



THE RUTHERFORD INSTITUTE

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Dear City Councilors and Mr. Jones,

The City of Charlottesville's belated demand that the "Unite the Right" demonstration scheduled for August 12 move from its planned and approved location in Emancipation Park raises serious First Amendment concerns.

1. Opposition can be no basis for government action that would suppress the First Amendment rights of demonstrators, no matter how distasteful those views may be

Both the timing and justification for the demand that organizers accept a move to McIntire Park show a callous disrespect for the rights of free speech and assembly, forcing an 11th-hour relocation of the rally from the place chosen specifically because of its importance to the message of the rally organizers. While the message of the "Unite the Right" rally may raise strong feelings of opposition among area residents and political leaders, that opposition can be no basis for government action that would suppress the First Amendment rights of demonstrators who have acted according to the law.

2. Last-minute relocation undermines ability of demonstrators to effectively communicate their message

The last-minute relocation by the City appears to be an attempt to undermine the ability of demonstrators to effectively communicate their message. Although event organizers submitted their application for the rally in Emancipation Park two months ago, the City is only now asserting that the event cannot be safely conducted in the park, a place chosen specifically by event organizers because of the symbolic significance of the Lee statute. This belated action by the City seriously undermines the ability of organizers to protect their legal rights to enforce their permit

to rally in the park, a permit that was plainly approved under section 3.4.6 of the City's Special Events Regulations.¹

3. City must provide factual evidence to support its attendance estimate and justify revoking the permit to demonstrate in Emancipation Park

It is also questionable whether the City's demand, which is effectively a revocation of the permit to demonstrate in Emancipation Park, is justified by any provision of the Special Events Regulation. Revocation could only be justified under section 3.4.7 of the regulation on the basis that the event "presents a danger to public safety" or "cannot reasonably be accommodated in the particular area applied for[.]"² While the City relies upon a forecast that "many thousands" will attend the event, it has not disclosed the sources of the information it is relying on for that estimate and whether such sources have any factual basis. When First Amendment rights are at stake, the City should be transparent about the evidence and information underlying its action so that citizens can be sure that fears of overcrowding are not simply a pretext for censorship and meet the requirement for proof that a compelling government interest underlies its decision.³ Moreover, demonstration organizers should be allowed to know the basis for the City's crowd projections so that they can defend the rights granted by the permit by challenging and rebutting the City's unilateral conclusion that the event poses a danger to public safety.

The City's justification for revocation appears more specious in light of the City's approval of permits for opposing demonstrations on August 12 in Justice and McGuffey Parks which will reportedly expect attendance of greater than 1000 persons. Furthermore, "Unite the Right" organizers reportedly offered to allow City officials to limit access to Emancipation Park during their event to prevent overcrowding. Thus, fears of overcrowding that would lead to public safety concerns appear to be a pretext for silencing the "Unite the Right" demonstration.

4. If the City is justifying its relocation of the rally elsewhere based on the presence of counterdemonstrators, that constitutes an unconstitutional "hecklers' veto"

To the extent the City is relying on the presence of counterdemonstrators for its revocation of the Emancipation Park permit, it is violating the fundamental principle that the rights of speech and assembly may not be restricted because demonstrators may be met by opposition. There is no place for a "hecklers' veto" under the First Amendment.⁴ Any decision that the demonstration under the permit poses a threat to public safety should be based solely on the plans and actions of the "Unite the Right" organizers, not of those who plan to be present in opposition. Otherwise,

¹ That section provides "[a]ll requests for demonstration permits shall be DEEMED GRANTED, subject to all applicable limitations and restrictions, unless denied within ten business days following the application for a permit[.]" City of Charlottesville Standard Operating Procedure Policy No. 100-04.

² *Id.*

³ *National Socialist White People's Party v. Ringers*, 473 F.2d 1010, 1014 n.4 (4th Cir. 1973). See also, *Christian Knights of KKK v. District of Columbia*, 972 F.2d 365 (D.C. Cir 1992).

⁴ *Christian Knights of Ku Klux Klan Invisible Empire, Inc. v. Stuart*, 934 F.2d 318 (4th Cir. 1991).

Mike Signer, Mayor, et al.
August 8, 2017
Page 3

hecklers and counterdemonstrators could always shut down speech they disagree with by manufacturing threats to public safety.

5. The City must act in accordance with the law, no matter how distasteful that may be to members of the community

The City must act in accordance with the law, even if doing so is distasteful to members of the community who disagree with the views espoused by the “Unite the Right” organizers. At the very least, the City must explain in more than just generalities its reasons for concluding that the demonstration cannot safely be held in Emancipation Park. It must allow the organizers the opportunity to dispel fears or concerns about the rally. Otherwise, it appears that the City’s revocation of the permit is based only upon public opposition to the message of the demonstration, which would constitute a violation of the organizers’ fundamental First Amendment rights.

As organizations committed to protecting constitutional and civil rights, we demand that the City withdraw its letter to Jason Kessler of August 7, 2017, revoking and otherwise rescinding the permit for a demonstration in Emancipation Park on August 12, 2017, and provide assurances that the City will allow the “Unite the Right” demonstration as previously planned and approved by operation of law. We will need a response to this letter by noon (12:00 p.m.) August 9, 2017.

Sincerely,



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