

Dear Governor McAuliffe and Members of the General Assembly:

This letter's objective is to shed light on an issue that concerns a government agency's abuse of power through intimidation, coercion, discrimination, and the infringement of freedom of Speech and Association on Virginia citizens. It is with confidence that upon review of all the facts that will be presented; a crucial review of the statutes and practices of the Alcoholic Beverage Control (Board) will be scrutinized by your office. As well as informing Virginia businesses that the following letter is not a policy that is supported by Virginia Government.

The following letter was issued on February 6, 2017 by the Department of Alcoholic Beverage Control to all Charlottesville Region 9 on Premises Licensees and other regions throughout Virginia, warning licensed establishments that allowing entry of motorcycle club members into their establishments places them in jeopardy of having their licenses revoked and the possibility of them being penalized under statute 4.1-227. (A copy has been attached for verification and authenticity)

This letter is to advise you there has been an increase of Outlaw Motorcycle Gang (OMG) activity in on premise ABC licensed establishments throughout the Charlottesville ABC Regional Enforcement area

Pursuant to 4.1-225, The Board may suspend or revoke any license other than a brewery license, in which case the Board may impose penalties as provided in 4.1-227, if it has reasonable cause to believe that:

1. The licensee, or if the licensee is a partnership, any general partner thereof, or if the licensee is an association, any member thereof, or a limited partner of 10 percent or more with voting rights, or if the licensee is a corporation, any officer, director, or shareholder owning 10 percent or more of its capital stock, or if the licensee is a limited liability company, any member-manager or any member owning 10 percent or more of the membership interest of the limited liability company:

g. Has maintained the licensed premises in an unsanitary condition, or allowed such premises to become a meeting place or rendezvous for members of a criminal street gang as defined in § 18.2-46.1 or persons of ill repute, or has allowed any form of illegal gambling to take place upon such premises;

p. Has failed to take reasonable measures to prevent (i) the licensed premises, (ii) any premises immediately adjacent to the licensed premises that are owned or leased by the licensee, or (iii) any portion of public property immediately adjacent to the licensed premises from becoming a place where patrons of the establishment commit criminal violations of Article 1 (§ 18.2-30 et seq.), 2 (§ 18.2-38 et seq.), 2.1 (§ 18.2-46.1 et seq.), 2.2 (§ 18.2-46.4 et seq.), 3 (§ 18.2-47 et seq.), 4 (§ 18.2-51 et seq.), 5 (§ 18.2-58 et seq.), 6 (§ 18.2-59 et seq.), or 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2; Article 2 (§ 18.2-266 et seq.) of Chapter 7 of Title 18.2; Article 3 (§ 18.2-344 et seq.) or 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2; or Article 1 (§ 18.2-404 et seq.), 2 (§ 18.2-415), or 3 (§ 18.2-416 et seq.) of Chapter 9 of Title 18.2 and such violations lead to arrests that are so frequent and serious as to reasonably be deemed a continuing threat to the public safety.

The Code of Virginia 18.2-46.1 clearly defines what is considered a Criminal Street Gang and its reference throughout the Virginia ABC Acts codes noted above.

The statements made in the aforementioned letter presents several misinterpretations. The letter begins by giving the impression that all motorcycle clubs are classified as Outlaw Motorcycle Gangs (OMG) as well as ‘criminal street gangs.’ It states that the Board is entitled to penalize Virginia Businesses that do not refuse service to a select/specific class of people.

It was with the Boards characterization of motorcycle clubs that a detailed examination of the definition of Outlaw Motorcycle Gang and criminal street gang is necessary with an emphasis on how every motorcycle club in the state of Virginia could be deemed as such. The Department of Justice defined Outlaw Motorcycle Gangs on May 8, 2015 as;

***Definition of Gangs:** (1) an association of three or more individuals; (2) whose members collectively identify themselves by adopting a group identity which they use to create an atmosphere of fear or intimidation frequently by employing one or more of the following: a common name, slogan, identifying sign, symbol, tattoo or other physical marking, style or color of clothing, hairstyle, hand sign or graffiti; (3) the association's purpose, in part, is to engage in criminal activity and the association uses violence or intimidation to further its criminal objectives; (4) its members engage in criminal activity, or acts of juvenile delinquency that if committed by an adult would be crimes; (5) with the intent to enhance or preserve the association's power, reputation, or economic resources; (6) the association may also possess some of the following characteristics: (a) the members employ rules for joining and operating within the association; (b) the members meet on a recurring basis; (c) the association provides physical protection of its members from other criminals and gangs; (d) the association seeks to exercise control over a particular location or region, or it may simply defend its perceived interests against rivals; or (e) the association has an identifiable structure. (7) this definition is not intended to include traditional organized crime groups such as La Cosa Nostra, groups that fall within the Department's definition of "international organized crime," drug trafficking organizations or terrorist organizations.*

The Virginia Code defines ‘criminal street gangs’ in statute section 18.2-46.1 as;

As used in this article unless the context requires otherwise or it is otherwise provided: "Act of violence" means those felony offenses described in subsection A of § 19.2-297.1. "Criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, (i) which has as one of its primary objectives or activities the commission of one or more criminal activities; (ii) which has an identifiable name or identifying sign or symbol; and (iii) whose members individually or collectively have engaged in the commission of, attempt to commit, conspiracy to commit, or solicitation of two or more predicate criminal acts, at least one of which is an act of violence, provided such acts were not part of a common act or transaction. "Predicate criminal act" means (i) an act of violence; (ii) any violation of § 18.2-31, 18.2-42, 18.2-46.3, 18.2-51, 18.2-51.1, 18.2-51.2, 18.2-51.3, 18.2-51.6, 18.2-52, 18.2-52.1, 18.2-53, 18.2-53.1, 18.2-55, 18.2-56.1, 18.2-57, 18.2-57.2, 18.2-59, 18.2-83, 18.2-89, 18.2-90, 18.2-95, 18.2-108.1, 18.2-121, 18.2-127, 18.2-128, 18.2-137, 18.2-138, 18.2-146, 18.2-147, 18.2-248.01, 18.2-248.03, 18.2-255, 18.2-255.2, 18.2-279, 18.2-282.1, 18.2-286.1, 18.2-287.4, 18.2-289, 18.2-300, 18.2-308.1, 18.2-308.2, 18.2-308.2:01, 18.2-308.4, 18.2-355, 18.2-356, 18.2-357, or 18.2-357.1; (iii) a felony violation of § 18.2-60.3; (iv) a felony violation of § 18.2-248 or of 18.2-248.1 or a conspiracy to commit a felony violation of § 18.2-248 or 18.2-248.1; (v) any violation of a local ordinance adopted pursuant to § 15.2-1812.2; or (vi) any substantially similar offense under the laws of another state or territory of the United States, the District of Columbia, or the United States.

Based on the application of the term Outlaw Motorcycle Gangs within the letter the Board is focusing solely on items (a), (b), and (e) of the Department of Justices' definition. Similarly the Board is solely focusing on item (ii) of the Virginia Code's definition of a criminal street gang. The concept that any group of people that 'employ rules for joining and operating with the association, meet on a recurring basis, have an identifiable structure, and has an identifiable name or identifying sign or symbol' that operate a motorcycle could be classified within these groups appears to be a way to mislead Virginia Businesses.

By omitting the definition of an Outlaw Motorcycle Gang and disregarding the other items in the Virginia Code it opens the opportunity to exploit the lack of knowledge by Virginia businesses. The very definition of Outlaw Motorcycle Gang and the omitted items from the Virginia Code stresses that the association/organization has a primary objective that centers on criminal activity, fear, and intimidation.

Both definitions applied by the Board would make it the responsibility of both the Board and the Virginia Business to determine whether or not the main objective of every motorcycle club that visits the establishment has a primary objective to perform criminal activities as well as use their club symbols to promote fear and intimidation. Additionally it would be the responsibility of both the Board and the Virginia Business to provide evidence for such claims as defining a club as an Outlaw Motorcycle Gang and/or criminal street gang.

Upon examination of several Motorcycle club's mission's statements and also the lack of a declared overall objective by other Motorcycle clubs it would make it unlikely that these organizations could be classified as either an Outlaw Motorcycle Gang or criminal street gang. Several motorcycle clubs mission statements have been provided for review and substantiate of the claim.

Guilty Ones MC: "The purpose of Guilty Ones Motorcycle Club is to offer the residents of Virginia a traditional, respected, and sanctioned brotherhood of riders on both sport bikes and cruisers."

The War Dogs Motorcycle Club respects all Clubs, citizens, and law enforcement agencies that respect us. We seek no enemies. As our Brotherhood grows, we become more capable at accomplishing our goals and mission. It is very simple; improving our Brotherhood is our primary focus!

War Dogs Motorcycle Club is dedicated to developing a Fraternal Brotherhood of men with loyalty, discipline, and character. Our Club is based on the East Coast. A large percentage of our Members are ex-military, but that is not a requirement for Membership.

We believe in giving men a second chance in life as long as they are committed to our Brotherhood and dedicated to our Club's goals and mission. We will judge a man on the character he possesses today, not the mistakes he may of made in the past. However; lack of honesty and loyalty are character flaws we will not tolerate. Our Brotherhood cannot exist without trust! Trust cannot exist without honesty!

Mission Statement: Infidels Motorcycle Club is a veteran formed and based MC for Patriotic Americans and our supporting allies.

Definition of an Infidel: One who doubts or rejects a particular doctrine, system, or principle.

The Infidels MC reject the radical jihadist movement that threatens liberty and freedom around the world. The Infidels MC will support the fight against terrorism as military members, contractors in support of the military, and as patriotic Americans supporting our fighting forces from the homeland.

For those interested in joining our brotherhood or being a supporter, or if you'd like more information regarding the Club you can submit the Contact form from our menu. You will be contacted and advised of the requirements regarding membership and prospecting. We require that you ride American Iron to be a member. We are an independent motorcycle club.

By the Board singling out all Motorcycle clubs and classifying them as 'criminal street gangs' it opens the question as to why other groups by their very limited interpretation of the statute were not included in the letter. The letter and examination of the definition give an impression that the Board is discriminating (*the practice of unfairly treating a person or group of people differently from other people or groups on people*) against Motorcycle clubs.

Based on the FBI's National Gang Threat Assessment, there is a minimum of 97 'gangs' that reside in the state of Virginia of which less than 25% are motorcycle clubs. According to several motorcycle club registries including; Long riders Magazine, VA-Black Motorcycle Clubs VA, Motorcycle Clubs of Virginia, there are more than 200 motorcycle clubs in Virginia made up of First responders, veterans, religious groups, and social groups. This translates to less than 10% of all motorcycle clubs in Virginia are even listed on the FBI's Threat Assessment resulting in thousands of Virginia citizens being denied access to certain business establishments throughout Virginia. To make an assertion that Motorcycle clubs are more predominant, violent, and dangerous to Virginia Business than other possibly classified 'Criminal Street gangs' is questionable given several assessments made by law enforcement professionals. It was stated in Northern Virginia Comprehensive Gang Assessment (2003-2008);

MS-13 is the largest gang in Northern Virginia with an estimated membership of 3,000. MS-13 can be found in all parts of the region, and is the most active gang in the majority of the larger jurisdictions. Four other gangs with a significant regional presence are 18th Street, Southside Locos, Bloods and the Crips, which can be found in all counties, and in many of the towns and cities as well.

Furthermore, by the Board singling out statute section 4.1-225 subsection 1.g opens the question as to why Virginia Businesses are not made aware of statute section 4.1-225 subsection 2.c which would also result penalties and loss of license;

c. Has become a meeting place or rendezvous for illegal gambling, illegal users of narcotics, drunks, prostitutes, pimps, panderers or habitual law violators or has become a place where illegal drugs are regularly used or distributed. The Board may consider the general reputation in the community of such establishment in addition to any other competent evidence in making such determination.

m. Has allowed any obscene literature, pictures or materials upon the licensed premises;

This requires establishments to not only know and deny sale of alcoholic beverages to motorcycle clubs but to also know if the person fits any of the other requirements set by the statute. However these were also not indicated in the letter sent to Virginia establishments.

The lack of full disclosure and the use of intimidation by the Board have resulted in Virginia Businesses preventing a large specific group of Virginia consumers from their businesses. This is evident by the increase of the following signs and policies that businesses have been forced to apply to stay compliant with the Board. Pictures of signs and policies have been attached for verification and authenticity.

“From I Don’t Know Sports Bar and Gill; We Are a Biker Friendly Bar. We just Ask That No MC Colors, Cuts, Or Support Shirts Be Worn In Establishment. This is Also To Be In Compliance [sic] With VA ABC. Everyone Is Welcome Here!! Thank You For Understanding Our Policy and Most All Restaurants In Va Have The Same Policies.”

The understanding that any private business has the right to deny business to any individual has not been ignored, however that is not germane to this situation. It is clear that this restriction is implemented out of fear of not being in compliance with VA ABC and the consequence of losing their license.

It is also concerning that the Board has taken a stance in denying certain Virginia Consumers their constitutional freedoms. Every United States citizen has the freedom of speech and association. It has been defined that the freedom of association is the right of individuals to join or leave groups of a person’s own choosing and for the group to take collective action to pursue the interests of members. Similarly every citizen has the right to freedom of speech whether it is symbolically or by action. The legal term used in United States law defines this; actions that purposefully and discernibly convey a particular message or statement to those viewing it.

The very question of whether a motorcycle club’s ‘colors/name/symbol’ was relevant to these freedoms was deliberated and decided by the United States Federal Courts. In *Rivera v. United States* (the following case number has been provided for verification and authenticity Case 2:09-cv-02435-FMC-VBK) the very discussion of an individual’s right to wear a motorcycle club’s colors and name was outlined and defined by the court to be an individual’s constitutional right under freedom of speech.

‘purportedly for use in commerce in connection with promoting the interests of persons interested in the recreation of riding motorcycles. In contrast to commercial trademarks, which are used in commerce and generally not entitled to full First Amendment protections, collective membership marks are used by members of an organization to “indicat[e] membership in a union, an association, or other organization. 15.U.S.C §1127. The use and display of collective membership marks therefore directly implicate the First Amendment’s right to freedom of association. The Supreme Court has recognized that “implicit in the right to engage in activities protected by the First Amendment’ is ‘a corresponding right to associate with others in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends.’ This right is crucial in preventing the majority from imposing its views on groups that would rather express other, perhaps unpopular, ideas. Furthermore, clothing identifying one’s association with an organization is generally considered expressive conduct entitled to First Amendment protection. Though the symbol may at times function as a mouthpiece for unlawful or violent behavior, this is not sufficient to strip speech of its First Amendment protection. Ashcroft v. Free Speech Coalition, 535 U.S. 234, 253 (2003) (“The mere tendency of speech to encourage unlawful acts is not a sufficient reason for banning it. . . .First Amendment freedoms are most in danger when the government seeks to control thought or to justify its laws for that impermissible end.”) Prohibiting speech of this nature constitutes an attack on a particular viewpoint. Sammartano v. First Judicial District Court, in and for the County of Carson City, 303 F.3d 959, 971-72 (9th Cir. 2002). In Sammartano, the Carson City courthouse enacted a rule to prohibit admission of those with “clothing, attire or ‘colors’ which have symbols, markings or words indicating an affiliation with street gangs, biker or similar organizations,” because “such clothing or attire can be extremely disruptive and intimidating, especially when members of different groups are in the building at the same time.” 303 F.3d at 964. The Ninth Circuit reasoned that the rule singles out bikers and similar organizations for the message their clothing is presumed to convey, and held that the rule impermissibly discriminates against a particular point of view – the view of biker clubs as opposed to garden clubs and gun clubs. Id . at 971-72. In this case, the Government targets an even narrower group of individuals, a single motorcycle club. In addition, the Government has been seizing property, which imposes a greater

restriction on individual rights than the denial of access to a public facility. Accordingly, the seizure of property bearing a Mongols membership mark should be considered viewpoint-discriminatory. Nonetheless, as discussed above, even speech advocating unlawful conduct is afforded protection under the First Amendment. On balance, Plaintiff's hardship in not being able to express his views and the public interest in protecting speech outweigh the Government's interest in suppressing an intimidating symbol."

Lastly it has been well documented that the Board has had history of implementing this same policy. A Richmond City Council Public Safety Committee met on Monday, May 18, 2009 in Richmond, Virginia and this very issue was debated. Michael Weise, Attorney representing the Virginia Federation of Motorcycle Clubs spoke out about the unconstitutional practice that was occurring. Several Motorcycle clubs spoke out; The Pagans MC, The Devil's Grip MC, The Untamed MC, The Outlaws MC, and the Harley Owners Group against the infringement of their rights.

Respectfully submitted,