



CITY OF PHILADELPHIA

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VIA EMAIL ONLY

June 7, 2020

Reggie Shuford
Executive Director
ACLU of Pennsylvania
RShuford@aclupa.org

Witold Walczak
Legal Director
ACLU of Pennsylvania
VWalczak@aclupa.org

Re: Curfew Orders During a State of Emergency

Dear Messrs. Shuford and Walczak:

I write in response to your June 5 letter regarding the City of Philadelphia's imposition of curfews. Curfew orders were necessary each day that they were issued to protect City residents and their property against unprecedented levels of looting and destruction—and they were effective. Due to the additional efforts of peaceful protestors, City residents, business owners, and many others, a curfew will not be necessary in Philadelphia today. And, the City is presently hopeful that curfews will be unnecessary in the coming days and weeks. Nonetheless, I write to memorialize for you the legality of the Mayor's curfew orders, which were lawful and did not target First Amendment activity. The City will continue to encourage peaceful protests, which have ignited crucial conversations about racial and social justice within our local government.

The issuance of the curfew falls within the Mayor's authority granted by The Philadelphia Home Rule Charter, The Philadelphia Code, applicable State and City orders, and the Declarations of Emergency referenced in the curfew orders. Specifically, as to the last, the Governor of Pennsylvania issued a Proclamation of Disaster Emergency related to Philadelphia on May 30, and the Mayor issued a Declaration of Emergency Related to Imminent Danger of Civil Disturbance, Disorder, or Riot in Philadelphia, also on May 30. As you acknowledge in your letter, starting on May 30 and continuing for some days after, the City experienced incomparable levels of violence and destruction in the midst of what are largely peaceful protests.

City leadership, relying upon criminal activity data and known threats to public safety, deliberated the necessity of a curfew order at the beginning of each day. Based on that analysis, a narrowly tailored order had been issued on a daily basis with an understanding of the burden that curfews impose on the public. While the violence had not again reached the levels seen last

Saturday, May 30, looting, theft, and vandalism continued through the week at unsafe levels and remained significantly above what the City was experiencing before May 30.

No provision of the Mayor's curfew orders targeted gatherings of individuals engaged in First Amendment activities. On the contrary, the Mayor has repeatedly encouraged all forms of peaceful and non-violent protests. Consistent with that position, the Mayor has declined to exercise the City's clear legal authority to order additional, lawful restrictions on protests specifically. Nor has the City enforced active COVID-19 related regulations and orders that identify large gatherings as detrimental to public health.

Indeed, the curfews have always contained important exemptions for essential activities at a time when there are public health measures justifiably limiting movement anyway. Further, those limits have eased with the passage of days, having begun at 6:00 p.m. on May 31 through June 3, with the exception of an 8:30 p.m. curfew on Tuesday, June 2, for voting. Starting on Thursday, June 4, curfew hours were reduced to 8:00 p.m., which was repeated on June 5 and June 6.

Yesterday, at least 10,000 people participated in *one* protest, and those persons were largely peaceful. But, the size of the crowd presented, again, the threat of violent opportunists hiding within it—that is, persons uninterested in engaging in First Amendment activity, but plotting to incite and cause violence and destruction across our City, particularly at the end of the peaceful protests. City leadership monitored various threats to public safety and imposed a curfew, which proved to be a critical preventative measure that was not available last Saturday. Based on information available as of 10:00 a.m., we are pleased that a curfew will be unnecessary today.

The actions of the Mayor, and the City, have been “taken in good faith and [certainly have] some factual basis for the decision that restrictions imposed were necessary to maintain order.” *Moorhead v. Farrelly*, 723 F. Supp. 1109, 1113-14 (D.V.I. 1989) (upholding the imposition of a weeks-long nighttime curfew in the wake of a hurricane). You have cited cases concerning restrictions imposed during non-emergency times, but *Moorhead* wisely points out that in emergency circumstances, the equation is different.

Lastly, I personally appreciate the ACLU raising these concerns and its willingness to engage in conversation. We are united in our hope that further curfews will not be required, as we move to a space of dialogue and reconciliation.

Sincerely,



Marcel S. Pratt
Philadelphia City Solicitor

cc: James F. Kenney, Mayor
Brian Abernathy, Managing Director