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November 14, 2007

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Re: Proposed "Sagging Pants" ordinance

Gentlemen:

I understand that the City Council of Gonzales will consider a proposed ordinance bagging "sagging pants" and other forms of attire at its next meeting. This letter is to urge the Council not to adopt that ordinance, and to recognize that clothing is a form of expression protected under the Constitution of the United States. The ordinance as proposed is also unconstitutional as vague and overbroad. We trust that, upon careful review, the Gonzales City Council will recognize that this proposal will only disserve the interest of the people of Gonzales.

As reported in the New Orleans Times-Picayune, the proposed ordinance reads as follows:

It shall be unlawful for any person in any public place or in view of the public to be found in a state of nudity or partial nudity or in dress not becoming to that person's sex, or in any indecent exposure of his or her person or undergarments due to sagging of pants, or be guilty of any indecent or lewd behavior.

Everyone is partially nude all the time; the only form of attire that does not consist of "partial nudity" is the burka, which completely covers the body from head to toe. Any showing of skin constitutes "partial nudity," which means that it will be up to the discretion of the enforcing officer to decide, based on his or her own personal standards, how much skin is appropriate. Short sleeves? Tank tops? Shorts? How short may the shorts be, before the exposure of a leg is deemed "partial nudity?" Plunging necklines? Must women submit their blouses to an inspection of the police to ensure that their necklines don't fall below a standard of "partial nudity?" There is no clear standard, and the people of Gonzales will be forced to guess whether their clothing will pass muster.

Moreover, although the ordinance appears to be drafted to protect plumbers and carpenters, if a member of either of those occupations exposes his "crack" for a reason other than

sagging pants, that would constitute “partial nudity” and be prohibited under this ordinance. For this reason the ordinance is at least in part overinclusive, unless it is the intent of the City Council to ban “carpenter's and plumber's cracks.” And if so, I submit that the ordinance will be remarkably difficult to enforce, and subject to selective enforcement against those who are not carpenters or plumbers.

With respect to “dress not becoming to that person's sex,” this too is totally undefined. At one time it was deemed inappropriate for women to wear pants in public. For most people that standard has changed, but how is a woman to know whether the pants she wears are considered sufficiently feminine that she will not be accused of wearing clothing suitable for a man? May a man wear a pink shirt? May a woman wear her husband's jacket if she gets cold? Or a high-school girl wear her boyfriend's sweater? May children of opposite sexes wear one another's hand-me-down clothing, to save family expenses? And what does “becoming” mean – is it a question of whether the attire is flattering, or suitable by some unwritten standard? Again, how are the people of Gonzales to know whether their clothing is sufficiently gender appropriate or “becoming”?

What exactly is “indecent exposure?” If it means “obscenity,” that is already prohibited under the Louisiana Criminal Code, LSA RS 14:106. If “indecent exposure” is intended to expand on that definition, Section 14:106 (E) expressly 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.” Any regulation that expand the definitions set forth in RS 14:106 is therefore impermissible under Louisiana law.

And finally, the sagging pants themselves. First, your ordinance does not define “sagging of pants.” Pants sag for lots of reasons, only one of which is to purposely exposes underwear. The pants may not fit well. A belt may have broken. Will the citing officer have to determine the reason for the sag, or will citations be issued regardless of the reason?

Banning “sagging pants,” or any other form of attire, violates 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 the City of Gonzales has no legitimate rational basis for regulating the attire of its residents.

The City of Gonzales has a rightful role in protecting its residents. Its residents have the right to a clear and enforceable set of municipal 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. The proposed “sagging pants” bill is a folly. We urge the Council to reject this proposed ordinance and to recognize that clothing styles change over time, that this too will pass, and to get on with the more important business of the City of Gonzales.

Sincerely,



Marjorie R. Esman
Executive Director

cc: John A. Berthelot, Mayor