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JUVENILE CURFEWS: PROTECTION OR REGULATION?

Jill A. Lichtenbaum

JUVENILE CURFEWS: PROTECTION OR REGULATION?

Curfews[1] have often been imposed on individuals in the United States[2] and in other countries.[3] They have been imposed in emergency situations,[4] in times of war,[5] and on the basis of race,[6] gender,[7] and age.[8] Curfews pose a controversial issue on which parents, children, lawmakers, and legislators have conflicting viewpoints.[9] Within each group, there is

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[1] A curfew is defined as, "A law (commonly an ordinance) which imposes on people (particularly children) the obligation to remove themselves from the streets on or before a certain time of night." BLACK'S LAW DICTIONARY 381 (6th ed. 1990).

[2] *See, e.g.*, Hutchins v. District of Columbia, 942 F. Supp. 665 (D.D.C. 1996); Ashton v. Brown, 660 A.2d 447 (Md. 1995); Qutb v. Strauss, 11 F.3d 488 (5th Cir. 1993).

[3] *See* Thistlewood v. Trial Magistrate for Ocean City, 204 A.2d 688, 690 (Md. 1964) (stating that curfews, introduced in England by William the Conqueror, were imposed to prevent the citizens from assembling together in groups).

[4] *See, e.g.*, People v. Richardson, 39 Cal. Rptr. 2d 17 (Cal. App. Dep't Super. Ct. 1994); Moorhead v. Farrelly, 723 F. Supp. 1109 (D.V.I. 1989); United States v. Chalk, 441 F.2d 1277 (4th Cir. 1971); State v. Boles, 240 A.2d 920 (Conn. Cir. Ct. 1967); *Thistlewood*, 204 A.2d at 688.

[5] *See, e.g.*, Hirabayashi v. United States, 320 U.S. 81 (1943); Korematsu v. United States, 323 U.S. 214 (1944).

[6] *See, e.g.*, Chase v. Twist, 323 F. Supp. 749 (E.D. Ark. 1970) (stating that curfews were only imposed on black people).

[7] *See, e.g.*, Robinson v. Bd. of Regents of E. Ky. Univ., 475 F.2d 707 (6th Cir. 1973) (holding that a curfew imposing dormitory restrictions solely on women did not violate equal protection because safety was a legitimate state concern).

[8] *See Hutchins*, 942 F. Supp. at 668 (stating that the curfew applied to those under the age of seventeen); *Ashton*, 660 A.2d at 452 (stating that the curfew applied to those under the age of eighteen); *Qutb*, 11 F.3d at 490 (stating that the curfew applied to those under the age of seventeen).

[9] *See* Overtis Hicks Brantley, *Curfews for Juveniles: More and More Cities Are Adopting Them, But Are They Constitutional? Yes: Safety is a Fundamental Right*, A.B.A.J., Apr. 1994, at 40 (stating that the author "who helped write an Atlanta curfew law, which has been in effect for three years, believes that carefully drawn statutes are essential to protecting youths."); Alfonso A. Narvaez, *New Curfews on Youths Due in Jersey*, N.Y. TIMES, Jan. 3, 1984, at B5 (stating that "lawyers for the American Civil Liberties Union have voiced opposition . . . and have said they would challenge it in the courts on constitutional grounds."); Jean Kelso Sandlin, *Curfew Crew Cuts Violations*, TIMES-PICAYUNE, Aug. 18, 1996, at 1H4 (quoting

a division as to whether curfews are constitutional or unconstitutional and whether they are even practical.[10] After their passage, many curfew ordinances face constitutional challenges.[11] This note focuses on juvenile[12] curfews and the problems plaguing them. Part I examines the curfews, focusing specifically on the provisions and exceptions they commonly include. Part II focuses on the possible infringement of the juveniles' constitutional rights when subject to curfews as they are commonly drafted. This includes a discussion of the Equal Protection, First Amendment, and Due Process rights of juveniles. Part III discusses the possible infringement of the constitutional rights of parents, including Due Process rights and the right of parents to raise their children without governmental interference. Part IV addresses problems in effectively enforcing the curfews. Part V discusses the ramifications of enacting a juvenile curfew in New York City and its chances for success.

Covington Police Chief Jerry DiFranco who stated "I think the [curfew] program is working out fine."); Pam Milleville, *Hearing Set in Lewiston on Curfew; Town Residents Have Chance To Offer Views*, BUFF. NEWS, Sept. 26, 1994, at 5 (stating that Lewiston Councilman John Merino feels that a curfew is unnecessary, while Police Captain Ronald R. Winkley feels a curfew would effectively deter crime).

[10] *See, e.g.*, Brantley, *supra* note 9, at 40 (stating the opposing opinions of two lawyers, American Civil Liberties Union Attorney Robyn E. Blumner and acting deputy city attorney, Overtis Hicks Brantley); Narvaez, *supra* note 9, at B5 (stating the opposing opinions of two police officials, Trenton Police Captain Thomas S. Williams and Willingboro Police Chief Robert A. Rossell); Kenneth C. Crowe, *Curfew Round Table Gets National Spin; 'Parade' Magazine Will Feature Student Group's Spirited Discussion*, TIMES UNION (Albany), Aug. 26, 1994, at B1 (stating the conflicting opinions of four high school students with respect to the curfew issue).

[11] *See Hutchins*, 942 F. Supp. at 666-67 (stating that the plaintiffs challenged the curfew ordinance because it violated Fifth Amendment Equal Protection and Due Process rights of the minors and their parents, it violated the Fourth Amendment right of the minors to be free from unreasonable searches and seizures, and that it was overbroad and vague); *Ashton*, 660 A.2d at 451 (stating that the plaintiffs in this case wanted a declaratory judgment, injunctive relief, and monetary damages); *Qutb*, 11 F.3d at 491 n.4 (stating that the plaintiffs brought suit to strike down the ordinance saying, among other things, that it restricted First Amendment rights of free speech and association and it violated the right to be free from unreasonable searches and seizures guaranteed by the Fourth and Fourteenth Amendments).

[12] The terms juvenile, minor, child[ren], and youth will be used interchangeably throughout this note.

I. THE CURFEWS: PROVISIONS AND EXCEPTIONS

According to a Justice Department report, ninety of the 200 largest cities in the United States have juvenile curfews.[13] Various courts have upheld[14] some curfews and invalidated[15] others. Some courts have invalidated juvenile curfews for poor drafting, such as being overbroad or vague.[16] Other courts have invalidated curfews for violating constitutional principles, such as the Equal Protection and Due Process Clauses of the United States Constitution.[17] Accordingly, proper drafting is essential to ensure a curfew's validity.[18]

Most states enact curfews to protect minors from becoming victims of crimes that occur in the late evening and early morning hours.[19]

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[13] Fox Butterfield, *Successes Reported for Curfews, but Doubts Persist*, N.Y. TIMES, June 3, 1996, at A1 (stating that laws have been enacted or toughened due to "a tripling in the number of homicides by teen-agers.").

[14] *See, e.g.*, Bykofsky v. Borough of Middletown, 401 F. Supp. 1242 (M.D. Pa. 1975), *aff'd mem.*, 535 F.2d 1245 (3d Cir. 1976); *In re* Juan C. 33 Cal. Rptr.2d 919 (Cal. Ct. App. 1994); People in the Interest of J.M., 768 P.2d 219 (Colo 1989).

[15] *See, e.g., Hutchins*, 942 F. Supp. at 665; *Ashton*, 660 A.2d at 447; Waters v. Barry, 711 F. Supp. 1125 (D.D.C. 1989); Allen v. City of Bordentown, 524 A.2d 478 (N.J. Super. Ct. Law Div. 1987).

[16] *See, e.g. Ashton*, 660 A.2d at 456 (holding the curfew ordinance unconstitutional because its terms were vague); *Hutchins*, 942 F. Supp. at 667 (finding, in part, that the curfew law was both overbroad and unconstitutionally vague).

[17] *See, e.g., Allen*, 524 A.2d at 487 (finding that the curfew was unconstitutional because it did not allow children to exercise their fundamental constitutional rights and it interfered with parents' right to allow their children to exercise their fundamental rights); *Hutchins*, 942 F. Supp. at 668 (finding, in part, that the curfew law violated the minor's equal protection and due process rights, in addition to the parents' due process rights).

[18] *See* Tona Trollinger, *The Juvenile Curfew: Unconstitutional Imprisonment*, 4 WM. & MARY BILL RTS. J. 949, 953 (1996) (stating that curfews should be "'narrowly drawn to accomplish proper social objectives.'") (quoting Johnson v. City of Opelousas, 658 F.2d 1065, 1072 (5th Cir. 1981)).

[19] *See* James Gill, *ACLU's Drive to Scrap City's Curfew*, TIMES-PICAYUNE, Sept. 16, 1994, at B7 (saying that keeping children off the streets convinces the public that less children will become crime victims). *But see* Butterfield, *supra* note 13, at A1 (stating that "most juvenile crime occurs after school, from 3 to 6 P.M., not late at night when most of

Another reason often set forth is to protect other citizens from crimes perpetrated by these minors.[20] Yet another reason is to encourage parental support and control over children.[21] These reasons, if supported by convincing statistical evidence, can serve as rational grounds for enacting the curfews,[22] provided the curfews meet other constitutional guidelines. In fact, both President Clinton and former presidential candidate, Bob Dole, supported and encouraged the enactment of juvenile curfews in response to the juvenile crime problem when campaigning during the 1996 presidential election.[23] That juvenile curfews receive so much attention reveals the severity of the youth crime problem facing our country.[24] Many feel that curfews are the solution.[25] Evidence shows that curfews can be, and in some cities have been, a solution to the juvenile crime problem.[26]

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the curfews are in force.").

[20] *See* Pamela Katz, *Curfews Infringe On Parents' Rights*, TIMES UNION (Albany, NY), June 23, 1996, at E2 (stating that politicians enact curfews to combat juvenile crime).

[21] *See Paterson Mayor Proposes Curfew For City Troubled By Teen-Agers' Crimes*, N.Y. TIMES, Dec. 1, 1985, at 54 (quoting Frank X. Graves Jr., Paterson's mayor, as saying that he enacted the curfew to put the parents back in charge of their children); *see also* Kristi Wright, *Teens Speak Out on Curfew Laws Around the U.S.*, OMAHA WORLD HERALD, June 25, 1996, at 37. President Clinton recently supported curfews by saying, "They're designed to help people be better parents. . . . They give parents a tool to impart discipline." *Id.*

[22] *See Hutchins*, 942 F. Supp. at 675 (saying that the statistical data must be supportive enough to convince the court that there is a real need to enact the curfew).

[23] *See* Aaron Roston, *Do You Know Where Your Child Is?*, NEWSDAY (Nassau/Suffolk), June 11, 1996, at A68. President Bill Clinton advocated the idea of more cities and towns enacting curfews to combat juvenile violence and promote family values. *Id.*; Butterfield, *supra* note 13, at A1 (stating that President Clinton and Bob Dole advocated the enactment of juvenile curfews across the country).

[24] *See Youth Crime: The Trends Aren't All Bad*, U.S. NEWS & WORLD REP., Dec. 23, 1996, at 13 (citing FBI statistics showing a rise in juvenile crime rates).

[25] *See* Butterfield, *supra* note 13, at A1 (quoting Sergeant Jim Chandler of Dallas who stated that "[t]hese [crime rate] figures tell us that the curfew works."). *See also supra* note 23 and accompanying text.

[26] *See id.* (citing statistics from Dallas, where both violent and overall juvenile crimes have decreased since the curfew's enactment).

Generally, different curfews will contain similar provisions.[27] For example, a majority of curfew ordinances apply to minors under the age of either seventeen or eighteen,[28] restricting their movement between the hours of 10:00 or 11:00 p.m. and 6:00 a.m. on weekdays[29] and between midnight and 6:00 a.m. on weekends.[30] The ordinances also set out exceptions and defenses.[31] Some frequently used exceptions are: emergency situations,[32] travelling to or from a job,[33] travelling to or from a school function,[34] travelling to or from a religious function,[35] running an

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[27] *Compare Hutchins*, 942 F. Supp. at 665; Ashton v. Brown, 660 A.2d 447 (Md. 1995); *and* Bykofsky v. Borough of Middletown, 401 F. Supp. 1242 (M.D. Pa. 1975), *aff'd mem.*, 535 F.2d 1245 (3d Cir. 1976) (showing the similarities in the curfew ordinances).

[28] *See, e.g.*, Wayne King, *Trenton Lawmakers Pass Bill Allowing for Night Curfews*, N.Y. TIMES, Sept. 15, 1992, at B5 (stating that municipalities in New Jersey can enact curfews that apply to youths under the age of eighteen); Ronald Smothers, *Atlanta Sets a Curfew for Youths, Prompting Concern on Race Bias*, N.Y. TIMES, Nov. 21, 1990, at A1 (stating that the curfew for Atlanta applies to anyone under seventeen years of age); Terry Pristin, *Camden to Enforce Curfew*, N.Y. TIMES, May 22, 1996, at B1 (stating that Camden's curfew applies to those under the age of eighteen); Toni Locy, *D.C. Curfew Overturned in Federal Court; Judge Cites City's Use of 'Flawed Statistics'*, WASH. POST, Oct. 30, 1996, at A1 (saying that Washington D.C.'s curfew applies to those youths under seventeen years of age).

[29] *See, e.g.*, King, *supra* note 28, at B5 (stating that, if enacted, the New Jersey curfews would be in effect between 10:00 p.m. and 6:00 a.m.); Robert Hanley, *Authorities Turn to Curfews to Clear the Streets of Teen-Agers*, N.Y. TIMES, Nov. 8, 1993, at B1 (showing the curfew hours as 10:00 p.m. until 6:00 a.m.); Qutb v. Strauss, 11 F.3d 488, 490 (5th Cir. 1993) (stating that the curfew ordinance is in effect "from 11 p.m. until 6 a.m. on week nights, and from 12 midnight until 6 a.m. on weekends.").

[30] *See, e.g.*, Smothers, *supra* note 28, at A1 (stating that the hours for the Atlanta curfew are between 12:00 and 6:00 a.m. on weekends); Locy, *supra* note 28, at A1 (showing the weekend hours when the curfew is in effect as being midnight to 6:00 a.m.).

[31] *See* Trollinger, *supra* note 18, at 952-53 (stating that "[t]o conform to judicial precedent and anticipated constitutional challenges, the juvenile law typically excepts certain activities.").

[32] *See Hutchins*, 942 F. Supp. at 682 (citing D.C. CODE ANN. § 6-2183(b)(1)(E) which allows involvement in an emergency as a defense to a curfew violation).

[33] *Id.* (citing D.C. CODE ANN. § 6-2183(b)(1)(D) allowing for travel to and from a job as a defense to a curfew violation).

[34] *Id.* (citing D.C. CODE ANN. § 6-2183(b)(1)(G) which considers attending a school function as an exception to the curfew ordinance).

errand for a parent or guardian,[36] participating in interstate travel,[37] being accompanied by a parent or guardian,[38] and exercising a First Amendment right.[39] Courts invalidate curfews created without adequate exceptions, both for violating a minor's constitutional rights and for being overbroad.[40]

II. CONSTITUTIONAL PROBLEMS WITH CURFEWS

A. Equal Protection, Fundamental Rights, and Juvenile Curfews

The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution states that "[n]o State shall . . . deny to any person within its jurisdiction the equal protection of the laws."[41] "The Equal Protection Clause . . . is essentially a direction that all persons similarly situated should be treated alike."[42] The states are, therefore, restricted in their use of suspect classifications[43] based on race,[44]

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[35] *Id.* (citing D.C. CODE ANN. § 6-2183(b)(1)(G) which considers attending a religious function as an exception to the curfew ordinance).

[36] *Id.* (citing D.C. CODE ANN. § 6-2183(b)(1)(B) which considers running and errand with parental permission as a defense to a curfew violation).

[37] *See* Bykofsky v. Borough of Middletown, 401 F. Supp. 1242, 1270 (M.D. Pa. 1975), *aff'd mem.*, 535 F.2d 1245 (3d Cir. 1976) (exempting interstate travel from the curfew provisions).

[38] *Id.* at 1269 (showing that if the juvenile is with a parent or guardian, the curfew has not been violated).

[39] *Id.*(stating that the exercise of a First Amendment right, such as freedom of religion, speech, or assembly, is an exception to the curfew's provisions).

[40] *See* Johnson v. City of Opelousas, 658 F.2d 1065, 1074 (5th Cir. 1981) (holding that "[s]ince the absence of exceptions on the curfew ordinance precludes a narrowing construction, we are compelled to rule that the ordinance is constitutionally overbroad."); *see also* discussion *infra* Part II.B.

[41] U.S. CONST. amend. XIV, § 1 (Equal Protection Clause).

[42] *See* City of Cleburne v. Cleburne Living Ctr., Inc., 473 U.S. 432, 439 (1985).

[43] BLACK'S LAW DICTIONARY, *supra* note 1, at 1446. "[C]lassifications that are based upon a trait which itself seems to contravene established constitutional principles so that any purposeful use of the classification may be deemed 'suspect'. Examples include race, sex, national origin and alienage (with exceptions)." *Id.*; *see generally* Loving v.

alienage,[45] gender,[46] or illegitimacy[47] when creating and enforcing legislation. However, age has never been considered a suspect classification.[48] "Equal protection analysis requires strict scrutiny of a legislative classification . . . when the classification impermissibly interferes with the exercise of a fundamental right . . .."[49] To withstand strict scrutiny analysis, a state has the burden of proving that the law in

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Virginia, 388 U.S. 1, 10 (1967). "The clear and central purpose of the Fourteenth Amendment was to eliminate all official state sources of invidious racial discrimination in the States." *Id.*; San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1, 28 (1973) (setting out the factors used to describe a suspect classification).

[44] *See, e.g.*, Strauder v. West Virginia, 100 U.S. 303, 310 (1879) (holding that the act in question discriminated against blacks, and therefore violated the Equal Protection Clause); *Loving*, 388 U.S. at 12 (holding that Virginia's statute prohibiting interracial marriage was based solely on invidious racial discrimination and violated the Equal Protection Clause); Yick Wo v. Hopkins, 118 U.S. 356, 373-74 (1886) (holding that if legislation is both applied and administered by public authorities and unjustly discriminates between similarly situated persons, it has violated the Equal Protection Clause).

[45] *See, e.g.*, Plyler v. Doe, 457 U.S. 202, 230 (1982) (deciding that free state education cannot be withheld from illegal aliens); Graham v. Richardson, 403 U.S. 365, 381 (1971) (stating that aliens cannot be denied welfare benefits); *In re* Griffiths, 413 U.S. 717, 729 (1973) (holding that resident aliens may not be barred from practicing law).

[46] *See, e.g.*, Wengler v. Druggists Mutual Ins. Co., 446 U.S. 142, 147 (1980) (dealing with a state law denying death benefits to widowers who could not prove dependence or physical disability while providing death benefits to all widows whose husbands died in job-related accidents); Mississippi Univ. for Women v. Hogan, 458 U.S. 718, 719-20 (1982) (dealing with a state nursing school's women-only admission policy).

[47] *See, e.g.*, Weber v Aetna Casualty & Surety Co., 406 U.S. 164, 168 (1972) (addressing Louisiana's workmen's compensation statute providing that "[u]nacknowledged illegitimate children . . . [are not within the class of children, but] are relegated to the lesser status of 'other dependents,' . . . and may recover *only* if there are not enough surviving dependents in the preceding classifications to exhaust the maximum allowable benefits."); Levy v. Louisiana, 391 U.S. 68, 70-71 (1968) (dealing with a Louisiana statute that refused to allow unacknowledged illegitimate children to bring a wrongful death action for their mother's death); Trimble v. Gordon, 430 U.S. 762, 763 (1977) (dealing with an Illinois statute that did not allow illegitimate children to inherit from their fathers).

[48] *See, e.g.*, Massachusetts Bd.of Retirement v. Murgia, 427 U.S. 307, 311-12 (1976) (deciding that age is not a suspect classification); Gregory v. Ashcroft, 501 U.S. 452, 470 (1991) (upholding the mandatory retirement age for state judges because the Court did not consider age to be a suspect classification).

[49] *Murgia*, 427 U.S. at 312.

question is narrowly tailored to serve a compelling state interest.[50]

The United States Constitution guarantees all persons fundamental rights, such as First Amendment rights,[51] the right to travel,[52] the right to privacy,[53] the right to marry,[54] and the right to vote.[55] All of these rights apply to adults, and some apply to minors.[56] Although these rights apply

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[50] *Plyler*, 457 U.S. at 216-17 (stating the strict scrutiny test).

[51] U.S. CONST. amend I. According to the First Amendment, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." *Id.*

[52] *See* Shapiro v. Thompson, 394 U.S. 618, 630 (1969) (finding a fundamental right to interstate travel); City of Panora v. Simmons, 445 N.W.2d 363, 367 (Iowa 1989) "The notion that a person's right to merely wander and stroll about town, as well as to travel interstate, is a fundamental right that appears to have its roots in the case of *Papachristou v. City of Jacksonville*, 405 U.S. 156 (1972) . . .."). In *Papachristou*, Justice Douglas stated that "wandering and strolling," while

> not mentioned in the Constitution or in the Bill of Rights . . . [are] unwritten amenities [which] have been in part responsible for giving our people the feeling of independence and self-confidence, the feeling of creativity. These amenities have dignified the right of dissent and have honored the right to be nonconformists and the right to defy submissiveness. They have encouraged lives of high spirits rather than hushed, suffocating silence.

Simmons, 445 N.W.2d at 367 (citing *Papachristou*, 405 U.S. at 164); Aptheker v. Secretary of State, 378 U.S. 500, 520 (1964) (Douglas, J., concurring) ("Freedom of movement is the very essence of our free society . . . . Once the right to travel is curtailed, all other rights suffer, just as when curfew or home detention is placed on a person.").

[53] *See* Stanley v. Georgia, 394 U.S. 557, 564 (1969) (saying that "also fundamental is the right to be free, except in very limited circumstances, from unwanted governmental intrusions into one's privacy.").

[54] *See* Zablocki v. Redhail, 434 U.S. 374, 383 (1978) (finding a fundamental right to marry).

[55] *See* Harper v. Virginia Bd. of Elections, 383 U.S. 663, 665 (1966) (finding a fundamental right to vote).

[56] *See, e.g.*, Bellotti v. Baird, 443 U.S. 622, 633 (1979) (plurality opinion) (finding that children are not denied constitutional protection solely because of their status as minors); Planned Parenthood v. Danforth, 428 U.S. 52, 74 (1976) (finding that "[c]onstitutional rights do not mature and come into being magically only when one attains the state-defined age of majority."); In re Gault, 387 U.S. 1, 13 (1967) (finding that the Bill of Rights and the Fourteenth Amendment apply to children as well as adults); Tinker v. Des Moines Sch. Dist., 393 U.S. 503,

to minors, there are, however, certain limitations resulting from the United States Supreme Court's decision in *Bellotti v. Baird*.[57] In *Bellotti*, a plurality of the Court concluded that "[t]he constitutional rights of children cannot be equated with [the rights] of adults . . . [because of] the peculiar vulnerability of children; their inability to make critical decisions in an informed, mature manner; and the importance of the parental role in child rearing."[58] However, since the United States Supreme Court has not yet decided a case dealing with juvenile rights in the context of juvenile curfews, there is no uniform standard for the lower courts to follow.[59] Although the *Bellotti* factors generally control in cases where one must distinguish between the constitutional protections afforded to juveniles and adults,[60] many lower courts, in applying the *Bellotti* factors, have disagreed about whether minors are guaranteed fundamental rights.[61]

After detecting the possible infringement of a fundamental right or the presence of a suspect classification, a court must apply strict

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511 (1969) (stating that "[students] are possessed of fundamental rights which the State must respect, . . .").

[57] 443 U.S. 622 (showing that a plurality of the Court upheld a parental notification requirement for minors seeking abortions while invalidating the parental consent requirement).

[58] *Id.* at 634 (setting forth the three *Bellotti* factors the Court used to determine when the state may give constitutional rights of children less deference than those of adults).

[59] *See* Sam R. Hananel, Qutb v. Strauss: *The Fifth Circuit Upholds a Narrowly Tailored Juvenile Curfew Ordinance*, 69 TUL. L. REV. 308, 310 (1994).

[60] *See* Johnson v. City of Opelousas, 658 F.2d 1065, 1073 (5th Cir. 1981); McCollester v. City of Keene, 586 F. Supp. 1381, 1385-86 (D.N.H. 1984).

[61] *See* Deerfield v. Greenberg, 550 N.E.2d 12, 16 (Ill. App. Ct. 1990) (applying the Bellotti factors and upholding the curfew ordinance because it was enacted due to the "particular vulnerability of children" and because it furthered the parental role in raising children); People in the Interest of J.M., 768 P.2d 219, 223 (Colo. 1989) (finding the presence of the three *Bellotti* factors, upholding the curfew ordinance and holding "[t]hat J.M.'s liberty interest in freedom of movement does not constitute a fundamental right."); *McCollester*, 586 F. Supp. at 1385 (invalidating the ordinance and finding that "[b]ecause this ordinance sweeps so broadly in prohibiting innocent juvenile activities, the City fails to meet the three-prong test of *Bellotti* . . . for validity of restraints on minors which would be unconstitutional if placed on adults."); Waters v. Barry, 711 F. Supp. 1125, 1137 (D.D.C. 1989) ("[a]pplying the Bellotti factors, . . . [and holding] that the context in which the District seeks to enforce the Act does not justify differentiating between the constitutional rights of minors and adults.").

scrutiny to the ordinance in question to determine if there has been an equal protection violation.[62] If the curfew ordinance neither implicates a fundamental right nor involves a suspect class, the courts must apply the rational basis test.[63] Accordingly, because different courts have analyzed juvenile curfews differently, there have been inconsistent results, where some curfews were upheld while others were invalidated.[64]

1. Curfews Upheld Under Equal Protection Analysis

The Pennsylvania District Court in *Bykofsky v. Borough of Middletown*,[65] held that the juvenile curfew ordinance,[66] in effect in the Borough of Middletown, County of Dauphin, and Commonwealth of Pennsylvania, did not violate the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution because "[t]he ordinance applie[d] alike to all persons under the age of eighteen [and therefore,] there clearly [was] no equal protection violation within the class subject to the curfew."[67] After finding that age was not a suspect classification and that the curfew ordinance did not violate a fundamental right, the court applied the rational basis test to the ordinance.[68] The court stated that "there is a rational relationship between the legitimate ends sought and the means chosen . . . [since] [t]he age classification . . . rests on real and substantial differences between adults and minors . . .."[69] The

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[62] *See* San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1 (1973).

[63] *Id.* at 40 (stating that to uphold the state ordinance, the state must show that the ordinance is rationally related to a legitimate state interest).

[64] *See, e.g.*, Bykofsky v. Middletown, 401 F. Supp. 1242 (M.D. Pa. 1975), *aff'd mem.*, 535 F.2d 1245 (3d Cir. 1976) (holding that the curfew ordinance did not violate the Equal Protection Clause); *Waters*, 711 F. Supp. at 1139 (holding that the statute violated the Equal Protection Clause); Allen v. City of Bordentown, 524 A.2d 478 (N.J. Ct. Law Div. 1987) (holding that the ordinance was an unconstitutional denial of equal protection rights).

[65] 401 F. Supp. 1242 (M.D. Pa. 1975), *aff'd mem.*, 535 F.2d 1245 (3d Cir. 1976).

[66] *Id.* at 1266-67 (discussing the 1975 ordinance, number 662, which was enacted in the Borough of Middletown, County of Dauphin, and the Commonwealth of Pennsylvania).

[67] *Id.* at 1266.

[68] *Id.* at 1265.

[69] *Id.*

court held that applying curfews to those eighteen and under was not arbitrary, unreasonable, or violative of the Equal Protection Clause.[70] Additionally, the court compared the curfew's restrictions to other fundamental rights that minors do not possess:

> The Middletown curfew applies to all those under the age of eighteen, and a very fundamental right, namely, the right to vote, is denied to this same age group. . . . [Y]ouths under the age of eighteen have traditionally been regulated . . . they generally lack the power to contract, to marry without parental consent, to own a gun, to purchase or consume alcoholic beverages . . ..[71]

The court, by looking at other regulations imposed on minors, determined that the curfew was akin to these other regulations and, therefore, found that the curfew did not violate minors' constitutional rights.[72]

In *Qutb v. Strauss*,[73] the Fifth Circuit applied strict scrutiny to the Dallas, Texas curfew ordinance[74] and held that the city had compelling interests in enacting the curfew ordinance.[75] The court then stated that because there were defenses to curfew violations, the ordinance was narrowly drawn, met its goals, and still respected the minors' rights.[76] The city's compelling interests were to "(1) [r]educe the number of juvenile crime victims; (2) reduce injury accidents involving juveniles; . . . (4) provide additional options for dealing with gang problems; (5) reduce juveniles peer pressure to stay out late; and (6) assist parents in the control

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[70] *Bykofsky*, 401 F. Supp. at 1266.

[71] *Id.*

[72] *Id.*

[73] 11 F.3d 488 (5th Cir. 1993).

[74] *Id.* at 496 (discussing the 1992 ordinance, number 21309, amending chapter 31 of the Dallas City Code, prohibiting persons under 17 from being out in a public place between 11:00 p.m. and 6:00 a.m. on week nights and midnight until 6:00 a.m. on weekends).

[75] *Id.* at 492.

[76] *Id.* at 494.

of their children."[77] Therefore, since the state demonstrated its compelling interest in protecting the children of Dallas and the ordinance was narrowly tailored to this governmental interest, the Fifth Circuit upheld the constitutionality of this statute.[78]

In *People v. Walton*,[79] the Appellate Department of the Superior Court of California upheld the curfew ordinance[80] after deciding that "[i]t is competent for the legislature to provide regulations for the protection of children of immature years."[81] The court compared this legislation to the requirement of mandatory education by stating:

> The right of a state to make and enforce provisions for the compulsory education of all children is clearly recognized as is the right to enact laws classifying persons by their age for the purpose of dealing with them as dependent or delinquent persons, such as the juvenile court law and laws to prevent school children from joining fraternities.[82]

The *Walton* court upheld the ordinance.[83] It reasoned that the ordinance prohibited only those under eighteen from remaining or loitering on public streets during specified hours; It did not prohibit them from walking through the streets of Los Angeles during those hours.[84] The basis for the

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[77] *Id.* at 494 n.8.

[78] *Qutb*, 11 F.3d at 496.

[79] 161 P.2d 498 (Cal. App. Dep't Super. Ct. 1945).

[80] *Id.* at 499 (discussing the curfew ordinance in question, number 4256, New Series, of Los Angeles County which amended the original ordinance, number 3611, which had also been amended by ordinance number 4464 and provided that those under 18 could not remain or loiter on public streets between the hours of 9:00 p.m. and 4:00 a.m.).

[81] *Id.* at 502.

[82] *Id.* (quoting 5 CAL.JUR. 842, par. 199).

[83] People v. Walton, 161 P.2d 498 (Cal. App. Dep't Super. Ct. 1945).

[84] *Id.* at 502. *But see Ex parte* McCarver, 46 S.W. 936-37 (1898) (stating that prohibiting those under 21 from being on the streets after 9:00 p.m. unduly invaded those affected persons' personal liberties).

court's decision was that the ordinance provisions were regulatory.[85] The court placed great importance on the distinction between provisions which were regulatory and those that were prohibitory.[86]

2. Curfews Invalidated Under Equal Protection Analysis

The United States District Court for the District of Columbia in *Waters v. Barry*,[87] analyzed the curfew ordinance[88] using strict scrutiny because "the Act directly burdens the First Amendment rights and Fifth Amendment liberty interests of the thousands of innocent minors who reside in or who may visit the District of Columbia."[89] The District set out its purposes in enacting the curfew ordinance, which included, "protect[ing] juveniles from harm, . . . [and] insulat[ing] them from the evils of the street."[90] The court, however, determined that applying the curfew only to juveniles did not advance any of the objectives that the District had set forth, and that it was neither rationally related, nor narrowly tailored, to achieving those objectives.[91] The opinion stated that "[w]hen [dealing with] fundamental interests[,] . . . the classification chosen [must] bear an intimate relationship to the problem."[92] The court concluded that for the curfew to successfully resolve all the problems warranting its creation, it would have to deter those youths who presently

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[85] *Walton*, 161 P.2d at 501 (stating that this ordinance was regulatory in that it did not restrict those under 21 from going from one place to another after 9:00 p.m.).

[86] *Id.*

[87] 711 F. Supp. 1125 (D.D.C. 1989).

[88] *Id.* at 1141-42 (discussing the "Temporary Curfew Emergency Act of 1989", codified at D.C. CODE § 6-1509 (Supp. 1989), which applies to persons under 18, between the hours of 11:00 p.m. and 6:00 a.m. on weeknights and between 11:59 p.m. and 6:00 a.m. on weekends and prohibits them from remaining on any street or in any public place).

[89] *Id.* at 1139. The court referred to the Fifth Amendment instead of the Fourteenth Amendment because the Fifth Amendment not the Fourteenth Amendment applies to the District of Columbia. Women Prisoners of District of Columbia Dept. of Corrections v. D.C., 93 F.3d 910, 924 (D.C. Cir. 1996).

[90] *Waters*, 711 F. Supp. at 1139.

[91] *Id.*

[92] *Id.*

commit violent and dangerous acts from committing such acts.[93] The court also pointed out that almost everything the curfew purported to avoid was already illegal, and, therefore, was punishable by more severe methods than the punishment for violating the curfew.[94] Additionally, the court suggested that the curfew would affect those juveniles who would ordinarily obey the law.[95] Finally, the statistical evidence offered did not support the District's determination of the necessity of this curfew.[96] Accordingly, after examining the statistical evidence, in conjunction with the curfew's objectives, the court determined that although the objectives were valid, the curfew was not narrowly tailored to achieve those objectives, and therefore, did not justify infringing upon the constitutional rights of those affected.[97]

In *Allen v. City of Bordentown*,[98] the New Jersey Superior Court reasoned that although the Bordentown curfew ordinance[99] affected fundamental rights, it did not necessarily mean that those rights could not be regulated.[100] The court analyzed the curfew by using the strict scrutiny test and by asking whether the City of Bordentown had a compelling interest in enacting a curfew that would limit the fundamental rights of juveniles, while not imposing the same limitations on adults.[101] The court held that the curfew ordinance violated juveniles' rights to equal protection under the law because it "demonstrat[es] not only . . . lack of a compelling government interest in the curfew restrictions, but the opposite - a compelling government interest in the encouragement of many activities

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[93] *Id.*

[94] *Id.*

[95] *Waters*, 711 F. Supp. at 1139.

[96] *Id.*

[97] *Id.* at 1139-40 (stating that the court granted summary judgment for the plaintiffs on their First and Fifth Amendment claims).

[98] 524 A.2d 478 (N.J. Super. Ct. Law Div. 1987).

[99] *Id.* at 480 (discussing the Bordentown curfew ordinance, enacted as an amendment to an anti-loitering ordinance, prohibiting persons under 18 from being in public places between 9:00 p.m. and 6:00 a.m.).

[100] *Id.* at 486.

[101] *Id.*

which the ordinance prohibits."[102] The court also found that by impeding the juveniles' constitutional rights, the ordinance interfered with parental rights as well.[103] The court struck down the ordinance, holding that it was vague, overbroad, lacked a showing of compelling state interest, and unconstitutionally infringed upon parental and juvenile rights.[104]

B. First Amendment, Overbreadth Doctrine, and Juvenile Curfews

When curfew ordinances fail to provide adequate exceptions,[105] they infringe upon the First Amendment rights that minors possess.[106] Despite this, Judge Charles R. Richey[107] opined in *Waters*, that "it is what these curfews restrict, and not what they exempt, that matters most."[108] Judge Richey, in comparing the ordinance in *Waters*[109] to the ordinance in *Bykofsky*,[110] noted important differences between the two.[111] He stated, "[T]he Middletown ordinance contained a broad exemption for the

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[102] *Id.*

[103] *Allen*, 524 A.2d at 487 (stating that the curfew restricts parental rights because most parents want their children to be able to exercise their constitutional rights).

[104] *Id.*

[105] *See, e.g.*, Hutchins v. District of Columbia, 942 F. Supp. 665, 682 (D.D.C. 1996) (citing First Amendment exceptions to the District of Columbia's juvenile curfew ordinance); Bykofsky v. Borough of Middletown, 401 F. Supp. 1242, 1270 (M.D. Pa. 1975), *aff'd mem.*, 535 F.2d 1245 (3d Cir. 1976) (stating that the exercise of a First Amendment right, such as freedom of religion, speech, or assembly, is an exception to the curfew's provisions).

[106] *See* Planned Parenthood v. Danforth, 428 U.S. 52, 74 (1976) (stating that "[c]onstitutional rights do not mature and come into being magically only when one attains the state-defined age of majority."); *In re* Gault, 387 U.S. 1, 13 (1967) (stating that "whatever may be their precise impact, neither the Fourteenth Amendment nor the Bill of Rights is for adults alone."); Tinker v. Des Moines Sch. Dist., 393 U.S. 503, 506 (1969) (stating that school officials do not possess absolute power over the students, and that students are "persons" under the Constitution and accordingly, possess certain fundamental rights).

[107] Judge Charles R. Richey, District Judge for the United States District Court for the District of Columbia, wrote the opinion in *Waters*. *Waters*, 711 F. Supp. at 1125.

[108] *Id.* at 1136.

[109] 711 F. Supp. 1125 (D.D.C. 1989).

[110] 401 F. Supp. 1242 (M.D. Pa. 1975), *aff'd mem.*, 535 F.2d 1245 (3d Cir. 1976).

[111] *See infra* notes 109-111 and accompanying text.

exercise of First Amendment rights . . .. The Act [in Waters] contains no equivalent exemption."[112] Judge Richey invalidated the ordinance in *Waters*[113] while the ordinance in *Bykofsky* was upheld.[114]

In addition to failing to provide exceptions, curfew ordinances may also fail under the overbreadth doctrine.[115] The overbreadth doctrine falls within the discussion of First Amendment rights.[116] "The overbreadth doctrine applies when a law 'does not aim specifically at evils within the allowable area of [government] control but . . . sweeps within its ambit other activities that in ordinary circumstances constitute an exercise' of protected First Amendment rights."[117] An ordinance that affects a person's ability to exercise his/her constitutional rights is unconstitutionally overbroad if a more narrowly tailored ordinance would accomplish the same objective.[118] Courts will not uphold curfews drafted in such a manner.[119] "The framers recognized the futility and danger of creating a shopping list of rights and drafted the [F]irst [A]mendment in broad language to protect against the evils of strict construction based upon barren enumeration."[120] Many curfews have faced overbreadth challenges.[121] Some courts have invalidated these curfews for being

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[112] *See* Martin P. Hogan, Waters v. Barry: *Juvenile Curfews -- The D.C. Council's "Quick Fix" for the Drug Crisis,* 1 GEO. MASON U. CIV. RTS. L.J. 313, 341 n.49 (1990) (quoting Waters v. Barry, 711 F.Supp. 1125, 1136 n. 24 (D.D.C. 1989)).

[113] 711 F. Supp. at 1125.

[114] 401 F. Supp. at 1242.

[115] *See, e.g.,* Johnson v. City of Opelousas, 658 F.2d 1065, 1074 (5th Cir. 1981) (finding the Opelousas curfew overbroad and therefore, unconstitutional).

[116] *See* City of Maquoketa v. Russell, 484 N.W.2d 179, 186 (Iowa 1992) (stating that courts use overbreadth analysis when there is a denial of First Amendment rights).

[117] Allen v. City of Bordentown, 524 A.2d 478, 482 (N.J. Ct. Law Div. 1987) (citing Thornhill v. Alabama, 310 U.S. 88, 97 (1940)).

[118] *See id.*

[119] *See, e.g., Johnson,* 658 F.2d at 1074 (holding that Opelousas' curfew was unconstitutional because it was overbroad); Hutchins v. District of Columbia, 942 F. Supp. 665 (D.D.C. 1996) (holding that the District of Columbia's curfew was not narrowly tailored, and was therefore, unconstitutional).

[120] *See* Hogan, *supra* note 112, at 338.

[121] *See, e.g., Johnson,* 658 F.2d at 1071; McCollester v. City of Keene, 586 F. Supp. 1381, 1385 (D.N.H. 1984); *Allen,* 524 A.2d at 482-84.

overbroad,[122] while other courts found sufficient exceptions within the curfews thereby defeating overbreadth challenges.[123]

The New Jersey Superior Court, after examining the exceptions in the Bordentown ordinance in *Allen*, stated that the ordinance limits the rights of all minors, emancipated and unemancipated.[124] The only exceptions that the legislature provided were:

> (1) [W]hen a minor is accompanied by a parent or guardian, or (2) is upon an emergency errand or legitimate business consented to by the parent or guardian, and then only if the minor possesses a pass issued by the police department upon application of the parent or guardian, or (3) under emergent conditions precluding application for a pass provided the minor possesses a note from the parent or guardian identifying the minor, the emergency, involved and the time of day to be encompassed by the note.[125]

These exceptions do not provide for any activities protected by the First Amendment, such as: school events, situations when a parent cannot write a note because of the emergency situation, or incapacitation.[126] The court held that "the ordinance is unconstitutionally overbroad. It contains unnecessarily sweeping restrictions of fundamental personal liberties of children and adults: their freedom of speech, assembly and religion . . .."[127]

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[122] *See, e.g. Johnson*, 658 F.2d at 1074 (holding that Opelousas' curfew was unconstitutional because it was overbroad); *Hutchins*, 942 F. Supp. at 665 (holding that the District of Columbia's curfew was not narrowly tailored, and was therefore, unconstitutional).

[123] *See, e.g. In re* Daniel W., 41 Cal. Rptr. 2d 202, 206 (Cal. Ct. App. 1995) (stating that the curfew ordinance was upheld because it prohibited loitering and did not just prohibit presence on the street); Qutb v. Strauss, 11 F.3d 488, 494 (5th Cir. 1993) (finding that the curfew ordinance, unlike the ordinance in *Johnson*, was not overbroad because of the many exemptions it contained).

[124] *See Allen*, 524 A.2d at 483.

[125] *Id.* at 482-83.

[126] *Id.* at 483.

[127] *Id.*

In *Johnson v. City of Opelousas*,[128] the Fifth Circuit held that the curfew ordinance was "constitutionally infirm in its breadth."[129] The Fifth Circuit compared the challenged ordinance to the ordinance in *Aladdin's Castle, Inc. v. City of Mesquite*,[130] where the court struck down the ordinance prohibiting operators of pinball parlors from allowing anyone under the age of seventeen to use the machines unless accompanied by a parent or guardian.[131] The *Aladdin* court stated that there were other ways to shield the children from undesirable influences.[132] Additionally, the court in *Aladdin* stated that "[t]he deterrents ordinarily to be applied to prevent crime are education and punishment for violations of the law, not abridgement of the rights of free speech and assembly."[133] The *Aladdin* ordinance did not further a compelling interest and was not narrowly tailored "to avoid unnecessary abridgement of associational freedom" and was therefore, unconstitutional.[134] The court in *Johnson* found that "[t]he ordinance at issue here target[ed] the same age group, but cast[] a much broader net over the associational rights of minors by seeking to keep them off the streets altogether during certain hours."[135] The court found the curfew overbroad because it lacked significant exceptions.[136]

In *City of Maquoketa v. Russell*,[137] the Supreme Court of Iowa

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[128] 658 F.2d 1065 (5th Cir. 1981).

[129] *Id.* at 1071. Relying on *Aladdin's Castle, Inc. v. City of Mesquite*, 630 F.2d 1029, 1038 n.13 (5th Cir. 1980), *prob. juris. noted*, 455 U.S. 283 (1982), the court held that the curfew ordinance was overbroad and that it "swe[pt] within its ambit other activities that in ordinary circumstances constitute an exercise' of protected expressive or associational rights." *Id.*

[130] 630 F.2d 1029 (5th Cir. 1980), *prob. juris. noted*, 455 U.S. 283 (1982).

[131] *Id.* at 1044.

[132] *Id.* at 1042.

[133] *Id.* (citing Whitney v. California, 274 U.S. 357, 378 (1927) (Brandeis, J., concurring).

[134] *Id.* at 1041 (citing Buckley v. Valeo, 424 U.S. 1, 25 (1976)).

[135] Johnson v. City of Opelousas, 658 F.2d 1065, 1071 n.8 (5th Cir. 1981).

[136] *Id.* at 1074.

[137] 484 N.W.2d 179 (Iowa 1992).

found the Maquoketa curfew ordinance[138] overbroad.[139] "The court then stated that the Maquoketa juvenile curfew ordinance might have operated to prevent minors from participating in activities involving those fundamental rights, such as church services, precinct caucuses, city council meetings, protests and demonstrations, and labor union meetings."[140] The court based its decision on the importance of creating curfew ordinances narrowly to avoid encroaching on First Amendment fundamental rights.[141]

C. Due Process, Fundamental Rights, and Juvenile Curfews

Substantive due process is the "[d]octrine that due process clauses of the Fifth and Fourteenth Amendments to the United States Constitution require legislation to be fair and reasonable in content as well as application. . . . [and also] the constitutional guarantee that no person shall be arbitrarily deprived of his life, liberty or property."[142] "No right is more sacred, or is more carefully guarded, by the liberty assurance of the due process clause than the right of every citizen to the possession and control of his own person, free from restraint or interference by the state."[143] The Supreme Court, under the Due Process Clause, has acknowledged

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[138] *Id.* at 181 (discussing the ordinance in question, ordinance number 3-1-6, adopted on November 6, 1989, which prohibited persons under 18 from being on the street or in any public place from 11:00 p.m. until 6:00 a.m.).

[139] *Id.* at 186.

[140] *See* Natalie M. Williams, *Updated Guidelines For Juvenile Curfews:* City of Maquoketa v. Russell, 79 IOWA L. REV. 465, 470 (1994) (examining the *Russell* opinion and the types of enforcement exceptions a juvenile curfew ordinance must provide to withstand vagueness and overbreadth challenges).

[141] *Russell*, 484 N.W.2d at 186.

[142] BLACK'S LAW DICTIONARY, *supra* note 1, at 1429.

[143] *See* Bykofsky v. Borough of Middletown, 401 F. Supp. 1242, 1255 (M.D. Pa. 1975), *aff'd mem.*, 535 F.2d 1245 (3d Cir. 1976) (citing Union Pac. Ry. Co. v. Botsford, 141 U.S. 250 (1891)).

juveniles' constitutional rights.[144] In fact, many juvenile curfews have been challenged on Due Process grounds.[145]

In determining whether there has been a Due Process violation, similar to an Equal Protection violation, courts decide whether the ordinance in question encroaches on any fundamental right that the minor possesses.[146] Just as in Equal Protection analysis, if the curfew ordinance infringes on a fundamental right, it is subject to strict scrutiny, and, therefore, must be narrowly tailored to serve a compelling state interest.[147] "'[I]t is necessary in some instances to infer the standard used through reliance on the justifications provided by the court to uphold or strike down the [juvenile curfew ordinances]'"[148] because of the inconsistent results from the different courts after analyzing curfew ordinances using the *Bellotti* factors,[149] and the fact that the Supreme Court has not yet set out a level of scrutiny applicable to juvenile curfews.[150] Since minors do not always have the same fundamental rights as adults, courts have used

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[144] *See, e.g.*, Schall v. Martin, 467 U.S. 253, 263 (1984) (stating that children involved in criminal cases are afforded certain procedural rights also afforded to adults); Carey v. Population Servs. Int'l, 431 U.S. 678, 693 (1977) (plurality opinion) (stating that minors are afforded the right to privacy in the context of procreation); Goss v. Lopez, 419 U.S. 565, 574 (1975) (stating that minors are entitled to due process protections in the context of education); Poe v. Gerstein, 517 F.2d 787, 791 (5th Cir. 1975), *aff'd sub nom.*, Gerstein v. Coe, 428 U.S. 901 (1976) (stating that minors are entitled to have abortions).

[145] *See, e.g., Johnson*, 658 F.2d 1065, 1068 (stating that the appellants in this case claimed that the curfew ordinance violated the 14th Amendment's Due Process Clause); *McCollester*, 586 F. Supp. at 1384 (stating that the court found the curfew ordinance violated the rights guaranteed by the 14th Amendment's Due Process Clause).

[146] *See* discussion *supra* Part II.A.

[147] *See* Plyler v. Doe, 457 U.S. 202, 216-17 (1982).

[148] *See* Peter L. Scherr, Note, *The Juvenile Curfew Ordinance: In Search of A New Standard*, 41 WASH. U.J. URB. & CONTEMP. L. 163, 183 n.91 (1992) (citing Martin E. Mooney, Note, *Assessing the Constitutional Validity of Juvenile Curfew Statutes*, 52 NOTRE DAME LAW. 858, 872 (1977)).

[149] Bellotti v. Baird, 443 U.S. 622, 634 (1979) (stating the three reasons why a court can treat minors differently than adults: "the peculiar vulnerability of children; their inability to make critical decisions in an informed manner; and the importance of the parental role in child rearing").

[150] *See* Scherr, *supra* note 148, at 192.

different levels of scrutiny to analyze the curfew ordinances.[151] Some have used strict scrutiny[152] and others have used the rational basis test.[153] Consequently, the inconsistent results by different courts regarding the fundamental rights of minors also produce inconsistent results regarding juvenile curfew ordinances in the area of substantive due process.[154]

D. Void for Vagueness

"A law is void for vagueness if it is so ambiguous that reasonable people cannot distinguish permissible conduct from prohibited conduct."[155] When life, liberty, or property is at stake, people must not be forced to guess what statutes require of them.[156] "A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an *ad hoc* and subjective basis."[157] The challenge in *Bykofsky* focused on the wording of the ordinance's exceptions that allowed minors to be out on the street for certain reasons during the curfew hours.[158] Certain phrases, such as "reasonable necessity" and

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[151] *Compare* Waters v. Barry, 711 F. Supp. 1125 (D.D.C. 1989) (strict scrutiny test), *with* City of Panora v. Simmons, 445 N.W.2d 363 (Iowa 1989) (rational basis test).

[152] *See Waters*, 711 F. Supp at 1138-39 (applying strict scrutiny to the curfew ordinance); City of Milwaukee v. K.F., 426 N.W.2d 329 (Wis. 1988) (holding the curfew ordinance constitutional after applying strict scrutiny).

[153] *See, e.g.*, People in the Interest of J.M., 768 P.2d 219, 223 (Colo. 1989) (upholding the curfew ordinance after applying the rational basis test); *Simmons*, 445 N.W.2d at 369 (concluding that since neither a suspect class was involved, nor a fundamental right encroached upon, the proper scrutiny by which to analyze the curfew ordinance was the rational basis test).

[154] *See* Scherr, *supra* note 148, at 191.

[155] Kevin C. Siebert, Note, *Nocturnal Juvenile Curfew Ordinances: The Fifth Circuit "Narrowly Tailors" A Dallas Ordinance, But Will Similar Ordinances Encounter the Same Interpretation*, 73 WASH. U.L.Q. 1711, 1723 (1995).

[156] *See* Bykofsky v. Borough of Middletown, 401 F. Supp. 1242, 1248 (M.D. Pa. 1975), *aff'd mem.*, 535 F.2d 1245 (3d Cir. 1976) (citing Lanzetta v. New Jersey, 306 U.S. 451, 453 (1939)).

[157] *Id.* (citing Grayned v. City of Rockford, 408 U.S. 104, 108-09 (1972)).

[158] *Id.* at 1249.

"normal night-time activity" were phrases at issue here.[159] The court, basing its decision on past usage of the phrase "reasonable necessity" held that it was not vague.[160] The court found that the term "normal" was vague, as "[t]he curfew ordinance fails to set forth any guidelines as to what is to be deemed 'normal' nighttime activity for minors."[161]

In *Allen*, there were many words and phrases challenged for their vagueness.[162] The court deemed words and phrases such as "reasonable judgment", "upon an emergency errand", or "upon legitimate business"[163] vague.[164] These words and phrases, in their contextual setting, are subjective and give those in charge of enforcing the curfew a great deal of leeway.[165]

III. PARENTAL RIGHTS AND JUVENILE CURFEWS

A. Constitutional Rights of Parents

"[C]onstitutional interpretation has consistently recognized that the parents' claim to authority in their own household to direct the rearing of their children is basic in the structure of our society."[166] Accordingly, the Courts have safeguarded parental rights from state interference when concerning the upbringing of their children.[167]

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[159] *Id.* at 1249-50.

[160] *Id.* at 1249.

[161] *Bykofsky*, 401 F. Supp. at 1250.

[162] 524 A.2d 478 (N.J. Super. Ct. Law Div. 1987).

[163] *Id.* at 481-82.

[164] *Id.* at 482 (stating that "[o]ther provisions in the Bordentown ordinance are equally vague and equally destructive to its validity.").

[165] *Id.* at 481.

[166] *See* Trollinger, *supra* note 18, at 997 (discussing parents' rights with respect to their children).

[167] *See, e.g.*, Meyer v. Nebraska, 262 U.S. 390, 400 (1923) (stating that parents have the right and duty to determine what is suitable for their children to learn); Pierce v. Society of Sisters, 268 U.S. 510, 534-35 (1925) (stating that parents have the freedom to direct their childrens' upbringing, including their education); Wisconsin v. Yoder, 406 U.S.

In *Meyer v. Nebraska,*[168] the Court found that a state could not interfere with parents' constitutional right to decide matters concerning their children's upbringing.[169] The Court held that the Fourteenth Amendment to the United States Constitution guaranteed citizens certain rights:[170]

> Without doubt, it denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men.[171]

In *Wisconsin v. Yoder,*[172] the Court held that the constitutional rights of Amish parents to direct the religious upbringing of their children outweighed the state's interest in having the children attend school until they reached sixteen years of age.[173] The Court believed that regardless of the significance of the State's interest in compulsory education, that

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205, 215 (1972) (positing that the state does not have absolute authority in enforcing compulsory education laws because the state's interest and the parents' interest must be balanced); Stanley v. Illinois, 405 U.S. 645, 658 (1972) (stating that, contrary to the Illinois statute which unconditionally denied unwed fathers the right to have custody of their children, "all Illinois parents are constitutionally entitled to a hearing on their fitness before their children are removed from their custody.").

[168] 262 U.S. 390 (1923).

[169] *Id.* at 399 (dealing with the prohibition of teaching a foreign language to any child who has not successfully passed eighth grade).

[170] *Id.*

[171] *Id.*

[172] 406 U.S. 205 (1972).

[173] *Yoder,* 406 U.S. at 212-13 (dealing with the violation of Wisconsin's compulsory school-attendance policy by Amish families whose children were not sent to school but were trained by their families to prepare them for their future in the Amish community).

interest did not automatically outweigh other interests, especially, legitimate free exercise claims.[174] The Court believed that courts must carefully weigh all competing interests before rendering a decision when a religious claim requiring exemption from a state ordered activity is at stake.[175] Accordingly, because of the importance of the Religion Clauses, the Court does not favor State legislation that has the possibility of a broad application with unpredictable results.[176]

In *Stanley v. Illinois*,[177] the Court held that according to the Due Process Clause of the Fourteenth Amendment, the petitioner, an unwed father, had the right to a hearing to demonstrate his capability as a parent and overcome the State's presumption that an unwed father was not fit to raise his child on his own.[178] "The State's interest . . . is *de minimis* if Stanley is shown to be a fit father. It insists on presuming rather than proving Stanley's unfitness [for convenience] . . .. Under the Due Process Clause that advantage is insufficient . . . when the issue . . . is the dismemberment of his family."[179] The Court demonstrates its consistent preservation of the family unit by its past decisions.[180] Therefore, to preserve the family unit, the Court would likely recognize parents' right to set curfews for their own children.

In *Pierce v. Society of Sisters*,[181] the Court held that parents had a constitutional right to send their children to private schools and that the

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[174] *Id.* at 215.

[175] *Id.* at 235.

[176] *Id.* at 234.

[177] 405 U.S. 645 (1972).

[178] *Id.* (dealing with an Illinois statute giving the State custody of the children of unmarried fathers after the deaths of their mothers).

[179] *Id.* at 657-58.

[180] *See, e.g.*, Meyer v. Nebraska, 262 U.S. 390, 399 (1923) (stating that the right to raise ones own children is fundamental); Skinner v. Oklahoma, 316 U.S. 535, 541 (1942) (stating that there are "basic civil rights" that all persons are afforded); May v. Anderson, 345 U.S. 528, 533 (1953) (stating that there are "[r]ights far more precious . . . than property rights.").

[181] 268 U.S. 510 (1925).

State of Oregon's Compulsory Education Act violated this right.[182] If there is no sound relation to a legitimate state power, state legislation may not limit constitutionally guaranteed rights.[183] The Court found that the state does not have absolute control over children, with respect to mandating that they receive their education from a particular source.[184] In invalidating this ordinance, the Court stated, "[t]he child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations."[185] This phrase, if applied to a discussion of juvenile curfews, points towards the conclusion that the Court would recognize that parents have the right to set and enforce curfews for their own children without being forced to follow state guidelines.

Although the Court has upheld parents' right to direct their childrens' upbringing, this right is not absolute.[186] When dealing with legitimate state concerns, specifically those affecting the welfare of children and the general public, the state may lawfully act to protect those interests.[187] In *Prince v. Massachusetts*,[188] the Court spoke of the state's broad powers in the context of limiting parental liberty.[189] However, the Court said that "[i]t is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor

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[182] *Id.* (concerning an Oregon act requiring all normal children to attend public schools).

[183] *Id.* at 535.

[184] *Id.*

[185] *Id.*

[186] *See* Bykofsky v. Borough of Middletown, 401 F. Supp. 1242, 1262 (M.D. Pa. 1975), *aff'd mem.*, 535 F.2d 1245 (3d Cir. 1976).

[187] *Id.*

[188] 321 U.S. 158 (1944) (dealing with a Massachusetts statute prohibiting anyone from giving minors any articles, in this case Jehovah's Witness brochures, that the minor intends to unlawfully distribute).

[189] *Id.* at 167 (stating that "the state has a wide range of power for limiting parental freedom and authority in things affecting the child's welfare; and that this includes, to some extent, matters of conscience and religious conviction.").

hinder."[190] Once again, as in *Pierce*, applying this phrase in the context of curfews, leads to the conclusion that the Court would uphold parental child rearing rights and invalidate a curfew that infringed upon those rights.

In the context of parental constitutional rights and juvenile curfew ordinances, the courts have not been consistent in their decisions, upholding some curfew ordinances[191] and invalidating others.[192] The court in *Bykofsky*, held that because of exceptions, specifically allowing children to be out when accompanied by a parent, the curfew ordinance did not interfere with parents' control over their children.[193]

In *City of Panora v. Simmons*,[194] the Supreme Court of Iowa held that Panora's curfew ordinance[195] did not infringe upon parents' rights in the upbringing of their children because the city of Panora had an interest

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[190] *Id.* at 166.

[191] *See, e.g., Bykofsky*, 401 F. Supp. at 1264 (upholding the curfew ordinance because "the curfew ordinance does not impermissibly impinge on the parents' constitutional right to direct the upbringing of their children."); City of Panora v. Simmons, 445 N.W.2d 363, 370 (Iowa 1989) (upholding the curfew ordinance because the city had a compelling interest in protecting the children); City of Eastlake v. Ruggiero, 220 N.E.2d 126, 129 (Ohio Ct. App. 1966) (upholding the validity of the parental responsibility portion of the curfew ordinance because "[a] parent's rights in respect of the care and custody of his minor children are subject to control and regulation by the state by appropriate legislative or judicial action."); City of Milwaukee v. K.F., 426 N.W.2d 329, 339 (Wis. 1988) (citing Prince v. Massachusetts, 321 U.S. 158, 166 (1944)) (upholding the curfew ordinance because "while parental interests in rearing children without state or municipal interference may be impinged upon by the ordinance, . . . 'the state as *parens patriae* may restrict the parent's control.'").

[192] *See, e.g.*, McCollester v. City of Keene, 586 F. Supp. 1381, 1386 (D.N.H. 1984) (finding that the curfew ordinance interfered with parents' rights to raise and rear their children); Allen v. Bordentown, 524 A.2d 478, 574 (N.J. Super. Ct. Law Div. 1987) (finding that the ordinance interferes with parents' rights to have their children exercise their constitutional rights).

[193] *Bykofsky*, 401 F. Supp. at 1264.

[194] 445 N.W.2d 363 (1989).

[195] *Id.* at 364 (discussing the curfew in question, ordinance number 2.1-1.0301, which prohibited anyone under 18 from remaining on any public street or place of business between 10:00 p.m. and 5:00 a.m.).

in protecting minors from the ills facing the city.[196] The court agreed with Panora's argument that "while a right to family autonomy exists, such rights are subject to the same limitations as other constitutionally protected rights and that minors are subject to reasonable regulations imposed by legislative authorities."[197] The court felt that Panora's curfew, in fact, gave control to the parents and supported the family unit by advocating that children stay at home.[198] The court based its decision on the fact that Panora's ordinance only minimally encroached upon constitutional rights while the city's interest in enacting the ordinance was profound.[199] Here, the court upheld the ordinance because the city's interest outweighed the parent's interest.[200]

The Ohio Court of Appeals, in *City of Eastlake v. Ruggiero*,[201] held that the curfew ordinance[202] did not violate parents' constitutional right to direct the upbringing of their children.[203] The ordinance stated, in pertinent part, that "'[i]t shall also be unlawful for any parent or guardian of any child . . . to allow such child to be upon the streets or sidewalks during the period from darkness to dawn . . ..'"[204] The court stated that the terms of the ordinance applicable to the parents of curfew violators required actual knowledge of the violation, and if the parents were lax in supervising their children, the curfew's provisions were a constitutionally

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[196] *Id.* at 370 (stating that "the City has a strong interest in protecting minors from the national epidemic of drugs, and the curfew ordinance is a minimal infringement upon a parent's right to bring up his or her child.").

[197] *Id.* at 369.

[198] *Id.* at 370.

[199] *Simmons*, 445 N.W.2d at 370.

[200] *Id.*

[201] 220 N.E.2d 126 (Ohio Ct. App. 1966).

[202] *Id.* at 127 (discussing the curfew in question, Section 583.02 of the Codified Ordinance of the City of Eastlake, which sets out different curfews for persons under 12 and those between 12 and 16). Children under 12 are prohibited from being on the streets from dark to dawn and those between 12 and 16 are prohibited from being on the streets from midnight until 6:00 a.m. *Id.*

[203] *Id.* at 129.

[204] *Id.* at 127 (citing the ordinance at issue in this case).

valid means of state supervision.[205]

In *City of Milwaukee v. K.F.*,[206] the Supreme Court of Wisconsin held that the curfew ordinance[207] did not interfere with a parent's rights with respect to raising children.[208] The court also said that the state has broad latitude in terms of restricting the rights of parents when the welfare of children is at stake.[209]

In *McCollester v. City of Keene*,[210] the United States District Court of New Hampshire invalidated the Keene, New Hampshire curfew ordinance[211] saying that "the stated governmental objectives [were] not sufficient to justify the ordinance's infringement of parents' privacy and liberty interests."[212] The court also found that the ordinance improperly encroached on parental privacy rights as well as parental freedom in family life and child rearing.[213] Accordingly, a statute or ordinance will be invalidated when it unjustifiably intrudes upon parental rights.[214]

In *Allen v. Bordentown*,[215] the court stated that "[t]he Bordentown

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[205] *Id.* at 129.

[206] 426 N.W.2d 329 (Wis. 1988).

[207] *Id.* at 332 (discussing the ordinance in question, found in the Milwaukee Code of Ordinances, section 106-23 which prohibited those under 17 from, among other things, congregating and loitering on public streets and in public places between 11:00 p.m. and 5:00 a.m.).

[208] *Id.* at 339.

[209] *Id.* (citing Prince v. Massachusetts, 321 U.S. 158, 166 (1944)) (agreeing with the United States Supreme Court's idea that "where 'acting to guard the general interest in youth's well being, the state as *parens patriae* may restrict the parent's control . . . .'").

[210] 586 F. Supp. 1381 (D.N.H. 1984).

[211] *Id.* at 1387-89 (discussing the ordinance in question, cited at N.H. REV. STAT. ANN. § 31:43-a through N.H. REV. STAT. ANN. § 31:43-g (1980), amended in 1981 and 1982, which prohibited persons under 16 from being on a public street between 10:00 p.m. and 5:00 a.m.).

[212] *Id.* at 1386 (stating that "the ordinance restricts the parents' protected liberty interests in family and child rearing by usurping parental discretion in supervising a child's activities and imposing parental liability even where the parent exercised reasonable control or supervision in authorizing a child's activities which violate the ordinance.").

[213] *Id.*

[214] *Id.*

[215] 524 A.2d 478 (N.J. Super. Ct. Law Div. 1987).

ordinance, by preventing children from exercising [their] fundamental constitutional rights, interfere[d] with the right of parents to have their children exercise those rights."[216] The court also stated that "[a]ny law supporting the parental role advances a strong state interest while one which inhibits that role does the opposite."[217] The court, by its decision here, preserved the sanctity of the family by protecting parental rights and by not allowing the state to interfere with parental authority.[218]

B. Parents and Punishment

According to the National Conference of State Legislatures, approximately half the states have amended existing laws or created new ones to apply to the parents of curfew violators.[219] By holding parents liable for their children's behavior, the legislatures are trying to increase parental responsibility.[220] Many curfew ordinances, in fact, contain parental liability provisions.[221] For example, in Dallas, "[y]ouths and their parents, at the court's discretion, can be fined as much as $500 or ordered to perform community service, like cleaning up graffiti."[222] In New Orleans, "[p]arents are required to pick up their children [at the Central Curfew Center] and take part in counseling with a trained staff of religious

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[216] *Id.* at 487. The court continued by stating "[n]early all parents in this country want their children to understand, uphold and use their rights of free speech, assembly, religion and travel. The ordinance impermissibly restricts the right of parents to have their children do so." *Id.*

[217] *Id.*

[218] *Id.*

[219] Peter Applebome, *Parents Face Consequences As Children's Misdeeds Rise*, N.Y. TIMES, Apr. 10, 1996, at A1 (also stating that "[i]n 1995 alone, at least 10 states from New Hampshire to Louisiana to Oregon passed so-called parental responsibility laws calling for fines or sometimes imprisonment.").

[220] *See* Liberty Mutual Ins. Co. v. Davis, 368 N.E.2d 336, 337-38 (Ohio 1977) (stating that one reason for enacting parental liability laws was to increase parental supervision over children).

[221] *See, e.g., infra* notes 219-241 and accompanying text.

[222] *See* Butterfield, *supra* note 13, at A1.

and psychiatric volunteers."[223] The New Orleans curfew also imposes a monetary penalty on the parents of repeat offenders.[224]

Other cities, states, and countries impose penalties on parents of children who violate curfew ordinances.[225] The penalties vary, as some impose warnings,[226] others impose community service,[227] and still others impose monetary fines.[228] For example, in Buffalo, New York, "[p]arents of first-time violators will receive a warning, while parents of repeat offenders will face fines of up to $200."[229] Buffalo's mayor, James A. McGinnis, proposed stiffer penalties for parents of offenders.[230] Under the proposed plan, "[v]iolations could subject the parents or guardian to a fine of up to $250 or 15 days in jail, or both."[231] In the Town of Tonawanda, near Buffalo, New York, Town Supervisor Carl J. Calabrese proposed that "'irresponsible parents'" should be forced to pay hefty fines.[232]

In Mechanicville, New York, although a curfew was enacted in

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[223] *Id.*

[224] *Id.* "Parents of repeat offenders are issued a court summons and may be fined as much as $500." *Id.*

[225] *See infra* notes 226-244 and accompanying text (stating the different penalties imposed on curfew violators and their parents).

[226] *See* Phil Fairbanks, *ACLU Plans Suit Against Teen Curfew; City Group Will Monitor How Police Enforce Law*, BUFF. NEWS, June 8, 1994, at 1 (stating that "[p]arents of first-time violators will receive a warning.").

[227] *See, e.g.*, Tim O'Brien, *Police, Parents and Teens Ready For Troy Curfew*, TIMES UNION (Albany, NY), Sept. 15, 1996, at D3 (stating that parents of second time curfew violators could be fined and forced to perform twenty five hours of community service); King, *supra* note 28, at B5 (stating that parents of curfew violators in New Jersey could face fines of as much as $1,000 or court-ordered community service).

[228] *See, e.g.*, O'Brien, *supra* note 227, at D3; King, *supra* note 28, at B5 (discussing monetary penalties for parents of curfew violators).

[229] *See* Fairbanks, *supra* note 226, at 1.

[230] *See* Richard Batzer, *Officer Gives Support To Youth Curfew*, BUFF. NEWS, Nov. 28, 1995, at B4.

[231] *Id.*

[232] *See* Niki Cervantes, *Town Might Fine 'Irresponsible Parents': Tonawanda Eyes Alternative to Curfew For Troublesome Youngsters*, BUFF. NEWS, Aug. 31, 1995, at B8.

1915, it appears that it has never been enforced.[233] In accordance with the Mechanicville curfew, "youths who violate the curfew face no sanction at all."[234] The Mechanicville ordinance calls for the arrest of parents who do not know their childrens' whereabouts during the curfew hours.[235] Norman Siegel, executive director of The New York Civil Liberties Union stated, "'Under no circumstances should you punish the parents for the actions of a juvenile, unless you can demonstrate a clear contributory fault."[236]

Many communities often impose harsher penalties for curfew violators.[237] Teenage curfew violators in California cities, such as Thousand Oaks or Fillmore, face fines or losing their driving privileges, while the parents of curfew violators face fines of up to $2,500.[238] In Ventura County, "[f]irst-time violators and their parents . . . have always attended a 45-minute class on the consequences of petty crime . . .. Second-timers are ordered to contribute $25 to charity . . .."[239] In Simi Valley, California, in addition to being fined up to $2,500, parents of curfew violators also face the possibility of having to pay for the time that the police spend apprehending their children.[240]

In November 1995, the District of Columbia's Prince George

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[233] *See* Sam Howe Verhovek, *It's 10 P.M., Parents; How Do You Plead?*, N.Y TIMES, Apr. 20, 1990, at B1 (stating that "[t]he Mayor, dusting off a 1915 ordinance that seems to have never been enforced, is vowing to clamp down on any parent whose child is found out and about after 10 p.m.").

[234] *Id.*

[235] *Id.*

[236] *Id.* In essence, according to Mr. Siegel, "[t]hat means a parent would actually have to encourage a child to break the curfew, and even then the law would be suspect . . .. [a]nd if a youth sneaks out a window late one night? 'Forget it' . . . '[t]he law could never stand up in court.'" *Id.*

[237] *See* Mack Reed, *New Laws Clip Wings of Teenage Nighthawks; Curfew: Violations Can Now Mean Loss of Driver's Licenses For Teens and Fines For Parents. Police Say Regulations Are For the Youngsters' Safety*, L.A. TIMES, May 27, 1996, at B1 (citing the different counties' attitudes towards curfews).

[238] *Id.*

[239] *Id.*

[240] *Id.*

County enacted a juvenile curfew.[241] Children who violate Prince George County's curfew ordinance receive a written warning and are sent home.[242] Prince George's ordinance imposes penalties on parents and businesses who allow juveniles to violate the curfew.[243] Both the parents of repeat offenders and the businesses where youths have violated the curfew face fines.[244]

IV. PROBLEMS WITH ENFORCING JUVENILE CURFEWS

A. Who Will Abide By the Curfews?

There are many problems that confront those faced with enforcing curfews. James Allen Fox, Dean of Northeastern University's College of Criminal Justice said, "'Curfews are a quick and easy fix, but not necessarily effective' . . .. The problem with curfew laws is that most kids, the good, the bad and the tired, are asleep at midnight . . .."[245] Pamela Katz of the New York Civil Liberties Union, feels that curfews are ineffective:

> [a]nd logic dictates that we assume young people running drugs who are not deterred by the harsh anti-drug laws and the sentences they carry, will not be hindered by curfew laws that require violators to go to a holding station until their parents or guardians retrieve them or, at worst, to pay a fine for which their parents will be

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[241] *See* Philip P. Pan, *Prince George's Police Begin to Enforce Juvenile Curfew*, WASH. POST, July 2, 1996, at B1 (referring to the curfew, which applies to those under 17, and was in effect from 10:00 p.m. until 5:00 a.m. on weeknights and midnight on weekends).

[242] *Id.*

[243] *Id.*

[244] *Id.* (stating that parents are fined $50, $100, and $250, while the businesses are fined up to $500).

[245] *See* Butterfield, *supra* note 13, at A1.

responsible.[246]

Additionally, Newark store owner, Norberto Otero said, "[t]he kids simply ignore the curfew, and the police are too busy to do much about it . . .. 'The people ruining the city aren't affected by the curfew.'"[247]

Minors who are affected by curfews are vocal on the subject.[248] One said that the curfews only work for the short time when the police are actually there chasing the minors off the streets, but once they leave, the minors often return.[249] Another said that a curfew might have been successful in the past, but that "'now the kids will just laugh in their face. . . . To the kids out on the streets now, it's become a way of life and there's no way the police can make any significant impact, youth curfew or not.'"[250]

Students at Henry Grady High School in Atlanta, Georgia had mixed reactions to the idea of a curfew.[251] One fourteen-year-old student said that the curfew would not have any impact on crime because those who commit the crimes will commit them despite the curfew.[252] A fifteen-year-old student questioned the reasons for applying Atlanta's curfew to those under seventeen, because he did not see a difference between a sixteen-year-old and a seventeen-year-old.[253] Another fifteen- year-old student, however, liked the idea of the curfew because she said that it would supplement the guidelines that her parents had set for her.[254]

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[246] *See* Katz, *supra* note 20, at E2 (showing her opposition to juvenile curfews as well as their inability to deter crime because those that commit crimes would not be deterred by curfew ordinances where minimal penalties are imposed).

[247] *See* Neela Banerjee, *Curfews Spread, But Effects Are Still Not Clear*, WALL ST. J., Mar. 4, 1994, at B1.

[248] *See infra* notes 249-254.

[249] *See* Banerjee, *supra* note 247, at B1.

[250] *See* Richard Weizel, *Street Violence and Teen-Age Curfews*, N.Y. TIMES, June 19, 1994, at § 14CN, at 1.

[251] *See infra* notes 252-254.

[252] *See* Smothers, *supra* note 28, at A1.

[253] *Id.*

[254] *Id.*

B. Sufficiency of the Police Department to Enforce the Curfews

Another problem involving the enforcement of curfews is the lack of police power and resources needed to effectively enforce them.[255] According to Chris Hansen, senior staff counsel for the American Civil Liberties Union, cities often fail to enforce the curfews because "'they take a massive amount of police time and effort for very little payoff.'"[256] In 1996, William Miller, the police chief of Troy, New York, declared "curfews as unnecessary and difficult to enforce."[257] In 1994, another chief of police, John A. Dale, of Albany, stated that "[curfews] 'place an undue burden on the department to enforce something that basically would be unenforceable . . . [and they are] of no benefit to the citizens or the Police Department.'"[258]

In the summer of 1995, the District of Columbia adopted a juvenile curfew.[259] According to police officials, however, "the city's officers [were] too busy with emergency calls to vigorously enforce [the curfew]."[260] In fact, even though only one curfew violator was picked up each night during the first three months of the curfew's existence, none of those violators was charged.[261]

Long Island, New York, does not currently have any juvenile curfew ordinances and the local officials want it to stay that way.[262] According to Don Longo, Suffolk County Police Sgt., "'I think [curfews] would be a nightmare. . . . You would need an army of police officers to enforce it . . . and you could end up with three-hundred-fifty kids down

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[255] *See infra* notes 256-271 and accompanying text.

[256] Butterfield, *supra* note 13, at A1.

[257] *See* Katz, *supra* note 20, at E2.

[258] *Id.*

[259] *See* Pan, *supra* note 241, at B1 and accompanying text.

[260] *Id.*

[261] *Id.*

[262] *See* Justin Martin, *Inside Long Island: Curfews for Kids; Many Say It's Just Not Time*, NEWSDAY (Nassau/Suffolk), July 23, 1995, at A8. *See also infra* note 263 and accompanying text.

here at the precinct.'"[263]

The Town of Tonawanda, New York, tried to come up with an alternative to juvenile curfews by attempting to fine "'irresponsible parents'" for their childrens' misdeeds.[264] Tonawanda's officials are opposed to imposing a juvenile curfew because they feel "a curfew could end up slowing police response to other calls for assistance and would require a new detention center to handle violators."[265]

In Connecticut, curfews are in effect in several communities such as Bridgeport, Hartford, New London, and New Britain.[266] Although those curfews find political support, police officials are wary of the curfew's effectiveness, or with concerns as to whether the police departments are sufficiently equipped to enforce the curfews.[267] A Hartford police officer said, "'I don't see [the curfew] being used at all. . . . We just don't have the manpower to enforce it.'"[268] In fact, Mary Moran, the mayor at the time when Bridgeport's curfew ordinance was originally proposed, voted against the curfew "at the urging of Police Chief, Thomas Sweeney," who felt that the curfew was unmanageable and unenforceable.[269] According to William Gavitt, New London Police Captain, "'[The new curfew] could bog down the system.'"[270] Acting Police Chief of New Britain, Edwin Mercier said that "'[t]here is not a whole lot of teeth in the law, but we don't have the manpower to enforce it on a daily basis anyway. Frankly, we're not sure when and how we're going to use it.'"[271]

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[263] *Id.*

[264] *See* Cervantes, *supra* note 232, at B8.

[265] *Id.*

[266] *See* Weizel, *supra* note 250, at 1.

[267] *Id.* "Around the state the concept is supported by many politicians and most of the business community, but opposed by some law enforcement officials and many teen-agers [sic] themselves." *Id.*

[268] *Id.*

[269] *Id.*

[270] *See* Weizel, *supra* note 250, at 1.

[271] *Id.*

C. Selective Enforcement and Discrimination

Another problem with enforcing juvenile curfews is the possibility of selective enforcement,[272] which would often be caused by and result in discrimination against minorities.[273] This problem was anticipated in Buffalo by Council Majority Leader Eugene M. Fahey, who decided to hold meetings between the police officials and community leaders to discuss how the police would enforce the curfew and to allay the community fears about selective enforcement.[274]

The idea of discrimination in juvenile curfew enforcement troubles many.[275] At a hearing discussing juvenile curfews in Troy, New York, it was said:

> 'Nobody's going to tell me that [a] police officer going down Pawling Avenue is going to stop every kid who is 10 minutes past curfew, but that [a] police officer in the inner city who sees a kid with his pants hanging low and . . . his hat tipped sideways is going to be a prime target . . .'[276]

A study done to determine the effects of juvenile curfews in selected cities, concluded that "curfew restrictions are disproportionately enforced in minority communities and against individuals perceived as 'different' from the norm."[277] The American Civil Liberties Union also voiced their worries about possible discriminatory enforcement of juvenile

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[272] *See* Smothers, *supra* note 28, at A1.

[273] *See, e.g.*, Ashton v. Brown, 660 A.2d 447, 452-53 (Md. 1995) (stating that the police set up a curfew sweep at a restaurant regularly patronized by African-Americans).

[274] *See* Dale Anderson & Harold McNeil, *Griffin Signs Law On Curfew; Curb on Young to Begin Jan. 1*, BUFF. NEWS, Dec. 6, 1993.

[275] *See* Fairbanks, *supra* note 226, at A1 (stating that the ACLU feared the police would target the African-American and Hispanic communities).

[276] Katz, *supra* note 20, at E2.

[277] *Id.* (discussing the survey analyzing curfews in San Francisco, Oakland, and New Orleans, by a policy institute, the Center on Juvenile and Criminal Justice).

curfews.[278]

This fear of discrimination and selective enforcement, many feel, can create more problems in the community because of already increased tensions between minorities and the police in many United States cities .[279] In fact, these fears are well-founded.[280] Lieutenant Louis Wolf of the Hartford Police Department stated that, "'[b]ecause of increased gang violence and drive-by shootings, we felt we had to do something, and I think the curfew has helped . . .. We mostly target areas ravaged by drugs and prostitution. We don't bother a kid coming home from the movies.'"[281] Discriminatory enforcement simply serves to undermine the curfew and its purposes by applying the curfew to certain groups of youths and punishing them, and not trying to protect all youths as they purport to do.

When Atlanta enacted its curfew in 1990, the Georgia chapter of the American Civil Liberties Union spoke harshly about the curfew.[282] Ellen Spears, the group's interim director, said that "the curfew would unfairly focus on the city's poor neighborhoods, which are predominantly black."[283]

In *Ashton v. Brown*,[284] the Mayor and Police Chief, Major Ashton, planned a curfew sweep at a restaurant that was frequented by predominantly African-Americans residing in Frederick County, Maryland.[285] Twenty-eight suspected curfew violators were apprehended at the restaurant,[286] however, there is a discrepancy as to the actual number

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[278] *See* Fairbanks, *supra* note 226, at A1.

[279] *See* Geoffrey Canada, *Curfews Are for Parents to Set*, N.Y. TIMES, July 23, 1996, at A19.

[280] *See* Weizel, *supra* note 250, at 1 (stating that the police often target certain neighborhoods looking for curfew violators); *see also* C. Virginia Fields, *A Curfew for the City's Kids? It Will Mask Real Problems*, DAILY NEWS (New York), Jan 16, 1997, at 41 (stating her concerns based upon "the disproportionate targeting of black and Latino youth by police, which already occurs without benefit of a curfew law").

[281] Weizel, *supra* note 250, at 1.

[282] Smothers, *supra* note 28, at A1.

[283] *Id.*

[284] 660 A.2d 447 (Md. 1995).

[285] *Id.* at 452-53.

[286] *Id.* at 453.

of patrons who were in fact detained.[287] The plaintiffs introduced statistical evidence supporting their claim of racial discrimination.[288] Although discrimination was argued in the brief submitted to the court, neither the trial court nor the intermediate court addressed the racial discrimination claim.[289]

Selective enforcement not only deals with racial discrimination, it also deals with situations where police officers have the discretion to either stop suspected violators or let them go.[290] Prince George County in the District of Columbia is made up of many different suburban communities, which creates difficulty in enforcing the curfew because juveniles are widely dispersed throughout the county.[291] Accordingly, the police have their own way of enforcing the curfew.[292] Tony Ayers of the Prince George County police department, stated that "'[y]ou don't want to waste a lot of time searching for loiterers, so we target the areas where there are a lot of complaints.'"[293] This selective enforcement subjects only those in the targeted areas to the curfew's restrictions.[294]

Additionally, U.S. District Judge Joseph McKinley, invalidated a juvenile curfew ordinance in Henderson, Kentucky.[295] He had a problem with the fact that it was "susceptible to [the] moment-to moment opinion

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[287] *Id.* (plaintiffs claim all twenty-eight violators that were detained were African-American, while defendants claim that twenty-five of the twenty-eight violators were African-American).

[288] *Id.* at 453 n.5.

[289] *Ashton*, 660 A.2d at 454.

[290] *See* Trollinger, *supra* note 18, at 1002 (stating that because it is not possible for those in charge of enforcing the curfews to stop everyone who is possibly in violation of the curfew, there is great potential for selective enforcement).

[291] *See* Susan Saulny, *All's Quiet Under the Prince George's Curfew; Teens Mostly Resigned to New Rule; Parents, Business Owners Back It*, WASH. POST, Aug. 18, 1996, at B1.

[292] *Id.*

[293] *Id.*

[294] *See supra* text accompanying notes 272-293.

[295] *See* John Lucas, *Kentucky City's Curfew Tossed Out: Court Rules Ordinance Applying to Juveniles Too Vague; Authorities Undecided About Appeal*, ROCKY MTN. NEWS, July 21, 1996, at 38A.

of a policeman on his beat and to arbitrary and discriminatory enforcement."[296]

D. Are Nocturnal Juvenile Curfews the Solution to the Juvenile Crime Problem?

On October 29, 1996, the District of Columbia's District Court invalidated the District of Columbia's juvenile curfew ordinance in *Hutchins v. District of Columbia.*[297] A problem that Judge Emmet G. Sullivan[298] had with that ordinance was that the District's statistical evidence did not support the District Council's assertions that youths commit more crimes or are victims of more crimes during the curfew hours.[299] In support of this idea, Harry L. Shorstein, Jacksonville Florida's State Attorney, said that "'we know that most crimes occur during school hours as a result of truancy or after school gets out and before dinner time.'"[300] Others, skeptical of the curfews, say that the majority of juvenile crime occurs during school hours, the afternoon and early evening.[301] Additionally, "[m]any criminologists say curfews just shift juvenile crime to earlier in the day."[302] If the criminologists are correct and juvenile crime merely shifts, the main purpose in enacting curfews is defeated.

V. CAN A JUVENILE CURFEW SUCCEED IN NEW YORK CITY?

Council minority leader, Thomas Ognibene, has proposed a

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[296] *Id.*

[297] 942 F. Supp. 665 (D.D.C. 1996).

[298] Judge Emmet G. Sullivan, a District Judge for the United States District Court for the District of Columbia, wrote the opinion in *Hutchins. See id.* at 665-66.

[299] *See* Locy, *supra* note 28, at A1.

[300] *See* Butterfield, *supra* note 13, at A1.

[301] *See* Derrick Jackson, *Curfews Are Poor Answer to Teen Crime*, DALLAS MORNING NEWS, June 11, 1996, at 17A.

[302] *Curfews Should Be Local Matter*, MORNING CALL (Allentown), June 4, 1996, at A14.

juvenile curfew ordinance for New York City, similar to others that are currently in effect in many cities in the United States.[303] He professes that the curfew would "reduce graffiti, car theft and vandalism."[304] Mayor Rudolph Giuliani has agreed to consider enacting the curfew, despite the possibility of problems.[305]

Local community boards would have the ultimate decision as to whether or not their community would enforce the curfew.[306] Originally, Ognibene planned for the curfew ordinance to apply to juveniles under the age of eighteen, and would be in effect after 10:00 p.m. on Sunday through Thursday, and 11:00 p.m. on Friday and Saturday.[307] City Council Minority Leader, Thomas V. "Ognibene's [revised] proposal, aimed at cutting juvenile crime, would force kids under 18 to be off city streets after midnight during the school year and after 12:30 a.m. during the summer."[308] There has been no determination as to the time the curfew would end.[309] The bill would provide exemptions for those going to or returning from work, sporting events, religious or school events, or recreational activities.[310] Youth violators would perform twenty-five hours of community service for a first offense and fifty hours for each additional offense.[311] Parents of youth violators would receive fines of seventy five dollars for the first offense and $250 for each additional offense.[312]

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[303] *See* Michael O. Allen & Don Gentile, *Council Mulling Curfew On Teens*, DAILY NEWS (New York), July 10, 1996, at 3.

[304] *See Rudy Cool To Curfew Bill*, NEWSDAY(Nassau & Suffolk), July 11, 1996, at A26.

[305] *Id.* (quoting Mayor Giuliani who stated that "'[t]here are complications to it in a city like New York, in any large city. Legal Complications. Practical complications.'").

[306] *See* Allen & Gentile, *supra* note 303, at 3.

[307] The council struck down this plan in 1996. *See* Joel Siegel, *Pole Eyes a Curfew For Teens*, DAILY NEWS (New York), July 2, 1997, at 24.

[308] *Id.* "Kids hanging out on their stoops or on sidewalks next to their homes could stay outside until 1 a.m." *Id.*

[309] *See* Joseph W. Queen & William Murphy, *Teen Curfew Proposed for City*, NEWSDAY (Queens), July 10, 1996, at A3.

[310] *Id.*

[311] *See* Allen & Gentile, *supra* note 303, at 3.

[312] *Id.*

There are mixed reactions to the curfew throughout the city.[313] For example, Council Speaker Peter Vallone is against the curfew because he feels "there are many worthwhile activities at night for youths."[314] He also spoke of the recent drop in crime thereby eliminating the need to enact a curfew.[315] In addition, Police Department spokeswoman, Marilyn Mode, stated three problems that she found with the idea of imposing a curfew in New York City.[316] She said it "'would penalize good youths, would be difficult to enforce and [would be] an added burden for street cops.'"[317] President Clinton, however, totally supports the idea of a curfew.[318] On the other hand, it is not surprising that most teenagers in the New York City area are not happy with the idea of imposing a curfew.[319]

Looking at the proposed curfew in light of the discussion in Part IV of this paper,[320] it would seem that a curfew for New York City would not be successful. There are many possible problems with enacting a curfew in New York City. First, minors can easily obtain fake identification cards,[321] which when shown to police officers, would absolve them of liability, unless the police officer realized the identification was fake. Second, as mentioned in Part IV,[322] there is already a great deal of racial tension between the police and many minority

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[313] *See infra* notes 314-319 and accompanying text.

[314] Allen and Gentile, *supra* note 303, at 3

[315] *See Rudy Cool to Curfew Bill*, *supra* note 304, at A26.

[316] *See* Allen & Gentile, *supra* note 303, at 3. *See also infra* text accompanying note 317.

[317] *Id.*

[318] *Id.*

[319] *Id.* ("While some teens said a curfew would keep a lot of kids out of trouble, most gave it a thumbs down.").

[320] *See* discussion *supra* Part IV.

[321] *See* Christine B. Whelan, *Psst! Here's What Party Girls Are Really Like*, N.Y. TIMES, Sept. 15, 1996, § 1, at 53 (discussing the ease with which minors can obtain fake ID, especially fake Texas driver's licenses). *See also* Wyllys Chip Terry, Editorial, *Those 'Objective' Tests Still Benefit the Rich*, N.Y. TIMES, Nov. 1, 1996, at A34 (discussing the ease in obtaining fake ID's, in the context of fake ID's used by people fraudulently taking standardized exams for others).

[322] *See* discussion *supra* Part IV.

groups in New York City.[323] In New York City, there are many cases where the police have abused their authority in African-American and Latino communities.[324] Enacting a curfew, especially if it is enforced in a discriminatory manner, will do more harm than good.[325] With the city's rising racial tension, enacting and enforcing a curfew might exacerbate the already hostile situation.[326] Third, New York City is a large city that is constantly facing budget cuts.[327] In fact, Mayor Giuliani planned to cut the New York City's Police Department's budget by approximately 42 million dollars.[328] Clearly, budget cuts to the Police Department would hamper efforts to enforce a juvenile curfew by decreasing the size of the police force. Fourth, New York City has had success with its current truancy program.[329] Former police commissioner, William Bratton, said, "'It was

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[323] *See* James J. Green, *What a Police Force Should Look Like*, N.Y. TIMES, Dec. 26, 1993, § 13LI, at 15 (stating that "[i]t is extremely difficult for members of an underrepresented group to view the police as being responsive to their needs, free of prejudice and interested in the cause of justice if they do not see members of their group on the force."); *see also* Canada, *supra* note 279, at A19 (stating that "[i]f you are a person of color and [are] male, you invariably have a story to tell about police harassment or worse."). "In New York City, police abuse in their [African-American and Latino] neighborhoods includes the use of excessive force and the death of suspects in custody, according to an Amnesty International report." *Id.*

[324] *See* Canada, *supra* note 279, at A19.

[325] *Id.* (stating that because of the tensions already present in minority communities between the residents and the police, the possibility of selective enforcement may worsen the problem).

[326] *Id.*

[327] *See* Steven Lee Myers, *Giuliani Weighs Reducing Police Force By 1,000 Jobs; Considers Plans to Close $2 Billion Budget Gap*, N.Y. TIMES, Jan. 25, 1996, at A1 (stating that "the Mayor ha[d] ordered each of his agencies to cut their budgets for the next fiscal year by 7.5 percent. . . .").

[328] *See* Clifford J. Levy, *Giuliani Budget To Spend Millions On Trailers For Crowded Schools*, N.Y. TIMES, Jan. 31, 1997, at A1 (stating that while Mayor Giuliani expects to cut the amount of money allocated to the New York City Police Department, it is hoped that there will not be a change in the size of the police force).

[329] *See Teen Curfew Success Reported, But Doubts Persist*, OMAHA WORLD HERALD, June 3, 1996, at 1 (stating that "[i]n New York City, which has had a 30 percent drop in juvenile crime in the past three years, the decision against a curfew was deliberate . . . .").

felt we could get a bigger bang for the buck with a truancy program.'"[330] Finally, New York City's size will also present an enforcement problem.[331] If a curfew cannot succeed in a small city, how can it succeed in New York City? According to C. Virginia Fields, former Manhattan Council member and new Manhattan Borough President, a curfew can't succeed in New York City.[332]

VI. CONCLUSION

Juvenile curfews, although in effect for many years, are not without problems. Constitutional challenges are frequently brought to enjoin enforcement of the curfews.[333] Among the many challenges to these curfews are that they infringe upon the constitutional rights of minors and their parents.[334] "A few state and federal courts have considered their validity but no case has reached the United States Supreme Court."[335] Without clear guidance from the United States Supreme Court, there will not be a universally held standard on this issue, as each court dealing with a curfew challenge will continue to decide the case absent a clear standard to follow.[336] Consequently, the confusion that currently exists among the different state and federal courts will not be cleared up, and the stream of

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[330] *Id.*

[331] *See* Laura Vecsey, *Brotherly Dispute For Mayor, Alderman Signoracci's Split On Cohoes Youth Curfew*, TIMES UNION, Aug. 10, 1990, at B3 (discussing the possibility of enacting a curfew in Cohoes). Cohoes Mayor Robert Signoracci said, "'This is not to say I'm opposed to the idea of a curfew, but you have to look at demographics and location.'" *Id.*

[332] *See* Fields, *supra* note 280, at 41 (stating that "[a] juvenile curfew for New York City is untimely and ill-advised, as it serves only to mask problems, not address them.").

[333] *See, e.g.*, Hutchins v. District of Columbia, 942 F. Supp. 665 (D.D.C. 1996); Ashton v. Brown, 660 A.2d 447 (Md. 1995); Qutb v. Strauss, 11 F.3d 488 (5th Cir. 1993).

[334] *See* Trollinger, *supra* note 18, at 977 (stating that juvenile curfews penalize minors and their parents for acting within their constitutional rights).

[335] Allen v. City of Bordentown, 524 A.2d 478, 480 (N.J. Super. Ct. Law Div. 1987).

[336] *See* Williams, *supra* note 140, at 476 (stating that "[c]ourts have inconsistently applied three different equal protection approaches [rational basis, strict scrutiny, and the *Bellotti* test] when analyzing juvenile curfews.")

inconsistent results will continue.[337]

Curfews are also plagued with problems from a non-legal standpoint. For example, if children are kept off the streets to avoid becoming victims of crime, what about the elderly or the mentally ill? Shouldn't they should be afforded the same protections as children? Using this rationale, curfews simply cannot be justified. Curfews by virtue of their flaws, seem to be more of an excuse to regulate childrens' behavior, and not to achieve the goals they set out to achieve.

Jill A. Lichtenbaum

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[337] *Compare* Bykofsky v. Borough of Middletown, 401 F. Supp. 1242 (M.D. Pa. 1975), *aff'd mem.*, 535 F.2d 1245 (3d Cir. 1976); *In re* Juan C., 33 Cal. Rptr.2d 919 (Cal. Ct. App. 1994); People in the Interest of J.M., 768 P.2d 219 (Colo. 1989) *with* Hutchins v. District of Columbia, 942 F. Supp. 665 (D.D.C. 1996); Ashton v. Brown, 660 A.2d 447 (Md. 1995); Waters v. Barry, 711 F. Supp. 1125 (D.D.C. 1989); *Allen*, 524 A.2d at 478.