

June 15, 2023

Town Council of Warrenton

P. O. Box 341

Warrenton, VA 20188

Warrenton Town Council,

As representatives of the six sponsoring organizations of the Black Lives Matter Vigil for Action (“Vigil”), we are writing to appeal the decision of the Town to relocate the Vigil from the Courthouse Square to Eva Walker Memorial Park (“Park”).

We want to be at the Courthouse Square (“Square”) for two main reasons: 1) the issues we raise at our Vigil and explain on our website (blmvigilforaction.org) are critically important to achieve these goals from the Declaration of Independence- “life, liberty and the pursuit of happiness,” for all people, including African-Americans, and 2) the Square is unique in its combination of visibility, safety, and symbolism as the central public square for town and county residents.

On May 11, 2023, Scott Christian received a phone call from Chief Carter informing him that the Vigil was being moved permanently from the Square. In the nearly four weeks since we were informed of that unilateral decision, we have been confused and confounded by inconsistent messaging and a lack of collaboration with the Town. This runs counter to the cooperation that had characterized the past three years, which involved several meetings to discuss issues with Town officials, which even included the counter-protesters on two occasions.

This appeal has two sections. The first is a narrative of our interactions with Town officials, and the second is an explication of the constitutional issues which underlie our appeal.

NARRATIVE OF OUR INTERACTIONS WITH THE TOWN

Last summer when the Council was finalizing the new Special Permit Ordinance, we will always remember the public meeting with flowers, representing Ukraine and its fight for liberty, displayed at each of the council member’s places on the dais. As a group the council members spoke of their commitment to democracy and to the First Amendment right to free speech. In that spirit the Council decided not to charge any group for a permit to gather for political expression. Many citizens who spoke that night addressed the practical and symbolic importance of being in the Square, which is where most planned and spontaneous free speech gatherings are held. It is surrounded by nearly all the important government institutions in our county—the courts, the Town government, the Sheriff’s Department just blocks away, and soon the County will inhabit the bank buildings behind.

In the ten months following the Council's passing of the ordinance, we did not hear a single word from any Town official about the need to change our overall behavior on Saturday mornings or about any issues related to traffic safety. Our behavior on Saturday mornings has earned us a deserved reputation as a peaceful, law-abiding gathering.

In the initial May 11 conversation, Chief Carter's focus was that he felt he could not keep the Vigil participants safe. He stated that because of local and national events and issues, he was worried that a person would drive a car into our gathering. Following that reasoning, he told Christian that the Vigil participants must stand behind the concrete rail fence at the Park for our safety.

Additionally, Chief Carter said that the counter-protesters would not be allowed to gather in the greater Square area either. However, Chief Carter said that decisions about other groups using the Square for gatherings would be determined on a case-by-case basis in terms of the likelihood that they would attract violent behavior. No data or specific information about potential threats that would be used by Chief Carter to make this determination was shared with Christian.

In that same May 11 conversation, Chief Carter stated that a local businessman had submitted a special permit application for a tribute to first responders for seven Saturdays from 9 am- Noon beginning May 13. This application was received one day before the Vigil's renewal request for another seven Saturdays, so Chief Carter said the ordinance stipulated this businessman would have the Square for their event. Chief Carter also said that this application did not affect his decision to move us permanently from the Square; that it was just coincidental that this application happened about the same time. Interestingly, we were told at a later meeting that the local businessman has no intention of hosting a single tribute to first responders, so the Square will remain reserved but empty for the seven Saturdays.

On May 13, we began holding our Vigil at the Park, and no counter-protesters were there. Presumably they felt that their stated request made publicly at numerous Council meetings over the past three years to move us off the Square had been achieved. Many Vigil participants complained that at the Park it was difficult to stand on the hill behind the concrete fence, there was less traffic than at the Square, motorists could not see their signs very well, and it was difficult to engage the area's few pedestrians without blocking the sidewalk.

On Sunday, May 14, Scott Christian spoke with a member of the Warrenton Police Department's Community Action Team, who said that the Chief had held a zoom meeting on the previous Friday. In that meeting the person said the Chief talked at length about traffic safety, which surprised Christian, since that was barely discussed in his May 11 conversation with the Chief.

On May 17 Christian submitted an appeal to the Town Manager of the decision to move the Vigil from the Square. In this letter he expressed consternation that the Vigil had been moved since there had been no accidents during the nearly three years of the Vigil being in the Square. Additionally, he

questioned the constitutionality of forbidding one free speech group from using the traditional public square, while other another group could use it.

On May 22 the six of us met with Acting Town Manager Tommy Cureton, Chief Carter, and Town Attorney Martin Crim. At this meeting there was no discussion of the danger to us posed by a car driving into our midst; the concerns voiced by the Town officials were about traffic safety. We learned there has been no formal traffic study of the Courthouse intersection. In Christian's May 17 appeal letter, he made three suggestions about traffic safety: 1) replace a "Yield" sign with a "Stop" sign, 2) remove one parking space on Main St. to increase visibility of the intersection, and 3) return to the use of barricades to keep the counter-protesters off the sidewalk and their signs further away from the street. None of these were apparently even considered by the Town. The only traffic-related incident cited by the Town was a reference to former Chief Kochis being struck lightly by a car in 2022 as he crossed an intersection, which did not prompt any action by the Town at that time. However, in recent months the Town has installed all-way stop signs at three other intersections. At the conclusion of this meeting, Acting Town Manager Tommy Cureton rejected our appeal.

EXPLICATION OF THE CONSTITUTIONAL ISSUES WHICH UNDERLIE OUR APPEAL

In *Grayned v. City of Rockford* (1972), the U.S. Supreme Court determined, "The crucial question is whether the manner of expression is basically incompatible with the normal activity of a particular place at a particular time." And, in *Ward v. Rock Against Racism* (1989), the Court held that time, place, or manner restrictions must (i) Be content-neutral. (ii) Be narrowly tailored. (iii) Serve a significant governmental interest. (iv) Leave open ample alternative channels for communication. We contend that the Vigil's relocation was not neutral, that a significant government interest did not suddenly appear after nearly three years, and the Park's lack of visibility and safety issues constitute an indefensible violation of the standard established in these and other cases.

Consider the optics of what the Town of Warrenton has done.

Having peacefully demonstrated on the Square for nearly three years, the Vigil was told that, because of "safety issues," it would forever be relocated from Warrenton's defacto "Free Speech Zone" to an area within the Park with dramatically inferior visibility and ordered to stand on a potentially hazardous hillside.

Although initially told the relocation was due to an increased possibility of intentional harm directed toward Vigil participants, we now understand that the public safety justification for the Vigil's permanent relocation was not based on studies or statistics but on largely subjective traffic and pedestrian safety concerns. Given the absence of documentation, how can a "significant governmental interest" be shown?

At our May 22 meeting, Tommy Cureton refused to entertain any present or future conversations that might lead to remediations to resolve the Town's alleged "public safety" issues that might be less disruptive to the Vigil's participant's exercise of their First Amendment rights. Given this refusal, how does the Town propose to satisfy the Court's "narrowly tailored" standard?

The Vigil was supplanted by an applicant who proposed to use the Square for a tribute to first responders. We acknowledge that the issuance of permits on a first-come basis is entirely permissible. However, what if the applicant, instead of leaving the Square empty (thus revealing their subterfuge to

deny the Vigil's access), had actually used the area as their permit had allowed? Apart from speech content, how would the Town's "safety issues" have possibly differed?

And, parenthetically, please recall that Vigil participants have donated over \$3,400 to Special Olympics Virginia in honor of the Warrenton Police Department. Also, when an applicant has not used the reserved space, should not the Town's ordinance be amended to require applicants to show cause why their remaining dates not be revoked?

Individuals exercising their personal "First Amendment rights" have been told they could not hold their individually owned "Black Lives Matter" signs in the otherwise empty Square during those time periods that the applicant, in apparent bad faith, had reserved. In contrast, we understand that signs with different content might, on a case-by-case basis, be OK. Again, how will you answer when asked why the Vigil's content was singled out for exclusion from Warrenton's historic and traditional public space?

In summary, we contend that the Town's determinations and directives have been arbitrary and capricious. They were not content-neutral. They were not narrowly tailored. They failed to serve a governmental interest demonstrable through any study or statistics. And they fell abysmally short of providing the Vigil and its participants with "ample alternative channels for communication." It should be incontrovertible that the Park lacks appropriate visibility. It lacks opportunities for engaging with pedestrians. And, it is dangerous for many Vigil participants who are now forced to stand on unlevel ground.

In conclusion, rather than allow this matter to devolve further, we call upon the Town to enter into discussions with representatives of the Vigil. The Town's goal in these conversations should be to design appropriate traffic signaling and reasonable remediation to the Square (and the adjacent sidewalks, streets, and crosswalks) that preserves the First Amendment rights of the Vigil (and other groups that may wish access to the Square) while addressing the Town's safety concerns.

Respectfully submitted by these six representatives of the sponsoring organizations,

Scott Christian, representative of the Virginia Interfaith Center for Public Policy

Joe Washington, representative of the Fauquier Branch of the NAACP

Karen White, representative of the Afro-American Historical Association of Fauquier County

Jon Trevathan, representative of the Piedmont Race Amity Project

Barbara Amster, representative of the League of Women Voters of Prince William and Fauquier

Mary Haak, representative of Coming to the Table