

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

SHANNON WALLACE and WESLEY SEWELL,
Plaintiffs,
vs.

Case No.: 1:06cv1073-LG-JMR

CITY OF WIGGINS, MISSISSIPPI;
BUDDY BELL, in his official capacity as
Chief of Police of the Wiggins, Mississippi
Police Department; **UNKNOWN**
DETECTIVE A, in his official capacity as a
detective for the City of Wiggins, Mississippi
Police Department; **UNKNOWN OFFICER**
B, in his official capacity as a police officer of
the City of Wiggins, Mississippi;
UNKNOWN OFFICER C, in his official
capacity as a police officer of the City of
Wiggins, Mississippi; **UNKNOWN**
OFFICER D, in his official capacity as a
police officer of the City of Wiggins,
Mississippi,
Defendants.

Trial By Jury Requested

FIRST AMENDED VERIFIED COMPLAINT

INTRODUCTION

1. This is a civil rights action brought by Plaintiffs Rev. Shannon Wallace and Rev. Wesley Sewell, seeking injunctive relief, declaratory relief and damages against Defendants for the violation of their fundamental rights.
2. This action is premised on the United States Constitution concerning the denial of Plaintiffs' fundamental rights of free speech, free exercise of religion, due process and equal protection by Defendants while acting under color of state law.

3. Defendants' actions have deprived and will continue to deprive Plaintiffs of their paramount rights and guarantees provided under the United States Constitution.
4. Each and every act alleged herein of Defendants was committed under the color of state law and/or municipal authority.

JURISDICTION AND VENUE

5. This action arises under the United States Constitution, particularly the First and Fourteenth Amendments; and under federal law, particularly 28 U.S.C. §§2201, 2202; 42 U.S.C. §§1983 and 1988.
6. This Court has original jurisdiction over the federal claims by operation of 28 U.S.C. §§1331 and 1343, and supplemental jurisdiction to hear any state claims under §1367.
7. This Court has the authority to issue the requested declaratory relief under 28 U.S.C. §2201.
8. This Court has the authority to issue the requested injunctive relief under Fed. R. Civ. P. 65 and 28 U.S.C. §1343(3).
9. This Court is authorized to award the requested damages under 28 U.S.C. §1343(3).
10. This Court is authorized to award attorneys' fees under 42 U.S.C. §1988.
11. Venue is proper under 28 U.S.C. §1391 in the Southern District because this claim arose there, and because Defendants are found within the District.

PLAINTIFFS

12. Plaintiff Rev. Shannon Wallace ("Rev. Wallace") is an adult male and a resident of Perkinston, Mississippi.
13. Plaintiff Rev. Wesley Sewell ("Rev. Sewell") is an adult male and is a resident of Hawkinsville, Georgia.

DEFENDANTS

14. Defendant City of Wiggins is a municipal corporation and political subdivision of the State of Mississippi which may sue and be sued.
15. Defendant Buddy Bell is now, and was at all relevant times hereto, Chief of Police of the Wiggins, Mississippi Police Department.
16. In his official capacity, Defendant Bell interprets and applies the laws and ordinances of the City of Wiggins, Mississippi.
17. Defendant Unknown Detective A was, at all relevant times hereto, a detective for the City of Wiggins Police Department.
18. In his official capacity, Defendant Unknown Detective A interprets and applies the laws and ordinances of the City of Wiggins, Mississippi.
19. Defendant Unknown Officer B was, at all relevant times hereto, a police officer for the City of Wiggins, Mississippi.
20. In his official capacity, Defendant Unknown Officer B interprets and applies the laws and ordinances of the City of Wiggins, Mississippi.
21. Defendant Unknown Officer C was, at all relevant times hereto, a police officer for the City of Wiggins, Mississippi.
22. In his official capacity, Defendant Unknown Officer C interprets and applies the laws and ordinances of the City of Wiggins, Mississippi.
23. Defendant Unknown Officer D was, at all relevant times hereto, a police officer for the City of Wiggins, Mississippi.
24. In his official capacity, Defendant Unknown Officer D interprets and applies the laws and ordinances of the City of Wiggins, Mississippi.

FACTS

25. Revs. Wallace and Sewell are Christians, and as a tenet of their faith, they share their religious beliefs with others on public ways.
26. Revs. Wallace and Sewell discharge a religious duty by publicly proclaiming and orally communicating their Christian beliefs to others.
27. Revs. Wallace and Sewell have no intent to physically touch or harass anyone, or to express themselves in any way other than in a peaceful manner.
28. Revs. Wallace and Sewell engage in speech activities for numerous reasons; namely, to express their views about their faith, to object to activities contrary to the tenets of their faith, to associate with others who embrace like views concerning their faith, to counsel individuals regarding their faith, and to engage in religious activities, such as singing of hymns, reading and quoting the Bible, preaching, and praying.
29. In furtherance of their religious beliefs and convictions, as set out herein, Revs. Wallace and Sewell wish to convey their message in public areas and ways in the Wiggins, Mississippi area and other areas around the country.
30. On April 11, 2006, Revs. Wallace and Sewell attempted to engage in public expression about their Christian beliefs on a public way in Wiggins, Mississippi.
31. Their efforts on April 11, 2006 to engage in public expression were thwarted by Defendants.
32. On April 11, 2006, Revs. Wallace and Sewell positioned themselves on a public way at the northeast corner of Magnolia and College in Wiggins, Mississippi.
33. Two other adult individuals and three minor children were present with Plaintiffs.

34. To assist in the spreading of their message, Revs. Wallace and Sewell brought with them certain posterboards, no larger than two feet by three feet in size, which displayed messages to passersby.
35. The messages on their signs included, "Jesus Saves," "Where will you spend eternity?," and a picture of a cross.
36. Revs. Wallace and Sewell also used a voice amplification device consisting of a microphone and two ten-inch Peavy brand speakers.
37. Revs. Sewell and Wallace began to preach using the amplification device and held their signs.
38. Revs. Sewell and Wallace at no time stepped into the public road while engaging in their expressive activity.
39. Plaintiffs are not aware of and did not witness any traffic disturbances on College and Magnolia as a result of their expressive activity.
40. Approximately ten to fifteen minutes following their arrival, Revs. Wallace and Sewell were approached by five police officers of the City of Wiggins, including Defendant Bell, Unknown Detective A, and Unknown Officers B, C and D.
41. Defendant Bell and two other officers walked from the police station across the railroad tracks to where Plaintiffs were located.
42. The two additional officers initially approached Plaintiffs in their official police vehicles.
43. Upon their arrival, one of the police officers initially advised Plaintiffs to turn off their amplification system.

44. A further conversation ensued between Plaintiffs, Defendant Bell, and the other police officers.
45. During this conversation, Plaintiffs were advised by Defendant Bell and the other officers that they were violating the city's noise ordinance by making noises that traveled further than 50 feet.
46. Defendant Bell and the other officers also advised Plaintiffs that they were violating the city's sign ordinance by holding up too many signs.
47. Defendant Bell and the other officers also advised Plaintiffs that they were obstructing traffic.
48. Defendant Bell and the other officers also advised Plaintiffs that they were endangering public safety by preaching and holding signs along a public way.
49. Defendant Bell and the other officers also advised Plaintiffs that they were violating the City's permit ordinance.
50. Defendant Bell and the other officers advised Plaintiffs that to comply with the permit ordinance, they needed to obtain a permit in order to congregate and speak as they were doing.
51. Plaintiffs asked Defendant Bell how to obtain a permit for this purpose.
52. Defendant Bell advised Plaintiffs that they needed to see the City Mayor, Jerry Alexander, to obtain a permit.
53. However, Defendant Bell also told Plaintiffs that the City of Wiggins did not permit preaching on the streets.
54. Plaintiffs were given the option of ceasing their speech and leaving or suffering law enforcement action.

55. In response to what Defendant Bell and the other officers advised them, Plaintiffs offered to put down their signs and turn down (or off, if necessary) their amplification system.
56. Defendant Bell advised Plaintiffs that these remedies were insufficient.
57. Defendant Bell advised Plaintiffs that they must cease their expressive activity and Plaintiffs understood that the consequences of doing otherwise was arrest.
58. As a result, out of fear of arrest, Revs. Wallace and Sewell gave up any immediate hope of speaking on public ways in Wiggins, Mississippi, and abandoned their First Amendment rights for fear of arrest.
59. The following day, April 12, 2006, Plaintiffs went to the office of the mayor, Jerry Alexander, to obtain a permit for their activities as Defendant Bell advised.
60. Unknown Detective A was also present at the meeting.
61. During the meeting, Mayor Alexander advised Plaintiffs that he did not issue permits, but stated that Plaintiffs must instead seek a permit from the Board of Aldermen.
62. Mayor Alexander also advised Plaintiffs that they could not conduct their speech along a public way in Wiggins, but instead must go to Blaylock Park, located in Wiggins, to engage in their desired activities.
63. Mayor Alexander further advised Plaintiffs that even if they went to Blaylock Park, they could not use their amplification system.
64. Speaking in Blaylock Park without amplification is not an adequate alternative for Plaintiffs' expressive activity.

65. On April 18, 2006, the Plaintiffs attended the meeting of the Wiggins Board of Aldermen in an effort to obtain the permit Defendant Bell and Mayor Alexander told them they needed.
66. The Board of Aldermen and the City Attorney, Rebecca Taylor, mentioned the city's noise and sign ordinances and disturbing the peace as reasons why Plaintiffs could not conduct their desired expressive activities.
67. Rev. Sewell brought a copy of the noise ordinance with him and pointed out that it did not apply to Plaintiffs' activities on its face.
68. The City Attorney agreed with Rev. Sewell that the noise ordinance did not apply.
69. The Board of Aldermen tabled the request of the Plaintiffs until the following meeting, held on May 2, 2006.
70. On May 2, 2006, Rev. Sewell attended the meeting of the Board of Aldermen in an effort to obtain a permit for Plaintiffs' expressive activities.
71. Rev. Sewell had been placed on the official agenda for the May 2, 2006 meeting.
72. The Board of Aldermen and the City Attorney advised Rev. Sewell that the City did not employ any form of permit process, but that Plaintiffs still could not conduct their expressive activities.
73. The Board of Aldermen and the City Attorney mentioned the city's noise and sign ordinances, disturbing the peace and public safety as reasons why Plaintiffs could not conduct their expressive activity.
74. Defendant Bell, who was present at the meeting, and the City Attorney both advised Rev. Sewell that if he and Rev. Wallace engaged in their desired expressive activities in Wiggins, they would be arrested for disturbing the peace.

75. Mayor Alexander announced during the meeting to the clerk that he wanted it on record in the minutes that he did not like what Rev. Sewell was doing.
76. The May 2, 2006 meeting of the Wiggins Board of Aldermen was a public meeting.
77. The Wiggins Board of Aldermen regularly keeps minutes of their meetings.
78. In September 2006, Revs. Wallace and Sewell went to Wiggins to obtain copies of the minutes of the Board of Aldermen meetings on April 18, 2006 and May 2, 2006.
79. Plaintiffs obtained the minutes of the April 18, 2006 meeting.
80. Plaintiffs obtained the minutes of the May 2, 2006 meeting, but they do not contain any record of the portion of the proceedings wherein their circumstances were addressed.
81. Plaintiffs inquired as to why the minutes did not include record of this discussion, and the city clerk provided no explanation.
82. Upon information and belief, Defendants have permitted other types of expressive activity to occur on public ways in Wiggins.
83. Revs. Wallace and Sewell are not permitted to preach on public ways in Wiggins, Mississippi.
84. Revs. Wallace and Sewell strongly desire to share their religious message in public ways in Wiggins, and would do so, but are chilled and deterred from engaging in expressive conduct on public ways in Wiggins for fear of arrest.
85. The impact of chilling and deterring Revs. Wallace and Sewell from exercising their constitutional rights on public ways in Wiggins constitutes irreparable harm to Revs. Wallace and Sewell.
86. Revs. Wallace and Sewell have no adequate remedy at law for the loss of their constitutional rights.

ALLEGATIONS OF LAW

87. Each and all of the acts alleged herein were done by Defendants under the color and pretense of state law, statutes, ordinances, regulations, customs, usages and policies.
88. Defendants ban preaching on public streets and ways in Wiggins, Mississippi.
89. Defendants have enforced the challenged ban on preaching on the streets of Wiggins pursuant to its policies and practices against Plaintiffs.
90. Plaintiffs' speech, religious exercise and expression are protected by the United States Constitution.
91. Denial of access to public fora to engage in protected speech is a violation of the First and Fourteenth Amendments to the United States Constitution.
92. The decision to deny Plaintiffs access to public ways in Wiggins for preaching was a direct result of laws, policies, practices, customs, and usages officially adopted and promulgated by the City of Wiggins.
93. All of Defendants' actions herein were done in violation of clearly established law.
94. Unless and until Defendants' exclusion of Plaintiffs from public ways is enjoined, Plaintiffs will continue to suffer irreparable harm to their federal constitutional rights.

FIRST CAUSE OF ACTION: VIOLATION OF THE RIGHT TO FREEDOM OF SPEECH UNDER THE FIRST AMENDMENT OF THE CONSTITUTION

95. The allegations contained in all preceding paragraphs are incorporated herein by reference.
96. Religious speech is protected by the First and Fourteenth Amendments to the United States Constitution.
97. The public way on which Plaintiffs wished to conduct their expressive activity is a traditional public forum.

98. Within a traditional public forum, the government may only regulate the time, place and manner of speech through the use of narrowly tailored regulations that further a compelling governmental interest.
99. Defendants' prohibition against preaching on the streets in Wiggins does not serve a compelling government interest and is not narrowly tailored to achieve any such interest.
100. Defendants' prohibition against preaching on the streets in Wiggins vests unfettered discretion in city officials to deny protected speech.
101. Defendants silenced Plaintiffs' speech on threat of arrest because of the religious content of Plaintiffs' speech.
102. Within a traditional public forum, express discrimination against religious speech is presumptively unconstitutional.
103. Regardless of the type of forum (traditional, designated, limited, or nonpublic), the government may not discriminate based upon the viewpoint expressed by the speaker.
104. The conduct of Defendants therefore constitutes a violation of Plaintiffs' right to freedom of speech under the First Amendment of the United States Constitution as incorporated and applied to the states through the Fourteenth Amendment.

**SECOND CAUSE OF ACTION: VIOLATION OF PLAINTIFFS' RIGHT TO FREE
EXERCISE OF RELIGION UNDER THE FIRST AMENDMENT OF THE
CONSTITUTION**

105. The allegations contained in all preceding paragraphs are incorporated herein by reference.
106. Laws which burden the free exercise of religion must be neutral and generally applicable.

107. Defendants prohibit preaching on public ways in Wiggins, Mississippi, which singles out religious speech for exclusion from a traditional public forum.
108. Plaintiffs' desire to share their faith with others is motivated by their sincerely held religious beliefs.
109. The Bible instructs believers to share the Gospel with others, and Plaintiffs rely on the Bible to guide their words and actions.
110. Plaintiffs seek to discuss issues from a religious prospective and engage in religious speech through the sharing of their faith on public ways in Wiggins.
111. Defendants' ban on preaching on the streets in Wiggins prevents Plaintiffs from exercising their sincerely held religious beliefs in a traditional public forum and imposes a burden on Plaintiffs' beliefs that is not imposed on others.
112. Defendants' prohibition on preaching on the streets in Wiggins serves no rational or compelling government interest.
113. The conduct of Defendants, as set out herein, constitutes a violation of Plaintiffs' right to free exercise of religion under the First Amendment of the United States Constitution as incorporated and applied to the states through the Fourteenth Amendment.

**THIRD CAUSE OF ACTION: VIOLATION OF PLAINTIFFS' RIGHT TO FREEDOM
OF ASSEMBLY UNDER THE FIRST AMENDMENT OF THE UNITED STATES
CONSTITUTION**

114. The allegations contained in all preceding paragraphs are incorporated herein by reference.
115. Plaintiffs were prohibited by Defendants from engaging in religious speech with one another on the public ways in Wiggins, Mississippi.

116. The conduct of Defendants, as set out herein, constitutes a violation of Plaintiffs' right to freedom of assembly under the First Amendment of the United States Constitution as incorporated and applied to the states through the Fourteenth Amendment.

FOURTH CAUSE OF ACTION: VIOLATION OF PLAINTIFFS' RIGHT TO DUE PROCESS UNDER THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION

117. The allegations contained in all preceding paragraphs are incorporated herein by reference.

118. Defendants' prohibition against preaching on the streets in Wiggins is not written.

119. The various ordinances pointed out by the Board of Aldermen and Defendant Bell as justification for the ban (noise, signs) do not apply on their face to Plaintiffs' activities.

120. Wiggins city officials differ in their explanation of the prohibition of preaching on the streets in Wiggins.

121. As a result, individuals of common intelligence must guess at the meaning and differ as to its application.

122. Defendants' prohibition against preaching on the streets in Wiggins provides unfettered discretion to city officials to deny protected speech.

123. The conduct of Defendants, as set out herein, constitutes a violation of Plaintiffs' right to due process of law under the Fourteenth Amendment of the United States Constitution.

FIFTH CAUSE OF ACTION: VIOLATION OF THE RIGHT TO EQUAL PROTECTION UNDER THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION

124. The allegations contained in all preceding paragraphs are incorporated herein by reference.

125. The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution requires that the government treat similarly situated persons equally.
126. Upon information and belief, Defendants allow similarly situated persons access to public ways in Wiggins to engage in a wide variety of speech, expression and conduct.
127. Defendants' prohibition on preaching on the streets in Wiggins treats individuals wishing to engage in "preaching" differently than individuals wishing to engage in other types of speech.
128. Defendants' prohibition on Plaintiffs preaching on public ways in Wiggins treats them differently than similarly situated persons.
129. Defendants have no rational or compelling reason that would justify an exclusion of preaching from the public ways in Wiggins.
130. The conduct of Defendants, as set out herein, constitutes a violation of Plaintiffs' right to equal protection under the Fourteenth Amendment of the United States Constitution.

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, the Plaintiffs pray for relief against Defendants, and respectfully request that the Court:

- a. Assume jurisdiction over this action;
- b. Enter a judgment and decree declaring that Defendants' actions violate Plaintiffs' rights under the United States Constitution;
- c. Preliminarily and permanently enjoin Defendants, their agents, employees, officials, and all persons in active concern or participation with them, from enforcing any ordinance, law, policy or practice prohibiting Plaintiffs' desired religious speech activities on public ways in Wiggins, Mississippi;
- d. Award Plaintiff compensatory and nominal damages;

- e. Award Plaintiff their reasonable costs and expenses in bringing this action, including attorneys' fees in accordance with 42 U.S.C. §1988; and
- f. Grant such other and further relief as appears to the Court to be equitable and just.

Respectfully submitted this 26th day of September, 2007.

By: s/Heather Gebelin Hacker
Heather Gebelin Hacker

Benjamin W. Bull, AZ SBN 009940*
ALLIANCE DEFENSE FUND
15333 N. Pima Road, Suite 165
Scottsdale, Arizona 85260
Telephone: (480) 444-0020
Facsimile: (480) 444-0028
E-mail: bbull@telladf.org

Timothy D. Chandler, CA SBN 234325*
Heather Gebelin Hacker,
AZ SBN 024167, CA SBN 249273*
ALLIANCE DEFENSE FUND
101 Parkshore Drive, Suite 100
Folsom, California 95630
Telephone: (916) 932-2850
Facsimile: (916) 932-2851
E-mail: tchandler@telladf.org
hghacker@telladf.org

**Admitted Pro Hac Vice*
***Local Counsel of Record*


P. Sharkey Burke, Jr., MS SBN 10436**
ANDERSON, CRAWLEY & BURKE, PLLC
Post Office Box 2540
Ridgeland, Mississippi 39158-2540
Telephone: (601) 977-8977
Facsimile: (601) 977-9975
E-mail: sburke@acblaw.com

Attorneys for Plaintiffs

VERIFICATION OF COMPLAINT

I, Wesley Sewell, a citizen of the United States and resident of the State of Georgia, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that I have read the foregoing Verified Complaint and the factual allegations therein, and the facts as alleged are true and correct.

Executed this 22 day of August, 2007.

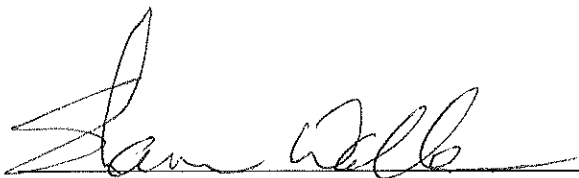


Wesley Sewell

VERIFICATION OF COMPLAINT

I, Shannon Wallace, a citizen of the United States and resident of the State of Mississippi, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that I have read the foregoing Verified Complaint and the factual allegations therein, and the facts as alleged are true and correct .

Executed this 22 day of August, 2007.

A handwritten signature in black ink, appearing to read "Shannon Wallace", written over a horizontal line.

Shannon Wallace

CERTIFICATE OF SERVICE

I hereby certify that on September 26, 2007, I electronically filed the foregoing with the Clerk of Court using the ECF system, which sent notification of such filing to the following:

Mark D. Fijman
fijmanm@phelps.com

Gary E. Friedman
friedmag@phelps.com

Attorneys for Defendants

Pat Sharkey Burke, Jr.
sburke@acblaw.com

Heather Gebelin Hacker
hghacker@telladf.org

Timothy D. Chandler
tchandler@telladf.org

Benjamin W. Bull
bbull@telladf.org

Attorneys for Plaintiffs

s/Heather Gebelin Hacker
Heather Gebelin Hacker
AZ SBN 024167, CA SBN 249273
ALLIANCE DEFENSE FUND
101 Parkshore Drive, Suite 100
Folsom, California 95630
Telephone: (916) 932-2850
Facsimile: (916) 932-2851
E-mail: hghacker@telladf.org