

Minute Entry
August 30, 1967
HEEBE, J.

ROBERT HICKS

Civil Action

versus

No. 66-225

JESSE H. CUTRER et al

Section "B"

This cause came on for hearing on a previous day on the motion of the plaintiff for a preliminary injunction to restrain the defendants from enforcing the provisions of Ordinances numbers 757 and 758 of the City of Bogalusa. Insofar as Part D of Section 1 of Ordinance number 758 is concerned, the plaintiff's motion is GRANTED and the defendants are hereby ENJOINED from enforcing the provisions of Part D. With respect to the remainder of Ordinance 758 and the provisions of Ordinance 757, plaintiff's motion is DENIED.

R E A S O N S

Ordinance number 758, Section 1, Part D, reads as follows:

"D. Prohibitions.

(1) No parades, 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 to adequately patrol and protect such parades would require the diverting of police to the extent that less than six policemen remain on patrol duty to furnish police protection to the remainder of the City."

Although it is clear that there is a great difference between "pure speech" and "speech mixed with conduct", and that the latter may quite readily be restricted for the good of the state and the public under properly drawn and fairly administered statutes and regulations, see Cox v. Louisiana, 379 U.S. 436 (1965), it is not at all clear to what extent such restrictions may be

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imposed. Although the Supreme Court in Cox indicated that the "control of travel on the streets" is to be given high priority on the list of justifiable reasons for limitations on assemblies and marches, 379 U.S. at 554, 555, certainly rights of peaceable assembly and peaceable protest are just as important as the smooth flow of traffic on the streets. A balancing of all factors, the interest of the public as well as the rights of individuals to freely speak and assemble and protest their grievances, must be made in each case on the particular facts and circumstances present therein.

Although this Court agrees with Justice Black and his statement that "people who want to propagandize protests or views [do not] have a constitutional right to do so whenever and however and wherever they please," Adderley v. Florida, 385 U.S. 39, 48 (1966), and that certain buildings and grounds, whether devoted to the general use of the public or to a specific governmental function, may for good reasons be "closed off" to marches and assemblies, nevertheless we deem it highly important that the opportunity to march and to assemble somewhere, and without burdensome and unnecessary inconvenience to those exercising these rights, be provided by the States.

It is this Court's opinion, after a review of the record, all evidence presented, and a full consideration of the particular facts and circumstances present in the City of Bogalusa, that the quoted provisions of Part D(1) of Section 1 of Ordinance 758 unduly burdens the plaintiffs and inconveniences them in the exercise of their full and free rights of speech and assembly. The quoted provisions pose the problem, not of the "fencing off" of a specific or several specific public places, but of the effective prohibition of all assemblies, parades and other such gatherings on all public places in the City of Bogalusa between the hours of six in the evening and eight in the morning. Marches and assemblies of any substantial length of time are thus effectively prohibited

on working days. The State maintains that it is incapable of protecting the marchers and of keeping the peace generally during periods of marching and assembling after dark; but for five or six months of each year, nightfall comes to Bogalusa two or three hours after the 6:00 p.m. deadline.

The provisions contained in subpart D(2) of Ordinance 758 are no less burdensome to peaceful assemblies and parades in Bogalusa. Moreover, D(2) places too wide discretion in the hands of local officials to determine which expressions should and which should not be allowed. See Cox v. Louisiana, supra.

On the other hand, we find Ordinance 757 to be a fair and reasonable regulation, very necessary to the interest of the public in Bogalusa and, because of its limited scope, not burdensome to the rights of individual citizens to conduct peaceable and meaningful marches and assemblies elsewhere on the public streets.

Ordinance 757 prohibits all parades (other than funeral processions and activities of "governmental agencies acting within the scope of their functions") on Columbia Street between its intersection with Sixth Street and Willis Avenue. Columbia Street is the main thoroughfare in the city and the evidence in the case convinces us that the prohibition is not only reasonable, but necessary to insure the flow of traffic through and across the city, and that any good to be achieved by opening the area to street parades and assemblies is offset by the considerations of the good and welfare of the general public. Moreover, the ordinance specifically reserves the rights of persons, including these petitioners, to picket and assemble on the sidewalks of Columbia Street. This consideration, together with the fact that the rest of the public streets are available for marches, strongly fortifies our finding that the Ordinance number 757 is a reasonable regulation and not subject to constitutional attack.

For the foregoing reasons, Part D of Section 1 of

Ordinance 758 of the City of Bogalusa is declared unconstitutional, in violation of the rights of the petitioners under the due process clause of the Fourteenth Amendment, and the defendants are ENJOINED from enforcing its provisions, recognizing and reserving to defendants however, their power to enact reasonable and less burdensome provisions and limitations on the times for assemblies and parades. With respect to the remainder of Ordinance 758 and the provisions of Ordinance 757, petitioner's motion is DENIED.

Frederick A. Ridenour