

## **Memorialization of Agreed Principles Concerning Protest Activity in Public Places in Fort Wayne, Indiana**

On June 26, 2020, the Indiana Civil Liberties Union, Inc. d/b/a ACLU of Indiana, Black & Brown Liberation, and thirteen individual plaintiffs filed suit against the City of Fort Wayne and the Allen County Sheriff in litigation entitled Black & Brown Liberation, et al. v. City of Fort Wayne, No. 1:20-cv-240-DRL-SLC (N.D. Ind.) In that suit, plaintiffs sought: (1) a declaration that defendants' and officers' actions violated and continue to violate the First and Fourth Amendments; (2) a preliminary and permanent injunction prohibiting defendants and their officers from taking any actions designed to interfere with or stop lawful protest activities and/or utilizing objectively unreasonable force against protest activities, including but not limited to employing tear gas, rubber bullets, pepper ball projectiles and stun grenades; and (3) an award of monetary damages, including attorneys' fees. Thereafter, one of the individual plaintiffs withdrew as a plaintiff to the lawsuit, and the ACLU voluntarily dismissed the Allen County Sheriff as a defendant.

This matter was set for a 2-day evidentiary hearing on October 15 and 16, 2020, on Plaintiffs' motion for preliminary injunction. After an expedited period of discovery and discussions among counsel, Plaintiffs filed an unopposed Motion to Withdraw Motion for Preliminary Injunction and Vacate Hearing. The District Court granted this motion.

Subsequently, the parties participated in multiple discussions, many of which were facilitated by a neutral mediator. Those discussions culminated in the parties establishing agreement in principle to the points in the numbered paragraphs below addressing protest activities that occur on public property in Fort Wayne, Indiana. The parties continue to have disagreements about certain legal standards that apply to the actions of the City of Fort Wayne and certain facts

related to the claims in the litigation. The parties agree that this public document is not an admission of any liability or wrongdoing by the City of Fort Wayne, the Fort Wayne Police Department or any of its individual officers, and it cannot be used to establish such liability or wrongdoing in the above-named litigation, or any other litigation, past, present, or future. The parties further agree that nothing herein is an admission of any behavior that has or has not been engaged in by the City of Fort Wayne, the Fort Wayne Police Department, or any of its individual officers. The parties further agree that nothing herein is an admission that any of the policies or procedures of the City of Fort Wayne or the Fort Wayne Police Department violate any State or Federal laws.

No provision herein is intended to establish any other person as a third-party beneficiary or to authorize any non-party to maintain any action under its terms. Neither this document nor any portion thereof is intended to be made an order of any court or subject to judicial enforcement either in the above-named litigation, or any other litigation, past, present or future.

That said, Plaintiffs intend to dismiss their claims in the above-described litigation relating to declaratory and injunctive relief. Plaintiffs' damage claims will remain to be litigated if not resolved by agreement of the Parties.

1. Persons have the right to engage in non-violent protests within constitutional and legal bounds. This generally allows for non-violent protests in parks, sidewalks, and on streets that have been closed to vehicular traffic consistent with the general practices and policies of the Fort Wayne Police Department ("FWPD"). The existing policies and procedures of the FWPD, developed over time, following existing case law and the training curriculum approved by the Indiana Law Enforcement Academy, promote and protect these rights.

2. In circumstances where non-violent protesters enter public streets unlawfully, the FWPD, consistent with its general practices and policies, will take reasonable measures to temporarily close streets and/or to divert vehicular traffic until the unlawful assembly of protesters in the street can be cleared.

3. FWPD, in accordance with its existing policies and procedures and applicable governing law, including the Fourth Amendment to the United States Constitution, will use force that is objectively reasonable under the circumstances presented. Whenever circumstances permit, FWPD will continue to make reasonable efforts to deescalate any potentially unlawful situation presented during a protest prior to using force.

4. Unlawful activities by protesters may require the FWPD, consistent with its established policies, including but not limited to the Public Safety Response Team (“PSRT”) Policy, to establish an emergency incident area or to declare an unlawful assembly or to make other dispersal orders. If the FWPD establishes an emergency incident area or an unlawful assembly or makes other dispersal orders, the location will be limited in scope to the area where the unlawful activity is occurring and will be narrowly tailored to the reasons for establishing the emergency incident area or declaring an unlawful assembly or the making of the dispersal orders. Absent an emergency, the FWPD will make reasonable attempts to notify persons within the area to leave and the routes that they should take to leave the emergency incident area or unlawful assembly. These measures may include, but not be limited to, general notices through loudspeakers, both on the ground and through drones; personal oral notice delivered by law enforcement personnel; and,

geofencing. The FWPD will also make the same reasonable attempts, utilizing those same measures, notifying persons approaching the area that they are not allowed to enter the area.

5. In the absence of an emergency incident area being established, or an unlawful assembly being declared, or a curfew being imposed, persons who are occupying sidewalks or parks, and who are not involved in unlawful activity, will not be ordered to disperse, and force will not be used against them unless the person is reasonably perceived to present an imminent threat of property damage or bodily injury. In the event an emergency incident area is established, or an unlawful assembly is declared or dispersal orders are given, the FWPD will not intentionally target those persons complying or attempting to comply unless they are committing a criminal act.

6. FWPD acknowledges that the use of any chemical agent, including personal protective devices, is a use of force and that its use must be reasonable. When feasible, directives and warnings will be given that the deployment of personal protective devices is imminent.

7. Absent exigent circumstances, prior to deploying crowd control-type chemical agents (*i.e.* chemical agents other than personal protective agents) against broad threat areas related to protesters committing unlawful acts, FWPD will take reasonable measures to announce the intention to use crowd control-type chemical agents and the announcements will be made through a variety of delivery systems to be heard, seen, or understood by anyone in the surrounding area. Absent exigent circumstances, announcements will be made through a variety of delivery systems in a manner to allow protesters and others the opportunity to comply and to leave the area.

Consistent with its established policies, including but not limited to the PSRT Policy, FWPD will consider the safety of uninvolved citizens and those persons not engaged in unlawful activity.

8. Consistent with existing policies, FWPD will not fire impact munitions indiscriminately into crowds; FWPD will not use direct-fired, impact munitions against non-violent or passively resistant protesters; and less-lethal, impact munitions shall, in all instances, be used only when it is objectively reasonable to do so and shall only be used to target persons engaged in conduct reasonably perceived to pose an imminent threat of property damage or bodily injury, persons actively engaged in such conduct, or persons resisting or interfering with an arrest.