



3601 Main Street
Kansas City, MO 64111
(816) 470-9933

454 Whittier Street
St. Louis, MO 63108
(314) 652-3114

www.aclu-mo.org

BOARD OF TRUSTEES

Brad Pierce
President

Shontaia Riley
Pam Woodard
Vice Presidents

Bob Waugh
Treasurer

Daron Smith
Secretary

Terry Bloomberg
St. Louis

Tricia Bushnell
Kansas City

Susan Carlson
St. Louis

Rod Chapel
Jefferson City

Denise Field
St. Louis

Sheila Greenbaum
St. Louis

Laurie Hauber
St. Louis

Robert King
St. Louis

David Nelson
St. Louis

Aaron Novack
St. Louis

Bill Raney
Kansas City

Allen Rostron
Kansas City

Annette Slack
Columbia

Joseph Stimpfl
St. Louis

Steven Streen
Kansas City

Erica Warren
Columbia

Jeffrey A. Mittman
Executive Director

August 13, 2014

Thomas Jackson

Chief of Police

Ferguson Police Department

222 South Florissant Road

Ferguson, Missouri 63135

Fax: (314) 522-0429

The ACLU of Missouri has received a copy of the Ferguson Police Department's statement today asking that protestors limit themselves to assembling during daylight hours and protest in a "respectful manner." We are writing to you to express our concerns about this direct attack on protected expressive activity. We are further concerned about the increasing efforts to shut the media out of Ferguson.

I. The constitutional rights of protestors

"The First Amendment, applicable to the States through the Fourteenth Amendment, provides that 'Congress shall make no law ... abridging the freedom of speech.'" *Virginia v. Black*, 538 U.S. 343, 358 (2003). The protests in Ferguson are at the core of the First Amendment's protection because they deal with matters of public concern. "Speech deals with matters of public concern when it can be fairly considered as relating to any matter of political, social, or other concern to the community, or when it is a subject of legitimate news interest; that is, a subject of general interest and of value and concern to the public." *Snyder v. Phelps*, 131 S. Ct. 1207, 1216 (2011) (internal quotations omitted). "Speech on matters of public concern is at the heart of the First Amendment's protection." *Id.* at 1215 (alterations and quotations omitted). Here, there is no question that Ferguson Police Department's statement is aimed

directly and explicitly at speech that lies at the core of the First Amendment's protection ("groups wishing to assemble in prayer or protest.").

"The First Amendment reflects 'a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open.'" *Id.* (quoting *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964)). Speech on matters of public concern "occupies the highest rung of the hierarchy of First Amendment values, and is entitled to special protection." *Id.* at 1215 (quoting *Connick v. Myers*, 461 U.S. 138, 145 (1983)).

The protests in Ferguson are subject to heightened protection for the additional reason that they are peaceful and conducted on public streets and sidewalks. "Consistent with the traditionally open character of public streets and sidewalks, [the Supreme Court] ha[s] held that the government's ability to restrict speech in such locations is 'very limited.'" *McCullen*, 134 S. Ct. at 2529. The government is "sharply circumscribed" in its authority to restrain expressive activity in "places which by long tradition or by government fiat have been devoted to assembly and debate." *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 45 (1983). Public places, such as streets and sidewalks, that are associated with the free exercise of expressive activities "are considered, without more, to be 'public forums.'" *Grace*, 461 U.S. at 177; *see also Snyder*, 131 S.Ct. 1207 at 1218 (quoting *Frisby v. Schultz*, 487 U.S. 474, 480 (1988)) (observing that the Supreme Court has "repeatedly referred to public streets as the archetype of a traditional public forum"); *Pleasant Grove City, Utah v. Summum*, 555 U.S. 460, 469 (2009) (noting "government entities are strictly limited in their ability to regulate private speech" in " 'traditional public fora' " such as public streets and parks) (citation omitted); *Frisby*, 487 U.S. at 481 (finding that courts need not make any "particularized inquiry into the precise nature of a specific street" because "all public streets are held in the public trust and are properly considered traditional public fora").

Your statement, which will be viewed as an informal order, effectively imposes a ban on expressive activity that is protected by the First Amendment. There is no legal support for exercising such authority. Moreover, your demand for protests to proceed in a "respectful manner" is far beyond the bounds of permissible government activity. Government agencies do not get to demand respect from protestors. Respect is something that government officials earn from

citizens, and citizens are entitled to express their lack of respect by protest on public streets and sidewalks. Actions to suppress peaceful expressive activity dilute that respect and, thus, are contrary to your request.

While we appreciate that the current circumstances present your Department with many challenges, it is unacceptable to, formally or informally, suspend the First Amendment within Ferguson. We acknowledge that limiting protests to daylight hours and demanding a "respectful manner" might make your job easier, "[b]ut that is not enough to satisfy the First Amendment. ... [T]he prime objective of the First Amendment is not efficiency." *McCullen v. Coakley*, 134 S. Ct. 2518, 2540 (2014).

II. Press Concerns

Finally, we are concerned that your statement combines with the FAA closure of all drone access to Ferguson last night. This primarily impacts the press. Such a media blackout in the skies, together with your efforts to impose a curfew on protestors, appears an effort to not only suppress public protest, but to also prevent oversight and accountability.

You have indicated that Ferguson is committed to taking the necessary steps to rebuild and strengthen the community. Your statement is a step away from that commitment. Based on the foregoing, we must insist that you clarify that your statement today is merely a request, not an order, and the peaceful protests are permitted on the streets and sidewalks of Ferguson. Furthermore, you need to make it clear to all law enforcement officers present in your jurisdiction that the First Amendment has not been suspended and that rights of protestors must be respected.

Sincerely,



Jeffrey A. Mittman
Executive Director