

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION**

Tiffani Morgan Walton,

Plaintiff,

v.

Civil Action No. 2:22-cv-00350

**CRAIG BLAIR, in his official capacity
as President of the West Virginia Senate;
GROVER MILLER, in his official capacity
as Assistant Sergeant-at-Arms
for the West Virginia Senate; KEVIN FOREMAN,
in his official capacity as Director of the
West Virginia Division of Protective Services;
and VAN ARMSTRONG, in his official capacity
as an officer for the West Virginia Division
of Protective Services,**

Defendants.

**PLAINTIFF'S VERIFIED COMPLAINT FOR DECLARATORY AND EMERGENCY
INJUNCTIVE RELIEF FOR CONSTITUTIONAL VIOLATIONS**

This action seeks emergency declaratory and injunctive relief for violations of the constitutional rights of individuals to video record and to photograph government proceedings open to the public.

INTRODUCTION

On July 29, 2022, West Virginians assembled in droves at the State Capitol to exercise their right to engage in a hallmark of democracy: participating in the legislative process. That day, legislators debated and voted on a critical issue of public importance—the future of abortion access in the state after the fall of *Roe v. Wade*.

While legislators debated policy that could amount to a total ban on abortion, West

Virginians—both for and against abortion rights—closely followed the process, many inside the Capitol but others from across the state observing via the legislature’s livestream, or through photos and videos posted to social media by people in attendance.

Plaintiff Tiffani Morgan Walton is just one of the many individuals who observed Senate proceedings that day, primarily from the Senate “gallery,” a section of seating provided specifically for members of the public to observe the legislative process in person. As she watched from the gallery, she recorded video via her cell phone of the floor debate regarding House Bill 302 (HB 302), proposed legislation relating to access to abortion care. Although she had recorded other government proceedings that day, including a debate on separate legislation related to the personal income tax (HB 303), she was told, first by agents employed by the legislature, under the authority of Senate President Craig Blair, and then by law enforcement employed by the West Virginia Division of Protective Services (Capitol Police), under the authority of Director Kevin Foreman, that she was not permitted to record the proceedings related to HB 302, and she was ultimately removed from the gallery, the only venue by which she would be able to observe in person the legislative debate. Ms. Walton then explained she had a legal right to record and was informed she would be arrested and ejected from the entire Capitol building if she did not cease to record or if she sought to re-enter the gallery.

Observing the actions of government actors in public is activity protected by the First Amendment of the U.S. Constitution. The government violated Ms. Morgan’s fundamental right to free speech when the West Virginia Senate, under the direction of Senate President Craig Blair, and the West Virginia Capitol Police, under the direction of Defendant Foreman, prohibited Ms. Morgan from recording the actions of legislators and retaliated against her by

preventing her from re-entering the gallery to watch the proceedings and when they demanded she leave the Capitol entirely and threatened arrest if she attempted to re-enter the gallery or to exercise her constitutional rights to free speech.

This is an action for declaratory judgment, preliminary and permanent injunctive relief, and money damages brought under 42 U.S.C. §1983 and the First Amendment to the United States Constitution against Senate President Craig Blair, West Virginia Division of Protective Services Director Kevin Foreman, Senate Assistant Sergeant-at-Arms Grover Miller, and Capitol Police Corporal Van Armstrong.

Emergency preliminary relief is appropriate in this matter because the Senate and its committees are scheduled to meet, at the latest, on September 11-13, which is approximately 20 days from the date of this filing. The meetings which are scheduled on those dates are primarily open to the public and are meetings at which individuals will have a constitutional right to observe and record. The legislature may reconvene sooner, as the debated legislation central to this Complaint is at the time of filing stalled as the legislature convenes a “conference committee,” composed of members of each chamber, to consider the proposed legislation. Defendant Blair’s office has reportedly confirmed that the committee meetings will be open to the public.¹ Emergency preliminary relief is appropriate as it is the only

¹ See Ian Karbal, *‘Keep the door closed’: Inside the chaotic week when West Virginia Republicans’ efforts to ban abortion stalled*, MOUNTAIN STATE SPOTLIGHT, Aug. 3, 2022, available at <https://mountainstatespotlight.org/2022/08/03/inside-the-chaotic-week-when-west-virginia-republicans-efforts-to-ban-abortion-stalled>.

mechanism to ensure Ms. Walton's rights will be protected and that she will be free from retaliation when observing imminent Senate proceedings.

Ms. Walton alleges that the West Virginia Senate and the Capitol Police have a custom, pattern, practice or policy of authorizing agents to retaliate against individuals for exercising their right to record public government proceedings.

Plaintiff requests, under 42 U.S.C. § 1983 and the historic equity powers of the federal courts, that this Court issue an emergency temporary restraining order, or, in the alternative, emergency preliminary injunctive relief, to enjoin immediately Defendant officials of the West Virginia Senate and the West Virginia Division of Protective Services from prohibiting the use of recording devices by the general public during open meetings in the legislature, and from unlawfully retaliating against individuals who are recording or photographing proceedings in the legislature which are open to the public.

PARTIES

1. Plaintiff Tiffani Morgan Walton is a West Virginia resident who resides in Greenbrier County.
2. Defendant Craig Blair was, at all times here mentioned, the President of the West Virginia Senate, one of two houses in the West Virginia legislature. The West Virginia Senate regularly convenes in the State Capitol Complex in Charleston, the county seat of Kanawha County, West Virginia. Defendant Blair is vested with authority and responsibility for the staffing, administration, operation, and control of the West Virginia Senate, including the ultimate oversight of all employees and agents² of the West Virginia Senate and with

² The term "agents" in this pleading includes individuals employed by the West Virginia Senate on a part-time or per diem basis.

authority to promulgate, amend, and implement policies and procedures within the West Virginia Senate to ensure constitutional compliance with said policies. Defendant Blair is named in his official capacity for the purposes of seeking injunctive and declaratory relief.

3. Defendant Kevin Foreman was, at all times here mentioned, the Director of the West Virginia Division of Protective Services, also known as the Capitol Police. Defendant Foreman is vested with authority and responsibility for the staffing, administration, operation, and control of the Capitol Police, including the oversight of all Capitol Police employees and with authority to promulgate, amend, and implement policies and procedures within the Capitol Police to ensure constitutional compliance with said policies. Defendant Foreman is named in his official capacity for the purposes of seeking injunctive and declaratory relief.

4. Defendant Grover Miller was, at all times here mentioned, the Assistant Sergeant-at-Arms for the West Virginia Senate and was acting under the color of state law. Defendant Miller is named in his official capacity.

5. Defendant Van Armstrong was, at all times here mentioned, a corporal and officer for the West Virginia Division of Protective Services, also known as the Capitol Police, and was acting under the color of state law. Defendant Armstrong is named in his official capacity.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction over this dispute pursuant to 28 U.S.C. §§ 1331, 1343 because Plaintiff seeks redress for the deprivations of rights guaranteed by the Constitution of the United States.

7. This Court has personal jurisdiction over Defendants because they are domiciled in West Virginia and because their denial of Plaintiff's rights under the United States Constitution occurred in West Virginia.

8. This is an action for injunctive and declaratory relief pursuant to 42 U.S.C. § 1983 to protect the rights of Plaintiff as guaranteed to her under the Fourteenth Amendment to the United States Constitution.

9. Venue is proper in the United States District Court in the Southern District, Charleston Division, because a substantial part of the events or omissions giving rise to the claim occurred in this District.

STATEMENT OF THE FACTS

A Legislative Convening to Address Access to Abortion Care

10. On Wednesday, July 20, 2022, West Virginia Governor Jim Justice issued an executive proclamation, calling for the convening of a “special session” of the state legislature at 12 p.m. on Monday, July 25, 2022.

11. The proclamation outlined the topics Governor Justice requested the legislature to consider, focusing primarily on his administration’s proposed legislation relating to personal income tax.

12. On July 25, the day on which the convening was to commence, Governor Justice shortly before 12 p.m. amended the proclamation to add an additional item: a request that the legislature consider and pass a new statutory framework governing abortion care in light of a United States Supreme Court decision issued on June 24, 2022 in *Dobbs v. Jackson Women’s Health Organization*, in which the Supreme Court overruled its decision in *Roe v. Wade*, the landmark case that established a constitutional right to abortion.

13. The legislature in the following days convened in committee meetings and on the floors of the Senate and House chambers to debate legislation that would restrict abortion care in West Virginia.

14. On July 28, 2022, the West Virginia House of Delegates passed House Bill 302, which, if passed and signed into law, would ban all abortions in West Virginia except in certain situations and would impose significant penalties on abortion care providers.

15. Upon passage in the House of Delegates, the bill was transmitted to the West Virginia Senate.

16. The following day, July 29, the West Virginia Senate took up for consideration HB 302.

17. The Senate and House were unable to agree on an amended version of HB 302. The bill was referred for consideration of a “conference committee,” and therefore the bill did not advance further prior to the recess of the legislature the evening of July 29.

Ms. Walton’s Interest in HB 302 and the Exercise of Her Constitutional Right to Record Government Officials and Proceedings

18. As a West Virginia resident, Ms. Walton has a general interest in proposed legislation under consideration by the West Virginia legislature, and how any such legislation might impact herself, her community, and her state.

19. Ms. Walton traveled to the West Virginia Capitol Complex on July 29, the final day of special session, to observe debate on both HB 303, the proposed legislation regarding personal income tax, and HB 302.

20. At approximately 12:30 p.m., Ms. Walton and other members of the public entered the Senate Gallery. Prior to entering the Gallery, they were informed by a Senate Doorkeeper that recording video and taking photographs would not be permitted once the Senate came to order.

21. A sheet of paper was taped to the ledge in front of the first row of seats in the Senate Gallery that read, “While in Gallery: Turn off cell phones, no flash photography, no leaning on railing.”

22. Notably, the posted sign in the Senate Gallery does not prohibit recording video.
23. As Ms. Walton waited for the Senate to begin debate HB 302, Defendant Blair announced that the Senate was going to take a brief recess. She and others exited the Senate Gallery.
24. During the Senate's recess, the American Civil Liberties Union of West Virginia (ACLU-WV) became aware that individuals in the Senate Gallery had been told they were not permitted to record video or take photographs during the Senate's session.
25. At approximately 1:53 p.m., the ACLU-WV, via undersigned counsel, sent via email a letter to Defendant Blair advising him that people sitting in the Senate Galley were expressly permitted by law to record video and take photographs during open governmental proceedings, including the Special Session, in accordance with the West Virginia's Open Governmental Proceedings Act, which expressly provides a right to photograph and record public proceedings. *See Exhibit A.*
26. ACLU-WV also posted the letter on its website as well as its social media channels, including Facebook, Twitter, and Instagram.
27. At approximately 2:30 p.m., the Senate returned from recess and Ms. Walton returned to the Senate Gallery. When the Senate resumed at approximately 2:30 p.m., the body began debate on HB 303, the separate proposed legislation addressing the Governor's proposed income tax cut.
28. Ms. Walton returned to the Senate Gallery to observe the proceedings and recorded portions of the personal income tax debate without incident.
29. At approximately 4:00 p.m., the Senate began debate on HB 302, the proposed abortion legislation.

30. At approximately 4:31 p.m., Ms. Walton began recording debate on HB 302 from her seat in the Senate Gallery.

31. Almost immediately after Ms. Walton began recording the proceedings, Defendant Grover Miller approached Ms. Walton and demanded she stop recording debate on the bill.

32. Defendant Miller informed Ms. Walton that if she continued to record video, she would be ejected from the Senate Gallery.

33. Ms. Walton informed Defendant Miller that she was permitted to record video of the debate in accordance with the West Virginia Open Governmental Proceedings Act. Ms. Walton then conveyed to Defendant Miller the letter ACLU-WV sent to Defendant Blair earlier that afternoon.

34. Defendant Miller then demanded Ms. Walton move into the hallway outside of the gallery as the two continued to disagree as to whether Ms. Walton had the right to record the debate on the bill.

35. As Defendant Miller and Ms. Walton continued to disagree, Capitol Police officers approached.

36. Once Ms. Walton was moved outside the Senate Gallery, she began recording her interaction with Defendant Miller and the Capitol Police officers.³

³ A recording of the exchange between Ms. Walton, the Capitol Police officers, and Defendant Miller can be found embedded in an article which summarized the events of the week. See Ian Karbal, *'Keep the door closed': Inside the chaotic week when West Virginia Republicans' efforts to ban abortion stalled*, MOUNTAIN STATE SPOTLIGHT, Aug. 3, 2022, available at <https://mountainstatespotlight.org/2022/08/03/inside-the-chaotic-week-when-west-virginia-republicans-efforts-to-ban-abortion-stalled>.

37. Ms. Walton asked one officer, Defendant Armstrong, "Why am I being escorted out of the Senate [Gallery]?" Defendant Armstrong responded, "Because you're interrupting."

38. Ms. Walton told Defendant Armstrong, "I was just recording. I wasn't being loud. I wasn't saying anything. I was just recording."

39. Defendant Armstrong then asked Ms. Walton if she saw the sign that says not to record. In response, Ms. Walton told Defendant Armstrong that she had a legal right to record. Defendant Armstrong responded, "No you can't."

40. Ms. Walton then told Defendant Armstrong, "I think I can. The ACLU said that I can." Defendant Armstrong responded, "ACLU? No."

41. As Ms. Walton and Defendant Armstrong waited for another officer to retrieve her belongings from the Senate Gallery, Ms. Walton again stated, "I'm just recording. I wasn't saying anything. I'm just recording a public process. I'm a public citizen. This is a public hearing. I can have my phone out, just like he can record me, I can record them. It's all live streamed on Facebook anyway."

42. Ms. Walton then asked, "Just to be clear you are kicking me out of a public event, me, a public citizen . . . I have a right to peacefully record what's happening." To this, Defendant Armstrong responded, "No you don't." The second officer then said, "You don't have a right to disturb the process." Ms. Walton informed both officers, "I am definitely not disturbing anything just because I have my phone out. The Senators have their phones out!"

43. In response, Defendant Miller told Ms. Walton, "You are disturbing . . . because you are not following the rules. This is only public if you follow the rules. If you can't follow the rules, then you have to excuse yourself."

44. Ms. Walton responded to Defendant Miller with, “there's no rule that I can't record, just no flash photography.” Defendant Miller then told Ms. Walton, “You're not listening at all. You just need to be escorted out, that's all.”

45. Ms. Walton told Defendant Miller, “I was listening to my rights being taken away. I'm not listening to you tell me I can't publicly record a public process.”

46. To this, Defendant Miller suggested Ms. Walton should complain “to the appropriate people” if she thought her rights were being “offended.” Ms. Walton then told Defendant Miller, “Well, I'm sure I will.”

47. Ms. Walton then asked Defendants Miller and Armstrong, “Can I just go back in and listen quietly?” In response, Defendant Miller told Ms. Walton, “No. You lost your right to do that.”

48. Ms. Walton then informed the officers and Defendant Miller, “I did not lose any rights. I didn't break any laws. I'm losing rights right now, sure, it's happening right now, but I'm not breaking any laws. I was recording peacefully.”

49. In response, Defendant Miller told Ms. Walton, “You don't have the right to go against any rules that we set in here, and you're doing that, and I've explained that to you two or three times today. Ms. Walton responded to Defendant Miller, “Because I have a right to record a public process.”

50. As Defendant Armstrong and another officer attempted to move Ms. Walton down the steps leading away from the Senate Gallery, Ms. Walton again asked, “just to be clear, am I being kicked out of the vicinity?” Defendant Armstrong responded, “No, no you just go down to the area where we started at earlier today. Outside the chamber.”

51. Moments later, Defendant Foreman, along with at least four additional Capitol Police officers, approached Ms. Walton. Defendant Foreman informed Ms. Walton, "You can go outside the [Senate] Chamber at the bottom of the steps. You can do that, or you'll be out of the building. You choose."

52. Ms. Walton asked, "so I'm being kicked out of earshot of the public proceedings?" To this, Defendant Foreman told Ms. Walton, "You can go down to the bottom of the steps. They've told you. Yes, you have. You've violated the rules and you need to go down to the bottom of the steps." Ms. Walton then responded, "I didn't violate any rules."

53. Defendant Armstrong then told Ms. Walton, "One or the other. You tell us what you want to do. Do you want to leave the building or do you want to . . ." Ms. Walton responded, "I have a right to record public process. I have a right to record public process. I know my rights."

54. In response to this, Defendant Armstrong laughed at Ms. Walton. Ms. Walton asked Defendant Armstrong if he found her statement to be funny.

55. Defendant Armstrong again laughed and responded, "yeah."

56. Officer Workman stated, "You need to move, lady. You'll be arrested. You'll be arrested."

57. Defendant Foreman then told Ms. Walton, "Let's go down the steps. You're not going to stay here." Ms. Walton again asked, "So I am being kicked out of a public building? As a public citizen?" To this, Officer Workman told Ms. Walton, "Yes, you are."

58. Defendant Foreman then told Ms. Walton, "You can go right down to the bottom . . . you've been removed from the [Senate] Gallery."

59. Three Capitol Police Officers and Defendant Foreman then escorted Ms. Walton away from the Senate Gallery and into the Senate lobby.

60. As she was escorted down the stairs, Ms. Walton said, "Absolutely. Thank you so much for kicking me out of a public building, for recording a public process, as a public citizen, who was not causing any disturbance to the hearing itself."

61. Ms. Walton was not permitted to return to the Senate Gallery to observe debate on HB 302. Although Defendant Blair later in the day, at approximately 5:50 p.m., ordered that the galleries be cleared, at the time of Ms. Walton's interactions with the Capitol Police and Defendant Miller, other individuals were still permitted to remain in the gallery

62. Ms. Walton was observing the public legislative process peacefully but was still ejected from the gallery for exercising her free speech rights as protected by the First Amendment.

63. When Ms. Walton engaged with police officers and agents of the West Virginia Senate, she spoke calmly when asserting her rights and was not disruptive.

64. At no time did Ms. Walton do anything that would allow a reasonable officer or agent of the West Virginia Senate to believe that she was engaged in any unlawful activity.

65. At no time did Ms. Walton do anything that would have allowed a reasonable officer or agent of the West Virginia Senate to believe there was legal cause to violate her constitutional right to record and to retaliate by prohibiting Ms. Walton from re-entering the gallery or continuing to record.

66. In his capacity as Senate President, Defendant Blair knows, or should know, that the acts of Defendant Miller against Ms. Walton were unconstitutional.

67. Upon information and belief, as part of his responsibilities as Senate President, Defendant Blair reviews all reports and complaints against the employees and agents of the West Virginia Senate, including Defendant Miller.

68. Defendant Blair's failure to stop Defendant Miller from violating Ms. Walton's right to record, and to retaliate against her for exercising those rights, despite his actual knowledge of those occurrences, amounts to deliberate indifference to the constitutional rights of West Virginians to observe and record open governmental proceedings in the West Virginia Senate.

69. Defendant Blair's approval of practices such as those undertaken by Defendant Miller proximately caused the constitutional injuries and harm suffered by Ms. Walton.

70. As a direct and proximate result of the Defendants' actions, Ms. Walton suffered the following injuries and damages:

(a) Violation of her rights under the First Amendment to the United States Constitution, as applied to the states by the Fourteenth Amendment, and to be retaliated in any way for engaging in constitutionally protected speech or conduct;

(b) Emotional trauma, humiliation, and distress.

71. The West Virginia Senate, under the direction of Defendant Blair and by virtue of custom, pattern, practice, training and/or policy, authorizes its employees and agents to prohibit the general public from recording open governmental proceedings and to unlawfully retaliate against the general public for exercising its right to observe and record open proceedings.

72. The West Virginia Capitol Police, under the direction of Defendant Foreman and, by virtue of custom, pattern, practice, training and/or policy authorizes its employees and

agents to prohibit the general public from recording open governmental proceedings in violation of both the Open Meetings Act and the federal and state constitutions.

73. Defendants collectively are deliberately indifferent to the right to record as protected under the United States Constitution.

**FIRST CAUSE OF ACTION
First Amendment Retaliation
(Against All Defendants)**

74. Plaintiff incorporates by reference the foregoing paragraphs.

75. Observing government activities is a legitimate means of gathering information for public dissemination and is expressive conduct protected by the First Amendment to the United States Constitution.

76. The unlawful actions of Defendants Foreman, Armstrong, and Miller in prohibiting Ms. Walton from recording and enjoining her from participating in and observing in the legislative process, constitutes unlawful retaliation against Ms. Walton by public officials for engaging in activities protected by the First Amendment to the United States Constitution.

77. Defendants Foreman and Blair are responsible for the violations of Plaintiff's constitutional rights because the actions of Defendants Foreman, Armstrong, and Miller resulted from the deliberate indifference to a custom, pattern, practice, or policy of allowing the Capitol Police, the Assistant Sergeant at Arms of the West Virginia Senate and other agents of the West Virginia Senate to retaliate against individuals for expressive conduct in videotaping open government meetings, when the Capitol Police and agents of the Senate are undertaking their official duties, and/or resulted from a deliberate or indifferent failure to train, supervise, and discipline officers and agents of the Senate who engage in such conduct.

PRAYER FOR RELIEF

WHEREFORE, in light of the foregoing, Plaintiff respectfully requests the following:

78. Enter a declaratory judgment that the Defendants violated Plaintiff's First Amendment right to observe and record government actions;
79. Issue immediate emergency and injunctive relief, permanently enjoining Defendants from prohibiting individuals to observe and record open governmental proceedings;
80. Waive any requirement for the posting of a bond as security for entry of temporary or preliminary injunctive relief;
81. Award Plaintiff costs, expenses, and reasonable attorneys' fees pursuant to 42 U.S.C. § 1988 and other applicable laws; and
82. Granting such other and further relief as the Court deems just and proper.

Respectfully submitted,

Plaintiff,
TIFFANI MORGAN WALTON,
By counsel,

/s/ Loree Stark
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