

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

Civil Action No.

JEANNE PAHLS,  
REBECCA WILSON,  
ALMA ROSA SILVA BANUELOS,  
CARTER BUNDY,  
JASON CALL,  
MARY LOU “MITZI” KRAFT,  
MERIMEE MOFFITT,  
LAURA LAWRENCE,  
STUART T. “TERRY” RILEY,  
CODEPINK WOMEN FOR PEACE, ALBUQUERQUE CHAPTER,  
STOP THE WAR MACHINE,

Plaintiffs,

v.

BOARD OF COUNTY COMMISSIONERS  
FOR THE COUNTY OF BERNALILLO,  
BERNALILLO COUNTY SHERIFF’S DEPARTMENT,  
CITY OF ALBUQUERQUE,  
ALBUQUERQUE POLICE DEPARTMENT,  
JOHN/JANE DOES 1-5, in their individual capacities,

Defendants.

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**COMPLAINT AND JURY DEMAND**

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**I. INTRODUCTION**

1. This is a case arising out of the August 27, 2007 appearance by President George W. Bush at a fundraiser for Senator Pete Domenici at the Los Ranchos de Albuquerque estate of Mayor Larry Abraham. Defendants engaged in content and viewpoint discrimination by placing plaintiffs – individuals peacefully expressing disagreement with the views of the President – at

least 150 yards away from the driveway of the fundraiser site, while allowing a group of the President's supporters to stand just across from the driveway of the fundraiser site. The disparate treatment accorded plaintiffs was based solely on the content and viewpoint of plaintiffs' speech, in violation of their First and Fourteenth Amendment rights.

## **II. JURISDICTION AND VENUE**

2. This Court has jurisdiction pursuant to 28 U.S.C. § 1331. Remedies are provided by 42 U.S.C. § 1983.

3. In the event some of the defendants turn out to be federal actors, then this Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1346, and this action is also authorized and instituted pursuant to *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971).

4. The practices alleged herein to be unlawful were committed within the jurisdiction of the United States District Court of New Mexico. Venue is proper in this Court pursuant to 28 U.S.C. § 1391.

## **III. PARTIES**

5. Plaintiff Jeanne Pahls is a citizen of the United States and was at all relevant times a resident of the State of New Mexico.

6. Plaintiff Rebecca Wilson is a citizen of the United States and was at all relevant times a resident of the State of New Mexico.

7. Plaintiff Alma Rosa Silva Banuelos is a citizen of the United States and was at all relevant times a resident of the State of New Mexico.

8. Plaintiff Carter Bundy is a citizen of the United States and was at all relevant times a resident of the State of New Mexico.

9. Plaintiff Merimee Moffitt is a citizen of the United States and was at all relevant times a resident of the State of New Mexico.

10. Plaintiff Laura Lawrence is a citizen of the United States and was at all relevant times a resident of the State of New Mexico.

11. Plaintiff Stuart T. “Terry” Riley is a citizen of the United States and was at all relevant times a resident of the State of New Mexico.

12. Plaintiff Mary Lou “Mitzi” Kraft is a citizen of the United States and was at all relevant times a resident of the State of New Mexico.

13. Plaintiff Jason Call is a citizen of the United States and was at all relevant times a resident of the State of New Mexico.

14. Plaintiff Stop the War Machine is an unincorporated grassroots, anti-war organization based in Albuquerque, New Mexico. Stop the War Machine is primarily engaged in efforts that involve expressions of free speech with regard to weapons, war-related spending, and the military industrial complex. Also, its members are often involved in organizing events so that individuals can express their disagreements with the President and other top administration officials when those individuals visit New Mexico.

15. CODEPINK Women for Peace is a 501(c)(3) non-profit corporation that has its headquarters in Venice, California. It is an organization focused primarily on ending the war in Iraq. It was formed in November, 2002, and is open to both women and men. There are over 250 active local groups around the country and the world, including a volunteer, local chapter in Albuquerque, New Mexico. CODEPINK, the Albuquerque Chapter, is the plaintiff in this case. The organization is consistently engaged in organizing gatherings so that individuals can express their disagreement with the President and his policy on the Iraq War.

16. Defendant Board of County Commissioners for the County of Bernalillo [“County”] is a local governmental entity organized and existing under the laws of the State of New Mexico, and is a “person” subject to suit herein.

17. Defendant the Bernalillo County Sheriff’s Department (“BCSD”) is an agency of the County, New Mexico responsible for general law enforcement.

18. Defendant City of Albuquerque (“City”) is a municipality and government entity within the State of New Mexico. Defendant City is constitutionally responsible for the training, supervision, acts, omissions, conduct, policies (written or unwritten), patterns, practices, customs and procedures of the public employees acting within the scope of their duties who worked for the Albuquerque Police Department, at all relevant time frames.

19. Defendant the Albuquerque Police Department (“APD”) is an agency of Albuquerque, New Mexico responsible for general law enforcement.

20. Defendants John/Jane Does 1-5 (or “real name(s) unknown” as per N.M. Stat. Ann. § 38-2-6 (1978)) are persons whose identities are currently unknown to plaintiffs. Upon information and belief, the Does are local, state, or federal actors who were involved in making and/or implementing policy decisions that led to violations of plaintiffs’ First and Fourteenth Amendment rights by discriminating against plaintiffs based on the content and viewpoint of plaintiffs’ speech. They are sued in their individual capacities.

#### **IV. FACTUAL ALLEGATIONS**

21. On August 27, 2007, President Bush visited Albuquerque, New Mexico to attend a fundraiser for Senator Pete Domenici.

22. The fundraiser took place at the Los Ranchos de Albuquerque estate of Mayor Larry Abraham at 7205 Rio Grande Boulevard NW – a semi-rural area not far from Albuquerque.

23. Prior to the President's visit, various individuals, including some of the plaintiffs, decided to find a peaceful way of showing the President that not all Americans shared his views, especially those on the Iraq War. They determined that they would try to stand peacefully along his travel route with signs expressing their disapproval.

24. Plaintiff Jeanne Pahls, who is one of the organizers of Stop the War Machine, sent out emails informing individuals on the Stop the War Machine email news bulletin that people would be assembling peacefully to express their disagreement with the President on the day of the fundraiser.

25. Plaintiff Rebecca Wilson, the director of the Albuquerque chapter of CODEPINK, informed fellow members of CODEPINK about the event.

26. On the day of the fundraiser, Ms. Pahls arrived at the event site at approximately 8:00 to 8:30 am. At the event site, Ms. Pahls spoke to an officer from the BCSD, who told her that people would be allowed to gather on the shoulders of Rio Grande Blvd. either north or south of the driveway leading into Mayor Abraham's estate.

27. Rio Grande Blvd. is a two-lane road that runs north and south through the town of Los Ranchos de Albuquerque, and Mayor Abraham's estate is situated on the west side of Rio Grande Blvd. The driveway leading into the Mayor's estate runs perpendicular to Rio Grande Blvd.

28. As time passed, a larger group of people started gathering on Rio Grande Blvd. south of the Mayor's driveway. Ms. Pahls, however, along with a few other individuals decided

to gather on the part of Rio Grande that was north of the Mayor's driveway. At that point, none of the people knew whether the President's motorcade would be coming from the north or south of Rio Grande. The BCSD office who spoke with Ms. Pahls did not know either, but stated that he thought the President's motorcade might be coming from north of Rio Grande. Ms. Pahls thus decided to stay on the northern part of Rio Grande.

29. Among the individuals who later gathered on the northern part of Rio Grande Blvd. were plaintiffs Laura Lawrence and Mary Lou "Mitzi" Kraft. Ms. Lawrence, a journalist who writes under her maiden name "Paskus," is also an active member of CODEPINK. Ms. Lawrence heard about the gathering through the organization, and decided that she would attend the gathering to peacefully voice her disapproval to the President. She also decided that she would take her 19-month old daughter along in a stroller.

30. Ms. Kraft heard about the gathering from Ms. Pahls and Stop the War Machine. After having spoken to her grandson, who was serving in the military and had been back from Iraq for almost a year, Ms. Kraft decided that she also wanted to peacefully voice her disagreement with the war. She decided that she would carry a sign telling the President to bring the troops back home.

31. While driving to the gathering, Ms. Lawrence saw Ms. Kraft walking, and offered Ms. Kraft a ride in her car. Ms. Lawrence and Ms. Kraft arrived some time after as Ms. Pahls, and parked her car on Chamisal Road, which intersects Rio Grande Blvd. in an area north of the Mayor's driveway. While walking south on Rio Grande towards the Mayor's estate, Ms. Lawrence and Ms. Kraft ran into Ms. Pahls. Ms. Lawrence and Ms. Kraft, along with Ms. Lawrence's daughter, decided to join Ms. Pahls' group.

32. Among the individuals gathered on the south side was plaintiff Terry Riley, a member of the Albuquerque Chapter of Veterans for Peace. Mr. Riley was there with his 90-year old, wheelchair-bound mother. Having arrived at 8:30 am, Mr. Riley had parked at the Village Hall, which was approximately half a mile south of Mayor Abraham's estate on Rio Grande Blvd. Mr. Riley then proceeded to walk north on Rio Grande towards the Mayor's estate, pushing his mother's wheelchair, until the police would not allow them to move any further north.

33. At the point where Mr. Riley was stopped, there were several parked police cars and officers on horseback. The parked police cars and officers on horseback formed a barricade that blocked people from moving further north on Rio Grande Blvd. Mr. Riley asked if he and his mother were permitted to go any further north so that they could be closer to the Mayor's driveway, but were told that they could not. Mr. Riley held up a sign that said, "Good Riddance to Gonzales. Who's Next? Bush, I Hope", while his mother held up a sign that said, "Peace Takes Work, War Takes Lives".

34. Another person standing on the portion of Rio Grande Blvd. south of the Mayor's driveway was plaintiff Carter Bundy. Mr. Bundy is a former attorney who serves as the legislative director of the American Federation of State, County and Municipal Employees ("AFSCME"). Having also arrived at approximately 8:30 am, Mr. Bundy parked at the Village Hall and walked north on Rio Grande towards the Mayor's home. He then asked an officer from BCSD how close to the Mayor's driveway he could stand. The BCSD officer said that the entire area near the Mayor's estate was a PNM (utility company) easement, and was therefore unsure whether Mr. Bundy could stand on the easement at all. The BCSD officer eventually called Mr. Bundy on Mr. Bundy's cell phone, and informed him that he could stand on that area, but only

where Road Runner Lane intersected with Rio Grande Blvd. This was approximately 300 yards south of the Mayor's driveway. Only later did Larry Kronen, an attorney with plaintiffs, inform Mr. Bundy and other individuals that they could move closer, to an area that was approximately 150 to 200 yards from the Mayor's driveway.

35. Between approximately 9:30 and 10:00 am, Ms. Wilson, Merimee Moffitt, and about 12 to 15 other members of CODEPINK arrived at the gathering. Ms. Wilson, Ms. Moffitt, and the other members of CODEPINK all situated themselves where the majority of people were gathered, on the shoulders of Rio Grande Blvd. south of the Mayor's driveway. Ms. Wilson and the other members of CODEPINK held up pink peace symbols, as well as signs that said, "Walk in their [soldiers'] Shoes," and "Delete Him [Bush]."

36. Around the time that the members of CODEPINK arrived, plaintiff Jason Call arrived. Prior to that, Mr. Call, a high school math teacher who is running for Congress, had been involved in a "Honk to Impeach Bush" rally. Also situating himself on the southern portion of Rio Grande along with the majority of others, Mr. Call moved as far up as the police would allow. Mr. Call, who heard about the gathering through a Stop the War Machine email, wore a t-shirt that said "Bush is an International Terrorist," while holding up signs saying "Honk to Impeach Bush-Cheney," "Defend the Constitution – Impeach Bush," and "War, Famine, Pestilence, Death" – with pictures of President Bush, Vice President Cheney, Secretary Rice, and Secretary Rumsfeld underneath.

37. Although the majority of people were gathered on the south end of Rio Grande Blvd., Ms. Pahls, Ms. Kraft, Ms. Lawrence, and Ms. Lawrence's daughter remained on the portion of Rio Grande Blvd. that was north of the Mayor's driveway. Larry Kronen moved between the two groups until police told him he had to stay on the south end of Rio Grande. In

addition, at some point prior to the President's arrival, members of the BCSD forced Ms. Pahls and the other individuals on the north end of Rio Grande to the south end, where most of the other people were gathered. Ms. Pahls' group objected peacefully to moving to the south end because they thought that the President's motorcade would be coming from the north side of Rio Grande Blvd. She informed the BCSD officers that another BCSD officer had given her permission to stand on the north end. The officers from the BCSD nevertheless made them move to the other end.

38. Sometime after 10:00 am, plaintiff Alma Rosa Silva Banuelos, a community organizer who heard about the gathering from a Stop the War Machine email, arrived at the gathering. By the time Ms. Banuelos arrived, there were already numerous people present. Ms. Banuelos first drove her car from the south end of Rio Grande Blvd. to the north end, where she saw several police officers situated by the shoulders of the road. She then proceeded to make a U-turn, and drove back from the north end to the south end, where the majority of people were gathered. While driving back towards the south end of Rio Grande Blvd., Ms. Banuelos saw a small group of Presidential supporters standing on the shoulder of Rio Grande Blvd. just across from the Mayor's driveway.

39. There were nine individuals – two adults and seven children – among the group supporting the President. Several of them were holding American flags and two individuals held up a banner that said, "God Bless George Bush! We pray for you!"

40. All of the individuals who were peacefully expressing their disagreement with the President – including the plaintiffs – were forced to stay in the area on Rio Grande Blvd. that was at least 150 yards south of the Mayor's driveway.

41. There was no legitimate basis for treating plaintiffs differently from the President's supporters.

42. Larry Kronen, who was standing with plaintiffs behind the parked police cars and the officers on horseback, asked if the police could move some of the cars so that plaintiffs' view of the north end of Rio Grande Blvd. would not be obstructed. Suspecting that the President's motorcade would be arriving from the north end, the people on the south end wanted their view of the north end to be clear. The police agreed to move only one of the several cars.

43. Prior to the President's arrival, Alice Lloyd drove up to Ms. Wilson, Ms. Moffitt, and other individuals on Rio Grande Blvd. in a beige Chevrolet Tahoe with her 13-year old daughter. Ms. Lloyd offered some of the plaintiffs a place to stand and to hold up their signs. The place was a property belonging to Ms. Lloyd's friend, and was approximately the third property north of Mayor Abraham's estate on Rio Grande Blvd. Because the woman's property was north of the Mayor's driveway, plaintiffs would have been more visible to the President as the President's motorcade later arrived from the north side of Rio Grande. In addition, plaintiffs would not have been blocked from the President's view by the parked police cars and officers on horseback. The BCSD, however, informed Ms. Lloyd that she had to move her car immediately, and refused to allow some of the plaintiffs to go north with Ms. Lloyd to the woman's property.

44. After some additional time passed, Mr. Riley asked if he and his wheelchair-bound mother could move to the area of Rio Grande Blvd. north of the Mayor's driveway so that the President could see their signs. The officer replied that the motorcade would be arriving at any minute, and that it would not be safe for Mr. Riley and his mother to be there. The motorcade, however, did not arrive for at least 20 minutes until after the conversation took place.

45. At around noon, the President's motorcade approached the area from the north and proceeded to enter Mayor Abraham's estate. The President's motorcade never passed by plaintiffs, who were standing south of the Mayor's estate.

46. The President's view of the individuals on the south end of Rio Grande Blvd. was obstructed by the parked police cars and officers on horseback. It would have been difficult, if not impossible, for someone sitting in the President's car to have seen or read plaintiffs' signs.

47. The majority of people stayed until 15 minutes after the President entered Mayor Abraham's estate for the fundraiser. A few people, including Ms. Lawrence and Ms. Pahls, stayed until after the fundraiser. This occurred after 1:00 pm.

48. There were approximately 70 people standing outside Mayor Abraham's estate attempting to express their disapproval to the President in a peaceful manner.

49. Plaintiffs' purpose in gathering outside of Mayor Abraham's estate was to express their disagreement with the President as well as the Iraq War through peaceful means. At no time did they intend to or give any indication that they would disrupt the event or resort to violence.

50. At all times, the practice or policy perpetuating content and viewpoint discrimination (against any speech disagreeing with the President) was set by defendants, including Doe defendants.

51. The Presidential Advance Manual, prepared by the Office of Presidential Advance, includes a section called "Preparing for Demonstrators." In that section, the Manual provides that members of the Presidential Advance team should "work with the Secret Service and have them ask the local police department to designate a protest area where demonstrators can be placed, preferably not in view of the event site or motorcade route" (emphasis added).

The description from the Manual is consistent with what occurred here. Plaintiffs – whom the Manual would label as “demonstrators” – were placed in an area south of the Mayor’s estate, and kept at a distance such that they were “not in view of the event site or motorcade route.”

52. Chief Deputy David Linthicum of the BCSD was quoted in the newspapers as saying that the Secret Service, in consultation with the Sheriff’s Department, were the ones who decided that the supporters of the President could stand just across from the Mayor’s driveway.

53. Defendants, the County, the City, the BCSD and APD each have a municipal policy of discriminating against individuals based on the viewpoint and content of their speech, or in the alternative, have followed orders from federal actors to adopt and enforce this policy of discriminating against individuals based on the viewpoint and content of their speech.

54. Defendants are in violation of plaintiffs’ First and Fourteenth Amendment rights for creating, adopting, and enforcing an unconstitutional practice or policy of discriminating against plaintiffs based on the viewpoint and content of plaintiffs’ speech, and therefore are guilty of depriving plaintiffs of their right to peacefully express their disagreement with the President and the President’s views.

## **V. CAUSE OF ACTION**

**(Action Pursuant to 42 U.S.C. § 1983 for state actors, and *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971) for any potential federal actors )**

55. Plaintiffs hereby incorporate all preceding paragraphs of this Complaint as though fully stated herein.

56. Defendants violated plaintiffs’ First and Fourteenth Amendment rights by establishing and enforcing a policy of disparate treatment based solely on the viewpoint and content of plaintiffs’ speech.

## **VI. RELIEF**

- A. Declare that the actions of defendants in discriminating against the viewpoint and content of plaintiffs' speech are violations of plaintiffs' First and Fourteenth Amendments rights,
- B. Grant plaintiffs damages for the violations of their rights under the First and Fourteenth Amendments of the United States Constitution,
- C. Grant Plaintiffs such other relief as they may be entitled to, and
- D. Award Plaintiffs reasonable attorney's fees and costs.

### **PLAINTIFFS DEMAND A JURY TRIAL ON ALL ISSUES SO TRIABLE.**

Respectfully submitted this \_\_\_th day of January, 2008.

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