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Rochester City Councilmember, East District
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Rochester, NY 14609

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September 15, 2020

Eric S. Dreiband
Assistant Attorney General
U.S. Department of Justice
Civil Rights Division
950 Pennsylvania Avenue, NW
Washington, D.C. 20530-0001

Dear Mr. Dreiband,

We request a civil rights investigation into the response from law enforcement to protests in Rochester, N.Y. regarding the homicide of Daniel Prude. There is considerable evidence that the First Amendment rights of countless citizens have been violated when police declared assemblies unlawful and used violence to disperse crowds.

Protesters have been met with heavily-militarized law enforcement personnel who have instigated confrontations. Police have used disproportionate and excessive force on thousands of citizens in response to provocations from a few people. They have indiscriminately fired pepper balls on peaceful protesters, disregarding department protocols forbidding firing into a crowd and aiming at peoples' heads.

Dozens of protesters have been injured through the use of pepper balls, tear gas and other methods, with some citizens suffering severe eye injuries, concussions and broken bones.¹ On September 5, we were among a group of elected officials, pastors and senior citizens standing at a barricade not 20 feet away from police when they fired pepper balls at our bodies. Legislator Barnhart was among those who was hit in the head, leading to a concussion. Councilmember Mitch Gruber was also struck several times with pepper balls. Later in the

¹ Schumacher, Tracy. "We know about injuries to Rochester police Sept. 5. What about injuries to protesters?" *Democrat and Chronicle*. September 11, 2020. Link: <https://www.democratandchronicle.com/story/news/2020/09/11/how-many-injuries-protesters-sept-5-2020-rochester-ny/3466996001/?fbclid=IwAR1l42p361pBS5EiPQcpz6iHy0q6uyvy2RA8jEzUrmB9GRRin-nr9EnRIMs>.

evening, Nicole Re, an official with the local Democratic Party, was hit in the face with a tear gas canister, breaking her nose.²

Journalists recording events have been targeted and repeatedly struck by projectiles throughout the protests.^{3 4 5} Councilmember Lupien was struck in the back with a pepper ball on September 2. Police reportedly shot pepper balls at a church on September 5, while injured protesters sought refuge inside.⁶

Police are using the 11 p.m. curfew ordered by the mayor in an arbitrary and capricious manner. There are no consistent standards for what is an unlawful assembly, and it is being used to violate the First Amendment rights of protesters. On September 5, they declared the assembly unlawful as we arrived at a barricade - before the curfew and before any unruliness from protesters.

Rochester Mayor Lovely Warren claimed she does not have operational knowledge of the department's actions.^{7 8} Officers continue to evade accountability by covering their names, and in some cases badge numbers, despite Councilmembers being told this practice is disallowed.⁹

Police have shown they *do* know how to de-escalate protests and avoid violence, as they have allowed protesters to march and demonstrate uninterrupted and without serious confrontation from September 6 to September 11. On those evenings, police greatly decreased their militaristic presence and showed restraint. On September 12, we saw a return to the previous militaristic tactics, observed from September 2 to 5, of creating standoffs and using force on

² Nicole Re Twitter Account. September 6, 2020. Link: <https://twitter.com/NHushlaRe/status/1302534195886120971?s=20>.

³ Kilian, Michael. "D&C journalists bear witness to a moment Rochester is challenged to meet." *Democrat and Chronicle*. September 13, 2020. Link: <https://www.democratandchronicle.com/story/news/2020/09/13/rochester-protest-democrat-and-chronicle-journalists-coverage-ital/5781491002/>.

⁴ Zach D. Roberts Twitter Account. September 5, 2020. Link: <https://twitter.com/zdroberts/status/1302444946318913536>.

⁵ Sarah Maslin Nur Twitter Account. September 3, 2020. Link: <https://twitter.com/SarahMaslinNir/status/1301713305501929473?s=20>.

⁶ Spectrum News. "Injured Protesters Seek Refuge in Rochester's Spiritus Christi Church." September 6, 2020. Link: <https://spectrumlocalnews.com/nys/rochester/news/2020/09/06/injured-protesters-seek-refuge-in-rochester-s-spiritus-christi-church>.

⁷ Sharp, Brian and Campbell, Jon. "Daniel Prude case: How investigation moved forward without public fanfare." *Democrat and Chronicle*. September 7, 2020. Link: <https://www.democratandchronicle.com/story/news/2020/09/07/daniel-prude-timeline-of-investigation-without-public-fanfare/5723104002/>.

⁸ Palmer, Seth. "Questions about police protest response go unanswered at city council, mayor briefing." *13WHAM-TV*. September 9, 2020. Link: <https://13wham.com/news/local/questions-about-police-protest-response-go-unanswered-at-city-council-mayor-briefing>.

⁹ Lahman, Sean. "Can police officers cover their name tags? Rochester department says yes, for officer safety." *USA Today*. September 4, 2020. Link: <https://www.usatoday.com/story/news/nation/2020/09/04/daniel-prude-protests-can-rochester-officers-cover-up-name-tags/5715089002/>.

protesters who were peacefully participating.¹⁰ One man was arrested while filming officers, who later confiscated his camera.¹¹ A live feed of the standoff showed a law enforcement officer from an unidentified agency pointing a weapon at protesters.¹²

We request you examine the following:

- What law enforcement agencies participated in the protest response in Rochester in September?
- Who was supervising the response on each night of the protests and directing an escalated response?
- What weapons and chemicals were used on citizens?
- Were these weapons and chemicals used appropriately?
- Did law enforcement violate the civil rights of protesters?

Although we are elected officials charged with overseeing local government, given the fact we have been assaulted by this very government, we believe an outside investigation is necessary. The State Attorney General is investigating Daniel Prude's death, but no one is formally investigating the conduct of law enforcement at protests.

In America, citizens should not have to don helmets, goggles, gas masks and shields to protest their government. They should not have to fear violence for demanding police stop killing our Black loved ones, friends and neighbors.

Thank you,

Mary Lupien

Rachel Barnhart



cc: Rep. Joseph Morelle
cc: Sen. Charles Schumer
cc: Sen. Kirsten Gillibrand

¹⁰ Sean Dobbin Twitter Account. September 12, 2020. Link: https://twitter.com/Sean_Dobbin/status/1304979291013292033?s=20.

¹¹ Nicholas Wilt Facebook Account. September 12, 2020. Link: <https://www.facebook.com/nwilt/videos/10158533832684346>.
Timecode 1:35:15.

¹² WHEC Facebook Account. September 12. Link: <https://www.facebook.com/watch/live/?v=336482851002877&ref=search>.
Timecode 17:12.