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December 23, 2014

Via Email (and to be hand delivered at Westford Board of Selectmen Meeting)
Scott Hazelton, Chair, shazelton@westfordma.gov
Kelly J. Ross, Vice Chair, kross@westfordma.gov
Andrea Peraner-Sweet, Clerk, asweet@westfordma.gov
Jim Sullivan, Board Member, jsullivan@westfordma.gov
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Board of Selectmen
Town Hall
55 Main Street
Westford, MA 01886

Re: Permit Application for Black Lives Matter Rally on Town Common

Dear Members of the Board:

The ACLU of Massachusetts has been informed that the Westford police department is requesting that the Board of Selectmen impose a fee of \$200-\$400 for a two-man police detail to be paid by Margaleet Katzenblickstein, the organizer of a Black Lives Matter rally, in order to receive a permit to hold a peaceful rally on January 5, 2015 on the Town Common. Imposing this financial burden on peaceful political assembly and speech in a traditional public forum for expression would violate the First Amendment. On behalf of Margaleet Katzenblickstein, we urge you to issue the permit for this rally without imposing these fees.

Town Common is a traditional public forum for expression.

There are several reasons why courts have found that imposing police fees on peaceful political gatherings in places like the town common is unconstitutional and these reasons apply here. First, the Town Common is a "traditional forum for expression." In such public space, the protection for the exercise of First Amendment rights is very high. *Perry Education Assn. v. Perry Local Educators' Assn.*, 460 U.S. 37, 45 (1983). Assuming that a permit requirement can be imposed at all on a modest-sized gathering to protest very recent events, permit schemes "may not delegate overly broad licensing discretion to a government official" and must not be based on the content of the message or the views to be expressed. *Forsyth County v. Nationalist Movement*, 505 U.S. 123, 130-131 (1992).

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Westford lacks narrow, objective and definite standards to determine the imposition of police fees.

To prevent the risk of arbitrary requirements like police charges being imposed, “a law subjecting the exercise of First Amendment freedoms to the prior restraint of a license’ must contain narrow, objective and definite standards to guide the licensing authority.” No such standards exist to guide the decision of this Board on imposing police detail fees on this rally.

We are not aware of any rules, bylaws or policies that set forth such standards for assessing police fees on those who wish to rally on the Town Common. Indeed, the two policies on use of the Westford Common are entirely silent on this issue.

Reactions to content or views expressed.

Without such narrow, reasonable and definite standards, town officials may end up exercising their discretion to impose charges for police services based on how controversial they deem the views to be expressed or whether those who disagree are likely to appear as well. In this context, “the danger of censorship and of abridgment of our precious First Amendment freedoms is too great’ to be permitted.” *Forsyth County, supra*, at 131. Here, there is no evidence that all similar-sized gatherings on the Common, even those held after dark and during the winter, have been assessed police detail charges. Rather, the police department request for a required detail may be influenced by impermissible factors, even if unstated, such as reactions by listeners or police officers’ own feelings about the nature of the rally. Charges may not be imposed on a group that wishes to gather on the Common because others may be offended or disagree with the views expected to be expressed. “Speech cannot be financially burdened, any more than it can be punished or banned, simply because it might offend...” *Id.* at 134-135.

No objective justification for requiring a police detail.

Here, requiring protesters to pay for a two-man police detail imposes more of a burden on political expression than needed to achieve the town's goal for public safety. The rally will be located on the Common and will not involve protesters marching through the town. No road closures or traffic control will be needed in Westford. Based on the number of protesters who attended the Black Lives Matter demonstration in Lexington, MA earlier this month, the organizer estimates 50-200 participants will attend the rally in Westford. Ample parking for this number of people is within walking distance of the Common. If people need assistance returning to their vehicles, perhaps the Board can discuss with the organizer the possibility of designating monitors to assist.

Imposing financial conditions on a Black Lives Matter demonstration by requiring peaceful protesters to pay money in order to exercise their First Amendment rights to free speech and peaceful assembly offends our Constitution. The ACLU of Massachusetts urges the Board of

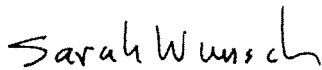
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Re: police detail charges for rally

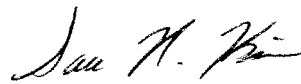
Selectmen to reject the Westford police department's request to require the rally organizer to pay for a police detail in order to peacefully demonstrate on the Town Common on January 5, 2015.

Sara Kominers will be present and available to answer any questions you may have at the Board of Selectmen Meeting tonight. If time allows, Sara Kominers requests a few minutes to address the Members of the Board on this matter.

Sincerely,



Sarah Wunsch
Deputy Legal Director



Sara Kominers
Legal Intern

cc by email: Margaleet (Leetka) Katzenblickstein
Nina Katz
Ellen Harde, Town Moderator
Jodi Ross, Town Manager, jross@westfordma.gov
Matt Hanson, Project/Procurement Specialist, mhanson@westfordma.gov