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4 IN THE CIRCUIT COURT FOR THE STATE OF OREGON
5 FOR THE COUNTY OF MULTNOMAH

6 AMERICAN CIVIL LIBERTIES UNION
7 OF OREGON, INC., an Oregon non-profit
8 public benefit corporation, and
9 PROTESTER #1, an individual,

10 Plaintiffs,

11 v.

12 CITY OF PORTLAND, an Oregon
13 municipal corporation,

14 Defendant.

Case No.

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

NOT SUBJECT TO MANDATORY
ARBITRATION

ORS 21.135(2)(a), (f): \$281

15 **INTRODUCTION**

16 1. Oregon is not a surveillance state. With this action, Plaintiffs American Civil
17 Liberties Union of Oregon, Inc. and Protester #1¹ seek to eliminate a practice by the City of
18 Portland — and, specifically, the Portland Police Bureau — that threatens to turn it into one.

19 **PARTIES AND VENUE**

20 2. Plaintiff American Civil Liberties Union of Oregon, Inc. (“ACLU”) is an Oregon
21 non-profit public benefit corporation.

22 3. Plaintiff Protester #1 is an individual who resides in Portland, Oregon.

23 4. Defendant City of Portland (the “City”) is a municipality incorporated in Oregon.
24 The Portland Police Bureau (“PPB”) is a department or division of the City.

25 ¹ Protester #1 intends to proceed under a fictitious name. Pursuant to Multnomah County
SLR 2.035, Protester #1 will seek permission from the Court to do so at the earliest available
opportunity.

5. Venue is proper in this Court because Plaintiffs' causes of action arose, at least in part, in Multnomah County.

FACTS

6. Over the past several weeks, thousands of Oregonians have exercised their constitutional rights by protesting in streets, parks, and other public spaces in and around Portland. The protesters seek fundamental changes in the way American police departments interact with the communities they serve. In particular, they seek to eradicate the senseless and recurring police brutality and murders of Black people like George Floyd, Breonna Taylor, Michael Brown, Quatrice Hayes, Terrell Johnson, Keaton Otis, Aaron Campbell, Patrick Kimmons, Darris Johnson, Kendra James, and so many others.

7. PPB has surveilled participants in the protests, and will continue to do so, with livestreamed internet videos. The videos regularly depict individual protesters who are demonstrating peacefully and engaging in no criminal activity at all. Nevertheless, the videos have focused and will continue to focus on specific protesters, apparently for the purpose of identifying them.

8. Protester #1 is one such protester. On the evening of July 13, 2020, Protester #1 attended a protest that took place at the headquarters of the Portland Police Association (the “PPA”) in North Portland. Protester #1 did so in order to express solidarity with other protesters, and because Protester #1 had been sickened and devastated by acts of violence committed by PPB against other protesters over the past several weeks. At all times, Protester #1 demonstrated peacefully and engaged in no criminal conduct whatsoever. Protester #1 spent much of Protester #1’s time at the protest standing in front of the line of PPB officers that had encircled PPA’s building, holding up photos of Protester #1’s child and pleading with the officers not to harm the crowd.

1 9. During the protest, a PPB camera captured Protester #1's image, which it
2 livedreamed publicly on the internet. At the time, Protester #1 was not aware that PPB was
3 filming the crowd. Had Protester #1 known of PPB's filming, Protester #1 would not have
4 consented to it. Protester #1 plans to continue attending protests, but is deeply disturbed by
5 PPB's practice of using livestreamed internet videos to monitor protesters' exercise of their
6 constitutional rights.

7 10. Many of the other protesters whose likenesses and voices have appeared on PPB's
8 videos also want not to be recorded. Several have shouted as much at PPB's cameraperson;
9 others have shone bright lights at its camera in attempts to obscure the camera's view of the
10 crowds; still others have used squeakers to obscure PPB's audio recording. ACLU's legal
11 observers² and other members have been (and will continue to be) among those at the protests
12 who object to PPB's recording.

13 11. As a technological matter, the contents of each livestreamed video are within
14 PPB's custody and control beginning at the moment when each livestream begins. For example,
15 YouTube — which PPB has used for some of its livestreams — requires a user to choose
16 whether to delete or retain a livestreamed video when the livestream ends. Until the user makes a
17 selection, the full contents of the video remain accessible to the user, which, in this case, is PPB
18 itself.

19 12. PPB has offered varying rationales for livestreaming videos of protesters. Its
20 policies say that it does so to provide "situational awareness" and to record possible criminal
21 activity. According to section 4.3 of PPB Directive No. 0635.10, "[d]emonstrations may be
22 broadcast to Bureau facilities by live video feed to provide situational awareness to the [PPB

23 ² ACLU legal observers are trained volunteers who attend protests at the invitation of the
24 events' organizer(s). Legal observers are asked to document interactions between protesters and
25 law enforcement. They do not intervene in the event of a violation of law; instead, they
 document the violation for later review.

1 Incident Commander]. * * * If a possible crime is captured on the recording, that recording will
2 be forwarded to [the] Bureau's Detective Division for investigation and the District Attorney's
3 Office, if requested." However, in a separate email, a Senior Deputy City Attorney wrote that
4 PPB had livestreamed one video not to provide "situational awareness," but rather "so the
5 community could understand what was occurring at the protest."

6 13. In August of 1988, ACLU and PPB reached a civil settlement agreement (the
7 "Agreement") regarding the latter's collection of information about participants in public
8 demonstrations. A copy of an August 3, 1988 letter from Portland's City Attorney memorializing
9 the Agreement is attached as Exhibit A. Among other things, the Agreement obligated PPB to
10 adopt the following formal policy:

11 "Portland Police Officers shall not collect or maintain
12 information about the political, religious or social views,
13 associations or activities of any individual, group, association,
14 organization, corporation, business or partnership unless such
information relates directly to an investigation of criminal
activities, and there are reasonable grounds to suspect the subject
of the information is or may be involved in criminal conduct."

15 In exchange for that and other promises by PPB, ACLU promised that it would "not litigate over
16 the collection of information by [PPB] at demonstrations which have occurred prior to July 27,
17 1988."

18 14. The nature of the Agreement was and remains clear: PPB promised ACLU that it
19 would comply at all times with ORS 181A.250 (whose language the Agreement tracks verbatim)
20 when its officers are present at or otherwise involved in demonstrations by members of the
21 public.

22 15. PPB's practice of livestreaming videos of protesters amounts to a violation of
23 ORS 181A.250, and to a breach of the Agreement. By livestreaming videos of protesters, PPB
24 collects and maintains information about their political and social views, associations, and
25 activities in violation of ORS 181A.250.

PAGE 4 – COMPLAINT

1 16. Plaintiffs have no adequate remedy at law for PPB's violations, which pose a
2 serious and imminent threat of irreparable harm to them and other protesters alike. Specifically,
3 PPB cannot "undo" a video through which its officers identify or otherwise collect information
4 about a protester. Nor can it force a third party to "un-learn" information about a protester that
5 the third party obtains by watching PPB's livestream. Moreover, any damages associated with
6 such conduct by PPB would be, by their very nature, extremely difficult or impossible to
7 quantify.

8 17. An order prohibiting PPB from livestreaming or otherwise recording video or
9 audio of protesters except as permitted by ORS 181A.250 would subject it to no meaningful
10 burden. As the contents of the videos themselves make clear, there is no reason to believe that
11 such an order would interfere at all with PPB's legitimate operations or responsibilities at the
12 protests.

13 18. Additionally, an order prohibiting PPB from livestreaming or otherwise recording
14 video or audio of protesters except as permitted by ORS 181A.250 would serve the public
15 interest, in that it would facilitate and promote Plaintiffs' and other protesters' exercise of their
16 constitutional rights.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

**(Declaratory Judgment; ORS 181A.250 and ORS 28.010 *et seq.*)
(ACLU and Protester #1)**

19 19. Plaintiffs reallege and incorporate by reference each of the preceding paragraphs
20 as if fully set forth herein.

21 20. By livestreaming the videos described above, the City has collected and
22 maintained, and will continue to collect and maintain, information about the political and social
23 views, associations, and activities of Protester #1, ACLU, and others who have attended or will
24 attend the protests. Its videos do not relate to an investigation of any criminal activities, nor are
25

1 there any reasonable grounds to suspect that the specific subjects of the videos are or may be
2 involved in any criminal conduct. Thus, by livestreaming the videos, the City has violated and
3 will continue to violate ORS 181A.250.

4 21. Plaintiffs' rights, statuses, and other legal relations are affected by the City's
5 practice of livestreaming the videos described above. The City's livestreaming of the videos has
6 caused a specific injury to Plaintiffs' rights under ORS 181A.250, which entitles them to be free
7 of such conduct. Their injury is real, and not hypothetical or speculative, because the City
8 already has engaged in conduct prohibited by ORS 181A.250 and will continue to do so unless
9 this Court orders otherwise. Moreover, a decision declaring that ORS 181A.250 prohibits the
10 City from livestreaming or otherwise recording video or audio of protesters except in the
11 circumstances permitted by the statute, and enjoining it from doing so in the future, will have a
12 practical effect on the rights that Plaintiffs are seeking to vindicate because it will cause the
13 City's unlawful conduct to cease.

14 22. As explained above, Plaintiffs have no adequate remedy at law for the City's
15 violations of ORS 181A.250.

16 23. Accordingly, Plaintiffs are entitled to (i) a declaration that ORS 181A.250
17 prohibits the City (including, but not limited to, PPB) from livestreaming or otherwise recording
18 video or audio of protesters demonstrating in public spaces, except where the video or audio
19 relates to an investigation of criminal activities and there exist reasonable grounds to suspect the
20 subjects of the videos are or may be involved in criminal conduct; and (ii) temporary,
21 preliminary, and permanent injunctive relief prohibiting the City from doing so in the future.

22 **SECOND CLAIM FOR RELIEF**
23 **(Breach of Contract/Breach of the Duty of Good Faith and Fair Dealing)**
24 **(ACLU)**

25 24. ACLU realleges and incorporates by reference each of the preceding paragraphs
as if fully set forth herein.

25. The Agreement is a binding and valid contract between ACLU and the City. ACLU has fully performed all of its obligations under the Agreement, and has not breached any obligation imposed on it by the Agreement.

26. The Agreement imposes a contractual obligation on the City to comply with ORS 181A.250, whose language the Agreement tracks verbatim. In particular, the Agreement obligates the City as a matter of contract “not [to] collect or maintain information about the political * * * or social views, associations or activities of any individual, group, association, [or] organization,” except in the circumstances permitted by ORS 181A.250.

27. The City (and, specifically, PPB) has breached the Agreement by collecting information about protesters in the manner described above.

28. Alternatively, if the City did not breach the terms of the Agreement by collecting information about protesters in the manner described above, it violated the duty of good faith and fair dealing by doing so.

29. As explained above, ACLU has no adequate remedy at law for the City's breaches of the Agreement or, alternatively, of the duty of good faith and fair dealing.

30. Accordingly, ACLU is entitled to (i) a declaration that the Agreement prohibits the City (including, but not limited to, PPB) from livestreaming or otherwise recording video or audio of protesters demonstrating in public spaces, except where the video or audio relates to an investigation of criminal activities and there exist reasonable grounds to suspect the subjects of the videos are or may be involved in criminal conduct; and (ii) temporary, preliminary, and permanent injunctive relief prohibiting the City from doing so in the future.

PRAAYER

WHEREFORE Plaintiffs pray for a judgment awarding the following relief:

A. A declaration that ORS 181A.250 and the Agreement each prohibit the City (including, but not limited to, PPB) from livestreaming or otherwise recording video or audio of

1 protesters demonstrating in public spaces, except where the video or audio relates to an
2 investigation of criminal activities and there exist reasonable grounds to suspect the subjects of
3 the videos are or may be involved in criminal conduct;

4 B. Temporary, preliminary, and permanent injunctive relief prohibiting the City,
5 including its employees, agents, and all others acting in concert with it or on its behalf, from
6 livestreaming or otherwise recording video or audio of protesters demonstrating in public spaces,
7 except where the video or audio relates to an investigation of criminal activities and there exist
8 reasonable grounds to suspect the subjects of the videos are or may be involved in criminal
9 conduct.

10 C. The costs and disbursements that Plaintiffs incur in bringing this action; and

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1 D. Such other relief as the Court may deem just and proper.

2 Dated: July 29, 2020.

3 *s/Edward A. Piper*

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AUG 4 1988

E. ROSENTHAL

August 3, 1988

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PORTLAND OR 97204-1165

Re: Portland Police Bureau Policy on
Maintaining Information

Dear Elden:

I have met with the appropriate Police Bureau officials to discuss your partial counter-proposal in your March 2, 1988 letter. We accept the new paragraph you proposed.

Accordingly, it is our understanding that the American Civil Liberties Union and the Portland Police Bureau have agreed to the following resolution of this matter.

1. The American Civil Liberties Union will not litigate over the collection of information by the Portland Police Bureau at demonstrations which have occurred prior to July 27, 1988.
2. The Portland Police Bureau will formally adopt the following policy by amending its standard operating procedures for the criminal investigation division. The amended policy shall state:

Portland Police Officers shall not collect or maintain information about the political, religious or social views, associations or activities of any individual, group, association, organization, corporation, business or partnership unless such information directly relates to an investigation of criminal activities, and there are reasonable grounds to suspect the subject of the information is or may be involved in criminal conduct.

Any photographs or other tangible information taken or obtained at peaceful demonstrations in accordance with the above paragraph may be retained by the Portland Police Bureau for 30

Elden M. Rosenthal
August 3, 1988
Page 2

days, during which time the Bureau will be able to process police officer reports and review evidence, including any citizen complaints or charges of criminal misconduct, property damage, or other matters for which the photographs or information could constitute evidence. At the end of this 30-day period the photographs and information shall be destroyed by the Portland Police Bureau unless, at that time, there are reasonable grounds to suspect the subject of the information is or may be involved in criminal conduct and the photographs or information relate directly to a criminal investigation, in which case, the photographs may be maintained by the Portland Police Bureau as long as those conditions exist.

The Bureau shall not collect or maintain information about the political, religious or social views, associations or activities of any individual, group, association or organization, corporation, business or partnership, solely for the reason that the individual, or individual members of a group, association, organization, corporation, business or partnership have been convicted of a crime, but the Bureau may consider the relationship of the facts which supported the conviction to any current information in determining whether there are reasonable grounds to suspect the subject is or may be involved in criminal conduct.

3. The Portland Police Bureau has reviewed its files, and will review them again in light of the amended policy, to ensure that their contents comply with the law and the amended policy adopted pursuant to this agreement.
4. The Portland Police Bureau assures that they are not currently collecting or maintaining information upon the political, religious, or social views, associations or activities of Mr. John Blank, the American Field Services (AFS), or the Portland Central American Solidarity Committee (PCASC). Furthermore, the Bureau assures that it does not presently have any documents whatsoever concerning Blank, AFS or PCASC in criminal intelligence files.

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Page 3

I have one additional concern, although I do not propose that it be an official part of the resolution of this matter. My concern is how the ACLU portrays this agreement. Understandably, any organization wants to portray itself as a frequent "winner." Although it wouldn't be the end of the world if the ACLU portrays this agreement as a victory over the Police Bureau, I believe it would be inaccurate and might create unnecessary tension which would interfere with future cooperative approaches to problem solving. In other words, I believe that the Portland Police Bureau has responded in a constructive and responsible manner to the legitimate parts of the ACLU's concerns, and I hope that the ACLU will acknowledge that action in any public portrayal of this agreement.

The City has been making increased efforts to talk with the ACLU prior to taking actions which might raise civil liberties questions. Conversely, we appreciated your approaching us informally on this matter before commencing litigation. Although there is inevitably healthy tension between your organization and the Portland Police Bureau, I believe strongly that it is in everyone's interest to promote a non-adversarial approach to these difficult and important issues.

I will be out of town from August 4th through August 15th. I hope that before my return you will be able to confirm this agreement. When I receive your confirmation upon my return, I will advise the Police Bureau and they will amend their policy in accordance with this agreement.

Thank you.

Very truly yours,



Jeffrey L. Rogers
City Attorney

JLR/dzl
conf\rosen

c: Deputy Chief Rob Aichele
Lt. Al Dean
Mary Overgaard
Steve Moskowitz