

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

MARGARET APPLEBY,

Plaintiff,

v.

MURIEL BOWSER, in her official capacity as Mayor of the District of Columbia; KARL A. RACINE, in his official capacity as Attorney General of the District of Columbia; and the DISTRICT OF COLUMBIA,

Defendants.

No. 21-cv-1276

**VERIFIED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE RELIEF**

1. The District of Columbia allows dancing in strip clubs, in Zumba and dance-studio classes, and in programs sponsored by the government's Department of Parks and Recreation.

2. But as of May 1, 2021, as if to create an imitation of the 1984 movie *Footloose*, the District of Columbia has outlawed dancing at weddings. Margaret Appleby sues to end this irrational and unscientific state of affairs.

3. Plaintiff Margaret Appleby, who like her fiancé, is vaccinated, has scheduled her wedding in the District of Columbia on June 6, 2021. From the start, she has been sure to follow all required and appropriate protocols to ensure the event can be conducted safely. Until Defendant Mayor Muriel Bowser's last-minute alteration of the District's COVID-19 protocols, she had intended to include masked dancing as part of her nuptials, as weddings in the District have included throughout the pandemic. But under new rules implemented by Bowser, this is no longer permitted. She therefore brings this action under 42. U.S.C. § 1983 to vindicate this abridgment of her First Amendment rights to expression and association.

PARTIES

4. Plaintiff Margaret Appleby is a doctoral student who scheduled her wedding in the District of Columbia on June 6, 2021. She resides in the District of Columbia and is also a citizen of the District.

5. Defendant Muriel Bowser is the Mayor of the District of Columbia. Appleby sues her in her official capacity because, as the District's chief executive, her emergency executive orders impose the restrictions Appleby challenges. Her office is in the John A. Wilson Building, 1350 Pennsylvania Avenue NW, Washington, DC 20004.

6. Defendant Karl A. Racine is the Attorney General of the District of Columbia. Appleby sues Racine in his official capacity as the official responsible for enforcing emergency executive orders under D.C. Code § 7-2307. His office is located at 400 6th Street NW, Washington, DC 20001.

7. Defendant District of Columbia is a municipal corporation and is responsible for the policies implemented through its officials and agents, including Mayor Bowser and Attorney General Racine.

JURISDICTION AND VENUE

8. This case raises claims under the First Amendment of the U.S. Constitution and 42 U.S.C. § 1983. The Court has subject-matter jurisdiction under 28 U.S.C. § 1331 and 28 U.S.C. § 1343.

9. Venue is proper in the District of Columbia under 28 U.S.C. § 1391(b). All Defendants are residents of or perform their official duties in this district. Additionally, a substantial part of the events or omissions giving rise to the claims occurred in this district. *Id.* § 1391(b)(2).

FACTS

10. Wedding dancing is “[o]ne of the most exquisite forms” of the “expressive dimension of the wedding celebration.” Riv-Ellen Prell, *Keynote Remarks on Marriage*, 17 DANCE R. J. 2, 55 (1985-86). From the Irish Cèilidh, to the Middle-Eastern Halay, the Greek Tsamiko, and the Jewish Horah and Mezinke Tanz, more or less every cultural tradition includes some form of group dancing as part of its celebration of bride and groom joining together.

11. For many couples, wedding dancing is an integral aspect of adhering to their faith and religion.¹

12. For most, it forms a core part of the association and expression of the wedding as a whole, as family and friends come together to witness “one of the ‘basic civil rights of man,’ fundamental to our very existence and survival.” *Zablocki v. Redhail*, 434 U.S. 374, 383 (1978) (quoting *Loving v. Virginia*, 388 U.S. 1, 12 (1967) and *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535, 541 (1942)).

13. It is a deeply rooted tradition within American marital culture.

14. Plaintiff Margaret Appleby is a doctoral student in political science at Virginia Polytechnic Institute and State University, who lives in Washington, D.C.

15. Appleby and her fiancé, Reilly Stephens, were engaged on December 6, 2019.

16. Like so many Americans, Appleby has spent the past fourteen months rather isolated, assiduously following social distancing requirements.

¹ Gabriela Miranda, “Washington D.C. bans wedding dances. But some couples call the measure ‘a bit extreme.’” USA Today (May 7, 2021), available at <https://www.usatoday.com/story/news/health/2021/05/07/washington-d-c-couples-call-wedding-dance-ban-excessive/4993111001/> [https://web.archive.org/web/20210509033926/https://www.usatoday.com/story/news/health/2021/05/07/washington-d-c-couples-call-wedding-dance-ban-excessive/4993111001/] (reporting on a devout Jew who will have to skip out on the traditional horah and mezinke dances because of the Order’s ban).

17. Her original doctoral program moved to online education in March 2020, requiring her to adapt both as a postgraduate student and as a teacher of undergraduates, and while she maintained high marks, she struggled with the changes in her program, leading her to transfer in January 2021 to her current university, which proved better adapted to this new learning environment. She has kept up her progress towards her Ph.D despite not stepping foot in a classroom for over a year.

18. Throughout the pandemic, both Appleby and her fiancé have made concerted efforts to adhere to the relevant COVID-19 guidelines to protect themselves and others. When the official CDC guidance still advised against mask-wearing to conserve masks for front-line workers, Appleby cut up some of her own clothes to make a mask for her fiancé to wear to the grocery store. Each of them made appointments and received vaccinations as soon as they were eligible, and each has continued to adhere to masking and other social distancing requirements in public even after being fully vaccinated.

19. At each point, even when it was unclear if it would be possible at all, she looked forward to her wedding as an opportunity for her, her existing family, and the family in which she was joining to come together at the end of a very difficult year in celebration and community, under whatever reasonable limitations might be necessary.

20. For Appleby, wedding dancing is an expression of community, symbolizing the celebration of the marriage rite, and representing the bringing together of two families into a common whole.

21. For Appleby, wedding dancing is unique and irreplaceable. No other medium will allow her to express the same message as wedding dancing at her reception.

22. On March 4, 2020, the couple booked a venue for their wedding on June 6, 2021. They selected District Winery, a winery and restaurant on the waterfront in southeast Washington D.C.

23. District Winery is a licensed food establishment, but is also a multi-purpose facility, offering tour of its wine-making facility, and hosting private events, receptions, and parties in an area separated from its dining facilities.

24. On March 11, 2020, Mayor Bowser issued Mayor's Order 2020-045, which declared a public emergency and Mayor's Order 2020-046, which declared a public health emergency.

25. On March 24, 2020, Mayor Bowser issued Mayor's Order 2020-053, which closed all "non-essential" businesses and limited gatherings to fewer than ten people.

26. By the time of Mayor Bowser's March 24 Order, Appleby, Stephens, and their families had entered into contracts, including substantial nonrefundable deposits, with many of the vendors needed for the wedding including the venue, catering, florist, and photographer.

27. Mayor Bowser followed the March 24 Order with a series of further orders over the next year, which periodically updated the list of restrictions on various activities, and extended the period of public emergency on at least eight occasions.

28. As of March 17, 2021, Mayor's Order 2021-038 imposed capacity and activity limits on Licensed Food Establishments and stricter rules on Live Entertainment, Theaters, and Multi-purpose Facilities, but included no specific ban on dancing.

29. For the duration of the pandemic, Appleby has planned her wedding in concert with the venue to ensure the plans were consistent with COVID-19 guidelines. In particular, Appleby agreed with the venue that guests would wear masks at all times other than when seated at their table and actively eating or drinking, that vendors would wear masks at all times, that all guests would be assigned a specific table and seat number, that no eating or drinking would take place except when seated, that hand sanitizer would be provided throughout the event space and its use encouraged, that the venue had the right to ask any noncompliant guest to leave the event, and that Appleby would provide the venue "a full client / guest list for contact tracing purposes."

30. Appleby also agreed with the venue to strictly adhere to total capacity restrictions. In order to do so, she adjusted her pre-COVID guest list to fit the 25% total capacity limit, and has continued to adjust it to conform with the changing rules.

31. On April 5, 2021, Mayor Bowser announced that beginning May 1, 2021, she would relax capacity restrictions on live entertainment and special events, including wedding venues. Based on this announcement, the venue informed Appleby on April 6, 2021 that it expected to be able to accommodate an increase to 70 total guests by June 6, which remains the current threshold. As of the RSVP deadline on May 6, 2021, 67 guests have indicated they will attend.

32. In discussions with the venue, Appleby agreed to social distancing guidelines for dancing that only allowed dancing at three separate, smaller dancefloors at different points in the room, to limit the capacity of any one dance floor. Other proposals reviewed by Appleby did include one larger dance floor, which she understood would be acceptable by allowing sufficient space between dancers. Each of these proposals was acceptable to Appleby. All proposals required guests to remain masked while dancing (or any time they were not seated for that matter), and did not allow them to carry or consume beverages or food on the dance floor. The only exception to the masking requirement would be for the ceremonial "First Dance" between bride and groom, because that would be conducted between two members of the same household at a sufficient distance from other guests.

33. Mayor's Order 2021-060, signed on April 26, 2021, and effective May 1, 2021, did in fact relax various restrictions, but for the first time included a specific ban on dancing.

34. Section IX of the April 26 Order relaxed some of the restrictions on Live Entertainment and Multi-purpose facilities, which included allowing events to go forward at previously restricted venues.

35. Under the prior order, live events like concerts were allowed only with a waiver.

36. Under the new order, “[m]ulti-purpose facilities and venues holding regular live events may operate” with certain restrictions. The general rule, applying to “plays, concerts, and other performances,” provides for 25% capacity, up to a maximum of 500 guests “outdoors or indoors.”

37. Section IX.2 provides that the “District will consider waivers for live entertainment events . . . for gatherings larger than five hundred (500) guests . . .”

38. Section IX.3 provides for the holding of “regional business meetings and conventions” at 25% capacity, up to a maximum of 250 guests.

39. Section IX.4 allowed that multi-purpose venues “may hold events such as wedding and special non-recurring events” at 25% capacity, up to a maximum of 250 guests.

40. Despite this general trend of loosening restrictions, Section IX.4 of the Order also for the first time instituted the special restriction on venues hosting weddings challenged here: “Standing and dancing receptions are not allowed.”

41. The ban on dancing receptions is categorical. It does not matter if the reception is indoors or outdoors. It does not matter whether there are limits on the number of persons attending, whether they are vaccinated, whether they are socially distanced, or whether they wear masks.

42. Soon after the April 26 Order, the venue informed Appleby that because of the Order it could no longer allow even masked, socially distanced dancing for her wedding.

43. Until the April 26 order, venue staff and her wedding planner indicated that they would allow dancing at her wedding reception.

44. Public understanding and practice prior to the April 26 Order was that while there were capacity restrictions and social distancing requirements, there was no ban on dancing before May 1, 2021. Indeed, the ban is “new, and it came as a huge surprise to people in D.C.’s live events industry,” with one prominent event planner explaining to media that:

“We were able to have successful events in the fall. I mean, there were many weddings that stuck to the guidelines. They wore masks. They

could only eat and drink at their tables. There was no ban on dancing at the time. It was just a restriction on the amount of people . . . We even put hula hoops on the floor to keep people apart, to give them space.”²

45. Another planner explained, “All the sudden we’re being told an extra rule out of nowhere. To be told, by the way, you can’t stand up, and [have this] new rule that has never been talked about even last fall when we didn’t have a vaccine, is definitely a club over the head.”³

46. Another expressed frustration. “[T]he science isn’t supporting the way the mayor has made the regulations. It’s not fair. Even at the height of Covid, we were dancing.”⁴

47. In response to this widespread shock and dismay at the District’s change of course, Mayor Bowser defended the ban, preferring to emphasize the loosening of restrictions on multi-purpose venues.⁵ Her spokesperson, as well, argued that “dancing was

² Rachel Kurzius, “Til Dance Do Us Part? D.C. Dance Ban Has Event Planners Scrambling,” DCist (May 5, 2021), available at <https://dcist.com/story/21/05/05/dc-dance-ban-weddings-covid-restrictions/> [https://web.archive.org/web/20210506202137/https://dcist.com/story/21/05/05/dc-dance-ban-weddings-covid-restrictions/].

³ Tom Russey, “‘A club over the head’: Those planning weddings in DC dumbfounded by ‘no dancing’ rule,” WJLA ABC News (May 7, 2021), available at <https://wjla.com/news/local/a-club-over-the-head-those-planning-weddings-in-dc-dumbfounded-by-no-dancing-rule> [https://web.archive.org/web/20210507214936/https://wjla.com/news/local/a-club-over-the-head-those-planning-weddings-in-dc-dumbfounded-by-no-dancing-rule].

⁴ Jacqueline Tynes, “No Standing, No Dancing—Here’s What to Expect Now at Weddings and Events in DC,” Washingtonian (May 5, 2021), available at <https://www.washingtonian.com/2021/05/05/dc-bans-dancing-at-weddings/> [https://web.archive.org/web/20210505213508/https://www.washingtonian.com/2021/05/05/dc-bans-dancing-at-weddings/].

⁵ Brittany Bernstein, “Washington, D.C. Mayor Defends Ban on Dancing at Weddings,” National Review (May 5, 2021), available at <https://www.nationalreview.com/news/washington-d-c-mayor-defends-ban-on-dancing-at-weddings/> [https://web.archive.org/web/20210506092258/https://www.nationalreview.com/news

effectively banned at these events before the order, due to physical distancing requirements already in place — but the latest order explicitly prohibited getting down”.⁶

48. The District has not banned all dancing; rather it allows similar activities as long as they adhere to social distancing requirements.

49. As previously mentioned, the District’s restrictions allow exercise classes of up to 50 people outdoors and 25 indoors, including classes that use strenuous dancing as a form of exercise, including the dance fitness brand Zumba, which currently lists 15 available locations in the District.

50. The District’s restrictions also allow dance studios to operate group instructional classes within the District subject to social distancing requirements.

51. The District’s restrictions also allow exotic dancing establishments to operate, with performers both dancing on stage and interacting with guests.

52. The District’s restrictions also allow recreational facilities, including recreation centers, roller skating rinks, and bowling alleys to operate at half-capacity and to include recreational dancing.

53. The District’s restrictions allow museums and the National Zoo to host dancing receptions (though they still prohibit “standing receptions”).

54. The District’s restrictions also permit guided indoor tours of up to 25 persons and outdoor tours of up to 50 persons.

/washington-d-c-mayor-defends-ban-on-dancing-at-weddings/].

⁶ Jenna Portnoy, “D.C. ban on wedding dancing gets chilly reception from couples,” Wash. Post (May 5, 2021), available at https://www.washingtonpost.com/local/dc-bowser-dancing-ban-coronavirus/2021/05/05/d9cddb0f0-adaa-11eb-acd3-24b44a57093a_story.html

[https://web.archive.org/web/20210506122259/https://www.washingtonpost.com/local/dc-bowser-dancing-ban-coronavirus/2021/05/05/d9cddb0f0-adaa-11eb-acd3-24b44a57093a_story.html]

55. Mayor Bowser's ban on dancing is inconsistent with the policies of states around the country, about 48 of which do not impose such a restriction—including the bordering states of Maryland and Virginia.

56. Mayor Bowser's imposition of this new restriction comes too late for Appleby to alter her wedding plans. There is only about a month until the event, and the last deadline for Appleby to change venues was sixty days before the event, on April 7, 2021. Moving the wedding over the border to some location in Maryland or Virginia, which do not see the need to outlaw dancing, would entail not just severe logistical challenges but forfeiture of the deposits and thousands of dollars in additional expenses.

57. There is no scientific or public-health basis to permit dancing in Zumba classes, dance studios, and strip clubs, but not at weddings of vaccinated people.

58. On March 31, 2021, Stephens received his second dose of the Pfizer–BioNTech COVID-19 vaccine. The official protocol considers him fully vaccinated as of April 14, 2021.

59. On April 23, 2021, Appleby received her second dose of the Pfizer–BioNTech COVID-19 vaccine. The official protocol considers her fully vaccinated as of May 7, 2021.

60. Consistent with the District of Columbia capacity requirements, the guest list for Appleby's wedding will be limited to a maximum of 70 people, which brings it under the required 25% of the venue's fire code capacity.

61. On information and belief, a large majority of the guests attending Appleby's wedding will be fully vaccinated under the official protocol by the time of the wedding on June 6, 2021.

62. The majority of guests will be traveling from outside of the DC region, meaning that any who are unvaccinated are already subject to the self-quarantine requirements of Section XII.2, providing an additional form of security from transmission of COVID-19.

63. According to the Center for Disease Control's vaccination tracking data, of May 7, 2021, 60.8% of the DC population over the age of 18 had received at least one dose of a COVID-19 vaccine, and 39.9% of the over-18 population has been fully vaccinated.

Nationally, 57.4% of people over 18 had received at least one dose, and 42.6% had been fully vaccinated.

CLAIM

**Defendants' complete ban on a category of expressive activity
violates Appleby's rights of expression and association
as guaranteed by the First Amendment.**

64. The allegations in the preceding paragraphs are incorporated herein by reference.

65. Under the First Amendment to the United States Constitution, the District of Columbia may not abridge the freedom of speech.

66. The First Amendment safeguards not just spoken and written word, but other forms of expression.

67. There is "no question" expressive dance constitutes protected expression under the First Amendment. *Oberwetter v. Hilliard*, 639 F.3d 545, 551 (D.C. Cir. 2011). Wedding rituals and ceremonies likewise are a form of protected expression. *Kaahumanu v. Hawaii*, 682 F.3d 789, 799 (9th Cir. 2012); *see also Turner v. Safley*, 482 U.S. 78, 95 (1987) (marriage is fundamental right); *Zablocki*, 434 U.S. at 383 (same).

68. Mayor Bowser's recent Order singles out wedding dancing.

69. It constitutes a per se ban on an entire mode of expression and as such is "inherently suspect." *Lederman v. United States*, 291 F.3d 36, 44 (D.C. Cir. 2002).

70. The complete ban on wedding dancing is not narrowly tailored to advance the District's interest in public health.

71. The Order's restriction on wedding dancing is arbitrary and underinclusive as it permits other forms of non-expressive dancing, gathering, and congregating, while banning wedding dancing without accounting for whether people are vaccinated, or have a

previous COVID diagnosis that the District's own quarantine procedures recognize provides immunity, or any safety measures that are followed.

72. There are less restrictive alternatives to a complete ban on dancing, such as allowing dancing with masks, imposing capacity restrictions on dance floors, imposing distancing between couples on the floor, regulating the length of time when dancing may occur, or making distinctions between vaccinated and unvaccinated guests.

73. There are no satisfactory alternatives to dancing permitted by the Order.

74. On its face and as applied to Appleby's own wedding, the Order's ban on wedding dancing violates the First Amendment.

75. In banning dancing at weddings, Mayor Bowser is operating under the color of the law of the District of Columbia. 42 U.S.C. § 1983.

76. The District of Columbia is a municipal corporation and is thus is a "person" who may be sued under 42 U.S.C. § 1983. *Best v. District of Columbia*, 743 F. Supp. 44, 47 (D.D.C. 1990); *Monell v. Department of Social Services*, 436 U.S. 658, 691 (1978).

77. Unless Defendants are enjoined from enforcing the dancing ban, Appleby will suffer irreparable harm.

78. Appleby is therefore entitled to declaratory and injunctive relief under 42 U.S.C. § 1983.

PRAYER FOR RELIEF

Appleby respectfully requests that this Court:

a. Declare that, on its face and as-applied, the complete ban on masked, socially distanced dancing at wedding is a violation of Appleby's First Amendment rights.

b. Enjoin Defendants from enforcing the dancing ban in Section IX.4 of Mayor's Order 2021-060, or any alternative rule that bans dancing entirely without allowing for safety protocols, during Plaintiff's wedding ceremony and reception on June 6, 2021.

c. Award Plaintiff her costs and attorneys' fees under 42 U.S.C. § 1988; and

d. Award any further relief to which Plaintiff may be entitled.

Dated: May 10, 2021

Respectfully Submitted,

By: /s/ Adam Schulman

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*Pro Hac Vice motions to be filed.

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VERIFICATION

Pursuant to 28 U.S.C. § 1746, I, Margaret Appleby have personal knowledge of the matters alleged in the foregoing Verified Complaint concerning myself, my activities and my intentions. I verify under the penalty of perjury that the statements made therein are true and correct.

Executed on May 9, 2021

Margaret Appleby

Margaret Appleby