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for the
COUNTY OF ALBEMARLE

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July 23, 2013

By Electronic Mail

Board of Supervisors
Albemarle County
401 McIntire Road, 4th Floor
Charlottesville, VA 22902

RE: Public Safety Checkpoints

Dear Members of the Board of Supervisors:

There has been some discussion in the community recently regarding the administration of traffic safety checkpoints by the Albemarle County Police Department. Unfortunately, a mistaken view of the law with regards to checkpoints and a misunderstanding of the policy rationales behind them have slanted that discussion. I am writing to set the matter straight.

The Supreme Court of Virginia has been unequivocal in its holdings on the constitutionality of traffic safety and sobriety checkpoints. So long as the plan for the checkpoint is explicit in its directions, employs neutral criteria in selecting the sites, and prevents the officers at the checkpoint from employing unbridled discretion, it does not infringe on individual rights under the Fourth Amendment.ⁱ The checkpoint must have a valid purpose, which can include enforcing safety requirementsⁱⁱ and inspecting vehicles for violations in the equipment, inspection, or the driver's license.ⁱⁱⁱ

Public safety on the roadways is not simply a matter of stopping drunk drivers or speeders. Unlicensed drivers accounted for more than 21,000 traffic fatalities between 2007 and 2009.^{iv} Unlicensed drivers, and those whose licenses have been revoked or suspended, are more than twice as likely to cause a traffic fatality as properly licensed drivers.^v Taking unlicensed

drivers off the roads of Albemarle County does more than just enforce the laws of the Commonwealth—it protects the lives and property of innocent citizens.

I have worked closely with the Albemarle County Police Department to ensure that the County's traffic checkpoints are in line with both Virginia and federal law. When I took office, I reviewed the checkpoint policies and procedures with the Police Department. The Police Department selects its checkpoint sites by analyzing traffic data, including accident and arrest information, and citizen complaints. The Chief of Police must personally sign off on each potential site and no approved site may be used until thirty (30) days after approval. Each checkpoint is operated under strict procedural guidelines, staffed by officers who have been specially trained for the task, and supervised by a senior officer who does not participate in the actual stopping of vehicles. At every step along the way—from selecting potential sites to the administration of the stop—Albemarle County Police Department procedures are squarely within the letter and spirit of the law. My office periodically reviews the policies and procedures to assure that they remain consistent with the law and I make a point personally to observe checkpoints in operation on a periodic basis. Finally, during the time I have been in Office there has been no successful challenge to the operation of a checkpoint.

With respect to the checkpoint which took place on July 11, 2013 and, specifically, the interaction of police with the individual who has voiced a complaint, much has been omitted from the facts which have been presented to the public by others in other formats. Without going into an exhaustive explanation of the facts in this letter, it should be noted that the individual personally knew two officers on scene who attempted to reason with him. When he exited his car he told officers to arrest him despite the fact that he had been informed that he was not under arrest. When the officers did not do so, the individual lay down in the travel lane, obstructing traffic, creating a safety concern, and resulting in other drivers waiting until he got up. Because the object of the checkpoint was, in part, to assure that drivers were licensed and the individual's identity was known to the officers present, they determined that he was a licensed driver and advised that he was free to go. Unfortunately, instead of proceeding away from the area after getting back in his car, the individual pulled over again and became confrontational with another officer. Although the individual obstructed the officers in the performance of their duties and endangered his own safety and that of others

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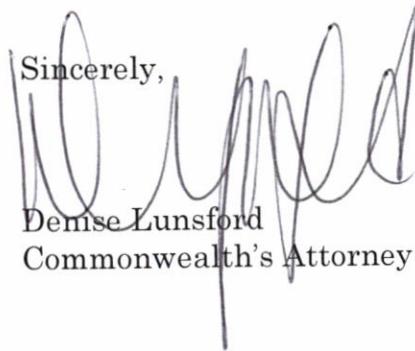
on the scene, the officers acted with restraint and he was neither arrested nor summonsed.

The manner in which citizens and law enforcement interact is a serious topic worthy of serious discussion. It raises questions of the balance we each expect between safety and privacy. But a serious discussion such as this one should not be misled by distorted rhetoric. The opinions of one or two individuals are not a substitute for opinions of the Supreme Court of the United States or the Supreme Court of Virginia. It is important that settled law be given the weight it is due.

In short, the Albemarle County Police Department is acting within the bounds of the Constitutions of the United States and the Commonwealth of Virginia in conducting checkpoints. The policy related to the checkpoints has been repeatedly reviewed by my office and subjected to the scrutiny of local courts. I respectfully suggest that the issue of such checkpoints be left to the Police Department and that this Board not unnecessarily, needlessly, and inappropriately involve itself in the enforcement of criminal and traffic laws.

My office is available for any further assistance or information you desire.

Sincerely,

A handwritten signature in black ink, appearing to read "Denise Lunsford". The signature is stylized with large loops and a long vertical line extending downwards from the end.

Denise Lunsford
Commonwealth's Attorney

cc: Colonel Steve Sellers, Albemarle County Police Department
John W. Whitehead, President, The Rutherford Institute

ⁱ See *Desposito v. Com.*, 60 Va. App. 252, 257; see also *Burns v. Com.*, 261 Va. 307, 322 (2001); *Simmons v. Com.*, 238 Va. 200, 203 (1989); *Lowe v. Com.*, 230 Va. 346, 349 (1985).

ⁱⁱ *Wright v. Com.*, 52 Va. App. 263, 268 (2008).

ⁱⁱⁱ *Palmer v. Com.*, 36 Va. App. 169, 172 (2001); see also *Delaware v. Prouse*, 440 U.S. 648, 663 (1979) (suggesting that a roadblock set up with the purpose of verifying licenses and registrations would be constitutional).

^{iv} AAA Foundation for Traffic Safety, "Unlicensed to Kill," November 2011.

^v Brar, Sukhvir S., "Estimation of Fatal Crashes for Suspended/Revoked and Unlicensed Drivers In California," California Department of Motor Vehicles, September 2012.