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***VIA REGULAR MAIL***

Chief Michael Sauschuck  
Portland Police Department  
109 Middle Street  
Portland, ME 04101

RE: ***Protesters, Policing, and the First Amendment***

Dear Chief Sauschuck:

For nearly 50 years, the ACLU of Maine has worked to ensure that all people in Maine, including protesters, can exercise the rights guaranteed to them by the First Amendment. These rights are fundamental to who we are as human beings, and they are a necessary part of informed self-government.

We have recently noticed an increase in requests from individuals and organizations for information about how to lawfully and peacefully voice their objection (or support) to matters of public concern. We anticipate that there may be an additional increase in public expressive activity in the months and years ahead. The purpose of this letter is to share with you what we have told them. Our hope is that this will better enable you and your department to prepare for any protests within your community.

The liberties found in our Constitution are built on a foundation of free speech, dissent, and protest. Protesting, picketing, and leafletting are activities protected by the First Amendment to the U.S. Constitution. Peaceful protest has a long tradition in our country, and it is an entirely appropriate way for anyone to participate in the political discourse.

While the Constitution prohibits the government from preventing people from speaking, the government may validly regulate freedom of speech in carefully tailored and limited ways.

- The government may not impose restrictions on protesters and demonstrators because of a disagreement with the protester's message or their viewpoint. All regulation must be content-neutral and viewpoint-neutral.
- Picketers, leafleteers, and protesters rarely need a permit. If the government does require demonstrators to obtain a permit – *e.g.* for a march or parade that does not stay on the sidewalk or an event that blocks traffic; for a large rally requiring the use of sound amplifying devices; or for events at certain designated parks or plazas—then the government needs to set out ahead of time with specificity the precise contours of that requirement. Though it is best for all concerned if demonstrators obtain permits far in advance of an event, sometimes protesters are responding to events in the news as they unfold. Because of that, the government must be willing to accommodate spontaneous events that do not lend themselves to advance permitting.
- Counter-demonstrators have free speech rights, too. Although counter-demonstrators should not be allowed to disrupt the event they are protesting, they do have the right to be present and to voice their displeasure. The law permits the police to keep two antagonistic groups separated, but should allow them to be within the general vicinity of one another.
- The government may draw nondiscriminatory “time, place and manner” restrictions about when and where a protest may occur. Generally speaking, streets, sidewalks, parks and other public locations that the government has used for speech activities (such as the plazas in front of government buildings) are permissible locations for protests and demonstrations. Even when a restriction is neutral with regard to content, it must be enforced in such a way as to ensure that it does not burden more speech than necessary to achieve the government's purpose.

We generally advise anyone planning a protest or demonstration to be prepared to obey commands from a police officer, even if the person thinks that the command is unlawful; in our experience, it rarely does anyone any good to argue with a patrol officer. We encourage protesters who feel that their rights are being violated to ask to speak to a police supervisor and to calmly explain the disagreement to him or her. We always emphasize that if a protestor does not obey an officer, she may be arrested and taken away from the protest.

We also advise protesters and demonstrators that, in extreme cases, a person who disobeys an officer's lawful command may be subjected to criminal liability. We

believe, though, that it makes little sense to arrest, transport to jail, and criminally charge a protester who simply disobeys a city ordinance.

We strongly urge every police department to use restraint, and to exercise good judgment when making arrest and charging decisions. Protesting is a cherished – protected – constitutional right. We know that police officers will feel some incentive to arrest demonstrators who are causing a disruption (particularly if the police themselves are the subject of the demonstration). But, in the long-term, arresting and jailing protesters causes more problems than it solves.

Jailing nonviolent protesters means that jail officials have to devote their time and energy to housing and guarding people who pose no threat to public safety, it requires prosecutors and court officials to spend time and resources sorting out whether and how to prosecute individuals who are exercising constitutionally-protected rights, and it affords protestors an additional platform to press their cause in a courtroom. In the mine run of cases, we believe that criminal prosecution is wholly inappropriate.

We routinely direct citizens to our website, where they may find additional information about the First Amendment right to protest. That information is available here: <https://www.aclumaine.org/en/know-your-rights/kyr-protests>.

As always, please do not hesitate to contact the ACLU if we may be of assistance with this, or any other matter. We would be happy to speak to you, or to give a presentation to your department, about these matters, if you believe that would be helpful. Our wish for the New Year is a peaceful, robust public debate about current events.

Kindest regards,

/s/ Zachary L. Heiden  
/s/ Jamesa J. Drake  
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