

June 5, 2020

VIA ELECTRONIC MAIL

Mr. Steven R. Buck, City Manager
City of Sanford
919 Main Street
Sanford, Maine 04073
srbuck@sanfordmaine.org

Re: Unconstitutional Curfew Order in Sanford, Maine

Dear Mr. Buck:

I am the Legal Director for the American Civil Liberties Union of Maine, and I am writing to you this morning to demand that Sanford rescind its Emergency Declaration of Curfew, issued yesterday (June 4, 2020). We appreciate the city's interest in maintaining peace within your city, but this is not a permissible way of achieving that goal. Your curfew order was promulgated in excess of your emergency authority as City Manager and in retaliation against activities that are protected by the First Amendment. The order is unlawful, and it must be rescinded. If you do not agree to rescind this order immediately, you may face legal action on behalf of peaceful protesters who wish to exercise their freedom of speech and assembly in Sanford this weekend.

People have the right to assemble peacefully and to express their views on matters of public concern. We are in the midst of one of the most significant mass movements in a generation, and people all across this state are peacefully assembling to demand freedom from racism and harassment on behalf of themselves, their neighbors, and their families. Nothing that has happened at any protest anywhere in Maine justifies the imposition of a curfew, which is likely why none of

your colleagues in municipal governments across the state have seen fit to seek to impose such a restriction.

The First Amendment generally requires government officials to punish those few who break the law rather than preventively suppressing everyone's protected speech because of what a few people may do afterwards. Forcing people to remain in their homes is one of the greatest restraints that can be placed on our constitutional freedoms. Such a significant deprivation of liberty could only be justified by the most extreme government need; a rumor of potential unrest plainly does not satisfy this standard. If necessary, a court will apply the strictest scrutiny to your curfew order and the factual underpinning that might justify it, and it will strike the order down unless it is the least restrictive manner of maintaining the peace.

If the curfew was imposed because of concern that protests against racism will attract violent counter-protests by white supremacists, that constitutes a "heckler's veto," which is unconstitutional. Sanford's responsibility in such a case is not to silence the voices of protesters and activists but to affirmatively protect them from counter-protesters who would do them harm.

Finally, the curfew order you imposed suffers from a number of structural defects: The order has not been voted on or adopted by the City Council and cannot be adopted pursuant to emergency powers granted exclusively for responding to the COVID-19 pandemic.¹ The order exempts, but does not define, "essential travel" and "emergencies," leading to the likelihood of unfair or biased enforcement, and a likelihood of confusion about which activities qualify as "essential." Finally, the order was issued one day before it was scheduled to go into effect, at a time

¹ See Emergency Declaration of Curfew, pursuant to Sanford Code §27-7 (2) (June 4, 2020) (adopted pursuant to the March 24, 2020 Emergency Proclamation authorizing emergency powers to the City Manager to rapidly respond to the COVID-19 pandemic); *see also* Recording of March 23, 2020 Meeting at 58:28-1:07:00, available at https://townhallstreams.com/stream.php?location_id=82&id=27733.

when people already have difficulty coordinating the necessities of life due to the COVID-19 pandemic.

If you wish to discuss this matter, you or your attorney may contact me by email at zheiden@aclumaine.org or by phone at (207) 619-6224. I hope to hear from you.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Zachary L. Heiden', with a long horizontal flourish extending to the right.

Zachary L. Heiden

cc: Mayor Thomas P. Cote (tcote@sanfordmaine.org)
Deputy Mayor Joseph R. Hanslip (jhanslip@sanfordmaine.org)
Councilor Lucas J. Lanigan (ljanigan@sanfordmaine.org)
Councilor Maura A. Herlihy (mherlihy@sanfordmaine.org)
Councilor Robert G. Stackpole (rstackpole@sanfordmaine.org)
Councilor John L. Tuttle, Jr. : (jltuttle@sanfordmaine.org)
Councilor Ayn M. Hanselmann (amhanselmann@sanfordmaine.org)