UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION

COLT J. LANDRY Plaintiff, – Versus – CITY OF ABBEVILLE; MARK PIAZZA, in his official capacity as Mayor of the City of Abbeville; and TONY J. HARDY, in his official capacity as Chief of Police for the City of Abbeville Police Department, Defendants.	NUMBER: JUDGE: MAGISTRATE JUDGE:

MOTION FOR PRELIMINARY INJUNCTION

Under Federal Rule of Civil Procedure 65, Plaintiff, Sergeant Colt J. Landry, hereby moves for a preliminary injunction, the terms of which are set forth in the proposed order attached hereto, barring Defendants from continuing to violate his rights under the Free Speech Clause of the First and Fourteenth Amendments to the United States Constitution and Article 1 Section 7 of the Louisiana Constitution, 1974. In support of this motion, Plaintiff, Sgt. Landry, relies upon the accompanying memorandum of law, his complaint (Rec. Doc. 1), and the exhibits attached thereto.

Respectfully submitted,

/s/ Candice C. Sirmon
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Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I certify that on or immediately after Wednesday, September 24, 2014, I provided for this motion for a preliminary injunction and all accompanying documents, as well as a copy of Plaintiffs' complaint and all exhibits, to be served on Defendants via hand delivery, regular mail, facsimile and, where known, electronic mail.

/s/ Candice C. Sirmon
Candice C. Sirmon

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
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COLT J. LANDRY Plaintiff, – Versus – CITY OF ABBEVILLE; MARK PIAZZA, in his official capacity as Mayor of the City of Abbeville; and TONY J. HARDY, in his official capacity as Chief of Police for the City of Abbeville Police Department, Defendants.	NUMBER: JUDGE: MAGISTRATE JUDGE:

MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

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INTRODUCTION

Plaintiff Colt Landry, a resident of the city of Abbeville in Vermilion Parish, Louisiana, seeks a preliminary injunction from this Court enjoining Defendants, the City of Abbeville, Mayor Mark Piazza and Chief Tony Hardy, from enforcing General Order 222, Social Networking Policy. Colt Landry is an employee, and Sergeant, with the City of Abbeville Police Department ("APD"). General Order 222, Social Networking Policy prohibits APD employees from participating on all forms of social media if there is any possibility that their speech or actions will be considered to give a "negative view" towards the City of Abbeville, APD, its employees, or members of the public.

Individuals do not surrender their First Amendment rights by accepting public employment.[1] The First Amendment to the United States Constitution states "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for redress of grievances."[2] Similarly, Louisiana Constitution of 1974 Article 1 § 7 Freedom of Expression states "[n]o law shall curtail or restrain the freedom of speech or of the press. Every person may speak, write, and publish his sentiments on any subject, but is responsible for abuse of that freedom."[3]

Sgt. Landry's First Amendment to the United States Constitution and Article 1 Section 7 of the Louisiana Constitution facial challenges to G.O. 222 are substantially likely to succeed on the merits. Sgt. Landry's loss of First Amendment freedoms unquestionably constitutes irreparable harm. The threat to Sgt. Landry's First Amendment and Article 1 Section 7 freedom

[1] *Lane v. Franks, et al.*, No. 13-483 U.S., slip op. at 4 (2014).
[2] United States Constitution, Amendment I.
[3] Louisiana State Constitution of 1974, Article 1 § 7.

of speech rights far outweighs any harm to Defendants that may result from a preliminary injunction. Finally, the public interest is served by guaranteeing the First Amendment rights of Sgt. Landry and all APD employees.

FACTS

Sgt. Landry has been employed with the APD for more than twelve years. The City of Abbeville enacted General Order 222, Social Networking Policy, effective August 21, 2013. General Order 222, Social Networking Policy Effective August 21, 2013, states:

> Social Networking:
>
> No employee of the City of Abbeville, Police Department shall post, respond to, share, like, tag or comment on any social networking site (Facebook, Twitter, Instagram, Etc.) pertaining to actions, viewed or taken by any member of the department, spoken or overheard by any member of any employee of the Abbeville Police Department during the performance of their duties at the Abbeville Police Department. Members of the Abbeville Police Department will be held to a higher standard while participating on social networking sites and shall be subject to disciplinary actions. The following are actions which are subject to but not limited to disciplinary action:
>
> - Posting photographs or comments which will give a negative view towards the City of Abbeville, the Abbeville Police Department or its employees.
> - Commenting to photographs or comments which will give a negative view towards the City of Abbeville, the Abbeville Police Department or its employees.
> - "Like" Liking photographs or comments which will give a negative view towards the City of Abbeville, the Abbeville Police Department or its employees. [*sic*]
> - Sharing photographs or comments which will give a negative view towards the City of Abbeville, the Abbeville Police Department or its employees.
> - Post, Share, Like or commenting with profane language.
> - Posting, Share, "Like" or commenting negatively towards any racial, ethnic, sexual or religious orientation. [*sic*]
> - Posting, Sharing, Private Messaging, "Like" or Commenting while in the performance of their duties (Scheduled Shift,

> Overtime, K-Time, Security) while representing the Abbeville Police Department.
> - Posting, Share, "Like" or Commenting insulting or derogatory comments toward members of the public. [*sic*]
>
> Negative View (Description):
>
> Any insulting, disrespectful, profane or derogatory Post, Comment, Private Message, "Like", Share or Photograph directed towards the City of Abbeville, the Abbeville Police Department, its officials, employees or citizens.

Exhibit A.

When the prohibited speech and activities in General Order 222, Social Networking Policy ("G.O. 222") are listed individually, there are at least twenty-six speech restrictions.[4] Furthermore, this list, although extensive, is not exhaustive because G.O. 222 provides the qualifier "but not limited to" prior to the list of prohibited speech and actions.

G.O. 222 prohibits speech and actions on "any social networking site (Facebook, Twitter, Instagram, Etc.)," if it may give a "negative view" towards the City of Abbeville, APD, its employees, or members of the public. Social networking is the creation and maintenance of personal and business relationships, especially online.[5] G.O. 222 provides as examples the social network sites, Facebook, Twitter and Instagram. However, it also leaves the definition open to all social networking sites by the use of "Etc."

The result is a prohibition of all social networking sites because ADP employees are prohibited from not only communicating their own opinions, but also commenting or responding to anyone else's speech or actions. A small sample of popular networking sites that are likely prohibited include Yelp, YouTube, LinkedIn, Pinterest, Google+, Goodreads, Tumblr,

[4] *See,* Doc. 1, Plaintiff's Complaint, ¶ 16.
[5] Merriam-Webster definition of social networking: http://www.merriam-webster.com/dictionary/social%20networking.

Foursquare, Flickr, Vine and MySpace. Many social networking sites also offer mobile phone and tablet applications that allow for quick and easy access to public forums.

Also potentially included are websites of newspapers on which individuals may post comments and posting a photograph of a building in disrepair, even if not intended to highlight the condition of the building, because such a building might give a "negative view" of the City. APD employees are also potentially precluded from commenting on Facebook or newspaper sites about an umpire's lack of knowledge a sport and bad calls if the umpire is an employee or resident of the City or APD. Also, potentially precluded are comments to videos on YouTube if the video shows employees of the city not properly performing their jobs or doing something that could embarrass the City. APD employees may also be prohibited from commenting on Angie's List or other social networking sites that rate businesses if the business or its employees work for or are residents of the City. The list of potential prohibitions by G.O. 222 are as endless as one's desire to participate in public discourse.

The social networking site and mobile application Yelp, a popular social networking site for reviewing and ranking local businesses, is an example of a prohibited site. An APD employee cannot give a negative review or low ranking to a local business on Yelp because such a comment could be considered as giving a negative view towards members of the public or citizens of Abbeville. Even more disturbing, an APD employee may not comment or respond to anyone else's speech on Yelp if it gives or could be construed as giving a "negative view."

G.O. 222 includes a specific prohibition of "Posting, Sharing, Private Messaging, 'Like' or Commenting while in the performance of their duties (Scheduled Shift, Overtime, K-Time, Security) while representing the Abbeville Police Department." [*sic*] This specific on-duty prohibition among the list of prohibited speech and actions indicates that the rest of the

prohibited activities are not limited to when APD employees are at work or performing their duties. G.O. 222 prohibits this non-exhaustive list of speech and actions 24 hours a day, 7 days a week, 365 days a year, regardless of when, where and to whom the employee is speaking.

Furthermore, G.O. 222 describes "Negative View" as "[a]ny insulting, disrespectful, profane or derogatory Post, Comment, Private Message, 'Like', Share or Photograph directed towards the City of Abbeville, the Abbeville Police Department, its officials, employees or citizens." "Insulting," "disrespectful," "profane" and "derogatory" are not defined.

Sgt. Landry is forced to suppress his speech for fear of disciplinary action and enforcement of G.O. 222. Sgt. Landry's fear is real and justified by the Defendants' recent disciplinary action against him for a private Facebook post made while off-duty.

APPLICABLE STANDARD FOR A PRELIMINARY INJUNCTION

A preliminary injunction should be granted if Plaintiff, Sgt. Landry, can establish: (1) that there is a substantial likelihood of success on the merits; (2) there is a substantial threat of irreparable injury if the injunction is not issued; (3) that the threatened injury if the injunction is denied outweighs any harm that will result if the injunction is granted; (4) that the grant of an injunction will not disserve the public interest.[6]

As discussed below, Sgt. Landry meets all four requirements of the standard for granting a preliminary injunction.

ARGUMENT

I. PLAINTIFF HAS A SUBSTANTIAL LIKELIHOOD OF SUCCESS ON THE MERTIS OF HIS CLAIMS.

There is a substantial likelihood that Sgt. Landry will prevail at trial on both his

[6] *Byrum v. Landreth*, 566 F.3d 442, 445 (5th Cir. 2009) (citing *Speaks v. Kruse*, 445 F.3d 396, 399-400 (5th Cir. 2006)).

constitutional claims of free speech under the First Amendment claims via the Fourteenth Amendment to the United States Constitution and claims pursuant to Article 1 Section 7 of the Louisiana Constitution.

First, G.O. 222 unconstitutionally restricts speech based upon the subject matter and message it conveys. Second, G.O. 222 effectively restricts Sgt. Landry and all APD employees from all forms of social media. Third, Sgt. Landry and all APD employees must guess what will be considered by Defendants to give a negative view towards the City, APD, their employees or citizens. Fourth, G.O. 222 is unconstitutionally overbroad and deters legitimate and protected forms of speech. Last, G.O. 222 restrains the speech of Sgt. Landry and APD employees because Defendant, Chief Hardy, has the sole discretion as to what violates G.O. 222. Defendants' enactment of G.O. 222 is an unconstitutional enforcement and there is a substantial likelihood that Sgt. Landry will prevail on the merits of his facial challenges.

A. General Order 222, Social Networking Policy is an Unconstitutional Content-Based Restriction.

"[T]he First Amendment means that the government has no power to restrict expression because of its message, its ideas, its subject matter or its content."[7] "Content-based regulations are presumptively invalid."[8] Government regulation of speech must be content-neutral, meaning the government is prohibited from choosing the subjects that are appropriate for public discussion.[9] The government cannot discriminate based upon viewpoint (i.e. restrict speech by a particular speaker) or subject matter (i.e. impose restrictions on speech related to an entire

[7] *Police Department of City of Chicago v. Mosley*, 408 U.S. 92, 95-96, 92 S.Ct. 2286, 33 L.Ed.2 212 (1972) (citations omitted).
[8] *R.A. V. v. City of St. Paul Minnesota*, 505 U.S. 377, 382, 112 S.Ct. 2538, 120 L.Ed.2d 305 (1992).
[9] *Perry Educ. Assn. v. Perry Local Educators' Assn., et al.*, 460 U.S. 37, 59, 103 S.Ct. 948, 74 L.Ed.2 794 (1983)

subject area).[10] It is unquestionable that the government may not regulate speech based on its substantive content or the message it conveys.[11] Restrictions that focus only on the content of the speech and the direct impact it has on its listeners is the essence of content-based regulation.[12] Content based restrictions must meet strict scrutiny. [13]

G.O. 222 imposes restrictions on speech related to entire subject areas and the content of employees'' speech. G.O. 222 restricts Sgt. Landry and all APD employees from speaking or acting in any way that may give a "negative view" towards the city of Abbeville, APD, its employees or residents. G.O. 222's specific prohibition of speech that may give a "negative view," makes it clear that G.O. 222's purpose is to prevent and suppress certain messages about the City, APD, their employees and residents while permitting other speech that gives the opposite view. G.O. 222 is a content-based regulation because its primary focus is on the content of employees' speech and the direct impact it has on the readers. G.O. 222 is unlikely to meet the standard of strict scrutiny. There is a substantial likelihood that this Court will find that G.O. 222 is an unconstitutional content-based restriction.

B. General Order 222, Social Networking Policy is an Unconstitutional Restriction on Speech Because it Forecloses an Entire Medium of Communication.

Statutes that "restrict or burden the exercise of First Amendment rights must be narrowly drawn and represent a considered legislative judgment that a particular mode of expression has to give way to other compelling needs of society."[14] This includes laws that, while they may be

[10] *Perry Educ. Assn.*, 460 U.S. at 59.
[11] *Chiu v. Plano Independent School Dist.*, 339 F.3d 273, 280 (5th Cir. 2003).
[12] *U.S. v. Playboy Entertainment Group*, 529 U.S. 803, 811-812, 120 S.Ct. 1878, 146 L.Ed.2d 865 (2000).
[13] *U.S. v. Playboy Entertainment Group*, 529 U.S. at 813 (citing *Sable Communications of Cal., Inc. v. FCC*, 492 U.S. 115, 126 (1989)).
[14] *Broadrick v. Oklahoma*, 413 U.S. 601, 611-612, 93 S.Ct. 2908, 37 L.Ed.2d 830 (1973).

content neutral, "foreclose an entire medium of expression."[15] In that context, the Supreme Court has invalidated ordinances that prohibited: the distribution of pamphlets within a municipality[16], the distribution of handbills on public streets[17], the door-to-door distribution of literature[18], and live entertainment.[19]

"Although prohibitions foreclosing entire media may be completely free of content or viewpoint discrimination, the danger they pose to the freedom of speech is readily apparent -- by eliminating a common means of speaking, such measures can suppress too much speech."[20]

G.O. 222 forecloses to Sgt. Landry and APD employees all social networking sites and is not narrowly tailored to achieve a compelling government interest. Social networking sites like Facebook, Yelp, Twitter and LinkedIn have become common means of speaking and communicating with friends, family, communities and even strangers. An employee's comment on websites and applications like Yelp or Angie's List, which review local businesses, could be interpreted by Defendants to give a negative view towards the city, its employees or residents. The result is that APD employees are severely restricted in their use of all social networking sites. Newspaper sites that invite public comment are important ways for people to learn not only about current events but also about what their neighbors think of those events.

These sites and mobile phone applications are constantly available for individuals to express themselves to the public and to their friends and family, both locally and internationally. As seen in recent national and international events such as the Ferguson demonstrations and

[15] *City of Ladue v. Gilleo*, 512 U.S. 43, 55, 114 S.Ct. 2038, 129 L.Ed.2d 36 (1994).
[16] *Lovell v. City of Griffin, Ga.*, 303 U.S. 444, 451-452, 58 S.Ct. 666, 669, 82 L.Ed. 949 (1938).
[17] *Jamison v. State of Texas*, 318 U.S. 413, 416, 63 S.Ct. 669, 87 L.Ed. 869 (1943).
[18] *Martin v. City of Struthers, Ohio*, 319 U.S. 141, 145-149, 63 S.Ct. 862, 87 L.Ed. 1313 (1943).
[19] *Schad v. Borough of Mount Ephraim*, 452 U.S. 61, 75-76, 101 S.Ct. 2176, 68 L.Ed.2d 671 (1981).
[20] *City of Ladue*, 512 U.S. at 55.

international political protests and conflicts, social networking sites have become a forum for both local issues of great importance as well national and international importance.

APD employees are prohibited, at the discretion of the Defendants' Chief Hardy and Mayor Piazza, from the use of these public forums if their speech may give a "negative view" towards the city Abbeville, APD, its employees or residents. G.O. 222 makes no exception for matters of private or public concern. The prohibition of comments giving a "negative view" in such a widely used space for discourse is analogous to foreign governments restricting Twitter feeds by dissidents.[21] This type of restriction strikes at the very core of First Amendment rights and is antithetical to the values of a free society.

C. General Order 222, Social Networking Policy is Unconstitutionally Vague.

A law is unconstitutionally vague when people "of common intelligence must guess at its meaning and differ as to its application."[22] When a statute "'fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute,'" it must be struck down for unconstitutional vagueness.[23] When "there are no standards governing the exercise of the discretion granted by the ordinance, the scheme permits and encourages an arbitrary and discriminatory enforcement of the law."[24] In the absence of enforcement standards,

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[21]Countries that have blocked Facebook, YouTube or Twitter in some capacity over the last couple of years include: Turkey, Iran, Pakistan, Eritrea, China, North Korea and Vietnam. Twitter was also shut down by governments during the Arab Spring of 2011, including Algeria, Tunisia, Egypt, Cameroon, Malawi, and Belarus. Source: www.motherjones.com/politics/2014/03/turkey-facebook-youtube-twitter-blocked.

[22]*Citizens United v. Federal Election Com'n*, 558 U.S. 310, 324, 130 S.Ct. 876, 175 L.Ed.2d 753 (2010) (citing *Connally v. General Constr. Co.*, 269 U.S. 385, 391, 46 S.Ct. 126, 70 L.Ed. 322 (1926)).

[23]*Papachristou v. City of Jacksonville*, 405 U.S. 156, 162, 92 S.Ct. 839, 31 L.Ed2d 110 (citing *U.S. v. Harris*, 347 U.S. 612, 617, 74 S.Ct. 808, 812, 98 L.Ed 989 (1954)).

[24]*Papachristou*, 405 U.S. at 170 (holding that a vagrancy ordinance was void for vagueness).

the ordinance may become a convenient tool for harsh and discriminatory enforcement against a particular group.[25]

G.O. 222 is unconstitutionally vague because people of common intelligence must guess at its meaning and thus cannot tell what speech is prohibited and what is permitted. The description of "negative view" as "[a]ny insulting, disrespectful, profane or derogatory" speech is ambiguous and gives little guidance as to what speech is proscribed. The terms "insulting" and "disrespectful" are inherently vague and can mean different things to different people based upon their own individual perceptions of what level of courtesy or respect is due or what is impolite. APD employees are left guessing as to what Defendants, Chief Hardy and Mayor Piazza, will consider insulting, disrespectful, profane or derogatory and whether the speech will be considered to "give a negative view" towards the city, APD, officials, employees or citizens.

Additionally, G.O. 222 is vague as to when the prohibition on social media speech is prohibited. Does it prohibit speech on social media when APD employees are at home or off-duty? The specific on-duty prohibition can lead to the conclusion that the remainder of the prohibitions apply to APD employees 24 hours a day, 7 days a week, 365 days a year. Also, does the phrase in G.O. 222 prohibiting APD employees from posting on social media something they "overheard by any member of any employee of the Abbeville Police Department during the performance of their duties" mean that they may not post later about what they heard at work?

Furthermore, G.O. 222 does not provide adequate notice as to what speech is prohibited and what is allowed because there is no standard governing the exercise of the discretion granted by the ordinance. Without clear guidance G.O. 222 Defendants are permitted to arbitrarily and discriminatorily enforce G.O. 222.

[25] *Papachristou*, 405 U.S. at 170.

D. General Order 222, Social Networking Policy is Unconstitutionally Overbroad.

According to the Supreme Court's First Amendment overbreadth doctrine "a statute is facially invalid if it prohibits a substantial amount of protected speech."[26] The statute's "overbreadth must be substantial, not only in an absolute sense, but also relative to the statute's plainly legitimate sweep."[27] When First Amendment freedoms are at stake the Court has repeatedly emphasized that precision of drafting and clarity of purpose are essential.[28]

A declaration of overbreadth is "strong medicine" and has been "employed by the Court sparingly and only as a last resort."[29] However, where a statute is not readily subject to a narrowing construction by state courts and its deterrent effect on legitimate expression is both "real and substantial," it will be invalidated.[30] "[I]n a facial challenge to the overbreadth and vagueness of a law, a court's first task is to determine whether the enactment reaches a substantial amount of constitutionally protected conduct."[31]

G.O. 222 prohibits speech on social networking sites that Defendants in their sole discretion determine gives a negative view towards the city of Abbeville, APD, its employees or residents. In its attempt to prevent employees from expressing opinions that the Defendants may find negative, it catches in the same net speech related to personal matters and speech on matters of public concern.

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[26] *U.S. v. Williams*, 553 U.S. 285, 292, 128 S.Ct. 1830, 1838, 170 L.Ed.2d 650 (2008).
[27] *U.S. v. Williams*, 553 U.S. at 292 (citations omitted).
[28] *Erznoznik v. City of Jacksonville*, 422 U.S. 205, 217-218, 95 S.Ct. 2268, 45 L.Ed. 2d 125 (1975).
[29] *Broadrick*, 413 U.S. at 613.
[30] *Erznoznik*, 422 U.S. at 216 (finding that the deterrent effect of city ordinance prohibiting the showing of films containing nudity by a drive-in theater when its screen was visible from a public street or place was both real and substantial because it applied to all persons employed by or connected with the drive-in-theatres).
[31] *City of Houston, Tex. v. Hill*, 482 U.S. 451, 458, 107 S.Ct. 2502, 96 L.Ed.2d 398 (1987) (citations omitted).

E. General Order 222, Social Networking Policy is an Unconstitutional Prior Restraint on Speech.

The Supreme Court has long held, and the Fifth Circuit recognizes, that ordinances regulating speech contingent on the will of an official are unconstitutional censorship or burdens on speech classified as prior restraints.[32] Although a prior restraint is not *per se* unconstitutional, it "bears a heavy presumption against its constitutional validity.[33] "A party enforcing a prior restraint 'carries a heavy burden on showing justification for the imposition of such a restraint.'"[34] The Supreme Court has repeatedly found invalid laws that empower a government official with uncontrolled discretion to grant or refuse to grant a required permit.[35]

Similar to the requirement of a permit, G.O. 222 gives Defendants, Chief Hardy and Mayor Piazza, uncontrolled discretion to determine what employee speech is prohibited. APD employees' speech is subject to the will of Defendant, Chief Hardy, and he can determine with impunity which employees' speech may be subject to disciplinary action. The enforcement of G.O. 222 chills the speech of Sgt. Landry and ADP employees and results in self-restraint when speaking on social networking sites for fear of reprisal and the potential loss of employment.

II. PLAINTIFF FACES A SUBSTANTIAL THREAT OF IRREPARABLE HARM IF THIS COURT DOES NOT ISSUE A PRELIMINARY INJUNCTION.

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[32] *Staub v. City of Baxley*, 355 U.S. 313, 322, 78 S.Ct. 277, 2 L.Ed.2d 302 (1958); *Chiu,* 339 F.3d at 280.

[33] *Chiu*, 339 F.3d at 280-281 (citing *Southeastern Promotions, Ltd. v. Conrad*, 420 U.S. 546, 558, 95 S.Ct. 1239, 43 L.Ed.2d 448 (1975); *Bantam Books v. Sullivan*, 372 U.S. 58, 70, 83 S.Ct. 631, 9 L.Ed.2d 584 (1963); *see Forsyth County v. Nationalist Movement*, 505 U.S. 123, 130, 112 S.Ct. 2395, 120 L.Ed.2d 101 (1992)).

[34] *Chiu*, 339 F.3d at 281 (citing *Org. for a Better Austin v. Keefe*, 402 U.S. 415, 419, 91 S.Ct. 1575, 29 L.Ed.2d (1971)).

[35] *Staub*, 355 U.S. at 323-325.

"The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury."[36] Sgt. Landry and all APD employees have lost their First Amendment freedoms and are irreparably harmed. G.O. 222's vagueness and overbreadth has caused Sgt. Landry to refrain from exercising his First Amendment rights. G.O. 222 has the potential to chill Sgt. Landry and other from exercising their First Amendment rights. Defendants' recent punishment of Sgt. Landry for sharing and commenting on a photograph on Facebook guarantees that the First Amendment rights of not only Sgt. Landry, but all APD employees, will continue to be suppressed.

III. THE INJURY TO PLAINTIFF'S FUNDAMENTAL RIGHTS FAR OUTWEIGHS ANY HARM THAT WILL RESULT IF A PRELIMINARY INJUNCTION IS GRANTED.

The threatened injury to Sgt. Landry's constitutionally protected speech outweighs whatever damage may result from enjoining Defendants' ability to enforce what appears to be an unconstitutional statute.[37] The loss of Sgt. Landry's freedom of speech, if the injunction is denied, far outweighs the potential harm to Defendants if an injunction is granted.

IV. A PRELIMINARY INJUNCTION WILL SERVE THE PUBLIC INTEREST.

Enforcing the constitutional guarantee of freedom of speech undoubtedly promotes the public interest.[38] The public interest is undermined when the government is allowed to violate the rights of the people at whim.[39]

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[36] *Elrod v. Burns*, 427 U.S. 347, 373-374, 96 S.Ct. 2673, 49 L.Ed.2 547 (1976); *Deerfield Medical Center v. City of Deerfield Beach*, 661 F.2d 328, 338 (5th Cir. 1981).
[37] *See*, *Am. Civil Liberties Union v. Johnson*, 194 F.3d 1149, 1163 (10th Cir. 1999).
[38] *Maxey v. Smith*, 823 F.Supp. 1321, 1331 (N.D. Miss. 1993) (finding that police chief who had been placed on administrative leave for newspaper comments critical of his government employer was entitled to an injunction reinstating him to his position and the preliminary injunction did not disserve public interest).

G.O. 222 sends a chilling message to Sgt. Landry and all APD employees that First Amendment freedom of speech rights can be weakened and eroded with impunity. As the Northern District of Mississippi found in *Maxey v. Smith*, "the public has an overriding, vested interest 'in assuring that the constitutional rights of its fellow citizens, especially those to whom it turns for law enforcement protection, are not muzzled by a fear of retaliation for speaking out on matters of public concern."[40]

The public interest is best served by enjoining any policy that impairs the fundamental rights of Sgt. Landry and APD employees, therefore a preliminary injunction barring enforcement of G.O. 222 is appropriate.

CONCLUSION

For the reasons set forth above, this Court should issue the preliminary injunction as outlined in Plaintiff's Motion for Preliminary Injunction and Proposed Preliminary Injunction Order.

Respectfully Submitted,

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/sWilliam L. Goode
William L. Goode, La No. 6128

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[39] *Valley v. Rapides Parish School Bd.*, 118 F.3d 1047, 1056 (5th Cir. 1997) (finding that public interest would be undermined if unconstitutional actions of a school board were permitted to stand).

[40] *Maxey*, 823 F.Supp. at 1331 (citing *Cohen v. Coahoma County, Mississippi*, 805 F.Supp. 398, 408 (N.D. Miss. 1992)).

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Attorneys for Plaintiff

Dated: September 24, 2014

CERTIFICATE OF SERVICE

I certify that on or immediately after Wednesday, September 24, 2014, I provided for this motion for a preliminary injunction and all accompanying documents, as well as a copy of Plaintiffs' complaint and all exhibits, to be served on Defendants via hand delivery, regular mail, facsimile and, where known, electronic mail.

/s/ Candice C. Sirmon
Candice C. Sirmon

EFFECTIVE DATE: August 21, 2013
General Order 222, Social Networking Policy

Social Networking:

No employee of the City of Abbeville, Police Department shall post, respond to, share, like, tag or comment on any social networking site (Facebook, Twitter, Instagram, Etc.) pertaining to actions, viewed or taken by any member of the department, spoken or overheard by any member of any employee of the Abbeville Police Department during the performance of their duties at the Abbeville Police Department. Members of the Abbeville Police Department will be held to a higher standard while participating on social networking sites and shall be subject to disciplinary actions. The following are actions which are subject to but not limited to disciplinary action:

- Posting photographs or comments which will give a negative view towards the City of Abbeville, the Abbeville Police Department or its employees.

- Commenting to photographs or comments which will give a negative view towards the City of Abbeville, the Abbeville Police Department or its employees.

- "Like" Liking photographs or comments which will give a negative view towards the City of Abbeville, the Abbeville Police Department or its employees.

- Sharing photographs or comments which will give a negative view towards the City of Abbeville, the Abbeville Police Department or its employees.

- Post, Share, Like or commenting with profane language.

- Posting, Share, "Like" or commenting negatively towards any racial, ethnic, sexual or religious orientation.

- Posting, Sharing, Private Messaging, "Like" or Commenting while in the performance of their duties (Scheduled Shift, Overtime, K-Time, Security) while representing the Abbeville Police Department.

- Posting, Share, "Like" or Commenting insulting or derogatory comments towards members of the public.

Negative View (Description):

Any insulting, disrespectful, profane or derogatory Post, Comment, Private Message, "Like", Share or Photograph directed towards the City of Abbeville, the Abbeville Police Department, its officials, employees or citizens.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION

COLT J. LANDRY Plaintiff, – Versus – CITY OF ABBEVILLE; MARK PIAZZA, in his official capacity as Mayor of the City of Abbeville; and TONY J. HARDY, in his official capacity as Chief of Police for the City of Abbeville Police Department, Defendants.	NUMBER: JUDGE: MAGISTRATE JUDGE: **PROPOSED ORDER**

Having considered Plaintiff's motion for a preliminary injunction, IT IS HEREBY ORDERED that the motion is GRANTED. Defendants and/or any of their agents, representatives, or anyone acting on their behalf are restrained and enjoined for the duration of this matter from applying or enforcing City of Abbeville Police Department General Order 222, Social Networking Policy.

Thus done and signed on this ____day of _____, 2014, in Lafayette, Louisiana.

Date: _____

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DISTRICT JUDGE

_____
MAGISTRATE JUDGE