



VIA ELECTRONIC MAIL

May 27, 2021

AMERICAN CIVIL
LIBERTIES UNION
FOUNDATION OF
MARYLAND

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Patrick W. Thomas, Esq.
Acting Talbot County Attorney
Courthouse, South Wing
11 N. Washington Street
Easton, Maryland 21601

Dear Mr. Thomas:

I write on behalf of the Move the Monument Coalition, its organizers, and the American Civil Liberties Union of Maryland, concerning Talbot County's efforts to impose unconstitutional restrictions on permitting for the Juneteenth Move the Monument event. Specifically, we object to the provisions of the permitting application and its addendum demanding a million-dollar insurance certification and an extraordinary personal indemnity requirement, neither of which has been previously imposed by County officials on other courthouse events. (See attached.)

As you know, the County's retention of a Confederate monument on its courthouse lawn has drawn enormous public opposition,¹ and now is being challenged as government-endorsed racism in federal court litigation in which both the ACLU and Kevin Karpinski, who is copied here, are counsel. *Maryland Office of the Public Defender et al. v. Talbot County, Md.*, Civil Action No. 21-ELH-1088. The Juneteenth event calling for removal of Talbot's Confederate monument and timed to coincide with the annual celebration of emancipation, is one to which Coalition organizers have devoted enormous time and effort, and for which the County

¹ Most recently, as highlighted in today's *Star Democrat*, numerous community members took the stage during the public comments segment of this week's County Council meeting, making heartfelt and compelling pleas to the County, with speaker after speaker -- including Councilman Corey Pack, as well as the father of Councilman Pete Leshner -- urging immediate removal of the monument. Notably, not a single person spoke in defense of the County's racially discriminatory retention of the monument. See "It will all be for naught if we don't remove that statue," *Star Democrat*, May 26, 2021. Video of the Talbot County Meeting is available at https://www.youtube.com/watch?v=C_vey88UNI, with the public comments segment starting at the 1:28 minute mark.

granted preliminary approval in March – without any financial conditions. After the lawsuit was filed on May 5, however, and organizers submitted an amended application altering the time of the Juneteenth event from morning to mid-day, the County responded by appending improper insurance and indemnity conditions upon its approval of the updated application. We see this latest salvo as part and parcel of the County’s continuing efforts – here sanctioned by the County Office of Law – to stifle criticism about the County’s continuing display of a monument to white supremacy on its courthouse lawn.

As set forth below, it has been clearly established for decades that it is unconstitutional and improper for the government to impose conditions, such as those proposed by Talbot County here, requiring people engaging in peaceable assembly in public forums to pay the costs of police protection or to secure insurance liability coverage for the event. We ask you to immediately withdraw your proposal and grant the Move the Monument Coalition an event permit free of financial and liability conditions, in accordance with the Constitution.

I. The Juneteenth March and Courthouse Event are Protected by the First Amendment, and Cannot Be Subjected to Unnecessary Financial Restrictions

There can be no doubt that the Juneteenth Move the Monument event at a traditional public forum such as the Talbot County Courthouse is fully protected by the First Amendment right to peaceably assemble. That much has been clear since at least 1939, when the Supreme Court held that a local ordinance giving the chief of police unfettered discretion to deny permission to hold meetings in public places or buildings violated the First Amendment. *Hague v. Committee for Indus. Org.*, 307 U.S. 496, 516 - 518 (1939). Moreover, it is equally well-settled that imposing an insurance requirement on the exercise of First Amendment rights is itself a violation of the First Amendment. The U.S. District Court in Maryland so held *more than 30 years ago*, when Judge Walter Black barred the Town of Thurmont from conditioning approval for demonstration permits on the applicants’ agreement to indemnify the town and obtain insurance for the event. *Invisible Empire of the Knights of the Ku Klux Klan v. Town of Thurmont*, 700 F. Supp. 281, 285-86 (D. Md. 1988) The *Thurmont* decision is consistent with those of courts around the country confronting the same issue. *E.g. Eastern Connecticut Citizens Action Group v. Powers*, 723 F.2d 1050, 1056-57 (2d Cir. 1983) (invalidating insurance requirement on its face and as applied to group holding parade as not narrowly tailored to compelling purpose); *Pritchard v. Mackie*, 811 F.Supp. 665 (S.D. Fla. 1993) (same). The decisions in these cases are also consistent with the U.S. Supreme Court’s decision in *Forsyth County v. Nationalist Movement*, 505 U.S. 123 (1992), which held that a town ordinance which allowed the government to vary the permit fee based on the estimated cost of the necessary police services violated the First Amendment (despite a \$1,000 cap) because the cost was inherently content based. The same is true of insurance requirements, because insurers routinely look at the nature of the event in setting the fee. *See also*

Courtemanche v. Gen'l Serv's Admin., 172 F.Supp.2d 251, 268 (D. Mass. 2001) (“The lower courts have generally found mandatory insurance provisions to be unconstitutional prior restraints on speech under various prongs of the *Forsyth County* test.”)

II. Talbot County’s Insurance and Indemnity Requirements Here Serve No Purpose Other Than to Stifle Freedom of Expression on a Matter of Great Public Concern

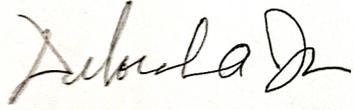
The reasons for this constitutional rule against fees, insurance, and indemnity requirements on peaceful public assemblies are simple: If the government is allowed to burden certain speech it wishes to silence through the imposition of financial obstacles, it would be free to stifle any speech or criticism it does not wish to hear. That, we believe, is exactly the County’s aim. It seems apparent that Talbot County’s insurance requirement serves no necessary purpose, and rather, serves only to deter people from gathering to protest by making assemblies cost-prohibitive. The County doubtless already has insurance to cover its public property, and yet is demanding that Move the Monument event organizers obtain duplicate insurance, as well as personally pledging to indemnify the County, in the event that any damage or costs are incurred in connection with the event, irrespective of whether anyone involved in the Coalition was at fault.

Although these requirements are unlawful, organizers from the Coalition nevertheless tried to meet them. After being informed of the insurance requirement, the organizers made extensive inquiries to try to secure a certificate of insurance, but were told by insurer after insurer that they were out of luck – that no insurance company would provide a certificate of insurance for this event. Thus, by requiring insurance which the County doesn’t actually need and that officials likely know organizers cannot obtain, the County seeks to use the back door to shut down this event, censoring the voices of opposition to the Confederate monument and diminishing the power of the Coalition’s message. We refuse to let that happen.

For these reasons, we ask you to promptly eliminate the insurance requirement and the personal indemnity clause from the Juneteenth Move the Monument permit, so that we need not take further action to address the matter. Additionally, we request that the County permanently eliminate the insurance requirement from its permitting application for future events, so that other community voices are not censored by Talbot County’s discriminatory application of impermissible rules.

Please contact me at your earliest opportunity to discuss this matter. If I do not hear from you by the close of business on Tuesday, June 1, we will assume you are not interested in resolving the matter amicably and pursue other avenues for securing relief.

Sincerely,

A handwritten signature in black ink, appearing to read "Deborah A. Jeon". The signature is written in a cursive style with a large initial "D".

Deborah A. Jeon
Legal Director

cc: Kevin B. Karpinski, Esq.
Daniel Wolff, Esq.