

January 14, 2020

The Honorable Ralph Northam
Governor, Commonwealth of Virginia
1111 East Broad Street
Richmond, VA 23219

Col. Anthony S. Pike, Chief
Division of Capitol Police
P.O. Box 1138
Richmond, VA 23218

Col. Gary T. Settle, Superintendent
Virginia State Police
P.O. Box 27472
Richmond, VA 23261



RE: Capitol Square Demonstrations Scheduled for January 20, 2020

701 E. Franklin Street
Suite 1412
(804) 644-8022
Richmond VA 23219
acluva.org

Dear Governor Northam, Colonel Pike, and Colonel Settle:

I am writing on behalf of the American Civil Liberties Union of Virginia (“ACLU-VA”) and its 24,000 members across the Commonwealth. We understand that, on Monday, January 20th, multiple groups plan to converge on Capitol Square to advocate for gun rights and gun reforms, among other causes. Recent reports indicate that many of those attending may be planning to carry firearms openly or concealed while on Capitol grounds or in the Pocahontas Building or the Capitol.

All people have a right to petition the government and to do so in collective activity protected by the First Amendment to the U.S. Constitution and Article 1, Section 12 of the Constitution of Virginia. At the same time, however, the government has the right, indeed the duty, to take action to protect public safety so long as its actions are reasonable, based on evidence, and not based on the view point of the people involved. As we have said previously, the ACLU-VA believes that, using neutral criteria and appropriate procedures, the state may implement a policy barring weapons at events and demonstrations on state property, including Capitol Square, without violating the First or Second Amendment rights of participants. There is no constitutional prohibition against barring weapons at such events held on Capitol Square grounds. Because the demonstrations are on state property, there is nothing in the law that prevents you from creating a secure no-weapons zone, thereby barring those who attend Monday’s demonstrations from bringing guns or other weapons to scheduled events.

Capitol Square is a traditional public forum, where the right to free speech is at its apex and the government’s power to restrict speech is at its lowest. In a



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traditional public forum, the state may only impose reasonable time, place, and manner restrictions that are not based on the content of speech and leave open ample alternative channels of communication. *See Ward v. Rock Against Racism*, 491 U.S. 781 (1989). A restriction on carrying weapons at demonstrations is a reasonable time, place, and manner rule that does not raise constitutional concerns under the First or Second Amendments to the U.S. Constitution. Although the right to free speech and the right to bear arms are essential individual liberties, the U.S. Supreme Court has held that government may take action that limits these liberties where there is evidence of a threat to public safety. *See Cox v. Louisiana* 379 U.S. 559 (1965) (upholding a ban on picketing near a courthouse); *Chaplinsky v. New Hampshire*, 315 U.S. 568 (1942) (upholding a ban on speech that is likely to lead to violence). *See also District of Columbia v. Heller*, 554 U.S. 570, 626-27 (2008) (recognizing “longstanding” restrictions on the right to bear arms).

The ACLU-VA has previously articulated its position on this issue in other forums. For example, in response to the emergency regulation proposed in 1VAC30-150-30(C)(1), prohibiting weapons at demonstrations at the Commonwealth’s Lee Monument in Richmond, the ACLU-VA filed comments with the Department of General Services, explaining that the regulation of weapons at events held on the Lee Monument grounds is not objectionable under the First or Second Amendment. *See* <http://bit.ly/Letter2GovVA1> and <http://bit.ly/Letter2GovVA2>. We also prepared a white paper entitled [Permitting Demonstrations – Guiding Principles](#) that addresses demonstrations and protests generally and explains why the state is not subject to the same restrictions, currently imposed by statute on local governments in Virginia, that prohibit any local regulation of firearms.

In conclusion, the ACLU-VA believes that the governor, Capitol Police, and Virginia State Police are well within their existing statutory and constitutional authority to prohibit people participating in demonstrations on state property, including Capitol Square grounds, from carrying weapons. We welcome an opportunity to consult with you during your planning for the upcoming events. Thank you for your immediate attention to this matter.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Claire G. Gastañaga".

Claire G. Gastañaga
Executive Director