

Norfolk PD May Have Violated Officer's Speech Rights by Firing Him over Rittenhouse Donation

By RYAN MILLS | April 23, 2021 5:07 PM



Kyle Rittenhouse, the teenager charged with killing two people and injuring another during riots on the streets of Kenosha, Wis., attends his extradition hearing in Lake County, Waukegan, Ill., October 30, 2020. (Nam Y. Huh/Reuters Pool)



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The firing of a veteran Norfolk police officer whose anonymous \$25 donation to the legal defense of teenage Kenosha shooter Kyle Rittenhouse was outed by *The Guardian* last week was likely “inappropriate and illegal,” a local labor lawyer told NATIONAL REVIEW.

Ray Hogge, a Norfolk, Va.-based lawyer, said that as a public employee, the city must respect the First Amendment rights of Lieutenant William Kelly, including his right to donate to charitable causes that city leaders might not approve of.

Even though Kelly included his police email on the crowdfunding site GiveSendGo, he said, it is clear that Kelly was donating and writing as a private citizen, not in an official capacity representing the police department. And because Kelly was speaking and donating to a matter of significant public concern, his speech should receive a high level of protection, Hogge said.

“I don’t have any doubt that what the city did was ... inappropriate and illegal and violated the man’s First Amendment rights,” said Hogge, who has been in contact with Kelly’s lawyer, and may help represent Kelly in the grievance process.

Kelly is one of nine police officers and other public employees **outed by *The Guardian*** last week for making contributions to fundraisers and legal defense funds for embattled officers involved in on-duty shootings and for Rittenhouse, the Illinois teenager who shot and killed two people after traveling to Kenosha, Wisc. to protect businesses during the riots in the city last August. Rittenhouse is facing homicide charges, but his lawyers have said that “without the shadow of a doubt” he **acted in self-defense**.

The public employees **outed by *The Guardian*** appear to have all made their contributions anonymously, but their personal information was revealed due to a GiveSendGo data breach, and leaked to reporters by the transparency group Distributed Denial of Secrets.

Besides Kelly, it appears that none of the other public employees **outed by *The Guardian*** faced any serious reprimands from their employers, and at least one of the people named in the story had already left his job as an officer at the time he made a contribution. Many of the employers told NATIONAL REVIEW that they don’t have any specific policies prohibiting their employees from making contributions to controversial charitable causes.

In addition to his \$25 donation, Kelly also wrote a message to Rittenhouse, telling him that he’d “done nothing wrong” and “every rank and file police officer supports you.”

In a **prepared statement**, Norfolk City Manager Chip Filer said that he and Police Chief Larry Boone concluded that Kelly had violated city and police department policies, though he didn’t specify what policies those were. He also said that Kelly’s “egregious comments erode the trust between the Norfolk Police Department and those they are sworn to serve.”

Boone said in a prepared statement that “a police department cannot do its job when the public loses trust with those whose duty is to serve and protect them.” Attempts by NATIONAL REVIEW to reach Norfolk Police Chief Larry Boone for comment further were not successful.

Considering Kelly’s First Amendment rights, there needs to be a balancing test to weigh the interest of Kelly’s speech – his donation and written message – against the interest of the city to avoid

disruptions to its police operations and its relationship with citizens, Hogge said.

“I haven’t seen any evidence, any information to support that there actually was a problem,” Hogge said. “Frequently, if a police department can’t show any actual evidence of that, the court says your hypothesis that (an employee’s speech) was going to be disruptive is just speculative and therefore doesn’t carry much weight.”

It’s “a dangerous business,” Hogge said, for the government to start picking which causes are okay for their employees to support.

“It becomes a very slippery slope, which leads us to the point of, ‘I don’t like your cause, therefore it’s bad, it’s wrong, it’s prohibited,’” he said.

While Kelly was fired after he was outed by *The Guardian*, the employers of the other public officials named in the story have generally supported their workers.

Earlier this month, Green Bay Police Chief Andrew Smith received an email from a reporter from *The Guardian* who alerted him that two of his officers had each donated anonymously to a fundraiser supporting Rusten Sheskey, the Kenosha police officer who shot and seriously injured Jacob Blake, a black man, leading to last summer’s riots in that city.

Smith said he explained to the reporter that he wasn’t concerned about the two \$20 donations by officers Lieutenant Chad Ramos and Lieutenant Keith Gehring. His department hadn’t taken a position on the shooting, he said, and “where our officers donate money is not the concern of the police department.”

He learned that one of the officers made the donation from a department computer on work time, a minor infraction, and both identified themselves online with their work email addresses. But the infractions were so minor that neither officer was reprimanded.

“I admonished them, it’s probably not good to use your department association when you’re making donations of any kinds, regardless of where it is,” Smith said.

Steve Linn, a spokesman for the Village of Pleasant Prairie in Wisconsin, said their police department also does not regulate how employees spend their money. *The Guardian* outed Pleasant Prairie police officer Pat Gainer for donating to a Sheskey fundraiser, and for sending Sheskey a message to “Stay strong brother.” The report doesn’t say how much Gainer donated.

Sheskey returned to duty this month after an investigation concluded he didn’t violate any department policies and he wouldn’t be criminally charged for shooting Blake, who had a knife.

“A donation to officer Rusten Sheskey wouldn’t violate any agency policies to warrant disciplinary action,” Linn wrote in an email. However, he said, the department has taken “corrective action” against Gainer for misusing his work email. He did not say what that corrective action entailed.

Gainer declined to comment when reached on the phone by NATIONAL REVIEW.

The West Valley City Fire Department in Utah took no action against Craig Shepherd, a paramedic, after *The Guardian* outed him for donating \$10 to Rittenhouse. It also took issue with a reporter from a local ABC affiliate who [tracked Shepherd down at home](#).

“We have been very concerned for our employee and have also expressed our concerns with the reporter and his management,” the fire department wrote on Facebook. “Our employee inadvertently used his government email and no action has been taken against him by us.”

The Lawrence Livermore National Laboratory in California similarly defended lab engineer Michael Crosley who was outed by *The Guardian* for donating \$100 to Rittenhouse.

“This employee was acting on his own and he does not speak for the lab,” spokeswoman Lynda Seaver said in an email. “It is the lab’s understanding that he did not intend to use his lab email.”

The Guardian also outed two Houston public employees for making anonymous donations to support four former Houston police officers who were fired in September for shooting and killing a man, Nicolas Chavez, during a standoff in April 2020. Chavez, who was armed and emotionally disturbed, threatened officers and ignored their commands, according to police.

The Guardian noted that Houston Fire Chief Samuel Peña donated \$100 to support the officers.

Peña defended his donation in an email to NATIONAL REVIEW, writing “I have and will continue to support and donate to local civic-minded organizations and donate to causes that assist firefighters, police officers and military personnel.” A fire department spokeswoman did not respond when asked if Peña had been reprimanded in any way.



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