

**UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MARYLAND
Northern Division**

BETSY CUNNINGHAM)
4100 N. Charles Street)
Suite 1105)
Baltimore, Maryland 21218,)

TERRY DALSEMER)
214 Homewood Terrace)
Baltimore, Maryland 21218,)

KATHARINE LeVEQUE)
2728 N. Calvert Street)
Baltimore, Maryland 21218,)

FRANCES FINNEY)
4100 N. Charles Street)
Suite 513)
Baltimore, Maryland 21218)

and)

BARBARA PULA)
221 Ridgemead)
Baltimore, Maryland 21218,)

Plaintiffs,)

v.)

KIMBERLY AMPREY FLOWERS)
INTERIM DIRECTOR,)
DEPARTMENT OF RECREATION AND PARKS)
in her official capacity,)
3001 East Drive – Druid Hill Park)
Baltimore, Maryland 21217,)

Defendant.)
_____)

COMPLAINT

Plaintiffs Betsy Cunningam, Terry Dalsemer, Katharine LeVeque, Frances Finney and Barbara Pula, by their attorneys, allege as follows:

INTRODUCTION

1. Plaintiffs are a group of peaceful, law-abiding women who have held, and wish to continue to hold, silent vigils on public sidewalks in Baltimore City to protest war and promote peaceful, non-violent solutions. They are participants in Women in Black-Baltimore, a part of Women in Black, an international, multi-faith, multi-cultural, and multi-ethnic network of women who wear black as a symbol of mourning, carry signs of peace, and hold silent vigils because words cannot express the painful tragedy of war and violence. Plaintiffs wish only to secure their rights of free speech and expressive conduct protected by the First Amendment.
2. Because of the ongoing war in Iraq, plaintiffs have decided to hold a vigil every Friday at noon for the foreseeable future on the public sidewalks on McKeldin Square at the southeast corner of Pratt and Light Streets in the Inner Harbor in downtown Baltimore. Plaintiffs organized and participated in a silent vigil held there last Friday, April 4, 2003, which was prematurely shut down by Baltimore police officers acting pursuant to regulations of the Department of Recreation and Parks. Plaintiffs plan to hold future vigils, and have already issued widely distributed press releases and announcements for upcoming silent vigils in the immediate future.

3. Plaintiffs have been denied their First Amendment rights by the bureaucratic and administrative scheme established by the City of Baltimore and its Department of Recreation and Parks, and enforced by the Baltimore City Police Department, mandating that anyone engaging in speech and expressive conduct, even on publicly-owned, city sidewalks in the Inner Harbor, first obtain a permit. These permits require submitting a lengthy application up to eight weeks in advance of the demonstration and paying a non-refundable permit fee. As such, the permit requirements are an unnecessary and unconstitutional burden on the valid exercise of First Amendment rights insofar as the government's interests in crowd control are not implicated.
4. Plaintiffs seek a declaratory judgment, preliminary and permanent injunctive relief, including attorneys' fees and costs, against defendant for violating their federal constitutional rights under the Free Speech Clause of the First Amendment and the Fourteenth Amendment.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this action under 28 U.S.C. § 1331, this being a civil action arising under the laws of the United States, as well as under 28 U.S.C. § 1343.
6. Plaintiffs' claims for declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2201 and 2202, which empower this Court to "declare the rights and other legal relations of any interested party seeking such declaration," and Rules 57 and 65 of the Federal Rules of Civil Procedure.

7. Venue is proper in the United States District Court for the District of Maryland, Northern Division, pursuant to 28 U.S.C. § 1391(b), because all parties reside in this District and the events giving rise to the claims asserted occurred therein.

THE PARTIES

8. Plaintiff BETSY CUNNINGHAM is a resident of Baltimore City, Maryland. She is a facilitator for Women in Black-Baltimore, a part of Women in Black, an international peace network founded in 1988 by Christian, Jewish, and Muslim women. A multi-faith, multi-cultural, and multi-ethnic network, Women in Black participants wear black as a symbol of mourning, carry signs of peace, and hold silent vigils because words cannot express the painful tragedy of war and violence. They hold silent vigils to protest war and promote peaceful, non-violent solutions. As a deeply committed Christian, she participates in Women in Black in order to bridge differences among people of all faiths and backgrounds. She participated in the silent vigil held on Friday, April 4, 2003 and plans to attend upcoming silent vigils.
9. Plaintiff TERRY DALSEMER is a resident of Baltimore City, Maryland. She is a participant in Women in Black-Baltimore. She chooses to participate in Women in Black in order to bridge differences among people of all faiths and backgrounds. She participated in the silent vigil held on Friday, April 4, 2003 and plans to attend upcoming silent vigils.
10. Plaintiff KATHARINE LeVECQUE is a resident of Baltimore City, Maryland. She is a participant in Women in Black-Baltimore. As an active member of the

Episcopal Cathedral of the Incarnation Congregation, she participates in Women in Black in order to bridge differences among people of all faiths and backgrounds. She participated in the silent vigil held on Friday, April 4, 2003 and plans to attend upcoming silent vigils.

11. Plaintiff FRANCES FINNEY is a resident of Baltimore City, Maryland. She is a participant in Women in Black-Baltimore. She participated in the silent vigil held on Friday, April 4, 2003 and plans to attend upcoming silent vigils.
12. Plaintiff BARBARA PULA is a resident of Baltimore City, Maryland. She is a participant in Women in Black-Baltimore. She participated in the silent vigil held on Friday, April 4, 2003 and plans to attend upcoming silent vigils.
13. Defendant KIMBERLY AMPREY FLOWERS is the interim director of the Department of Recreation and Parks. Defendant Flowers is sued in her official capacity.
14. The Department of Recreation and Parks (the "Department") is an agency created, authorized and existing under the Baltimore City Charter (the "Charter"). As the supervisor of the Department, defendant Flowers is charged with, in part, maintaining and operating the parks, zoos, squares, athletic and recreational facilities and activities for the people of Baltimore City.

FACTUAL ALLEGATIONS

A. Women in Black-Baltimore

15. Women in Black-Baltimore, in which all plaintiffs participate, has held 14 silent vigils on public sidewalks in the Inner Harbor in downtown Baltimore and six on

public property elsewhere in Baltimore City since December 2001. During these vigils, Women in Black participants wear symbolic black clothing and stand in silence holding signs of uniform dimension and color with the word peace written in different language on each sign. An important element of their political expression is creating the visual image of a group of women standing together holding signs in different languages, which is both visually striking and a forceful expression of their message of hope and togetherness.

16. Plaintiffs have organized and/or participated in most, if not all, of the Women in Black vigils in Baltimore.
17. Since the Iraq War began last month, Women in Black-Baltimore has decided to follow the direction of Women in Black all over the world, and hold weekly silent vigils every Friday at noon to mourn for all victims of war. The participants have chosen to stand, as they have in the past, on McKeldin Square, a triangular island at the southeast corner of Pratt and Light Streets (bordered on the north by Pratt Street, on the west by Light Street, and diagonally on the southeast by the right turn lane from northbound Light Street onto eastbound Pratt Street).
18. Women in Black chose this location because it symbolizes Baltimore City and is a central focal point for visitors and residents alike. Passing motorists can easily see them and pedestrians approaching the Inner Harbor frequently stop to speak with them as they pass by. In particular, standing in an L-shaped line, along Pratt and Light Streets, the entire group can be seen by the eastbound traffic on Pratt Street and by the southbound traffic on Light Street, both of which are major

thoroughfares in downtown Baltimore. None of the other corners at that intersection offer such visibility.

19. Since their first vigil in December of 2001, originally planned as a one-time event, the Women in Black vigils have increased in frequency and decreased in size.
20. Plaintiff Cunningham submitted a permit application and paid the permit fee for the vigil in December of 2001, and obtained permits for subsequent vigils because the Department waived the permit fee. In October of 2002, the Department told her it would no longer waive the fee.
21. From October of 2002 through March of 2003, Women in Black participants held small vigils, without obtaining a permit, on the public sidewalks on McKeldin Square. They did not encounter any problems from bystanders or police at any of these events. They had an average of 15 people at these vigils.
22. Last Friday, April 4, 2003, plaintiffs and three other women gathered, as planned, at noon on the public sidewalks on McKeldin Square. One of the participants was holding a Women in Black banner; the rest were holding signs of peace.
23. After approximately 10 minutes, plaintiffs were approached by several police officers on bicycles. The policemen told plaintiffs that they could not stand where they were because they were required to have a permit.
24. Plaintiffs asked the police officers why they had to move, and explained that they had been holding vigils there for over a year without a problem.

25. Officer Wehner stated that they had to move to another intersection because plaintiffs were standing on park property without a permit.
26. Officer Wehner admitted that he took action against plaintiffs because he had been prompted by a complaint from a passer-by who had questioned their presence. He insisted plaintiffs could not continue to hold their vigil there.
27. Officer Wehner refused to let plaintiffs call his supervisor, Lieutenant Bittner, whom plaintiff Cunningham knew of from coordinating past vigils. As they continued to talk, Officer Wehner became visibly angry and raised his voice, prompting plaintiffs to ask him several times to not yell at them.
28. Officer Wehner agreed to go and get a copy of the regulation he claimed prohibited plaintiffs from standing there, and plaintiffs agreed to move. They moved to another corner of Pratt and Light Streets.
29. At approximately 12:45 pm, two officers returned. They showed plaintiffs a stapled and photocopied document but would not give them a copy.
30. Around 1 pm, plaintiffs put their signs away and left the site.
31. Plaintiffs wish to return to the public sidewalks on McKeldin Square every Friday at noon for the foreseeable future. Due to the officers' actions enforcing the permit requirements of the Department, plaintiffs believe that they will not be permitted to hold their vigils as planned. If they do, plaintiffs fear they will be arrested. As such, plaintiffs' political views with Women in Black have been silenced and their constitutional rights violated. In addition, plaintiffs' and Women in Black's planning for future vigils has been greatly disrupted and made

uncertain, as they have already issued widely distributed press releases and announcements for upcoming silent vigils in the immediate future.

B. Department of Recreation and Parks' Permit Scheme

32. Pursuant to Art. VII, § 67(f) of the Charter, the director of the Department has promulgated Rules and Regulations (the “Rules”), effective July 31, 1996, which govern all park areas in the City of Baltimore.
33. The Inner Harbor is one of the city parks covered by the Rules. McKlendin Square, where plaintiffs stood, is part of the Inner Harbor Park.
34. Rule 54 of the Rules governs the issuance of permits by the Department. Under Rule 54(A) and the permit application process established by the Department, any person or group of persons—no matter how large or small—wishing to demonstrate in any city park is required to obtain a permit to hold demonstrations.
35. To obtain a permit, individuals must complete a lengthy application form, which is available along with accompanying explanatory rules at the Department's website, www.ci.baltimore.md.us/government/recnparks/permits.html. The application form and the explanatory rules set forth requirements that are in many instances more burdensome than the Rules themselves, further abridging the constitutional rights of applicants. Specifically, despite Rule 54(A), which provides that permit applications for public assembly can be submitted up to three (3) days before the proposed public assembly, the explanatory rules on the Department's website specify that all applications for permits in the Inner Harbor

Park must be submitted at least eight weeks prior to the proposed event, and that exceptions are not allowed.

36. Rule 54(J) of the Rules provides for a waiver of the three (3) day time period specified by Rule 54(A) in time-sensitive cases. However, the waiver applies only when circumstances that are the subject of the demonstration will occur within three days of filing the application. The waiver does not apply where the subject of the demonstration is a precipitous event that just occurred, such as the sudden outbreak of war, and a three (3) day waiting period would diminish, and possibly nullify, the effectiveness of the proposed demonstration.
37. Section VII of the Rules, entitled “Special Conditions for Inner Harbor Park and the Harbor’s Public Pedestrian Promenade,” go beyond the Rules that apply to all city parks, and impose especially restrictive regulations governing speech and expressive conduct in the Inner Harbor Park and Pedestrian Promenade, including an outright ban on any activities and events in multiple areas of the Inner Harbor Park and Promenade.

COUNT I
**VIOLATION OF THE FREE SPEECH CLAUSE OF THE FIRST AMENDMENT AND
FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION**

38. Plaintiffs repeat, replead and reallege each and every allegation contained in paragraphs 1 through 37 above, as if fully set forth herein.
39. The Department’s Rules and permit application process, coupled with the officers’ actions enforcing them last Friday, have resulted in plaintiffs’ fear that they will

be arrested if they conduct future vigils on the public sidewalks on McKeldin Square.

40. By promulgating the Rules and implementing them as described above, defendant has denied and is denying plaintiffs' rights under the First and Fourteenth Amendments to the United States Constitution, giving rise to plaintiffs' claims for redress under 42 U.S.C. § 1983, and 28 U.S.C. §§ 2201 and 2202.

WHEREFORE, by virtue of the foregoing acts, plaintiffs demand judgment in their favor and against defendant and respectfully request:

- A. That the Court declare that defendant has violated and continues to violate the First and Fourteenth Amendment rights of plaintiffs and others exercising their rights to free speech by enforcing unconstitutional provisions of the Rules and Regulations of the Department of Recreation and Parks;
- B. That the Court issue a preliminary and permanent injunction enjoining defendant from enforcing unconstitutional provisions of the Rules and Regulations of the Department of Recreation and Parks that interfere with the First and Fourteenth Amendment rights of plaintiffs and others exercising their rights to free speech;
- C. That the Court award plaintiffs their reasonable attorneys' fees and costs, pursuant to 42 U.S.C. § 1988(b); and
- D. Such other and further relief as may be just, together with the costs and disbursements of this action.

Dated: April 10, 2003

Respectfully submitted,

SUSAN GOERING (#03606)
RAJEEV GOYLE
(Admitted in New York, Nov. 26, 2002)
American Civil Liberties
Union Foundation of Maryland
3600 Clipper Mill Road, Suite 350
Baltimore, Maryland 21211
(410) 889-8555
(410) 366-7838 (fax)

ATTORNEYS FOR PLAINTIFFS