CLAIRE GASTAÑAGA
EXECUTIVE DIRECTOR

August 12, 2015

Michael Hershman
Chair
Ad Hoc Police Practices Review Commission
Fairfax County
12000 Government Center Pkwy.
Fairfax, VA 22035

Dear Chairman Hershman:

AMERICAN CIVIL
LIBERTIES UNION OF
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We commend the members of the Ad Hoc Police Practices Review Commission (Commission) for their work to ensure that the Fairfax County Police Department (FCPD) encourages a culture of public trust in law enforcement. As you know, this trust is key to ensuring a safe community.

Ensuring public trust in the FCPD will require a shift in its culture and mindset and the reassertion of civilian authority over the policies that guide policing in the County. At the foundation of this shift are the concepts and values of constitutional policing and respect for the sanctity of human life -- concepts and values that should be in the DNA of all law enforcement personnel. As such, these concepts and values should provide the foundation for the Commission's recommendations and should guide all policies and procedures adopted and implemented by the Fairfax County Board of Supervisors (County Board) and the FCPD.

We have included the full text of our recommendations to the Commission in an enclosure to this letter. We believe these recommendations, if implemented, will help achieve the needed shift in the FCPD's culture and mindset. These recommendations, many of which outline policies that the County Board should adopt as elected officials responsible to the residents they serve, include:

- *Understanding Policing in a Democratic Society* – Law enforcement are the guardians of the U.S. Constitution, thus the FCPD should initiate department-wide training to ensure its personnel understand the mission and role of police in protecting constitutional rights and the sanctity of human life, prioritizing de-escalation, and ensuring a duty to intervene if another officer uses excessive force.
- *Emphasizing Mental Health Training* – Embracing the sanctity of human life requires law enforcement to differentiate between a person who needs mental health care and a criminal offender who poses a serious threat. Training FCPD officers to distinguish between criminal offenders and individuals in need of mental health services will also better ensure that the Fairfax County Adult Detention Center does not also serve as a mental health facility.
- *Establishing a Civilian Review Board* – The establishment of a civilian review board with investigatory and discipline authority can be an effective tool for enhancing trust between the FCPD and Fairfax residents. It does so by making the FCPD more transparent and accountable to the people.
- *Funding and Mandating Police Body Worn Cameras* – If, and only if, proper policies and procedures are in place for their use, body cams can be a win-win. They can both

protect the public from police misconduct and protect the police from false allegations of abuse.

- *Ending the War on Drugs* – Drug use is a public health issue, and the Commonwealth, the County Board, and FCPD should implement policies and procedures to deal with it as such. Drug policies must be evidence-based and incorporate prevention, treatment, and public safety elements. The end of the war on drugs should begin with a policing policy that deprioritizes enforcement of marijuana possession and includes County Board advocacy for decriminalization of possession by the Commonwealth.
- *Mandating Data Collection* – To ensure that the FCPD is not engaged in racially biased policing, the County Board should adopt a policy requiring the FCPD to collect, analyze, and publish an annual statistical report covering all FCPD stops, frisks, citations, arrests, and use-of-force incidents.
- *Restricting the Use of SWAT* – The County Board should adopt a policy limiting use of SWAT to scenarios in which there is a likelihood that the situation for which the FCPD deploys a SWAT team presents an imminent threat to the lives of civilians and/or police personnel.
- *Reforming Civil Asset Forfeiture* – Policing should be based on public safety, not supplementing the FCPD's budget. The County Board should determine as a matter of policy that the FCPD should use asset forfeiture only when: 1) a person has been found guilty of a crime; 2) the convicted person is the owner of the property; and 3) the government has proved by clear and convincing evidence that the owner/offender either used the property in the commission of the crime or received the property as a result of the crime.
- *Enhancing Existing Policies, Practices, and Laws Regarding Police-involved Incidents* – Law enforcement should focus on de-escalation techniques and ensure that any use of force tool used is the least severe for the situation at hand, including a recognition that some less-lethal force options are less severe than others are.

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While there is no silver bullet to ensuring a safe and effective police force, with restoration of effective civilian oversight the recommendations we have made will help restore public trust by making the FCPD a model for what policing in a democratic society should look like. We urge their adoption.

Thank you for your time and consideration, and please do not hesitate to contact us if you have any questions or concerns.

Very Truly Yours,

Claire Guthrie Gastañaga
Executive Director

Enclosure
CC: Members of the Ad Hoc Police Practices Review Commission