

**VIRGINIA: IN THE CIRCUIT COURT
FOR THE CITY OF RICHMOND**

**VIRGINIA STUDENT POWER
NETWORK, NOAH SMITH, AND
DIAMANTE PATTERSON,**

Plaintiffs,

v.

**CITY OF RICHMOND, RICHMOND
POLICE DEPARTMENT, WILLIAM
“JODY” BLACKWELL, in his official
capacity as Interim Chief of Richmond
Police Department, VIRGINIA
DEPARTMENT OF STATE POLICE, and
GARY T. SETTLE, in his official capacity
as Superintendent of Virginia Department
of State Police,**

Defendants.

SERVE:

Office of the City Attorney
City of Richmond
900 E. Broad Street, Suite 400
Richmond, VA 23219

David M. Mitchell
General Counsel
Richmond Police Department
200 W. Grace Street
Richmond, VA 23220

Office of the Attorney General
202 N. Ninth Street
Richmond, VA 23219

Case No. _____

PROPOSED ORDER

TEMPORARY INJUNCTION ORDER

This cause came on June 26, 2020, to be heard upon Plaintiffs' Emergency Application For a Temporary Injunction; upon the appearance of Plaintiff by counsel, and was argued by counsel.

Upon consideration thereof, and applying the legal standards set forth in Sections 8.01-620 and 8.01-622 of the Code of Virginia, 1950, as amended, the Court finds as follows with respect to Plaintiffs' claims under the Virginia Constitution:

That Plaintiffs have shown a likelihood of success on the merits of their claim that Defendants violated their rights under Article I, Section 12 of the Virginia State Constitution;

That there is a likelihood of irreparable harm if injunctive relief as requested were not granted;

That it is in the public interest to issue an injunction limiting Defendants' use of force to disperse protests, as well as Defendants' invocation of the "unlawful assembly" statute;

That little harm will be suffered by Defendants by the issuance of this temporary injunction.

The Court does therefore ADJUDGE, ORDER, and DECREE as to Defendants, and each of them:

1. That the use of chemical munitions, irritants, explosives, stun weapons, and physical-impact weapons against peaceful protestors be enjoined. And that such force may be used, pursuant to an order of unlawful assembly or riot, *if and only if*:
 - a. Officers are faced with a clear and present danger of imminent violent conduct, by three or more people, to themselves or other identifiable persons;
 - b. Protestors are committing or clearly threatening acts of violence that cannot be controlled by singling out and removing individual perpetrators;
 - c. Efforts to subdue a clear and present danger of violent conduct through the use of alternative crowd control measures have been exhausted and were ineffective; and

- d. That the Chief of the Richmond Police Department, the Superintendent of the Virginia Department of State Police, or their specified designee, has determined that the use of such chemical agents is the only reasonable alternative to safeguard persons' bodies and lives.
2. That clear, loud, continuous, and provable orders are issued before any munitions are threatened and demonstrators are given a reasonable opportunity to disperse.
3. That exits must be made available for voluntary dispersal of a crowd before any munitions or other force are used, and that the intentional containment or corralling of protestors be enjoined.
4. That any such dispersal orders be reasonably limited in temporal and geographic scope.
5. That VA Code § 18.2-406 may not be used to designate gatherings of three or more people as an unlawful assembly, unless it is shown that: the persons assembled shared the common intent to advance some lawful or unlawful purpose through "the commission of an act or acts of unlawful force or violence"; "the assembly actually tends to inspire persons of ordinary courage with well-grounded fear of serious and immediate breaches of public safety, peace or order"; *and*, "there is a clear and present danger of violent conduct."
6. That any violation of this Order while in full force and effect will be a Contempt of Court and punishable by both criminal and civil contempt powers of this Court upon a proper showing.
7. That either party may seek further injunctive or other relief while this cause is pending, and the Court reserves the right to review and to modify, as required, the rulings set forth herein at any time upon its own motion or upon the motion of any party.
8. That given the circumstances of this case, it is unnecessary for Plaintiff to post an injunction bond, and as such, that an injunction bond be, and hereby is, dispensed with.

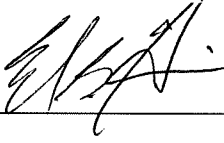
And this case is continued.

ENTER: _____

Judge

DATE: _____

I ask for this



Eden B. Heilman (VSB No. 93554)