

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA

EDWIN CRAYTON,

Plaintiff,

– Versus –

CITY OF NATCHITOCHEs, LOUISIANA;  
WAYNE MCCULLEN, Mayor, City of  
Natchitoches; MELVIN HOLMES, Chief of  
Police, City of Natchitoches,

Defendants.

NUMBER:

SECTION:

MAG:

CIVIL RIGHTS ACTION  
42 U.S.C. § 1983

DECLARATORY AND INJUNCTIVE  
RELIEF

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COMPLAINT

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**I. INTRODUCTION**

1. This is an action pursuant to 42 U.S.C. §§ 1983 and 1988, for a temporary restraining order, declaratory judgment, injunctive relief and nominal damages to redress Defendants' violations Plaintiff's rights as protected by of the First and Fourteenth Amendments to the United States Constitution. Specifically, Plaintiff seeks emergency judicial review of the Natchitoches City Code Sections 20-16 through 20-25, both facially and as applied to Plaintiff. The actions of Defendants are preventing Plaintiff from exercising his First Amendment right to freedom of speech, by denying him the right to express his religious views on the public sidewalks of the City.

**II. JURISDICTION AND VENUE**

2. This Court has original jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343.

3. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b).
4. Declaratory relief is authorized pursuant to 28 U.S.C. § 2201 and 28 U.S.C. § 2202. A declaration of the law is necessary and appropriate to determine the respective rights and duties of the parties to this action.

### **III. THE PARTIES**

5. Plaintiff Edwin Crayton is an individual of the age of majority presently residing in Natchitoches, Louisiana, within the jurisdiction of the Western District of Louisiana.
6. Defendant City of Natchitoches, Louisiana, is a political subdivision of the State of Louisiana and a municipal corporation, which was at all relevant times the employer of Melvin Holmes, named as defendant herein. Defendant City is directly liable for acts complained of herein due to the policies, practices, procedures and customs of its police department and its employees. Defendant City is further directly liable for acts complained of herein due to its enactment of municipal ordinances that violate Plaintiff's rights. Defendant City maintains the right and power to sue and be sued.
7. Defendant Wayne McCullen is an individual of the age of majority presently residing in Natchitoches, Louisiana, within the jurisdiction of the Western District of Louisiana. At all times pertinent herein, Defendant McCullen was the duly elected Mayor of the City of Natchitoches. Defendant McCullen is responsible for the supervision of the Natchitoches Police Department. Additionally, Defendant McCullen is responsible for the execution of the ordinances of the City of Natchitoches, complained of herein, and denied Plaintiff a permit pursuant to those ordinances. Upon information and belief, he is a final policymaker on the question of whether a person will be allowed to protest or otherwise exercise speech rights. He is sued in his official capacity.

8. Defendant Melvin Holmes is an individual of the age of majority presently residing in Natchitoches, Louisiana, within the jurisdiction of the Western District of Louisiana. He is the duly appointed Superintendent of Police for the City of Natchitoches. As such, he is charged with the duty of enforcement of criminal laws of the State of Louisiana and the City of Natchitoches, including the laws complained of herein. Upon information and belief, he is a final policymaker on the question of whether a person will be allowed to protest or otherwise exercise speech rights. He is sued in his official capacity.

#### **IV. THE CHALLENGED STATUTES**

9. **CITY CODE; CITY OF NATCHITOCHEs Sec. 20-16. Gatherings on streets prohibited.**

All public gatherings are hereby prohibited on the streets of the city, except as permitted under section 10-77 of this Code of Ordinances.

10. **CITY CODE; CITY OF NATCHITOCHEs Sec. 20-24. (Permit) Required.** Any person, firm or organization desiring to hold an open air public meeting in the city shall first obtain a permit from the mayor and police chief, who will designate a place for such meeting.

11. **CITY CODE; CITY OF NATCHITOCHEs Sec. 20-25. Fee.** A fee of ten dollars (\$10.00) shall be charged for the permit required by this division in order to help defray the expense of cleaning up after such a meeting.

12. The cited City Code articles are attached hereto and incorporated by reference.

#### **V. FACTUAL ALLEGATIONS**

13. Plaintiff is a resident of Natchitoches, Louisiana, and is a devout Christian.

14. Plaintiff's religious beliefs include a conviction that same-sex marriage is morally wrong.

15. Plaintiff believes that Wal-Mart supports gay marriage, in that he understands that Wal-Mart has joined an organization that supports gay marriage rights, and that Wal-Mart supports gay marriage rights.
16. Plaintiff sought to protest this position of Wal-Mart, and made a sign saying "Christians: Wal-Mart Supports Gay Lifestyles And Marriage Don't Shop There." On the other side, the sign read "Christians: Wal-Mart Has Joined A Gay and Lesbian Group. Don't Shop There. Romans 1, First Corinthians 6:9-11."
17. On or around October 4, 2006, Plaintiff took his sign and stood on the public sidewalk in front of Wal-Mart in Natchitoches.
18. Plaintiff stood on the public sidewalk with his sign for approximately forty (40) minutes. Plaintiff engaged in peaceful protest and did not present any threat to public safety.
19. A police officer, acting in the course of his employment as a police officer of the Defendant City, approached Plaintiff and advised him that he needed a permit to protest on the public sidewalk.
20. Plaintiff went to the police department, where he was given a permit form. Plaintiff was told that until the police chief and the mayor signed the permit form, he could not continue to hold a sign on the public sidewalk.
21. The permit form ostensibly provides an opportunity for an individual to obtain permission to conduct "Open Air Public Meetings" pursuant to "Section 20-16 thru 25 of City Code."
22. Plaintiff completed the form, and was told that once the application was approved, he would have to pay a ten-dollar fee for the permit.
23. The Defendant Police Chief Holmes signed the permit application, and Plaintiff was directed to go to the Mayor's office for his signature.

24. Plaintiff went to the Mayor's office, but was advised that the Mayor was busy. Plaintiff was instructed to leave the form with the Mayor's office, and was told that the Mayor would call him when it was signed.
25. The Mayor's office never called. After a couple of days, on or around October 6, 2006, Plaintiff called the Mayor's office to check the status of his application.
26. Plaintiff was informed that the Mayor had not signed it and that the Mayor wanted to talk to him about it. He was told that the Mayor would call him.
27. To date Defendant McCullen has not called Plaintiff, and neither has Plaintiff been informed that the permit has been approved.
28. Plaintiff has been and remains unable to exercise his First Amendment right to freedom of speech due to the actions of the Defendants.

## **VI. CAUSES OF ACTION**

### **FIRST CLAIM FOR RELIEF**

(City of Natchitoches Municipal Code Sections 20-16 through 25 are facially unconstitutional violations of the First Amendment)

29. Plaintiff realleges and reincorporates, as though fully set forth herein, each and every allegation contained above.
30. The City Code for the City of Natchitoches prohibits all public gatherings on the streets of Natchitoches, with the exception of parades, which are exempted under Section 10-77. However, "open air meetings" are excepted if a permit is obtained from the mayor and the police chief, who will designate the place for the meeting. The Code then provides that the permitted individual shall pay ten dollars to defray the cost of cleaning up such a meeting.
31. The aforementioned ordinances are facially unconstitutional for the following reasons:
  1. The ordinances afford excessive discretion to the licensing mayor and the police chief in determining whether to issue a permit and where a meeting may occur;

2. The ordinances are not narrowly tailored to achieve a significant government interest, and are unconstitutionally over broad;
3. The ordinances does not leave adequate alternative channels for communication;
4. The ten-dollar fee functions as a tax on the exercise of First Amendment rights.

### **SECOND CLAIM FOR RELIEF**

(City of Natchitoches Municipal Code Sections 20-16 through 25 are an unconstitutional violation of the First Amendment, as applied to Plaintiff)

32. Plaintiff realleges and reincorporates, as though fully set forth herein, each and every allegation contained above.
33. The aforementioned ordinances are unconstitutional as applied to Plaintiff, for the following reasons:
  1. Defendants have no legitimate interest in regulating his expressive activity, and, if Defendants do have such an interest, the ordinances are not narrowly tailored to achieve that interest.
  2. Plaintiff did not seek to engage in any of the regulated activities. He did not seek to engage in any activity which would commonly be characterized as either an "open air public meeting" or a "public gathering," yet he was required to comply with the permitting requirements contained in the ordinance, and was denied a permit.

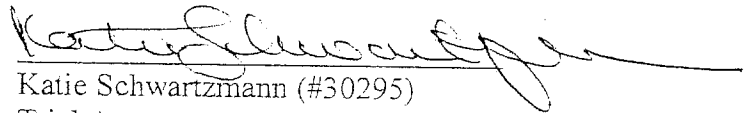
### **VII. PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, having no adequate remedy at law, prays for the following:

1. That a preliminary injunction and permanent injunction be issued restraining and enjoining Defendants and their employees and agents from enforcing or threatening to enforce Natchitoches City Code §§ 20-16 through 20-25;

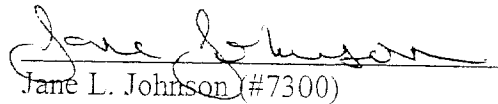
2. That a declaratory judgment be issued holding that Natchitoches City Code §§ 20-16 through 20-25 are unconstitutional both facially and as applied;
3. That Plaintiff be awarded nominal damages;
4. That reasonable attorneys' fees, expenses and costs be awarded to Plaintiff pursuant to 42 U.S.C. § 1988 and any other applicable provision of law;
5. That this Court grant all equitable and further relief which the Court deems just and proper.

Respectfully Submitted,



Katie Schwartzmänn (#30295)  
Trial Attorney  
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████████████████████  
*Staff Attorney for the American Civil Liberties  
Union Foundation of Louisiana*



Jane L. Johnson (#7300)

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*Cooperating Attorney for the American Civil  
Liberties Union Foundation of Louisiana*

*Attorneys for Plaintiff*

**ARTICLE I. IN GENERAL****Sec. 20-1. Planting shrubs, etc., on city property restricted.**

It shall be unlawful for any person (other than the city or its agents, contractors or employees) to plant, place or put any shrubs, trees, rocks, posts, signs, flowers, benches, walks, or any other articles, plants or things on any property, belonging to the city or dedicated to the public use, without written approval and resolution of the city council. The city shall have the right to make such plantings and placing in accordance with section 8-143(i) of the Code of Ordinances.

(Ord. No. 699, § 1, 1-14-57; Ord. No. 105-2001, § 1, 1-14-2002)

*Cross reference*—Streets, sidewalks and public places, Ch. 28.

**Secs. 20-2—20-15. Reserved.**

**ARTICLE II. OPEN AIR PUBLIC MEETINGS****DIVISION 1. GENERALLY****Sec. 20-16. Gatherings on streets prohibited.**

All public gatherings are hereby prohibited on the streets of the city, except as permitted under section 10-77 of this Code of Ordinances.  
(Ord. No. 786, 8-22-60).

**Secs. 20-17—20-23. Reserved.**

**DIVISION 2. PERMIT\*****Sec. 20-24. Required.**

Any person, firm or organization desiring to hold an open air public meeting in the city shall first obtain a permit from the mayor and police chief, who will designate a place for such meeting.  
(Ord. No. 786, 8-22-60)

\**Cross reference*—Licenses and miscellaneous business regulations, Ch. 19.

**Sec. 20-25. Fee.**

A fee of ten dollars (\$10.00) shall be charged for the permit required by this division in order to help defray the expense of cleaning up after such meeting.

(Ord. No. 786, 8-22-60)

**Secs. 20-26—20-35. Reserved.**

**ARTICLE III. CURFEW FOR MINORS†****Sec. 20-36. Short title.**

This article shall be known and may be cited as the "Curfew Ordinance".

(Ord. No. 15-1990, § 1, 5-29-90)

**Sec. 20-37. Purposes.**

This article prescribes, in accordance with prevailing community standards, regulations for the conduct of minors on streets at night, effectively enforced, taught in homes, all for the good of minors, for the furtherance of family responsibility, and for the public good, safety, and welfare.  
(Ord. No. 15-1990, § 2, 5-29-90)

**Sec. 20-38. Definitions.**

For the purposes of this article, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular, and words in the singular number include the plural. The word "shall" is always mandatory and not merely directory.

*City* is the City of Natchitoches.

*Minor* is any person under the age of seventeen (17).

*Parent* is any person having legal custody of a minor (i) as a natural or adoptive parent, (ii) as a

†*Editor's note*—Ord. No. 15-1990, §§ 1—8, adopted May 29, 1990, did not specify manner of codification; hence, such provisions have been included by the editor as Art. III, §§ 20-36—20-42.