) Dollars, or shall be confined for not more than ninety (90) days, or both.

SECTION 2. BE IT FURTHER ORDAINED that it is hereby declared to be the intention of the City of Bogalusa, Louisiana, that the articles, paragraphs, sentences, clauses and phrases of the City of Bogalusa, Louisiana, Criminal Code are severable, and, if any article, paragraph, sentence, clause or phrase of such Code shall be declared unconstitutional and invalid, such unconstitutionality and invalidity shall not affect any of the remaining articles, paragraphs, sentences, clauses and phrases of this Code, since the same would have been enacted by this body without the incorporation in such Code of any such unconstitutional or invalid article, paragraph, sentence, clause or phrase.

SECTION 3. BE IT FURTHER ORDAINED that all Ordinances or parts of Ordinances in conflict herewith are hereby repealed.

SECTION 4. BE IT FURTHER ORDAINED that the repeal provided for herein shall not affect any offense or act committed or done, or any forfeiture incurred, before the effective date of this Ordinance.

SECTION 5. BE IT FURTHER ORDAINED that the public health, welfare and safety being affected by the provisions hereof, the provisions of this Ordinance are hereby declared to be emergency by nature and the same shall be effective immediately upon adoption.

/s/ Curt Siegelin
CURT SIEGELIN, MAYOR

/s/ S. Boyd Jones
S. Boyd Jones, City Clerk

INTRODUCED and ADOPTED: July 7, 1967.

I hereby certify that the above and foregoing is a true and correct copy of ORDINANCE NO. _____ of the City of Bogalusa, Louisiana.

S. Boyd Jones, City Clerk

ORDINANCE NO. 755

AN ORDINANCE PROHIBITING PARADES, PROCESSIONS, MARCHES OR DEMONSTRATIONS ON COLUMBIA STREET AND STREETS INTERSECTING COLUMBIA STREET BETWEEN ITS INTERSECTION WITH SIXTH STREET AND WILLIS AVENUE, PROVIDING A PENALTY FOR VIOLATION THEREOF, REPEALING ANY ORDINANCE OR PARTS OF ORDINANCES IN CONFLICT HERewith, PROVIDING FOR THE EFFECT OF THE REPEAL, AND MAKING THE PROVISIONS HEREOF EMERGENCY BY NATURE.

SECTION ONE: BE IT ORDAINED by the Commission Council of the City of Bogalusa, Louisiana, in special session convened, that the following ordinance is hereby adopted:

A. No parades, demonstrations or marches shall be permitted on Columbia Street between its intersection with Sixth Street and Willis Avenue, or any other street intersecting Columbia Street between the intersection of Columbia Street and Sixth Street and Columbia Street and Willis Avenue.

B. Whoever violates the provisions of this Ordinance shall be fined not more than One Hundred and No/100 (\$100.00) Dollars or shall be confined not more than ninety (90) days, or both.

SECTION TWO: BE IT FURTHER ORDAINED that this Ordinance shall not apply to:

- (1) Funeral processions;

- (2) A governmental agency acting within the scope of its functions;
- (3) Lawful picketing on public sidewalks.

SECTION THREE: BE IT FURTHER ORDAINED that all Ordinances or parts of Ordinances in conflict herewith are hereby repealed.

SECTION FOUR: BE IT FURTHER ORDAINED that the repeal provided herein shall not affect any offense or act committed or done, or any penalty of forfeiture incurred before the effective date of this Ordinance.

SECTION FIVE: BE IT FURTHER ORDAINED that the public health, welfare and safety being affected by the provisions hereof, this Ordinance is hereby declared to be emergency by nature and the same shall be effective immediately upon adoption.

/s/ Curt Siegelin
CURT SIEGELIN, MAYOR

/s/ S. Boyd Jones
S. Boyd Jones, City Clerk

INTRODUCED and UNANIMOUSLY ADOPTED: July 7, 1967.

I hereby certify that the above and foregoing is a true and correct copy of ORDINANCE NO. _____ of the City of Bogalusa, Louisiana.

S. Boyd Jones, City Clerk