ALAN WILSON
ATTORNEY GENERAL

May XX, 2025

Chief Amy S. Prock
City of Myrtle Beach
Police Department
1101 N. Oak Street
Myrtle Beach, SC 29577

Dear Chief Prock:

Attorney General Alan Wilson has referred your letter to the Opinions section. Your letter requests an opinion addressing the following:

> I am requesting your opinion on enforcement of the South Carolina Code of Laws § 16-17-520, entitled "Disturbance of religious worship," as it applies during an active protest. This statute provides:
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> > Any person who shall (a) wilfully and maliciously disturb or interrupt any meeting, society, assembly or congregation convened for the purpose of religious worship, (b) enter such meeting while in a state of intoxication or (c) use or sell spirituous liquors, or use blasphemous, profane or obscene language at or near the place of meeting shall be guilty of a misdemeanor and shall, on conviction, be sentenced to pay a fine of not less than twenty nor more than one hundred dollars, or be imprisoned for a term not exceeding one year or less than thirty days, either or both, at the discretion of the court.
>
> Section 16-17-520(c) makes it a misdemeanor to "use blasphemous, profane, or obscene language at or near the place of [religious] meeting." Before the Myrtle Beach Police Department takes action based on the referenced code section, I would like your opinion on whether subsection (c) violates the First Amendment of the United States Constitution and Section 2 of Article I of the South Carolina Constitution. I am likewise seeking an opinion as to the constitutionality of subsection (a), making it a misdemeanor to "willfully and maliciously disturb or interrupt any meeting, society, assembly or congregation convened for the

purpose of religious worship," if the behavior causing the disturbance or interruption constitutes expressive conduct under the First Amendment.

Assuming the state statute is constitutional, I would also appreciate your opinion on the following three questions:

1. Is § 16-17-520 (c) violated by protestors' use of blasphemous, profane or obscene language from the public right-of-way outside the church while churchgoers are entering or exiting the place of worship?
2. Is § 16-17-520 (a) violated by protestors following churchgoers from the church campus to an off-site church event?
3. If the church has a service on the beach or anywhere apart from its campus, is that a "place of meeting" for purposes of subsection (c)?

Law/Analysis

Your letter questions whether two portions of S.C. Code § 16-17-520 violate the federal constitution and our state constitution. The cited constitutional provisions relate to the prohibition on the government establishing a religion or prohibiting the free exercise of religion, freedom of speech, freedom of the press, the right to peaceful assembly, and the right to petition the government.[1][2] Presumably, the primary concern is whether the statute abridges the freedom of speech, and generally involves determining what type of protection is afforded to different categories of speech.

Initially, it must be stated that legislation enacted by the General Assembly is presumed valid and enforceable until a court rules otherwise. The Supreme Court of South Carolina explained this presumption and the standard by which a court will declare a statute unconstitutional.

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[1] See U.S. Const. amend. I

> 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 a redress of grievances.

[2] See S.C. Const. art. I, § 2

> The General Assembly 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 or any department thereof for a redress of grievances.

> The supreme legislative power of the State is vested in the General Assembly; the provisions of our State Constitution are not a grant but a limitation of legislative power, so that the General Assembly may enact any law not expressly, or by clear implication, prohibited by the State or Federal Constitution; a statute will, if possible, be construed so as to render it valid; every presumption will be made in favor of the constitutionality of a legislative enactment; and a statute will be declared unconstitutional only when its invalidity appears so clearly as to leave no room for reasonable doubt that it violates some provision of the Constitution.

Cox v. Bates, 237 S.C. 198, 208–09, 116 S.E.2d 828, 832 (1960). If a part of a statute is found to be unconstitutional, our courts apply the following test to determine whether the remaining portions of the statute continue to be enforceable.

> The rule is that where a part of a statute is unconstitutional, if such part is so connected with the other parts as that they mutually depend upon each other as conditions and considerations for each other, so as to warrant the belief that the Legislature intended them as a whole, and if they cannot be carried into effect, the Legislature would not have passed the residue independently of that which is void, the whole act is void. On the other hand, where a part of the statute is unconstitutional, and that which remains is complete in itself, capable of being executed, wholly independent of that which is rejected, and is of such character as that it may fairly be presumed that the Legislature would have passed it independently of that which is in conflict with the Constitution, then the courts will reject that which is void and enforce the remainder.

Fairway Ford, Inc. v. Timmons, 281 S.C. 57, 59, 314 S.E.2d 322, 324 (1984) (internal citations omitted); see also Stone v. Traynham, 278 S.C. 407, 409, 297 S.E.2d 420, 422 (1982) ("The separation and independence of each branch of government require that we go no further than absolutely necessary in declaring unconstitutional an action of the legislature. Although we are hesitant to declare any portion of a statute unconstitutional, we may invalidate a separable part without impairing the remainder."). "In short, the question is whether the intention of the Legislature can be fulfilled absent the offending provision." S.C. Tax Comm'n v. United Oil Marketers, Inc., 306 S.C. 384, 389, 412 S.E.2d 402, 405 (1991). With this framework in mind, this opinion will examine the text of the statute in light of the concerns raised to evaluate its constitutionality.

Subsection (a) states, "Any person who shall (a) wilfully and maliciously disturb or interrupt any meeting, society, assembly or congregation convened for the purpose of religious worship, … shall be guilty of a misdemeanor." The question asked is essentially if such an

interruption results from "expressive conduct," is it constitutional to criminalize it. This Office has identified two cases in which our state courts have upheld convictions under section 16-17-520(A). First, in State v. Jones, 77 S.C. 385, 58 S.E. 8, 8 (1907), defendants were charged after participating in a riot roughly 40 feet from a church. The Court found the disturbance was "willful" because it "was a result so certain to follow the riot that it must be held to have been within the contemplation and intention of all who participated." Second, in State v. Matheny, 122 S.C. 459, 101 S.E. 661, 661 (1919), defendants were charged after shooting on church property as the congregation was leaving worship.

> The evidence shows that immediately after the congregation had been dismissed by the pastor a difficulty occurred on the church ground, wherein several shots were fired, one man shot, loud talking and cursing indulged in, which caused the congregation on the ground to run, and scatter in various directions, and alarmed and frightened them. The difficulty took place at the well which was on the church property 20 or 25 yards from the church, while the congregation, or a part of it, was in the churchyard.

Id. Neither case concerned expressive conduct or a general conflict with the first amendment freedom of speech clause. In a case where an interruption to a religious worship includes expressive elements, a court would consider whether the conduct was "sufficiently communicative." State v. White, 348 S.C. 532, 537, 560 S.E.2d 420, 423 (2002).

> According to the United States Supreme Court, the First Amendment protects speech, including conduct, if sufficiently communicative in character. Spence v. Washington, 418 U.S. 405, 94 S.Ct. 2727, 41 L.Ed.2d 842 (1974). The threshold question then is whether the conduct in issue is "sufficiently imbued with elements of communication to fall within the scope of the First and Fourteenth Amendments." Id. at 409, 94 S.Ct. at 2730, 41 L.Ed.2d at 846. Admittedly, this test requires line drawing. The Supreme Court has acknowledged this implicitly, but held it could not "accept the view that an apparently limitless variety of conduct can be labeled 'speech' whenever the person engaging in the conduct intends thereby to express an idea." United States v. O'Brien, 391 U.S. 367, 376, 88 S.Ct. 1673, 1678, 20 L.Ed.2d 672, 679 (1968) (upholding defendant's conviction for burning his draft card on the courthouse steps against the challenge that the conduct amounted to expression protected by the First Amendment).

Id.; see also In re Amir X.S., 371 S.C. 380, 385, 639 S.E.2d 144, 147 (2006) ("[W]e first note that although conduct generally is not protected by the First Amendment, *expressive* conduct may be.").

If the interruption is found to result from expressive conduct, it must be determined whether the class of speech is one protected by the first amendment.

> Allowing the broadest scope to the language and purpose of the Fourteenth Amendment, it is well understood that the right of free speech is not absolute at all times and under all circumstances. There are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any Constitutional problem. These include the lewd and obscene, the profane, the libelous, and the insulting or 'fighting' words—those which by their very utterance inflict injury or tend to incite an immediate breach of the peace. It has been well observed that such utterances are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality. 'Resort to epithets or personal abuse is not in any proper sense communication of information or opinion safeguarded by the Constitution, and its punishment as a criminal act would raise no question under that instrument.'

Chaplinsky v. State of New Hampshire, 315 U.S. 568, 571–72 (1942) (footnotes omitted). One such example, in State v. Bouye, 325 S.C. 260, 484 S.E.2d 461 (1997), the South Carolina Supreme Court determined that a statute prohibiting "lewd and lascivious behavior" did not prohibit constitutionally protected speech even it could be categorized as expressive conduct.

> The statute prohibits conduct, not speech. … Even assuming that this statute does address certain expressive conduct, we construe the language of this statute as a prohibition of obscenity. It is well-settled that obscene speech is not protected by the First Amendment. As we stated in Ramsey, "[a] statute directed at conduct rather than speech may stand; and a statute reaching a proscribable class of speech ... does not infringe on First Amendment rights."
>
> This interpretation is abundantly supported. Initially, the dictionary definitions of "lewd," "lascivious," and "obscene" show that these terms are all synonyms. Furthermore, many other courts, including the Supreme Court, have used these terms interchangeably and found them to be synonymous.
>
> There are certain well-defined and narrowly limited classes of speech, the prevention of which have never been thought to raise any Constitutional problem. These include the lewd and obscene.... It has been well observed that such utterances are no essential part of any exposition of ideas, and are of such slight

> social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality....

Id. at 265–66, 484 S.E.2d at 464 (citations omitted); see also OBSCENE, Black's Law Dictionary (12th ed. 2024).[3]

Even if a disturbance or interruption amounts to expressive conduct, a court is unlikely to find either the federal or state constitution prohibits its punishment under section 16-17-520(a). First, the disturbance or interruption must be committed "wilfully and maliciously." This Office previously opined on S.C. Code § 16-15-130 which prohibited "'wilful and malicious indecent exposure . . . in any public place." Op. S.C. Att'y Gen., 1986 WL 289760 (February 26, 1986). The opinion explained:

> Our Supreme Court has consistently recognized the difference between the use of the term "malice" or "malicious" in its popular sense and in its legal sense. In Margolis v. Telech, 239 S.C. 232, 122 S.E.2d 417 (1961), the Court noted that in legal usage, the term malice means the deliberate, intentional doing of a wrongful act without just cause or excuse. In State v. Howell, 162 S.C. 394, 160 S.E. 742 (1931) it was stated that the "very essence of malice is that the wrongful act must have been done intentionally and without just excuse." The Court, in State v. Heyward, 197 S.C. 371, 15 S.E.2d 669, 671 (1941) elaborated upon the legal and popular definitions of malice:
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> > In its popular sense, the term 'malice' conveys the meaning of hatred, ill will, or hostility toward another. In its legal sense, however, . . . it does not of necessity import ill will . . . but signifies rather a general malignant recklessness of the lives and safety of others, or a condition of the mind which shows a heart regardless of social duty and fatally bent on mischief.

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[3] obscene adj. (16c) 1. Extremely offensive under contemporary community standards of morality and decency; grossly repugnant to the generally accepted notions of what is appropriate. Under the Supreme Court's three-part test, material is legally obscene — and therefore not protected under the First Amendment — if, taken as a whole, the material (1) appeals to the prurient interest in sex, as determined by the average person applying contemporary community standards; (2) portrays sexual conduct, as specifically defined by the applicable state law, in a patently offensive way; and (3) lacks serious literary, artistic, political, or scientific value. Miller v. California, 413 U.S. 15, 93 S.Ct. 2607 (1973).

Id.

And in State v. Ferguson, 91 S.C. 235, 243, 74 S.E. 502 (1911), the Court again made the point, noting the "difference" between the popular and legal meaning of the word "malice."

> . . . [A] man's heart may be full of sin . . . yet, unless it prompts "the wilful or intentional doing of a wrongful act, without just cause or excuse," it is not a legally malicious heart.

In several cases, the Court has also noted that malice may be implied from the surrounding circumstances. With respect to malicious mischief, the Court noted in State v. Davis, 88 S.C. 229, 238, 70 S.E. 815 (1911) that it was not necessary to show personal ill will. Instead,

> Malice as an ingredient of the offense may be inferred from the wilful doing of an unlawful act without just cause or excuse, and both wilfulness and malice may be inferred when the unlawful act is done in such a wanton and reckless spirit as to show a mind disposed to mischief.

Id. at 2-3. These cases suggest that the malice requirement in section 16-17-520(a) would be satisfied if there is no legal justification for the disturbance and such disturbance is done so recklessly or wantonly as to show a depravity of mind and disregard for others. This requirement of recklessness and wanton disregard of others is largely consistent with the facts in both Jones and Matheny of engaging in riotous conduct in close proximity to a church and shooting firearms on church property while the congregation was exiting the building respectively. It seems logically untenable that expressive conduct could both satisfy the element of a willful and malicious disturbance and be entitled to free speech protections, as again it would be committed without legal justification.

Next, we note that the scenario presented is not simply a question of the whether freedom of speech could be impermissibly restricted, but also under section 16-17-520(a) whether a "meeting, society, assembly or congregation convened for the purpose of religious worship" is being interrupted in a reckless or wanton manner. In this scenario, the interrupted congregation is denied its right to assemble and worship. Federal courts have enjoined such conduct under federal civil rights statutes and cited favorably to state laws criminalizing the disruption of religious services. For instance, in Central Presbyterian Church v. Black Liberation Front, 303 F. Supp. 894 (E.D. Mo. 1969) the court enjoined defendants after they interrupted services and distributed papers to congregation members leaving church over a course of weeks.

> The defendants' demonstrations at the plaintiffs' church were of such a nature that they effectively denied the plaintiffs of their constitutionally-guaranteed right to

> freedom of worship. In Douglas v. City of Jeannette, 130 F.2d 652, 656 (1942 3d Cir.), the Court said:
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> 'Freedom of worship, freedom of speech, freedom of the press, and the right of assembly are not the subject of direct constitutional grant. They are, however, constitutionally recognized and confirmed as attributes of liberty incident to all persons under the Constitution and laws of the United States regardless of their citizenship * * *.'
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> ...
>
> Defendants are also in violation of 562.250 RSMo 1959, V.A.M.S. This statute makes disruption of religious services a misdemeanor. The purpose of this statute is to ensure religious freedom. This affirmative statement of the law of the State of Missouri establishes plaintiffs' right to peaceful religious services. It is the type of right mentioned in the above-discussed federal statutes.

Id. at 900–01. Given that the question does not present a fact pattern to analyze, this opinion can only suggest that a court is unlikely to find section 16-17-520(a) is facially unconstitutional as courts have upheld similar legislation. To extent that expressive conduct may be entitled to constitutional protection in a particular case, a court will likely evaluate whether the enforcement of the statute is constitutional on an as-applied basis.

Next, your letter asks whether section 16-17-520(c) violates the first amendment to the federal constitution or Article I, § 2 of the South Carolina State Constitution. Subsection (c) states any person that "use[s] or sell[s] spirituous liquors, or use blasphemous, profane or obscene language at or near the place of meeting" is guilty of a misdemeanor. Because the numbered questions refer to blasphemous, profane or obscene language, this opinion will focus its analysis on this part of the statute. As discussed above, obscene and profane language are generally held to be "no essential part of any exposition of ideas" such that they are unprotected under the first amendment. Chaplinsky, supra; see also Bouye, supra. Statutes regulating blasphemous language, however, have been found unconstitutional as courts have interpreted them to protect or promote Christianity. See Kalman v. Cortes, 723 F. Supp. 2d 766, 775 (E.D. Pa. 2010) (historical discussion of blasphemy statutes and jurisprudence holding those "statutes intended to protect Christianity over other religions run afoul of the First Amendment."). If a court rules the prohibition on blasphemous language at or near a place of meeting runs afoul of the state and federal constitutions, it would then determine whether the remainder of the statute is separable and capable of being executed without the offending provision. See Fairway Ford, Inc. v. Timmons, supra. A court may well hold that the prohibition on blasphemous language is severable from the remainder of subsection (c) such that the Legislature's intent can still be fulfilled in its absence. Yet, until a

court holds that any part of the statute is unconstitutional, it is presumed to be valid and enforceable. See Cox v. Bates, supra.

Finally, the conduct section 16-17-520 prohibits is distinguishable from the speech the United States Supreme Court held was protected in Snyder v. Phelps, 562 U.S. 443 (2011). While the case may seem generally applicable because a protest was held to coincide with a funeral at a church, the facts therein would not violate section 16-17-520.

> Fred Phelps founded the Westboro Baptist Church in Topeka, Kansas, in 1955. The church's congregation believes that God hates and punishes the United States for its tolerance of homosexuality, particularly in America's military. The church frequently communicates its views by picketing, often at military funerals. ...
>
> Phelps became aware of Matthew Snyder's funeral and decided to travel to Maryland with six other Westboro Baptist parishioners (two of his daughters and four of his grandchildren) to picket. On the day of the memorial service, the Westboro congregation members picketed on public land adjacent to public streets near the Maryland State House, the United States Naval Academy, and Matthew Snyder's funeral. The Westboro picketers carried signs that were largely the same at all three locations. They stated, for instance: "God Hates the USA/Thank God for 9/11," "America is Doomed," "Don't Pray for the USA," "Thank God for IEDs," "Thank God for Dead Soldiers," "Pope in Hell," "Priests Rape Boys," "God Hates Fags," "You're Going to Hell," and "God Hates You."
>
> The church had notified the authorities in advance of its intent to picket at the time of the funeral, and the picketers complied with police instructions in staging their demonstration. The picketing took place within a 10–by 25–foot plot of public land adjacent to a public street, behind a temporary fence. App. to Brief for Appellants in No. 08–1026(CA4), pp. 2282–2285 (hereinafter App.). That plot was approximately 1,000 feet from the church where the funeral was held. Several buildings separated the picket site from the church. Id., at 3758. The Westboro picketers displayed their signs for about 30 minutes before the funeral began and sang hymns and recited Bible verses. None of the picketers entered church property or went to the cemetery. They did not yell or use profanity, and there was no violence associated with the picketing. Id., at 2168, 2371, 2286, 2293.
>
> The funeral procession passed within 200 to 300 feet of the picket site. Although Snyder testified that he could see the tops of the picket signs as he drove to the funeral, he did not see what was written on the signs until later that night, while watching a news broadcast covering the event.

Id. at 448–49 (emphasis added). The Court held speech that "addresse[s] matters of public import on public property, in a peaceful manner, in full compliance with the guidance of local officials," and which does "not itself disrupt that funeral," was held to be protected under the first amendment. Id. at 460. As the facts of the case were described there would be no violation of section 16-17-520 because there would be no disturbance to the funeral service or procession, and there would be no blasphemy, profanity, or obscenity "at or near the place of meeting." The Court's holding in Synder does not render S.C. Code § 16-17-520 unconstitutional nor prohibit its enforcement.

Your letter asks the following questions:

1. Is § 16-17-520(c) violated by protestors' use of blasphemous, profane or obscene language from the public right-of-way outside the church while churchgoers are entering or exiting the place of worship?

In State v. Matheny, 122 S.C. 459, 101 S.E. 661, 661 (1919), the South Carolina Supreme Court explained that S.C. Code § 16-17-520 does not require that the disturbance occur while actively engaged in religious worship.

> There is no doubt that the congregation had convened in the first instance for religious worship, the pastor had dismissed the congregation, with the announcement that the baptism of the converts would take place later at Willis Pond, about 1 1/4 of a mile from the church, after the afternoon service.
>
> The section of the Code under which the appellants were convicted is sufficient to sustain the conviction. It does not contemplate that the disturbance shall occur while the congregation shall be actually engaged in religious worship. They have the right to convene on the church ground for that purpose, to enter the church, and engage in religious worship, and, after church, to disperse without being disturbed, made afraid, or annoyed by profanity, fighting on the part of any persons, who, by their conduct willfully and maliciously interrupt or disturb the congregation assembled for religious worship, either in convening for the purpose of religious worship, or while actually engaged therein, or in dispersing from the church or grounds of the church, after the congregation is dismissed.
>
> The congregation has the right to convene, worship, and disperse without malicious or willful interruption.

Id. Under Matheny, violations of section 16-17-520 can occur during the convening of worship, while engaged in worship, or dispersing therefrom. Determining whether such a charge is warranted will depend on the facts in a given case. We suggest conferring with you circuit solicitor's office.

2. Is § 16-17-520 (a) violated by protestors following churchgoers from the church campus to an off-site church event?

Under Matheny, supra, a disturbance occurring between a worship service on church property and an offsite-church event which otherwise satisfies the elements of section 16-17-520 can support a charge thereunder. Determining whether such a charge is warranted will depend on the facts in a given case. We suggest conferring with you circuit solicitor's office.

3. If the church has a service on the beach or anywhere apart from its campus, is that a "place of meeting" for purposes of subsection (c)?

Section 16-17-520 does not require that a church or other religious institution have an interest in the property upon which a violation occurs or otherwise set parameters on such a location. The statutes simply requires that the disturbance must occur "at or near the place of meeting." Determining whether such a charge is warranted will depend on the facts in a given case. We suggest conferring with you circuit solicitor's office.

Conclusion

As is discussed more fully above, it is this Office's opinion that S.C. Code § 16-17-520 does not violate the first amendment to the federal constitution or Article I, § 2 of the South Carolina State Constitution. Legislation enacted by the General Assembly is presumed valid and enforceable until a court rules otherwise. We note that the expressive conduct scenario presented is not simply a question of the whether freedom of speech could be impermissibly restricted, but also under section 16-17-520(a) a "meeting, society, assembly or congregation convened for the purpose of religious worship" is being interrupted in a reckless or wanton manner. In this scenario, the interrupted congregation is denied its right to assemble and worship. This opinion can only suggest that a court is unlikely to find section 16-17-520(a) is facially unconstitutional as courts have upheld similar legislation. To extent that expressive conduct may be entitled to constitutional protection in a particular case, a court will likely evaluate whether the enforcement of the statute is constitutional on an as-applied basis.

Subsection (c) states any person that "use[s] or sell[s] spirituous liquors, or use blasphemous, profane or obscene language at or near the place of meeting" is guilty of a misdemeanor. Obscene and profane language are generally held to be "no essential part of any exposition of ideas" such that they are unprotected under the first amendment. Chaplinsky, supra; see also Bouye, supra. Statutes regulating blasphemous language, however, have been found unconstitutional as courts have interpreted them to protect or promote Christianity. See Kalman v.

Cortes, 723 F. Supp. 2d 766, 775 (E.D. Pa. 2010) (historical discussion of blasphemy statutes and jurisprudence holding those "statutes intended to protect Christianity over other religions run afoul of the First Amendment."). If a court rules the prohibition on blasphemous language at or near a place of meeting runs afoul of the state and federal constitutions, it would then determine whether the remainder of the statute is separable and capable of being executed without the offending provision. See Fairway Ford, Inc. v. Timmons, supra. A court may well hold that the prohibition on blasphemous language is severable from the remainder of subsection (c) such that the Legislature's intent can still be fulfilled in its absence. Yet, until a court holds that any part of the statute is unconstitutional, it is presumed to be valid and enforceable. See Cox v. Bates, supra.

Sincerely,

Matthew Houck
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Solicitor General