

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

MR. ROBERT HICKS and	:	
MR. A. Z. YOUNG, on their own	:	
behalf and on behalf of all	:	
others similarly situated,	:	
	::	
PLAINTIFFS,	:	CIVIL ACTION
	:	
vs.	:	NO. _____
	:	
JESSE H. CUTRER, individually, as	:	
Mayor, and as a Member of the	:	
Commission Council of Bogalusa, Louisiana,	:	
ARNOLD SPEARS, individually, as	:	
Commissioner of Safety, and as a Member	:	
of the Commission Council of Bogalusa,	:	
Louisiana, MARSHALL HOLLOWAY, "JOHN"	:	
TALBERT, ROBERT RESTER, individually	:	
and as Members of the Commission	:	
Council of Bogalusa, Louisiana,	:	
CLAXTON KNIGHT, individually and as	:	
Chief of Police of Bogalusa, Louisiana,	::	
	:	
DEFENDANTS.	:	

COMPLAINT

I. STATEMENT AS TO JURISDICTION

1. This is a civil action brought by the plaintiffs on their own behalf and on behalf of others similarly situated for a temporary restraining order and preliminary and permanent injunction to prevent the deprivation under color of Louisiana law of certain rights, privileges and immunities secured to the plaintiffs by the Constitution of the United States as hereinafter more fully set forth. The suit also seeks a judgment declaring void and unconstitutional a certain ordinance of the City of Bogalusa, Louisiana, whose purpose and effect is to deprive the plaintiffs of their constitutional rights.

2. Jurisdiction is conferred on this court pursuant to Title 42 U.S.C., Sections 1981, 1983, 1985 and Title 28 U.S.C., Sections 1343, 2201 and 2202.

3. Plaintiffs assert violations by the defendants of Amendments I and XIV to the Constitution of the United States of America and of Title 42 U.S.C. 1983.

4. Plaintiffs Robert Hicks, and A. Z. Young are citizens of the United States and residents of the City of Bogalusa, Louisiana. They are members of the Negro race and sue herein on their 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 the court. There are common questions of law and fact affecting all members of the class, and common relief is sought.

5. Defendant Jesse H. Cutrer is the Mayor of Bogalusa, Louisiana, authorized, empowered and directed by the statutes of the State of Louisiana to have superintending control of all the officers and affairs of the municipality and to take care that the laws and ordinances are executed. He is sued herein individually and in his capacity of Mayor of the City of Bogalusa, Louisiana.

6. Defendants, Marshall Holloway, "John" Talbert, Arnold Spears, Robert Rester, Jesse H. Cutrer are Members of the Commission Council of Bogalusa, Louisiana, and as such serve as the governing authorities of the municipality. They are sued herein individually and in their official capacity.

7. Defendants Claxton Knight and Arnold Spears are the Chief of Police and the Commissioner of Safety of the City of Bogalusa, Louisiana, and as such are the chief public officials of the municipality responsible for the preservation of peace and public safety in the city. They are sued herein individually and in their official capacity.

II. FACTUAL ALLEGATIONS

8. Plaintiffs and the members of the class which they

represent, have been and are engaged in activities in the State of Louisiana and the city of Bogalusa to improve educational opportunities for Negroes, to provide opportunities for Negroes to vote who are not now permitted to vote in Bogalusa (Washington Parish), Louisiana, to assure to Negroes the right to avail themselves of public facilities and accommodations as well as facilities and accommodations subject to the Civil Rights Act of 1964, and generally to provide due process of law and equal protection of the laws to Negroes who are deprived of these rights in Bogalusa, Louisiana. These activities include but are not limited to the organization of peaceful campaigns by Negroes in Washington Parish, Louisiana, to enable them to exercise their constitutional right to vote, and the organization of peaceful demonstrations to protest the existence of discrimination, segregation and denials of constitutional rights to the citizens of Bogalusa, Louisiana.

9. On April 7, 1965, with the purpose and effect of frustrating and making ineffective the efforts of the plaintiffs set forth in Paragraph 8, defendants enacted an ordinance to regulate and prevent plaintiffs and members of their class from exercising their right of free speech guaranteed to them by the First and Fourteenth Amendments to the Constitution of the United States. The ordinance numbered 709 is entitled:

"AN ORDINANCE amending and re-enacting Section 38 of Chapter 18 of the City of Bogalusa Code; repealing all ordinances or parts of ordinances in conflict herewith."

A complete copy of this ordinance is attached as an exhibit to this complaint and is made part hereof and incorporated as if fully set forth herein.

10. Since April 7, 1965, members of the Plaintiffs' class have been arrested under this ordinance and charged with disturbing the peace.

III. CAUSES OF ACTION

11. Section 1 of the ordinance set forth in the exhibit to this complaint and specifically sub-sections 5, 6, 7, 9, 10 and 11 of Section 1 are void and unconstitutional on their face in that they are vague and overbroad and deny plaintiffs' freedom of speech in violation of the First and Fourteenth Amendments to the Constitution of the United States of America.

IV. OTHER ALLEGATIONS

14. This suit involves a genuine case or controversy between the plaintiffs and the defendants because the ordinance as heretofore set forth affects and deters the lawful and peaceful activities which the plaintiffs and the classes which they represent have already undertaken and will undertake.

15. The plaintiffs have no adequate remedy at law and will suffer irreparable injury unless a temporary restraining order and a preliminary and permanent injunction are granted.

16. Unless the above mentioned ordinance is declared void and unconstitutional, and the defendants are enjoined from enforcing it, plaintiffs and the classes which they represent will be deprived of their constitutional rights to express themselves freely and peacefully, to assemble, to move about freely, to petition for redress of grievances and to enjoy the equal protection of the law. Members of the class which plaintiffs represent have been and will continue to be arrested, incarcerated, and tried for exercising rights guaranteed to them by the Constitution of the United States of America.

V. PRAYER FOR RELIEF

17. Plaintiffs respectfully pray that:

1) Defendants be permanently enjoined from enforcing and effectuating the above mentioned ordinance and from making arrests, conducting trials or incarcerating persons or taking any

other action pursuant to that ordinance.

2. That a temporary restraining order and a preliminary injunction be granted to plaintiffs enjoining defendants from arresting and incarcerating plaintiffs and members of the class which they represent and from taking any other action pursuant to the above mentioned ordinance.

3. That plaintiffs be granted such other relief as may be just and proper.

Respectfully submitted,

ROBERT F. COLLINS

NILS R. DOUGLAS

LOUIS E. ELIE

2211 DRYADES STREET

NEW ORLEANS, LOUISIANA

523-5197

BY: _____

OF COUNSEL:

CARL RACHLIN

38 PARK ROW

NEW YORK 38, NEW YORK

ALVIN J. BRONSTEIN

603 N. FARISH STREET

JACKSON, MISSISSIPPI

VERIFICATION

STATE OF LOUISIANA

PARISH OF ORLEANS

I, Robert F Collins, of lawful age, first duly sworn upon oath, depose and say:

That I am a member of the bar of Louisiana and admitted to practice before the United States District Court for the Eastern District of Louisiana;

That I am one of the attorneys of record for the plaintiffs in the action herein;

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

That the matters set out in said complaint are true and correct as therein stated to the best of my knowledge, information and belief.

Sworn to and subscribed before me
this ____ day of June, 1965.

Notary Public

My commission expires:

ORDINANCE NO. 709

AN ORDINANCE amending and re-enacting Section 38 of Chapter 18 of the City of Bogalusa Code; repealing all ordinances or parts of ordinances in conflict herewith.

Section 1. BE IT ORDAINED by the Commission Council of the City of Bogalusa, Louisiana, in special session convened Section 38 of Chapter 18 of the City of Bogalusa Code be and the same is re-enacted and amended to read as follows:

"18-38. Disturbing the peace.

Any person disturbing the peace of the City shall be guilty of a misdemeanor.

Disturbing the peace is the doing of any of the following in such a manner as would foreseeably disturb or alarm the public:

1. Engaging in a fistic encounter; or
2. Using of any unnecessarily loud, offensive, or insulting language; or
3. Appearing in an intoxicated condition; or
4. Engaging in any act in a violent and tumultuous manner by any three or more persons; or
5. Holding of an unlawful assembly; or
6. Interruption of any lawful assembly of people; or
7. Commission of any other act in such a manner as to unreasonably disturb or alarm the public.
8. Refusing to leave the premises of another when requested to do so by the owner, lessee, or any employee thereof when under such circumstances that a breach of the peace may be occasioned thereby.
9. 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.
10. Picketing by three (3) or more persons of any place of business within the City limits.
11. Interfering with any person or persons entering or leaving any place of business within the City limits.

Section 2. Whoever shall violate the provisions of this ordinance shall be punished by a fine not exceeding one hundred and no/100 (\$100.00) dollars, or imprisonment not exceeding ninety (90) days, or both.

Section 3. BE IT FURTHER ORDAINED that all ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

(s) Jesse H. Cutrer, Jr., Mayor

(s) Bertha Pierce, City Clerk

Introduced, Made Emergency and Adopted; April 7, 1965.

I hereby certify that the above and foregoing is a true and correct copy of ORDINANCE NO. 709 of the City of Bogalusa, Louisiana.

(s) Bertha Pierce
Bertha Pierce, City Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA
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ROBERT HICKS, et al

PLAINTIFFS

vs.

CIVIL ACTION

NC. _____

JESSE H. CUTRER, et al

DEFENDANTS

MOTION FOR TEMPORARY RESTRAINING ORDER

Upon the verified complaint, the Exhibit attached thereto, the plaintiffs move the Court to issue a temporary restraining order restraining defendants, their employers, agents, successors and all persons acting in concert or participation with them from enforcing the ordinance of the City of Bogalusa numbered 709 entitled:

"AN ORDINANCE AMENDING AND REENACTING SECTION 38 OF CHAPTER 18 OF THE CITY OF BOGALUSA CODE; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH."

and from arresting, incarcerating, trying, or otherwise taking any action against any person pursuant to this ordinance, pending hearing and disposition of plaintiffs' Motion for Preliminary Injunction.

The existence of this ordinance causes irreparable harm to plaintiffs and the class they represent by virtue of its inhibitory effect on activity protected by the First and Fourteenth Amendments to the United States Constitution.

Respectfully submitted,

Collins, Douglas & Elie
2211 Dryades St.
New Orleans, Louisiana

Alvin J. Bronstein
603 No. Farish St.
Jackson, Mississippi

Carl Rachlin
38 Park Row
New York, New York

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DEFENDANTS

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NO. _____

ORDER

On consideration of the verified Complaint filed herein and the Exhibit attached thereto,

It appearing that unless this Court issue its temporary restraining order as prayed for by the plaintiffs, plaintiffs will suffer immediate and irreparable injury, it is this _____ day of June, 1965

ORDERED that the defendants, their employees, agents, successors and all persons acting in concert or participation with them, be, and they are hereby restrained from enforcing the ordinance of the City of Bogalusa numbered 709 entitled:

"AN ORDINANCE AMENDING AND REENACTING SECTION 38 OF CHAPTER 18 OF THE CITY OF BOGALUSA CODE; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH."

and from arresting, incarcerating, trying, or otherwise taking any action against any person pursuant to this ordinance from this day forth until this order is terminated.

United States District Judge

DATED

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ROBERT HICKS, et al

PLAINTIFFS

VS.

CIVIL ACTION

JESSE H. CUTRER, et al

NC. _____

DEFENDANTS

MOTION FOR PRELIMINARY INJUNCTION

Upon the verified complaint and the ordinance of the City of Bogalusa, Louisiana annexed thereto, the plaintiffs move the Court as follows:

To issue a preliminary injunction restraining defendants, their employees, agents, successors and all persons acting in concert or participation with them from enforcing the ordinance numbered 709 entitled:

"AN ORDINANCE AMENDING AND REENACTING SECTION 38 OF CHAPTER 18 OF THE CITY OF BOGALUSA CODE; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith."

and from arresting, incarcerating, trying, or otherwise taking any action against any person pursuant to this ordinance.

The existence of this ordinance causes irreparable harm to plaintiffs and the class they represent by virtue of its inhibitory effect on activity protected by the First and Fourteenth Amendments to the United States Constitution.

Respectfully submitted,

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2211 Dryades St.
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DEFENDANTS

ORDER TO SHOW CAUSE

Upon the verified complaint herein, and upon the copy of the ordinance of the City of Bogalusa, Louisiana, it is hereby:

ORDERED that on June _____, 1965, at _____ defendants shall show cause at the United States District Court for the Eastern District of Louisiana in the United States Court-house at _____, Louisiana, why they should not be preliminarily enjoined during the pendency of this litigation from enforcing and effectuating said ordinance and from making arrests, conducting trials or incarcerating persons by virtue of the said ordinance and from in any other way taking action under or by virtue of said ordinance; and it is further

ORDERED that the United States Marshall be directed to serve a certified copy of this order on each defendant, and to endorse his return on the original hereof.

United States District Judge

Dated: