

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SIMBI WATERS, a minor
by AMERAH SHABAZZ, her mother
201 I STREET, S.W.
WASHINGTON, D.C. 20024
(202) 484-5606

JEFFREY SMITHSON, a minor,
by KAREN M. CHRISTENSEN, his mother
1718 Crestwood Drive, N.W.
Washington, D.C. 20011
(202) 722-0208

DAVID DRANITZKE, a minor,
by ALAN DRANITZKE, his father
124 12th Street, S.E.
Washington, D.C. 20003
(202) 547-2737

FRANKLIN L. FOER, a minor,
by ALBERT A. FOER, his father,
c/o 1400 20th Street, N.W. #119
Washington, D.C. 20036
(202) 457-0801

JONATHAN S. FOER, a minor,
by ALBERT A. FOER, his father,
c/o 1400 20th Street, N.W. #119
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Civil Action No. 89-0707 (CRR)

AMENDED COMPLAINT
FOR DECLARATORY AND
INJUNCTIVE RELIEF

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ON BEHALF OF THEMSELVES AND
OTHERS SIMILARLY SITUATED,

Plaintiffs,

v.

MARION BARRY, JR.
Mayor, The District of Columbia
District Building
Washington, D.C. 20004
(202) 727-6319

COURT

THE DISTRICT OF COLUMBIA
c/o The Corporation Counsel
District Building
Washington, D.C. 20004
(202) 727-6248

Defendants.

AMENDED COMPLAINT
FOR DECLARATORY AND INJUNCTIVE RELIEF
(Violation of First, Fourth and Fifth Amendment Rights)
(Class Action)

Introduction

The District of Columbia "Temporary Curfew Emergency Act of 1989" (the "New Curfew Law") was signed into law by the Mayor on April 17, 1989, and he has announced that it will be enforced beginning at 12:01 a.m. on Tuesday, April 25, 1989 (i.e., at midnight of the night of April 24-25). With several exceptions, it requires persons under eighteen years of age to be off the streets by 11:00 p.m. on weeknights and by 11:59 p.m. on weekends. This civil action seeks a declaration that the New Curfew Law is unconstitutional, and an injunction prohibiting its enforcement.

Jurisdiction and Venue

1. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question). Plaintiffs bring this action under 42 U.S.C. § 1983 and also seek relief authorized by the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq.

2. Venue is properly laid in this Court pursuant to 28 U.S.C. § 1391(b).

Parties

3. (a). Plaintiff Simbi Waters is seventeen years old and is a resident of the District of Columbia. She is a senior at the Duke Ellington School of the Arts, and plans to attend the California Institute of the Arts beginning in the fall of 1989. During the 1988 fall semester, plaintiff Waters played the role of Annie Sullivan in the Ellington School's production of *The Miracle Worker*. Plaintiff Waters' family does not own an automobile, and because she travels by public transportation, she did not return home from rehearsals until approximately 11:30 p.m., and did not return home from performances until after midnight. She will also be playing a leading role in the spring semester play, "Duke Ellington's 'Jump for Joy!,'" which involves similarly late travel home through the District by bus, in violation of the New Curfew Law. Because it is not always possible to anticipate when a rehearsal will run late, the activity may not be registered with the Mayor in advance for a particular night when it does so. Even if the activity is registered, it often takes plaintiff Waters much more than the 60 minutes allowed by the New Curfew Law to return to her home via public transportation.

(b). As a student at the Ellington School, plaintiff Waters is also required to attend and write class papers about various theatrical performances. For example, she recently attended a performance by the Martha Graham Dance Company at the John F. Kennedy Center for the Performing Arts. Travelling by public

transportation, she is often unable to arrive home from such performances before the hour specified by the New Curfew Law, and her travel time might be more than the 60 minutes permitted by the law. Nor can plaintiff control whether such performances are registered in advance with the Mayor. Thus, the New Curfew Law will not permit her to continue to engage in these activities without fear of arrest and detention.

(c). Plaintiff Waters sometimes goes out for evening activities with her "Aunt Mary," a close family friend who is a responsible adult. The New Curfew Law makes such activities a criminal act by both plaintiff Waters and her mother.

(d). Plaintiff Simbi Waters brings this action through her mother, Amerah Shabazz, who is an adult resident of the District of Columbia.

4. Plaintiff Jeffrey Smithson is seventeen years old and is a resident of the District of Columbia. He is a senior at the Field School, where he is President of the Student Council. His activities in that and other capacities occasionally require him to be out after the hours set by the New Curfew Law. These activities are not always planned in advance and cannot always be registered in advance with the Mayor. On weekend nights plaintiff Smithson often stays out past midnight with classmates and friends studying for a test or simply socializing. He and his parents have together established a 1:00 a.m. curfew that generally applies to his weekend activities. He wishes to continue these activities and does not believe that the government has the right to dictate to him and his family the time by which he must return home. Often these activities are not

sponsored by an educational, religious, or non-profit organization, and thus cannot be exempted from the curfew law. Plaintiff Smithson brings this action through his mother, Karen Christensen, who is an adult resident of the District of Columbia.

5. Plaintiff David Dranitzke is seventeen years old and is a resident of the District of Columbia. He is a senior at the Maret School, where he is President of the Student Council. He often engages in activities that keep him out after the hours permitted by the New Curfew Law, and under circumstances that do not exempt him from its application. For example, he and other high school students are currently organizing a benefit concert for AIDS victims, which will be held on May 14th at the Sylvan Theater on the Washington Monument grounds. The organizing group for this event meets at least weekly, and meetings often have to be scheduled or re-scheduled at the last minute. Nor can it be anticipated when a meeting will last beyond the curfew hour, although some do. This activity is not sponsored by an educational, religious, or non-profit organization, and so students involved in its meetings are not exempt from enforcement of the New Curfew Law. From time to time plaintiff Dranitzke visits his grandparents, who live in Chevy Chase, and returns after the curfew hour. He also attends events at the Capital Center and other public places that keep him out past the time specified in the New Curfew Law; he cannot control whether these events are registered in advance with the Mayor. He wishes to continue these and similar activities, with the consent of his parents, and without the interference of the government. Plaintiff

Dranitzke brings this action through his father, Alan Dranitzke, who is an adult resident of the District of Columbia.

6. (a). Plaintiff Franklin L. Foer is fourteen years old and is a resident of the District of Columbia. He is a ninth grade student at the Georgetown Day School. Although he is generally home well before 11:00 p.m. on weeknights and midnight on weekends, there are times when -- with his parents' permission -- he is out on the public streets or sidewalks, or on public property or in a public place, after those hours. For example, during the summer and fall of 1988, he worked as a volunteer intern performing photocopying and other clerical services for the Dukakis for President campaign. There were several times when he was still working after 11:00 p.m. or midnight, and, in order to get home, had to be on the public streets and sidewalks after those hours. Plaintiff has worked as a volunteer in other political campaigns, including David Clarke's last campaign for D.C. Council Chairman, and he plans to be active in other political campaigns between now and his eighteenth birthday. He does not want to have to curtail his efforts on behalf of the candidates he supports in order to be home by 11 p.m. or midnight. Plaintiff does not know whether such political campaign work qualifies as an "activity sponsored by an educational, religious, or non-profit organization," or whether the routine daily activities of a political campaign can be registered with the Mayor under the law.

(b). Plaintiff is also a member of the debate team at his school, which regularly travels to other schools in and out of the District to engage in interscholastic debates. There are times when he doesn't arrive home until after 11 p.m. or midnight from those trips; often,

he cannot anticipate exactly when he will arrive home. Since the debates occur outside of the District of Columbia, it is not likely that they will be registered with the Mayor's office. At other times he stays at the home of another debate team member until after the curfew hour, working on arguments and preparing for upcoming debates. He expects to continue to be active on the debate team, and does not want to have to limit his activities in order to avoid violating the New Curfew Law.

(c). Additionally, Plaintiff's family belongs to the Adas Israel synagogue, and he is active in their United Synagogue Youth ("USY") group. USY organizes religious, cultural, athletic and social activities for teenagers in the Washington area, and these sometimes continue until after 11 p.m. or midnight. He is also frequently invited to attend the Bar Mitzva celebrations of his thirteen-year-old friends; which often do not end until after midnight. He also sometimes plays tennis or goes jogging with his father before 6 o'clock in the morning. The conduct described above would violate the New Curfew Law, and much of it is either not sponsored by an educational, religious or non-profit organization or is not planned in advance and so cannot be registered with the Mayor in advance.

(d). Plaintiff Franklin Foer brings this action through his father, Albert A. Foer, who is an adult resident of the District of Columbia.

7. Plaintiff Jonathan Foer is twelve years old and a resident of the District of Columbia. He is a sixth grade student at the Georgetown Day School. Although he is usually home and in bed before 11:00 p.m. on weeknights and midnight on weekends, there are

times when he is out on the public streets or sidewalks, or on public property or in a public place, after those hours. For example, he sometimes plays tennis or goes jogging with his father on the public streets before 6 a.m., and sometimes goes out to pick up the morning newspaper prior to that hour. He also occasionally attends parties with his parents, or with their permission, that last until after 11 p.m. on weeknights or midnight on weekends. These activities are not sponsored by an educational, religious or non-profit organizations, and often are not planned in advance. Plaintiff Jonathan Foer does not wish to have to curtail these activities because of the New Curfew Law.

8. Plaintiff Albert A. Foer is an adult resident of the District of Columbia and is the father of plaintiffs Franklin and Jonathan Foer. From time to time he and his wife allow their children to stay out late at night, or to go out early in the morning, when in their view there is an appropriate reason. He believes it invades his family's privacy and usurps his role as a parent for the government to forbid him and his family from making these decisions for themselves, when their conduct is causing no harm to any person. He believes it violates his rights, as guaranteed by the Constitution, for the government to make criminals of himself, his wife, and his children simply because they exercise parental discretion in customary and reasonable ways. Under the New Curfew Law, plaintiff Albert Foer and his wife will also be violating the law, by "knowingly . . . permit[ting]" their children to be out during curfew hours.

9. Plaintiff Maxwell F. Mirel is a resident of the District of Columbia who became eighteen years old on April 14, 1989. Although

he is no longer a minor and thus no longer directly subject to the New Curfew Law, it is quite likely that a police officer would believe that he still appears to be a minor, and in that case plaintiff would effectively bear the burden of establishing that he was an adult. Accordingly, he would be forced to carry identification showing his photograph and birthdate if he might be out after the curfew hour, and to show that identification to a police officer upon request, on pain of being taken into custody and detained overnight, or until his parents came to get him. Plaintiff Mirel does not always carry such identification and does not wish to be compelled to do so, and does not wish to be compelled to identify himself to every police officer who inquires, on pain of spending the night in detention or having his parents called to come to the police station to pick him up. Many of plaintiff Mirel's friends are still less than 18 years old, and they engage in a variety of educational, political, cultural and social activities together, including activities that occur after 11 p.m. on weekdays and after 11:59 p.m. on weekends, or from which they arrive home after those hours. The New Curfew Law will make it impossible for him to share those activities with his friends.

10. (a). Plaintiffs Lawrence H. Mirel and Elizabeth Post Mirel are adult residents of the District of Columbia and are the parents of plaintiff Maxwell Mirel. They believe that, just as part of educating children about responsible behavior involves setting limits, part of such education also involves showing them that rules are not rigid, and that reasonable exceptions should be made when there is good justification. Accordingly, they allow their children to stay out late from time to time, when in their view there is an appropriate

reason. They wish to remain free to do so, which they will not be if the New Curfew Law is permitted to go into effect.

(b). Plaintiffs Lawrence and Elizabeth Mirel do not wish to be roused out of bed during the night if the police have detained their son, but neither do they wish him to have to spend the night in custody. Nor will they advise him always to carry photographic identification and display it on request to any police officer, for they believe it is an important part of his heritage as an American citizen not to be required to behave as if he were living in a police state.

11. Plaintiff Melissa Miele is 21 years old, and is a student at Hood College in Frederick, Maryland. She works as a volunteer at a non-profit agency in the District of Columbia two days a week, and she sometimes stays in town on weeknights, or comes to the District on weekend evenings, to take advantage of the city's cultural and artistic opportunities. There are times when she does not carry any identification papers, and in that event she might well be detained overnight at a police station just because she looks young. Even if she is carrying identification, she doesn't want to have to show it to every police officer who requests it, even if the officer has no reason to suspect that plaintiff is breaking any law, at the risk of spending the night in custody if she refuses. She believes that she should have the right to tell a police officer to mind his own business if she is not doing anything wrong. If she is detained, she will have to spend the entire night at the police station, since her parents live in California and will not be able to come and pick her up, and there is no other "adult person acting in loco parentis with respect to" her who is available to pick her up.

12. Plaintiff Brock Bunney is a 21-year-old resident of the District of Columbia and is an undergraduate student at The American University. Some of his friends are under 18 years of age, and he enjoys going with them to activities such as musical performances at the 9:30 Club. That club is operated by a for-profit corporation, and thus his 17-year-old friends cannot lawfully remain there past about 11:15 or 11:30 p.m. on a weekend night, which is often when performances are really just getting underway. Plaintiff Bunney will be deprived of the ability to attend such concerts and engage in other activities with the friends of his choice if the New Curfew Law is enforced.

13. Plaintiff Biograph Theatre Corp. is a District of Columbia business corporation that owns and operates the Biograph Theatre, a movie theater located at 2819 M Street, N.W., Washington, D.C. The Biograph is an art film theater, and generally shows films of particular political, cultural, artistic, or historical interest; it is often the only theater in the Washington area where particular films of those kinds can be seen. The Biograph screens most of its films in the evening, and the later showing -- which is often the only showing for the second film of a double feature -- typically ends too late for a patron to return home before 11 p.m. on weeknights or midnight on weekends. The Biograph also has a midnight show on weekends, which features a different film from those shown earlier in the evening. The New Curfew Law will directly affect the operations of the Biograph Theatre, since a significant portion of its patrons are under 18 years of age, and often attend screenings that do not end until after or shortly before the curfew hour, thus

making it impossible for them to arrive home before the curfew takes effect. Many of the Biograph's patrons rely on public transportation or walk to and from the theater, and thus will not be exempted from the curfew by the New Curfew Law's exception for persons travelling in motor vehicles. Because the Biograph Theatre Corp. is a for-profit corporation, it cannot immunize its young patrons from violating the New Curfew Law simply by registering its activities with the Mayor's office. This means that juvenile patrons will be unable lawfully to see certain films of particular political, social, cultural or historical value. It also results in discriminatory treatment of the Biograph compared to non-profit organizations that show films, since, if the very same films were shown at the very same hours by a non-profit corporation -- as a fund-raising activity, for example -- minors could attend the screening, at any hour, and be exempt from the New Curfew Law as they returned home. Indeed, any activity sponsored by a non-profit organization can be registered with the Mayor and thus come within the statutory exception, but no activity sponsored by the Biograph, no matter how worthy, can so register. As a result of these provisions of the New Curfew Law, plaintiff Biograph Theatre Corp. is likely to suffer financial loss. The Biograph Theatre Corp. brings this suit on its own behalf and on behalf of its juvenile patrons, and their young adult friends, who will be adversely affected by the New Curfew Law.

14. Plaintiff J.E. McNeil is an adult resident of the District of Columbia, and is the Treasurer of the Friends' Meeting of Washington, Religious Society of Friends. She has been authorized by the Executive Committee of the Friends' Meeting of Washington to

speaking with respect to the issues involved in this action. In the view of the Executive Committee, enforcement of the New Curfew Law will infringe upon the Friends' ability to practice their religion freely.

The Friends' religious practices include activities in which persons under 18 years of age participate, and which may involve their being outdoors in public places between 11:00 p.m. and 6:00 a.m. on weekdays or between midnight and 6:00 a.m. on Saturday or Sunday mornings. Examples of such activities include meetings for worship, weekend work camps, teen weekends, work with the homeless, peace vigils, peace walks, and committee work. The religious practices of Friends also sometimes involve activities that are not planned or organized much in advance, so that it would be impracticable to register them with the Mayor, even if the group were willing to do so. For example, peace vigils are sometimes organized on the spur of the moment, when particular circumstances make such a vigil timely. Although the New Curfew Law attempts to provide an exemption for minors returning home from activities sponsored by a religious organization, if the activity is registered in advance with the Mayor, the Friends Meeting of Washington cannot, in good conscience, avail itself of this exemption. They believe that a religious community's spiritual activities should not be fettered by the government, particularly where those activities involve no conduct that could remotely be considered to pose any threat to the public health, safety or order. If the New Curfew Law goes into effect and is enforced in a truly effective and non-discriminatory way, both children and their parents in the Society of Friends will violate the law in the course of their religious activities, and would

expect to be arrested and detained, or prosecuted and fined, respectively.

15. (a). Plaintiff Rosalind A. Gnatt is an adult citizen and resident of the District of Columbia. She is married to and resides with plaintiff Michael A. Gnatt, and is the mother of plaintiff Kimberly Owens and Johanna Owens, who are her children by a prior marriage. Plaintiff Rosalind Gnatt's children will be living in with her and her husband in Washington this summer, and plaintiff Kimberly Owens will be living in Washington for the 1989-90 school year, as well. Plaintiff Michael A. Gnatt is the step-father of plaintiff Kimberly Owens and Johanna Owens, but is neither their natural or adoptive parent, nor does he have legal custody of them. He is, therefore, apparently not their "parent" for purposes of the New Curfew Law's exemption for minors who are accompanied by a parent. During the course of the summer, there will be occasions when plaintiff Michael Gnatt and his step-children will want to be out together past the curfew hour without plaintiff Rosalind Gnatt, but that would involve them in criminal behavior. Plaintiffs Rosalind and Michael Gnatt want him to be as much as possible like a real father to the children; the New Curfew Law's refusal to consider him as a parent will interfere with their ability to approach that goal.

(b). From time to time, plaintiff Kimberly Owens and her sister will be out past 11 p.m. or midnight, with their mother's permission, in the care of a responsible adult other than a parent or step-parent. For example, sometimes they will be accompanied by plaintiff Michael Gnatt's parents, who live in the Washington area,

or by the parents of other youngsters their age, when the children are all out together, or by other adult friends of plaintiffs'. On such occasions, both plaintiffs Kimberly Owens and Rosalind Gnatt will be breaking the law. During the summer, plaintiff Kimberly Owens and her sister often visit with their friends in the neighborhood, and will violate the New Curfew Law when they walk home from their friends' homes after 11 p.m. or midnight, even if they are accompanied by their friends' parents.

(c). Plaintiff Kimberly Owens is also frequently asked to babysit for friends and neighbors; these babysitting jobs last until rather late in the evening on some occasions. Under the New Curfew Law, both plaintiff Kimberly Owens and plaintiff Rosalind Gnatt will be engaging in a criminal act if the parents of the children for whom Kimberly baby-sits walk her home at the end of the evening. Since plaintiff Rosalind Gnatt believes that it is important for her children to learn the responsibility of working to help with family expenses, this restriction interferes with her ability to instill that value in her children.

(d). Plaintiff Kimberly Owens brings this action through her mother, plaintiff Rosalind A. Gnatt.

16. Defendant Marion Barry, Jr., is the Mayor of the District of Columbia and is responsible for executing the laws thereof. He has publicly announced that the New Curfew Law will be enforced beginning at 12:01 a.m. on Tuesday, April 25, 1989. Defendant Barry is sued in his official capacity only.

17. Defendant District of Columbia is a municipal corporation created by Congress pursuant to Article I, Section 8 of the

Constitution of the United States. It is the official policy of the District of Columbia to enforce the New Curfew Law against minors present in the District during the hours specified in that law, and against their parents or guardians.

Class Action Allegations

18. Plaintiffs bring this action as a class action on their own behalf and on behalf of all others similarly situated, under the provisions of Rules 23(a) and 23(b)(1) and (2) of the Federal Rules of Civil Procedure.

19. The class represented by plaintiffs consists of (a) all minors in the District of Columbia, (b) all parents of minor children in the District of Columbia, (c) all step-parents, grandparents, uncles, aunts, adult friends and other adults who will be prevented from acting in loco parentis to minors in the District of Columbia during curfew hours, (d) all young adults in the District of Columbia who might appear to a police officer to be minors, (e) all for-profit corporations that will suffer harm because of the discrimination against them in the New Curfew Law, and (e) all persons whose exercise of political, cultural, religious or associational activities will be impaired because of the application of the New Curfew Law to their co-religionists or associational companions. The exact number of class members is not known, but is believed to number several hundred thousand. The class is so numerous that the joinder of individual members is impracticable.

20. There are common questions of law and/or fact in this action that relate to and affect the rights of each member of the

class. The basic issue presented in this action -- the constitutionality of the New Curfew Law -- is common to all class members.

21. The claims of the named plaintiffs are typical of those of the class. Like other members of the class, plaintiffs Waters, Smithson, Dranitzke, Owens, and Franklin and Jonathan Foer engage in a variety of otherwise lawful activities that will cause them to violate the provisions of the New Curfew Law; plaintiffs Albert Foer and Rosalind Gnatt are the parents of minors who engage in otherwise lawful activities that will cause them and their parents to violate the provisions of the New Curfew Law; plaintiffs Maxwell Mirel, Miele and Bunney are young adults who may be mistaken for minors and required to prove their age upon pain of overnight detention, and who will be prevented from engaging in lawful activities with their younger friends; plaintiffs Lawrence and Elizabeth Mirel are parents of a young adult who may be harmed by operation of the New Curfew Law; plaintiff McNeil's religious and associational rights will be impaired by the application of the New Curfew Law to young members of her religious society; plaintiff Michael Gnatt is a responsible adult who will be prevented from acting as a parent to his step-children; and plaintiff Biograph Theatre Corp. is a for-profit corporation that will be harmed because of the New Curfew Law's irrational discrimination between for-profit and non-profit organizations.

22. The named plaintiffs are able to and will fairly and adequately represent and protect the interests of the class. Plaintiffs' attorneys are experienced in litigating constitutional claims

such as those made herein, and are cognizant of their responsibilities to the entire class.

23. This action is appropriately maintained as a class action because the prosecution of separate actions by individual members of the class would create a risk of inconsistent or varying adjudications that would establish incompatible standards of conduct for defendants' agent, the Metropolitan Police Department, and because adjudications with respect to individual class members would as a practical matter be dispositive of the claims of other class members not parties to the adjudications or would substantially impair or impede their ability to protect their interests.

24. This action is also appropriately maintained as a class action because the defendants have announced their intention to act on grounds generally applicable to the class, thereby making appropriate preliminary and permanent injunctive relief and corresponding declaratory relief with respect to the class as a whole.

Facts

25. The District of Columbia Self-Government and Governmental Reorganization Act of 1973 (Pub. L. 93-198, 87 Stat. 774), commonly known as the "Home Rule Charter," sets out the law-making powers of the Mayor and Council of the District of Columbia. In ordinary circumstances, in order to create a law, a bill must (i) be introduced in the Council, (ii) be referred to a committee, (iii) be reported by the committee, (iv) pass at First Reading in the Council, (v) pass at Second Reading in the Council, not less than two weeks later, (vi) be signed or not acted upon by the Mayor; or passed by a

two-thirds majority of the Council over his veto, (vii) not be disapproved by Congress and the President during a period of thirty legislative days (sixty legislative days for criminal laws). However, the Charter provides that the Council may by a two-thirds vote (and without the participation of the Mayor) declare the existence of an emergency and may then (by a simple majority) enact emergency legislation in a single reading. Such legislation becomes effective immediately upon signature or acquiescence by the Mayor or override of his veto, and is not subject to congressional review. Emergency legislation expires after 90 days unless it has been succeeded by "temporary" legislation (which is good for 180 days) or by regular legislation.

26. On April 4, 1989, without prior public notice or hearing, the District of Columbia Council adopted Resolution 8-30, the "Temporary Curfew Emergency Act of 1989 Emergency Declaration Resolution of 1989." That resolution "determine[d]" that there were "emergency circumstances making it necessary that the Temporary Curfew Emergency Act of 1989 be adopted after a single reading." A true copy of this resolution is attached hereto as Exhibit A.

27. Thereafter, on the same day, and also without prior public notice or hearing, the Council enacted Bill 8-235, the "Temporary Curfew Emergency Act of 1989" (the "New Curfew Law"). Mayor Marion Barry, Jr., signed that bill on Monday, April 17, 1989, and it thereupon become effective as provided by § 8 thereof and pursuant to D.C. Code § 1-227(e). A true copy of the New Curfew Law is attached hereto as Exhibit B.

28. Defendant Barry has announced that the New Curfew Law will be enforced beginning at 12:01 a.m. on Tuesday, April 25, 1989.

29. Under the New Curfew Law, persons under 18 years of age may not lawfully "remain in or upon any street, sidewalk, park, or other outdoor public place" within the District of Columbia after 11:00 p.m. on Sunday through Thursday nights, or after 11:59 p.m. on Friday and Saturday nights. Such activity is unlawful even if the minor has his or her parents' permission to "remain" in such places. Indeed, it is unlawful for a minor to be on the streets or sidewalks or in an outdoor public place after the specified hours even if the minor is accompanied by a responsible adult.

30. The New Curfew Law provides for five exceptions:

- (a). when a minor is accompanied by a parent;
- (b). when a minor is "returning home by way of a direct route from an activity that is sponsored by an educational, religious, or non-profit organization within 60 minutes of the termination of the activity, if the activity has been registered with the Mayor in advance";
- (c). when a minor is travelling in a motor vehicle;
- (d). when a minor is acting within the scope of employment requiring a work permit or theatrical permit and has the permit or an employer's affidavit in his or her possession; and
- (e). when a minor is on an emergency errand, and (i) is a custodial parent and the errand is "directly related to the health or safety of" the child, or (ii) the errand is "directly related to the health or safety of [a] parent or family member" and the minor is

carrying a written statement signed by a parent describing the emergency, "if practicable."

31. A police officer who determines, based on the available information, that a person is violating the New Curfew Law, must take the person into custody and transport him or her to the nearest police station. The minor is to be held there or in the custody of the Family Services Administration until 6 a.m., unless sooner picked up by a parent or other adult acting in loco parentis.

32. Under the New Curfew Law, it is also an offense on the part of a parent "knowingly to permit or, by negligent failure to exercise reasonable control, allow his or her minor child" to violate the curfew. Such offenses are punishable by fines of up to \$100 for a second offense and \$300 for any subsequent offenses.

33. By reason of the New Curfew Law, plaintiffs Waters, Smithson, Dranitzke, Owens, Franklin Foer and Jonathan Foer, and the class members they represent, will be unable to continue their otherwise lawful activities, as described above, even if they have the explicit permission of their parents to do so.

34. By reason of the New Curfew Law, plaintiffs Albert Foer and Rosalind Gnatt, and the class members they represent, will be unable to exercise their parental judgment as to the appropriate activities of their minor children, as described above.

35. By reason of the New Curfew Law, plaintiffs Miele, Maxwell Mirel and Bunney, and the class members they represent, will be forced to carry with them during curfew hours sufficient identification to satisfy a police officer that they are not minors, and will be forced to display that identification to any police officer upon

"request," or face a night in custody. They also will be deprived of the ability to engage in protected activities with their minor friends and relatives.

36. By reason of the New Curfew Law, plaintiffs Lawrence and Elizabeth Mirel, and the class members they represent, may suffer injury because of the application of the New Curfew Law to their young adult children.

37. By reason of the New Curfew Law, plaintiff Michael Gnatt and the class members he represents will be impaired in their ability to form and maintain close attachments with, and to act as parents or responsible adult caretakers to, their step-children, grandchildren, nieces, nephews, and other young people whose parents wish to have them act in such roles.

38. By reason of the New Curfew Law, plaintiffs Owens and Waters and the class members they represent will be impaired in their ability to form and maintain close attachments with, and participate in otherwise lawful activities with, responsible adults other than their parents. Plaintiff Owens and the class members she represents will also be deprived of the ability to contribute to the family income by engaging in lawful casual work for which no work permit is required.

39. By reason of the New Curfew Law, plaintiff McNeil and other members of the Society of Friends and other religious groups will be unable to exercise freely their religious and associational rights.

40. By reason of the New Curfew Law, plaintiff Biograph Theatre Corp. and the class members it represents will be damaged

by the irrational distinction made by the New Curfew Law between non-profit and for-profit organizations.

41. Unless enforcement of the New Curfew Law is enjoined by this Court, some or all of the plaintiffs, and many members of the class they represent, will suffer irreparable injury. Plaintiffs have no adequate remedy at law.

42. Neither defendants nor any third parties will suffer any injury if injunctive relief is issued.

43. The public interest favors the issuance of relief to protect the constitutional rights at stake in this case.

Claims for Relief

44. By making it unlawful for minors to engage in otherwise lawful activities between the hours of 11:00 p.m. or 11:59 p.m. and 6:00 a.m., the New Curfew Law violates the Freedom of Speech Clause and the freedom of association component of the First Amendment to the Constitution of the United States.

45. By making it unlawful for minors to participate in the activities of religious organizations during curfew hours unless such activities are registered in advance with the Mayor, the New Curfew Law violates the Free Exercise Clause of the First Amendment to the Constitution of the United States.

46. By making it unlawful for minors to participate in a variety of constitutionally protected activities unless those activities have been registered in advance with the Mayor, the New Curfew Law violates the First Amendment to the Constitution of the United States.

47. By forcing young adults to carry adequate identification and display it to police officers on request, the New Curfew Law violates the First and Fourth Amendments to the Constitution of the United States.

48. By making it unlawful for minors -- with the consent of their parents -- to engage in a wide range of ordinary, lawful conduct that in no way harms any other person, the New Curfew Law violates the Due Process Clause of the Fifth Amendment to the Constitution of the United States.

49. By making it unlawful for a parent or guardian to exercise parental discretion and control of their children in ordinary and reasonable ways, the New Curfew Law violates the Due Process Clause of the Fifth Amendment to the Constitution of the United States.

50. By failing to specify with reasonable clarity and precision what conduct it prohibits, the New Curfew Law is unconstitutionally vague, in violation of the Due Process Clause of the Fifth Amendment to the Constitution of the United States.

51. By preventing step-parents and step-children from acting as parents and children to each other, and by preventing other relatives and responsible adults from acting in loco parentis towards children whose parents wish them so to act, the New Curfew Law violates the rights to familial privacy and intimate association protected by the First and Fifth Amendments to the Constitution of the United States.

52. By discriminating irrationally between persons under 18 years of age and persons over that age, the New Curfew Law violates

the equal protection component of the Fifth Amendment to the Constitution of the United States.

53. By discriminating irrationally between young citizens who have the use of a motor vehicle and those who do not, the New Curfew Law violates the equal protection component of the Fifth Amendment to the Constitution of the United States.

54. By discriminating irrationally between activities sponsored by for-profit and not-for-profit organizations, the New Curfew Law violates the equal protection component of the Fifth Amendment to the Constitution of the United States.

55. By discriminating irrationally between work for which a work permit or theatrical permit is required by law and work for which no such permit is required, the New Curfew Law violates the Due Process Clause and the equal protection component of the Fifth Amendment to the Constitution of the United States.

56. By criminalizing a broad range of wholly harmless private conduct, the New Curfew Law exceeds the lawful scope of the police power that may be exercised by the District of Columbia Council.

WHEREFORE, plaintiffs request that this Court:

A. Enter judgment declaring that the District of Columbia "Temporary Curfew Emergency Act of 1989" violates the First, Fourth and Fifth Amendments to the Constitution of the United States and exceeds the police powers of the District of Columbia Council, and may not lawfully be enforced;

B. Issue preliminary and permanent injunctions prohibiting the defendants, their agents, servants, and employees, and all

persons acting under their direction or in concert with them, from enforcing the District of Columbia "Temporary Curfew Emergency Act of 1989";

C. Award to plaintiffs their costs and reasonable attorneys' fees in this action; and

D. Grant plaintiffs such other and further relief as the Court may deem just and proper.

Respectfully submitted,



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April 19, 1989

A RESOLUTION

A-32

IN THE DISTRICT OF COLUMBIA

April 2, 1983

To declare the existence of an emergency due to the high incidence of persons under 18 years old who are either victims or perpetrators of crime in the District of Columbia.

Resolved, by the Council of the District of Columbia, that this resolution may be cited as the "Emergency Declaration Act of 1983" and that it be effective as of the date of its passage.

Exhibits

Sec. 2. (a) Narcotic trafficking and violent crime associated with narcotics trafficking adversely affect the quality of residential and commercial life in the District of Columbia ("District").

(b) The health, safety, and welfare of persons under 18 years old ("minors") who live in the District are threatened by narcotic trafficking and violent crimes associated with narcotic trafficking in the District.

(c) There has been a dramatic increase in the number of arrests of minors in the District on charges that relate to the possession or distribution of illegal drugs, the illegal possession of weapons, and the unauthorized use of motor vehicles. For example:

(1) In 1982, 1,913 minors were arrested for narcotic offenses. Source: Youth Division, Metropolitan Police Force, Juvenile Arrest Breakdown.

(2) In 1982, 1,384 minors were arrested for narcotic offenses compared to 417 in 1981. Source: Bulletin of the Statistical Index to District of Columbia Services Volume 4, Published July 1982 by the Office of Policy, page 25-1 (Index).

(3) Minors arrested for unauthorized use of motor vehicles increased from 219 in 1981 to 1,132 in 1982. Source: Index, page 29.

(4) Minors detained or convicted for violations of the law by the court become the responsibility of the

A RESOLUTION

8-30

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

April 4, 1989

To declare the existence of an emergency due to the high incidence of persons under 18 years old who are either victims or perpetrators of crime in the District of Columbia.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Temporary Curfew Emergency Act of 1989 Emergency Declaration Resolution of 1989".

Sec. 2. (a) Narcotic trafficking and violent crime associated with narcotic trafficking adversely affect the quality of residential and commercial life in the District of Columbia ("District").

(b) The health, safety, and welfare of persons under 18 years old ("minors") who live in the District are jeopardized by narcotic trafficking and violent crimes associated with narcotic trafficking in the District.

(c) There has been a dramatic increase in the number of arrests of minors in the District on charges that relate to the possession or distribution of illegal drugs, the illegal possession of weapons, and the unauthorized use of motor vehicles. For example:

(1) In 1988, 1,913 minors were arrested for narcotic offenses. Source: Youth Division, Metropolitan Police force, Juvenile Arrest Breakdown.

(2) In 1987, 1,894 minors were arrested for narcotic offenses compared to 439 in 1983. Source: Indices - A Statistical Index to District of Columbia Services Volume V, Published July 1988 by the Office of Policy, page 255 ("Indices").

(3) Minors arrested for unauthorized use of motor vehicles increased from 419 in 1983 to 1,133 in 1987. Source: Indices, page 260.

(4) Minors detained or committed for violations of the law by the court become the responsibility of the

Youth Services Administration in the Department of Human Services. The number of minors detained in FY 1987 was 14% higher than 1986 and 42% higher than 1983. The number of minors committed in FY 1987 was 14% higher than 1986 and 29% higher than 1983. Source: Indices, at page 261.

(5) In FY 1987, 4,615 juvenile cases were referred by the Metropolitan Police force to the Office of the Corporation Counsel for prosecution, an increase of 19% over the 1983 level. Source: Indices, at page 260.

(d) The number of minors who have been the victims of violent crime in the District, including homicide, has increased significantly. For example:

(1) In the first quarter of 1989 alone, 7 minors were victims of criminal homicides. Source: Inspector, Planning and Development Division, Office of Criminal Justice Plans and Analysis ("OCJPA").

(2) The seven victims in the first quarter of 1989 almost equal the total number of minors murdered in all of 1985 when 8 minors were victims of criminal homicide. Source: "Homicide in the District of Columbia", published December 1988, by the Statistical Analysis Center, Office of Criminal Justice Plans and Analysis, ("Homicide Analysis"), page 8.

(3) Twenty-six minors were victims of criminal homicide in 1988, more than double the number killed in 1985. Nine, or 34%, were killed during the proposed curfew hours. Source: OCJPA.

(4) Between 1985 and June 1988, 57% of criminal homicides occurred between the hours of 9:00 p.m. and 6:00 a.m. Source: Homicide Analysis.

(5) These findings are consistent with a disturbing report published by researchers at Johns Hopkins University, which determined that homicide was the leading cause of injury death for District children. Source: "Childhood Injury Death: National Analysis and Geographic Variations", March 1989, Johns Hopkins University Injury Prevention Center.

(e) Minors commit violent crimes and are the victims of violent crimes during late-night hours. For example:

(1) In the first quarter of 1989, 8 minors have been arrested for criminal homicide. If arrests continue at that rate, 32 minors may be arrested by the end of the year. This compares to 26 arrests for 1988. Source: OCJPA.

(2) The Youth Division of the Metropolitan Police force reported the following juvenile arrest analysis for calendar years 1987 and 1988:

Enrolled Original

Part One Offenses	1987	1988
Homicide	9	26
Rape	14	11
Robbery	220	179
Assault with deadly weapon	319	294
Burglary	197	122
Theft	333	236
Stolen Auto	1133	1414
Arson	4	6
Subtotal	2,229	2,288
Part Two Offenses		
Drugs	1,894	1,913
Excluding Drugs (fugitives, weapons, etc.)	2,025	2,416
Subtotal	3,919	4,329 (+10%)
Totals	6,148	6,617 (+7.62%)

(3) In 1988, 283 minors were victims of violent crimes other than homicide. Source: OCJPA.

(4) According to the Director of Public Affairs at Greater Southeast Community Hospital, in 1987, 188 minors were treated for serious injuries and released. In 1988, 843 minors were treated.

(5) According to the Public Affairs Office at Children's Hospital, 17 minors were admitted in the first quarter of 1989.

(f) Parents of minors are assisted in carrying out their responsibilities for the late-night activities of minors by a curfew imposed by law.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Temporary Curfew Emergency Act of 1989 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

AN ACT

Codification,
District of Columbia Code
(1989 Supp.)

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To impose, on an emergency basis, a curfew on minors in the District of Columbia.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Temporary Curfew Emergency Act of 1989".

Note,
Section 1-229

Sec. 2. Definitions.

(a) "Parent" means a natural or adoptive parent or any person who has legal custody by court order or by marriage.

(b) "Minor" means any person under the age of 18 years, but does not include a judicially emancipated minor.

(c) "Narcotic trafficking" means the act of engaging in any prohibited activity related to narcotic drugs or controlled substances as defined in the District of Columbia Uniform Controlled Substances Act of 1981, effective August 5, 1981 (D.C. Law 4-29; D.C. Code, sec. 33-501 et seq.).

Sec. 3. Purpose.

(a) The purpose of this act is to protect the welfare of minors by:

(1) Reducing the likelihood that minors will be the victims of criminal acts during the curfew hours;

(2) Reducing the likelihood that minors will become involved in criminal acts or exposed to drug trafficking during the curfew hours; and

(3) Aiding parents in carrying out their responsibility to exercise reasonable supervision of the minors entrusted to their care.

Sec. 4. Curfew; authority and enforcement.

(a) The Council of the District of Columbia ("Council") imposes a curfew on minors in the District of Columbia ("District") between the hours of 11:00 p.m. and 6:00 a.m. each day, except that on Friday and Saturday

venings the curfew shall commence at 11:59 p.m. ("curfew hours").

(b) It shall be unlawful for a parent knowingly to permit or, by negligent failure to exercise reasonable control, allow his or her minor child to remain on any street, sidewalk, park, or other outdoor public place within the District during the curfew hours.

(c) It shall be unlawful for any minor to remain in or upon any street, sidewalk, park, or other outdoor public place in the District during the curfew hours.

(d) This section shall not apply:

(1) When a minor is accompanied by a parent;

(2) When a minor is returning home by way of a direct route from an activity that is sponsored by an educational, religious, or non-profit organization within 60 minutes of the termination of the activity, if the activity has been registered with the Mayor in advance;

(3) When a minor is traveling in a motor vehicle;

(4) When a minor is acting within the scope of legitimate employment pursuant to An Act To regulate the employment of minors within the District of Columbia, approved May 29, 1928 (45 Stat. 998; D.C. Code, sec. 36-501 et seq.), and the minor has in his or her possession a copy of a valid work or theatrical permit or an affidavit from the employer; or

(5) When, due to reasonable necessity:

(A) A minor who is a custodial parent is engaged in an emergency errand that is directly related to the health or safety of his or her child and the minor describes the nature of the health or safety emergency; or

(B) A minor is engaged in an emergency errand and the minor has in his or her possession, if practicable, a written statement signed by the parent, which states that the errand is directly related to the health or safety of the parent or family member and that describes the nature of the errand and the health or safety emergency.

(e) If a police officer determines, based on all the information reasonably available, including any information offered by the person, that the person is under the age of 18 years, remains in or upon a street, park, or other outdoor public place in the District during the curfew hours, and none of the exceptions set forth in section 4 applies, the police officer shall take the person to the nearest available Police District headquarters. The police officer shall not handcuff the person when taking him or her to the nearest Police District headquarters as a result of a violation of this act.

(f) A minor who violates this act shall be detained by the Metropolitan Police force at the nearest available Police District headquarters and released into the custody

of the minor's parent. The minor's parent or an adult person acting in loco parentis with respect to the minor shall be called to the Police District headquarters to take custody of the minor. A minor who is released to a person acting in loco parentis with respect to the minor shall not be taken into custody for violation of this act while returning home with the person acting in loco parentis. If no one claims responsibility for the minor, the minor shall be detained at the nearest available police district headquarters in a room that is not a cell or placed in the custody of the appropriate official of the Family Services Administration of the Department of Human Services and released at 6:00 a.m. that morning.

(g) A parent who violates this act shall be subject to a fine of not more than \$100 for the second offense or \$300 for any subsequent offense. No person shall be fined for the first violation of this act.

Sec. 5. Review Process.

(a) Five days, excluding Saturdays, Sundays, holidays and days of Council recess, prior to the expiration of this act, the Mayor shall report to the Council on the curfew's effectiveness and shall recommend that the curfew for minors either be continued or discontinued.

(b) Criteria by which effectiveness shall be measured include monthly statistics, by ward and police precinct, on:

- (1) The number of minors detained and the number of persons fined as a result of a violation of this act;
- (2) The number of criminal homicides and other narcotic trafficking related crimes of violence committed during the time that this act is in effect, by age and time of day; and
- (3) The number of minors injured during the curfew hours as a result of crime and the cause of each injury.

Sec. 6. Records sealed.

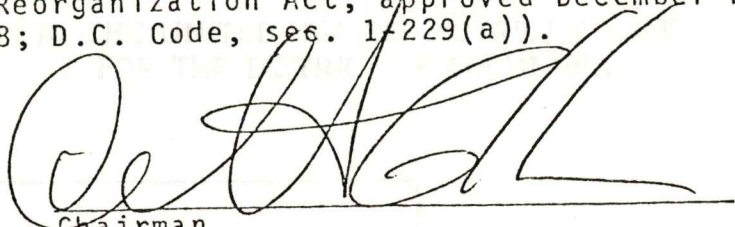
Any law enforcement records or files of a minor attendant to a violation of this act shall be sealed by the Metropolitan Police force when the minor reaches the age of majority.

Sec. 7. Repeal.

The Short Term Curfew Emergency Act of 1989, effective March 15, 1989 (D.C. Act 8-5; to be codified at D.C. Code, sec. 6-1509 et seq.), is repealed.

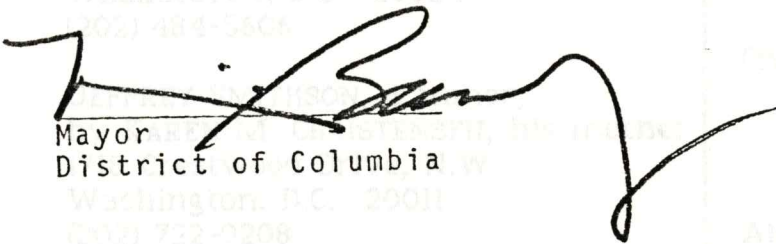
Sec. 8. This act shall take effect upon its enactment (approval by the Mayor, or in the event of veto by the

Mayor, override of the veto by the Council) and shall remain in effect for no longer than 90 days, as provided for emergency acts of the Council of the District of Columbia in section 412(a) of the District of Columbia Self-Government and Governmental Reorganization Act, approved December 24, 1973 (87 Stat. 788; D.C. Code, sec. 1-229(a)).



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Council of the District of Columbia

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Mayor
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