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MARJORIE R. ESMAN
EXECUTIVE DIRECTOR

April 4, 2013

**OPEN LETTER TO THE TERREBONNE PARISH COUNCIL REGARDING PROPOSED
SAGGY PANTS ORDINANCE**

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To the Terrebonne Parish Council:

The ACLU of Louisiana has reviewed the content of the proposed ordinance to ban “saggy pants” on Terrebonne Parish. Based on the text of that proposed ordinance, we urge you to defeat that proposal as a violation of the Constitutional rights of the people of Terrebonne Parish.

The ordinance as proposed would provide that “It shall be unlawful for any person to appear in public view or in a public place wearing pants below the waist which expose the skin or undergarments.” However, clothing is a form of expression protected under the Constitution of the United States. To ban a particular clothing style would violate a liberty interest guaranteed under the 14th Amendment of the US Constitution. In *Kelley v. Johnson*, 425 U.S. 238, 244 (1976), the US Supreme Court assumed without deciding that individuals have a liberty interest in their personal appearance. This has been affirmed by the US Fifth Circuit Court of Appeal among others *Lansdale v. Tyler Junior College*, 470 F.2d 659, 663 (5th Cir. 1972) (en banc), *cert. denied*, 411 U.S. 986 (1973) . The government must demonstrate a rational basis for its ban – and Terrebonne Parish has no legitimate rational basis for regulating the attire of its residents.

The proposed ordinance as described would also be unconstitutionally vague and overbroad. It allows no accidental slippage. It allows no one to inadvertently have underwear

peek out while bending over. It makes no concessions for the stereotype of “plumber’s or “carpenter’s crack.” It makes a criminal of everyone whose pants are not high enough to suit the arbitrary standards of law enforcement.

Moreover, such an ordinance would inevitably raise questions about racial profiling or disproportionate enforcement. “Saggy pants” is a clothing style typically associated with young African-American males. If enforced against those who choose this style and not against everyone whose pants may inadvertently sag, it will almost certainly be enforced disproportionately against a particular group of people who will be singled out by law enforcement for nothing other than their attire.

If your concern is the potential exposure of genitalia, please be advised that the Louisiana Criminal Code, LSA RS 14:106 (A)(1) prohibits “Exposure of the genitals, pubic hair, anus, vulva, or female breast nipples in any public place or place open to the public view, or in any prison or jail, with the intent of arousing sexual desire or which appeals to prurient interest or is patently offensive.” Existing law therefore already addresses the problem of exposure. Additional legislation is unnecessary, and potentially violates other provisions of Louisiana law. LSA RS 14:106 expressly prohibits any regulation of “obscenity” by local officials. Section 14:106 (E) provides that “the regulation of obscenity by municipalities, parishes, and consolidated city-parish governments shall not exceed the scope of the regulatory prohibitions contained in the provisions of this Section.” Therefore, Terrebonne Parish lacks the legal authority to enact regulations more strict than those already contained in the Louisiana Criminal Code with respect to the matters contained in RS 14:106.

The Terrebonne Parish Commission has a rightful role in protecting its residents. Its residents have the right to a clear, lawful, and enforceable set of ordinances, and to have their taxes spent on legitimate governmental activities. The government does not belong in the business of telling people what to wear. Nor does it have the right to use clothing as a pretext to engage in otherwise unlawful stops of innocent people. We urge you not to pass this unlawful and troublesome ordinance. There is more important business facing Terrebonne Parish than regulating attire.

Sincerely,

A handwritten signature in blue ink, appearing to read "Marjorie R. Esman".

Marjorie R. Esman
Executive Director