

The Oregonian

Portland Police Hit with 6 Lawsuits Alleging Excessive Force During Protests

*By Maxine Bernstein
March 8, 2018*

Six people allege in lawsuits filed Thursday that Portland police assaulted them, sometimes using batons and pepper spray, during a series of turbulent protests that gripped the city over eight months.

The suits contend that the Police Bureau has become "increasingly militarized in its tactics, deploying droves of officers wearing tactical dress, including helmets, carrying batons and full-body riot shields, and using chemical agents as crowd-control weapons."

They cite police actions during a protest of a closed-door City Council vote on the police union contract at City Hall in October 2016, a youth-led protest after the presidential election in November 2016, a Don't Shoot Portland and Not My President's Day protest in February 2017 and a counter-protest to the June 2017 Patriot Prayer rally in Terry Schrunk Plaza.

Portland police hit with 6 lawsuits alleging excessive force during protests

The people allege battery by officers and seek between \$10,000 and \$200,000 in damages. Several of them were arrested at the protests, only to have their charges dismissed by prosecutors.

Instead of claiming unconstitutional police practices in federal court, the American Civil Liberties Union of Oregon and the plaintiffs chose to file the lawsuits in Multnomah County Circuit Court to resolve them faster.

The legal action is intended "to hold the Portland Police Bureau accountable for their violent response to protests in our city," said Mat dos Santos, legal director for the ACLU of Oregon.

"Portland police must end its disproportionate response to protests," dos Santos said at a news conference with the plaintiffs. "Today we demand from our city and our police that they do better."

Sgt. Chris Burley, Police Bureau spokesman, said the bureau does not comment on pending litigation, but takes all complaints of alleged misconduct seriously.

The ACLU has released photos and video that captured the plaintiffs' arrests and injuries.

The six people who filed the suits and their allegations:

-- Patricia Barger, 55, alleges battery during the Oct. 12, 2016, protest and is seeking up to \$10,000 in damages. She stumbled upon the gathering as she was headed to catch a MAX train. While watching the it unfold from the sidewalk across Southwest Fifth Avenue from the City Hall entrance, she contends Officer Timothy Paolini struck her twice with a baton, first in the chest and then on the forearm, without any warning. At the time, officers in riot gear were clearing demonstrators from the street, but Barger said she was on the sidewalk when she was hit.

-- On Nov. 21, 2016, Kathryn Stevens, one of the founders of Portland's Resistance with her boyfriend, Greg McKelvey, contends an officer struck her in the face as she was being arrested during a march from Holladay Park in Northeast Portland to downtown. Once the march crossed

the Burnside Bridge into downtown, Stevens was separated from McKelvey and then spotted him "being escorted by police," her suit says.

Stevens, 31, was concerned McKelvey was injured, so she ran up to him and hugged him from behind. At the time, however, McKelvey was being arrested. Without warning, officers pushed Stevens to the ground, she says, and then lifted her up by her jacket, choking her, the suit says. Officers took her and McKelvey to an alley, where one held her down, pushed on her face and taunted her, asking, "Do you like this? Are you enjoying things? You're going to get arrested."

Stevens was arrested but the charges were dropped.

-- On Feb. 20, 2017, Charles Stubbs, 39, says he was knocked to the ground as officers tried to arrest him during a Don't Shoot Portland demonstration outside the Edith Green-Wendell Wyatt Federal Building. People had gathered to protest the fatal police shooting of 17-year-old Quanic Hayes 12 days earlier during an armed robbery investigation.

Officers, at one point, decided the demonstration, which had spilled into Southwest Third Avenue and was blocking traffic, was illegal and ordered everyone back onto the sidewalk. As Stubbs moved to the sidewalk, officers tackled him, he says. He landed face down beside a bush and then was lifted and dragged into the street and handcuffed by police, his suit says. He was accused of disorderly conduct, interfering with an officer and resisting arrest, but prosecutors dismissed the charges.

-- During the same protest, participant Tristan Romine-Mann, 27, says he was standing by the sidewalk with his bicycle when an officer suddenly grabbed his bicycle and knocked him to the ground. The officer struck him with the bicycle five to six times, his suit says. He was later sprayed with pepper spray while he was on his knees, his hands behind his back.

-- Margaret Zebroski, 67, a retired physician's assistant, was holding a Don't Shoot Portland banner across the street in front of the federal building the morning of Feb. 20, 2017. Officers on bicycles tried to push the protesters back onto the sidewalk, but Zebroski and others held their ground, remaining in the street.

When officers in riot gear arrived, Zebroski returned to the sidewalk and went to help her 75-year-old friend, who got knocked to the ground, the suit says. Suddenly, Zebroski was slammed to the ground by police. One officer placed his knee on the back of her head, forcing her face into the pavement, breaking her nose, the suit says. Charges of second-degree disorderly conduct, resisting arrest and interfering were ultimately dismissed against her.

"All the marchers were dealt with as criminals for the actions of a few," she said Thursday. She's seeking \$200,000 in damages.

-- Kelly Simon, an ACLU staff attorney and legal observer to the June 4, 2017, counter-protests on the perimeter of a Patriot Prayer rally in Terry Schunk Plaza, contends police fired an impact munition at her leg as she had her back to officers and was walking out of nearby Chapman Square as ordered by officers. Simon was wearing a bright blue ACLU legal observer vest over her jacket that clearly identified her, the suit says.

"The police tactics created a sense of confusion and fear," Simon's suit says.

She said she was shot by Portland police in the middle of the day in downtown Portland "doing exactly" what they asked her to do.

In a letter to the mayor, then-Police Chief Mike Marshman defended the response to the dueling June 4 protests downtown, saying officers needed to wear riot-control gear for protection as demonstrators hurled bricks, fireworks and other objects.

He said police would prefer not to use any crowd-control devices but did use flash-bang grenades to clear the park when they saw bricks, bottles, rocks, ball bearings, marbles, urine balloons, feces balloons, chemical balloons and small explosives thrown or slung at officers and the public using slingshots.

Oregon State Police, who were helping out Portland police, fired pepper-spray balls toward a parking garage that day because people "were advancing up the garage, into a position where projectiles could be thrown, putting the public and police officers at risk," a deputy city attorney wrote in response to a separate lawsuit filed over police actions during the June 4 protests.

Police said officers have used tear gas, pepper spray and rubber ball distraction devices during some protests. They also have allowed officers to use "non-lethal force" without warning in response to specific threats.

Portland's new Police Chief Danielle Outlaw told The Oregonian/OregonLive in October when she first started that she wanted to go through the bureau's training on crowd control herself before she passed judgment on how police have handled city protests.

"I haven't had a chance to do a critical review of past incidents. That's certainly on my radar," she said then. "Bottom line is we're here to protect people's First Amendment right to free speech."

The ACLU's dos Santos said he has noticed some improvements by police at recent protests, but said he also has found people have been more reluctant to take to the streets.

Attorneys from the law firm Tonkon Torp are working pro bono to help represent the plaintiffs.

The Portland Tribune

Gateway to Superfund Site Getting Cleanup Plan

By Steve Law

March 8, 2018

City of Portland, four companies devise remedies for upstream stretch of 10-mile project

Seventeen years after a heavily contaminated 10-mile stretch of the Willamette River was declared the Portland Harbor Superfund site, a detailed cleanup plan is being drafted for a toxic hot spot at the upstream tip of the site.

The city of Portland is teaming with five private companies to plot precise cleanup remedies for 38 acres on the east side of the river between the Broadway and Fremont bridges, officially dubbed River Mile 11E.

That's the waterfront of the former town of Albina before it was annexed into the city in 1891 and has been used for a range of industrial purposes for more than a century.

River Mile 11E is one of three heavily polluted areas of the Superfund site where there's been forward movement on cleanup projects in the past few months, along with the Port of Portland's Terminal 4 and a site known as Gasco, where NW Natural has long operated.

The River Mile 11E effort isn't the biggest cleanup project, but it has symbolic importance because it's at the beginning of the Superfund site.

"In general, it makes sense to start at the top and work your way down," said Cindy Ryals, water resources program manager for the city Bureau of Environmental Services. It's also "a way for

the city to show leadership" as one of more than 150 past polluters on the hook to pay for cleanup costs, Ryals said. Most of those entities, known as potentially responsible parties, have done little since the Superfund site was named.

"I think it's encouraging that this is happening right now, and it will signal to others that this type of movement should happen right now at other sites up and down the river," said Travis Williams, executive director of Willamette Riverkeeper, an environmental advocacy group.

No fund in Superfund

The U.S. Environmental Protection Agency doesn't have money any more to spend on actual Superfund cleanups. Instead, it coaxes select potentially responsible parties to step up and take charge, under EPA supervision.

The federal agency inked a consent order in 2013 with the city and a group of other parties to spearhead work on the River Mile 11E site. That bound the parties to commission and pay for studies to evaluate contamination of the riverbed in that area.

Those studies have determined that the major pollutants in that area are polychlorinated biphenyls or PCBs. Those were widely used for insulation and other properties by a variety of industries over several decades, and they're very persistent in the environment. There also is dioxin and PAH, among other chemicals, in River Mile 11E, Ryals said.

Last month, six of the parties signed an amendment that makes them responsible for the next phase, including preparing what's called the remedial design. That's a detailed description of what parts of the contaminated river sediment will get dredged and removed, what parts get capped to prevent further contamination, what materials to use for the cap, and what areas where nature will be left to take its course.

The cleanup plan must follow the conditions laid out in the Record of Decision, EPA's cleanup plan for the entire Superfund site issued in January 2017. That plan didn't get down to the level of precise remedies for individual sites.

Others joining the city on the amended consent order Cargill Inc., CBS Corp., DIL Trust, Glacier Northwest Inc., and PacifiCorp.

Several others may ultimately be asked to share costs of the cleanup. Other property owners along the waterfront there include Unkeles Family LLC, Ross Island Sand & Gravel Co., the state of Oregon, Stan Herman, and Sakrete of Pacific Northwest. Ross Island is part of the Pamplin corporate family that also includes the Portland Tribune.

City liability stems from sewers

The city is a potentially responsible party because the Bureau of Environmental Services operated three storm sewer outfall pipes that drain into that section of the river. The pipes are believed to have conveyed chemicals that drained from the streets or other sources, via industrial companies.

Past Superfund projects have determined that municipal sewer companies are liable for cleanups because they provided the means with which chemicals wound up contaminating rivers, said Annie Von Burg, the Bureau of Environmental Services senior program manager for Superfund projects.

The city has 35 outfalls in the entire Portland Harbor Superfund Site, Von Burg said.

Different from sewage overflows

The chemical contamination that's the target of the Superfund cleanup is persistent, and distinct from pollution from untreated sewage that also ends up in the Willamette on particularly rainy periods, when the city storm sewer system is overloaded. Though swimming is not advised during those discharges, that type of pollution is short-term, and quickly flows downstream.

According to historical research compiled by the Oregon Department of Environmental Quality, the first towering grain elevators were built in what was called the Albina docks in the late 1890s. Albina Engine and Machine Works Inc. was established in 1904. It built, repaired and broke shops through 1971, and then into the 1980s as Dillingham Ship Repair.

Ships were built in that stretch of the river for the big military building during World War II, Ryals said. Shipbuilding is believed to be a major source of pollution in the Superfund site and occurred in other areas as well.

It's way too soon to know the ultimate costs to clean up River Mile 11E, or to know which polluters will pay what. That's tied up with the bigger effort to divvy up costs among the polluters for the entire 10-mile stretch of the river, Von Burg said.

The Bureau of Environmental Services collects money from sewer customers on every bill to pay for the city's share of Superfund costs. There currently is \$7.5 million available for the Portland Harbor in the Environmental Remediation Fund, Von Burg said.

In the future, entities that stepped up early, including the city, figure to get reimbursed for some of their outlays by other companies who have yet to pay anything for cleanup work.

Willamette Week

City Commissioner Chloe Eudaly's Vote Blocks Plans for Kengo Kuma-Designed Skyscrapers on Portland Waterfront

By Rachel Monahan

March 8, 2018

Portland City Council voted down a proposal to increase the height at Riverplace and with it 500 affordable units. A day later, Eudaly signals she's open to reconsidering.

Portland City Council on Wednesday rejected a proposal to raise height restrictions along the Willamette River just south of downtown, despite the tantalizing possibility of 500 units of affordable housing and a concept designed by an internationally renowned architect.

City Commissioner Chloe Eudaly cast the deciding vote. It was a significant vote— in part because she campaigned on the issue of housing affordability. (And it was the rare decision at Council decided by such a close vote.)

By this afternoon, Eudaly indicated she's willing to reconsider, though she may not necessarily approve the height increases.

The new vote will take place March 22.

"I am doing this as a courtesy to the mayor," she said at Council this afternoon. "It does not guarantee a change in my vote."

A new development at Riverplace would be subject to inclusionary housing rules and therefore include as many as 500 units of affordable housing.

The concept, floated last fall at City Hall by NBP Capital, included eight towers as tall as 400 feet with a concept designed by the Japanese architect Kengo Kuma, who also designed a new building at Portland's Japanese Gardens. The developer requested more height from City Council in exchange for building the affordable units.

The vote yesterday would have increased the heights to as high as 325 feet (not quite as high as the concept proposed) and failed by a vote of 2 to 2. It needed a majority to pass. The recommendation height limit for the area was as high as 200 feet.

City Commissioner Dan Saltzman recused himself, citing property his family owns.

(His sister, Julie Leuvrey, who runs the family business, Oregon Pacific Investment and Development Company, has lobbied against the Riverplace height increases. "You may be aware that I am Dan Saltzman's sister and run our family real estate business. We have holdings in the neighborhood which would be heavily impacted by the Riverplace proposal," she wrote in a Jan. 20 email.)

Commissioner Amanda Fritz was always expected to vote no; she opposes this change and others to city zoning codes that raise heights at the riverbanks.

Eudaly voted with her, citing concerns over the process: The developer had come to City Council to increase the height limits after the city's Planning Commission had weighed in on the Central City 2035 plan.

"I've expressed my concerns for a tacit approval for a development project that has not gone through the proper channels for approval," she said Thursday at Council. "I've asked for commitments from the mayor that any project that develops on that site, particularly if they plan to build to the maximum heights, goes through the master plan process, design overlay and community engagement that any other development would."

Mayor Ted Wheeler and Commissioner Nick Fish voted for the height increase.

Wheeler said he believes Eudaly's concern can be addressed through a technical review she mentioned, called a master planning process, that was approved by Council yesterday for the site. It will require approval from the city's design review commission about the concept for the development.

"I believe those questions are answered through the master planning requirement," Wheeler said Thursday.

Wednesday's vote that blocked new height at Riverplace was the second major action at council in a single day to upend plans for development along the waterfront.

The first was a decision to overturn approval the city's Design Review Commission had made for a 275 units of housing in the Pearl District that would have blocked local views of the Fremont Bridge.

Six More Protesters Sue the Portland Police For “Increasingly Militarized” Tactics That Left Them Bloodied and Bruised

By Katie Shepherd

March 8, 2018

"It is our hope that these lawsuits send a clear message to the City of Portland: The time for change is now."

The American Civil Liberties Union of Oregon filed six lawsuits against the Portland Police Bureau on Thursday alleging police brutality against protesters in a handful of demonstrations last year.

The lawsuits involve clashes between protesters and police at several demonstrations held since late 2016, including a protest at City Hall opposing the new police union contract, a post-election protest in November 2016, last year's Feb. 20 "Not My Presidents Day" protest, and at a counter-protest to a Patriot Prayer demonstration last June.

"The PPB has become increasingly militarized in its tactics, deploying droves of officers wearing tactical dress, including helmets, carrying batons, and full-body riot shields ('riot gear'), and using chemical agents as crowd-control weapons," the lawsuits say.

A police spokesman could not immediately be reached for comment. The bureau does not comment on pending lawsuits.

The suits' named plaintiffs allege the Portland police officers improperly used force to subdue or detain them and in some cases used force after they had already been detained.

The lawsuits say police knocked protesters to the ground without warning, singled out a protester and struck her multiple times with a baton without explanation, pepper sprayed a man who was already restrained by two officers, and hit a protester who had already been handcuffed.

Portland riot stand off against anti-Trump protesters on Jan. 20, 2017. (William Gagan) Portland riot stand off against anti-Trump protesters on Jan. 20, 2017. (William Gagan)

The ACLU is filing video and photographs of the incidents, including pictures of some of the protesters' injuries. Kelly Simon had a four-inch bruise on her leg after police fired an "impact munition" at her even though she was wearing a blue ACLU legal observer vest. Peggy Zebroski's nose was broken after police tackled her to the ground. (Zebroski's injury, suffered at the "Not My President's Day" protest, became iconic when an Oregonian photographer captured a shot of the grandmother's face bleeding.)

The lawsuits come after more than a year of controversy surrounding the city's approach to policing public demonstrations. Violent protests left storefronts smashed in the Pearl District and protesters grew increasingly bold and confrontational. But sometimes the police outnumbered the protesters and many have accused officers of using force on peaceful protesters.

In November, the ACLU sued Portland Police for its tactics at the June 4 protest last year where officers kettled protesters into a barricade and wouldn't let them leave the area until the police photographed their IDs.

The ACLU says it filed the six new suits in the Multnomah County Circuit Court instead of federal court because it is hoping a state judge will make a determination in the cases more quickly.

"Instead of filing federal constitutional claims which can take years to resolve, we are filing a coordinated series of lawsuits in state court," says ACLU spokeswoman Sarah Armstrong. "We believe at this point, for this kind of case, pursuing state claims is a more effective way for these people to get justice. It is our hope that these lawsuits send a clear message to the City of Portland: The time for change is now."

The Portland Mercury

Hall Monitor: Lawsuit Roundup Time!

By Dirk VanderHart

March 7, 2018

Lots of Local Elected Officials Are Getting Sued! Here's a Rundown.

The other day, it occurred to me that I've never seen so many local elected officials being sued at the same time.

Right now, County Commissioner Loretta Smith, Mayor Ted Wheeler, and City Commissioner Chloe Eudaly all face lawsuits—each of them filed by constituents who are representing themselves.

It's not a coincidence. More and more, the city and county's most vocal critics aren't willing to stop at criticism. They want a judge to agree on their gripes—and they sometimes even succeed.

With that in mind, here's a look at where the lawsuits stand, and what they might lead to.

Seth Woolley v Loretta Smith

In the suit that probably has the best chance of effecting change, local activist Woolley is hoping a judge will force Smith out of her job.

At issue is a provision in the county charter that says elected officials need to resign from office if they begin "running" for another elected office before the final year of their term.

As the Mercury has reported, Smith began a campaign for City Commissioner Dan Saltzman's seat last year, creating a website and hiring campaign staff. Woolley says that's enough to force her from office. In a filing last week, Smith argued that only filing for office would have triggered the need to resign.

Both parties had a conference call with a judge last week, but have yet to meet in court.

Joe Walsh v City of Portland, Ted Wheeler, and the Portland Police Bureau

A longtime local activist, septuagenarian Walsh has had success using the court system in the past. In 2015, a federal lawsuit he filed against city officials wound up stopping Mayor Charlie Hales from excluding disruptive people from public meetings for extended periods of time.

This one's a bit different. In a federal lawsuit filed in November, Walsh says city cops trampled his right to free speech when they used tear gas and flashbangs to scatter him and other demonstrators in Lowndale Square during a heated protest on June 4, 2017.

Walsh said he was doing nothing wrong, and is asking that cops be disallowed from using "chemical warfare" on citizens. The city has asked a judge to dismiss the case.

(Based on police actions that day, Wheeler is also named in a lawsuit by the ACLU of Oregon.)

Mimi German v Chloe Eudaly

German, like Walsh, is a fixture at City Council meetings, but the source of her ire is online.

In late December, German filed suit over Eudaly's personal Facebook page. She argues the commissioner violated her rights by ridiculing German on that page. Eudaly has also refused to turn over copies of exchanges from her personal Facebook account, saying only her separate profile as a public official qualifies as a public record.

It's not the first time Eudaly's Facebook use has drawn scrutiny. Last year, officials looked into the commissioner's use of the social networking site after Eudaly used her personal profile to criticize local journalists' coverage of her.

German's asking a judge to stop Eudaly from using Facebook like this. On March 2, Eudaly filed a motion to dismiss the case.

With Dan Saltzman Absent, City Council Passes a Campaign Finance Tweak He Stopped Yesterday

By Dirk VanderHart

March 8, 2018

Yesterday, Commissioner Dan Saltzman refused to approve a new arrangement that would put the city's public campaign finance system directly in the hands of Commissioner Amanda Fritz.

So now Fritz and the rest of council have gone around him.

In an extremely rare maneuver, Fritz at this afternoon's city council meeting called up an ordinance that yesterday failed to pass on an "emergency" basis because it lacked unanimous council support. The reason: Saltzman, the lone opponent of the proposal, is out of town. In his absence, Fritz got the 4-0 vote she needed to pass the matter as an emergency, meaning it goes into effect right away.

"We need to move very quickly," Fritz said this afternoon. "I realize this is very unusual to be doing this procedural change."

The arrangement council enshrined this afternoon comes with questions. The ordinance dramatically alters oversight of Open and Accountable Elections, the public campaign finance system proposed by Fritz and approved by council in late 2016, which is supposed to begin funding campaigns in 2020.

Since its passage, the program has been under the control of the Office of Neighborhood Involvement, which was controlled by Fritz when that decision was made. In the time since, Commissioner Chloe Eudaly has been handed ONI, and she says she's got too much on her plate to institute a new elections system. So, as first reported by the Mercury, Fritz has found a way to get the program back on her plate.

The ordinance approved by council this afternoon empowers Mayor Ted Wheeler to give control of Open and Accountable Elections to any commissioner (or the mayor), so long as they have more than two years left in their term. The plan is that the elections system will change hands every two years, so a commissioner who might be running for re-election is never overseeing the campaign finance system. With passage of the ordinance today, Wheeler immediately handed the program to Fritz.

But the situation raises concerns—most dramatically for Saltzman, but also among other officials the Mercury's spoken with.

“I can't support this in its current form,” Saltzman said yesterday. “It just doesn't look right.”

Saltzman's chief concern he said, was that a commissioner overseeing the system could be influenced by one of their colleagues who was up for re-election. “We are only human,” he said. “We are subject to the opinions of our colleagues.”

The Open and Accountable Elections program is seen as a way to attract new candidates to run for city office.

The program offers candidates the option to use city funding to leverage campaign donations—the city has pledged to kick in up to 6 public dollars for every \$1 donated from qualifying sources.

To gain access to the system, candidates need to first prove they're viable by hitting certain fundraising thresholds (collecting \$2,500 total from at least 250 people for candidates for city commissioner or auditor, and collecting \$5,000 total from at least 500 people for mayoral candidates). And they need to agree to limit campaign spending and the contributions they accept.

Most people who've looked at the program—including the City Budget Office and every member of Portland City Council—believe it is best housed in the Portland Auditor's Office, which oversees city elections. But Auditor Mary Hull Caballero has refused to accept the system, raising concerns that include staffing capacity.

Further Reading (Linked Below)

The Quest for Digital Equity

A look at the evolution of the challenge to ensure advances in technology bring benefits to everyone.