



July 18, 2016

Alfred Durham, Chief of Police
Richmond Police Department
200 W Grace Street
Richmond, VA 23219

RE: Trump for President Rally

Chief Durham:

I am writing because legal observers representing the ACLU of Virginia who were present at the Trump for President Rally on June 10th identified several troubling issues of concern related to how the Richmond Public Department (RPD) policed the event.

These concerns are as follows:

1. Misinformation was communicated by RPD officers to observers regarding the constitutional rights of protesters.

Officers at the 7th Street entrance to the Richmond Coliseum asked our legal observers if they had tickets. When they informed the officers that they were there to observe, the officer said that all protesters had to be in the designated area in Festival Park or be on the sidewalk across 7th Street. The officer also stated that protesters needed “to keep moving” in order to stay on the sidewalk directly across from the Coliseum.

It is not appropriate for officers to order protesters to “keep moving” on a public sidewalk. Federal courts have halted such policies that prohibit protesters from standing or sitting.¹ So long as protesters do not block the sidewalk or entrances to buildings they should be allowed to stand in one place and chant or hold up a sign. Panhandlers and religious people preaching on public sidewalks are not required to keep moving, neither should protesters at a political event.

¹ *Abdullah v. County of St. Louis*, 52 F. Supp. 3d 936 (E.D. Mo. 2014) (Federal judge granted a preliminary injunction against further use of “keep moving” policy by Ferguson Police, finding that it was violative of both Due Process and the First Amendment) quoting *Foti v. City of Menlo Park*, 146 F.3d 629 (9th Cir. 1998) (Court affirmed the district court ruling, which found that a certain provision of a statute requiring that anyone carrying sign on the sidewalk has to be “actually moving” was an unconstitutional encroachment on free speech, and was not narrowly-tailored to serve a government interest: “Requiring picketers to shuffle back and forth does not contribute to safe and convenient circulation on sidewalks; presumably, pedestrians could better negotiate around a stationary picketer than one who is walking back and forth. [...] A peaceful picketer carrying a sign creates no more of an obstacle than a picketer carrying a cross or a pedestrian waiting for a bus.”)

2. **Officers covered badge numbers with black electrical tape.**

The RPD has expressed a commitment to community policing. An important aspect of this style of policing is the ability of members of the community to identify officers by name. Name tags and badge numbers introduce the officers to the people they serve and allow for greater accountability to the community. If a person being policed has a complaint, they can easily identify the officer involved. Nonetheless, with the exception of captains and lieutenants who seemed to be part of the leadership team, officers at the rally did not have name tags. These officers also had black electrical tape over their badges that concealed their badge numbers.

Our legal observers asked several of these officers why they had tape over their badge numbers. Their response was that the officers were paying homage to a fallen comrade. When prompted to give the name of said comrade, none of the officers stated a specific fallen officer. We understand the desire of officers to find a way to show their support of fellow officers killed in the line of duty during some specific period of time following their passing. Black tape placed over badges in a way that obscures the badge number is not an acceptable way to do this, however, certainly not for indefinite periods of time, and particularly not where the officers have no name badges. In this case, the badge tape allowed officers policing the rally to remain anonymous. Anonymity increases the likelihood of negative interactions between officers and the public, and must not be encouraged, even in the name of respect for a fallen comrade.

3. **Protesters were corralled but Trump supporters were allowed to freely move in and out of the designated protest zone.**

The protest zone established for anti-Trump protesters had several problems. The U.S. Supreme Court is skeptical of buffer zones and protest zones, whether they are set up to protect attendees or guarantee protesters a place to exercise their free speech rights.² The protest zone established by the RPD for this event failed to do either of these.

The area designated for protesters was a bottleneck on the 5th Street side of the Coliseum. This caused tension between police, protesters and Trump supporters. There was no easy path to get in and out of this side of the protest area, yet the only restrooms open to the public for the protesters were across 5th Street at the Convention Center. At one point protesters that left to use the restrooms at the Convention Center were not allowed back into the protest zone, effectively violating their ability to exercise free speech rights. This group eventually grew to

² *McCullen v. Coakley*, 134 S. Ct. 2518 (U.S. 2014) (Court struck down Massachusetts buffer zone law that made it a crime to stand on a public sidewalk within 35 feet of the entrance to an abortion-providing clinic, finding that the law was not narrowly-tailored to serve the State's interest of safety concerns, even with a history of violence at clinics)

about 50 people standing on the other side of the barricade, unable to participate further in the protests.

In addition, although protesters were restricted in their movements, Trump supporters were unrestricted in their movements and were even free to wander in and out of the crowd of protesters corralled in the protest zone. Our legal observers witnessed several seemingly intoxicated Trump supporters freely walk into the crowd of protesters, causing disruption and inciting tempers between the groups. When this was pointed out to officers, they did nothing to stop such antagonizing behavior.

4. Violence erupted after an officer waived Trump supporters into the crowd of protesters.

As mentioned, Trump supporters were allowed to freely walk in and out of the crowd of protesters. Two of our legal observers witnessed an RPD officer open the barricade between the protesters and Trump supporters exiting the Coliseum event and motion for three young, aggressive and intoxicated men to enter the crowd of protesters. These three men chanted pro-Trump slogans and pushed their way into the center of the crowd. They began to push and shove the protesters. Several individual fights broke out and police removed the three men and two protesters.

This violence was the only violence that occurred during this protest, and it was directly attributable to the negligent actions of one of your officers. Our legal observers could not identify the officer because he did not have a nametag and his badge number was covered by black tape affording him complete anonymity. This one instance of violence was the headline in many news articles in the days following the event. That it could have been avoided is problematic; that it could have triggered escalated violence is inexcusable. It was only after this police facilitated confrontation that State Police retrieved their riot gear and began to escalate their use of force – an escalation that would not have been perceived as necessary if an RPD officer had not invited hostilities between Trump supporters and protestors by his action.

5. After the rally, during the march through downtown Richmond, officers failed to keep opposing protesters apart.

At the conclusion of the rally, close to 200 protesters continued to demonstrate by marching through the streets of Richmond. As they marched, several Trump supporters, or people just wanting to antagonize the protesters, followed closely behind and around the protesters. Again, these antagonists were allowed to wander in and out of the group of protesters. They were easy to spot and many were visibly intoxicated. Our legal observers witnessed two intoxicated antagonists shout threats and fighting words at several of the protesters. The police were on hand and backed them away from the crowd but did not cite or arrest them. These same two individuals were seen several more times walking in and out of the crowd of

protesters. The situation could have escalated and thankfully none of the protesters engaged their taunts or threats. Again, when our legal observers pointed out that the same individuals were continuing to antagonize the protesters repeatedly, officers did not respond.

We ask that you take action as Chief immediately and decisively to respond to these concerns. Given the events of the past week, and, as we move closer to the November elections, we all know that there will be additional political and other rallies and protests in Richmond and the rest of Virginia in the weeks and months ahead. We hope you will engage us and the community in taking corrective actions to prevent the kind of issues we have identified from recurring in the future. We would very much like to meet with you personally to discuss these issues and possible solutions in more detail. We will be in touch with you shortly regarding a possible meeting date.

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Very truly yours,



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