

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

**WORLD WIDE STREET PREACHERS’
FELLOWSHIP, ET AL.**

CIVIL ACTION NO. 05-0513

VERSUS

JUDGE ROBERT G. JAMES

TOWN OF COLUMBIA, LOUISIANA

MAG. JUDGE JAMES D. KIRK

OPINION

On March 22, 2005, Plaintiffs World Wide Street Preachers Fellowship (“WWSPF”) and Kenneth Coleman, Sr. (collectively, “the Preachers”) filed suit against Defendant Town of Columbia, Louisiana (“Columbia”) under 42 U.S.C. § 1983 and the First and Fourteenth Amendments to the United States Constitution. The Preachers moved for a Temporary Restraining Order (“TRO”). They alleged that Columbia was violating their constitutional rights of free exercise of religion, freedom of speech, and freedom to peaceably assemble by arresting and threatening to arrest the Preachers for displaying anti-abortion signs along Highway 165. On March 23, 2005, the Court granted the TRO, enjoining Columbia from interfering with the Preachers’ First Amendment activities until a preliminary injunction hearing could be held. On March 28, 2005, Plaintiffs filed an Amended Complaint.

A hearing on the Preachers’ motion for preliminary injunctive relief was held before this Court on April 1, 2005. Notice was received, and all parties were represented by counsel. Following the hearing, the Court took the matter under advisement and permitted the parties to file supplemental briefs. On April 12, 2005, the Preachers and Columbia each submitted post-hearing briefs, and on April 14, 2005, both parties submitted reply briefs. With briefing complete, the Court

is now prepared to rule on the Motion for Preliminary Injunction. For the following reasons, Plaintiff's Motion for Preliminary Injunction [Doc. No. 2] is GRANTED IN PART and DENIED IN PART.

The Court hereby enters the following findings of fact and conclusions of law. To the extent that any finding of fact constitutes a conclusion of law, the Court hereby adopts it as such, and to the extent that any conclusion of law constitutes a finding of fact, the Court hereby adopts it as such.

I. FINDINGS OF FACT

This case was presented to the Court at the preliminary injunction hearing on stipulations of fact, live testimony, and exhibits. Additionally, since the hearing, the parties have submitted several affidavits to supplement the record. The material facts are not generally in dispute.

Plaintiff WWSPF is an organization of street preachers. Plaintiff Kenneth Coleman and his pastor, Allen Russell, are members of WWSPF.

Members of the WWSPF, including Coleman, carry signs critical of abortion, based on their religious belief that abortion is a sin. Some of these signs are textual and some display pictures of aborted fetuses. The Preachers have carried these signs on numerous occasions in Columbia and in other locales.

When demonstrating in Columbia, the Preachers stand near the intersection of Highway 165 and Church Street ("the intersection") because this location provides them with the best opportunity to display their signs to passing motorists, who are forced to slow down or stop for a traffic signal.

On December 27, 2003, the Preachers were demonstrating at the southwest corner of the intersection. On that day, Russell requested police intervention and subsequently made a complaint to the Columbia police because one of the Preachers was nearly run over by a passing motorist. Officer Robert Miles arrived on the scene, spoke with the Preachers, and commented on the content

and offensiveness of their signs. Miles informed the Preachers that they could continue to protest at that location, but that they needed to back away from the edge of the roadway.

On December 30, 2003, the Preachers returned to the location at the southwest corner of the intersection. On that date, Chief of Police Doug Crockett stopped and spoke with the Preachers. Crockett asked the Preachers to put their signs away until he could investigate the legality of their activities, but he did not require them to put the signs away or to disperse. Russell informed Crockett that the Preachers would remain there with their signs visible until an officer showed him a law that makes their activities illegal. Crockett then left the scene and did not return.

On February 12, 2005, the Preachers returned to Columbia to demonstrate. On this date, the Preachers were on the southeast corner of the intersection because the location where they had been demonstrating at the southwest corner was under excavation as part of the relocation and reconstruction of Highway 165. The parties have stipulated that on this date the Preachers were standing on the shoulder of the highway (between the white fog line and the edge of the pavement) as well as on the dirt area adjacent to the pavement. At this location, the paved portion of the shoulder between the fog line and the dirt is approximately two feet wide. The Preachers were also at times standing within twenty feet of the traffic light, within twenty feet of a crosswalk, within fifteen feet of a fire hydrant, and opposite the construction site. State Trooper John Wiles passed by and allegedly observed the Preachers standing on the white line and in the roadway. Wiles called the Columbia police and advised them that someone needed to come out and ask the Preachers to move off the roadway. Columbia also received complaints from the United Methodist Church, which claimed to own the dirt area beside Highway 165 where the Preachers were demonstrating.

As a result of the calls and complaints on February 12, 2005, Officer Miles went to the area where the Preachers were demonstrating. The Preachers were told that the dirt area beside the

highway was private property belonging to the Methodist Church and that they could not stand on this property. The Preachers were also told that they could not stand on the paved shoulder of the roadway because Troop F of the Louisiana State Police had instructed the Columbia police officers to tell the Preachers to move off the roadway. Officer Miles told Russell at least six times that he needed to leave or he would be arrested. When Russell and the other Preachers failed to comply with Officer Miles's requests to leave, Russell was arrested.

Officer Miles's Affidavit of Probable Cause for Arrest Without a Warrant states, in pertinent part, that Miles

observed a group of people holding signs, and pictures, at the corner of Church St. and U.S. HWY 165 in Columbia. I then approached the Group and advised them that they were causing a disturbance with their actions, and pictures, and that [sic] were on the state right of way, and that they needed to leave the area. At that time a [sic] unidentified W/M approached me and stated that they did not have to move back, or leave. . . . The group didn't have any permit to be on the right of way, and they were to [sic] close to the flashing beacon (red light), and also they didn't have a permit issued through mayor's court. The above listed subject [Russell] was advised his rights per Miranda and placed under arrest for the violations listed above, and his refusal to comply with the orders given.

Russell was charged with three counts: (1) resisting an officer, La. Rev. Stat. § 14:108B(1)(D); (2) stopping or standing or parking in specified areas, La. Rev. Stat. § 32:143(7)(A); and (3) processions, marches or demonstrations without a permit, La. Rev. Stat. § 14:326(A),(B),(C).

On March 22, 2005, the Preachers filed the instant suit.

On March 23, 2005, the Court issued a TRO, which enjoined Columbia from interfering with the Preachers' First Amendment activities until a preliminary injunction hearing could be held.

On March 25, 2005, the Preachers returned to the southeast side of the intersection to demonstrate. At this time, the pastor of the Methodist Church asked the Preachers to leave the church property. Additionally, Officer Clay Bennett, who witnessed the Preachers standing on the shoulder of Highway 165 and on the church property, asked the Preachers to leave. The Preachers

ended their demonstration and dispersed.

On March 26, 2005, Russell spoke with Officer Bennett and requested an application for a public demonstration permit. Officer Bennett informed Russell that he was unsure of the application process and that Russell needed to go to the town hall on Monday morning for more information. Officer Bennett also told Russell that he did not believe there was any location along Highway 165 in Columbia where the Preachers could legally demonstrate. Finally, Officer Bennett advised that the Preachers should not return to the intersection to demonstrate until after the preliminary injunction hearing, and that, if they returned in the meantime, they would be removed.

On April 1, 2005, the Court held a hearing on the Preachers' request for preliminary injunction.

The Preachers seek a preliminary injunction (1) enjoining Columbia from limiting the Preachers' future exercise of First Amendment rights, specifically at the intersection in question; (2) enjoining Columbia from enforcing La. Rev. Stat. § 14:108 ("Resisting an Officer Statute") La. Rev. Stat. § 32:143 ("Standing Statute") and La. Rev. Stat. § 14:326 ("Permit Statute") against the Preachers because these statutes are unconstitutional as applied; and (3) declaring the Permit Statute unconstitutional on its face.

In consideration of the Motion for Preliminary Injunction, the Court makes the following conclusions of law.

II. CONCLUSIONS OF LAW

In determining whether to grant a preliminary injunction, the Court applies a four-part test:

- (1) a substantial likelihood that plaintiff will prevail on the merits;
- (2) a substantial threat that plaintiff will suffer irreparable injury if the injunction is not granted;

- (3) that the threatened injury to plaintiff outweighs the threatened harm the injunction may do to the defendant; and
- (4) that granting the preliminary injunction will not disserve the public interest.

Canal Authority of State of Florida v. Callaway, 489 F.2d 567, 572 (5th Cir. 1974). “A preliminary injunction is an extraordinary remedy and should be granted only if the movant has clearly carried the burden of persuasion with respect to all four factors.” *Allied Marketing Group, Inc. v. CDL Marketing, Inc.*, 878 F.2d 806, 809 (5th Cir. 1989) (citing *Mississippi Power & Light v. United Gas Pipe Line*, 760 F.2d 618, 621 (5th Cir. 1985); *Apple Barrel Productions, Inc. v. Beard*, 730 F.2d 384, 389 (5th Cir. 1984)). Failure of the movant to establish any one of the four factors defeats the right to injunction. *See Rohoe, Inc. v. Marque*, 902 F.2d 356 (5th Cir. 1990). If the Court determines that an injunction is warranted, “that injunctive relief should be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs.” *Madsen v. Women’s Health Ctr., Inc.*, 512 U.S. 753, 765 (1994).

For the following reasons, the Court finds that the Preachers have failed to establish a substantial likelihood of success as to their constitutional claims.

A. First Amendment Rights

The Court finds, as an initial matter, that the Preachers’ First Amendment rights of freedom of speech, freedom of religion, and freedom of assembly are implicated by their display of pro-life signs. *See, e.g., United States v. Grace*, 461 U.S. 171, 176 (1983) (“There is no doubt that as a general matter peaceful picketing and leafletting are expressive activities involving ‘speech’ protected by the First Amendment.”); *McDaniel v. Paty*, 435 U.S. 618, 625 (1978) (“[T]he right to the free exercise of religion unquestionably encompasses the right to preach, proselyte, and perform other similar religious functions.”); *Frisby v. Schultz*, 487 U.S. 474, 479 (1988) (noting that marching and demonstrating in public streets is assembly protected under the First Amendment).

Columbia is prohibited from violating the Preachers' constitutionally protected rights. The First Amendment to the United States Constitution states that "Congress . . . shall make no law . . . prohibiting the free exercise [of religion], or abridging the freedom of speech, . . . or the right of the people peaceably to assemble." U.S. CONST. amend. I. The First Amendment is made applicable to the states and their subdivisions through the Fourteenth Amendment. *See* U.S. CONST. amend. XIV, § 1; *see also, e.g., Virginia v. Black*, 538 U.S. 343, 358 (2003); *Lovell v. City of Griffin*, 303 U.S. 444, 450 (1938). Because Columbia is a municipality created pursuant to the Lawarson Act, La. Rev. Stat. § 33:321, the chief of police is charged with the enforcement of all ordinances within the municipality and all applicable state laws. La. Rev. Stat. § 33:423. Thus, Columbia and its police force are subject to the provisions and restrictions of the First Amendment.

However, the Preachers' exercise of First Amendment rights is not absolute. The First Amendment does not guarantee the right to communicate one's views at all times and places or in any manner that may be desired. *Heffron v. International Soc'y for Krishna Consciousness*, 452 U.S. 640, 647 (1981). Similarly, an individual's religious beliefs do not excuse him from compliance with an otherwise valid law prohibiting conduct that the State is free to regulate. *See, e.g., Employment Div., Dep't of Human Resources of Oregon v. Smith*, 494 U.S. 872, 878-79 (1990); *see also Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 531 (1993) ("[A] law that is neutral and of general applicability need not be justified by a compelling governmental interest even if the law has the incidental effect of burdening a particular religious practice.").

B. The Character of the Property at Issue

The standard used to determine the constitutionality of limitations placed upon First Amendment rights depends upon the character of the property at issue. *See Frisby*, 487 U.S. at 479; *see also Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 43 (1983).

The Preachers contend that they can demonstrate in front of the Methodist Church on the dirt area beside the pavement because this area is a "statutory right-of-way." The Court finds that the

Preachers have not demonstrated a substantial likelihood of success on the merits as to this claim.

When the State built the highway in 1936, it apparently took part of the private property belonging to the Methodist Church without a written agreement and without court action. (See Def. Ex. 1 & 6). The State has since acquired by acquisitive prescription a right of way equal to the actual width of the road and paved shoulder. *See Boteler v. Rivera*, 96-1507, 700 So.2d 913, 917 (La. App. 4 Cir. 9/17/97). However, the State did not by use or statute acquire a right of way or servitude to any more land than the width of the road and paved shoulder.

Although Plaintiffs have cited Louisiana Revised Statute Section 48:220.1 in support of their contention that the dirt area beside the paved highway is also public property, that statute was not enacted until 1976. Louisiana Acts 1976, § 630. Louisiana appellate courts faced with this issue have unanimously declined to apply the statute retroactively. *See Thompson v. State*, 94-2610, 688 So.2d 9, 18 (La. App. 1 Cir. 4/23/96) (La. Rev. Stat. § 48:220.1 is not to be given “retroactive effect,” and, therefore, was inapplicable to a road constructed in 1933); *see also State, Dep’t of Transp. and Dev. v. Richardson*, 83-0506 453 So.2d 572, 576 n.3 (La. App. 1 Cir. 5/15/84); *State, Dep’t of Highways v. Traina*, 13244, 347 So.2d 55, 57 (La. App. 2 Cir. 5/23/77).

The Preachers have no constitutional entitlement to demonstrate on the Methodist Church’s private property. *Hudgens v. National Labor Relations Board*, 424 U.S. 507, 513 (1976) (“It is, of course, a commonplace that the constitutional guarantee of free speech is a guarantee only against abridgment by government, federal or state.”). In fact, the Preachers were in violation of the Louisiana Trespass Statute, La. Rev. Stat. § 14:63, by standing on the church property without the permission of the Methodist Church. Therefore, Columbia has not and cannot violate the Preachers’

First Amendment rights by removing them from this area.¹

In contrast, the paved portion of Highway 165 is a public street, “the archetype of a traditional public forum.” *Frisby*, 487 U.S. at 480. No particularized inquiry into the precise nature of a specific street is necessary, as all public streets are held in the public trust and are properly considered traditional public fora. *Id.* at 481.

In traditional public fora, the Supreme Court has held that the government may regulate the time, place, and manner of the expressive activity, so long as such restrictions are content neutral, are narrowly tailored to serve a significant governmental interest, and leave open ample alternatives for communication. *Grace*, 461 U.S. at 177; *Perry*, 460 U.S. at 46. “The principal inquiry in determining content neutrality, in speech cases generally and in time, place, or manner cases in particular, is whether the government has adopted a regulation of speech because of disagreement with the message it conveys.” *Hill v. Colorado*, 530 U.S. 703, 719 (2000). “The government’s purpose is the controlling consideration. A regulation that serves purposes unrelated to the content of expression is deemed neutral, even if it has an incidental effect on some speakers or messages but not others.” *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989). Government regulation of expressive activity is content neutral so long as it is justified without reference to the content of the regulated speech. *Id.*

C. The Challenged Statutes

In the present case, the Court finds that all three statutes, the Resisting Statute, the Standing Statute, and the Permit Statute, are content neutral time, place, and manner restrictions, which have only an incidental effect on the speech and expressive activity of the Preachers. All three statutes are of general applicability, and there has been no proof that the statutes were adopted because of

¹The Preachers concede that they have no First Amendment right to demonstrate on private property and have indicated that they will not do so. The Preachers’ only contention in this respect is that the public right-of-way extends beyond the paved road at this location. The Court finds that the Preachers have not demonstrated a substantial likelihood of success on the merits as to this argument.

the government's disagreement with any particular message or viewpoint. However, the statutes must also serve a significant government interest, be narrowly tailored to achieve that end, and leave open ample alternative channels of communication. The Court now turns to an analysis of each challenged statute.

1. The Permit Statute

The Preachers challenge the constitutionality of the Permit Statute, La. Rev. Stat. § 14:326, on its face and as applied to them. The Court will first address the Preachers' facial challenge to the Permit Statute.

A plaintiff may show that a statute is facially unconstitutional in one of two ways: "either because it is unconstitutional in every conceivable application, or because it seeks to prohibit such a broad range of protected conduct that it is unconstitutionally 'overbroad.'" *Members of City Council v. Taxpayers for Vincent*, 466 U.S. 789, 796 (1984). Interpreting *Vincent* and the Supreme Court cases following it, the Fifth Circuit has explained that

if a rule is unconstitutional in all its applications, a plaintiff may challenge the rule as unconstitutional on its face. Under the substantial overbreadth doctrine, a person whose speech may be prohibited constitutionally may nevertheless prevail upon a facial challenge if the statute covers too much speech, and the statute's provisions are unseverable.

Monroe v. City of Kilgore, Tex., 877 F.2d 364, 382 (5th Cir. 1989). The Preachers have raised a facial challenge under the second method.

Louisiana Revised Statute Section 14:326, entitled "Processions, marches, parades, or demonstrations; permits; liability; bond; exemptions; penalty," provides, in relevant part:

A. Any procession, march, parade or public demonstration of any kind or for whatever purpose is prohibited by any group, association or organization on any public sidewalk, street, highway, bridge, alley, road or other public passageway of any municipality or unincorporated town or village unless there first has been obtained a permit therefor, and in all cases the person or persons or the group, association or organization to whom the permit is issued shall be liable for all damage to property or persons which may arise out of or in connection with any such procession, march, parade or public demonstration for which a permit is issued.

B. Application for the permit required herein shall be made to the mayor and governing authority of the municipality or to the governing authority of the parish in which the unincorporated town or village in which the procession, march, parade or public demonstration is located, as the case may be. Permits may be granted by the authority to which application is made, provided, however, that bond in the amount of ten thousand dollars has first been filed with the mayor and municipal governing authority or with parish governing authority, as the case may be, as security for the payment of any damage or injury which may occur as the result of or in connection with such procession, march, parade or public demonstration.

La. Rev. Stat. § 14:326A.-B. However, the statute further states that “the provisions of this Section shall apply only to parishes with a population of more than four hundred fifty thousand.” La. Rev. Stat. § 14:326C.

The Court will first decide the threshold question of the applicability of challenged statutes to the Preachers’ activities, “since if [the Court] finds the statutes inapplicable to [the Preachers], it will be unnecessary to reach the constitutional question.” *United States v. Powell*, 423 U.S. 87, 90 (1975); *see also Ashwander v. Tennessee Valley Authority*, 297 U.S. 288, 347 (1936) (Brandeis, J., concurring) (“The Court will not pass upon a constitutional question although properly presented by the record, if there is also present some other ground upon which the case may be disposed of.”).

The Preachers first contend that the statute is inapplicable to Columbia because the parish population is less than four hundred fifty thousand. The Preachers further argue that (1) the statute is so overbroad as to limit “vast amounts of speech and assembly,” (2) the requirement of registration and posting of a \$10,000 bond is incompatible with the Constitution, and (3) there are no safeguards as required under the prior restraint doctrine.

The Court need not reach the merits of the Preachers’ facial challenge to the Permit Statute. The Court has reviewed the language of the statute, and, under principles of statutory construction,² agrees with the Preachers that it applies only to parishes with a population of more than four hundred fifty thousand. As was established at the hearing in this matter, neither Caldwell Parish nor any other

²See Section 2, discussing the Standing Statute, *infra*, for a review of the principles of statutory construction.

parish in the Western District of Louisiana, Monroe Division, meets this population requirement.

In the type of facial challenge raised by the Preachers, there is an exception to the general standing requirements. *See Vincent*, 466 U.S. at 797. However, the Preachers are required to bring even this type of facial challenge in the proper venue. *See* 28 U.S.C. § 1391. This lawsuit against Columbia was brought in the Western District of Louisiana, Monroe Division, where Columbia “resides” and where a “substantial part of the events or omissions giving rise to the claim occurred.” 28 U.S.C. § 1391(b). Having found that the Permit Statute does not apply to Columbia or Caldwell Parish, the Court concludes that Columbia is not a proper defendant in a facial challenge to the constitutionality of the statute on overbreadth grounds, and a “substantial part of the events . . . giving rise to [a facial challenge]” could not occur in the Western District of Louisiana or the Monroe Division. *Cf. Globe Glass & Mirror Co. v. Brown*, 888 F. Supp. 768 (E.D. La. 1995).³ Given these facts, the Court finds that the Preachers do not have a substantial likelihood of success on the merits of a constitutional facial challenge to the Permit Statute.

The Preachers have also challenged the Permit Statute as applied to them. In an “as-applied” constitutional challenge, a plaintiff must show that a statute is unconstitutional as applied to his particular speech activity, even though the statute may be applied validly to others. *See Vincent*, 466 U.S. at 803 & 803 n.22. The Court has already determined that the Permit Statute is inapplicable in Caldwell Parish. Also, Columbia admits that there is no permit process, and the Preachers have stated that they would never apply for a permit even if there were such a process. Because the Permit Statute is inapplicable to the Preachers, the Court need not address the issue of the statute’s constitutionality. *See Powell*, 423 U.S. at 90; *Ashwander*, 297 U.S. at 347. Under these circumstances, the Preachers cannot demonstrate a substantial likelihood of success on the merits of a constitutional challenge to the Permit Statute as applied.

³Rather, such a challenge would properly be brought in the Middle District of Louisiana, where the State of Louisiana and its agencies may be sued, or, possibly in the Eastern District of Louisiana where there are parishes with populations exceeding four hundred fifty thousand and where the statute may be applicable.

However, to ensure there are no future incidents, the Court will enjoin Columbia from any attempt to apply the requirements of the Permit Statute to the Preachers.

2. The Standing Statute

The Preachers challenge the constitutionality of the Standing Statute, La. Rev. Stat. § 32:143, as applied, on the grounds that there is no compelling or even significant governmental interest for applying this statute to the Preachers' religiously motivated speech and assembly.

Louisiana Revised Statute Section 32:143, entitled "Stopping, Standing or Parking Prohibited in Specified Places," provides, in relevant part:

No person shall stand, or park a vehicle, except when necessary to avoid conflict with other traffic, or in compliance with law or the directions of a police officer or traffic control device, in any of the following places:

...

(4) Within fifteen feet of a fire hydrant;

...

(6) Within twenty feet of a cross walk at an intersection;

(7) Within twenty feet upon the approach to any flashing beacon stop sign, or traffic control signal located at the side of a roadway;

...

(11) Alongside or opposite any street excavation.

La. Rev. Stat. § 32:143.

As noted above, it is undisputed that on several occasions the Preachers were standing in these prohibited areas under the commonly understood definition of the term "standing." However, the Preachers argue that the term "stand" as used in this statute refers to the halting of a vehicle and that the legislature never envisioned this statute would be applicable to pedestrians.

As with the Permit Statute, the Court need not reach the Constitutional question. Instead, the Court concludes that the Standing Statute is inapplicable to the Preachers' conduct under principals of statutory construction. Louisiana Revised Statute Section 32:1, entitled "Definitions," provides:

When used in this Chapter, the following words and phrases have the meaning ascribed to

them in this Section, unless the context clearly indicates a different meaning:

. . .

(71) “Stand” or “standing” means the halting of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in receiving or discharging passengers.

La. Rev. Stat. § 32:1(71).

The following rules of statutory construction, derived from Louisiana statutes and case law, are applicable to a proper interpretation of the above statutes:

When a law or ordinance is clear and free from all ambiguity, it must be given effect as written. . . . When interpreting a law (ordinance), the court should give it the meaning the lawmaker intended. . . . The meaning and intent of a law is to be determined by a consideration of the law in its entirety and all other laws on the same subject matter, and a construction should be placed on the provision in question which is consistent with the express terms of the law and with the obvious intent of the lawmaker in enacting it. Where it is possible to do so, it is the duty of the courts in the interpretation of laws to adopt a construction of the provision in question which harmonizes and reconciles it with other provisions. A construction of a law which creates an inconsistency should be avoided when a reasonable interpretation can be adopted which will not do violence to the plain words of the law and will carry out the intention of the law maker. . . . When a law is susceptible to two or more interpretations, that which affords a reasonable and practical effect to the entire act is to be preferred over one which renders part thereof ridiculous or nugatory.

Suhr v. Felter, 90-1075, 589 So.2d 583, 585 (La. App. 1 Cir. 10/18/91) (citing *Bunch v. Town of St. Francisville*, 83-0382, 446 So.2d 1357, 1360 (La. App. 1 Cir. 2/28/84); La. Rev. Stat. § 1:1, *et seq*; La. Civ. Code art. 9, *et seq.*). Additionally, “[t]echnical words and phrases, and such others as may have acquired a peculiar and appropriate meaning in the law, shall be construed and understood according to such peculiar and appropriate meaning.” La. Rev. Stat. § 1:3.

Applying the above rules of statutory construction to the Standing Statute, the Court finds that the law is clear and unambiguous that the word “stand,” as that term is used in La. Rev. Stat. § 32:143, is defined in La. Rev. Stat. § 32:1(71) and refers only to the halting of a vehicle, not to pedestrians. It is, therefore, not applicable to the activities of the Preachers in demonstrating or

physically standing on the side of the road.⁴ Because the Standing Statute is not applicable to the Preachers, the Court will not address their contention that the statutes are unconstitutional as applied. *See Powell*, 423 U.S. at 90; *Ashwander*, 297 U.S. at 347. The Court concludes that the Preachers have not established a substantial likelihood that they will succeed on the merits of their claim that the Standing Statute is unconstitutional as applied.

However, to ensure there are no future incidents, the Court will enjoin Columbia from any attempt to apply the Standing Statute to the Preachers unless they are illegally halting a vehicle.

3. The Resisting Statute

The Preachers also argue that the Resisting Statute, La. Rev. Stat. § 14:108, is unconstitutional as applied because “it allows for First Amendment activity to be undermined at the will of an officer by merely issuing a ‘move along order,’” and then arresting those who do not comply.

Louisiana Revised Statute Section 14:108, entitled “Resisting an Officer,” provides:

Resisting an officer is the intentional interference with, opposition or resistance to, or obstruction of an individual acting in his official capacity and authorized by law to make a lawful arrest or seizure of property or to serve any lawful process or court order when the offender knows or has reason to know that the person arresting, seizing property, or serving process is acting in his official capacity.

La. Rev. Stat. § 14:108.

Louisiana courts have consistently construed this statute narrowly to only “prohibit conduct that obstructs or interferes with an officer, acting in his official capacity, who is attempting to seize property, serve process, or make a lawful arrest.” *State v. Joseph*, 99-1234, 759 So.2d 136, 140 (La. App. 5 Cir. 3/22/00); *see also Adams v. Thompson*, 557 F.Supp. 405, 410 (M.D. La. 1983). “Unless the officer is engaged in one of the three activities, interference with an officer’s investigation is not

⁴The Court additionally notes that no cases were cited by the parties or discovered by the Court wherein the Standing Statute has been applied to pedestrians.

a violation of [the statute].” *Joseph*, 759 So.2d at 140; *see also Adams*, 557 F.Supp. at 410.

Because the Court has already determined that both the Permit Statute and the Standing Statute are inapplicable to the activities of the Preachers in demonstrating on the side of the road, there can be no lawful arrest under these statutes as applied and, *a fortiori*, there can be no resisting of an officer authorized to make a lawful arrest under the circumstances. Because the Court has determined that the Resisting Statute is also inapplicable to the Preachers’ activities, the Court need not reach the issue of its constitutionality as applied. *See Powell*, 423 U.S. at 90; *Ashwander*, 297 U.S. at 347. As such, the Court finds that the Preachers have not established a substantial likelihood of success on the merits that the Resisting Statute is unconstitutional as applied.

However, to ensure there are no future incidents, the Court will enjoin Columbia from enforcing the Resisting Statute against the Preachers unless the Preachers interfere with an officer, acting in his official capacity, who is attempting to seize property, serve process, or make a lawful arrest.

D. Demonstrations at the Intersection in Question

Although the Court has determined that the Preachers have a First Amendment right to demonstrate in public fora and that all three statutes previously used by Columbia to arrest one of the Preachers are inapplicable to the activities of the Preachers, this does not end the Court’s analysis. The Preachers have made it clear that what they ultimately desire is not merely to demonstrate in Columbia free from arrest, but to demonstrate at a particular location: the intersection of Highway 165 and Church Street.

As noted previously, the parties stipulated that the southwest corner of this intersection is now an inaccessible construction zone and that all other locations in the vicinity except for the southeast corner of the intersection would place the Preachers in a position where they would restrict access to businesses. The Court has determined as a matter of law that the Preachers have failed to

sufficiently establish that the dirt area beside the paved edge of the highway is a public right-of-way. Thus, the area in question in which the Preachers desire to demonstrate and display their signs has been narrowed to the approximately two-foot-wide paved shoulder area between the fog line and the paved edge of Highway 165 near the southeast corner of its intersection with Church Street.

For the following reasons, the Court finds that, while the issue has not been decisively resolved, the Preachers have not established a substantial likelihood of success on the merits that they can legally demonstrate at *this particular location*.

While not previously relied upon to remove or arrest the Preachers, several other legal reasons have been advanced by Columbia for the prohibition of demonstrations on, and the removal of the Preachers from, the southeast corner of the intersection. These justifications include the duty of the State to maintain the public roadways in a condition that is reasonably safe and the statutory prohibition against obstruction of a highway. In the interest of judicial economy, the Court will now address these arguments.

1. Duty to Maintain Safe Roadways

Under Louisiana courts' interpretation of Louisiana Revised Statute Section 48:21, the State, through the Department of Transportation and Development ("DOTD"), has a duty "to maintain the public roadways in a condition that is reasonably safe and does not present an unreasonable risk of harm to the motoring public exercising ordinary care and reasonable prudence." *See, e.g., Lasyone v. Kansas City Southern R.R.*, 2000-2628, 786 So.2d 682, 690 (La. 2001) (interpreting La. Rev. Stat. § 48:21(A)). The state "must maintain the shoulders and the area off the shoulders, within its right-of-way, in such a condition that they do not present an unreasonable risk of harm to motorists using the adjacent roadway and to others, such as pedestrians, who are using the area in a reasonably prudent manner." *Id.* This duty to maintain safe shoulders encompasses the foreseeable risk that for any number of reasons a motorist might find himself on, or partially on, the shoulder, and this

duty extends not only to prudent and attentive drivers, but also to motorists who are slightly exceeding the speed limit or momentarily inattentive. *Id.* This duty and obligation is extended to local municipalities, such as Columbia, under the Lawarson Act. La. Rev. Stat. § 33:423.

2. Simple Obstruction of a Highway

Louisiana Revised Statutes Section 14:97, entitled “Simple Obstruction of a Highway of Commerce,” provides, in relevant part: “Simple obstruction of a highway of commerce is the intentional or criminally negligent placing of anything or performance of any act on any railway, railroad, navigable waterway, road, highway, thoroughfare, or runway of an airport, which will render movement thereon more difficult.” La. Rev. Stat. § 14:97. Louisiana courts interpreting this statute have stated that “any object which tends to impede traffic or render more hazardous the flow of vehicular traffic upon a public highway must be deemed an obstruction.” *Woods v. Employers Liability Assurance Corp.*, 6310, 172 So.2d 100, 108 (La. App. 1 Cir. 2/1/65).

3. Constitutional Analysis

The Court concludes that both of these potential restrictions on the exercise of the Preachers’ First Amendment activities are content-neutral time, place, and manner regulations of general applicability. Although these statutes may have an incidental effect on the speakers’ messages, there is no evidence that either was adopted by the government for the purpose of disfavoring any particular speech or viewpoint. Additionally, these regulations would not prevent the Preachers’ demonstrations altogether, but would only prohibit them from holding up signs where that activity renders movement on the highway more difficult or otherwise threatens the safety of drivers or themselves, as the Court is persuaded it may at this particular location.

The Court is also persuaded that the interests furthered by these two regulations, promoting safety and the orderly flow of traffic on public roads, are significant governmental interests. *See, e.g., Schenck v. ProChoice Network of Western New York*, 519 U.S. 357, 376 (1997) (recognizing the significant government interest in “ensuring public safety and order, promoting the free flow of traffic on streets and sidewalks, protecting property rights”); *Int’l Soc. for Krishna Consciousness*

of *New Orleans, Inc. v. City of Baton Rouge*, 876 F.2d 494, 498 (5th Cir. 1989) (same).

The Court finds that, as applied to demonstrations at this particular location, the regulations are narrowly tailored to serve the government's interest in safety and traffic flow. As noted previously, the shoulder of the paved highway at this point is only two feet wide and the dirt area beside it is likely private property. Given that the shoulder is defined as that portion of the improved highway set aside for "accommodation for stopped vehicles, for emergency use and for lateral support of base and surface," La. Rev. Stat. § 48:1(21), and that the Louisiana courts have consistently noted the "foreseeable risk that for any number of reasons a motorist might find himself on, or partially on, the shoulder," *Lasyone*, 786 So.2d at 690, the Court finds that a prohibition of demonstrations in this area based on these regulations does not restrict any more First Amendment activity than is necessary to promote the significant interests of promoting traffic flow and safety.⁵

The Preachers implicitly argue that such regulations, as applied, would be under-inclusive because they would be used to prohibit their demonstrations, but are not enforced against people simply walking along the roadway. However, the Court has been presented with no evidence that pedestrians regularly use the shoulder at this location or that any such regulations have been applied in a discriminatory manner. Even if this were a pedestrian walkway, the Court is persuaded that a group of people with large signs standing by the side of the road for extended periods of time with the specific intention of displaying their signs to passing cars presents more of a danger to the drivers and to themselves than would a person merely walking by the road. Additionally, whether these regulations would be narrowly tailored in other situations or in other locations is a question that the

⁵The Court notes that safety is an obvious concern at this location as evidenced by the fact that it was one of the Preachers who initially called the police in December 2003 because he was almost run over by a passing motorist while standing on the shoulder of Highway 165.

Court need not address because the Preachers have indicated that they wish to demonstrate only at this particular area. The Court concludes that the statutory prohibition against highway obstruction and the duty to maintain safe roads are both narrowly tailored regulations which prevent the Preachers from demonstrating on the shoulder of Highway 165 at the southeast corner of its intersection with Church Street.

Finally, the Court is persuaded that these restrictions leave open ample alternative channels of communication. *Grace*, 461 U.S. at 177; *Perry*, 460 U.S. at 46. Columbia has offered the Preachers other public sites where they will be allowed to demonstrate, and, apparently, the Preachers have availed themselves of these locations. The Preachers respond that the location near the intersection allows them to communicate their messages most effectively. However, the Preachers do not have the right to choose the exact or ideal location from which to communicate their messages, so long as the alternative locations still allow them to communicate their message to significant numbers of people. The Court finds that there are ample alternative sites in the town of Columbia at which the Preachers can demonstrate.

The prohibition on simple obstruction of highways, La. Rev. Stat. § 14:97, and the duty to maintain safe roadways derived from La. Rev. Stat. § 48:21, are constitutional as applied to demonstrations at the intersection in that both regulations are content neutral time, place, and manner restrictions that are narrowly tailored to further a significant governmental interest, and leave open ample alternative channels of communication. Therefore, the Preachers have not demonstrated a substantial likelihood of success on the merits that they can legally demonstrate at the intersection in question.

Because the Plaintiffs have not carried their burden of persuasion as to the substantial likelihood of success on the merits, the Court need not address the other three elements of the test

for injunctive relief. *See, e.g., Rohoe*, 902 F.2d at 358; *Allied Marketing*, 878 F.2d at 809.

III. CONCLUSION

For the foregoing reasons, the Plaintiffs' Motion for Preliminary Injunction [Doc. No. 2] is GRANTED IN PART and DENIED IN PART. Plaintiffs' Motion for Preliminary Injunction is GRANTED to the extent that it seeks to enjoin Defendant from unconstitutionally interfering with Plaintiffs' First Amendment Rights and to the extent that it seeks to enjoin Defendant from enforcing La. Rev. Stat § 14:108; La. Rev. Stat. § 32:143; and La. Rev. Stat. § 14:326 against the Plaintiffs as those statutes have been applied in the past.

Plaintiffs' Motion for Preliminary Injunction is DENIED in all other respects. Specifically, Plaintiffs' Motion for Preliminary Injunction is DENIED to the extent that it seeks to enjoin Defendant from interfering with, removing, or arresting under constitutionally valid laws, the Plaintiffs as they demonstrate and hold signs on the shoulder of Highway 165 at the southeast corner of the intersection with Church Street or on any private property.

MONROE, LOUISIANA, this 5th day of May, 2005.


ROBERT G. JAMES
UNITED STATES DISTRICT JUDGE