

July 18, 2020

## ACLU of Utah Statement on Recent Police Crackdowns on the Right to Protest

Freedom of speech, the right to protest, and the right to dissent are crucial to both the creation and preservation of constitutional democracy. The founding of this nation, the Declaration of Independence, and the U.S. Constitution were all the result of public acts of civil disobedience. We must acknowledge that our current form of government was made possible by resisters, organizers, and protestors against complacency and tyranny.

To this day, the First Amendment to the Constitution protects the right to protest and freedom of speech of all individuals inside the United States regardless of race, gender, nationality, citizenship status, religion, sexuality, whether they are unhoused, incarcerated, gender non-conforming, or simply disagree with the systems we have in place. After all, the Constitution begins with “We the people” with no asterisk or caveat.

We must also recognize that during any interaction between police officers and members of the public, particularly for BIPOC (Black, Indigenous, and People of Color) communities, an imbalance exists in which law enforcement agencies hold all the power. It cannot be ignored that the body armor, low-flying helicopters, offensive weapons, and [military-grade equipment](#) that police officers bring to these protests, on its own, intensifies this power imbalance. Throughout history, police power has been used as a mechanism to quell movements led by BIPOC individuals and preserve the status quo. Yet, for many of these communities, the ability to protest is the only accessible channel by which they are able to call for justice and change. The arrival of heavily armed and armored police to these protests alters the power dynamics and infringes upon one of the few spaces in which marginalized communities are able to air their grievances and call for systemic reform.

The role of law enforcement during protests is to maintain public safety and to facilitate the right of protestors to engage in protected expressive activities. Their role is not to intimidate protestors nor quell the viewpoints expressed by certain groups. **Over the last several months, as described below, ACLU of Utah Legal Observers have directly witnessed a concerning pattern of viewpoint discrimination and disproportionate and militarized police action in response to protests and**



**First Amendment speech that criticizes elected leaders and law enforcement in Utah.** We have gleaned similar events from footage and pictures released by media sources, as also highlighted.

From January 4 to the early morning of January 5, 2020, a team of ACLU of Utah Legal Observers documented a group of activists and unsheltered individuals in a small encampment on Washington Square Park in downtown Salt Lake City. Here is what we saw:

- The encampment was in a designated area of the park;
- Activists provided food, blankets, and clothing to unsheltered individuals;
- No destruction of public property occurred;
- No violence against community members occurred;
- Law enforcement set up flood lights and formed a perimeter around the encampment;
- Law enforcement, donned with riot gear, pushed into the encampment;
- Law enforcement fired less lethal projectiles at unarmed activists, pushed them with shields, and arrested them;
- Law enforcement charged at members of the ACLU Legal Observer team, pushing them with their shields;
- Law enforcement charged at a member of the press, knocking him over.

On May 30, 2020, protests occurred near Washington Square Park in response to Minneapolis police officers killing George Floyd. An ACLU of Utah attorney, trained as a Legal Observer, was at the protest and was later joined by another staff member who is also a trained Legal Observer. This is what we saw with regard to violence against protestors:

- A man with a large knife and compound bow threatened protestors;
- The man left his vehicle multiple times to threaten protestors as he drove north on 200 E toward law enforcement's blockade at the intersection of 400 S;
- He stopped his car near the intersection, got out of his vehicle, and appear to draw his bow on a protestor;
- Protestors defended themselves and only at that point did police intervene by pulling the man from the crowd and subsequently released him;
- Most of the day and into the evening otherwise peaceful protestors criticizing law enforcement and local government were met with phalanxes of riot police, military-grade vehicles, Utah National Guard helicopters, and numerous arrests of protestors.

The man who threatened protestors with weapons was detained by law enforcement only after days of public outcry. That same day, [footage recorded by ABC4 News](#) showed a law enforcement officer in riot gear knocking down an elderly man with a cane who was merely standing on a sidewalk. In response to the protests, elected officials intensified the crackdown by imposing a [week-long curfew](#) in Salt Lake City that resulted in the suppression of free speech and freedom of movement throughout the entire city, disproportionately impacting marginalized communities of the city and resulted in more police violence and arrests.

The problematic harassment and intimidation by law enforcement of protestors and organizers before, during, and after events protected by the First Amendment has continued.

On June 23, 2020, around 40 police officers [armed with lethal and less lethal weapons](#) were deployed to confront and disperse a crowd of between 70 to 80 people calling for accountability for the police killing of Bernardo Palacios Carbajal and threatened protestors with arrests. At no point did community members protesting pose a risk of harm to the public.

On July 2, 2020, police impounded a protestor's vehicle on alleged traffic infractions and arrested another protestor who filmed police conducting a traffic stop.

On July 9, 2020, several ACLU of Utah staff members trained as Legal Observers watched the live-streamed protests after Salt Lake County District Attorney Sim Gill announced he would not file charges against officers who killed Bernardo Palacios-Carbajal. The protests occurred in front of the Salt Lake County District Attorney's Office on 500 S, and civilian vehicles were used to block that portion of the street. This is what we saw on live-streamed footage:

- Law enforcement arrived in full riot gear prior to any incidents of alleged civil unrest;
- Law enforcement did not wear any identifying information, such as badges or name tags;
- Law enforcement used a van to smash into a parked vehicle to open access to the street;
- Protestors linked arms across the street and law enforcement smashed them with shields, batons, and shot at them with less lethal projectiles;
- Law enforcement harassed protestors and in at least one incident rammed into protestors with their riot shields without warning;
- After the protest, live-stream videos showed law enforcement targeting protest organizers in traffic stops;

Near the same scene where police used militarized response to protests, a group of protestors gathered unhindered as they protested pandemic-related safety measures ordered by the City and County as record numbers of cases of COVID-19 continue to rise throughout the state and disproportionately affect BIPOC communities. These protests were allowed to continue without any police intervention.

Since shortly after the daily protests began in response to the killings of George Floyd and Bernardo Palacios-Carbajal by police officers, law enforcement has used potential and actual damage to property to [justify militarized violence](#) against the [human bodies of protestors](#). For example, the Salt Lake City Police Chief explained that on July 9, "Sadly, as they began to break windows at [the District Attorney's Office], [Salt Lake City Police Department] declared it an unlawful assembly." But while protecting property may be a public safety concern, property never outweighs human life and preserving property does not justify tactics that inflict physical and emotional trauma on human beings. Many people were hurt as a result of law enforcement actions on July 9, and whether they were damaging property or not—and an overwhelming majority were not—this was not an acceptable result.

The result of these militarized responses to first amendment criticisms of police action, however, conveys a chilling message to protestors that criticism of law enforcement will not be tolerated.

This chilling message is not unique to Salt Lake City. At several protests in different Utah cities, we observed law enforcement stand calmly next to predominantly white and heavily armed counter-

protestors many of whom wore emblems that identified themselves as members of groups that have openly embraced extremist and racist ideologies calling for violence against BIPOC communities. On July 1, 2020, in Provo, Utah, our Legal Observers at a rally in defense of Black lives witnessed police officers joke with, fist bump, and accept water bottles from counter-protestors whose groups publicly embraced white supremacist views. By doing so, whether police were aware of the ideologies that these groups have openly embraced, these actions conveyed a message of solidarity with counter-protestors and the ideologies which they espoused. Rather than serving as a public safety entity to those present at or observing the protests, officers' actions and the way they positioned themselves during the events intimated a specific message of disagreement with the calls for racial justice.

On July 15, 2020, Provo City released a 19-minute long [video](#) featuring Mayor Michelle Kaufusi and Provo Police Chief Rich Ferguson answering questions about the recent protests in Utah County. While the Mayor and the Chief are on the surface addressing a specific act of violence during a specific protest, the implications of this video, combined with the events of two weeks before, are chilling to protected free speech activities in Provo. After the mayor stated that Provo "is not immune to this nationwide upheaval," the police chief implied that protests and marches that include new voices and make elected officials uncomfortable are not welcome in their city. He also implied that protests that include non-residents of Provo are less legitimate, and that the only "good people" are those who want to sit down with the police to talk about reforms. This narrow and hostile attitude to First Amendment activities in Provo is unacceptable and erases the crucial role that First Amendment activities have played in the recognition of civil rights of many disenfranchised communities. It also, whether intentionally or not, boosts unfounded conspiracy theories largely spread by extremist groups that claim racial justice protests are organized by "outside" anarchists and instigators rather than local community members raising grievances and demanding change. Freedom of speech clearly encompasses the right to criticize the systems that govern and oppress communities. Threats of use of police power and militarized police responses to these activities should not be used to quiet constitutionally protected dissent against the government. We expect Provo's elected officials and law enforcement to follow the Constitution and allow free speech activities in the city without regard to the identity and residence of the people protesting.

The right to protest and freedom of speech belongs to everyone. The Government cannot discriminate simply because it does not like what is said. Yet, throughout these examples, the viewpoint discrimination displayed by disparate police responses to the exercise of First Amendment rights cannot be ignored. During incidents when protestors openly and loudly criticized law enforcement and local government, they were met with overwhelming demonstration of militarized, state-sanctioned police violence and disproportionate use of government power to quell speech and disperse crowds engaged in free speech activities.

Recognizing the importance of the right to protest and dissent, we now demand the following from our state and local law enforcement agencies:

- Do not deploy to protests when there is not a clear and present danger to public safety;
- Clarify that individuals engaged in First Amendment Activities are not engaged in unlawful assembly;

- Halt the dispersal and arrest of individuals engaged in First Amendment activities that do not pose a present danger to public safety;
- Halt the use of force against and detention of journalists and individuals engaged in legal observation and allow them to stay even when a decision has been made to deem an assembly unlawful and disperse it;
- End the practice of targeting of individuals who participate in and organize protests for extra scrutiny for alleged civil and criminal offenses such as driving with expired registration;
- Prohibit “kettling” or mass arrests and honor the Fourth Amendment: require individualized suspicion or probable cause in order to detain or arrest a person engaged in criminal activity;
- Clarify incidents when First Amendment activities can be considered unlawful assemblies to be consistent with Constitutional principles and case law;
- Require clear and visible identification of officers deployed in crowd control;
- Require any live video feeds of events be simultaneously made available to the public;
- Require body cameras to be worn and activated during protests and any footage in which any level of force was used for crowd control be submitted for review and publicly released in full;
- Require ample time and channels for safe dispersal of assemblies deemed unlawful;
- Emphasize maintenance of peace and de-escalation;
- Require all officers that participate in crowd control to undergo enhanced bias training *before* they participate in protest dispersal.

Law enforcement agencies should halt the practices of intimidation, escalation, and militarization of response to civil dissent. The response to protests against police should never be a militarized police state. Participating in, reporting on, or observing a protest should never instill fear of bodily harm and police violence. The use of state power and authority should never be used to quell dissent. Because, after all, dissent has been and always will be patriotic.