

Congress of the United States
Washington, DC 20515

August 17, 2020

The Honorable Eric S. Dreiband
Assistant Attorney General
Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Ave., N.W.
Washington, DC 20530

Dear Assistant Attorney General Dreiband:

On August 1, 2020, the District of Columbia’s Metropolitan Police Department arrested two individuals affiliated with the Students for Life of America for writing the phrase “Black Pre-Born Lives Matter” in chalk on a public sidewalk.¹ According to news reports, these individuals were later charged with defacing public or private property,² a crime punishable by up to a \$1,000 fine and/or up to 180 days in jail.³ This incident, in light of the District allowing other political messages to appear on public property, raises troubling questions about whether the District is respecting the constitutional rights of individuals in a viewpoint-neutral manner.

The First Amendment to the Constitution guarantees to Americans the rights to free speech and to peacefully assemble.⁴ Although the Supreme Court has held that jurisdictions may restrict certain constitutionally protected activity “in the interest of the public safety, health, welfare or convenience,”⁵ jurisdictions may only regulate the time, place, and manner of First Amendment activity—not the content of the First Amendment activity.⁶ The Supreme Court has ruled repeatedly that government actions that prohibit individual expression based on its content, or that are applied unequally based on the viewpoint expressed, violate the First Amendment.⁷

The District’s prohibition of the “Black Pre-Born Lives Matter” message suggests that the District may have engaged in unconstitutional viewpoint discrimination in light of the District’s allowance for other political messages on public property. While the District reportedly requires permits for certain protest activity like painting a street or sidewalk, the District has not uniformly enforced this requirement.⁸ Notably, the District declined to remove the political message “Defund The Police” painted prominently on 16th Street and located adjacent to the

¹ See Emily Davies, *Two protestors arrested while chalking ‘Black Pre-Born Lives Matter’ on sidewalk*, WASH. POST (Aug. 1, 2020), https://www.washingtonpost.com/local/two-protesters-arrested-for-chalking-black-pre-born-lives-matter-on-sidewalk/2020/08/01/6d966d90-d41f-11ea-9038-af089b63ac21_story.html.

² *Id.*

³ D.C. CODE § 22-3312.01; D.C. CODE § 22-3312.04; D.C. CODE § 22-3571.01.

⁴ U.S. Const. amend. I.

⁵ *Schneider v. State*, 308 U.S. 147, 160 (1939).

⁶ See *Police Department of the City of Chicago v. Mosley*, 408 U.S. 92, 99 (1971).

⁷ See, e.g., *Matal v. Tam*, 582 U.S. ___, 137 S. Ct. 1744 (2017).

⁸ Davies, *supra* note 1.

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government-commissioned “Black Lives Matter” mural in early June.⁹ The District has only recently paved over the “Defund The Police” message, more than two months after it was painted.¹⁰ This decision to allow some political messages to be painted or marked on public property but not others suggests that the District may be discriminating against speakers on the basis of their viewpoints.

Under the leadership of Attorney General William Barr, the Justice Department has prioritized the protection of Americans’ constitutional rights during these unprecedented times.¹¹ Among other responsibilities, the Civil Rights Division is tasked with protecting the constitutional rights of people who interact with state or local law-enforcement entities. To better understand how the Civil Rights Division evaluates and addresses unconstitutional viewpoint discrimination on public property, we ask that you please arrange for a staff-level briefing to our Committees no later than September 1, 2020.

If you have any questions regarding this request, please ask your staff to contact Judiciary Committee staff at (202) 225-6906 or Oversight Committee staff at (202) 225-5074. Thank you for your attention to this matter.

Sincerely,



Jim Jordan
Ranking Member
Committee on the Judiciary



James Comer
Ranking Member
Committee on Oversight and
Reform

⁹ Stephanie Ramirez, *DC won’t remove “Defund The Police” street art next to Black Lives Matter mural*, FOX 5 DC (Jun. 7, 2020), <https://www.fox5dc.com/news/dc-wont-remove-defund-the-police-street-art-next-to-black-lives-matter-mural>.

¹⁰ Frank Miles, *‘Defund the Police’ message in DC mural being repaved*, Foxnews.com (Aug. 12, 2020), <https://www.foxnews.com/us/defund-the-police-mural-dc-being-repaved>.

¹¹ See, e.g., Memorandum from William P. Barr, Attorney General, U.S. Department of Justice, to The Assistant Attorney General for Civil Rights and All United States Attorneys (Apr. 27, 2020), <https://www.justice.gov/opa/page/file/1271456/download>.

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Mike Johnson
Ranking Member
Subcommittee on the Constitution,
Civil Rights and Civil Liberties



Chip Roy
Ranking Member
Subcommittee on Civil
Rights and Civil Liberties

cc: The Honorable Jerrold L. Nadler, Chairman, Committee on the Judiciary

The Honorable Carolyn B. Maloney, Chairwoman, Committee on Oversight and Reform

The Honorable Steve Cohen, Chairman, Subcommittee on the Constitution, Civil Rights and Civil Liberties

The Honorable Jamie Raskin, Chairman, Subcommittee on Civil Rights and Civil Liberties