

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

-  
- DIVISION D  
-  
-

-----  
MEMORANDUM IN SUPPORT OF PLAINTIFF'S  
MOTION FOR A PRELIMINARY INJUNCTION

I. STATEMENT OF THE CASE

This action has been instituted by Robert Hicks  
on behalf of all the Negro citizens of Bogalusa. The  
defendants are the Mayor, the Chief of Police, the  
Public Safety Commissioner and the members of the  
Commission Council of Bogalusa. The purpose of the  
action is to secure a declaratory judgment that Article  
83 (E) of the Municipal Criminal Code of Bogalusa is  
unconstitutional and to enjoin its enforcement.

Article 83 (E) provides that:

"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."

Plaintiff contends that Article 83 (E) is unconstitu-  
tional on its face and as applied, in that:



1. It amounts to an unreasonable and suppressive regulation of rights secured by the First and Fourteenth Amendments;

2. It violates the equal protection clause of the Fourteenth Amendment, by virtue of its exceptions for certain categories of activities.

3. It fails to provide a clear standard differentiating conduct that is lawful from conduct that is unlawful;

On August 1, 1966, plaintiff applied to Defendant Knight for a permit to conduct a march on the evening of August 2, 1966. This permit was denied on the authority of Article 83 (E). The issuance of a preliminary injunction against the enforcement of Article 83 (E) is necessary to prevent the continued violation and suppression of the constitutional rights of plaintiff and those similarly situated.

## II. ARTICLE 83 (E) UNREASONABLY RESTRICTS FIRST AMENDMENT RIGHTS

A. Peaceful Parades and Marches for the Expression of Grievances are Within the Protection of the First Amendment.

It is firmly established that peaceful parading and marching for the expression of grievances is within the protection of the First Amendment. In Cox v. Louisiana, 379 U.S. 559 (1965) the Supreme Court stated that:

"...We reaffirm the repeated holdings of this Court that our constitutional command of free speech...encompasses peaceful social protest, so important to the preservation of the freedoms treasured in a democratic society..." (379 U.S. at 574)

In Edwards v. South Carolina, 372 U.S. 229, 235 (1963) the Court specifically held that marching to protest racial discrimination is protected by the First Amendment.

The constitutional protection afforded to peaceful protest was recognized by the Court of Appeals for this



Circuit in Kelly v. Page, 335 F. 2d 114, 119 (5th Cir. 1964). See also Williams v. Wallace, 240 F. Supp. 100 (M.D. Ala. 1965), where the Court issued an order enjoining the Governor of Alabama and others from interfering with a march from Selma to Montgomery to protest the denial to Negroes of the right to vote.

B. The State Has Only A Limited Right to Regulate Peaceful Parades and Marches.

Even though peaceful parades and marches to protest grievances are within the protection of the First and Fourteenth Amendments, the state may impose certain limited regulations on this activity in furtherance of its legitimate interests. Such limitations however, may not be overly broad or unduly restrictive. As the Supreme Court stated in Cox v. Louisiana, supra,

"There is [a]...plain requirement...for regulation of conduct that involves freedom of speech and assembly not to be so broad in scope as to stifle First Amendment freedoms, which 'need breathing space to survive',..." (379 U.S. at 575)

In Kelly v. Page, supra, the Court of Appeals for the Fifth Circuit stated:

"[The] rights to picket and to march and to assemble are not to be abridged by arrest or other interference, so long as asserted within the limits of not unreasonably interfering with the rights of others to use the sidewalks and streets, to have access to store entrances, and where conducted in such manner as not to deprive the public of police and fire protection." (335 F. 2d at 119)

While the Courts may allow some reasonable regulation of marching and picketing, these First Amendment rights may not be suppressed under "the guise of regulation" Hague v. Congress of Industrial Organizations, 307 U.S. 496, 516 (1939), nor may regulation "be used as a medium to thwart or intrude upon First Amendment rights." Kelly v. Page, supra, 335 F. 2d at 119.



C. The Restrictive Effect of Article 83 (E).

Article 83 (E) expressly prohibits all marches, parades and demonstrations after 6:00 p.m., seven days a week. It is plaintiff's position that this is an unreasonable restriction of First Amendment rights, and that under all the circumstances of this case the City of Bogalusa must leave some evening hours open to peaceful parades and demonstrations. The failure of Article 83 (E) to do so renders it unconstitutional. In Schneider v. Irvington, 308 U.S. 147, 161 (1939), the Court stated that "[i]n every case...where legislative abridgment of [First Amendment] rights is asserted, the Courts should be astute to examine the effect of the challenged legislation." In this case, the salient facts are these:

First, many adult Negroes in Bogalusa are required to be at their places of employment until five o'clock or later in the afternoon. Many Negroes work on Saturday, as well as Monday through Friday. Sunday is the Sabbath and some persons feel bound not to engage in political activities on that day. Consequently, many Negroes are not able to engage in parades or marches before the hour of 6:00 p.m.

Second, paragraph D of Article 83 prohibits marching, parading or picketing in or near the main business district of the city, between the hours of noon to 2:30 p.m. and the hours of 4:00 p.m. to 5:30 p.m.\* This provision severely restricts peaceful marches or parades during the daylight

---

\*Paragraph D also prohibits marching in this area between the hours of 6:00 a.m. and 8:00 a.m. and 9:30 p.m. and 10:30 p.m., hours during which all marching or parading is proscribed by paragraph E. The prohibition from 4:00 p.m. - 5:30 p.m. is particularly restrictive because students are in school until shortly before those hours.



hours (a) because the prohibited area is the main business district of the city; (b) because the prohibited area fronts the Crown Zellerbach plant, the object of many of the grievances connected with employment opportunities; (c) because the prohibited area forms the only passage from the southern to northern end of the city and the prohibition thereby prevents marches from the Negro neighborhood in southern Bogalusa to any location in the northern portion of the city, including the municipal buildings, the shopping center and the Negro neighborhood and church in that section. In addition, the ordinance prohibits, during the hours specified, parades in a major Negro neighborhood, itself.

While there is question as to the validity of the restrictions contained in paragraph D of Article 83, plaintiff does not challenge this provision at this time. It is clear, however, that the restrictions on daytime marching imposed by paragraph D, together with the restrictions on the activities of many of the Negro citizens of Bogalusa that are imposed by their employment and other obligations, result in a situation whereby the early evening hours are the only suitable hours for effective protest marches or parades. The City, through its enactment of Article 83 (E) has attempted to block all protests during these hours.

Third, there is no justifiable basis for the absolute prohibitions of Article 83 (E). Obviously traffic is lighter in the evening than during the day. Noise control is not a valid basis for prohibiting a parade as early as 6:00 p.m. Indeed, the City regularly permits school parades during the evening hours. See Hicks Affidavit, paragraph 7. Parades in the early evening would not interfere with any of the legitimate interests of residents of the City.



Fourth, the City has asserted that the dangers of violence against the marchers provides an adequate basis for the prohibition. But it is well settled that the alleged inability of the state to maintain law and order is not, absent a specific showing of a clear and present danger, a valid basis upon which to abridge First Amendment rights. See Watson v. Memphis, 373 U.S. 526 (1963); Cox v. Louisiana, supra, 379 U.S. 536, 550-51 (1965); Cooper v. Aaron, 358 U.S. 1 (1958). "[C]onstitutional rights may not be denied simply because of hostility to their assertion or exercise." Watson v. Memphis, supra, 373 U.S. at 535. If there is a threat of violence by others, it is the obligation of the police to meet it and not to abdicate their duty by banning peaceful demonstrations. In the Selma March case, the court said, "plaintiffs and the members of the class they represent are entitled to police protection in the exercise of this constitutional right to march along U. S. Highway 80..." Williams v. Wallace, supra, 240 F. Supp. at 109. "Uncontrolled official suppression...cannot be made a substitute for the duty to maintain order in connection with the exercise of [First Amendment rights]". Hague v. Congress of Industrial Organizations, supra, 307 U. S. at 516.

III. ARTICLE 83 (E) VIOLATES THE EQUAL PROTECTION  
CLAUSE OF THE FOURTEENTH AMENDMENT

The Equal Protection Clause of the Fourteenth Amendment prohibits any restrictions on First Amendment rights that do not apply equally to all persons and groups. In Cox v. Louisiana, 379 U. S. 536 (1965) the Supreme Court struck down a statute which precluded all street assemblies and parades, except for those conducted by labor unions. Justice Black, concurring, stated that:



"...by specifically permitting picketing for the publication of labor union views, Louisiana is attempting to pick and choose among the views it is willing to have discussed on its streets. It thus is trying to prescribe by law what matters of public interest people whom it allows to assemble on its streets may and may not discuss. This seems to me to be censorship in a most odious form, unconstitutional under the First and Fourteenth Amendments. And to deny this appellant and his group use of the streets because of their views against racial discrimination, while allowing other groups to use the streets to voice opinions on other subjects, also amounts, I think, to an insidious discrimination forbidden by the Equal Protection Clause of the Fourteenth Amendment." 379 U.S. at 581.

Article 83, like the statute in Cox, contains exceptions to its general prohibitions. Paragraph F of Article 83 exempts funeral processions, and marches and parades connected with educational or governmental functions.\* Thus while parades to protest racial discrimination are prohibited after 6:00 p.m. and are severely curtailed during daylight hours, parades or rallies at night in connection with a high school football game are not prohibited. If pep rallies in the streets are to be permitted, it would turn the priorities of a democratic society upside down to uphold a prohibition on the exercise of First Amendment rights.

---

\* Paragraph F of Article 83 provides:

"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 exceptions of Article 83 (F) emphasize that Article 83 (E) is not so much concerned with traffic regulations (Compare, Cox v. Louisiana, supra, 379 U.S. 536, 556, n. 14 (1965)), as with an official determination as to the kinds of marches and parades that may be allowed on the Bogalusa City streets. The exceptions to Article 83 constitute arbitrary classifications that render the restrictions invalid under the Fourteenth Amendment.

Article 83 (E) is particularly invidious since its purpose and effect is to block the right of Negroes in Bogalusa to protest racial grievances. Negroes are the only persons actually affected by Article 83 (E). They are the only persons who have indicated an intention to march in the evening. They are the only persons in the community with grievances that are likely to be protested in this manner. They are the only persons who have marched to protest grievances in the past. The timing of the adoption of Article 83 (E) soon after the expression of intent to engage in evening marches by Negro leaders, combined with the fact that a prohibition on evening parades is not contained in the Model Municipal Code on which the new Criminal Code of Bogalusa was based, strongly indicates that the purpose of the provision is to suppress the protest activities of the Negro community.\*

---

\* The existing Municipal Criminal Code of Bogalusa was introduced on September 14, 1965, weeks after the announcement by Negro leaders of an interest in evening marches. It was adopted on October 5, 1965. The Code was based on the Model Municipal Code published by the Louisiana City Attorneys Association, Louisiana Municipal Association and the Junior Bar Section of the Louisiana Bar Association. See Municipal Criminal Code of Bogalusa, (Preface). The model Municipal Code does not include a prohibition comparable to that set forth in Article 83 (E).



IV. ARTICLE 83 (E) IS INVALID IN THAT IT DOES NOT PROVIDE A CLEAR STANDARD FOR DISTINGUISHING LAWFUL FROM UNLAWFUL CONDUCT

Due process of law requires that a criminal statute plainly state the scope of prohibited conduct. Jordan v. De George, 341 U.S. 223 (1951); Winters v. New York, 333 U. S. 507 (1947). This requirement assumes special significance where the statute regulates First Amendment rights. Herndon v. Lowry, 301 U. S. 242, 264 (1936); Stromberg v. California, 283 U. S. 359, 369 (1930). The Supreme Court has made clear that "a vague and broad statute [which] tends itself to selective enforcement against unpopular causes" is invalid. N.A.A.C.P. v. Button, 371 U.S. 415 (1963). Where a vague statute is susceptible to application in areas protected by the First Amendment, it must be struck down. Thornhill v. Alabama, 310 U.S. 88 (1939); Burstyn v. Wilson, 343 U.S. 495 (1952); Smith v. California, 361 U.S. 147, 150-51 (1959).

Article 83 (E) prohibits "demonstrations." The ordinance does not define "demonstrations." The term can be interpreted to prohibit meetings, rallies and other forms of peaceful assembly. Moreover, Article 83 (E) is not limited to "demonstrations" on the streets, and presumably may be interpreted to apply to meetings in churches, halls or individual homes. These applications of the ordinance would be manifestly unconstitutional. The potential application of this vague statute to activity absolutely protected by the First Amendment requires that it be struck down.

V. THIS COURT SHOULD EXERCISE ITS EQUITY POWER TO ENJOIN THE ENFORCEMENT OF ARTICLE 83 (E)

In Dombrowski v. Pfister, 380 U.S. 483 (1965), the Supreme Court held that a federal court should not abstain



from deciding the constitutionality of a state statute which purports to regulate free expression:

"We hold the abstention doctrine is inappropriate for cases such as the present one where...statutes are justifiably attacked on their face as abridging free expression..." 380 U.S. at 489-90.

Replying to the suggestion that the constitutional issue could be raised in the defense of a prosecution under the statute, the Court found that the "chilling effect" of a statute unconstitutionally abridging First Amendment rights could not be satisfactorily eliminated "through a series of criminal prosecutions..." 380 U.S. at 489.

Concurring in England v. Louisiana State Board of Medical Examiners, 375 U.S. 411 (1963), Mr. Justice Douglas expressed his fear that "litigants seeking the protection of the federal courts for assertion of their civil rights will be ground down slowly by the passage of time and the expenditure of money in state proceedings, leaving the ultimate remedy....an illusory one." Delay in the vindication of First Amendment rights is especially costly to the values of a free society. Baggett v. Bullitt, 377 U.S. 360, 379 (1964). Where a statute deters constitutionally protected conduct" the free dissemination of ideas may be the loser" unless rights are promptly vindicated. Smith v. California, 361 U.S. 147, 151 (1959). [T]hreat of sanctions may deter...almost as potently as the actual applications..." N.A.A.C.P. v. Button, 371 U.S. 415, 433 (1963). Substantial loss or impairment of freedom of expression is a sufficient basis for a finding of irreparable injury, justifying the issuance of a preliminary injunction. Dombrowski v. Pfister, supra, 380 U.S. at 486.



VI. CONCLUSION

Plaintiff does not challenge the power of the City to regulate parades in a reasonable and non-discriminatory manner. He does not suggest that any group is entitled to picket at any hours of the day or night, or without adequate notice to the proper authorities. Plaintiff merely asserts that in prohibiting all parades in the early evening hours, the ordinance is over-broad and without substantial justification. The effect is to deny Negro citizens of Bogalusa a reasonable opportunity to peacefully and lawfully air their grievances. This is a result that may not be achieved.

Plaintiff prays that a preliminary injunction be issued enjoining the enforcement of Article 83 (E), or in the alternative enjoining enforcement of Article 83 (E) to parades or marches concluded before 9:30 p.m.

Respectfully submitted,

COLLINS, DOUGLAS & ELIE  
2211 Dryades Street  
New Orleans, Louisiana  
523-5197

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 Parish Street  
Jackson, Mississippi

Dated: August ,1966