

# THE RUTHERFORD INSTITUTE

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August 29, 2013

Via Email, Facsimile, and U.S. Mail

J. Neal Insley, Chairman  
Virginia Dept. of Alcoholic Beverage Control  
P. O. Box 27491  
Richmond, Virginia 23261-7491

**Re: *Failure of ABC to Adequately Review Its Policies and Procedures***

Dear Mr. Insley:

Despite repeated requests by The Rutherford Institute,<sup>1</sup> the Charlottesville City Council,<sup>2</sup> other elected officials, and various national and local news agencies for a sincere and sober review of Virginia Department of Alcohol Beverage Control's policies and procedures in the wake of an incident in which a 20-year-old University of Virginia college student was terrorized by gun-wielding ABC agents after purchasing a case of sparkling water,<sup>3</sup> no such public accounting has been made.

Moreover, apart from a concession by an ABC commissioner that the entire incident was "embarrassing"<sup>4</sup> and in "poor judgment,"<sup>5</sup> and a policy change requiring a uniformed agent to act

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

<sup>2</sup> *Charlottesville City Council Letter to Governor Robert McDonnell* (July 8, 2013), <http://bloximages.newyork1.vip.townnews.com/dailyprogress.com/content/tncms/assets/v3/editorial/0/5d/05de1318-e81f-11e2-a0de-001a4bcf6878/51db40459948f.pdf.pdf>.

<sup>3</sup> "Rutherford Institute Urges Charlottesville City Council to Investigate Unwarranted Raid, Condemn Police Militarization," *The Rutherford Institute* (July 1, 2013), [https://www.rutherford.org/publications\\_resources/on\\_the\\_front\\_lines/rutherford\\_institute\\_urges\\_charlottesville\\_city\\_council\\_to\\_investigate\\_unwa](https://www.rutherford.org/publications_resources/on_the_front_lines/rutherford_institute_urges_charlottesville_city_council_to_investigate_unwa).

<sup>4</sup> K. Burnell Evans, "ABC official calls Charlottesville incident 'embarrassing,'" *The Daily Progress* (August 2, 2013), [http://www.dailyprogress.com/news/local/abc-official-calls-charlottesville-incident-embarrassing/article\\_5804db6e-fbdd-11e2-af34-0019bb30f31a.html](http://www.dailyprogress.com/news/local/abc-official-calls-charlottesville-incident-embarrassing/article_5804db6e-fbdd-11e2-af34-0019bb30f31a.html).

as a “contact person” in undercover operations,<sup>6</sup> the agency has done little to address the gross deprivation of rights that occurred on April 11, 2013, or to prevent it from reoccurring. It appears that even the administrative review being conducted by the Virginia State Police<sup>7</sup> may amount to little more than a fact-finding mission.<sup>8</sup>

If the ABC persists in controlling and regulating the sale, distribution and consumption of alcohol through its own avenues and with its own police force, then it must ensure that its agents have a thorough understanding of the spirit and letter of the U.S. Constitution, especially the Fourth Amendment’s prohibitions on unreasonable searches and seizures, and are properly trained in how to conduct investigations based on *probable cause* that criminal activity is taking place, as opposed to the lesser standard of reasonable suspicion.

Furthermore, while the literal purpose of the Fourth Amendment is to protect our property and our bodies from unwarranted government intrusion, the moral intention behind it is to protect our human dignity. As such, ABC agents must be guided by an awareness that citizens have a right to “dignity and integrity” and must be accorded a level of respect, regard, and autonomy in dealings with the police, as the United States Supreme Court recognized in its seminal case *Miranda v. Arizona*.<sup>9</sup>

In light of the aforementioned and in regards to the ABC’s pursuit of suspected underage drinkers as demonstrated by the sting operation that resulted in Elizabeth Daly and her friends being targeted, terrorized and pursued in a darkened grocery store parking lot, held at gunpoint by plainclothes ABC agents well-versed in intimidation tactics,<sup>10</sup> and forced to spend a night in jail for daring to defend themselves against what they perceived to be attackers, it is our belief that the agency is in dire need of an overhaul in order to better balance its mission with the rights of the citizens of this commonwealth.

Thus far, attempts by the public to learn more about details relating to the Daly incident and the ABC’s related investigations have been rebuffed. However, what citizens require from all government officials – elected or not – are accountability, transparency, efficiency, honesty

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<sup>5</sup> Molly Greenberg, “ABC Official Admits Agents Used Poor Judgement in Wrongful Arrest of UVA Student Buying Water,” *In the Capital* (Aug. 3, 2013), <http://inthecapital.streetwise.co/2013/08/03/abc-official-admits-agents-used-poor-judgement-in-wrongful-arrest-of-uva-student-buying-water/>.

<sup>6</sup> K. Burnell Evans, “ABC official calls Charlottesville incident 'embarrassing,'” *The Daily Progress* (August 2, 2013), [http://www.dailyprogress.com/news/local/abc-official-calls-charlottesville-incident-embarrassing/article\\_5804db6e-fbdd-11e2-af34-0019bb30f31a.html](http://www.dailyprogress.com/news/local/abc-official-calls-charlottesville-incident-embarrassing/article_5804db6e-fbdd-11e2-af34-0019bb30f31a.html).

<sup>7</sup> “Virginia State Police to review Charlottesville ABC incident,” *Daily Progress* (July 8, 2013), [http://www.dailyprogress.com/news/virginia-state-police-to-review-charlottesville-abc-incident/article\\_b96adbbe-e847-11e2-b9b0-0019bb30f31a.html](http://www.dailyprogress.com/news/virginia-state-police-to-review-charlottesville-abc-incident/article_b96adbbe-e847-11e2-b9b0-0019bb30f31a.html).

<sup>8</sup> “ABC official calls Charlottesville incident 'embarrassing,'” *The Daily Progress* (August 2, 2013), [http://www.dailyprogress.com/news/local/abc-official-calls-charlottesville-incident-embarrassing/article\\_5804db6e-fbdd-11e2-af34-0019bb30f31a.html](http://www.dailyprogress.com/news/local/abc-official-calls-charlottesville-incident-embarrassing/article_5804db6e-fbdd-11e2-af34-0019bb30f31a.html).

<sup>9</sup> *Miranda v. Arizona*, 384 U.S. 436, 460 (1966).

<sup>10</sup> “ABC Arrest of Student Sparks Concern, Talk of Potential Suit,” *NBC 29* (July 2, 2013), <http://www.nbc29.com/story/22746938/abc-arrest-of-student-sparks-concern-talk-of-potential-suit>.

J. Neal Insley, Chairman of Virginia Alcohol Beverage Control

August 29, 2013

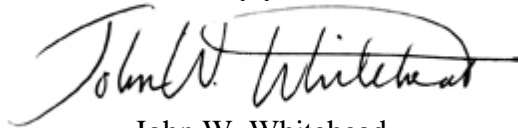
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and the assurance that they will abide by the dictates of the Constitution, especially as it relates to respecting our First and Fourth Amendment rights. Anything less than that is unacceptable.

To this end, I request an opportunity to engage in a serious dialogue with ABC leadership about how the agency might better serve the needs of Virginia taxpayers. As an organization committed to advancing public dialogue and protecting the rights of the citizens, The Rutherford Institute would be happy to take the lead in putting together a panel of individuals who could provide much-needed feedback to the ABC on some necessary reform measures. The Rutherford Institute is also willing to assist ABC in developing a training program for its agents to ensure that egregious incidents such as the Daly raid do not occur again.

Please provide formal acknowledgment of this letter by Friday, September 6, 2013.

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

cc: Governor Robert McDonnell  
The House Police, Militia and Public Safety Committee, the Virginia General Assembly  
Delegate David J. Toscano  
Senator R. Creigh Deeds  
Charlottesville City Council