

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

TIFFANI MORGAN WALTON,

Plaintiff,

v.

Civil Action No.

**THE WEST VIRGINIA SENATE, and
THE WEST VIRGINIA DIVISION OF PROTECTIVE SERVICES,**

Defendants.

**VERIFIED COMPLAINT FOR EMERGENCY DECLARATORY
AND INJUNCTIVE RELIEF**

This action seeks relief for the failure of the West Virginia Senate and the West Virginia Division of Protection Services (the West Virginia Capitol Police) to comply with the requirements of the West Virginia Open Governmental Proceedings Act (“the Open Meetings Act”), W. Va. Code § 6-9A-1, *et. seq.* Plaintiff Tiffani Morgan Walton seeks declaratory and injunctive relief pursuant to West Virginia Code Section § 6-9A-9.

THE PARTIES

1. Plaintiff Tiffani Morgan Walton is a West Virginia resident.
2. Defendant West Virginia Senate is one of two houses in the West Virginia legislature and is a “governing body” subject to the Open Meetings Act within the definition of West Virginia Code Section 6-9A-2(4). The West Virginia Senate regularly convenes in the State Capitol Complex in Charleston, the county seat of Kanawha County, West Virginia.
3. The West Virginia Division of Protective Services, also known as the Capitol Police, is an agency within the West Virginia Department of Military Affairs and Public Safety and is the arm of state law enforcement tasked with security and enforcement of state law within West Virginia Capitol Complex. The agency is located in the State Capitol Complex.

JURISDICTION AND VENUE

4. This is an action brought pursuant to the West Virginia Open Meetings Act, which provides in relevant part, “the [circuit] court is empowered to compel compliance or enjoin noncompliance with the provisions of this article and to annul a decision made in violation of this article.” W. Va. § 6-9A-6.

5. Kanawha County Circuit Court is the appropriate venue because “the circuit court in the county where the public agency regularly meets has jurisdiction and is a proper venue to enforce this article upon civil action.” W. Va. Code § 6-9A-6.

STATEMENT OF THE FACTS

A Legislative Convening to Address Access to Abortion Care

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

7. 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.

8. 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.

9. The legislature in the following days convened in committee meetings and on the floor to debate legislation that would restrict abortion care in West Virginia.

10. 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.

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

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

13. 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 House Bill 302 and the Exercise of her Statutory Right to Record Open Government Proceedings

14. 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.

15. 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.

16. 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.

17. 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.”

18. Notably, the posted sign in the Senate Gallery does not prohibit recording video.

19. As Ms. Walton waited for the Senate to begin debate on HB 302, Senate President Craig Blair announced that the Senate was going to take a brief recess. She and others exited the Senate Gallery.

20. 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.

21. At approximately 1:53 p.m., the ACLU-WV, via undersigned counsel, sent via email a letter to Senate President Blair advising him that people sitting in the Senate Gallery were expressly permitted by law to record video and take photographs during the governmental proceedings, including the Special Session, in accordance with the Open Meetings Act, which expressly provides a right to photograph and record public proceedings. *See Exhibit A.*

22. ACLU-WV also posted the letter on its website and social media channels, including Facebook, Twitter, and Instagram.

23. 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.

24. Ms. Walton returned to the Senate Gallery and recorded portions of the personal income tax debate without incident.

25. At approximately 4:00 p.m., the Senate began debate on HB 302, the proposed abortion legislation.

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

27. Almost immediately after Ms. Walton began recording the proceedings, Assistant Sergeant at Arms Grover Miller, who is, upon information and belief, employed part-time and compensated on a per diem basis by the West Virginia Senate, approached Ms. Walton and demanded she stop recording debate on the bill.

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

29. Ms. Walton informed Miller that she was permitted to record video of the debate in accordance with the Open Meetings Act. Ms. Walton then conveyed to Miller the letter ACLU-WV sent to Senate President Blair earlier that afternoon.

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

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

32. Once Ms. Walton was moved outside the Senate Gallery, she began recording her interaction with Miller and the Capitol Police officers.¹

33. Ms. Walton asked one officer, Capitol Police Corporal Van Armstrong, “Why am I being escorted out of the Senate [Gallery]?” Armstrong responded, “Because you’re interrupting.”

34. Ms. Walton told Armstrong, “I was just recording. I wasn’t being loud. I wasn’t saying anything. I was just recording.”

¹ A recording of the exchange between Ms. Walton, the Capitol Police officers, and 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

35. Armstrong then asked Ms. Walton if she saw the sign posted in the Senate and gallery and he then falsely represented that the sign indicated she could not record. In response, Ms. Walton told Armstrong that she had a legal right to record. Armstrong responded, "No you can't."

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

37. As Ms. Walton and 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."

38. 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, 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!"

39. In response, 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."

40. Ms. Walton responded to Miller with, "[t]here's no rule that I can't record, just no flash photography." Miller then told Ms. Walton, "You're not listening at all. You just need to be escorted out, that's all."

41. Ms. Walton told 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."

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

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

44. Ms. Walton then informed the officers and 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.”

45. In response, 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 Miller with, “[B]ecause I have a right to record a public process.”

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

47. Moments later, Director of Capitol Police, Kevin Foreman, along with at least four additional Capitol Police officers, approached Ms. Walton. 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.”

48. Ms. Walton asked, “so I’m being kicked out of earshot of the public proceedings?” To this, 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.”

49. 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."

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

51. Armstrong again laughed and responded, "Yeah."

52. Capitol Police Officer Workman stated, "You need to move, lady. You'll be arrested. You'll be arrested."

53. 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."

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

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

56. 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."

57. Ms. Walton was not permitted to return to the Senate Gallery to observe debate on HB 302. Although Senate President 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 Miller, other individuals were still permitted to remain in the gallery.

58. Ms. Walton was observing the public legislative process peacefully but was still ejected from the gallery for exercising her statutory right to record pursuant to the West Virginia Governmental Proceedings Act.

59. 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.

60. Ms. Walton did not unduly interfere with the proceedings of the Senate when she engaged in the ordinary use of her cell phone to record the proceedings.

61. 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.

62. 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 statutory right to record.

63. Ms. Walton was damaged by the Defendants' actions when she was denied her right to record and observe the legislative process as expressly permitted by the West Virginia Open Meetings Act.

64. 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.

65. Emergency injunctive relief is appropriate as it is the only mechanism to ensure Ms. Walton's rights under the West Virginia Open Meetings Act will be protected and to ensure there is full transparency in public government proceedings.

LEGAL AUTHORITY AND DISCUSSION

66. In enacting the laws relating to open governmental proceedings, the legislature stated:

[T]he citizens of this state do not yield their sovereignty to the governmental agencies that serve them. The people in delegating authority do not give their public servants the right to decide what is good for them to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments of government created by them.

W. Va. Code § 6-9A-1.

67. The Open Meetings Act provides that the public should be allowed “to educate itself about government decision-making through individuals’ attendance and participation at government functions, distribution of government information by the press or interested citizens, and public debate on issues deliberated within the government.” *Id.*

68. Further, the Open Meetings Act requires that, “[e]xcept as expressly and specifically otherwise provided by law, whether or heretofore or hereinafter enacted. . . [or if an exception by statute applies] all meetings for any governing body shall be open to the public.” *Id.*

69. Under the Open Meetings Act “a public agency may regulate the placement and use of equipment necessary for broadcasting, photographing, filming, or recording a meeting, so as to prevent undue interference with the meeting.” W. Va. Code § 6-9A-9.²

70. The Open Meetings Act explicitly states that a “public agency shall allow [broadcasting or recording] equipment to be placed within the meeting room in such a way as to permit its intended

² In 2019, the West Virginia Ethics Commission Committee on Open Governmental Meetings issued an advisory opinion to the City of Winfield, West Virginia addressing whether the City of Winfield could prevent the public from filming City Council meetings. The Committee advised, “as it pertains to the use of equipment necessary for broadcasting, photographing, filming or recording a meeting, a public agency may not prohibit anyone – the public or the media – from using such equipment unless it is to prevent undue interference with the meeting. *See* Exhibit B.

use, and the ordinary use of the equipment may not be declared to constitute undue interference.”

Id.

71. Because Ms. Walton was removed from the Senate Gallery for recording open, public debate on HB 302, she was unable to attend and participate in a meaningful manner in public agency decision making.

72. The Open Meetings Act provides that “[t]he court is empowered to compel compliance or enjoin noncompliance with the provisions of this article to annul a decision made in violation of this article.” W. Va. Code § 6-9A-6.

73. The Plaintiff brings this instant case against the West Virginia Senate and the Capitol Police for declaratory and injunctive relief under the Open Meetings Act.

CONCLUSION

Plaintiff acted within the scope of the West Virginia Open Meetings Act when she used her cell phone’s camera to record debate on HB 302. Plaintiff did not present any undue interference by engaging in the ordinary use of that equipment.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court:

74. Enter an Order declaring that Defendants violated Section 6-9A-9 of the Open Meetings Act by conducting a meeting where the public were prohibited from recording public debate.

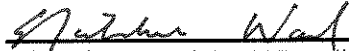
75. Issue injunctive relief enjoining against enforcement of the West Virginia Senate’s present custom, pattern, practice or policy prohibiting the public from recording open government proceedings.

76. That Plaintiff be awarded reasonable attorney’s fees and costs; and

77. Grant such other relief as this Court deems just and proper.

Respectfully submitted,

Plaintiff,
TIFFANI MORGAN WALTON,
By counsel,



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