

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION**

MONICA FAITH USSERY,)

Plaintiff,)

v.)

HONORABLE ROY COOPER, in his official)

capacity as Governor of the State of North)

Carolina, HONORABLE ERIK A. HOOKS,)

is his official capacity as Secretary of the)

North Carolina Department of Public Safety,)

LORRIN FREEMAN, in her official capacity)

as Wake County District Attorney,)

CASSANDRA DECK-BROWN, in her)

official capacity as Chief of the City of)

Raleigh Police Department, DEDRIC BOND,)

in his official capacity as City of Raleigh)

Police Department Captain, ROGER “CHIP”)

HAWLEY, in his official capacity as Chief of)

North Carolina State Capitol Police,)

MARTIN BROCK, in his official capacity as)

Chief of the North Carolina General)

Assembly Police Department, DERICK)

PROCTOR, in his official capacity as an)

officer of North Carolina State Capitol Police,)

TITO FINK, in his official capacity as an)

officer of the North Carolina State Capitol)

Police, and The City of Raleigh,)

Defendants.)

Civil Action No. 4:23-cv-00069

COMPLAINT

Jury Trial Demanded

INTRODUCTION

1. “Our democracy is a fragile ecosystem that requires checks and balances to survive,” Governor Roy Cooper wrote. Roy Cooper, I’m the Governor of North Carolina. *This Fringe Claim Before the Supreme Court Would Upend Democracy*, N.Y. Times, Dec. 5, 2022,

<https://www.nytimes.com/2022/12/05/opinion/supreme-court-elections-vote.html>. Serving in the role of drum major, throughout the COVID-19 pandemic, Governor Roy Cooper led a parade of government officials who trampled over the constitutional rights of the North Carolinians they serve. Whether it was shuttering houses of worship, closing schools, or destroying small businesses, in the name of public health, there was seemingly no right beyond the reach of Governor Cooper, state, and local officials' executive orders and edicts. These officials' power grabs were remarkable, unprecedented in American history and far-reaching, with the consequences still being felt years later.

2. Plaintiff Monica Faith Ussery experienced firsthand this unprecedented invocation of power. When she saw the most powerful forces in this State locking arms in apparent disregard of our Bill of Rights, she took to the streets to peacefully protest. Because she exercised this fundamental human and constitutional right, Ms. Ussery was arrested and prosecuted, *for years*. Thankfully, “[t]here is no pandemic exception to the Constitution of the United States.” *Berean Baptist Church v. Cooper*, 460 F. Supp. 3d 651, 654 (E.D.N.C. 2020).

3. With her criminal case resolved in her favor, the day of reckoning is here. Ms. Ussery brings this lawsuit against the Defendants who were acting under color of law for violating her civil rights and equal protection under the United States Constitution and the North Carolina Constitution.

4. In late 2019, a novel coronavirus emerged in China and set a trajectory that would ultimately turn the world upside down in a viral pandemic panic. By January 31, 2020, Alex M. Azar II, Secretary of Health and Human Services of the United States determined that a public health emergency existed as a result of confirmed cases of the 2019 Novel Coronavirus. This novel virus was soon commonly referred to as COVID-19.

5. The American public and federal government were distracted by the politically divisive impeachment of President Donald Trump and the Senate trial in which President Trump was acquitted on February 5, 2020. Protests erupted across the nation. This wide ideological divide was the stage on which COVID-19 arrived in full force in the United States.

6. Small outbreaks of COVID-19 erupted in February 2020. By early March 2020, the nation was in the grips of a viral pandemic. The public health, economic, and social consequences of all aspects of the pandemic and the governmental response to the same was and still is the subject of much discussion by government leaders, scientists, and the media. While everyone who cared to pay attention heard many varied opinions, the United States Constitution and North Carolina Constitution still secured the right of ordinary people to be heard on these matters and promised the equal protection of these rights to individuals without viewpoint discrimination.

7. Borrowing from the playbook of the Spanish influenza pandemic of 1918, local governments and state governors began issuing stay-at-home orders and quarantine criteria. In early March 2020, Governor Roy Cooper declared a state of emergency and issued a series of executive orders effectuating what was commonly known as a lockdown of activities except those recognized by Governor Cooper as being essential.

8. In response to this lockdown, a group of citizens sought to petition the government for these grievances and hold a protest in the visitor parking lot in the North Carolina State Government Complex, a short distance from both the North Carolina Legislative Building and the Executive Mansion. While exercising her right to assemble and peaceably protest the governor's order and petition for the reopening of the state for business, Monica

Ussery was arrested for protesting in alleged violation of Governor Cooper’s order, which did not expressly call out protesting as an essential activity.

9. On April 21, 2020, Defendants allowed large numbers of protestors to gather in the same place for the same purposes. In fact, Defendants assisted those protestors. Governor Cooper thereafter explained that his executive orders did not prohibit protesting. Nonetheless, Defendants continued to prosecute Ms. Ussery for years, even bringing new charges in 2021 related to her protest in April 2020, knowingly withheld evidence relevant to the charges against her, and only dismissed the claims as her case was set for trial in 2023.

10. In August 2022, Ms. Ussery finally obtained some of the videos from April 14, 2020 through her petition for release of the custodial law enforcement recordings. From those, Ms. Ussery learned for the first time that Defendants intended on that day to make examples of “agitators” who gathered to protest, to “lock up” a few to dissuade others in the future from protesting Defendants’ lockdown policies. As it turned out, Ms. Ussery was the “agitator” whom Defendants targeted to “make an example of” for the crime of protesting their lockdown policies.

PARTIES

11. Plaintiff Monica Faith Ussery is an individual who resides in High Point, North Carolina, Guilford County. As outlined in further detail below, Ms. Ussery was arrested by North Carolina State Capitol Police on April 14, 2020, in connection with her exercise of her constitutional rights to assemble and speak at a protest organized by the group ReOpenNC. The arrest occurred in downtown Raleigh, North Carolina.

12. Defendant Governor Roy Cooper is and was at all relevant times for this action the duly elected Governor of the State of North Carolina. Governor Cooper promulgated several of the Executive Orders that are at issue in this case. Governor Cooper is also responsible for

implementing, directing, and controlling the policies, procedures, and practices of at least the inferior state law enforcement bodies and officials charged with enforcing his Executive Orders, to include such as the North Carolina State Capitol Police which are a part of the North Carolina Department of Public Safety. Under N.C. Gen. Stat. § 143B-602, among other things, the Secretary of the Department of Public Safety is granted “powers . . . delegated to the Secretary by the Governor.” Further, as outlined in N.C. Gen. Stat. § 143B-911(a), the North Carolina State Capitol Police is a division of the Department of Public Safety. Governor Cooper is named as a defendant in this action in his official capacity as Governor.

13. Defendant Erik A. Hooks was Secretary of the Department of Public Safety of the State of North Carolina in 2020, and was delegated by Governor Cooper in Executive Order No. 116, to implement the governor’s plan and deploy the State Emergency Response Team. Secretary Hooks oversaw North Carolina State Capitol Police as a division of the Department of Public Safety. Secretary Hooks is named as a defendant in this action in his official capacity as Secretary of the Department of Public Safety for the State of North Carolina in 2020.

14. Defendant Lorrin Freeman is Wake County’s District Attorney and was authorized by state law to prosecute the criminal charges against Ms. Ussery. D.A. Freeman is named as a defendant in this action in her official capacity as Wake County District Attorney.

15. Defendant Dedric Bond is a Captain with City of Raleigh Police Department (“RPD”) and was the commander of the law enforcement activity at the North Carolina State Government Complex on April 14, 2020. Captain Bond is named as a defendant in this action in his official capacity.

16. Defendant Martin Brock is Chief of the North Carolina General Assembly Police Department and conspired with Captain Bond to unlawfully disperse the ReOpenNC protestors on April 14, 2020. Chief Brock is named as a defendant in this action in his official capacity.

17. Defendant Roger “Chip” Hawley is the Chief of the North Carolina State Capitol Police (“SCP”) and was the SCP commander for the law enforcement activity at the North Carolina State Government Complex on April 14, 2020. Chief Hawley is named as a defendant in this action in his official capacity.

18. Defendant Derik Proctor is an Officer of the North Carolina State Capitol Police (“SCP”) and presented probable cause to a Wake County Magistrate in connection with the arrest of Plaintiff. Officer Proctor is named as a defendant in this action in his official capacity.

19. The City of Raleigh is a municipal corporation organized under North Carolina State law, whose actors, agents, and employees violated Ussery’s Constitutional rights, and is an entity capable of suing and being sued.

JURISDICTION AND VENUE

20. This Court has federal subject matter jurisdiction over this case under 28 U.S.C. § 1331 and 42 U.S.C. § 1983, and 42 U.S.C. 1985(3), to redress the deprivation, under the color of state law, of rights secured by federal law, and the United States Constitution. It has supplemental jurisdiction over Plaintiff’s state law claims under 28 U.S.C. § 1367.

21. This Court has authority to issue the requested declaratory relief pursuant to 28 U.S.C. §§2201 and 2202, and to award all appropriate monetary damages, including compensatory and nominal damages, and reasonable attorneys’ fees and costs, under 42 U.S.C. § 1988.

22. All Defendants are residents of and/or perform their official duties in this judicial district. This Court has personal jurisdiction over all Defendants. Venue is proper in this judicial district under 28 U.S.C. § 1391(b). Further, a substantial part of the events giving rise to this action occurred in this judicial district.

STATEMENT OF FACTS

Political Expression Is Protected

23. On March 14, 2020, in view of the emerging COVID-19 pandemic, Governor Cooper issued Executive Order No. 117 which, among other things, prohibited mass gatherings of more than 100 people while providing for the continued normal operations of “airports, bus and train stations, medical facilities, libraries, [and] shopping malls and centers.”

24. Governor Cooper issued Executive Order No. 118 on March 17, 2020. This executive order closed all bars in North Carolina and prevented restaurants from providing dine-in services. Governor Cooper purported to do so relying, not on powers granted to him with the concurrence of the Council of State or the General Assembly, but on his own authority.

25. On March 23, 2020, Governor Cooper issued Executive Order No. 120. In that order, again without the concurrence of the Council of State or the General Assembly, Governor Cooper ordered the closure of all bowling alleys, gyms, movie theatres, barber shops, hair salons, and other service establishments.

26. Finally, on March 27, 2020, Governor Cooper issued Executive Order No. 121, which, among other things, ordered “all individuals currently in the State of North Carolina” to “stay at home” except for limited purposes provided in the order. Governor Cooper restricted travel in North Carolina only for those performing “Essential Activities.” In that regard, Executive Order No. 121 allowed individuals to leave their homes for health and safety reasons,

to obtain necessary supplies, engage in outdoor activity, such as walking or hiking, or to engage in “Essential Businesses and Operations.” Governor Cooper’s order also limited “mass gatherings” to groups of ten or fewer individuals whether gathered in a “confined indoor or outdoor space.” Governor Cooper’s order contained numerous exceptions to facilitate the normal operations of various retail and other business establishments. For example, though under the provisions of the North Carolina Emergency Management Act, he expressed authority to place restrictions on the purchase and sale of alcoholic beverages, *see* N.C. Gen. Stat. § 166A-19.31(b)(2), Governor Cooper chose to include beer, wine, and liquor stores as essential business under his order. Despite all of these exceptions and nuance, Executive Order No. 121 was silent on the constitutional rights of North Carolinians, to include the right to peacefully assemble to petition their government for a redress of grievances. Executive Order No. 121 is attached as **Exhibit 1.**

27. Various citizens of North Carolina noted the inconsistencies in the Executive Orders and were experiencing economic difficulties due to the lockdown. A small group of individuals created a Facebook group called ReOpenNC where likeminded individuals could gripe about the lockdown and criticize the government response. This group organized a protest of the lockdown and spread the word via Facebook that the protest would occur April 14, 2020, at the State Government Complex in Raleigh, North Carolina, and the protestors would meet in the state visitor parking lot 1.

28. State visitor parking lot 1 is a public forum.

29. Ms. Ussery first learned of the protest from Facebook and planned to attend with her stepson, Corey Phellan. The general plan for the protest was for protestors to remain in or near their cars or stand spread out on the public sidewalk. Mr. Phellan drove to the protest and

Ms. Ussery was a passenger in his car. Mr. Phellen and Ms. Ussery spent most of the protest at the car.

30. As part of the protest, various individuals posted videos and pictures to social media documenting the protest. The news media was present and reporting on the protest.



31. The City of Raleigh Police Department (“RPD”) also posted to social media, including Twitter. A post from RPD is shown below:



32. Sometime after noon and a lunch break, RPD and SCP arrived near the corner of state visitor lot 1. Defendant RPD Chief Bond addressed the crowd and stated, “You all cannot gather here. . . You are in violation of the executive order by the governor. . . This large gathering is also a public health violation. At this point I am going to ask y’all to disperse. I am going to ask you all to leave the city sidewalk. I’m going to ask you all to leave the parking lot. . . If you do not disperse, you will be subject to a physical arrest.” In response to the order, the crowd shouted, “What about the Constitution?”

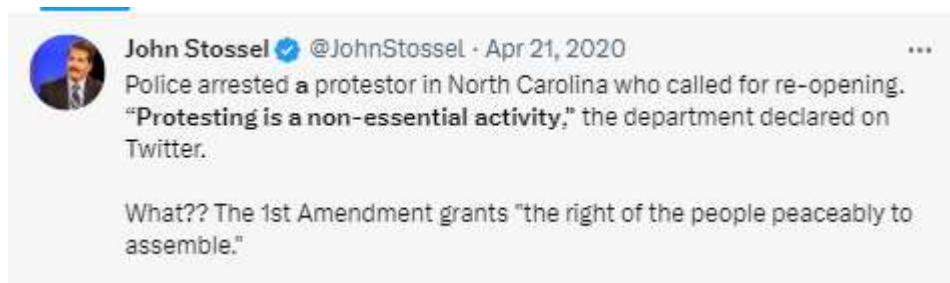
33. After the third warning, news reporters tweeted that law enforcement officers were walking through the parking lot going car to car to force protestors to leave.



34. People following the protest on Twitter asked RPD what part of the Governor’s Executive Order was violated. RPD’s responding Tweet went viral.



35. The embarrassing Tweet was picked up by national media and had been retweeted over 837 times by 1:20 pm on April 14, 2020.



36. When cars began to disperse in compliance with Captain Bond's order, Ms. Ussery told her stepson to leave while she walked out of state visitor parking lot 1 to take pictures of cars honking as they drove away. As the traffic slowed, Ms. Ussery realized that she had the keys to the car and that her stepson could not leave. Fearing for his safety, Ms. Ussery returned to parking lot 1, raised her hand waving the keys and obtained the attention of an officer

who was talking with her stepson. Office John Doe gave Ms. Ussery a thumbs up which she believed was permission to reenter the parking lot to give her stepson the car keys.

37. After Ms. Ussery had cleared belongings off the car and given her stepson the car keys, she instructed him to leave while she intended to walk around the government complex. Once her stepson left, Ms. Ussery was standing by herself without anyone near her except for police officers. When an officer told her to leave, in her frustration, she snapped back, “I can’t. My ride just left.” RPD officers then arrested her and began walking her to the corner of the parking lot where multiple transport vans were waiting. While Ms. Ussery was being patted down by a female officer, Defendant Proctor and SPC Officer Tito Fink were moving a SCP vehicle to use to transport Ms. Ussery.

38. During transport, Defendant Proctor drove the vehicle and Officer Fink rode in the back of the vehicle. Ms. Ussery was placed in the front passenger seat. According to Defendant Proctor’s incident report, Officer Fink was wearing a body camera and recording during transport. The incident report is attached as **Exhibit 2**.

39. After processing Ms. Ussery at that Wake County detention center, Defendant Proctor then presented probable cause to a Wake County Magistrate charging Ms. Ussery with violating Executive Order No. 121. Magistrate’s Order for file no. 20CR206153 states:

I, the undersigned, find the defendant names above has been arrested without a warrant and the defendant’s detention is justified because there is probable cause to believe that on or about the dates of the offense shown and in the county named above the defendant named above unlawfully and willfully did VIOLATING EXECUTIVE ORDER 121 BY DEFENDANT WILLINGNESS TO GATHER IN A MASS GATHERING OF MORE THAN 10 PEOPLE IN A SINGLE GROUP OR SPACE AS DEFINED AND PROHIBITED BY EXECUTIVE ORDER 121). THIS ACT WAS DONE IN VIOLATION OF NCGS 14-288.20(2).

A violation of N.C.G.S. § 14-288.20(2) is a secondclass misdemeanor. Magistrate’s Order file 20CR206153 is attached as **Exhibit 3**.

40. Ms. Ussery was detained for approximately 1 hour and ordered to appear in Wake County District Court on June 25, 2020.

41. As the result of the RPD Tweet stating that “protesting is a non-essential activity,” news media, members of the General Assembly and others contacted Governor Cooper asking for clarification regarding the Executive Order and the right to protest.

42. In a letter to Governor Cooper dated April 15, 2020, Senators Warren Daniel and Danny Britt of the Senate Judiciary Committee wrote Governor Cooper demanding an answer to the question,

Have you in fact prohibited, via executive order, the act of protesting against your executive orders? . . .if authorities are arresting people who protest because you prohibited protesting, that would be a grave overstep in you authority and would require immediate judicial intervention.

Can you please clarify whether your executive orders have prohibited the First Amendment right of North Carolinians to peacefully protest against your executive orders?

The Senators’ letter is attached as **Exhibit 4**.

43. On April 15, 2020, local press WRAL News covered the “nonessential activity” RPD tweet about protesting and Ms. Ussery’s arrest. WRAL interviewed various officials regarding the tweet. In a written statement posted to Twitter and emailed out, RPD spokeswoman Donna-Maria Harris made it clear that RDP was sticking to its interpretation that neither the governor's executive order, nor Wake County’s stay-at-home proclamation, list protesting as “an essential function” allowed to continue while the orders are in effect. The statement continued “The Raleigh Police Department is bound to carry out the regulations stipulated in the Executive Order and the Wake County Proclamation.” Raleigh Mayor Mary-Ann Baldwin referred WRAL back to the RPD’s statement. Governor Cooper’s spokesman Ford Porter weighed in stating, “The arrest appears to have been made based on violating Executive Order 121, which limits

mass gatherings to 10 people or fewer. While protests can be subject to restrictions on time, place and manner, they are held as a fundamental right under the Constitution and are not listed in the order.” Governor Cooper was asked during press briefings about the issue and he said his orders “do not interfere with people’s constitutional rights to express themselves” but with “unlawful mass gatherings.” District Attorney Lorrin Freeman reiterated that the Raleigh department’s read of the stay-at home orders is “technically correct” and that protesters “were given an opportunity to social distance” and told that if they spread out they could stay, though, upon information and belief, there is no recording or other evidence of law enforcement broadcasting that on April 14, 2020. WRAL News report is attached as **Exhibit 5**.

44. As the debate about the meaning of the executive order continued, Kristen Elizabeth the co-founder of the ReOpenNC group and Monica Ussery retained Anthony Biller. Mr. Biller wrote Governor Cooper and Greg Ford, Chairman of the Wake County Board of Commissioners for clarification regarding the rights of groups to engage in political protest in light of his clients’ fundamental rights under the constitutions of the United States and North Carolina. Mr. Biller informed Governor Cooper and Chairman Ford that ReOpenNC planned to reconvene their protest on April 21, 2020. Mr. Biller also requested that all criminal charges against Ms. Ussery be dismissed. Mr. Biller’s letter is attached as **Exhibit 6**.

45. On the afternoon of April 20, 2020, Governor Cooper through legal counsel responded to Mr. Biller and stated:

Executive Order No. 121 provides room for outdoor protests to continue, just as they allow for the expression of other First Amendment liberties, including the free exercise of religion and the right to a free press. So that there is no confusion regarding this issue, outdoor protests are allowed so long as the space occupied by the protesters is not enclosed (i.e. with walls) and so long as the protesters maintain the Social Distancing Requirement that individuals remain at least six feet apart unless they are members of the same household. This guidance is limited to the Governor’s Executive Order and Executive Order No. 121 in particular.

The Governor's letter continued,

Reports from your clients' protest of April 14, 2020, show that the six-foot Social Distancing Requirement identified above was not maintained by many participants. . . . When the six-foot Social Distancing Requirement is not followed, law enforcement may intervene to enforce the order, and thereby protect both the public and the protesters themselves.

Governor Cooper's letter is attached as **Exhibit 7**.

46. On April 21, 2020, ReOpenNC held a second protest of approximately of 300 people. RPD motorcycle officers escorted Protestors as they marched peacefully around state government buildings and the governor's mansion. U.S. Rep. Dan Bishop and Sens. Carl Ford and Vickie Sawyer of the North Carolina General Assembly joined in the protest. No one was arrested at the protest despite a larger number of protestors in closer contact than protestors on April 14, 2020.

By Rick Henderson Carolina Journal News Service Apr 22, 2020



Participants at the April 21 ReopenNC rally gather near the Legislative Building awaiting an escort from Raleigh Police Department motorcycle officers. (CJ photo by Rick Henderson)

47. When charges against Monica Ussery were not dismissed, Attorney Michael C. Hudson filed an appearance on Ms. Ussery’s behalf to represent her in criminal matter *State vs. Monica Ussery*, File No. 20 CR206153.

48. Over the following months while the State of North Carolina was still under an emergency order, multiple protest were held including ReOpenNC, the Black Lives Matter (“BLM”) movement, and nurses. The individuals participating in the protests were allowed to gather in outdoor groups and freely exercise their First Amendment rights, almost always within close proximity of each other. Those who engaged in violence or destruction of property faced the potential of arrest. On June 1, 2020, Governor Cooper joined a BLM protest and walked from the executive mansion around the Government Complex. Notably, Governor Cooper was not socially distanced from the other participants, and dropped his mask.

The group was sitting in the roadway and began chanting “march with us.”

Cooper then began to walk south on Blount Street and around the block.

The protest in front of the Executive Mansion marks the third night of demonstrations in Raleigh in the wake of the death of George Floyd in Minneapolis a week ago.

The protests turned violent over the weekend – resulting in several arrests and destruction across the city.



The scene outside the Executive Mansion on June 1, 2020 (Bridget Chapman/CBS 17)



49. Throughout 2020 and 2021 during the state of emergency, large groups continued to protest without fear of being arrested for the mere reason of gathering with others in exercise of their First Amendment rights.

50. While others were allowed to protest, Ms. Ussery continued to be prosecuted for her “willingness to gather in a mass gathering of more than 10 person in a single group or space as defined and prohibited by Executive Order 121.” This notwithstanding the fact she was standing by herself in a public parking lot when Raleigh police officers told her to leave and then promptly arrested her when she said her ride had just left. On June 26, 2020 in Wake County District Court, Ms. Ussery entered a not guilty plea in file no 20 CR 206153.

51. When the D.A. refused to dismiss the charges against Ms. Ussery, her attorney, Mr. Hudson, prepared for trial. Mr. Hudson ask the District Attorney (“D.A.”) to provide copies of police body camera footage from Ms. Ussery’s arrest and any other potentially exculpatory evidence that a D.A. is required to provide criminal defendants in order to satisfy due process rights according to the Supreme Court ruling in *Brady v. Maryland*, 373 U.S. 83 (1963). The D.A. failed to provide *Brady* evidence.

52. Ms. Ussery’s trial was set for April 8, 2021. As required by criminal procedure, on or about March 25, 2021, Mr. Hudson served subpoenas on witnesses for the trial. One witness was Governor Cooper, a person necessary to establish the meaning of Executive Order No. 121. Another was William McKinney, General Counsel to the Governor.

53. In further retaliation against Ms. Ussery for her viewpoints critical of Defendants and for her continuing to defend the legality of her actions in April 2020, on March 31, 2021, Defendants Proctor and Hawley of the State Capitol Police filed a complaint for criminal summons against Ms. Ussery for second degree trespass alleging that she “unlawfully and

willfully did without authorization remains on the premises of STATE of NORTH CAROLINA, located at 100 EAST JONES ST. RALEIGH, N.C., after having been notified not to enter or remain there by another person, RALEIGH POLICE OFFICER CAPTAIN BARNES.” Criminal Summons 21 CR 205014 is attached as **Exhibit 8**.

54. On April 1, 2020, North Carolina Attorney General Joshua H. Stein filed a motion to quash the subpoenas for Governor Cooper and William McKinney. Upon stipulation by the D.A. to not object to the admission into evidence of either Mr. Biller’s letter to Governor Cooper nor Governor Cooper’s letter in response, defense counsel Hudson release Governor Cooper and Mr. McKinney from the subpoenas. The Court then consolidated cases 20 CR 206153 and 21 CR 205014 for one trial in June 2021.

55. Once again, the D.A. had RPD police body camera footage of Ms. Ussery’s arrest by RPD, yet Defendants failed and refused to provide it to her criminal defense counsel.

56. On June 4, 2021, Ms. Ussery was tried in Wake County District Court for violating Executive Order 121 and for criminal trespass for remaining on the premise of 100 East Jones Street, Raleigh, North Carolina, after being notified not to be there by RPD Captain Barnes. The state’s only police witness was State Capitol Police Officer Proctor. At a bench trial, Ms. Ussery was found guilty on both charges and fined \$300 plus court costs. Ms. Ussery immediately appealed, and the case was transferred to Superior Court for a trial de novo.

57. The cases were transferred to another assistant D.A., Rachel Matthews, and Mr. Hudson continued to seek discovery. By January 24, 2022, the case was reassigned to a new assistant D.A., Bethanie Maxwell. Once again, Mr. Hudson sought discovery. Upon information and belief, the D.A. represented to Mr. Hudson and Ms. Ussery that RPD police body camera footage had been deleted because of policy deleting footage after 90 days.

58. Through contacts, Ms. Ussery found out that non-disclosed and non-released police body camera footage existed.

59. In May 2022, Anthony J. Biller substituted in as Ms. Ussery's defense counsel. On May 26, 2022, Mr. Biller wrote A.D.A. Bethany Maxwell seeking Raleigh Police Department and State Capitol Police recordings as *Brady* evidence and laid out the grounds for the request and what evidence was in the government's possession. Mr. Biller's letter to A.D.A. Maxwell is attached as **Exhibit 9**.

60. A.D.A. Maxwell informed Mr. Biller that the cases had to be reassigned to another A.D.A. David Egan. Mr. Biller reached out to Mr. Egan with a copy of the request for *Brady* evidence and a request for consent for a continuance to allow Ms. Ussery's Petition for Release of Custodial Law Enforcement Agency Recording to be heard.

61. On May 26, 2022, Ms. Ussery filed a Petition for Release of Custodial Law Enforcement Agency Recording seeking both the Raleigh Police Department and State Capitol Police recordings from April 14, 2020. After a hearing and in-camera review of the recordings, Wake County Superior Court Judge Keith O. Gregory, granted Ms. Ussery's petition and ordered Raleigh Police Department and State Capitol Police to release the recordings.

62. On or about July 25, 2022, D.A. Freeman, SCP Chief Hawley, and RPD Chief Estella Patterson were served with the order to release the custodial agency recordings to Ms. Ussery.

63. On or about July 27, 2022, RPD transmitted agency recordings to Ms. Ussery's counsel. On or about August 18, 2022, SCP transmitted agency recordings to Ms. Ussery's counsel. On September 9, 2022, Ms. Ussery's defense counsel informed A.D.A. David Egan that SCP failed to produce all the police body camera videos, and once again notified the D.A.'s

office of *Brady* evidence that he should investigate and produce. Despite multiple requests, the D.A.'s office never produce the requested *Brady* evidence.

64. On November 23, 2022, Ms. Ussery filed a motion to dismiss the criminal cases on constitutional grounds.

65. Before the motion to dismiss could be heard, the D.A.'s office offered Ms. Ussery pretrial diversions with dismissal and expungement of her record.

66. On or about Ms. Ussery completed the conditions for the diversion and the case was dismissed.

67. As a result of her conviction and then appeal, Ms. Ussery has amassed legal bills, missed time from work, had to travel from her home in High Point, to Raleigh, North Carolina, multiple times, has suffered embarrassment, physical and emotional distress, and the prolonged legal process caused significant strain on and the ultimate end of Ms. Ussery's marriage.

COUNT I

Conspiracy to Deprive Plaintiff Constitutional Rights

68. Plaintiff repeats and realleges each allegation contained in the preceding paragraphs of this complaint.

69. In early August 2022, as Ms. Ussery reviewed the agency recordings from RPD in preparation for trial, Ms. Ussery learned of the actions of multiple state actors to deprive Ms. Ussery of her civil rights and equal protection of the law for the crime of exercising her First Amendment rights to hold a different political position and to be openly critical of Defendant Governor Cooper.

70. Plaintiff discovered that Executive Order No. 121 and the public health was a pretext to the Defendants Freeman, Bond, Hawley, Brock, and the Secretary of State to suppress

the critical speech of Plaintiff and others gathered at the ReOpenNC protest on April 14, 2020, and to prevent another protest on the following week.

71. Through the videos Ms. Ussery learned that Defendants' claims she was arrested for purposes of public health were false and pretextual. There was no discussion of ensuring adequate spacing between protestors. The only discussion was about punishing agitators so that they would not return to further protest Defendants' lockdown orders.

72. In addressing the law enforcement officers who were part of the arrest team, Bond admitted holding a conference call with Defendants Freeman, Brooks, Hawley, and the Secretary of State to plan how to stop the protest and they reached an agreement on how to proceed. Bond stated, "Avoid parents with kids. . . What I want to do is make an example out of [agitators]. I'm hoping we'll start locking up a few of the agitators that the rest will automatically disperse. . . We had a long conversation with Lorren Freeman and when you see the videos that are already online and everything, it's obvious that we just can't allow that to continue. . . And then we already have intel that they're planning on doing this again next Tuesday so it's our opportunity to get it right this time and hope we won't have to go through the same thing again next Tuesday." Bond indicated he did not want the crowd to grow and wanted to start "locking up people as soon as possible."

73. These statements make clear that Defendant's actions on April 14, 2020 were not to protect public health or to make sure protestors stayed at least six feet apart from each other. To the contrary, Defendants intended to and conspired to punish and make an example of "agitators" for exercising their First Amendment rights to protest Governor Cooper's lockdown orders.

74. Bond then informed the officers, who stood in close proximity to each other without masks, that he would be providing a three-part dispersal order like they used for Moral Monday protests. He instructed the arrest team to put on their Personal Protective Equipment (“PPE”) because Bond was going to tell the protestors that “this is a public health hazard” and wanted to support his claim for the order to disperse.

75. When Bond arrived at the corner of State Visitor Parking Lot 1, RPD officer Doe set up the public address system and assisted Bond the timing of the commands. Upon information and belief, 5 minutes between warnings is the standard procedure for RPD in similar circumstances to allow people time to comply with an order to disperse before facing arrest. After Bond’s first warning, Officer Doe asked if he should start a 5-minute timer for the next order. Bond told him to wait only 1 minute.

76. During the time of shortened time of orders, protestors were honking car horns and the noise made it hard to hear the orders. After the third order, an older man approached Chief Bond and informed him he could not hear what had been said. Chief Bond informed him to disperse.

77. Defendant Bond’s shortened time between order was designed to make it difficult for protestors to comply with the order before the arrest team was sent into the parking lot.

78. Defendant Bond intended to arrest some agitators to serve as an example to prevent other protestors from continuing to exercise their First Amendment rights and to prevent them from attending another Protest scheduled on April 21, 2020.

79. Plaintiff did not hear Defendant Bond’s instructions and had already left State Visitor Parking Lot 1.

80. When Plaintiff returned to the parking lot to give her stepson the keys, the parking lot was almost empty except for law enforcement officers and the press. The Defendants did not have a target arrestee to hold out as an example to intimidate and threaten Plaintiff and others from ReOpenNC from attending the planned protest for the next Tuesday.

81. Plaintiff became their target and was arrested for violating Executive Order No. 121. The only persons close to her were Raleigh police officers.

82. Defendants Bond, Freeman, Hawley, Brock, and Secretary of State agreed to suppress Plaintiff's First Amendment rights and silence her in retaliation of political opposition and criticism of Governor Cooper's Executive Order No. 121. Defendants continued their retaliation through their prosecution of Ms. Ussery and by refusing to produce her *Brady* evidence.

83. Even after learning Governor Cooper's interpretation of Executive Order No. 121 did not prohibit protesting, Defendants continued the conspiracy and agreed to continue to apply the interpretation that protesting was not essential and was a violation of Executive Order No. 121 against Plaintiff for the purpose of suppressing her freedom of speech and to intimidate her from exercising her rights.

84. Plaintiff suffered nominal and compensatory damages as a result of her arrest, detainment, conviction, and fine as a result of her exercising her right to free speech.

COUNT II
Violation of the First Amendment

85. Plaintiff repeats and realleges each allegation contained in the preceding paragraphs of this complaint.

86. Plaintiff asserts a claim pursuant to 42 U.S.C. § 1983 for violation of the free expression, free association, and assembly rights protected under the First and Fourteenth Amendments of the United States Constitution.

87. The First Amendment to the United States Constitution Plaintiff's right to rights to speak, to publish speech, to be free from content-based and viewpoint-based discrimination, to be free from unconstitutional conditions, to be free from laws giving government officials unbridled discretion, and to be free from vague and overbroad laws.

88. Executive Order No. 121, facially and as enforced and interpreted by Defendants, punished Plaintiff's speech in a traditional public forum.

89. Application of the Executive Order No. 121 against Plaintiff violated the Free Speech Clause by punishing and suppressing the speech based content and viewpoint.

90. If not for Executive Order No. 121 and Defendants' uneven interpretation and enforcement of the Proclamation, Plaintiff would have continued to engage in unrestricted protected speech, including but not limited to speaking her desired message and criticizing the very Executive Order that was being enforced.

91. Instead, the Defendants (through arrests and fines as well as threat of such arrests and fines) not only precluded Plaintiff from speaking freely about her political beliefs and positions, but they also prevented Plaintiff from discussing freely her own political beliefs in a public location.

92. Because of Defendants' unlawful actions, Plaintiff ceased engaging in certain protected speech to avoid the Defendants' application of their unconstitutional interpretation of the Executive Order, and to avoid incurring further penalties for allegedly violating the Executive Order.

93. Even after the Executive Order expired and the Governor clarified the meaning of the order, Plaintiff suffered ongoing harm because of the Executive Order and Defendant's unconstitutional interpretation and application of it and ongoing prosecution of her.

94. The Executive Order No. 121 on its face and as interpreted and applied by Defendants infringed on Plaintiff's rights under the Free Speech Clause by chilling, deterring, and restricting Plaintiff's protected speech.

95. The Executive Order No. 121 gave Defendants discretion to interpret the provisions of the order and exercise viewpoint-based discrimination, which resulting Defendants arresting and imposing fines on Plaintiff while allowing others to gather and express other views in support of Governor Cooper's order.

96. Because the Executive Order No. 121 on its face and as interpreted and applied by Defendants violated free-speech principles for all the above reasons, it was required to further a compelling interest in a narrowly tailored way.

97. Defendants attempted no alternative, less restrictive means to achieve any compelling or legitimate interest they may have possessed.

98. Accordingly, facially and as applied to Plaintiff, Executive Order No. 121 violated her First Amendment right to free speech.

99. Plaintiff suffered nominal and compensatory damages as a result of her arrest, detention, and fines as a result of exercising her right to free speech.

COUNT III
Fourteenth Amendment: Procedural Due Process

100. Plaintiff repeats and realleges each allegation contained in the preceding paragraphs of this complaint.

101. Plaintiff asserts a claim pursuant to 42 U.S.C. § 1983 for violation of due process under Fourteenth Amendments of the United States Constitution.

102. The Due Process Clause of the Fourteenth Amendment guarantees persons the right to due process of law, which include the right to be free from vague guidelines for criminal charges.

103. The vagueness of Executive Order No. 121 on its face, the manner in which Defendants interpreted and applied the order, and the lack of procedural safeguards in the application of Defendants' misinterpretation of the order violated Plaintiffs Fourth Amendment right to due process.

104. The mass gathering section of Executive Order No. 121 was unconstitutionally vague on its face, lacked definiteness and clarity, and encouraged arbitrary enforcement based upon who was protesting and what they were protesting. Thus is was unconstitutionally vague as applied to Plaintiff and violated her right to due process.

105. Plaintiff suffered nominal and compensatory damages as a result of this violation.

COUNT IV
Fourteenth Amendment: Procedural Due Process
Brady Violations

106. Plaintiff repeats and realleges each allegation contained in the preceding paragraphs of this complaint.

107. Plaintiff asserts a claim pursuant to 42 U.S.C. § 1983 for violation of due process under Fourteenth Amendments of the United States Constitution.

108. The Due Process Clause of the Fourteenth Amendment guarantees persons the right to due process of law in criminal proceedings.

109. The government's withholding of evidence that is material to the determination of either guilt or punishment of a criminal defendant violates the defendant's constitutional right to due process.

110. Days before Plaintiff's trial after Plaintiff subpoenaed Governor Cooper, Defendants added a trespass charge.

111. Defendants withheld evidence of RPD body camera footage that clearly showed Plaintiff had permission to reenter the visitor parking lot 1 which is a material factor in the trespass charge.

112. Defendants withheld evidence showing them conspiring to punish protestors for exercising their First Amendment rights to deter them from further exercising those rights.

113. Defendants withheld evidence that demonstrated their "public health" concerns were a pretextual sham, that their actions were in retaliation for "agitating" against Defendants' lockdown policies.

114. Defendants have continued to withhold evidence from SCP regarding Ms. Ussery's transport to Wake County Detention Center.

115. Each of these violations deprived Plaintiff of due process.

116. Plaintiff suffered nominal and compensatory damages as a result of this violation.

COUNT V
Fourteenth Amendment: Equal Protection

117. Plaintiff repeats and realleges each allegation contained in the preceding paragraphs of this complaint.

118. Plaintiff asserts a claim pursuant to 42 U.S.C. § 1983 for violation of the Equal Protection Clause of the Fourteenth Amendments of the United States Constitution.

119. The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution guarantees Plaintiff equal protection of the law and prohibits Defendants from treating Plaintiff differently from similarly situated persons and organizations.

120. The government may not treat some individuals or entities disparately as compared to similarly situated persons with respect to the exercise and enjoyment of a fundamental right.

121. On April 21, 2020, ReOpenNC was allowed to hold another protest with more people and use more of the state's property as a public forum.

122. In May of 2020, while a similar limit on outdoor gathers was in effect, North Carolinians gathered in large crowds to protest the death of George Floyd. Nightly protests continued for several days under a "mass gathering" as defined by Executive Order No. 121 coalesced on the sidewalk outside the North Carolina Executive Residence and Governor Cooper joined with fellow activist in marching around the block.

123. Defendants' interpretation and application of Executive Order No. 121 treated Plaintiff differently from, and worse than, other persons, including Governor Cooper, who engaged in effectively the same activity as Plaintiff.

124. Defendants lacked a rational or compelling state interest for such disparate treatment of Plaintiff and Defendants' disparate treatment of Plaintiff was not narrowly tailored as the least restrictive means of advancing any compelling or legitimate government interest.

125. Accordingly, facially and as applied to Plaintiff, Executive Order No. 121 and Defendants' implementation and enforcement of the order violated the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

126. Plaintiff suffered nominal and compensatory damages as a result of this violation.

PRAYER FOR RELIEF

Plaintiff respectfully requests this Court enter judgment against Defendants and provide Plaintiff with the following relief:

- A. A declaration that Defendants violated the rights of Plaintiff under the First Amendment of the United States Constitution;
- B. A declaration that Defendants violated the right of Plaintiff under the Fourteenth Amendment of the United States Constitution to have equal protection and due process under the law;
- C. That this Court award all appropriate damages, including compensatory and nominal, for the Defendants' violation of the Plaintiff's constitutional and statutory rights, including those pertaining to Plaintiff's arrest, detention, and fine.
- D. That this Court award Plaintiff the costs and expenses of this action, including reasonable attorneys' fees, in accordance with 42 U.S.C. § 1988; and
- E. That this Court grant any other relief that it deems equitable and just in the circumstances.

Dated this the 21st day of April, 2023.

Respectfully submitted,

/s/ Anthony J. Biller
Anthony J. Biller
NC State Bar No. 24,117
James R. Lawrence, III
NC State Bar No. 44,560
Adam P. Banks
NC State Bar No. 47,559
2601 Oberlin Rd, STE 100
Raleigh, NC 27608
Telephone: (919) 715.1317
Facsimile: (919) 782.0452
Email: ajbiller@envisage.law

Email: jlawrence@envisage.law

Email: abanks@envisage.law