

July 13, 2006

Mayor Dave Edler
City of Yakima
129 N 2nd St.
Yakima, WA 98901

Re: Proposed Juvenile Curfew Ordinance

Dear Mayor Edler:

We understand that the City of Yakima is considering a new juvenile curfew ordinance that would restrict the movement of people under the age of 18 during specific hours. We have reviewed the draft language of the curfew and we urge you to reject this legislation.

I am the Legislative Director of the ACLU of Washington. I am also the attorney who represented Thomas Walsh in his fight against the Sumner juvenile curfew ordinance. Mr. Walsh's case resulted in the Washington State Supreme Court's decision that struck down the Sumner ordinance as unconstitutional. City of Sumner v. Walsh, 148 Wn.2d 490 (2003). The proposed Yakima ordinance has many of the same flaws.

Under a juvenile curfew, all young people lose their right to move freely in public, in hopes that this might prevent a few young people from committing crimes or becoming victims of crimes. The effect of a juvenile curfew is to make all people under the age of 18 potential criminals during curfew hours. We would never accept this approach for adults, even those who are elderly, disabled, or otherwise vulnerable. Neither should the City attempt to suspend the constitutional rights of young people by giving the police permission to approach, interrogate and detain them simply because they are out in public. "An ordinance that allows a person to stand on a public sidewalk only at the whim of a police officer is unconstitutional." Sumner v. Walsh, 148 Wn. 2d at 500.

Young people enjoy the same right to freedom of movement as adults. "Constitutional rights do not mature and come into being magically only when one attains the state-defined age of majority. Minors as, as well as adults, are protected

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by the Constitution and possess constitutional rights.” Walsh, at 505 (Chambers, J., concurring).

At the very least, any ordinance that seeks to limit fundamental rights must be carefully crafted to avoid the vagueness problem presented by the Sumner ordinance. But as the Supreme Court acknowledged in the Walsh case, it is hard to imagine a curfew ordinance that would be sufficiently narrow to avoid its intrinsic constitutional infirmity:

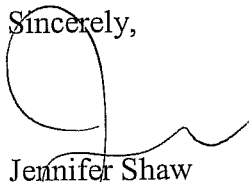
We recognize that it may be difficult for a city to draft a curfew ordinance that is not unconstitutionally vague. The primary reason for that, as we pointed out in Pullman, is that curfew ordinances attempt to make activities that are normally considered innocent, unlawful, i.e., walking, driving, going to the store.

Walsh at 502.

The City of Sumner spent countless hours of attorney time and other resources over a four year period between 1999 and 2003 attempting to defend its juvenile curfew. In the end, the curfew was struck down. If the City of Yakima is concerned about a juvenile crime problem, the better solution would be to create services for young people, support for their families, and adequate policing for the community as a whole. It would be a mistake to channel those resources into a juvenile curfew law that would ultimately be struck down at great cost, while providing only an illusion of safety while it exists.

Please do not hesitate to contact us with any questions regarding our position. We will continue to monitor the Council’s consideration of this proposal.

Sincerely,



Jennifer Shaw
Legislative Director

Cc: Ron Bonlender
Susan Whitman
Norm Johnson
Micah Cawley
Bill Lover
Neil McClure, Assistant Mayor