

THE RUTHERFORD INSTITUTE

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JOHN W. WHITEHEAD
Founder and President

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June 11, 2020

The Honorable Donald J. Trump
1600 Pennsylvania Ave.
Washington, DC 20006

Re: *Violations of First Amendment – St. John’s Episcopal Church*

Dear Mr. President:

No one is above the law.

For nearly 40 years, The Rutherford Institute¹ has worked hard to ensure that all government officials, including the president of the United States, are bound by the chains of the Constitution, which were forged by America’s founders in order to guard against tyranny in the form of government overreach and abuse of power.

The Constitution is particularly specific about what the government *cannot* do when it comes to religion: the government *cannot* establish a religion (or favor one religion over another); and it *cannot* prevent the citizenry from freely exercising their religious beliefs. Additionally, the government may not suppress free speech. It may not seize private property without probable cause. And it may not forcefully occupy private property without a court order or the express consent of the property owner.

You and your agents violated every one of these prohibitions on June 1, 2020.²

In a flagrant abuse of its authority and in clear violation of the law, the U.S. government mounted an armed invasion of private church property; physically assaulted church officials acting in their official capacity; forcefully ejected church officials from church property, thereby preventing them from exercising their right to religious

¹ The Rutherford Institute is a non-profit civil liberties organization that provides free legal representation to individuals whose civil rights are threatened and/or infringed.

² Dalton Bennett, Sarah Cahlan, Aaron C. Davis and Joyce Lee, “The crackdown before Trump’s photo op,” *The Washington Post* (June 8, 2020), <https://www.washingtonpost.com/investigations/2020/06/08/timeline-trump-church-photo-op/>.

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freedom; and used military forces to temporarily seize church property in order to allow a government agent to usurp a religious pulpit for his own political purposes.³

These actions of June 1, 2020, when government agents stormed the grounds of St. John's Episcopal Church across from Lafayette Park, seized church property, and installed you on church grounds for political purposes did not just breach the wall of separation between church and state: they brazenly leveled that wall in defiance of more than 200 years of jurisprudence. Such unlawful acts of aggression will not be tolerated.

Your actions of June 1 and those carried out under the direction of Attorney General William Barr did violence to the rights of freedom of speech, freedom of assembly and freedom of religion enshrined in the U.S. Constitution and to the persons exercising those rights at and near St. John's Church. It was also a betrayal of your oath of office to "preserve, protect and defend the Constitution of the United States."

Mr. President, if you hope to lead this nation, you must do better.

The Events of June 1, 2020 at St. John's Episcopal Church

On June 1, 2020, protesters denouncing racism and police violence were lawfully and peacefully exercising their First Amendment rights on H Street between Lafayette Park and St. John's Episcopal Church when a phalanx of law enforcement officers from various agencies, including the Secret Service, National Guard and Bureau of Prisons, all in riot gear, rushed forward and forced protesters off of H Street and adjacent areas in order to clear a path for you and your entourage to walk to the church for a photo op, unannounced and without an invitation from the church.

The assembled "riot squad" employed chemical irritants ("tear gas") and projectile pellet bombs to disperse the protesters, not to mention mounted officers.⁴ However, this overwhelming military-style assault upon citizens exercising their lawful right to freedom of assembly and speech did not only affect those on public streets and sidewalks, but also extended to persons of faith assembled on the property of St. John's Church. Members of the church and the area Episcopalian community had gathered on the church patio to support the peaceful protesters by providing medical assistance, water and food to those who needed it and to be a place of respite and peace. They were there, on private church property, carrying out their church duties by providing aid and comfort to their fellow citizens.

³ Michael Bonner, "'I'm shaken': Priest forcibly removed by police from D.C. church for President Trump photo opportunity shares experience," *MassLive* (June 2, 2020), <https://www.masslive.com/news/2020/06/im-shaken-priest-forcibly-removed-by-police-from-dc-church-for-president-trump-photo-opportunity-shares-experience.html>.

⁴ Dalton Bennett, Sarah Cahlan, Aaron C. Davis and Joyce Lee, "The crackdown before Trump's photo op," *The Washington Post* (June 8, 2020), <https://www.washingtonpost.com/investigations/2020/06/08/timeline-trump-church-photo-op/>.

That place of peace and respite at St. John's Church was shattered by the actions of law enforcement officers acting on orders from the Executive Branch. As the officers deployed tear gas and projectile bombs, church members on the St. John's Church patio were engulfed in persons fleeing the oncoming police. As described by one member of the Episcopalian community who was providing aid:

The police in their riot gear were literally walking onto the St. John's, Lafayette Square patio with these metal shields, pushing people off the patio and driving them back. People were running at us as the police advanced toward us from the other side of the patio. . . . We were literally DRIVEN OFF of the St. John's, Lafayette Square patio with tear gas and concussion grenades and police in full riot gear.⁵

The June 1 Actions of the Executive Branch Violated the First Amendment

When federal officers under the direction of the Executive Branch—specifically yourself as the Chief Executive and Attorney General William Barr—drove church officiants and members off the St. John's Church property, preventing them from providing the care and assistance compelled by their religious beliefs, the church and its members' First Amendment rights to freely exercise their religion were violated.

The right to free exercise of religion is not limited to formal religious rituals or worship services, but extends to all acts motivated by religious beliefs and tenets. Thus, courts have ruled that the provision of care to the needy or sanctuary to the homeless by a church to be constitutionally-protected conduct.⁶ Indeed, the concept of acts of charity as an essential part of religious worship is a central tenet of all major religions.⁷

Your administration's decisions and the resulting law enforcement action clearing the area north of Lafayette Park caused St. John's Church and its members to be deprived of their religious liberty by preventing them from providing aid and comfort to demonstrators. The patio of St. John's Church had been holy ground that day, providing a place of peace and respite where persons of faith could provide assistance for those in need. Your decision to seize church property for political purposes turned that holy ground into a battleground, ousting those who were doing the work of the church and violating their First Amendment rights.⁸

⁵ Michael Bonner, "'I'm shaken': Priest forcibly removed by police from D.C. church for President Trump photo opportunity shares experience," *MassLive* (June 2, 2020), <https://www.masslive.com/news/2020/06/im-shaken-priest-forcibly-removed-by-police-from-dc-church-for-president-trump-photo-opportunity-shares-experience.html>.

⁶ *Fifth Ave. Presbyterian Church v. City of New York*, 293 F.3d 570 (2d Cir. 2002).

⁷ *Western Presbyterian Church v. Zoning Bd. of Adjustment*, 862 F. Supp. 538, 544 (D.D.C. 1994).

⁸ Michael Bonner, "'I'm shaken': Priest forcibly removed by police from D.C. church for President Trump photo opportunity shares experience," *MassLive* (June 2, 2020),

The forced removal of church members from St. John's Church property also violated the Constitution's guarantee to freedom of speech. The church had established the aid station on its patio as a tangible expression of its support for the protesters and their call for an end to systemic racism in law enforcement and elsewhere. By offering aid and respite, the church manifested its commitment "to working and advocating for racial justice and reconciliation, celebrating the great cultural diversity of our communities, ending gun violence, and being a place of welcome for immigrants and refugees."⁹

The Constitutional protection of speech does not begin and end with the spoken or written word. The Constitution guarantees persons the right to engage not only in pure speech, but in expressive conduct as well. Acts with expressive meaning also fall within the protection of the First Amendment. Thus, the act of providing food for the hungry when performed by an organization that advocates ending hunger and poverty constitutes expression protected by the free speech clause of the First Amendment.¹⁰

St. John's Church and the persons gathered there to support and assist protesters were unquestionably exercising their right to freedom of speech. Just as surely, their forced removal from the property in order to co-opt the symbols of the church and install a government official in front of the church in order to deliver a political message violated the First Amendment. No justification existed for forcing the church members off the patio; they had engaged in no provocative action and were peacefully present on the patio for church purposes.

The June 1 Actions of the Executive Branch Violated the Fourth Amendment

Federal officers also violated the Fourth Amendment rights of church members when they forced them off the St. John's Church patio. That amendment forbids unreasonable seizures, and a seizure occurs whenever government agents apply physical force to restrain someone and limit their freedom of movement.¹¹ A church member present at the patio described how she and others who were there to provide aid and support protesters were driven off the patio by the officers, who eventually pushed them a full city block away from the church.¹²

<https://www.masslive.com/news/2020/06/im-shaken-priest-forcibly-removed-by-police-from-dc-church-for-president-trump-photo-opportunity-shares-experience.html>

⁹ Episcopal Diocese of Washington, Justice and Advocacy, <https://www.edow.org/ministries-and-networks/justice-advocacy>

¹⁰ *Fort Lauderdale Food Not Bombs v. City of Fort Lauderdale*, 901 F.3d 1235, 1240 (11th Cir. 2018).

¹¹ *California v. Hodari D.*, 499 U.S. 621, 624 (1991).

¹² Michael Bonner, "'I'm shaken': Priest forcibly removed by police from D.C. church for President Trump photo opportunity shares experience," MassLive (June 2, 2020), <https://www.masslive.com/news/2020/06/im-shaken-priest-forcibly-removed-by-police-from-dc-church-for-president-trump-photo-opportunity-shares-experience.html>.

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Furthermore, this seizure was clearly unreasonable. The federal officers had no basis for believing church members on the property had committed any crime or were posing a threat to officers or the public. The government's desire to use the church as a backdrop for its political messaging does not trump the rights of the church. The church members were there at the invitation of the church and in order to carry out the mission of the church, and so clearly had a right superior to yours to be present on the patio.

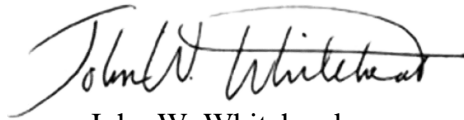
The Government Must Rectify This Breach

The Constitution exists to provide protection for "we the people" when the government oversteps its limits and abuses its powers. Clearly, it is your duty to see that those protections are not violated by government agents.

Mr. President, you are treading in dangerous territory. This way lies tyranny.

For the sake of the nation, for the sanctity of the Constitution, and for the integrity of our republic, I strongly advise you to repudiate your unlawful actions of June 1, 2020, lest you open yourself up to further legal action.

For freedom,

A handwritten signature in black ink, reading "John W. Whitehead". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

John W. Whitehead
President

cc: William Barr, U.S. Attorney General
Don Crane, Diocese of Washington, Episcopal Church House