

Letter to Mayor J.F. Valley

Last Updated Thursday, 08 April 2010

Via Facsimile 870-338-9832 and U.S. Mail

August 8, 2008

J.F. Valley, Mayor

Helena-West Helena

226 Perry Street

Helena-West Helena, AR 72342

Re: Emergency Curfew Order

Dear Mayor Valley:

The American Civil Liberties Union of Arkansas is a non-profit organization dedicated to preserving and defending the rights guaranteed to us by the United States and Arkansas Constitutions. The purpose of this correspondence is to notify you that your city's emergency curfew orders are unconstitutional, and that enforcement of such ordinance and orders may subject the city to civil liability for violating of the rights of those upon whom the curfew is imposed and enforced.

Chapter 7.12 of the Helena-West Helena City Code pertaining to curfews states:

7.12.01 Civil emergencies The Mayor, at any time a condition has arisen or is imminent, which in his judgment constitutes a civil disturbance, riot, insurrection or time of local disaster, may declare a state of emergency and impose a curfew for such time and for such areas as he deems necessary to meet such emergency. Provided, however, such curfew shall not extend for over a period of forty-eight (48) hours unless extended by a majority vote of the members of the governing body.

On August 7, 2008, you issued an order that all residents of a particular zone of the city be subject to a curfew prohibiting loitering, standing, and "hanging out," and providing for stop and investigation of all moving traffic. Furthermore, you ordered that Code Enforcement pursue evictions for all persons residing in homes where at least three criminal violations have occurred.

A high crime rate in Helena-West Helena is not a condition set forth in the city code for which the Mayor can declare a state of emergency, and as such it appears you are acting ultra vires. Peaceful, law abiding citizens are being ordered into their homes by law enforcement, underscoring that the situation in your city has not reached riot or natural disaster proportions. Were the city code to grant you the authority to declare a curfew on all citizens, the code would be unconstitutional, as set forth below.

This order is blatantly unconstitutional on numerous grounds. First, such curfews have never been allowed under the

laws of the United States, barring riot, insurrection, or natural disaster. Not one case has ever allowed for the imposition of searches, seizures, and house arrest against innocent citizens because of the high crime rate in a particular city. See, e.g. *American Civil Liberties Union of West Tennessee, Inc. v. Chandler*, 458 F.Supp. 456 (W.D. Tenn. 1978). In fact, "state of emergency" curfews imposed upon youth aimed at addressing youth crime have been declared unconstitutional. *Ramos v. Town of Vernon*, 353 F.3d 171 (2d Cir. 2003); *Nunez v. City of San Diego*, 114 F.3d 935 (9th Cir. 1997); *Hutchins v. District of Columbia*, 942 F.Supp. 665 (D.D.C. 1996); *Walters v. Barry*, 711 F.Supp. 1125 (D.D.C. 1989); *McCollester v. City of Keene*, 586 F.Supp. 1381 (D.N.H. 1984); *Johnson v. City of Opelousas*, 658 F.2d 1065 (5th Cir. 1981); *Naprstek v. City of Norwich*, 545 F.2d 815, 818 (2d Cir. 1976); *State v. J.P.*, 907 So.2s 1101 (Fla. 2004); *City of Sumner v. Walsh*, 148 Wn.2d 490 (2003).

Second, requiring adult residents of the city to be on house arrest violates these individuals' rights to travel and association, as guaranteed by the United States Constitution. Third, the very language of the Order violates the Fourth Amendment to the United States Constitution, in that, in effect, it proclaims that the Fourth Amendment is waived for all persons, including those suspected of no criminal activity. The warrant requirement of the Fourth Amendment is in place specifically to prohibit these kinds of sweeping searches. Law enforcement, even in areas where there are higher crime rates, is not a sufficient basis upon which to place people on house arrest, or set aside the Fourth Amendment.

Fourth, the Order likely violates Helena-West Helena residents' rights to equal protection under the laws. "[O]nce curfews are imposed, the burden falls disproportionately on minority individuals and communities." Harvard Note, "Juvenile Curfews and Gang Violence: Exiled on Main Street," 107 *Harvard L. Rev.* 1693, 1707 (1994). The order to evict all residents of homes where at least three crimes have occurred violates residents' rights to association as guaranteed by the First Amendment to the United States' Constitution. Finally, most loitering ordinances and arrests also violate constitutional guarantees. *Papachristou v. Jacksonville*, 405 U.S. 156 (1972).

Notwithstanding the City Code and Curfew Order, the residents of Helena-West Helena have the right to sit under shade trees in their front yard, to ride their bicycles along the streets, protest this policy, and drive around the city with the full protections of the First, Fourth, and Fourteenth Amendments. Citizens, including those expressing opposition to the curfew order, should be subject to no special scrutiny by law enforcement unless they are suspected of some criminal activity.

Mayor, we sympathize with the need to address crime in your city, and have many good friends and members in Phillips County and Helena-West Helena. We certainly do not seek to detract from law enforcement using their lawful authority under the Fourth Amendment to stop, question, detain, or arrest those who are suspected of committing criminal acts, but violating law abiding citizens' constitutional rights is counterproductive to quelling unrest. Citizens receiving unlawful orders tend to object, and enforcement of this order may inflame an already problematic situation. We urge you to immediately cease any curfews imposed due to high crime rates, whether in the entire city, or in a particular zone, and to dismiss any prosecution initiated for violation of the curfew order. We do encourage you to find law enforcement solutions that will comply with the constitution, and hope that this letter will help you avoid a solution that may ultimately leave the city subject to liability.

Please have your city attorney contact me as soon as possible to advise whether you will rescind the emergency curfew order. Thank you for your attention to this matter, and we look forward to receiving your response.

Respectfully,

Holly Dickson

cc: Helena-West Helena City Council Members(

Andre Valley, City Attorney