

HAROLD H. HODGE, JR.,  
46960 Lei Drive  
P.O. Box 1619  
Lexington Park, Maryland 20653  
  
*Plaintiff,*  
  
v.  
  
PAMELA TALKIN, Marshal of the United  
States Supreme Court,  
  
1 First Street, N.E.  
Washington, DC 20543  
  
and  
  
THE DISTRICT OF COLUMBIA  
A Municipal Corporation  
441 4th Street, N.W.  
Washington, D.C. 20001,  
Serve: Mayor Vincent C. Gray  
and Irvin B. Nathan, Attorney General  
for the District of Columbia,  
  
CATHY L. LANIER, Chief of Police of the  
Metropolitan Police of the District of  
Columbia,  
  
300 Indiana Avenue, N.W.  
Washington, DC 20001  
  
*Defendants.*

COMES NOW the Plaintiff, Harold H. Hodge, Jr., by and through the undersigned attorney, William Farley, Participating Attorney for The Rutherford

Institute, and presents this Complaint for Declaratory and Injunctive Relief against the Defendants. The action seeks to protect, secure and defend the First Amendment rights of a United States citizen to engage in peaceful, unobtrusive political speech and expression activities within a public forum.

### **PARTIES**

1. The Plaintiff, Harold H. Hodge, Jr. (“Hodge”), is a 45-year old African-American citizen of the United States and a resident of the State of Maryland. He is a full-time student at the College of Southern Maryland.

2. Defendant Pamela Talkin (“Talkin”) is the duly-appointed and acting Marshal of the United States Supreme Court, a statutory officer of the United States charged and empowered under 28 U.S.C. § 672 to take charge of all property used by the United States Supreme Court and with overseeing the Supreme Court Police. The Marshal also is empowered by federal law, 40 U.S.C. § 6121, to police the United States Supreme Court Building and grounds.

3. Defendant, District of Columbia (“D.C.”) is a municipal corporation.

4. Defendant Cathy L. Lanier (“Lanier”) is the duly-appointed Chief of Police of the Metropolitan Police of the District of Columbia. The Metropolitan Police Department is empowered by 40 U.S.C. § 6123 to make arrests for violations of federal or state law occurring on the grounds of the United States Supreme Court.

### **JURISDICTION AND VENUE**

5. This Court has jurisdiction over this action under 28 U.S.C. §§ 1331, 1346, 2201 and 2202, as it is an action for declaratory and injunctive relief against the

United States and officers of the United States arising under the laws and Constitution of the United States. The Defendants are subject to this action under 5 U.S.C. § 702.

6. Venue is properly in the United States District Court for the District of Columbia under 28 U.S.C. § 1391(e) because the Defendants are agencies of the United States and officers of those agencies and a substantial part of the events giving rise to the claim occurred within the District of Columbia.

### **FACTUAL ALLEGATIONS**

7. On January 28, 2011, at approximately 11:35 a.m., Plaintiff Hodge went to the site of the United States Supreme Court Building located at the corner of First Street, N.E., and East Capitol Street, N.E., within the District of Columbia

8. At that time, Hodge had hanging from his neck a sign approximately 3 feet long and 2 feet wide, which had the following written upon it: “The U.S. Gov. Allows Police To Illegally Murder And Brutalize African Americans And Hispanic People.” Hodge’s purpose in going to this site and wearing the sign was to engage in expression on a political matter of personal interest, as an African-American citizen, public interest and importance, and to raise public awareness about the adverse treatment of minorities by law enforcement.

9. Hodge approached the Supreme Court building from the west, crossing First Street, N.E., then crossing the sidewalk between First Street, N.E., and then proceeding up the steps leading up to the plaza in front of the Supreme Court building.

10. Hodge then stood quietly and peacefully upon the plaza area near the steps leading to the sidewalk in front of the Supreme Court Building, approximately 100 feet from the doors of the main entrance leading into the Supreme Court Building.

11. The plaza on which Hodge stood is oval in shape and approximately 252 feet in length. It is separated from the sidewalk between First Street, N.E., and the Supreme Court building grounds by a few small steps which lead up about 3 feet to the plaza. It is a place where the public is allowed to gather and converse and is in all relevant respects like a public square or park, places where citizens have by long-tradition been allowed to meet and express their views on matters of public interest and importance.

12. After standing on the plaza for a few minutes, Hodge was approached by Officer Daniel Metague of the Supreme Court of the United States Police. Metague informed Hodge that he was violating the law and was told to leave the plaza.

13. Hodge refused and was given three warnings to leave the plaza.

14. When Hodge refused to leave the plaza, he was informed by Metague that he was under arrest for violating 40 U.S.C. § 6135. Hodge was told to place his hands behind his back, and he peacefully and without resistance complied with this request.

15. Hodge was then handcuffed and taken to a holding cell within the Supreme Court building. Thereafter, he was transported to U.S. Capitol Police Headquarters where he was booked and given a citation for violating 40 U.S.C. § 6135. The citation required Hodge's appearance in the District of Columbia Superior Court on February 15, 2011.

16. In an information issued by the U.S. Attorney for the District of Columbia on February 4, 2011, Hodge was charged with violating 40 U.S.C. § 6135. The information alleged that Hodge “did unlawfully parade, stand, or move in processions or assemblages in the Supreme Court Building or grounds, or to [sic] display in the Building and grounds a flag, banner, or device designed or adapted to bring into public notice a party, organization, or movement.”

17. Eventually, a “stet” agreement was entered into between the United States and Hodge. Pursuant to this agreement, if Hodge remained away from the Supreme Court building and grounds for 6 months, the charge under 40 U.S.C. § 6135 would be dismissed.

18. Hodge complied with the “stet” agreement in all respects, and on September 14, 2011, the charge under 40 U.S.C. § 6135 was dismissed.

19. Hodge desires to return to the plaza area in front of the Supreme Court building and engage in peaceful, non-disruptive political speech and expression in the same manner as he did on January 28, 2011.

20. Hodge is deterred and chilled from engaging in peaceful, non-disruptive speech on the plaza of the Supreme Court building because of the terms of 40 U.S.C. § 6135 and his prior arrest on January 28, 2011 and subsequent prosecution for violating that statute.

21. Hodge seeks a declaration of his rights from this Court respecting his First Amendment right to engage in peaceful, non-disruptive political speech on the plaza of the Supreme Court building.

## CAUSE OF ACTION

22. Hodge incorporates by reference the allegations contained in ¶¶ 1 through 21 set forth above.

23. The plaza of the United States Supreme Court building is a public forum, indistinguishable in any relevant respect from the sidewalks bordering the Supreme Court grounds or from a public square or park.

24. The provisions of 40 U.S.C. § 6135, by making it unlawful to “parade, stand, or move in processions or assemblages in the Supreme Court Building or grounds, or to display in the Building and grounds a flag, banner, or device designed or adapted to bring into public notice a party, organization, or movement” is an unconstitutional restriction on speech, both on its face and as applied to the conduct of Hodge, in violation of the First Amendment to the United States Constitution.

25. The unconstitutional restriction on speech set forth in 40 U.S.C. § 6135 has and continues to deter Hodge from exercising his First Amendment right to speech and expression about discrimination and brutality practiced against African-Americans.

26. The provisions of 40 U.S.C. § 6135 are unconstitutionally vague and overbroad in violation of the First Amendment to the United States Constitution.

27. There is a present and existing controversy between Hodge and the Defendants concerning Hodge’s right to engage in peaceful, non-disruptive political speech upon the plaza of the Supreme Court building.

28. The Defendants are charged and empowered by law to enforce 40 U.S.C. § 6135 and other laws pertaining to the Supreme Court building and grounds and are appropriate defendants for this action seeking declaratory and injunctive relief.

WHEREFORE, the Plaintiff Harold H. Hodge, Jr., requests that judgment be entered in his favor as follows:

a) That judgment be entered pursuant to 28 U.S.C. §§ 2201-2202 declaring that the Plaintiff's peaceful, non-disruptive speech and expression on the plaza of the United States Supreme Court building is protected by the First Amendment and that the Defendants' enforcement of 40 U.S.C. § 6135 against the Plaintiff for engaging in peaceful, non-disruptive speech and expression violates the First Amendment to the United States Constitution;

b) That the Defendants, their agents, employees and others acting under their direction or authority be preliminarily and permanently enjoined from enforcing 40 U.S.C. § 6135 against the Plaintiff with respect to Plaintiff's peaceful, non-disruptive speech and expression;

c) That the Court enter an award under 28 U.S.C. § 2412 for the costs incurred by the Plaintiff in bringing and prosecuting this action and for reasonable attorney fees incurred in bringing and prosecuting this action.

Dated: January 19, 2012

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