



Nebraska

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June 2, 2020

The Honorable Jean Stothert
Mayor of Omaha
1819 Farnam Street Suite 300
Omaha, NE 68183

Cc: Paul Kratz, City Attorney
Omaha City Council Members

Re: Reconsideration or Amendment to May 31, 2020 Emergency Order

Dear Mayor Stothert,

For over 50 years in Nebraska, the ACLU has worked in courts, legislatures, and communities to protect the constitutional and individual rights of all people. With a nationwide network of offices and millions of members and supporters, we take up the toughest civil liberties fights. Beyond one person, party, or side — we the people dare to create a more perfect union.

We understand you are facing tremendous challenges and respect the leadership you have displayed during these difficult times. However, we ask you to reconsider whether your May 31 Emergency Order constitutes an unconstitutional prior restraint on peaceful assembly and speech in violation of the First Amendment.

We are all aware that over the weekend and continuing into last night, thousands of Nebraskans exercised their right to peaceably assemble and protest the murder of George Floyd, the repeated abuse of people of color by law-enforcement officers and the systemic and overt racism existing in our criminal justice system. As we witnessed in both Omaha and Lincoln last night, the peaceful demonstrations were powerful and have produced expression of mutual respect and understanding between protesters and members of law-enforcement.

Your emergency order significantly restricts the freedom of expression of all Omaha citizens during a critical time. Like other city officials, you have imposed a curfew of 8:00 p.m., which will prohibit assembly and protest more than an hour before nightfall. To your credit, it appears the Order was not meaningfully enforced last night, at least as to Omaha citizens peacefully protesting the George Floyd death. However, the lack of enforcement calls into question its need.

Of greater concern to the ACLU is the ban on assemblies. Unlike mayors in other cities, including Lincoln, your Order also imposes a 24-hour city-wide ban on all gatherings of more than twenty-five people. At a time when so many in our country and in the City of Omaha feel hurt and powerless, at a time



when so many feel their government is not listening to their concerns, imposing a restraint on free speech is misguided.

It is also an unconstitutional prior restraint of the freedom of expression guaranteed by the First Amendment. Voices may not be silenced simply because prior demonstrations involved instances of violence. The Constitution allows for the government to gather an appropriate number of police and to arrest those who engage in violent conduct. The Constitution does not allow the government to suppress legitimate First Amendment conduct as a preventative measure. The Order's city-wide 24-hour ban on assemblies of more than twenty-five people, criminalizes lawful protest at a time when voices need to be heard, and goes further than the First Amendment allows.

It has also been suggested the ban on assemblies is consistent with the Governor's Directed Health Measure. This is inaccurate. First, that order was entered as a means of protecting public health; Mayor Stothert's Order is explicitly based upon the protests in response to George Floyd's murder. Second, the DHM's definition of gatherings makes no mention of protests or of sidewalks and other areas where speech is traditionally afforded maximum protection. To the contrary, the DHM's definition of gatherings can be interpreted to allow demonstrations. Unsurprisingly, we are unaware of any enforcement action of the DHM to prohibit demonstrations.

We respectfully ask that you inform the public and members of the City Council that you will eliminate the ban on assemblies, effective immediately, as a condition of the Council's extension of the emergency declaration. We believe that working collaboratively to narrow and refine this matter is preferable to exploring costly lengthy civil rights litigation and would provide greater clarity to all stakeholders now when it is needed most.

We thank you for your time and consideration of this matter, are happy to provide additional information or assistance, and thank you for your ongoing commitment to public service.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Adam J. Sipple".

Adam J. Sipple
Legal Director