

Reggie Shuford
Executive Director

Witold Walczak
Legal Director



Pennsylvania

June 5, 2020

The Honorable James F. Kenney, Mayor
Brian Abernathy, Managing Director
Marcel Pratt, City Solicitor
City of Philadelphia

Eastern Region Office
PO Box 60173
Philadelphia, PA 19102
215-592-1513 T
215-592-1343 F

By email

Re: Justification for Continuation of Curfew

Dear Mayor Kenney, Managing Director Abernathy, and Solicitor Pratt:

Central Region Office
PO Box 11761
Harrisburg, PA 17108
717-238-2258 T
717-236-6895 F

We were distressed to learn this morning that the city has renewed a city-wide curfew for this evening, without explanation or any attempt at justification, and despite our expressed concerns. Particularly in this time, when the public has demonstrated its profound and widespread distrust of our government and our law enforcement (and each day's news gives more reason to distrust the actions of our police), the residents of Philadelphia deserve and demand that the city explain why it continues to place over 1.5 million overwhelmingly law-abiding Philadelphians under nightly house arrest.

Western Region Office
PO Box 23058
Pittsburgh, PA 15222
412-681-7736 T

We do not dispute that the city experienced, on May 30, 2020, and for some number of days thereafter, a significant degree of unrest. In more recent days, however, we have not seen reports of "extreme civil disturbance, including property damage and looting," as the Mayor's executive orders claim. Instead, we have seen the continuation of widespread and overwhelmingly peaceful and orderly protest activity. We are beginning to suspect that those constitutionally protected activities, not crime and disorder, are the actual reason for the nightly curfews.

The extraordinary curtailment of civil liberties represented by the nightly curfews falls hardest on those who do not have the ability to work remotely, but who, in order to keep their jobs, feed their families, and care for the daily needs of the city, have already had to risk their health and that of their families to go to and from home every day during the pandemic. Many of these unsung heroes of the pandemic work night shifts, requiring them to be out after dark. Now, many of those Philadelphians, disproportionately people of color—those who deliver our food, stock our grocery shelves and drive our buses and trolleys—must also face potential challenge and detention at the hands of police and even

National Guard members carrying rifles as they try to reach the safety of home or work after dark. That is a poor return for the sacrifices those workers have already made.

We recognize that some individuals have continued to damage property, both near and far away from the places where much larger numbers of people have engaged in peaceful protests. That unlawful conduct, however, cannot justify a curfew for the entire city. The Constitution does not permit the city to order such a sweeping restriction on free speech and travel across this vast city to address isolated attacks on property.

The city-wide curfew substantially burdens fundamental First Amendment freedoms, including freedom of speech and assembly, as well as the command of Article I, section 7 of the Pennsylvania Constitution that the “free communication of thoughts and opinions is one of the invaluable rights of man, and every citizen may freely speak, write and print on any subject, being responsible for the abuse of that liberty.” In addition, “freedom of movement is the very essence of our free society, setting us apart. Like the right of assembly and the right of association, it often makes all other rights meaningful—knowing, studying, arguing, exploring, conversing, observing and even thinking. Once the right to travel is curtailed, all other rights suffer, just as when curfew or home detention is placed on a person.” *Aptheker v. Secretary of State*, 378 U.S. 500, 520 (1964) (Douglas, J., concurring).

The First Amendment generally requires the state to punish those few who break the law rather than preventively suppressing everyone’s protected speech because of what a few people may do. To change this fundamental balance, the government must provide strong evidence of a need to limit innocent people’s constitutional rights *and* demonstrate that its actions are narrowly tailored so as not to restrict more liberty than is necessary. *McCullen v. Coakley*, 134 S. Ct. 2518, 2534 (2014).

The nightly city-wide curfews are anything but “narrowly tailored.” Apart from the geographic breadth (which extends well beyond any reported areas of disorder), the curfew applies to all kinds of movement, including many that obviously could not be mistaken for unlawful property damage. To give but a few examples, the curfew bans people from walking with their children or dogs, jogging or riding bicycles for exercise, going to the grocery store, traveling for family caregiving obligations, and various other forms of entirely innocuous movement. And the stated exceptions to the curfew actually increase the burden on those who travel after dark, because police must stop and question people to determine if they are or are not exempt from the curfew. The curfew essentially places nearly every person who travels the streets at night under suspicion and threat of harassment, detention, and arrest.

This is not the way to restore a city’s trust in its government. As the acts of vandalism have diminished and become largely unconnected to protest activities, the justification for the City’s extension of the curfew for yet another night has become highly suspect. Whatever extraordinary circumstances that may have justified, legally and constitutionally, the ongoing curtailment of civil liberties no longer exist. We call on the

city to immediately explain to the residents of Philadelphia why they are presumptively under house arrest for yet another night, and to reconsider the latest order.

Respectfully,

A handwritten signature in black ink, appearing to read "R Shuford".

Reggie Shuford, Executive Director

A handwritten signature in black ink, appearing to read "Witold Walczak".

Witold Walczak, Legal Director