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Ronald L. Rowe Jr., Acting Director
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Major General John C. Andonie, Commanding General
District of Columbia National Guard
2001 East Capitol Street SE
Washington, D.C. 20003

September 19, 2024

Dear Chief Smith, Chief Manger, Chief Taylor, Acting Director Rowe Jr., and Major General Andonie –

I am writing on behalf of the American Civil Liberties Union of the District of Columbia (ACLU-D.C.), in advance of the 2024 presidential election, to open the lines of communication regarding free speech rights as we all prepare for any demonstrations that might occur in the Nation’s Capitol during or after the election, including in connection with the certification of the election results or with the presidential inauguration.

As you know, Washington, D.C. is a special location for the public expression of views, as it is the place where the people of our Nation can speak in closest proximity to where their elected leaders formulate laws and policies on their behalf. The ACLU-D.C. believes we all share a strong interest in ensuring, during what might be a tense period, that people can exercise their constitutional right to express themselves here in the District.

We all remember, of course, the events of January 6, 2021. The actions that law enforcement took that day played a significant role in preserving the integrity of our democratic processes. It should go without saying that the ACLU-D.C. does not believe that the First Amendment even remotely supports a right to storm the Capitol (or any other government building) or to assault members of Congress or Capitol Police (or anyone).

At the same time, we want to make sure you also recall the history of other protest events in the District—ones that were, in contrast to the January 6 attack on the Capitol, lawful and constitutional but nonetheless suppressed via unconstitutional conduct by law enforcement. In the past quarter-century, some of the most prominent ones include: the violent dispersal of peaceful Lafayette Square demonstrators calling for police reform in the wake of George Floyd’s murder (June 1, 2020); the mass arrest and use of chemical irritants against more than 200 Inauguration Day protesters (Jan. 20, 2017); the mass arrest at the Inauguration Day protest march through Adams Morgan (Jan. 20, 2005); and the mass arrest and hogtying of hundreds of anti-World Bank demonstrators at Pershing Park (Sept. 27, 2002). Further back in time, but nonetheless notable because of its scale, the “May Day” Vietnam War protest on the steps of the Capitol in May 1971 was—despite the involvement of members of Congress in the demonstration itself—shut down by an unconstitutional mass arrest.

Each of these resulted in lawsuits by the ACLU-D.C. (known previously as the ACLU of the National Capital Area). See *Black Lives Matter-D.C. v. Trump*, No. 1:20-cv-1469 (D.D.C. filed June 4, 2020; settled in part Apr. 13, 2022); *Horse v. District of Columbia*, No. 1:17-cv-1216 (D.D.C. filed June 21, 2017; settled Apr. 26, 2021); *Carr v. District of Columbia*, No. 1:06-cv-0098 (D.D.C. filed Jan. 19, 2006, settled Aug. 1, 2011); *Abbate v. Ramsey*, 355 F. Supp. 2d 377 (D.D.C. 2005); *Dellums v. Powell*, 566 F.2d 167 (D.C. Cir. 1977). We have also challenged the use of chemical irritants and stun grenades on photojournalists covering racial justice protesters at Black Lives Matter Plaza in August 2020, see *Asinor v. District of Columbia*, No. 1:21-cv-2158 (D.D.C. filed Aug. 12, 2021; dismissed Aug. 29, 2022; dismissal reversed, No. 22-7129, 2024 WL 3733171 (D.C. Cir. Aug. 9, 2024)), and the use of low-flying military helicopters to assault and intimidate civil rights demonstrators in June 2020, see *Dashtamirova v. United States*, No. 1:23-cv-0681 (D.D.C. filed Mar. 14, 2023, settled Mar. 8, 2024).

We hope that, as you prepare for any demonstrations that may occur in the coming months, the training and direction you provide your officers will be informed by the First Amendment, by (where applicable) the D.C. First Amendment Assemblies Act, see D.C. Code § 5-331.01 to -.17, and by the lessons of the history I have summarized. In particular, please bear in mind the settlements reached in response to lawsuits over the Pershing Park,¹ 2017 Inauguration,² and Lafayette Square³ incidents. These cases resulted in significant policy reforms, at both the local and federal level, to protect demonstrators’ right to express themselves—such as restrictions on dispersals and arrests, identification requirements for officers, and other safeguards against “guilt-by-association” tactics in which the unlawful conduct of a few

¹ See *Abbate v. Ramsey*, 355 F. Supp. 2d 377, 381-89 (D.D.C. 2005); Settlement Agreement, ECF 1034-2, *Barham v. Ramsey*, No. 1:02-cv-2283 (D.D.C. May 10, 2015), at 7-8.

² https://www.acludc.org/sites/default/files/field_documents/097-1_horse_v_d.c._settlement_agreement_filed.pdf.

³ https://www.acludc.org/sites/default/files/field_documents/182-1_lafayette_sq_blmdc_signed_settlement_with_policy_attachment.pdf.

individuals within a crowd is used to justify widespread detentions or uses of force against demonstrators whose activities are constitutionally protected.

Finally, I'd like to encourage you (or your respective legal advisors) to be in touch with me directly. There may be disputes about the First Amendment or related rights that we can work together to resolve through discussion rather than litigation. Additionally, if in the course of your planning, you would find useful a briefing or training for senior staff about any of the First Amendment or D.C. law principles referenced here, I would be glad to arrange that.

Thank you for your attention to these issues. I hope you'll take this opportunity to ensure that your plans regarding any upcoming demonstrations in our Nation's Capital are firmly grounded in respect for the freedom of speech—one of the fundamental rights on which our democracy rests.

Sincerely,



Scott Michelman
Legal Director
ACLU of the District of Columbia

Cc (via email):

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