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

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

GARY WAYNE WRIGHT, II	)	
	)	
	)	
	)	
	)	
Plaintiff,	)	
	)	
v.	)	**CIVIL CASE NO. 4:22-cv-00615-SGC**
	)	
MARSHALL COUNTY, ALABAMA, et.al	)	
	)	
	)	
	)	
Defendants.	)	

MOTION FOR SUMMARY JUDGMENT

Defendants Marshall County and Marshall County Sheriff Phil Sims, in his official capacity, hereby respectfully file this Motion for Summary Judgment pursuant to Fed. R. Civ. Pro. 56, as follows:[1]

1. This case comes before this Court on a facial challenge brought by Plaintiff Gary Wayne Wright, II, as to the constitutionality of two Resolutions passed by the Marshall County Commission governing picketing on County property. The 2020 Resolution forbids "picketing," as defined in the Ordinance, from occurring inside the

[1] The Supporting Brief will be filed no later than one business day after the filing of this Motion and Defendants' evidentiary submissions.

Marshall County courthouses located in Albertville and Guntersville, Alabama, and requires that any individual, group, or organization that wishes to picket outside these courthouses must first apply for a permit. (Doc. 44, pgs. 17-20; also attached as Exhibit A). The 2023 Resolution forbids picketing "at, near, or proximately around the Marshall County Animal Control Shelter, the County Commission District Offices, the Marshall County Sheriff's Office, the Marshall County Jail, the Marshall County District Attorney Annex, the Marshall County Probate Office Annexes, and any other property owned, operated, and/or maintained by the County Commission which is not open to the general public." (Doc. 44, pg. 24; also attached as Exhibit B).

2. It is undisputed that Plaintiff's claims are a facial challenge to the constitutionality *vel non* of the Resolutions because he has not been denied a permit or otherwise had the Resolutions applied to him. Plaintiff has steadfastly refused to engage in the permitting process and has apparently refrained from participating in protests that were permitted. The undisputed evidence establishes that multiple picketing permits have been approved; none have been denied.

3. The First Amendment of the United States Constitution does not categorically forbid the government from regulating the activities protected by the Amendment. *See, e.g.*, *Members of City Council of City of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789, 803–04 (1984) ("'But to say the ordinance presents a First Amendment issue is not necessarily to say that it constitutes a First Amendment

violation.'" *Metromedia, Inc. v. San Diego*, 453 U.S., at 561, 101 S.Ct., at 2920, 69 L.Ed.2d 800 (Burger, C.J., dissenting).

4. Courts have given more latitude to facial challenges in the First Amendment context than in other contexts, invalidating regulations that may not meet the general requirement of complete unconstitutionality "in cases where every application creates an impermissible risk of suppression of ideas, such as an ordinance that delegates overly broad discretion to the decisionmaker, and in cases where the ordinance sweeps too broadly, penalizing a substantial amount of speech that is constitutionally protected." *Forsyth County, Ga. v. Nationalist Movement*, 505 U.S. 123, 129-130 (1992) (internal citations omitted). The justification for allowing the invalidation of a regulation of some kind even when it could theoretically be constitutionally applied in some cases is that "the statute's very existence will inhibit free expression." *Members of City Council of City of Los Angeles*, 466 U.S. at 799. At some point, however, "that effect – at best a prediction – cannot, with confidence, justify invalidating a statute on its face…To put the matter another way, particularly where conduct and not merely speech is involved, we believe that the overbreadth of a statute must not only be real, but substantial as well, judged in relation to the statute's plainly legitimate sweep." *Id.* at 799-800 (quotations and citation omitted).

5. "It is by now clear that the First Amendment does not guarantee access to property just because it is owned by the government." *Bloedorn v. Grube*, 631 F.3d

1218, 1230 (11th Cir. 2011). Any First Amendment challenge to a regulation limiting or prohibiting protected expression must accordingly begin by identifying the type of forum at issue: traditional public fora; designated public fora; limited public fora; and nonpublic fora.

6. The test for the constitutionality of limitations, up to and including complete restrictions, on expressive activity in nonpublic fora such as the interior of the courthouses and in and around buildings such as the animal shelter is merely whether the restriction is reasonable, i.e., is not arbitrary and capricious. *See Cornelius v. NAACP Legal Defense and Educational Fund, Inc.*, 473 U.S. 788 (1985). The content-neutral prohibition on picketing in nonpublic fora easily meets this standard.

7. Expressive activity in both traditional and limited public fora may be properly subject to content-neutral time, place, and manner regulation. *See Henderson v. McMurray*, 987 F.3d 997, 1002 (11th Cir. 2021). Although the analytical factors are similar in both, regulation of expressive activity in a traditional public fora is subject to a more strenuous standard of review, while regulation in limited public for a need only be reasonable. *See, e.g.*, *Id.*; Bloedorn, 631 F.3d at 1235.

8. Defendants argue that the undisputed facts in this case establish that the exterior of the Guntersville and Albertville courthouses are limited public fora. The exterior lawn and courtyards of both buildings serve the courthouses themselves; they are not open public parks. Unregulated expressive activity would pose a significant risk

of disrupting the important functions of the courthouses. *See, e.g.*, *Cornelius*, 473 U.S. at 803-804; *Bloedorn*, 631 F.3d at 1232-33.

9. Even if the exterior of the courthouses were regarded as traditional public fora, however, the picketing permit process at issue in this case would not amount to a facially unconstitutional prior restraint. It is explicitly content neutral, and it does not vest the permitting official with "unbridled discretion to limit access to a particular public function." *Bloedorn*, 631 F.3d at 1236. The Chairman, or his designee, "shall" issue a permit so long as no other organization has received a permit, and the picketing complies with the minimum standards of the Resolution. A permit cannot be effectively denied due to delay, as a permit will be deemed granted if no decision is made within seventy-two (72) hours. *Cf. United States v. Frandsen*, 212 F.3d 1231, 1240 (11th Cir. 2000). Permits are issued first-come, first-serve. The only substantive consideration that may be considered is whether one particular individual, organization, or group has not received an equal opportunity to engage in picketing, in which case they may be given priority for a particular date and time. Ensuring equal access amongst diverse groups is a legitimate goal of a permitting system. *Bloedorn*, 631 F.3d at 1238.

10. The government also has a significant legitimate interest in ensuring public safety by preventing violent clashes between opposing groups. *See Holland v. Wilson*, 737 F.Supp. 82 (1989). The undisputed evidence in this case establishes that this interest was the prime moving factor behind both the 2020 and 2023 Resolutions.

11. Finally, the Resolutions are not unconstitutionally vague. Defendants' position is that Plaintiff does not have standing to challenge the Resolutions on vagueness grounds. *See, e.g.*, *United States v. Pugh*, 90 F.4th 1318, 1332-33 (11th Cir. 2024). Even if Plaintiff did have standing to challenge the Resolution, the language of the Resolutions are sufficiently clear to pass constitutional muster. *See, e.g.*, *Pine v. City of West Palm Beach, FL*, 762 F.3d 1262 (11th Cir. 2014).

Wherefore, these premises considered, Defendant Marshall County and Sheriff Phil Sims, in his official capacity, hereby respectfully request that this Court enter summary judgment in their favor pursuant to Fed. R. Civ. Pro. 56.

Respectfully submitted this the 1st day of March 2024.

s/Jamie H. Kidd Frawley
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CERTIFICATE OF SERVICE

I hereby certify that on this the 1st day of March 2024, I have electronically filed the foregoing with the Clerk of the Court using the CM/ECF system and have served it via U.S. Mail on the following non-CM/ECF participant:

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s/Jamie H. Kidd Frawley
OF COUNSEL