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July 22, 2013

Via Email, Facsimile, and U.S. Mail

Board of Supervisors
Albemarle County
401 McIntire Road, 4th Floor
Charlottesville, VA 22902

Re: “Public Safety” Checkpoints in Charlottesville

Dear Members of the Board of Supervisors:

As you know, the Fourth Amendment to the U.S. Constitution makes clear that law-abiding citizens have a right to be free of unreasonable searches and seizures. While this important safeguard against government abuse has taken quite a beating in recent years, it remains one of the best defenses we have against tyranny in its varied forms, and The Rutherford Institute¹ has been one of its most vocal champions. To this end, we have repeatedly warned against the continuing erosion of Americans’ Fourth Amendment rights.

Unfortunately, the recent so-called “public safety” checkpoint that took place on Old Brook Road on July 11, 2013, in Charlottesville² only serves to reinforce The Rutherford Institute’s concerns about the deteriorating relationship and role reversal between police, charged with being public servants and peacekeepers, and the taxpayers who pay their salaries. Indeed, while this is a problem I address at length in my new book, *A Government of Wolves: The Emerging American Police State*, I never expected it to hit quite so close to home, especially

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

² “Police provocateur: Man says ‘no’ to license checkpoint,” *The Hook* (July 17, 2013), <http://www.readthehook.com/109892/police-provocateur-man-says-no-license-checkpoint>; “One-man stand: Albemarle man resists police ID checkpoint,” *The Schilling Show* (July 12, 2013), <http://www.schillingshow.com/2013/07/12/one-man-stand-albemarle-man-resists-police-id-checkpoint/>.

coming as it did on the heels of two other heavy-handed showings of police force in recent months in our close-knit community.³

I truly believe that if we are to have any hope of preserving our freedoms, especially our Fourth Amendment rights, we must begin at the local level, in communities such as ours, with a mutual commitment by local governing bodies, law enforcement and residents to working through any challenges that might arise. Thus, as elected representatives charged with protecting the rights and interests of the people of Albemarle County, I am looking to you to take the lead in ensuring that the delicate balance necessary to maintain a healthy community dynamic is not jeopardized for the sake of revenue or unnecessary shows of force.

What was the true purpose of the July 11th “safety” checkpoint?

The facts are as follows: On Thursday, July 11, 2013, six police officers and one supervisor with the Albemarle County Police Department (ACPD) shut down access to the Raintree subdivision via Old Brook Road from 1-4 pm, while officers set up a license checkpoint. According to ACPD officials, 262 people were stopped and forced to show identification and, in some cases, registration in order to enter or exit the subdivision.⁴ Of these 262, only 18 received tickets for any sort of traffic violation.⁵

ACPD claimed the purpose of the checkpoint was because “nearby residents had complained about traffic safety.” When asked to elaborate, one police officer on site explained the checkpoint was put in place to deter speeders. Despite the statements by the police that their motive in erecting the barrier was “safety,” photographs and video from the site clearly show a sign identifying the site as a “license checkpoint.”⁶

The true purpose of the checkpoint remains unclear to the public, which has every right to be informed of the reasoning behind the police taking an entire community hostage, denying them access to their homes on penalty of identifying themselves, and depriving them of their Fourth Amendment rights while engaging in a costly use of taxpayer and police resources in the

³ “Terror at Harris Teeter: Indignation rises over ABC underage drinking op,” *The Hook* (July 2, 2013), <http://www.readthehook.com/109831/terror-harris-teeter-gun-wielding-abc-agents-arrest-underage-water-buyer>; “Shock and Awe: Inside the Rugby Road Raid” *The Hook* (May 15, 2013), <http://www.readthehook.com/109570/rugby-road-lockdown-militarized-police-bust-fake-id-ring>.

⁴ “Police provocateur: Man says ‘no’ to license checkpoint,” *The Hook* (July 17, 2013), <http://www.readthehook.com/109892/police-provocateur-man-says-no-license-checkpoint>; “One-man stand: Albemarle man resists police ID checkpoint,” *The Schilling Show* (July 12, 2013), <http://www.schillingshow.com/2013/07/12/one-man-stand-albemarle-man-resists-police-id-checkpoint/>.

⁵ “Police provocateur: Man says ‘no’ to license checkpoint,” *The Hook* (July 17, 2013), <http://www.readthehook.com/109892/police-provocateur-man-says-no-license-checkpoint>; “One-man stand: Albemarle man resists police ID checkpoint,” *The Schilling Show* (July 12, 2013), <http://www.schillingshow.com/2013/07/12/one-man-stand-albemarle-man-resists-police-id-checkpoint/>.

⁶ “One-man stand: Albemarle man resists police ID checkpoint,” *The Schilling Show* (July 12, 2013), <http://www.schillingshow.com/2013/07/12/one-man-stand-albemarle-man-resists-police-id-checkpoint/>; “Police provocateur: Man says ‘no’ to license checkpoint,” *The Hook* (July 17, 2013), <http://www.readthehook.com/109892/police-provocateur-man-says-no-license-checkpoint>.

middle of the afternoon on a weekday in a quiet neighborhood that is neither crime-ridden nor heavily traveled. Moreover, should the explanation not pass muster, the taxpayers have every right to expect that law enforcement policies be modified to more appropriately reflect the priorities of the community and not merely those in law enforcement.

What do the courts have to say about the legality of such checkpoints?

Such checkpoints, carried out in the absence of any urgent need or for the stated purpose of generalized crime control and drug interdiction, do not rise to the levels established by jurisprudence. Indeed, while the U.S. Supreme Court has upheld sobriety checkpoints intended to remove drunk drivers,⁷ in *City of Indianapolis v. Edmond*, the Court held that a city's checkpoint program was not justified by the stated purpose of generalized crime control and drug interdiction.⁸ Furthermore, such checkpoint programs cannot be discretionarily applied by officers,⁹ and the stopped drivers cannot be detained without at least reasonable articulable suspicion that the motorist or vehicle is subject to seizure for a violation of the law—the requirement under the Fourth Amendment.¹⁰

Even if one takes at face value police statements that the real objective was to ensure the “safety” of the community members by deterring speeders, setting up a full police barricade to do so is clearly an unreasonable and excessive response. The police could just as easily have set up a “speed trap” to target those exceeding the posted speed limit. Alternatively, a police car along the side of the road – even an unoccupied one – goes a long way toward encouraging lead-footed drivers to slow down.

The danger with such checkpoint programs, as we have seen in cities across the country, is that even with the best of intentions, such programs can be and often are abused. As demonstrated by the New York Police Department's infamous stop and frisk program, even programs that are supposed to be “randomized” or uniformly applied far too often devolve into discriminatory profiling programs.¹¹ Thus, the justification that the checkpoints set up in Albemarle apply to everyone just isn't enough. Either in planning or execution, such programs can be used to intentionally and disproportionately target certain segments of the populations for unequal treatment.

The transformation of law enforcement

⁷ *Michigan Dept. of State Police v. Sitz*, 496 U.S. 444 (1990).

⁸ “When law enforcement authorities pursue primarily general crime control purposes at checkpoints such as here, however, stops can only be justified by some quantum of individualized suspicion.” *City of Indianapolis v. Edmond*, 531 U.S. 32, 48 (2000).

⁹ *Delaware v. Prouse*, 440 U.S. 648, 661 (1979).

¹⁰ *Delaware v. Prouse*, 440 U.S. at 663.

¹¹ “The Myth of a Post-Racial America,” *The Rutherford Institute* (July 1, 2013), https://www.rutherford.org/publications_resources/john_whiteheads_commentary/the_myth_of_a_post_racial_america.

In early America, law enforcement officials were considered peacekeepers in service to the public. Today, those roles have been reversed, with the average citizen often viewed and treated as subordinate to the police, which in appearance, weapons, and attitude have been transformed into civilian branches of the military.

The manner in which police officers with the ACPD interacted with Albemarle County resident Joseph Draego during the July 11th checkpoint is a perfect illustration of the problems inherent in the way the government, especially the police, now views the citizenry—as suspected lawbreakers rather than individuals who are innocent until proven guilty. This principle that the government must bear the burden of proof before it can deny any American life or liberty undergirds some of our Constitution’s greatest protections, such as the right to an attorney and a fair hearing, protection from unreasonable searches and seizures and the right to privacy, among others.

Mr. Draego, who lives in the Raintree subdivision, was driving home around 1:30 pm on July 11th when he turned onto Old Brook Road and was greeted with a line of cars and several flashing police lights. A nearby sign indicated that it was a license checkpoint. Upon reaching the front of the line of cars, Mr. Draego rolled his window down a few inches and was instructed by a police officer to show his driver’s license. A firm believer in the Fourth Amendment’s protections against unreasonable searches and seizures and knowing that he had done nothing to warrant either showing his license or being detained, Mr. Draego replied that he did not intend to show his license. The officers again demanded his driver’s license. Again exercising his understanding of the Fourth Amendment, Mr. Draego asked the officers if he was being charged with a crime. When the officers acknowledged that he was not being charged with a crime, Mr. Draego pointed out that he should be free to leave.

It was at this point that the ACPD officers ordered Mr. Draego to pull his car over to the side of the road, turn off the engine, and roll down the window, all of which he refused to do while continuing to maintain that he had committed no crime and should be free to leave. Growing more aggressive, one officer threatened to smash his car window in if Mr. Draego refused to comply. Fearful of what the police might do, Mr. Draego acquiesced and pulled his car over to the side of the road, whereupon Mr. Draego’s vehicle was immediately rushed by five ACPD officers who yelled orders at him. Mr. Draego remained in detention under police watch, by the side of the road.

At this point, one of the officers threatened to “deliver a warrant” to Mr. Draego’s house the following day—presumably for his arrest. In the meantime, the officers ran Mr. Draego’s tags through the ACPD computer database, confirming that he was the registered and lawful owner of the vehicle. It was only then that the police finally ended their unlawful seizure of Mr. Draego, and allowed him to continue to his home without so much as an apology or an acknowledgement of wrongdoing. The details of this interaction are a perfect case study on how police officers should *not* treat law-abiding citizens of their community. Such flagrant mistreatment does nothing but foster ill will and distrust toward law enforcement officers, making it less likely that people will cooperate in future interactions with police.

What should the Board of Supervisors do?

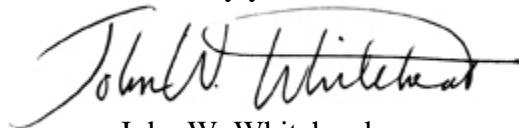
Mr. Draego was far from the only member of the community who reached out to me to share their concerns about the Old Brook checkpoint, both in terms of its excessive nature, its questionable purpose, and the manner in which law enforcement officials reacted to individuals who questioned the legitimacy of the exercise. Clearly something must be done to maintain greater accountability within law enforcement and mitigate against the emergence of, or even the appearance of, a police state in our community.

First and foremost, I would ask the Board of Supervisors to send a clear and unequivocal statement to the ACPD condemning the unlawful mistreatment of citizens by police, using the treatment of Joe Draego on July 11th as an example of what is not acceptable behavior by public servants. Secondly, I would request that the Board demand that the ACPD provide the Board and the broader public with a formal explanation for the justification and motivations for establishing this checkpoint in the first place. Each of the 262 people stopped that day have a right to know whether they were forced to do so for an unlawful purpose. The Board should not allow the rights of its constituents to be sacrificed solely for the purpose of raising revenue at these "safety" checkpoints. Finally, I would ask the Board to instruct the ACPD that such checkpoints in the future should only be undertaken for the specific purposes allowed under the Fourth Amendment and in conformity with the relevant case law. Police officers should be instructed that checkpoints set up for the generalized purpose of crime control are unlawful, and further, that they should not mislead the public about their motivations for setting up such checkpoints.

This is too critical an issue to put aside. Therefore, I ask that you address these concerns at the next meeting of the Board of Supervisors. I would also be happy to make one of The Rutherford Institute's attorneys available to answer any questions you might have regarding how law enforcement might better respect the rights of your constituents.

Please let me know how you plan to proceed.

Sincerely yours,

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

John W. Whitehead
President

cc: Steve Sellers, Albemarle County Chief of Police
Mr. Joseph Draego