



April 30, 2015

**Via Electronic Mail**

Mayor Stephanie Rawlings-Blake  
Office of the Mayor  
250 City Hall  
100 N. Holliday Street  
Baltimore, Maryland 21202

I write on behalf of the American Civil Liberties Union of Maryland to join the chorus of individuals, organizations and businesses calling for the curfew order over the City of Baltimore to be lifted immediately.

We share the goal of ensuring the safety and welfare of all persons and businesses in Baltimore. But we believe that at this time, the curfew is continuing at the expense of Baltimore residents' constitutional freedoms. We commend your expressed willingness to end the curfew early if "calm and order" are restored.<sup>1</sup> We think it is clear that these conditions have now been met such that the curfew is no longer serving its intended purpose, and we urge you to lift it.

In the past week, many residents of Baltimore have engaged in the great American tradition of expressing protest and dissent. Most have done so through peaceful means fully protected by the First Amendment. Residents have come together to lift their voices, to pray, to question, to challenge, and to advocate for change in policing policy in the wake of Freddie Gray's tragic death in police custody. The vast majority of protestors have spent the last week peacefully demanding justice and a meaningful dialogue with their elected officials, and encouraging others to do the same. In fact, many of those protestors have tried to defuse encounters between others and police and have worked hard to restore order and to participate in clean-up efforts where violence had previously erupted.

As you have acknowledged over the past several days, all residents of Baltimore have the right to secure justice and freedom from harassment for themselves and their families, friends, and neighbors. We have a right to demand policy changes of our government to make that dream a reality. And we have a constitutionally-protected right to do so on the streets and sidewalks of Baltimore without unnecessary restrictions that at this point seem to serve more to stoke community

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<sup>1</sup> See Wesley Case, As shortened hours affect bars, spokesman says Mayor is open to ending curfew early, Baltimore Sun, April 29, 2015, available at <http://www.baltimoresun.com/entertainment/music/midnight-sun-blog/bal-curfew-business-reel-20150429-story.html>.

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anger and resentment than to ensure public safety. For these reasons, we urge you to lift the curfew immediately.

### The Curfew's Continuation is Not Justified

A curfew that forces people inside is one of the greatest restraints that can be placed on our constitutional freedoms. Such an immense deprivation of liberty can be justified only by the most extreme circumstances. Courts will give such an immense deprivation of liberty careful scrutiny, and legal opinions examining the propriety of curfews routinely hold that governments must use the “least restrictive means” necessary to maintain the peace. In other words, curfews are unconstitutional unless strictly necessary given facts on the ground.<sup>2</sup>

Courts' careful oversight of restrictions on speech and protest ensures that state and local governments do not shut down the voices of their residents out of a desire to silence their message. As the Supreme Court has wisely warned, “Where certain speech is associated with particular problems, silencing the speech is sometimes the path of least resistance. But by demanding a close fit between ends and means, the tailoring requirement prevents the government from too readily sacrificing speech for efficiency.”<sup>3</sup>

The situation in Baltimore, contrary to what some breathless media reports may suggest, has not escalated to an emergency crisis that merits shuttering the entire city for a seven-day curfew.

Furthermore, any clashes that occurred were not armed and were relatively limited in scope. Police officers in full riot gear themselves threw rocks, and fired tear gas and pepper-spray projectiles in circumstances that may or may not have warranted this level of response.<sup>4</sup> Volunteers appeared in droves with brooms and trash bags to clean up broken glass, rocks, and paper—bringing their children to help them feel a sense of civic duty and understand the sadness and frustration of the community.<sup>5</sup> And since Tuesday, the protests during non-curfew hours have

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<sup>2</sup> See, e.g., *United States v. Chalk*, 441 F.2d 1277, 1280 (4th Cir. 1971) (any “restriction on First Amendment freedoms can be no greater than is essential to the furtherance of the government interest which is being protected.”); *Am. Civil Liberties Union of W. Tennessee, Inc. v. Chandler*, 458 F. Supp. 456, 461 (W.D. Tenn. 1978) (government must use “least restrictive means”); *Schleifer by Schleifer v. City of Charlottesville*, 159 F.3d 843, 847 (4th Cir. 1998) (a curfew on adults is entitled to the “strictest level of scrutiny”).

<sup>3</sup> *McCullen v. Coakley*, 134 S. Ct. 2518, 2534 (2014) (internal citations omitted).

<sup>4</sup> *Id.* See also Amanda Lee Myers & David Dishneau, *Police Clash with Baltimore Protestors for a Second Night*, Associated Press (Apr. 29, 2015) <http://bigstory.ap.org/article/53ee1c04ca12437196f2c76bdcd30885/riots-baltimore-raise-questions-about-police-response>.

<sup>5</sup> Victoria Bekiempis & Stav Ziv, *Baltimore Police Tallies Officer Injuries as Residents Clean Up, Crowds Remain*, Newsweek (Apr. 28, 2015) <http://www.newsweek.com/cleaning-baltimore-326238>.

widely been reported to be “peaceful”<sup>6</sup> and “calm,”<sup>7</sup> and the city is quietly returning to normalcy.<sup>8</sup> Credit for this relative tranquility goes to community organizers who have been calling for peace.<sup>9</sup> Some of these activists even formed a human barrier between protestors and police in riot gear to urge non-violence.<sup>10</sup>

Finally, we understand that today the Baltimore City Police Department announced that it has completed the investigation of what happened when officers apprehended, detained, and transported Freddie Gray, who later died after suffering a crushed voice box and a spine that was 80 percent severed. This information is now with the State's Attorney of Baltimore City. Thus, concerns over possible responses to the impending announcement are no longer justified, and continuation of the curfew is no longer necessary.<sup>11</sup>

The current state of affairs in Baltimore does not reflect the kind of extreme emergency situation that warrants the complete suspension of constitutional rights. The mayor's office should therefore lift the curfew to allow Baltimore residents to move—and protest—freely around their city.

#### The Curfew's Specific Ban on Protest is Constitutionally Problematic

Additionally, the provision of the Baltimore curfew that specifically targets and prohibits peaceful protest raises special constitutional concerns and should immediately be amended, even if the curfew order is not lifted.<sup>12</sup>

The curfew order provides specific restrictions on marches, parades, assemblies or demonstrations in public places without a permit both during and outside of curfew hours.<sup>13</sup> Courts have noted that when the government targets protected

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<sup>6</sup> John Woodrow Cox, Keith Alexander & Ashley Halsey III, *In Baltimore, Peaceful Protest Shifts Focus Back to Death of Freddie Gray*, Washington Post (Apr. 29, 2015) [http://www.washingtonpost.com/local/curfew-lifts-after-calmer-night-in-baltimore-but-tensions-remain/2015/04/29/3f2d42f2-ee7f-11e4-8666-a1d756d0218e\\_story.html](http://www.washingtonpost.com/local/curfew-lifts-after-calmer-night-in-baltimore-but-tensions-remain/2015/04/29/3f2d42f2-ee7f-11e4-8666-a1d756d0218e_story.html).

<sup>7</sup> *Baltimore Unrest Mostly Calm After Curfew*, US News & World Report (Apr. 29, 2015) <http://www.usnews.com/news/us/articles/2015/04/29/latest-on-police-custody-death-curfew>.

<sup>8</sup> *Id.*

<sup>9</sup> Wilson Dizard, *Community Activists Help Calm Baltimore Unrest*, AlJazeera America (Apr. 29, 2015) <http://america.aljazeera.com/articles/2015/4/29/community-activists-help-calm-baltimore-unrest.html>.

<sup>10</sup> *Id.*

<sup>11</sup> It is important to note that we do not believe that major government announcements alone give rise to a presumption that violence will result.

<sup>12</sup> See Order at (3)(b)(ii), available at <http://www.baltimorecity.gov/emergency-curfew-20150427>.

<sup>13</sup> *Id.*

free speech and protest for restriction, its justifications for such explicit deprivations of constitutional freedom must be far more stringent. As one Court stated, a curfew restricting movement during certain hours “is obviously an entirely different matter from prohibiting only specific First Amendment activities during those or other hours. The latter action is far more directly restrictive of the right of free expression.”<sup>14</sup> Similarly, in examining a juvenile curfew, the Fourth Circuit held that explicit exceptions for First Amendment activity during curfew hours were essential to its finding that the government had used the “least restrictive means” available.<sup>15</sup>

Yet, the current curfew over Baltimore actively singles out protest for *prohibition* rather than exception. In doing so, city officials may unwittingly be sending the message that spontaneous voices in the streets calling for change are unwanted and inconvenient. This is not a proper basis for a restriction on constitutional freedoms. Given that the overwhelming majority of assemblies have been peaceful, we believe the curfew should be lifted immediately. At the very least, we believe it should be amended to create space for spontaneous lawful protests.

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The hard-fought liberties found in our Constitution are built on a foundation of free speech, dissent, and protest. Since our very founding, we have taken to the streets and sidewalks to make our opinions heard. The residents of Baltimore have every right to engage in this proud tradition, and the continuing special restrictions are not justified. Restricting this most fundamental of all American values exacerbates, rather than solves, Baltimore’s current problems. We urge you to lift the curfew without delay.

Sincerely,



Deborah A. Jeon  
Legal Director

Ec: Suzanne Sangree, Esq.

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<sup>14</sup> See, e.g., *Collins v. Jordan*, 110 F.3d 1363, 1374 (9th Cir. 1996) (emphasis added); see also *Moorhead v. Farrelly*, 723 F. Supp. 1109, 1112-13 (D.V.I. 1989).

<sup>15</sup> *Schleifer*, 159 F.3d at 854.