

2. As indicated in the Amended Complaint, on July 26th, 2023, Defendants passed a second Picketing Resolution. The “First Amendment does not guarantee access to property simply because it is owned or controlled by the government.” *Perry Educ. Ass’n v. Perry Local Educators’ Ass’n*, 460 U.S. 37, 46 (1983) (citation omitted). It is accordingly well-established that the government may place greater limitations on access to certain public property, whether because it is a limited or nonpublic forum, or not a forum at all. *See, e.g., Arkansas Educ. Television Com’n, v. Forbes*, 523 U.S. 666 (1998) (discussing three types of public forum and recognizing that some government property may simply not be a forum); *Lehman v. City of Shaker Heights*, 418 U.S. 298 (1974) (holding that car card space is not a forum). As stated in the July 2023 Resolution attached as Exhibit D to the Amended Complaint, the prohibition on picketing contained in that Resolution only applies to property that is not open to the general public; areas that have been designated as public forums, or any traditional public forums, are expressly excluded from the prohibition. It is Defendants’ position that this Resolution is entirely Constitutional, and also that it presents an entirely different sort of First Amendment issue than that alleged in the original Complaint.

3. This Resolution was properly noticed and publicly available. Further, Defendants have recently ascertained through Plaintiff’s publicly available Facebook profile that Plaintiff both had personal knowledge of its existence and had come to the

determination that it should be included in his lawsuit, contemporaneously with its passage. (Exhibit A)

4. On September 5, 2023, Plaintiff filed a document titled “Consent Motion to File Amended Complaint.” (Doc. 42) The use of the term “consent” would seem to imply that Defendants had agreed to an Amended Complaint being filed after the discovery deadline had passed, when in fact the undersigned was not contacted about this Motion prior to it being filed. Moreover – as reflected by the lack of a Certificate of Service – neither this Motion, nor the attachments thereto, were served on the undersigned by Plaintiff as required by the Federal Rules of Civil Procedure.¹ The undersigned instead received these documents only when they were uploaded into CM/ECF on September 7, 2023, at 2:52 p.m. The Motion was granted approximately twenty-four (24) hours after the undersigned first received notice thereof.

5. The Amended Complaint was filed on September 15, 2023; again, it does not contain a Certificate of Service, and the undersigned only received it when it was uploaded into the CM/ECF system. (Doc. 44) The Amended Complaint is slightly different from the proposed Amended Complaint in that it includes 3 extra footnotes referencing additional events that Plaintiff apparently contend are relevant to the new claim.

¹ Defense Counsel notes that Mr. Wright is currently residing in Montgomery, Alabama, approximately three miles from her office location.

6. Defendants understand that at least a part of Plaintiff's claims in the Amended Complaint may be based on a factual allegation regarding the nature of the areas that fall under the new Resolution. This new claim is inherently different from the claims previously stated in the original Complaint. Discovery is needed to ascertain more information regarding the nature of this claim and the factual and legal bases, including the question of whether this challenge is as-applied or facial in nature, as well as Plaintiff's standing to bring this new claim.

7. The timing and circumstances of the filing of the Amended Complaint (i.e., in a motion incorrectly labeled as "consent," and without service directly to Defendants through Counsel) has severely prejudiced Defendants. It is worth noting that, at this point, the Parties are barred from even presenting evidence regarding this new claim pursuant to Fed. R. Civ. Pro. 26 because such evidence was obviously not disclosed during the discovery period.

8. Defendants therefore request that this Court reconsider its granting of the Motion to Amended Complaint and strike the Amended Complaint. Defendants also respectfully request that this Court extend the current dispositive motion deadline of October 2, 2023, for a period of seven (7) days after the Amended Complaint is stricken.

9. In the alternative, Defendants respectfully request that discovery be re-opened and that a new discovery deadline be set for December 15, 2023, with dispositive

motions to be filed no later than January 12, 2023, and that the pre-trial and trial dates be moved accordingly.

10. In the second alternative, Defendants respectfully request that the dispositive motion deadline be continued to October 23, 2023, to allow them time to properly complete evaluation and investigation of this new claim before being forced to brief it.

Respectfully submitted this the 29th day of September, 2023.

s/Jamie H. Kidd Frawley

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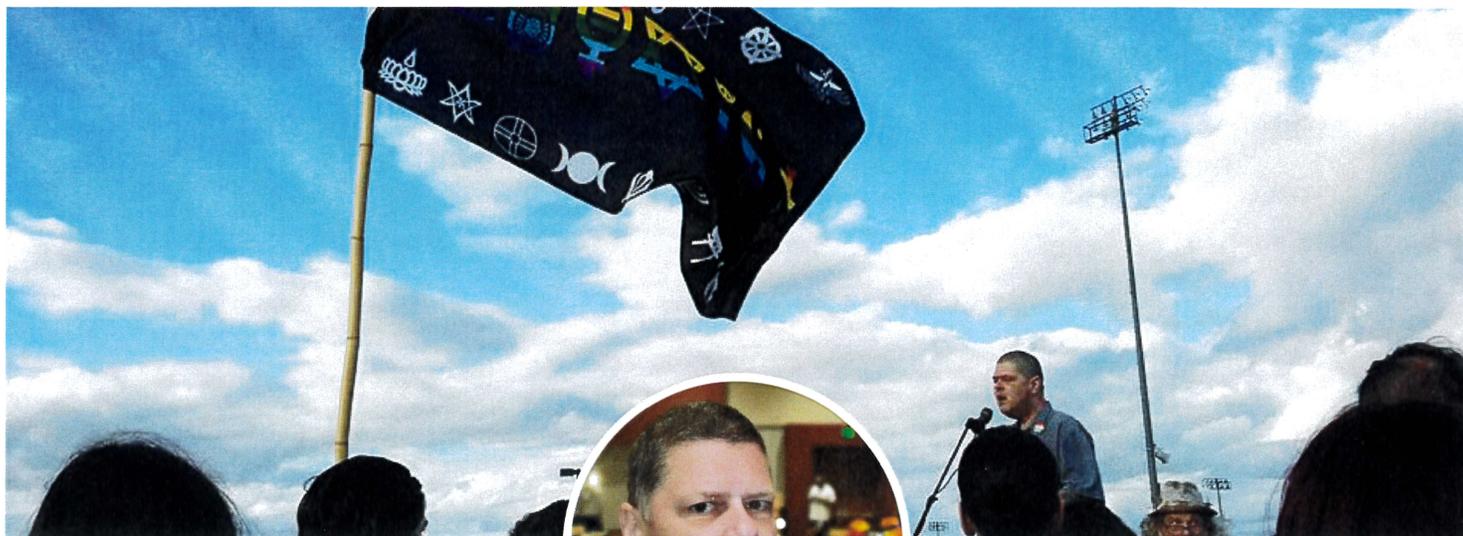
CERTIFICATE OF SERVICE

I hereby certify that on this the 29th day of September, 2023, I have electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will provide a copy to the following:

Gary Wayne Wright II (*pro se*)
3496 Wellington Road
Montgomery, AL 36106-2354

s/Jamie H. Kidd Frawley
OF COUNSEL

EXHIBIT A



Gary Wright II

1 mutual friend

Add friend

Message



Intro

Engineering geek, 3D animator, musician, disabled veteran, DADT and LGBTQ marriage equality plaintiff



President/CEO at Clever Things, LLC



Went to Huntsville High School



Lives in **Montgomery, Alabama**



From **Tuscumbia, Alabama**



Married



[garywright2](#)



[CleverThings.com](#)

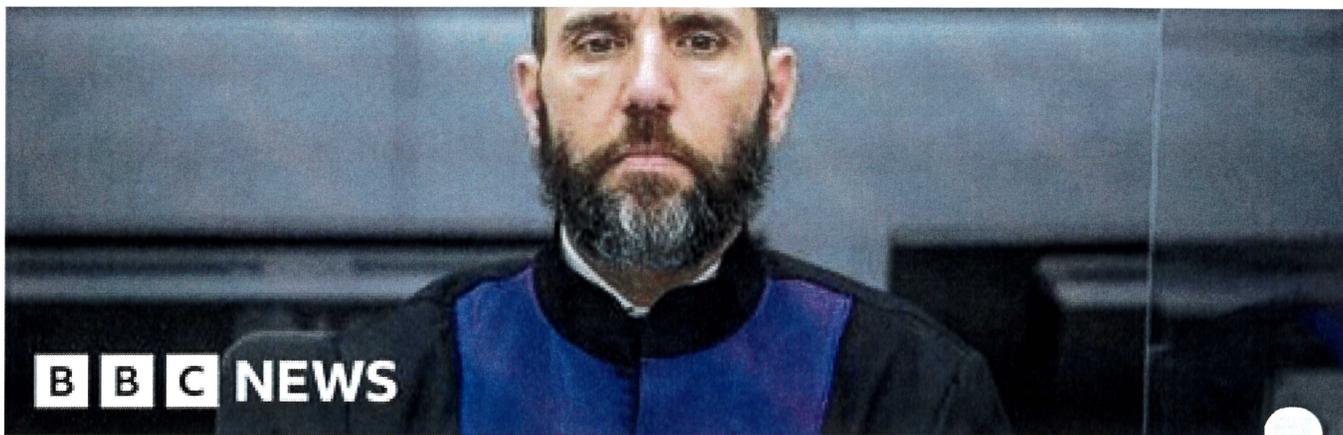


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Gary Wright II





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2

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Marshall County Alabama 🇺🇸 - Before my 1st Amendment case could go to trial in March, the county has expanded the Picketing Resolution to all properties not public forums. I have a problem with that, so I filed a lawsuit! cc: [ACLU of Alabama Southern Poverty Law Center](#)



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Gary Wayne Wright II v. Marshall County Alabama, et al.

Wright v. Marshall County Alabama, et al. - Gary Wright II is challenging the constitutionality of a county anti-protest Picketing Resolution

2

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