



AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

Texas

December 17, 2020

Gainesville Police Department Chief Kevin Phillips
201 Santa Fe Street
Gainesville, TX 76240

Sent via e-mail: kphillips@gvps.org

Re: Protester's Rights in Gainesville, TX

Dear Mr. Phillips,

We write to express our concern about government officials unconstitutionally chilling people's freedom of speech and retaliating against peaceful protesters in Cooke County. We ask that you facilitate, rather than hinder, protesters' exercise of their First Amendment rights and that you de-escalate situations in which one side engages in true threats of violence against specific individuals. The FBI Dallas Field Office has warned of post-election violence from extremist groups in North Texas.¹ This threat of violence is especially salient for protesters in Gainesville who have drawn attention to the city's long history of racial injustice. Members of Progressive Rights Organizers (PRO) Gainesville have experienced harassment, intimidation, and threats of violence since they started protesting this June, including experiencing death threats and a counter-protester pointing a gun at them with his finger on the trigger.

In light of these threats and the FBI Field Office's assessment, it is imperative you uphold your obligations to protect all Gainesville residents equally while also fully respecting every Gainesville resident's First Amendment freedom to protest.

Local Authorities Appear to be Retaliating Against PRO Gainesville, Chilling Their First Amendment Right to Protest, and Discriminating Against the Point of View They Express

¹ Federal Bureau of Investigation, "Boogaloo Adherents Likely Increasing Anti-Government Violent Rhetoric and Activities, Increasing Domestic Violent Extremist Threat in the FBI Dallas Area of Responsibility (Sep. 29, 2020) at 1-5, www.scribd.com/document/478202738/Boogaloo-Adherents-Likely-Increasing-Anti-Government-Violent-Rhetoric-and-Activities (noting that Boogaloo adherents are committed to "a large scale violent conflict with the government culminating in a second Civil War through violence or criminal activity.")

This June, PRO Gainesville began holding protests at the Cooke County Courthouse to call for the eradication of systemic racism and the removal of confederate statues.² In response to these protests, PRO Gainesville experienced intimidation and retaliation that have caused PRO Gainesville members to fear for their safety. Heavily armed counter-protesters have been closely monitoring PRO Gainesville's activities and have gathered in opposition at almost every protest. While counter-protesters have yelled and shouted threats at PRO Gainesville, they have also pointed guns at them, with at least one person pointing a semi-automatic rifle at PRO Gainesville organizers with his finger on the trigger.

But instead of de-escalating these volatile situations, the Gainesville Police Department appears to have retaliated against PRO Gainesville organizers by issuing warrants for their arrest on September 3, 2020, charging them with obstructing a highway or other passageway.

It also seems that local authorities have taken actions to chill the free exercise of First Amendment rights of peaceful protesters. Organizers of PRO Gainesville have been told by Police Chief Kevin Phillips that they must apply for permits to march in the sidewalks and streets, even if they are not obstructing traffic. When these permit applications are submitted in advance of protests, they have routinely been denied, and details of the protest plans have led to counter-protests against PRO Gainesville at the same time and place. It also appears that counter-protesters have not been subject to the same permitting requirements, monitoring and surveillance, and criminal charges as members of PRO Gainesville.

On September 4, 2020, the Cooke County Commissioners Court issued an ordinance barring people from displaying signs on county property without prior authorization from the Commissioners Court. This ordinance was used to block access to the Cooke County Courthouse lawn specifically on days that PRO Gainesville filed permits to protest racial injustice. However, groups other than PRO Gainesville have been able to routinely access the Courthouse lawn. This suggests that local authorities, by barring the expression of one particular viewpoint on the Courthouse lawn, are unconstitutionally discriminating against the speech of PRO because of their point of view.

The U.S. and Texas Constitutions forbid government officials from chilling protesters' freedom of speech, retaliating against them, or discriminating against speech based on viewpoint, and require that people be allowed to peacefully protest in public places. We urge you to fully respect people's constitutional rights and to apply local, state, and federal laws fairly and equally—irrespective of protesters' views—and to avoid using the coercive criminal law system to retaliate against protesters. Given the heightened risk of violence during the next month highlighted by the FBI, it is imperative that you ensure the safety of every Gainesville and Cooke County resident, including members of PRO Gainesville, and actively seek to de-escalate situations where guns are used as threats. Protesters and counter-protesters both have the right to protest and express their points of view. However, pointing a gun at someone, especially with one's finger on the trigger, is not protected speech and can lead to deadly violence. *Watts v.*

² In particular, PRO Gainesville calls for the removal of a Confederate monument that stands on the lawn of the Cooke County. The monument has an inscription that ends, "No nation rose so white and fair, None fell so free of crime," referring to the Confederacy.

United States, 394 U.S. 705 (1969). It is imperative that you equally and fairly apply the law, ensure that violence has no place in Gainesville, and protect every person's right to peacefully protest.

We welcome the opportunity to discuss these issues with you further.

Sincerely,

/s/

A handwritten signature in cursive script that reads "Brian Klosterboer".

Brian Klosterboer
Savannah Kumar
Julia Montiel

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