



March 10, 2015

OPEN LETTER TO THE OPELOUSAS CITY COUNCIL REGARDING PROPOSED
ORDINANCE REGULATING CLOTHING

BY FAX: 337-948-2593

Julius Alsandor, Councilman District A
J. "Tyron" Glover, Councilman District B
Blair Briggs, Councilman District C
Sherell Roberts, Councilwoman District D
Jackie Martin, Councilwoman District E
Marvin Richard, Council-at-Large

Opelousas City Hall
PO Box 1879
Opelousas, LA 70571-1879

To the Opelousas City Council:

From news reports on KATC.com, the ACLU of Louisiana has learned that the City of Opelousas plans to consider an ordinance to regulate the attire of people in Opelousas. We understand that the ordinance will be based on one in Ville Platte, and based on the text of that ordinance, we urge you to not to support that proposal, which is a violation of the Constitutional rights of the people of Opelousas.

As we understand it, the ordinance to be proposed will provide that "Pants worn by any person, regardless of age, should be size appropriate and secured at the waist to prevent the pants from falling more than three inches below the hips (crest of the ilium)." The penalties would include fines and community service, if they are consistent with those currently in place in Ville Platte.

This letter is to advise you that 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 Opelousas 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 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 taste of the City Council.

Moreover, if intended to prohibit the type of clothing commonly known as “saggy pants,” this 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, Opelousas 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. Moreover, there is no reason to assume that low-slung pants will result in such exposure.

The Opelousas City Council 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 such an unlawful and troublesome ordinance. There is more important business facing Opelousas than regulating attire.

Sincerely,



Marjorie R. Esman
Executive Director