

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
MIDDLE DIVISION**

FILED

2022 SEP 27 P 2:12

U.S. DISTRICT COURT
N.D. OF ALABAMA

GARY WAYNE WRIGHT, II)
)
Plaintiff)
)
v.)
)
MARSHALL COUNTY, ALABAMA, et al.)
)
Defendants)

Civil Case: 4:22-CV-615 RDP

Claim of Unconstitutionality

PLAINTIFF’S BRIEF ON 42 U.S.C. § 1985(3) CONSPIRACY

COMES NOW the Plaintiff, Gary Wayne Wright II (“Wright”) as pro se plaintiff proceeding in forma pauperis, and against the Defendants, Marshall County, Alabama (“Marshall County”), their employees, agents, and successors in office, and in support therefor states as follows:

1. Marshall County passed an unconstitutional Picketing Resolution (the “Resolution”) under the guise of a legislative act in order to restrict lawful First Amendment activities, to frustrate due process, and to deny the ability to redress grievances against the government.

2. Defendants created a self-inflicted and perpetual controversy as described below with improper display of public monuments, and then they (and State of Alabama) were unable to deal with the consequences. Defendant Sheriff Sims has well-known and well-documented corruption problems in the Marshall County Sheriff’s Office¹, and due to mismanagement the department can no longer operate safely or carry out their duties due to the budget shortfalls.²

¹ <https://www.propublica.org/article/alabama-sheriffs-accusations-impeding-successors>

²The last audit data was for period ending in 2016. A forensic accounting audit will be requested.

3. There were several underlying motivations for the conspiracy (including racial animus), but primarily the idea was proposed by Defendant Sheriff Sims to restrict the lawful protests because of overtime and departmental budgetary reasons. Defendant Maze, as the county attorney, was responsible for crafting and reviewing the Resolution. This is a most favorable reading of the evidence for the Defendants.

4. The remaining Defendants were all aware of the true unlawful intentions of the Resolution to restrict lawful protests, and they still not only passed the Resolution, but each have already personally witnessed it being abused and misrepresented in court.

5. All of the required elements of the conspiracy are obvious based on the evidence, and most of the evidence is already public record. The unlawful goal (target offense) was to restrict First Amendment Rights to protest for several reasons (including racial animus). There was a meeting of the minds of two or more Defendants who conspired to achieve the unlawful goal. All named Defendants were either initial participants in the crafting and passage of the Resolution, and/or they have knowingly abused the Resolution through its enforcement and/or abuse of the legal process in furtherance of the initial act of conspiracy.

BACKGROUND

6. Marshall County is located in north Alabama and according to the latest United States Census³ has a race composition of 92.8% White and 3.2% Black.

7. Much of Marshall County even today still has the reputation of a “sundown town” where minorities face threats, violence, and fear of lynching by the display of nooses and other symbols of white supremacy and intimidation. The Plaintiff is a cisgender White male, so he is able to hear the conversations freely being held in these courthouses by public officials when no minorities are present. If the racial animus displayed in and by Marshall County causes the

³<https://www.census.gov/quickfacts/fact/table/marshallcountyalabama,US/PST045221>

Plaintiff severe emotional distress, he can only imagine how the small community of minorities feel when they are repeatedly forced to be confronted by these symbols of hate. As long as those symbols remain, there shall be a valid reason to protest within the sight and sound of the controversy.

8. The “Ku Klux Klan Act” was enacted as part of the Civil Rights Act of 1871, and later codified as 42 U.S.C. § 1985(3) to provide citizens with a course of action against conspiracies to violate constitutional rights. It is appropriate in its application to this case.

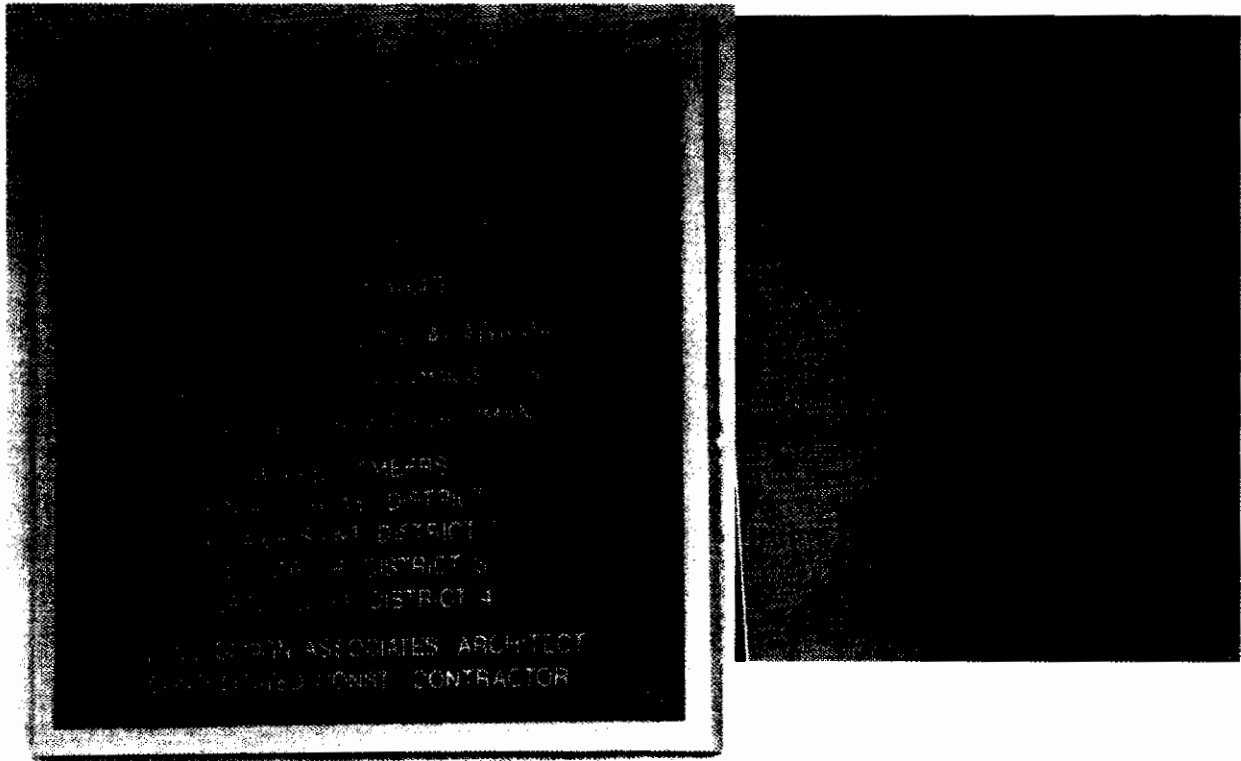
9. During the Civil War (1861-1865), the State of Alabama became part of the Confederacy under Jefferson Davis. Approximately four million soldiers fought each other in bloody battles resulting in over one million casualties.⁴

10. In 1848, Guntersville, Alabama became the seat of Marshall County. In 1883, a public water well was dug in the courthouse yard that was a public square used freely by the townspeople. In 1893, two cisterns were dug on the courthouse grounds so the public could fight fires and feed their livestock. In 1908, the cisterns were filled because of the complaints of mosquitoes. A replica antique water well marks the spot of the original location. The surrounding grounds of the courthouse were historically, and are clearly supposed to be, a public forum.

11. In 1914, the Women’s Temperance Union (a private organization) erected an ornate public water fountain near the old well on the courthouse grounds, as a public statement against the alcohol being served nearby. During the 1963 renovation of the courthouse, the fountain was removed and rightfully placed in the Guntersville Museum with a historical plaque that places it in the proper historical context.

⁴<https://www.nps.gov/civilwar/facts.htm>

12. The current courthouse in Guntersville was constructed in the Art Deco style in 1935. It was remodeled in 1963, and again in 1990 to its current Modern style.⁵



13. It was difficult for residents on Sand Mountain to access the Guntersville courthouse⁶, so in 1935 another courthouse was constructed in Albertville, Alabama. This image⁷ of the original courthouse construction is important to note, because the grounds surrounding the original building were open to the public (public forum) and it was a beautiful public space that was truly content neutral. It should be restored to its original state and have exterior grounds as a public forum.

⁵<http://encyclopediaofalabama.org/article/m-2966>

⁶<http://encyclopediaofalabama.org/article/m-2967>

⁷Alabama Department of Archives and History



THE NEVER-ENDING CONTROVERSY

14. After the Civil War, statues and monuments were erected throughout the country to honor the leaders and soldiers on both sides of the war. These monuments were placed on the blood-soaked battlefields and graves, which other than being displayed in museums in an accurate context, is the proper place for them.

15. Just as the government can't display symbols in favor of a particular religion on public property under the principle of Separation of Church and State, it should never get in the business of displaying monuments dedicated to specific wars on public property.

16. Even if there were no legal prohibition on the monuments, it is logistically impossible for the government to comply with the constitutional Equal Protection guarantees because, like religions, there are too many wars and not enough public property to give each of them access and an equal space of proper respect.

17. By choosing only specific war monuments for the government to put on public property, the display becomes government speech and citizens can reasonably believe it represents the views of the government. If that display is at a courthouse, it is reasonably perceived that a prejudice or preference exists for that public display. Citizens will not expect to achieve justice if they believe our courts are prejudiced, and without that trust of the people our systems of civilization quickly collapses into civil war.

18. When the Civil Rights movement started making progress, there was a resurgence of Whites in the South who were determined to intimidate and oppress the minorities in the area. They erected monuments to the Confederacy, but instead of placing them on graves or battlefields, they placed them in public squares and in front of courthouses. Some even included time capsules of civil war memorabilia in their cornerstones in hopes that some day the “South will rise again”.

19. There are over 700 monuments to the Confederacy in over thirty states, yet there were only eleven states in the Confederacy, and the majority of these monuments were erected between 1890’s through the 1950’s (a century after the war but erected during the civil rights movement).

20. The Civil War ended in 1865, yet the monument to the Confederacy in front of the Marshall County Courthouse in Albertville, Alabama says it was erected in 1996. A Confederate flag is also flying from the courthouse flag pole as government speech. There is another monument to veterans, but it only lists four wars. As you can see from the photograph below, there is simply not enough room for anything other than a single generic monument to all veterans (POW-MIA, etc.), or else a perpetual controversy is guaranteed to exist at the Albertville location. Which is exactly what has happened.



21. There is also a monument to the Confederacy in front of the Marshall County Courthouse in Guntersville, Alabama. Again as the record shows from photograph and video⁸, there still is not enough room for anything other than a single generic monument to all veterans of all wars, or else a perpetual controversy is guaranteed to exist at this courthouse.

⁸<https://youtu.be/wIOG589Lie0>



22. There are also symbols of the Confederacy located inside the Marshall County Courthouse, which is why the peaceful protests inside the courthouse interior in sight and sound of the controversy are completely appropriate. Outside of County Commissioner Hutcheson's office in pride of place is a portrait of Confederate general Robert E. Lee who led an unsuccessful armed insurrection against the United States of America. Especially in light of the recent failed armed insurrection attempt on January 6th, 2021, these symbols of the Confederacy are all the more inappropriate and offensive.

23. Whenever the Plaintiff, or anyone else, wishes to do their required business with Marshall County (marriage licenses, business licenses, vehicle registration, drivers license, etc.) they are forced to do so under the evil stares of those who believe we have no right to exist both through the statues and symbols shown as government speech on the courthouse grounds and

interior offices, and also by the government employees who embrace those same views through their passive aggressive displays that memorialize their failed visions of white supremacy.



24. When these symbols of oppression became a controversy, the government found other ways to display these symbols of oppression.⁹ Our nation not only recently suffered an attempted insurrection and attack on the United States Capitol, but we are experiencing a growing national security threat of stochastic terrorism being inspired by both the language in political rhetoric by elected leaders, and by numerous explicit acts of domestic terrorism.¹⁰

25. For an example of the current racial animus, when the county courthouse closes for the federal holiday to celebrate the Reverend Dr. Martin Luther King, Jr. the sign on the courthouse door will say, “Closed for Robert E. Lee’s Birthday” with no mention of Dr. King. On the Marshall County Calendar¹¹ created and approved by the defendants, the Columbus and

⁹<https://www.history.com/news/how-the-u-s-got-so-many-confederate-monuments>

¹⁰Sines v. Kessler

¹¹<https://www.marshallco.org>

Confederate holidays are listed first instead of being listed in alphabetical order. Mississippi and Alabama are the only two states that have combined the Dr. King and Lee holidays, and the county both through its actions and its government speech make their preferences clear.

26. Because of racial gerrymandering¹² (cracking and packing) of the congressional district and the massive voter suppression and disenfranchisement throughout the State of Alabama, the minorities have no real control of their elected leaders. Because one side has a political super-majority, they have been able to effectively silence all voices of dissent.

27. On his visit to Marshall County on Saturday May 14th, 2022 the current Alabama Attorney General Steve Marshall even referred to himself as a “... *proud member of The Marshall County Mafia!*” when introducing himself at a county political event.¹³ The public corruption is so common here, that they don’t even try to hide it when speaking among their corrupt cronies. There is a much larger conspiracy that potentially involves Defendants that is beyond the scope of this lawsuit.

STATE OF ALABAMA FORCES GOVERNMENT SPEECH

28. As protests became organized across the state, the system worked – until State of Alabama intervened in 2017 by passing the *Alabama Memorial Preservation Act* (the “Act”). The Act was passed as municipalities responded to the concerns of their citizens and started removing the offensive monuments.

29. On January 14, 2019, Circuit Judge Michael Graffeo correctly ruled that the Act violated the free speech rights of municipalities. Judge Graffeo wrote:

“Just as the state could not force any particular citizen to post a pro-Confederacy sign in his or her front lawn, so too can the state not commandeer the city's property for the state's preferred message. A city has a right to speak for itself, to say what it wishes, and to select the views that it wants to express. ... Under the act, however, the people of Birmingham cannot win. No matter how much they lobby city officials, the state has placed a thumb on the scale for a pro-

¹²<https://youtu.be/Z-NzMCD7A2I>

¹³<https://youtu.be/bZPv-WAxo-o>

Confederacy message, and the people, acting through their city, will never be able to disassociate themselves from that message entirely."¹⁴

30. However, on November 27, 2019, the Alabama Supreme Court unanimously in *State of Alabama v. City of Birmingham, Mayor Randall Woodfin*¹⁵ reversed that ruling stating that "...a municipality has no individual, substantive constitutional rights..." which then tied the hands of the local municipalities who were willing to pay the fine in order to rid themselves of the offensive symbols.

31. Assuming the Alabama Supreme Court ruling is correct, then Marshall County has violated the Act even after the ruling against Jefferson County. While the city of Birmingham placed wood panels to cover the monuments from sight, the security fencing that Marshall County erected after they passed the Picketing Resolution has the exact same effect as the plywood barriers. By denying public access with fencing around the monuments, they are unreadable monuments just as if they'd been covered with plywood. It is no longer a "public" monument, and itself is now in violation of the Act.

32. The erection of the barriers also further eliminated any remaining safe places for peaceful protests, which places those who choose to exercise their rights at risk of malicious prosecution and criminalization.

33. To further confuse the matter, in 2022 SCOTUS issued a ruling in *Shurtleff v. Boston*¹⁶ that governs government speech and public forums. There is now a conflict between the SCOTUS Opinion and Alabama Supreme Court decisions, which is beyond the scope of this case to solve.

¹⁴Media article with links to rulings:

<https://www.al.com/news/2019/11/alabama-supreme-court-says-birmingham-violated-historic-monuments-law.html>

¹⁵Alabama Supreme Court Case 1180342, Appeal from Jefferson Circuit Court Case CV-17-903426

¹⁶https://www.supremecourt.gov/opinions/21pdf/20-1800_7lho.pdf

34. The proposed, and only logical solution to the controversy is to return all of the monuments to their donors, and reopen the courthouse exteriors again as the public squares as they were intended. That solution is beyond the scope of this lawsuit, but until the initial controversy is resolved, the organized protests will always continue and they are fully constitutional.

SUMMARY

35. The end result of all of this is simply that the State of Alabama and many municipalities have created a never-ending controversy, and then have criminalized the constitutionally protected right to protest the controversy.

36. When the elected leaders are conspiring together to deny the rights of the citizens, and yet there's no way for those voices to be heard, vote, or to achieve a procedural or substantially effective redress of grievances against the government, the last remaining option is to organize peaceful protests and to peaceably assemble which are protected rights under the First Amendment to the United States Constitution.

37. Because of the Defendants self-created controversy of erecting and celebrating symbols of the Confederacy, there were numerous protests held at both Marshall County courthouses.

38. Instead of hearing and addressing the grievances of the citizens, the county became further entrenched in their position and erected fences around the monuments. That response (and expense) by the county required even more organized protests, which is what led to the conspiracy by county officials to deny civil rights, which is actionable under 42 U.S.C. § 1985(3).

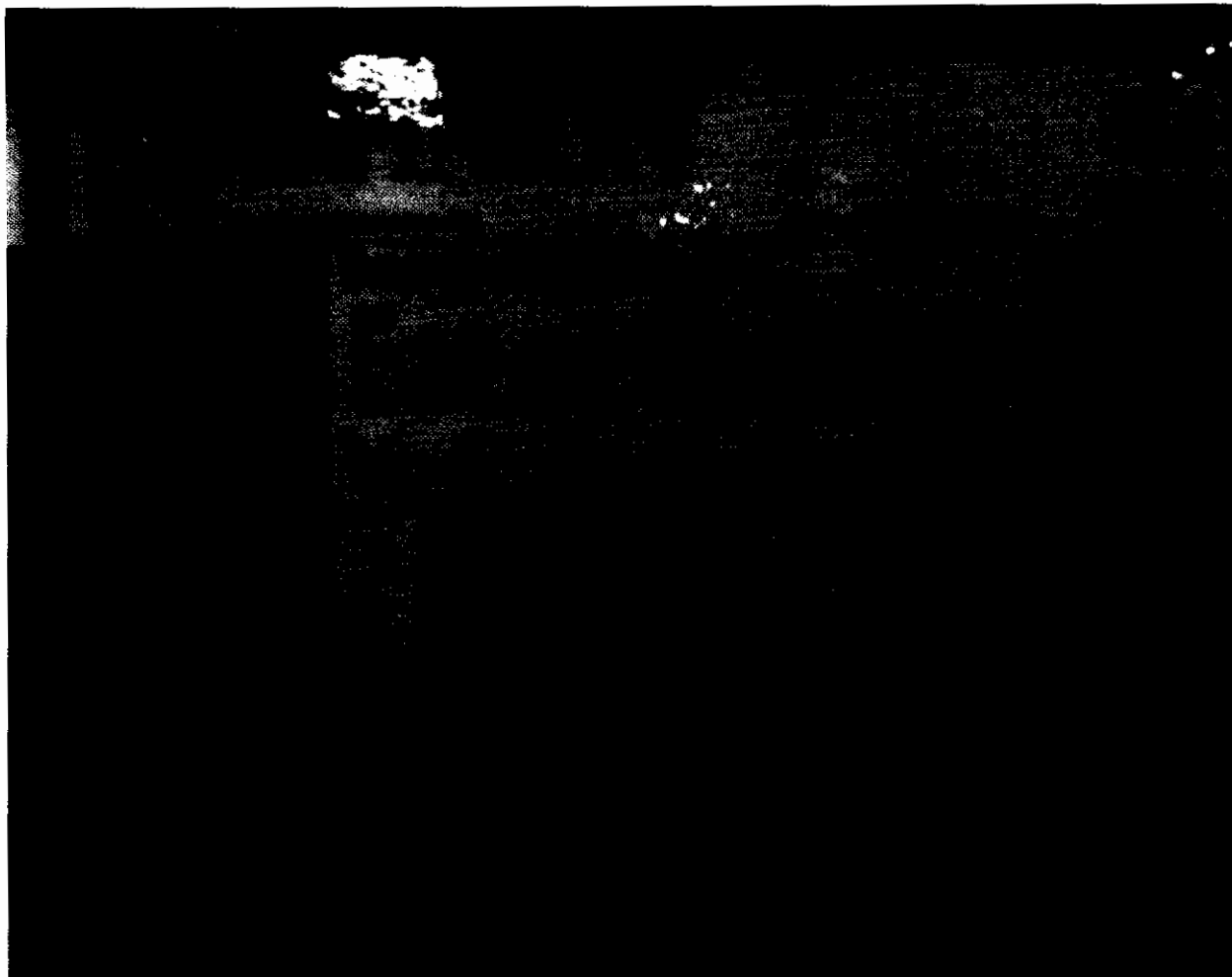
THE 42 U.S.C. § 1985(3) CONSPIRACY

39. The Plaintiff alleges that the defendants plotted, coordinated, and executed a common plan to deny citizens their First and Fourteenth Amendment rights, and that they committed overt acts in furtherance of that conspiracy.

ABUSE OF PROCESS / RESOLUTION

40. During an October 2020 peaceful sit-in protest at *Neena's Grill* (a business that is open to the public) inside the Marshall County Courthouse in Guntersville, a peaceful protester was assaulted by Rhonda McCoy (Defendant #8), who is the assistant to the Marshall County Commission Chairman (Defendant #2). Because the victim suffered no serious injuries, under Alabama law McCoy was convicted of the lesser charge of harassment (Case #MC 21-00000023). The Defendants then abused the legal process again with a frivolous appeal, used racial animus to get a mistrial from an all-White jury. That abuse by the Defendants was covered in Plaintiff's Reply to Motion to Dismiss.

41. The large, multi-story atrium of the courthouse in Guntersville serves as a community hub, and according to a local opinion newspaper column article from 2018 posted inside the courthouse, the grill feeds much of the community in addition to courthouse patrons and employees. This interior portion of the courthouse is a public forum, it is still used as such by the Defendants today (there's a "Chairman's Table"), and anyone has a right to protest in response to current events without a permit from the Defendants.



42. In response to the growing protests being organized at the two courthouses, Marshall County, Alabama (Defendant #1), acting by and through the Marshall County Commission on December 20th, 2020 passed a county Picketing Resolution which required a permit to be approved by the Marshall County Commission Chairman James Hutcheson (Defendant #2) and placed other unconstitutional restrictions on the protest activities.

43. The resolution was written and/or obtained from other potential defendants by Marshall County Commission Attorney Clint Maze (Defendant #7), and was signed but not dated and enacted by: Marshall County District #1 Commissioner Ronny Shumate (Defendant #3), Marshall County District #2 Commissioner Rick Watson (Defendant #4), Marshall County

District #3 Commissioner Lee Sims (Defendant #5), and Marshall County District #4 Commissioner Joey Baker (Defendant #6). Marshall County Sheriff Phil Sims (Defendant #9) also fully approved of the resolution.¹⁷

44. During the first McCoy trial, Defendants or their representatives were present on Monday December 20th, 2021 while the undated Picketing Resolution was misrepresented in court in regards to the effective date. The Court noticed that attempt of retroactivity and McCoy was convicted based on the irrefutable video evidence.

45. Because of their proven misrepresentation of the Marshall County Picketing Resolution in court and abuse of the legal system, there's a very credible fear the resolution will be maliciously abused again against future protesters, even if they attempt to be compliant with the Resolution.

46. The Plaintiff has participated in peaceful protests at both courthouses. If he attends a legally permitted protest, but enters the courthouse to use the restroom or eat at the public grill inside of the courthouse while still wearing a shirt with a protest message or carrying protest paraphernalia (such as protest posters), it is more likely than not that he could potentially face charges under this county resolution. There is far too much potential for abuse of this resolution, and the record shows the Defendants have already abused it.

47. The Plaintiff will prove through the evidence that the purpose of the unconstitutionally vague resolution had a corrupt intent to abridge, burden, and chill the exercise of constitutionally protected civil rights, and that the defendants committed a conspiracy actionable under 42 U.S.C. § 1985(3); and that the Plaintiff suffered irreparable harm of denial of constitutional rights by their actions.

¹⁷https://www.sandmountainreporter.com/free_share/article_bec859e8-3a5a-11eb-a91f-9370fb794df0.html

Respectfully submitted this 27th day of September, 2022.

A handwritten signature in black ink, appearing to read "Gary Wayne Wright II". The signature is fluid and cursive, with a large initial "G" and "W".

Gary Wayne Wright II

Plaintiff, Pro Se

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Dated: