



FOUNDATION FOR THE MARKETPLACE OF IDEAS

July 23, 2017

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Sent via Electronic Mail Only

**RE: AUGUST 12, 2017, "UNITE THE RIGHT" RALLY
DEPRIVATION OF CONSTITUTIONAL RIGHTS**

Dear Charlottesville Government Leaders:

The Foundation for the Marketplace of Ideas, Inc., is a Michigan-based non-profit civil rights organization which exists "to educate the public about the freedoms guaranteed by the United States Constitution and people who and organizations which strive to usurp said freedoms." We write, because it has come to our attention that the government of Charlottesville is not acting in a manner to uphold the First Amendment of the Constitution of the United States.

Here is our understanding of the facts; please advise if we are mistaken: on August 12, 2017, between 12:00 p.m. and 5:00 p.m., hundreds of "Alt-

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Right” activists are planning to rally in Lee Park of your city to peacefully protest the planned removal of Confederate monuments located there, and violent leftists are planning to disrupt the rally for which event-organizer Jason Kessler procured a permit. When Kessler recently informed governmental actors—including but not limited to the Charlottesville Police Department—that interlopers planned to disrupt the event, it was relayed to Kessler that law enforcement agents would not intervene should left-wing counterprotesters attack or try to prevent the Alt-Right demonstrators from rallying at the location provided in the issued permit. To Kessler’s understanding, left-wing agitators plans to arrive to the location of the planned Alt-Right rally the night before it is scheduled to occur and will stay there in attempt to prevent the Alt-Right activists from peacefully assembling there on August 12.

The police cannot and must not stand idly by if interlopers attempt to shut down the Alt-Right rally by improperly seizing control of the venue or by intimidating or physically attacking the Alt-Right activists. Failure of the police to act in good-faith to maintain order and to safeguard the First Amendment rights of the participants of the Alt-Right rally amounts to a due process violation of the most basic sort.

The leftists who plan to disrupt Kessler’s rally are doing nothing more than using a “heckler’s veto” to suppress political viewpoints that they find to be objectionable, and it would be offensive to the free speech rights of the Alt-Right activists for the police to sanction this misconduct by failing to act to maintain order. See *Bible Believers v Wayne County*, 805 F.3d 228 (6th Cir. 2015) (stating that a heckler’s veto situation “occurs when police silence a speaker to appease the crowd and stave off a potentially violent altercation.”).

In *Bible Believers*, the United States Court of Appeals for the Sixth Circuit—sitting *en banc*—noted that “officers have a duty to protect speakers * * * from the reactions of hostile audiences.” *Bible Believers*, 805 F.3d at 236-237 (citing *Glasson v. City of Louisville*, 518 F.2d 899, 906 (6th Cir. 1975) (“A police officer has the duty not to ratify and effectuate a heckler’s veto nor may he join a moiling mob intent on suppressing ideas. Instead, he must take reasonable action to protect from violence persons exercising their constitutional rights.”). Said the Sixth Circuit, “If the officers allow a hostile audience to silence a speaker, the officers themselves effectively silence a speaker and effectuate a ‘heckler’s veto’; the First Amendment ‘simply does not countenance this scenario.’” *Bible Believers*, 805 F.3d at 237 (citing *Forsyth County v. Nationalist Movement*, 505 U.S. 123, 134 (1992); *Boos v. Barry*, 485 U.S. 312, 320-321 (1998); *Smith v. Ross*, 482 F.2d 33, 37 (6th Cir. 1973) (“[S]tate officials are not entitled to rely on community hostility as an excuse not to protect, by inaction or affirmative conduct, the exercise of fundamental rights.”)).

It is “a police officer’s * * * duty * * * to enforce laws already enacted and to make arrests * * * for conduct already made criminal.” *Bible Believers*, 805 F.3d at 251 (quoting *Gregory v. City of Chicago*, 394 U.S. 111, 120 (1969)). “An officer [cannot] sit idly on the sidelines—watching as the crowd imposes, through violence, a tyrannical majoritarian rule[.]” *Bible Believers*, 805 F.3d at 253.

If police officers of the City of Charlottesville Police Department sit idly by and permit violent leftists to usurp the free speech rights of the Alt-Right activists at the direction of government leaders, then the police officers and government leaders can be sued in their official and personal capacities via 42 U.S.C. § 1983. The leftists, too, can be sued for tortiously interfering with the free rights of the Alt-Right activists and engaging in a civil conspiracy in relation thereto. See *McCalden v. California Library Assoc.*, 955 F.2d 1214 (9th Cir. 1990) (holding that the Simon Wisenthal Center’s misconduct of using

violence to interfere with the free speech rights of a historical revisionist at a public library is actionable).

When Auburn University interfered with the free speech rights of Alt-Right activists this past spring, a federal judge issued a temporary restraining order to require the university's police officers to protect the attendees of the event after a civil action was filed. Not long thereafter, the university settled out of court for the sum of \$29,000.00. Reeves, Jay. "Auburn to pay \$29k for trying to block controversial speaker Richard Spencer." Associated Press. 16 May 2017. It was the Foundation for the Marketplace of Ideas, Inc., which was instrumental in assisting with the procurement of this legal victory.

Alt-Right activists are willing, able, and eager to stand up for their rights in the courts of public opinion and law, and the Charlottesville government should see to it that the First Amendment is not whatsoever undermined on August 12.

It should be noted that pursuant to *Hudson v. Virginia*, 266 Va. 371, 380; 585 S.E.2d 583 (2003), the Supreme Court of Virginia opined that "The common law in Virginia permits a citizen to effectuate an arrest for breach of the peace occurring in his or her presence." If the Charlottesville Police Department stands down on August 12, it would not be farfetched to postulate that the Alt-Right rally participants will stand up for their rights by effectuating citizen's arrests or by engaging in acts of self-defense when attacked by leftist thugs.

If the Charlottesville Police Department does not maintain order, the fundamental right of free speech as guaranteed by the First Amendment will be infringed upon, and it is not unfathomable to think that many people can be injured therefor. It would be imprudent, reckless, unconstitutional, and actionable for the Charlottesville Police Department to not maintain order.

We trust that, now that this has been brought to your attention, the Charlottesville Police Department will not permit leftists to interfere with the planned rally and will in fact maintain order.

If you have any questions, please let us know; we would be happy to mail to you copies of the Constitution of the United States if you misplaced yours.

Sincerely,

**FOUNDATION FOR THE MARKETPLACE
OF IDEAS, INC.**



Kyle J. Bristow
Executive Director