



January 16, 2024

Mr. Tab Bowling  
Mayor of the City of Decatur  
PO Box 488  
Decatur, AL 35602  
Sent via email: [tbowling@decatur-al.gov](mailto:tbowling@decatur-al.gov)

Re: Constitutional Rights of Protestors

Dear Mayor Bowling:

We write to express the ACLU of Alabama's concerns about the City of Decatur's plans to apply municipal ordinances inappropriately and unlawfully against constitutionally protected protest activity in the City of Decatur. We also write to offer our collaboration in helping the City of Decatur revise and adopt ordinances that appropriately balance the First Amendment rights of your constituents and public safety.

We are particularly concerned that your stated plans are directed entirely at your constituents who have exercised their First Amendments rights in response to the police murder of Stephen Clay Perkins and at the organizers of Standing In Power, who have played an important and critical role in organizing peaceful protests. Despite the lawful nature of these gatherings, organizers and protestors have been harassed, maligned, threatened, and arrested by law enforcement. Your recently stated plans to further empower law enforcement to bring criminal charges against protestors for "disorderly conduct" and to require protestors to obtain "parade" permits to exercise their constitutional rights steps too far. Thus, we write to insist that the City of Decatur end this unlawful and unjust treatment directed at protestors of the police murder of Mr. Perkins.

As you are aware, all Americans have the right of free speech, peaceful assembly, and to petition their government. The First Amendment mandates a profound national commitment to the principle of robust and uninhibited debate on public issues. Without question, the protests that have occurred in Decatur in the wake of the police murder of Mr. Perkins are a matter of public concern, particularly in Alabama. Between November 2018 and June 2023, the ACLU of Alabama documented at least 84 victims killed by law enforcement in Alabama, including Nicholas Oden, who was killed on March 12, 2022, in an incident involving the Decatur Police Department. For Decatur, a city with a population

of less than 60,000, to have two police killings in less than two years is indicative of a problem. Accordingly, your constituents lawfully and rightfully exercised their First Amendment rights after the murder of Mr. Perkins to demand more from their public officials.

Because of the First Amendment's protections, the City of Decatur's power to restrict speech and protest in traditional public forums, such as public parks, sidewalks, and streets is strictly limited. The City of Decatur may impose reasonable restrictions on the time, place, and manner of public speech in a public forum, but the restrictions must be content neutral, narrowly drawn to serve significant government interests, and leave open ample alternative channels for communication of information.

The City of Decatur may not regulate speech and protest because of disagreement with the message or finding the activities inconvenient. As suggested by the word itself, protests often confront controversial topics about which reasonable minds may disagree, and free speech serves its high purpose when it creates a condition of unrest and even when it stirs people to anger. Therefore, those who have protested and continue to protest the police murder of Mr. Perkins do not lose their constitutional protection because their topic is potentially controversial or the City of Decatur is concerned about the public's reactions. To the contrary, our constitutional history demonstrates that controversial speech is the most important speech to protect.

With these constitutional protections and limitations in mind, the City of Decatur cannot lawfully apply its "parade permit" ordinance (Chapter 17, Article 2) to peaceful protestors for several reasons, including:

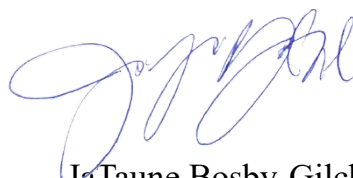
- On its face, the parade permit ordinance applies only to mobile demonstrations (parades). The ordinance does not mention stationary protests, but the City of Decatur has indicated that it will apply this ordinance to any protest, even those that are not mobile and do not violate traffic laws. Whereas a mobile demonstration may require planning to manage traffic or street closures, a stationary demonstration entails less disruption. Thus, protests that include participants who stay on the sidewalks, obey traffic laws, and allow room for others to use the streets do not fit the definition of a "parade," and the related ordinance is inapplicable and unenforceable as to stationary protests. Other cities, such as Nashville, have recognized as such and explicitly provide in their parade permit ordinances that it does not apply to "[p]icketing, marches or processions of any kind which will be conducted entirely upon the sidewalk."
- The parade permit ordinance is unconstitutionally vague and gives virtually unbridled discretion to the Chief of Police. Section 17-25 allows the Chief of Police to deny a parade permit if it is believed that the parade is "reasonably likely" to "create a disturbance." However, many constitutionally protected expressive

activities could be considered reasonably likely to “create a disturbance,” but are still protected under the First Amendment if they do not incite imminent illegal activity or contain fighting words. For example, the United States Supreme Court declared unconstitutional a city’s ordinance that made it unlawful to interrupt police officers in the performance of their duties, emphasizing that the law was not narrowly tailored and effectively allowed the police to make arrests selectively based on the content or speech.

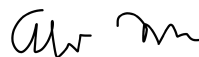
Finally, your recent threats to charge protestors with disorderly conduct if they do not obtain a permit before protesting is contrary to the law and discourages protestors from engaging in their constitutionally protected speech for fear of punishment. Your threats are not theoretical as we are aware that several protestors have already been arrested and subjected to criminal charges. These threats to arrest and criminally charge protestors based on violation of an ordinance that does not apply to their activities and, even if it did, is unconstitutionally vague, is calculated to cover some into silence rather than risk arrest for constitutionally protected activity.

We call on you and the City of Decatur to reverse course on your directives about the parade permit ordinance and your threats of charging protestors with disorderly conduct for exercising their First Amendment rights. The Decatur community is grieving, and your constituents are constitutionally entitled to have their voices heard, not silenced, in this moment. As experts on the First Amendment, we stand ready to assist the City of Decatur with revising and adopting ordinances that appropriately balance the First Amendment rights of your constituents and public safety. We respectfully ask that you and the City of Decatur accept our help.

Sincerely,



JaTaune Bosby-Gilchrist  
Executive Director



Alison Mollman  
Interim Legal Director