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February 23, 2007

The Honorable Bob McDonnell
Office of the Attorney General
900 East Main Street
Richmond, VA 23219

Via: Fax: 804-786-1991 and email: mail@oag.state.va.us

Dear Mr. McDonnell:

We are writing on behalf of the ANSWER Coalition (Act Now to Stop War & End Racism) regarding its efforts to engage in a First Amendment protected demonstration on March 17, 2007. Organizers are conducting a March on the Pentagon that will cross in part through roadway within the Virginia Department of Transportation's jurisdiction.

The demonstration will proceed as a march from Constitution Gardens adjacent to the Vietnam Memorial in Washington, D.C. over Memorial Bridge on Route 27 to the North Parking Lot of the Pentagon. This route will involve approximately 100 yards of roadway that is under VDOT's jurisdiction when Route 27 passes from National Park Service jurisdiction.

Anti-war activists are being illegally obstructed in their efforts to proceed with necessary organizing of this activity, are having time and resources needlessly consumed and are suffering delay that drives up the expense of the demonstration. It is not only their rights but the rights of the tens of thousands of people who are coming from across the country to protest that are being violated and this must stop.

It is apparent that VDOT possesses no constitutionally permissible permitting scheme, indeed it possesses no permitting system at all that can be lawfully applicable to those who wish to engage in free speech activities. Decisions are made on no basis or any basis, with unbridled discretion of the licensing authority, including to discriminate against free speech that reflects dissent from and condemnation of U.S. war policies and calls for the impeachment of George W. Bush.

As you know, VDOT bent over backwards to accommodate use of the same roadway when access was sought for a pro-war Pentagon-supported "Freedom Walk" in 2005 and 2006.

In contrast, anti-war organizers are told they must agree, in writing, in advance to pay an unspecified and unknown amount of user fees that may be many tens of thousands of dollars. They have been told they must hire at their expense an engineering firm to create VDOT's traffic control plan. They have been told they must secure at their own cost, a \$1 million insurance policy in case somebody slips while marching on the 100 yards of Route 27 at issue.

Attempting to cope with these remarkable demands, including the demand that they create a professionally engineered traffic plan for VDOT, organizers requested that VDOT provide copies of permits and applications issued for other activities that had similar pedestrian use of Route 27 including the annual Army Ten Miler, the Marine Corp Marathon and the Pentagon's "Freedom Walk." These requests for public information were denied, as were requests that VDOT disclose any guidelines, criteria or uniform standards to which applicants must conform in order to secure permit approval. The latter appears not to exist.

VDOT has refused to attend the interagency meetings that have taken place with the other law enforcement agencies with whom the organizers are coordinating this activity including the National Park Service, the Park Police, Pentagon, the DC Metropolitan Police Department and the Arlington County Police.

Last week VDOT agreed for the first time to meet to discuss these matters and we held that meeting yesterday at VDOT's offices. When organizers, again, asked for copies of the other government supported applications and permits that had been deemed sufficient for approval, VDOT representatives refused, saying that it would constitute "plagiarism." When organizers, yet again, asked for disclosure of what the requirements were that had to be satisfied, they were told by VDOT representatives that that was like asking "my professor to write papers for me and then give me an A." VDOT, which was apparently holding a relevant permit or permits at the table during the meeting, eventually allowed organizers to see one page that related to route closures.

The public roadway of Route 27 is unquestionably a quintessential public forum. The ANSWER Coalition has sought to use the roadway to engage in First Amendment activity. Virginia has promulgated no constitutionally permissible uniform standards or guidelines for this use and is imposing *ad hoc* obligations and engaging in wholly discretionary decision-making in response to this request. As you know, this process and its current application is unconstitutional. Shuttlesworth v. City of Birmingham, 89 S.Ct. 935 (1969); Forsyth County v. Nationalist Movement, 505 U.S. 123, 130 (1992); City of Lakewood v. Plain Dealer Publishing Co., 486 U.S. 750, 769 -70 (1988).

The demonstration is now just three weeks away and this matter needs to be resolved immediately. By this letter, we are seeking to resolve this matter without bringing

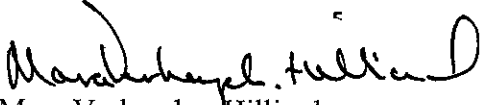
litigation in Federal District Court, however time is running short and no further delay can be countenanced. We met with representatives of VDOT yesterday in the hope that the matter would be handled appropriately at this time, but were informed by VDOT that they would not or could not resolve the matter absent intervention from the Virginia Attorney General's office.

When advised that this process was plainly in violation of the First Amendment to the U.S. Constitution, VDOT representatives actually expressed uncertainty that the Constitution applies in Virginia.

We expect the state of Virginia to uphold and respect the constitutional rights of all. It is evident that VDOT must establish a constitutionally permissible, content-neutral, non-discretionary permitting scheme or guidelines that will be applied without discrimination to future applicants. In the immediate, we require issuance of any permit necessary for the use by the ANSWER Coalition of the requested portion of Route 27 leading into the North Parking Lot of the Pentagon on March 17.

We look forward to your prompt response. Please feel free to contact this office with any questions.

Sincerely,



Mara Verheyden-Hilliard