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July 2, 2022

The Honorable Jeffrey C. McKay
Chairman
Fairfax County Board of Supervisors
12000 Government Center Parkway
Fairfax, Virginia 22035

Dear Chairman McKay:

I am writing to request that the Fairfax County Police enforce state law that prohibits picketing outside of the homes of Supreme Court Justices who live in Fairfax County.

Virginia law provides that “[a]ny person who shall engage in picketing before or about the residence or dwelling place of any individual, or who shall assemble with another person or persons in a manner which disrupts or threatens to disrupt any individual’s right to tranquility in his home, shall be guilty of a class 3 misdemeanor.” Va. Code Ann. § 18.2-419. A violation of the statute is punishable by a fine of up to \$500, and a court may order injunctive relief and damages. *Id.* §§ 18.2-419, 18.2-11(c). The Virginia Attorney General has concluded that the statute should be enforced, even though a Virginia trial court outside of Fairfax County declined to enforce it many years ago. *See* Jackie DeFusco, *Are Abortion Protests at S.Ct. Justices’ Homes Illegal in Virginia?*, *WRIC.com* (May 12, 2022) (“a spokesperson for Attorney General Jason Miyares, said in a statement that state law prohibits protesting in front of an individual’s private residence. . . . ‘Attorney General Miyares urges every Commonwealth’s Attorney to put their personal politics aside and enforce the law.’”); 1989 Va. A.G. 157 at *8 (1989) (“§ 18.2-419 may be enforced.”).

Governor Youngkin has expressed deep concern that “hundreds of demonstrators have recently chosen to picket Supreme Court Justices at their homes in Virginia,” while using “threatening language” – jeopardizing “the integrity of our American judicial system and the safety of our citizens.” Gov. Youngkin-Gov. Hogan Letter (May 11, 2022). In May, you suggested that section 18.2-419 should not be enforced, noting at the time that “[r]ecent protests have been limited in numbers and duration.” Jeffrey C. McKay, *Political Change Doesn’t Happen Outside People’s Homes*, *Wash. Post* (May 16, 2022). Since then, protest activity at Justices’ homes, as well as threatening activity, has only increased. For weeks on end, large groups of protesters chanting slogans, using bullhorns, and banging drums have picketed Justices’ homes in Virginia. Earlier this week, for example, at least 30 protesters gathered outside one Justice’s Fairfax County home chanting expletives, and dozens appeared outside another’s Fairfax County home chanting “no privacy for us, no peace for you!” This is exactly the kind of conduct that Virginia law prohibits.

I would respectfully request that you direct the Fairfax County Police to enforce the Virginia law that prohibits picketing at the homes of Supreme Court Justices who reside in Fairfax County.

Thank you very much for your consideration.

Very truly yours,



Gail A. Curley
Marshal of the Court