

THE RUTHERFORD INSTITUTE

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June 27, 2017

Chief Al S. Thomas, Jr., Charlottesville Police Department
Charlottesville City Council
P.O. Box 911, City Hall
Charlottesville, VA 22902

Re: Police intimidation tactics undermine First Amendment rights and could expose the City to the threat of a lawsuit

Dear Chief Thomas and members of the Charlottesville City Council,

Earlier this month, The Rutherford Institute¹ cautioned the City of Charlottesville's Police Department (CPD) to tread cautiously in its efforts to maintain law and order while respecting the First Amendment rights of the community, particularly as it responds to circumstances arising out of the heated debate over the Robert E. Lee monument in Lee Park.²

We received no acknowledgment from the CPD to the Institute's June 7 letter, nor have we seen any indication that the CPD heeded our advice to employ less confrontational tactics in engaging with the public.³

To the contrary, we were disheartened to learn that the CPD has been 1) making unannounced visits to the homes or workplaces of activists, 2) interrogating them about their plans for the upcoming July 8 Ku Klux Klan rally,⁴ 3) asking them to provide police with the

¹ The Rutherford Institute is a non-profit civil liberties organization based in Charlottesville that provides free legal representation to individuals whose civil rights are threatened or infringed.

² "Letter to Chief Thomas urges police restraint," *CBS19Newplex.com* (June 8, 2017), <http://www.newsplex.com/content/news/Letter-to-Chief-Thomas-urges-police-restraint-427303063.html>.

³ "John W. Whitehead letter to Police Chief Thomas," The Rutherford Institute (Jun. 7, 2017), http://rutherford.org/files_images/general/06-07-2017_Letter_Police-Chief-Thomas.pdf.

⁴ Taylor Gleason, "Activists Concerned About Charlottesville Police Tactics Deliver Letter," *NBC29.com* (June 23, 2017), <http://www.nbc29.com/story/35737928/activists-concerned-about-charlottesville-police-tactics-deliver-letter>.

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names of other activists,⁵ and 4) monitoring Facebook and other social media sites where the current tensions over racial issues are discussed in order to identify and target possible activists.⁶

Targeting activists for interrogation, surveillance and intimidation chills free speech

No matter how well-intended the CPD's motives might be, targeting activists for this kind of scrutiny, surveillance, and coercion 1) smacks of intimidation, 2) suppresses and alienates members of our community, 3) undermines the CPD's ability to be effective peace officers who are mindful of the constitutional limits on their activities, and 4) serves as a potent example of the kinds of totalitarian tactics that this nation, its founders and all those who truly value a robust First Amendment have historically opposed.

Such heavy-handed tactics, coming in the wake of the overly-aggressive enforcement of misdemeanor warrants by City police,⁷ not only chill lawful First Amendment activity but could also expose the City to the threat of a lawsuit for civil rights violations.⁸ Citizens have a First Amendment right to speak freely and openly without fear of retribution. Knowing they are being targeted by police for scrutiny, surveillance and interrogation not only effectively turns citizens into suspects but also discourages them from exercising their right to speak out and protest on matters of great personal and public concern for fear they might be subject to harassment or arrest.

While the CPD has defended its tactics by pointing out that they have not singled out one particular viewpoint but instead have targeted all those with an interest in the upcoming rally,⁹ the constitutional requirement of equal treatment under the law does not mean that the government can violate the law provided it does so across the board. Included among those individuals and groups targeted by the CPD are: the KKK, Showing Up For Racial Justice, Black Lives Matter, Cville Stands United, Fraternal Order of the Alt Knights, Cville Pride and Care Bear Stare (which aims to position a large number of stuffed animals in the vicinity of the KKK rally as a counterstatement).¹⁰

Be warned: the tactics that have been targeted at activists come perilously close to being the kind of intimidation and retaliation that could render the City liable for violating the First

⁵ Lisa Provence, "Police show up at activists' doors," *C-Ville Weekly* (Jun. 27, 2017), <http://www.c-ville.com/police-show-activists-doors/>.

⁶ Taylor Gleason, "Activists Concerned About Charlottesville Police Tactics Deliver Letter," *NBC29.com* (June 23, 2017), <http://www.nbc29.com/story/35737928/activists-concerned-about-charlottesville-police-tactics-deliver-letter>.

⁷ "Letter to Chief Thomas urges police restraint," *CBS19Newsplex.com* (June 8, 2017), <http://www.newsplex.com/content/news/Letter-to-Chief-Thomas-urges-police-restraint-427303063.html>.

⁸ *Constantine v. Rector & Visitors of George Mason University*, 411 F.3d 474, 500 (4th Cir. 2005).

⁹ Taylor Gleason, "Activists Concerned About Charlottesville Police Tactics Deliver Letter," *NBC29.com* (June 23, 2017), <http://www.nbc29.com/story/35737928/activists-concerned-about-charlottesville-police-tactics-deliver-letter>.

¹⁰ *Id.*; "Operation Care Bear Stare," <https://www.gofundme.com/3xx2dw8>.

Amendment. If government conduct would chill the exercise of First Amendment rights by a person of ordinary firmness, a lawsuit for civil rights violations might be brought against the government and any responsible officials.¹¹

Any response to the KKK rally by the City of Charlottesville must be predicated on a respect for the First Amendment, a commitment to nonviolence and the rule of law

The disputes relating to the City's monuments and the KKK rally have already brought significant, unwanted negative attention to Charlottesville. The CPD's ill-advised response to these developments has contributed to a further heightened state of tension. It is our hope that the CPD and the City do not exacerbate this series of unfortunate events by allowing police to continue to coerce citizens into forfeiting their First Amendment rights.

Indeed, history has not looked with favor upon those law enforcement agencies which have resorted to implicit threats, intimidation and surveillance to oppress, suppress, silence and monitor the lawful activities of American citizens.

- In the 1950s and 1960s, the Chicago Police Department's "Red Squads" carried out surveillance on political and social activists and subjected them to harassment and abuse.¹²
- Under the FBI's COINTELPRO program, federal agents engaged in a prolonged campaign of surveillance and harassment of political organizations and activist leaders, including Martin Luther King, Jr.¹³
- In 2005 and 2006, the Maryland State Police carried out 288 hours of surveillance on nonviolent death penalty and anti-war activists, classified 53 of them as terrorists, and entered their names and personal information into state and federal databases that track terrorism suspects.¹⁴
- More recently, in the days leading up to the 2016 Republican National Convention in Cleveland, police targeted activists for a "knock and talk" campaign that was seen as clear effort at intimidation meant to discourage

¹¹ *Constantine v. Rector & Visitors of George Mason University*, 411 F.3d 474, 500 (4th Cir. 2005).

¹² Lauren Biksacky, "ACLU Interns Visit 'Red Squad' Archives To Remember History of Police Surveillance and Spying," *ACLU* (Jul. 14, 2014), <http://www.aclu-il.org/aclu-interns-visit-red-squad-archives-to-remember-history-of-police-surveillance-and-spying/>.

¹³ Beverly Gage, "Somewhere, J. Edgar Hoover Is Smiling," *Slate* (Jun. 7, 2013), http://www.slate.com/articles/news_and_politics/history/2013/06/prism_j_edgar_hoover_would_have_loved_the_ns_a_s_surveillance_program_topic.html.

¹⁴ Lisa Rein, "Md. Police Put Activists' Names On Terror Lists," *The Washington Post* (Oct. 8, 2008), <http://www.washingtonpost.com/wp-dyn/content/article/2008/10/07/AR2008100703245.html>.

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individuals from exercising their freedom of expression and protest.¹⁵ The targets described feeling like they were being hunted down and viewed it as a harassment campaign.¹⁶

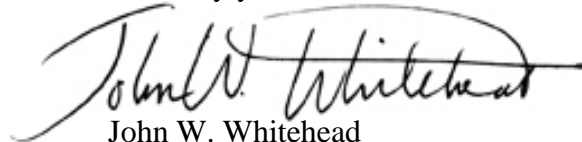
The City of Charlottesville does not have to follow the path of surveillance, coercion and harassment. It can forge its own path, one predicated on a respect for the First Amendment, a commitment to nonviolence and the rule of law, and faith in the citizenry to work through their differences and find common ground.

It is not always easy to navigate such uncertain terrain, and the CPD will play a critical role in ensuring that simmering tensions do not erupt into violence. However, the CPD's attempts to keep the peace cannot come at the expense of the rights of the people. As Supreme Court Justice William O. Douglas recognized, "[a] function of free speech under our system of government is to invite dispute. It may indeed best serve its high purposes when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger. Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea."¹⁷

Once again, The Rutherford Institute stands ready to offer its assistance in helping local police and the City Council contribute to a safe and free Charlottesville.

Please do not hesitate to call upon us if we can help in any way.

Sincerely yours,

A handwritten signature in black ink, reading "John W. Whitehead". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

John W. Whitehead
President

The Rutherford Institute

¹⁵Alice Speri, "FBI and Police are Knocking on Activists' Doors Ahead of Republican National Convention," *The Intercept* (June 23, 2016), <https://theintercept.com/2016/06/23/fbi-and-police-are-knocking-on-activists-doors-ahead-of-republican-national-convention/>.

¹⁶ Brandon Patterson, "Are Police Targeting Black Lives Matter Activists Ahead of the GOP Convention?," *Mother Jones* (June 30, 2016), <http://www.motherjones.com/politics/2016/06/cleveland-protesters-rnc-police-fbi-visits/#>.

¹⁷ *Terminiello v. City of Chicago*, 377 U.S. 1, 4 (1949).