

November 19, 2020

The Honorable Ralph S. Northam
Governor
Commonwealth of Virginia
Post Office Box 1475
Richmond, VA 23218-1475
c/o clark.mercer@governor.virginia.gov

The Honorable L. Louise Lucas
Post Office Box 700
Portsmouth, VA 23705-0700
district18@senate.virginia.gov

The Honorable Roslyn C. Tyler
25359 Blue Star Highway
Jarratt, VA 23867
DelRTyler@house.virginia.gov

Dear Governor Northam, Senator Lucas, and Delegate Tyler:

In compliance with §23.1-401.1(D) of the Code of Virginia, this report assembles in a consolidated document William & Mary's:

1. Policies regarding speech that is constitutionally protected under the First Amendment to the United States Constitution and the process to report incidents of disruption of such constitutionally protected speech (see attachment);
2. Certification of notification to employees of these policies; and
3. Copies of any complaints filed in a court of law since December 1, 2019, for alleged violation of the First Amendment of to the United States Constitution.

On behalf of the university, I certify that William & Mary notified all employees who are responsible for discipline or education of enrolled students of the existence of polices and rights articulated in the Student Handbook. This occurs annually through the Provost's "Essential Matters" communication, most recently distributed by email on September 30, 2020. A form to Report Disruption of Constitutionally Protected Speech is available to members of the William & Mary community, as well as unaffiliated individuals. This form is hyperlinked to the centralized website (www.wm.edu/report) , which is provided to all employees and students in back to school communications form the Provost and Vice President for Student Affairs, respectively, in fall 2020. A Free Expression on Campus webpage is maintained to provide a central location for policies relevant to free speech, materials about the policies and regulations, and the process to report incidents involving disruption of constitutionally protected speech.

I further certify that one complaint was filed against William & Mary since December 1, 2019 to initiate a lawsuit against the institution or any employee of the institution in his/her official capacity for an alleged

violation of the First Amendment to the United States Constitution. The suit was filed against a William & Mary employee on June 26, 2020 in the circuit court for Williamsburg/James City County and includes an allegation of a violation of the First Amendment. The complaint was never served and it was settled by an agreement between the parties.

William & Mary takes seriously our responsibility to uphold the constitutional freedoms provided under the First Amendment. “We engage diverse perspectives and seek wisdom in bridging differences,” in the words of the university’s recently updated Vision, Mission, Values statement affirmed by the Board of Visitors in November 2019, as we “cultivate creative thinkers, principled leaders, and compassionate global citizens equipped for lives of meaning and distinction.”

Sincerely,

A handwritten signature in black ink, appearing to read 'K.A. Rowe', with a long horizontal flourish extending to the right.

Katherine A. Rowe
President

Attachments

- A. William & Mary Policies Regarding Constitutionally Protected Speech
- B. Lawsuit filed June 26, 2020

Attachment: William & Mary Policies Regarding Constitutionally Protected Speech

In compliance with §23.1-401.1(B) of the Code of Virginia, William & Mary includes (1) in the Student Handbook, (2) on the website, and (3) in student orientation programs policies regarding speech that is constitutionally protected under the First Amendment to the United States Constitution and the process to report incidents of disruption of such constitutionally protected speech.

1. W&M Student Handbook

The Student Handbook section of Student Rights and Responsibilities, Section II.A. guarantees students' basic rights of freedom of expression and belief, freedom of association and peaceful assembly. All new students are informed of these policies, rights and processes in the orientation session prior to the beginning of the fall and spring semester. All students receive an annual "Fall Semester Announcements" email communication from the Vice President for Student Affairs that states:

FREE SPEECH & USE OF CAMPUS FACILITIES

William & Mary is committed to creating an environment in which all members of the community and invited guests are encouraged to speak freely and express themselves on university property. Such a commitment to free expression is essential to fostering open discourse, argumentation, speaking, listening, learning and exploration of ideas.

More information about university policies concerning free speech can be found on our website, along with relevant links to the Student Handbook and the Use of Campus Facilities policies which apply to the scheduling and conduct of campus events and activities, e.g. meetings and other group activities of student organizations; speeches, performances, and other events by outside groups invited by student organizations; demonstrations, rallies, vigils, and other group free speech exercises; and distributions of literature such as leafleting and pamphleting. For assistance in scheduling and planning your activities, please contact the Scheduling Office in the Sadler Center.

2. W&M Website

A dedicated webpage on the university's website, Free Expression on Campus, also compiles the materials on free speech in a central location.

- Policies & Regulations Relevant to Free Speech
 - [Use of Campus Facilities for University Purposes Policy](#)

- [Use of Campus Facilities for Non-University Purposes Policy](#)
- [Posting on Campus Policy](#)
- [Chalking Policy](#)

➤ Materials Relevant to Protected Rights & Responsibilities

- [Faculty Handbook](#)

Section I. A. Statement of Rights & Responsibilities ensures that students, faculty and administrators shall enjoy all rights, privileges and immunities guaranteed to every citizen of the United States and the Commonwealth of Virginia.

1. Among the basic rights are freedom of expression and belief, freedom of association and peaceful assembly, and freedom from personal force and violence, threats of violence and personal abuse.

Section III.A. Academic Freedom and Professional Ethics safeguards a faculty member's ability to "encourage free discussion, inquiry, and expression" in the course of teaching and learning. Additionally, "(F)aculty members are also entitled to their political rights and should be free from institution censorship or discipline for exercising them".

- [Student Handbook – Rights and Responsibilities](#)

Section II. Rights, Privileges and Immunities states in part that the members of the university community, as individuals, shall enjoy all rights, privileges, and immunities guaranteed every citizen of the United States and the commonwealth of Virginia, including:

A. Basic Rights: Among the basic rights are freedom of expression and belief, freedom of association and peaceful assembly, and freedom from personal force and violence, threats of violence and personal abuse.

C.2. Right to Organize: The right to hold public meetings, to invite speakers of his/her own choosing to campus, to post notices, to engage in peaceful, orderly demonstrations within reasonably and impartially applied rules (see Use of Campus Facilities Policy above)

Section III. A. Rights and Responsibilities of Citizenship articulates in part that students have the right to:

3. "discuss freely, inquire and express opinions inside the classroom"
6. "hear and study unpopular and controversial views on intellectual and public issues"
7. "expect that information about his/her views, beliefs and political associations which an instructor acquires in the course of his/her work as a teacher, advisor or counselor of the student be held in confidence."

- Process for Reporting Disruption of Constitutionally Protected Speech

Online [Report Form](#) for community members or invited guests

3. *Student Orientation Program*

- Tribe Values Opening Presentation by the Dean of Students Office to the entire new student body includes information about and affirmation of students' rights free expression and belief, freedom of association and peaceful assembly. The Use of Campus Facilities policies and Posting and Chalking policies are highlighted as resources for more information.

VIRGINIA:

**IN THE CIRCUIT COURT FOR
JAMES CITY COUNTY/WILLIAMSBURG CITY**

**PAUL CARSON,
Plaintiff,**

v.

Civil Case No. _____

**DONALD BUTLER, in his individual capacity.
Defendant,**

Serve at:

**William & Mary Police Department
201 Ukrop Way
Williamsburg, VA 23187-8795**

COMPLAINT

Comes now the Plaintiff Paul Carson, by counsel, and for this complaint against Donald Butler, in his individual capacity, states as follows:

1. This is a suit brought pursuant to 42 U.S.C. § 1983, for a violation of Paul Carson's First Amendment rights, by Major Donald Butler of the William & Mary Police Department.
2. Paul Carson is a citizen of the United States and of the Commonwealth of Virginia, and a resident of the City of Williamsburg.
3. At all times relevant to this Complaint, Donald Butler was employed as a Major with the College of William & Mary Police Department in the City of Williamsburg, acting under color of law.
4. The Omohundro Institute of Early American History and Culture is an institute dedicated to historical scholarship. It is based on the campus of William & Mary, with approximately thirty staff members, including editors, administrators, fellows, and apprentices.
5. On Valentine's Day of 2018, Paul Carson exercised his First Amendment rights by sending, through third-party delivery service, flowers and a card to the residence of a woman that

happened to be employed with the Omohundro Institute. He had previously had mutual and friendly correspondences with this woman. As a result of this gesture, by letters dated March 1, 2018 and March 5, 2018, signed by Deb Cheesebro, the Associate Vice President of Public Safety and Chief of Police for the College of William & Mary, Carson was banned from the lands, buildings, or premises of the College of William & Mary through July 1, 2018, except as specifically authorized. This ban was implemented pursuant to Virginia Code § 18.2-119, under the explicit threat of arrest and criminal charges for trespassing.

6. Without any further incident or justification, by letter date July 1, 2018, but dated as “served” on June 26, 2018, Major Butler issued a letter extending the ban through at least April 18, 2019. A copy of this letter is attached as Exhibit A. The letter states in part as follows:

You are further advised that if you fail to heed this warning during this time, you will be in violation of Section 18.2-119, Code of Virginia, and you may be arrested and charged with trespassing.

. . . . Specifically this prohibition includes any contacts with the staff of the Omohundra Institute of Early American History and Culture for any reason, including donations.

7. By virtue of this language in this letter, prohibiting “any contacts with the staff of the Omohundra Institute of Early American History and Culture for any reason,” under color of criminal law, namely Section 18.2-119 (prohibiting trespass after having been forbidden),¹

¹ § 18.2-119. Trespass after having been forbidden to do so; penalties.

If any person without authority of law goes upon or remains upon the lands, buildings or premises of another, or any portion or area thereof, after having been forbidden to do so, either orally or in writing, by the owner, lessee, custodian, or the agent of any such person, or other person lawfully in charge thereof, or after having been forbidden to do so by a sign or signs posted by or at the direction of such persons or the agent of any such person or by the holder of any easement or other right-of-way authorized by the instrument creating such interest to post such signs on such lands, structures, premises or portion or area thereof at a place or places where it or they may be reasonably seen, or if any person, whether he is the owner, tenant or otherwise entitled to the use of such land, building or premises, goes upon, or remains upon such land, building or premises after having been prohibited from doing so by a court of competent jurisdiction by an order issued pursuant to §§ 16.1-253, 16.1-253.1, 16.1-253.4, 16.1-278.2 through 16.1-278.6, 16.1-278.8, 16.1-278.14, 16.1-278.15, 16.1-279.1, 19.2-152.8, 19.2-152.9 or § 19.2-152.10 or an ex parte order issued pursuant to § 20-103, and after having been served with such order, he

Butler retaliated against Carson for Carson's previous exercise of his First Amendment rights. Further, Butler purported to prohibit, under the state trespass laws, Carson's future contacts "for any reason" with an entire class of people, without limiting this to contacts that occur through Carson's physical presence on lands controlled by William & Mary. This therefore both unlawful retaliation for prior First Amendment activity, and an overbroad and unreasonable restraint on the future exercise of First Amendment rights.

8. A reasonable officer in the position of the defendant would know that Code § 18.2-119 does not permit property owners or their agents to ban personal contacts or communications, but permits property owners or their agents to ban, to a limited extent, third parties from entering onto certain real estate. See *Hall v. Commonwealth*, 188 Va. 72, 49 S.E.2d 369 (1948) and the cases cited therein, as well as the plain language of the statute. The statute therefore does not authorize Butler, the William & Mary Police Department, or William & Mary College, to ban Carson from contacts with staff of the Omohundro Institute, when they occurred without Carson being present on lands belonging to William & Mary. Indeed, this statute cannot even prohibit such contacts that occur while Carson is on the public thoroughfares of the College. *Johnson v. Commonwealth*, 212 Va. 579, 186 S.E.2d 53 (1972); *Miller v. Commonwealth*, 10 Va. App. 472, 393 S.E.2d 431 (1990); *Artis v. Commonwealth*, 2014 Va. App. LEXIS 323 (Sept. 23, 2014)
9. A reasonable officer would know that it would violate the First Amendment for the police officer to impose a prohibition, under criminal trespass law no less, on "any contacts . . . for any reason" with a certain class of people. It is overly broad, and it is not a reasonable time, place, or manner restriction. It is akin to judicial protective order issued without due process.

shall be guilty of a Class 1 misdemeanor. This section shall not be construed to affect in any way the provisions of §§ 18.2-132 through 18.2-136.

10. This retaliatory threat to arrest Paul Carson for trespass if he has “any contacts with the staff of the Omohundra Institute of Early American History and Culture for any reason” would deter a similarly situated person of ordinary firmness in the exercise of his First Amendment rights. Specifically, Paul Carson is a historian in Williamsburg, a city of only approximately 15,000. He has been involved for many years in events and organizations that promote local and early American history. He is also involved in other community and religious groups in the Williamsburg area. Incidental contact with staff of the Omohundra Institute, off the premises of William & Mary, was practically unavoidable. He was reasonably concerned, however, based on the language of the ban and the circumstances, that criminal charges would be instituted against him for contacts—whether chance or intentional—with staff of the Omohundra Institute occurring while he was off the premises of William & Mary. Though he might ultimately prevail in the criminal proceeding, the fear of criminal charges deterred him, and would deter a person of ordinary firmness, from engaging in personal, professional, community, and social events that could bring him into contact with members of the staff of the Omohundra Institute. Notably, Carson and has no criminal history and has no experience with the criminal justice system. The prohibition on contact with approximately 30 people in similar circles, under color of criminal law, in such a small community, would reasonably deter such a person from engaging in some protected acts of association, communication, and expression.
11. While the scope of the ban has been replaced by letter dated February 10, 2020, with a new ban that no longer purports to prohibit such contacts, the purported ban on contacts with staff of the Omohundro Institute that was in place from June/July 2018 to February 2020 deterred Carson in the exercise of his First Amendment rights. For instance, as a contributor to the Omohundro Institute, Mr. Carson was permitted to attend various seminars and

events of the Omohundro Institute that were to take place outside of the grounds controlled by William & Mary, but Mr. Carson declined to participate in these events for fear that it would be construed as a violation of the ban on contacts. Further, the prohibition on contacts with “any contacts with the staff of the Omohundra Institute of Early American History and Culture for any reason” caused him fear and anxiety that deterred his participation in social, professional, and religious activities, from fear that incidental contacts with staff of the Omohundra Institute would be construed as a violation of the ban, subjecting him to criminal prosecution.

12. The conduct of the defendant violated Carson’s First Amendment rights, as made applicable to the states by incorporation through the Fourteenth Amendment, and made actionable pursuant to 42 U.S.C. § 1983.
13. A police officer’s use of a statute that prohibits trespassing as an instrument to prohibit “*any* contacts . . . for any reason” between a citizen and a class of people shows an evil motive or intent, or else reckless or callous indifference to the federally protected rights of Mr. Carson.
14. This Court has subject matter jurisdiction pursuant to Va. Code § 17.1-513, as the amount in controversy exceeds \$4,500.
15. This Court has personal jurisdiction over the Defendants pursuant to Va. Code § 8.01-328.1(A)(3).
16. Venue is proper in this Court pursuant to Va. Code § 8.01-262 (1),(3), and (4).
17. An award of compensatory damages, punitive damages, costs, and attorney fees pursuant to 42 U.S.C. § 1983 and § 1988 is appropriate.

Wherefore, the Plaintiff respectfully requests judgment against the Defendant, in his individual capacity, in the amount of \$30,000 in compensatory and punitive damages, as well as costs and attorney fees pursuant to 42 U.S.C. § 1983 and § 1988.

TRIAL BY JURY DEMANDED.

Respectfully requested,

Paul Carson

By:  _____

Counsel

Andrew T. Bodoh, Esq. (VSB 80143)

andrew.bodoh@robertslaw.org

THOMAS H. ROBERTS & ASSOCIATES, P.C.

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Richmond, Virginia 23219

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Counsel for Plaintiff



The College of
WILLIAM & MARY

POLICE DEPARTMENT
P.O. BOX 8795
Williamsburg, Virginia 23187-8795
(757) 221-4596 24 Hours
Fax (757) 221-1153 • TDD (757) 221-1154

July 01, 2018

Paul Carson
209 Woodmere Drive, Unit C
Williamsburg, VA 23185

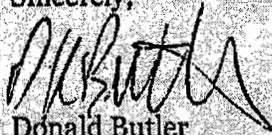
Dear Mr. Carson:

I am informing you of my decision to *extend* your current Trespass Warning, which shall remain in effect until **April 18, 2019**. At that time you may request that this order be rescinded. You are forbidden to go upon the lands, buildings, or premises of the College of William and Mary without specific permission from my designee or me. This is to include any and all property leased or controlled by the College of William and Mary.

You are further advised that if you fail to heed this warning during this time, you will be in violation of Section 18.2-119, Code of Virginia, and you may be arrested and charged with trespassing.

We understand that you are under a prohibition with Colonial Williamsburg until this same date. This action is a result of information previously received and discussed with you that your contacts and conduct are disruptive to our community. Specifically this prohibition includes any contacts with the staff of the Omohundro Institute of Early American History and Culture for any reason, including donations. Should you require clarification concerning this warning, you may contact me at 221-4596.

Sincerely,


Donald Butler
Major, WMPD

Respondent Signature: _____

Date: _____

Served By: Sgt L. Taylor

Date: 6/26/18

Exhibit
A