ACLU
AMERICAN CIVIL LIBERTIES UNION
of SOUTH CAROLINA

August 16, 2012

The Hon. Steve Loftis
Sheriff, Greenville County
4 McGee Street
Greenville, SC 29601

Mark Tollison
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Greenville, SC 29601

W.Walter Wilkins, III
13th Circuit Solicitor
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Dear Sheriff Loftis, Mr.Tollison, and Mr. Wilkins:

We write on behalf of the American Civil Liberties Union ("ACLU") and the ACLU of South Carolina regarding the Greenville County Sheriff's Office's practice of conducting undercover sting operations targeting sexual activity in Greenville County.[1]

Based on our review of arrest incident reports from 2011 and other public records,[2] we believe the Greenville County Sheriff's Office, and in particular its Directed Patrol Unit ("DPU"), is conducting sting operations and effecting arrests in a manner that violates both state and federal law. Specifically, we have identified repeated instances of the following illegal practices:

- Use of County Ordinance § 15-9 to arrest people for conduct that does not violate South Carolina state law, in violation of Article VIII § 14 of the South Carolina Constitution and the Fourth Amendment.

[1] The ACLU is a nationwide, non-profit, non-partisan organization dedicated to protecting and preserving the civil rights and liberties guaranteed by the Bill of Rights and state and federal law. The ACLU Lesbian, Gay, Bisexual and Transgender ("LGBT") Project and the ACLU Criminal Law Reform Project ("CLRP") are headquartered in New York and litigate, conduct policy advocacy, and provide public education on a range of civil rights and liberties issues across the country. The LGBT Project focuses on constitutional issues affecting LGBT individuals, while CLRP addresses inequities and civil rights violations in the nation's law enforcement and criminal justice systems. The ACLU of South Carolina is the state affiliate of the national organization and works daily in courts, the South Carolina legislature, and communities across the state to protect the civil rights and liberties of all South Carolinians.

[2] The ACLU received records from the Greenville County Sheriff's Office in response to two public records requests dated February 3, 2012 and April 29, 2012. The February 3, 2012 request was substantially modified before it received a response.

- Use of County Ordinance § 15-9 to arrest people when the person soliciting illegal sexual conduct is the undercover officer, without probable cause and in violation of the Fourth Amendment.

- Use of County Ordinance § 15-9 to arrest people for loitering to solicit others to engage in consensual private sexual activity, without probable cause and in violation of the First Amendment and *Lawrence v. Texas*, 539 U.S. 558 (2003).

- Use of County Ordinance § 15-9 to arrest people for being "known prostitutes," without probable cause and in violation of due process and the Eighth Amendment.

- Use of S.C. Code Ann. § 16-3-600(D)(1)(b) to arrest people for assault when an undercover officer gives apparent consent, without probable cause and in violation of due process and the Fourth Amendment.

These illegal practices appear to have been endorsed by supervisors and other policy making officials. Continuing to use S.C. Code Ann. § 16-3-600(D)(1)(b) and County Ordinance § 15-9 to arrest and prosecute people in these circumstances will expose the Greenville County Sheriff's Office, the 13th Circuit Solicitor's Office and their individual employees to liability for false arrest, malicious prosecution and other constitutional violations.

We request that the Sheriff's Office and the Solicitor's Office confirm that the practices described in this letter will be discontinued. We further request that the Sheriff's Office promulgate training materials to its officers to ensure that the means adopted to enforce South Carolina's public decency laws do not violate state and federal law. Officers must be instructed that they can arrest only when they have probable cause to believe that the state criminal code has been violated. In addition, officers must be alerted to the federal constitutional rights that their regular undercover practices habitually violate and taught to avoid such practices.

We have also shared copies of this letter with the criminal defense bar in South Carolina to ensure that future unconstitutional arrests are vigorously contested in any subsequent criminal proceedings and that future victims of these illegal practices are compensated through civil-rights litigation against the responsible officers and prosecutors.

I. Illegal Arrests Pursuant to County Ordinance § 15-9

County Ordinance § 15-9 provides: "It shall be unlawful for any person to loiter in any public place in a manner and under circumstances manifesting the purpose of inducing, enticing, soliciting or procuring another to commit an act of prostitution or other illegal sexual activity." As discussed below, the Greenville County Sheriff's Office has employed a widespread pattern and practice of arresting people under this County Ordinance in violation of the state and federal constitutions.

a. Greenville County May Not Use County Ordinance § 15-9 to Criminalize Conduct that Is Not Prohibited By State Statutes.

Article VIII § 14 of the South Carolina Constitution, which instructs that local governments may not "set aside . . . criminal laws and the penalties and sanctions for the transgression thereof," prohibits local governments from criminalizing conduct that is not unlawful under relevant state law. *Connor v. Town of Hilton Head Island*, 442 S.E.2d 608, 610 (S.C. 1994) ("Since Town has criminalized conduct that is not unlawful under relevant State law, we conclude Town exceeded its power in enacting the ordinance in question."). Pursuant to Article VIII § 14, Greenville County may not make it illegal to loiter with the purpose of soliciting another to engage in illegal sexual activity if no state laws addressing the same subject are violated in the process. Chapter 15 of the South Carolina criminal code prohibits prostitution and indecent exposure, but no state statute proscribes loitering with intent to induce another to commit these acts. It is, therefore, a violation of the state constitution and of the Fourth Amendment for officers to arrest individuals for violation of County Ordinance § 15-9 where they are without probable cause to believe that violation of the state public decency statutes has also occurred.

Nonetheless, public records reveal that officers lacking probable cause to arrest for prostitution regularly arrest individuals in reliance on County Ordinance § 15-9. For instance, in Case Number 11000011769 (attached as Appendix A), an undercover officer offered a ride to a suspected prostitute and, once she entered his car, began to discuss exchanging sex for money. The defendant did not agree to an act of prostitution and instead asked to be dropped off at a convenience store. As the defendant had not engaged or offered to engage in sexual activity in exchange for anything of value, the officer lacked probable cause to arrest her for prostitution or for any other violation of state law. *See* S.C. Code Ann. § 16-15-375(4) (defining "prostitution"). The officer nevertheless arrested her under County Ordinance § 15-9 for loitering to engage in illegal sexual activity, which is not a state crime and, therefore, cannot be criminalized by county ordinance.

Similarly, in Case Number 11000087866 (attached as Appendix B), a suspect who was sitting in a parked vehicle at a gas station was approached by an undercover officer posing as a female prostitute. The officer "discussed prices/sexual acts" with him, but the suspect "would not agree to anything specific." He told the officer several times that he "would 'think about it.'" The officer nevertheless arrested the suspect as he continued to sit in his car and charged him under County Ordinance § 15-9 with loitering to engage in prostitution, even though he, too, had not violated state law.

Nothing in the officer narratives describing these and other similar incidents indicates that the defendants manifested a purpose of inducing anyone to commit an illegal sex act. In both cases, it was the officer who solicited the suspect. But even if there were probable cause to believe that the suspect had violated County Ordinance § 15-9, that alone is insufficient to justify arrest under the South Carolina Constitution. Officers who fail to establish probable cause to arrest under state law may not fall back on the county ordinance to justify arrests.

b. Greenville County May Not Make Arrests Pursuant to County Ordinance § 15-9 if an Undercover Officer Is the Only Party Soliciting Sexual Activity.

Even if County Ordinance § 15-9 could provide an independent basis for arrest, officers lack probable cause to believe it has been violated when they solicit prostitution from individuals who have evidenced no intent to "induce another to commit an illegal sexual act." Public records show that officers repeatedly arrest individuals after incidents in which only the officer proposed illegal sexual conduct.

In Case Number 11000027158 (attached as Appendix C), the suspect was sitting on her own front porch when an officer pulled up and asked if she wanted a date. She accepted and after she got into the car, the officer proposed that they have oral sex. The woman, who suspected the driver was an officer, asked him to show her his penis to prove he was not. He showed her his belly. The suspect said she thought they were just going for a drive and asked him to take her home. Once home, she got out of the van and was then arrested for loitering to engage in illegal sexual activity. Even if it were valid to arrest suspects for conduct that does not violate state law, nothing "manifest[ed]" that she was sitting on her own front porch with "the purpose of inducing, enticing, soliciting or procuring another to commit an act of prostitution or other illegal sexual activity," as proscribed by County Ordinance § 15-9.

The county ordinance prohibits loitering for the purpose of "inducing, enticing, soliciting, or procuring" an illegal act to be performed; it does not prohibit loitering at the risk of being propositioned by another to engage in illegal sexual acts. Many of the arrests documented in the public records are fatally flawed because defendants exhibited no intent to solicit prostitution. Officers cannot establish a violation of County Ordinance § 15-9 simply by showing that defendants were in a position to be solicited by others. Such arrests lack probable cause and therefore violate South Carolina law and the Fourth Amendment.[3]

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[3] Moreover, arresting people who only respond to officers' solicitations raises serious concerns about entrapment. "The affirmative defense of entrapment is available where there is the conception and planning of an offense by an officer, and his procurement of its commission by one who would not have perpetrated it except for trickery, persuasion, or fraud of the officer." *State v. Johnson*, 367 S.E.2d 700, 701 (S.C. 1988) (internal quotation marks omitted); *see also State v. Jacobs*, 119 S.E.2d 735, 740 (1961) ("It is a general rule that where the criminal intent originates in the mind of the entrapping person and the accused is lured into the commission of a crime which he had otherwise no intention of committing in order to prosecute him therefore, no conviction may be had, though the committing of the act is not affected by any question of consent."). A defendant who demonstrates no inclination to engage in illegal sexual activity but is solicited by an officer to do so can establish the defense of entrapment. *See, e.g., State v. McBride*, 599 P.2d 449, 450-51 (Or. 1979) (defendant who was loitering when approached by officer, invited into his vehicle and offered $20 for a "car date" but did not remember agreeing to a $20 fee for a sexual act was entitled to an entrapment jury instruction).

c. Greenville County May Not Use County Ordinance § 15-9 to Arrest People for Loitering to Solicit Others to Engage in Private Consensual Sexual Conduct.

Under *Lawrence v. Texas*, 539 U.S. 558 (2003), the state cannot criminalize private, non-commercial consensual sexual conduct between adults. Because such private sexual activities are lawful, the First Amendment bars the state from criminalizing solicitations to engage in private, lawful sexual activity—even when the solicitations occur in public. *See, e.g.*, *Pryor v. Municipal Court*, 599 P.2d 636, 645-46 (Cal. 1979) (recognizing that public proposition of private sex may not be made a crime); *accord Provo City Corp. v. Willden*, 768 P.2d 455, 459 (Utah 1989) ("Unfortunately, in its zeal to eliminate [publicly] offensive behavior, the City has chosen to fashion a tool that sweeps far too deeply into the protected province of the first amendment."); *New York v. Uplinger*, 447 N.E.2d 62, 63 (N.Y. 1983) ("Inasmuch as the conduct ultimately contemplated by the loitering statute may not be deemed criminal, we perceive no basis upon which the State may continue to punish loitering for that purpose."); *Pedersen v. City of Richmond*, 254 S.E.2d 95, 98 (Va. 1979) ("It would be illogical and untenable to make solicitation of a non-criminal act a criminal offense."); *Oregon v. Tusek*, 630 P.2d 892, 895 (Or. Ct. App. 1981) ("The statute as it now stands . . . makes it a crime to ask another person to participate in an act which is not itself a crime. We find ourselves in agreement with [*Pedersen* and *Cherry*]."); *Cherry v. Maryland*, 306 A.2d 634, 640 (Md. Ct. App. 1973) ("While solicitation to commit a crime may properly be proscribed, it would be anomalous to punish someone for soliciting another to commit an act which is itself not a crime."); *People v. Gibson*, 521 P.2d 774 (Colo. 1974) (finding unconstitutional a statute forbidding loitering for the purpose of soliciting deviate sexual intercourse, where consensual deviate sexual intercourse was not a crime).

Public records indicate that on many occasions, DPU officers arrested individuals for participating in conversations about engaging in constitutionally protected private sex. For example, in Case Number 11000124088 (attached as Appendix D), the male undercover officer "began a sexual[ly] explicit conversation with the subject which led to the subject agreeing to allow each of us to perform oral sex on each other." According to the officer, "the subject asked if we could go somewhere that was more private and I agreed." Because the subject specifically asked to go to a private location, the officer had no probable cause to believe the subject was soliciting to engage in public sex or lewdness. The officer arrested the subject for loitering to solicit illegal sexual activity even though the sexual activity discussed was constitutionally protected under *Lawrence*.

Similarly, the officer in Case Number 11000124281 (attached as Appendix G) approached a parked car and initiated a conversation with the driver. The officer asked if he could get into the car and, once he was inside, asked if he could perform oral sex. The driver said he would like that but expressed reluctance to engage in a sexual act in the parking lot. The officer twice advised the driver that it was safe, but the driver never agreed to engage in the act in public. Because the driver expressed interest in a sexual encounter but was reluctant to accept the officer's suggestion of public sex, the officer *at most* had probable cause to believe that the driver had been loitering to solicit

constitutionally protected private sex. The officer, not the driver, suggested illegal conduct, which the driver resisted. The officer arrested him anyway, despite lacking probable cause to believe that the he had been loitering with the purpose of inducing others to engage in illegal conduct.

Officers violate the First and Fourth Amendments when they arrest men and women who accept their invitations to engage in private, non-commercial consensual sex, or who initiate such conversations themselves. Discussing such subjects—or loitering with the intent to solicit others to discuss such subjects—cannot be made a crime.

d. Greenville County May Not Use County Ordinance § 15-9 to Arrest Someone for Being a "Known Prostitute."

The Due Process Clause and the Eighth Amendment prohibit the government from arresting "known prostitutes" just for being on streets or in neighborhoods where prostitution occurs. *See Brown v. Municipality of Anchorage*, 584 P.2d 35, 37-38 (Alaska 1978) (finding statute criminalizing loitering to engage in prostitution unconstitutionally vague, as "a previously convicted prostitute or panderer could stand on a public street corner or walk slowly down a public sidewalk only at the whim of any police officer"); *City of Columbus v. De Long*, 180 N.E.2d 158, 160 (Oh. 1962) ("[A] prostitute . . . by merely 'wandering,' without more . . . commits no criminal offense. A suspicion of prospective misconduct is hardly enough."). To arrest, officers must have probable cause to believe that a crime has been or is being committed, and—under the Eighth Amendment—having been previously arrested for prostitution and walking on blocks deemed prostitution areas cannot be made a crime. *Cf. Robinson v. California*, 370 U.S. 660, 666 (1962) (invalidating "statute which makes the 'status' of narcotic addiction a criminal offense"); *Dominguez v. Beame*, 603 F.2d 337, 341 (2d Cir. 1979) (policy of arresting known prostitutes upheld based on evidence that "the policy was to arrest only those women actually observed engaging in activity which the police in good faith believed constituted an offense" and not based on merely on status).

Similarly, under the Due Process Clause the government may not delegate to law enforcement officials the discretionary authority to bar groups of people from purportedly high-crime areas on an ad hoc basis. People enjoy a "'right to remove from one place to another according to inclination' as 'an attribute of personal liberty' protected by the Constitution." *City of Chicago v. Morales*, 527 U.S. 41, 53 (1999) (plurality) (quoting *Williams v. Fears*, 179 U.S. 270, 274 (1900)) (invalidating statute that gave police authority to arrest known gang members for loitering in public places and failing to disperse when ordered).

Public records show that the Greenville County Sheriff's Office has repeatedly arrested suspects for being "known prostitutes" without any probable cause that they were actually engaging in criminal behavior. For example, the defendant in Case Number 11000048041 (attached as Appendix F) was arrested "for loitering to engage due to her being a known prostitute and it being a high drug area," and a defendant in Case Number 11000033584 (attached as Appendix G) was arrested while "walking down Bruce Rd."

because an officer "recognized [her] as a known prostitute whom The Directed Patrol Unit had arrested on 3/9/11 for Loitering to Engage in Prostitution in the same area." In Case Number 11000060218 (attached as Appendix H), an officer pulled over a vehicle after watching it make an illegal turn. The officer recognized the defendant, a passenger in the car, as someone he had arrested during a previous prostitution sting. He arrested her for loitering to engage in prostitution "due to the subject having com[e] from a high prostitution area and having been arrested for the same offense in the past."

Officers who arrest "known prostitutes" for failing to avoid certain areas of town do so without probable cause to believe a crime is being committed and in violation of the Eighth and Fourteenth Amendments. *See Ricks v. District of Columbia*, 414 F.2d 1097, 1109-1110 (D.C. Cir. 1968) ("Statistical likelihood that a particular societal segment will engage in criminality is not permissible as an all-out substitute for proof of individual guilt. And not even past violation of the criminal law authorizes one's subjection to innately vague statutory specifications of crime." (footnotes omitted)).

II. **Illegal Arrests Pursuant to S.C. Code Ann. § 16-3-600(D)(1)(b)**

Public records show a disturbing pattern of the Sheriff's Office using the assault and battery statute to arrest suspects for engaging in consensual touching with undercover officers. Under S.C. Code Ann. § 16-3-600(D)(1)(b), "a person commits the offense of assault and battery in the second degree if [a] the person unlawfully *injures* another person, or attempts to injure another person with the present ability to do so, and [b] the act involves the *nonconsensual* touching of the private parts of an adult, either under or above clothing" (emphases added). The statute thus requires that there be an injury or attempted injury and that the touching be nonconsensual. Despite these clear statutory requirements, DPU officers have relied on the assault and battery statute to arrest suspects during sex stings even when an undercover officer gives apparent consent to such touching and no injury or attempted injury occurs. Arresting people in these circumstances is unconstitutionally vague and lacks probable cause under the Fourth Amendment.

Under the void-for-vagueness doctrine, a defendant must have fair notice of what conduct is prohibited. *Kolender v. Lawson*, 461 U.S. 352, 357-58 (1983). Criminalizing physical contact when an undercover officer gives apparent consent to be touched is unconstitutionally vague because it fails to put defendants on notice that their actions may be illegal. *See Papachristou v. City of Jacksonville*, 405 U.S. 156, 163 (1972) (finding ordinance unconstitutionally vague because it "makes criminal activities which by modern standards are normally innocent").

Moreover, as a matter of statutory interpretation, when an officer gives apparent consent to be touched there is no probable cause to believe that the suspect has violated the statute because the element of lack of consent is missing. In similar circumstances, courts have repeatedly held that an undercover officer may not charge someone with assault after he has deliberately led the defendant to believe that physical contact is desired. *McDermett v. United States*, 98 A.2d 287, 290 (D.C. 1953) ("[W]hen flirtation is encouraged and

mutual, and leads to a not unexpected intimacy or an intimacy not discouraged or repelled, such cannot be classified as an assault."); *Guarro v. United States*, 237 F.2d 578, 581 (D.C. Cir. 1956) ("[T]he conduct of this policeman is of crucial significance, for he not only is aware of what is happening, but, furthermore, he may think that it is part of his job to see to it that such things as are alleged here do happen to him."); *cf. Brown v. County of San Joaquin*, No. CIV S-04-2008 FCD PAN, 2006 WL 1652407, at * 5-6 (E.D. Cal. June 13, 2006) (officer lacks probable cause to arrest for offensive sexual conduct where officer has not conveyed that he "would be offended or annoyed by any alleged sexual touching").

Public records nevertheless reveal that DPU officers have repeatedly arrested suspects for assault after leading them to believe that the touching was consensual. In Case Number 11000124281 (Attached as Appendix E), an undercover officer approached the defendant who was sitting in his car and asked if he could get in. Once inside the car, he told the defendant, "I like sucking dick a lot and I'll do it for you if you want me to." As the officer urged the defendant to allow him to perform oral sex, the defendant put his hand on the officer's thigh near the knee and began to move his hand down "until he reached the bottom of [the officer's] scrotum." The defendant was arrested and charged with loitering to engage in illegal sexual activity and assault and battery in the second degree.

In Case Number 11000132222 (Attached as Appendix I), an undercover officer offered the defendant a ride. As he drove, they discussed sex for money. He told her what sex act he wanted to perform, but she would not agree to an amount and said she would not do "the prostitution thing." While they talked, the defendant rubbed the inside of the officer's thigh. The officer named a place where they could go to have sex and, as he drove toward the location, the defendant reached over and squeezed his genitals twice. She, too, was arrested and charged with loitering to engage in prostitution and assault and battery.

Because there is no probable cause in these circumstances to believe a crime has been committed, these arrests for assault or battery based on touching an undercover officer who gave apparent consent to be touched violated the Fourth Amendment.

III. These Illegal Practices Have Been Approved By Supervisors in the Sheriff's Office and By Solicitors.

These illustrations are not exceptional. Public records indicate that they reflect a widespread pattern of behavior that has been encouraged and approved by supervisors in both the Sheriff's and the Solicitor's Offices. Over a dozen officers were directly involved in just the nine arrests described above, and those are only a sample of the illegal arrests evidenced in the records. A number of these arrests were made in the course of undercover operations initiated and/or directly supervised by Sergeants, such as Michael Moore, Steven Rhea and Johnny Westmoreland, and all of the arrests were approved of after-the-fact by supervisors who signed incident reports documenting the

arresting officers' illegal conduct. Finally, despite their facial invalidity, the Solicitor's Office has failed to immediately dismiss baseless charges of loitering and assault and battery arising out of these illegal arrests.[4]

The circumstances surrounding the arrest and prosecution of the arrestee in Case Number 11000124281 provide some particularly illuminating examples of the extensive role played by supervisors in the Sheriff's and Solicitor's Offices in furthering the violations of rights outlined above. The arrest was made during an undercover sting operation. An officer involved in the operation later testified at a preliminary hearing that he was instructed to "mak[e] casual contact with individuals [and a]fter contact was made with random subjects, a conversation was started and it was agreed between the two that the undercover deputy would perform a sexual act on the subject, after which time the subjects would be taken into custody for various offenses." (Oct. 6, 2011 hearing in Case Number J993104.) These instructions, imparted by a supervisor, invited the officer to commit at least three of the state and federal constitutional violations discussed above.

After it was completed, the arrest was approved personally by Sergeant Westmoreland, who signed the relevant incident report. Despite clear indications in the report that the arrest violated the subject's federal and state constitutional rights, the Sheriff's Office signaled its official approval with a laudatory press release. Finally, the 13th Circuit Solicitor's Office chose to prosecute the arrestee. The office did not oppose the defendant's preliminary motion to dismiss, yet it pursued the prosecution until the charges were ultimately dismissed pursuant to S.C. Code Ann. § 17-22-150.

Such evidence reveals that the repeated unconstitutional practices of individual police officers have been endorsed and encouraged by both the Sheriff's Office and the 13th Circuit Solicitor's Office. Supervisors who condone, participate in or direct illegal operations and arrests can be held liable for state and federal constitutional violations committed by themselves and by the officers they oversee. *Dodds v. Richardson*, 614 F.3d 1185, 1199 (10th Cir. 2010) (". . . § 1983 allows a plaintiff to impose liability upon a defendant-supervisor who creates, promulgates, implements, or in some other way possesses responsibility for the continued operation of a policy the enforcement (by the defendant-supervisor or her subordinates) of which subjects or causes to be subjected that

[4] Of the nine cases highlighted above, the files for at least three cases—those numbered 11000027158, 11000033584 and 1100013222—contain "Officer Input" forms sent from the Solicitor's Office to a member of the Sheriff's Office indicating that the defendant had been charged and was awaiting trial. A search of the Greenville County Public Index website confirms that the arrestee in case number 11000132222 faced prosecution. In addition, the files for case number 11000060128 contain a "Pre-Trial Intervention" form indicating that the arrestee in that case was also charged and prosecuted by the Solicitor's Office. We have also reviewed records relating to bail and preliminary hearings in a prosecution following from the arrest in Case Number 11000124281. Additional arrestees may have been prosecuted but had records of the proceedings expunged pursuant to provisions such as S.C. Code Ann. § 17-22-150(a), allowing for expungement following completion of a pretrial intervention program.

plaintiff to the deprivation of any rights secured by the Constitution . . . ." (internal quotation marks and ellipses omitted)).

IV. Other Law Enforcement Tools Are More Effective Than Undercover Stings

In addition to exposing law enforcement officers and their supervisors to liability for illegal practices, undercover stings like the ones that led to many of the illegal arrests recounted in this letter do not effectively serve the Sheriff's Office's goals of reducing illegal sexual activity's harms. According to the Office of Community Oriented Policing Services at the U.S. Department of Justice, using undercover decoys is not recommended and has only "limited effectiveness" at stopping illegal public sexual activity. U.S. Dep't of Justice, Office of Cmty. Oriented Policing Servs., "Illicit Sexual Activity in Public Places," at 26 (Apr. 2005) (http://www.cops.usdoj.gov/Publications/e01052683.pdf). Instead, the Department of Justice recommends more effective tools such as posting notices or using visible patrol units to deter illegal behavior. *Id.* at 20-21. The Department of Justice has also emphasized the ineffectiveness of using decoys to arrest individuals on prostitution-related charges as a method for controlling street prostitution. U.S. Dep't of Justice, Office of Cmty. Oriented Policing Servs., "Street Prostitution," at 20-21(2d ed., Nov. 2006) (http://www.cops.usdoj.gov/Publications/e10062633.pdf). To address the social harms of street prostitution, the Department of Justice instead recommends a variety of alternative strategies, which range from establishing a visible police presence and improving lighting to developing a rapport with street prostitutes, educating high-risk populations about the dangers of prostitution, and helping prostitutes to quit. *Id.* at 26-27, 30-32, 37. These tools can be more effective than decoy operations at meeting the legitimate law enforcement goal of preventing harm to the community, while demanding fewer law enforcement resources and avoiding violations of constitutional rights and their attendant legal consequences.

Conclusion

By engaging in and encouraging the law enforcement practices outlined above, the Sheriff's Office, the Solicitor's Office and their employees regularly violate the rights of South Carolinians and generate illegal arrests that cannot lead to valid prosecutions. We ask for your cooperation in ensuring that county resources are deployed to enforce the state criminal code through legal arrests based only on probable cause. Meanwhile, a copy of this letter will be distributed among defense attorneys who practice in Greenville County to reduce the risk of illegal prosecutions and convictions and to ensure that the Sheriff's Office's violations are addressed. We hope that legal challenges will be unnecessary. We seek your assurance that the practices identified above will cease, and that immediate steps will be taken to provide officers with all necessary related training.

If you have any questions or concerns about this letter or any other matter, please do not hesitate to contact us. You will find our contact information below our signatures.

Sincerely,

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