



September 22, 2021

The Honorable John Tecklenburg  
The Honorable Marie Delcioppo  
The Honorable Kevin Shealy  
The Honorable Jason Sakran  
The Honorable Robert M. Mitchell  
The Honorable Karl L. Brady, Jr.  
The Honorable William Dudley Gregorie  
The Honorable Perry K. Waring  
The Honorable Michael S. Seekings  
The Honorable A. Peter Shahid, Jr.  
The Honorable Harry Griffin  
The Honorable Ross A. Appel  
The Honorable Carol Jackson

RE: Law enforcement response to protests

Dear Mayor Tecklenburg and Members of the Charleston City Council:

On July 27, 2021 the ACLU of South Carolina witnessed an extremely concerning response from the Charleston Police Department (CPD) to a peaceful protest in downtown Charleston. That evening, at the corner of King Street and Calhoun Street we witnessed a CPD officer announce: "if you don't have a permit you cannot march." Shortly thereafter, CPD officers drastically escalated what was a peaceful demonstration when they began to needlessly detain individuals who were exercising their fundamental First Amendment right to protest their government.

The first protestor detained was pulled down Calhoun Street toward Meeting Street as he crossed Calhoun Street in the crosswalk. During this escalation by law enforcement, the individual's personal property (a trombone) was broken. At the time of his detention, as well as prior to it, he was following traffic light directions, marching within the crosswalk, and not obstructing traffic or other pedestrians. A few moments later, we witnessed the detention of a second individual by two CPD officers. One of the officers violently slammed the detained individual against the Walgreens store building (on the King Street side). The officer pinned the protestor against the side of the building in a way where the detained individual's feet were off the ground. The detained individual was then slammed into

another part of the same building. We witnessed no justification for this escalation in force by the CPD officer. One of the two officers present said the individual was detained for “spitting” and “wearing a mask.”

It was reported that two additional individuals were detained, but we did not witness those actions by CPD. This letter is limited to the actions by CPD that we witnessed.

The actions by CPD officers on July 27, 2021 conflict with the U.S. Constitution and CPB Administrative General Orders. These actions are part of a deeply concerning pattern by CPD. As we wrote to you on June 2, 2020,<sup>1</sup> July 28, 2020,<sup>2</sup> and October 22, 2020<sup>3</sup> we witnessed CPD also engage in a violent response to peaceful protest in Marion Square on May 31, 2020. As Charleston’s city leaders, this is a pattern that you cannot ignore.

### **Violations of the U.S. Constitution**

CPD’s purported justification for detaining the first individual, and thus severely escalating a situation that had been peaceful, was that the protesters did not have a permit. But the act of declaring the protest unlawful was an unconstitutional act by CPD.

Protest permit ordinances carry a heavy presumption *against* their constitutionality.<sup>4</sup> To be valid, both the text and enforcement of the ordinance must be “narrowly tailored to serve a significant governmental interest.”<sup>5</sup> To that end, permit ordinances generally cannot be applied to small gatherings<sup>6</sup> or spontaneous protests.<sup>7</sup>

Here, CPD violated the First Amendment by needlessly disturbing a legal protest. The protesters were engaged in urgent political speech in response to Solicitor Wilson’s announcement of no charges against the officers that killed Jamal Sutherland. The protest

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<sup>1</sup> ACLU of South Carolina letter to Chief Luther T. Reynolds, et al., June 2, 2020, *available at* [https://www.aclusc.org/sites/default/files/20.06.02.ltr\\_to\\_charleston\\_area\\_law\\_enforcement\\_re\\_abuse\\_of\\_power.pdf](https://www.aclusc.org/sites/default/files/20.06.02.ltr_to_charleston_area_law_enforcement_re_abuse_of_power.pdf).

<sup>2</sup> ACLU of South Carolina letter to Heather Mulloy, Assistant Corporation Counsel City of Charleston, July 28, 2020, *available at* [https://www.aclusc.org/sites/default/files/field\\_documents/2020.07.29\\_aclu\\_sc\\_2nd\\_letter\\_-\\_law\\_enforcement\\_response\\_to\\_protests\\_0.pdf](https://www.aclusc.org/sites/default/files/field_documents/2020.07.29_aclu_sc_2nd_letter_-_law_enforcement_response_to_protests_0.pdf).

<sup>3</sup> ACLU of South Carolina & SC4CJR letter to Mayor John J. Tecklenburg, et al., Oct. 22, 2020, *available at* [https://www.aclusc.org/sites/default/files/201022.aclu\\_sc\\_and\\_sc4cjr\\_ltr\\_to\\_charleston\\_leaders.pdf](https://www.aclusc.org/sites/default/files/201022.aclu_sc_and_sc4cjr_ltr_to_charleston_leaders.pdf).

<sup>4</sup> *Cox v. City of Charleston*, 416 F.3d 281, 284 (4th Cir. 2005) (quoting *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 70 (1963)).

<sup>5</sup> *Forsyth Cty. v. Nationalist Movement*, 505 U.S. 123 (1992); *Ward v. Rock Against Racism*, 491 U.S. 781, 799 (1989) (a time, place or manner restriction on First Amendment activity may not “burden substantially more speech than is necessary to further the government's legitimate interests.”).

<sup>6</sup> *Cox*, 416 F.3d at 284-87 (“[T]he Ordinance is facially unconstitutional to the extent that it applies to small groups.”).

<sup>7</sup> See *Grossman v. City of Portland*, 33 F.3d 1200, 1206 (9th Cir. 1994) (“Spontaneous expression, which is often the most effective kind of expression, is prohibited by the ordinance.”) (citing *Shuttlesworth v. City of Birmingham*, 394 U.S. 147, 163 (1969) (“[T]iming is of the essence in politics.... when an event occurs, it is often necessary to have one's voice heard promptly, if it is to be considered at all.”))

was relatively small, and protesters stayed on the sidewalks, obeyed traffic and pedestrian signals, and refrained from obstructing passersby. On these facts, the City had no interest—much less a significant interest—in restricting First Amendment rights of the protesters.

The right to gather and speak out against abuses of power by the government in traditional public forums is fundamental to our democracy and protected by the Constitution. Political expression related to public policy is the prototypical example of protected speech.<sup>8</sup> And, public parks and streets like in and around Marion Square are “prototypical” examples of public fora and have long been considered a rightful place for political demonstrations.<sup>9</sup> The arrests and use of force against the individuals exercising the First Amendment right to protest were gross violations of this cherished and fundamental right.

### **Violations of CPD Administrative General Orders**

Regarding the individual who was detained by a CPD officer and slammed against the Walgreens store building (on the King Street side), we witnessed no justification for this escalation in force by the CPD officer. Thus, that action may violate CPD’s Administrative General Order 23.2, which states that “[u]nder no circumstances will the force used be greater than necessary to achieve lawful objectives and to conduct lawful public safety activities.”<sup>10</sup> It is the policy of the Charleston Police Department that “[f]orce is to be regarded as an unusual procedure and an absolute last resort in police operations. Applied force should be limited to the force that is objectively reasonable and necessary under the circumstances existing at the time force is applied.”<sup>11</sup> In this case, at the time the individual was slammed against the building, as well as in the immediate period leading up to that, we did not witness the detained individual engage in any action that would have justified this escalation.

In addition, a second CPD officer was present during this use of force and failed to intervene against this escalation in force. This officer may have violated CPD’s duty to intervene. As Administrative General Order 23 states, “[a]ny officer present and observing another officer using force that is clearly beyond that which is objectively reasonable under the circumstances shall, when in a position to do so, intercede to prevent the use of such excessive force. Officers shall promptly report these observations to a supervisor.”<sup>12</sup>

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<sup>8</sup> *Texas v. Johnson*, 491 U.S. 397, 411 (1989).

<sup>9</sup> *Hague v. C.I.O.*, 307 U.S. 496, 515 (1939).

<sup>10</sup> City of Charleston Police Department Policy and Procedure Manual, Administrative General Order 23.1 Response to Resistance / Aggression, Effective Date: 02/01/08, Revised: 01/29/21, available at <https://public.powerdms.com/CPD5/tree/documents/599935>.

<sup>11</sup> City of Charleston Police Department Policy and Procedure Manual, Administrative General Order 23.2 Response to Resistance / Aggression, Effective Date: 02/01/08, Revised: 01/29/21, available at <https://public.powerdms.com/CPD5/tree/documents/599935>.

<sup>12</sup> City of Charleston Police Department Policy and Procedure Manual, Administrative General Order 23.7 Response to Resistance / Aggression, Effective Date: 02/01/08, Revised: 01/29/21, available at <https://public.powerdms.com/CPD5/tree/documents/599935>.

## Additional Concerns

Additionally, in the context of COVID-19, CPD's decision to arrest people instead of citing and releasing them risked escalating what continues to be a global pandemic.<sup>13</sup> As you know, jails have been home to some of the most severe COVID-19 outbreaks in the country.<sup>14</sup> In fact, in July the Spartanburg County Detention Center agreed to take affirmative steps to reduce the number of people incarcerated in their facility because of COVID-19.<sup>15</sup> Yet, CPD participated in the arrest of multiple individuals for protesting.

## Next Steps For Mayor Tecklenburg and the Charleston City Council

We ask that you:

- Conduct a public and independent review of the actions taken by CPD on the evening of July 27, 2021 in and around the intersection of King Street and Calhoun Street.
- Clarify the steps you will take to ensure that CPD protects the fundamental First Amendment right to protest.
- Instruct CPD to release all body camera footage captured during the period in question and explain in writing in each instance where body camera footage that should have been recorded was not recorded.
- Instruct CPD to respond in writing to the following questions:
  - What was the legal rationale for ordering protestors to cease their protest in and around the intersection of King Street and Calhoun Street on July 27, 2021?
  - Do you consider Marion Square and the public streets surrounding it to be a public forum? If not, why not?
  - Why did law enforcement conduct arrests of non-violent protestors?
  - How did the COVID-19 pandemic and the acute threat of COVID-19 spread in jails impact your decision to arrest and jail non-violent protestors?
  - Why were de-escalation options not taken?
  - What steps are you taking, including review of officer body-cam footage, to hold officers who used excessive force accountable?
  - What steps are you taking to ensure that your officers respect the fundamental right to protest during future protests?

As we have written to you before, community trust cannot exist when officers engage in violence with impunity, which currently appears to be the case in Charleston.

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<sup>13</sup> This is assuming the CPD was justified in declaring a First Amendment protected activity to be unlawful. As discussed above, this is unlikely.

<sup>14</sup> Taylor Miller Thomas, *How U.S. Prisons Became Ground Zero for Covid-19*, Politico, June 25, 2020, available at <https://www.politico.com/news/magazine/2020/06/25/criminal-justice-prison-conditions-coronavirus-in-prisons-338022> (“Eight of the top 10 coronavirus clusters in the country have been in jails and prisons, where inmates live in close quarters, sharing everything from cells to telephones.”). See also Letter to Chief Reynolds from the ACLU of South Carolina, Mar. 18, 2020, available at [https://www.aclusc.org/sites/default/files/field\\_documents/03.18.20\\_aclu\\_of\\_sc\\_coronavirus\\_criminal\\_justice\\_recommendations.pdf](https://www.aclusc.org/sites/default/files/field_documents/03.18.20_aclu_of_sc_coronavirus_criminal_justice_recommendations.pdf).

<sup>15</sup> *Lovelace v. Wright*, 6:20-CV-01977 (D.S.C., 2021), Settlement Agreement and Consent Decree, available at [https://www.aclusc.org/sites/default/files/field\\_documents/settlement\\_agreement\\_and\\_consent\\_decree.pdf](https://www.aclusc.org/sites/default/files/field_documents/settlement_agreement_and_consent_decree.pdf).

Thank you for your time and please let me know if you have any questions.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Frank Knaack'.

Frank Knaack  
Executive Director  
ACLU of South Carolina

Cc: Chief Luther Reynolds