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February 24, 2016

The Honorable James L. LeMunyon, Chair
General Laws - Subcommittee #2
Virginia House of Delegates
1000 Bank Street
Richmond, VA 23219

Re: Senate Bill 552 / Authorizing Secret Police Forces in Virginia

Dear Delegate LeMunyon and Members of the General Laws Subcommittee:

American citizens have a right to know when government agencies and government officials have engaged in wrongdoing.

Whether those individuals occupy a public office or are employed by a law enforcement agency is immaterial. If a government employee has been charged with misconduct, it is the right of the taxpayer to know both the name of the individual and the charge against them.

Efforts to circumvent greater government transparency which, in the process, potentially shields government wrongdoing—such as Senate Bill No. 552, which bars the public from learning the identity of persons employed as law enforcement officers¹—will only weaken that which makes our system of government strong: a system of checks and balances, public accountability, and government agencies and employees that are fully cognizant of the fact that they serve the taxpayers.

Senate Bill No. 552 Will Undermine Public Trust in Government Agencies

All across the country, Americans are clamoring for increased transparency and accountability of police departments and officers in the wake of police shootings of unarmed

¹ SB 552 proposes to change Virginia's Freedom of Information Act (FOIA) requirement that governments disclose the identity of their employees and other employment-related information of the bodies' officers and employees by prohibiting the public's access to the "names and training records of law-enforcement officers[.]"

individuals and subsequent agency cover-ups.² Laws such as SB 552 that close off information about the government to the public will serve only to heighten the distrust and alienation Americans feel about the institutions and individuals who are entrusted with serving and protecting them.

What we cannot afford to have happen in Virginia is the kind of backlash against law enforcement misconduct and subsequent cover-ups that resulted in community-wide protests and acts of civil disobedience in Ferguson, Missouri, and Baltimore.

Senate Bill No. 552 Creates an Unaccountable, Secret Police Presence within the Commonwealth

By ensuring that the identities of police officers could be kept completely secret, SB 552 would ostensibly result in the creation of secret police forces throughout the Commonwealth.³ If police are allowed to operate anonymously without the moderating influence that comes from public oversight of their activities, officers could be effectively immunized from wrongdoing and able to act with impunity and in disregard of the civil rights of citizens.

As such, SB 552 is an unprecedented and unjustified step toward the creation of unaccountable secret police forces.⁴

Senate Bill No. 552 Undermines Critical Legal Remedies Available to Victims of Police Misconduct

By preventing the public from obtaining information about the identity of persons who are employed as law enforcement officers, SB 552 could be applied so broadly as to authorize the redaction of the names of officers from police and crime reports.⁵ Without the ability to identify law-enforcement officers, lawsuits to vindicate fundamental rights could not be filed and a crucial deterrent to police misconduct would be lost. Moreover, the restraint imposed on police

²Wayne Drash, "Attorneys: Chicago cops falsified witnesses' accounts, threatened them," *CNN*, Jan. 9, 2016, available at <http://www.cnn.com/2016/01/08/us/laquan-mcdonald-witness-cover-up-allegations/>.

³The scope of the information that would no longer be accessible under SB 552 is staggering; "law-enforcement officer" is defined in the Code as any full-time or part-time employee of a police department or sheriff's office which is a part of or administered by the Commonwealth or any political subdivision thereof" as well as a host of other officers of state and local departments with law enforcement responsibility. Va. Code § 9.1-101.

⁴"Editorial: We don't need secret police in Virginia," *Richmond Times-Dispatch*, Feb. 21, 2016, available at http://www.richmond.com/opinion/our-opinion/article_d7986ba6-9ea5-5833-93b4-aa5f9128f662.html, and Radley Balko, "Virginia Senate passes bill to keep police officers' names secret," *The Washington Post*, Feb. 17, 2016, available at <https://www.washingtonpost.com/news/the-watch/wp/2016/02/17/virginia-senate-passes-bill-to-keep-police-officers-names-secret/>

⁵Gary A. Harki and Patrick Wilson, "Virginia bill to keep officers' name secret would be first in the nation, experts say," *The Virginia Pilot*, Feb. 18, 2016 (available at http://pilotonline.com/news/government/politics/virginia/virginia-bill-to-keep-officers-names-secret-would-be-first/article_f49aa653-a911-50a7-b77d-242ebc1f95fc.html).

conduct by civil lawsuits for violations of constitutional protections against unreasonable searches and seizures would no longer be effective.

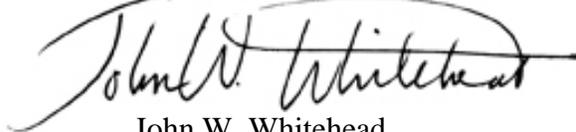
Virginia Should Set an Example for the Nation in How to Foster Better Relations Between Government Officials and the Citizenry

Despite its best intentions, SB 552 will not make Virginia any safer for police or for Virginians.

As you deliberate on how best to cultivate an environment in the Commonwealth that balances the spirit of liberty of our Founders with the complex needs of the modern age, I urge you to hold fast to the advice of Supreme Court Justice Louis D. Brandeis, who served on the court from 1916–1939. “Publicity is justly commended as a remedy for social and industrial diseases,” observed Brandeis. “Sunlight is said to be the best of disinfectants; electric light the most efficient policeman.”

Should you need any guidance in how to foster greater trust between law enforcement and the citizens they are charged with serving, I and The Rutherford Institute⁶ are at your disposal.

Sincerely yours,

A handwritten signature in black ink that reads "John W. Whitehead". The signature is written in a cursive style with a long horizontal flourish extending to the right.

John W. Whitehead
President

The Rutherford Institute

⁶ The Rutherford Institute is a nonprofit civil liberties organization based in Virginia. The Institute’s mission is twofold: to provide legal services at no charge to those whose constitutional and human rights have been threatened or violated and to educate the public on important issues affecting their constitutional freedoms.