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DIVIDED FEDERAL COURT UPHOLDS D.C. JUVENILE CURFEW LAW

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In the case of *Hutchins v. District of Columbia*, No. 96-7239 (D.C. Cir. 1999), the United States Court of Appeals for the District of Columbia had to determine whether the District's Juvenile Curfew violated the constitutional rights of minors and their parents. Despite sharp differences of opinion among the judges, as described in the following paragraphs, a majority on the federal circuit court held that the curfew ordinance was constitutional. The facts of the case were as follows:

> The District of Columbia Council, determining that juvenile crime and victimization in the District was a serious problem-and growing worse-unanimously adopted the Juvenile Curfew Act of 1995, which bars juveniles 16 and under from being in a public place unaccompanied by a parent or without equivalent adult supervision from 11:00 p.m. on Sunday through Thursday to 6:00 a.m. on the following day and from midnight to 6:00 a.m. on Saturday and Sunday, subject to certain enumerated defenses. See D.C. Code Ann.§§ 6-2182, 6-2183 (1996).
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> The curfew provides that a minor (defined as "any person under the age of 17 years," but not "a judicially emancipated minor or a married minor") cannot remain in a public place or on the premises of any establishment within the District of Columbia during curfew hours.
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> A parent or guardian commits an offense by knowingly permitting, or through insufficient control allowing, the minor to violate the curfew. Owners, operators, or employees of public establishments also violate the curfew by knowingly allowing the minor to remain on the premises, unless the minor has refused to leave and the owner or operator has so notified the police.
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> The curfew contains eight "defenses": it is not violated if the minor is
> (1) accompanied by the minor's parent or guardian or any other person 21 years or older authorized by a parent to be a caretaker for the minor;
> (2) on an errand at the direction of the minor's parent, guardian, or caretaker, without any detour or stop;
> (3) in a vehicle involved in interstate travel;
> (4) engaged in certain employment activity, or going to or from employment, without any detour or stop;
> (5) involved in an emergency;
> (6) on the sidewalk that abuts the minor's or the next-door neighbor's residence, if the

> neighbor has not complained to the police;
> (7) in attendance at an official school, religious, or other recreational activity sponsored by the District of Columbia, a civic organization, or another similar entity that takes responsibility for the minor, or going to or from, without any detour or stop, such an activity supervised by adults; or
> (8) exercising First Amendment rights, including free exercise of religion, freedom of speech, and the right of assembly.
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> If, after questioning an apparent offender to determine his age and reason for being in a public place, a police officer reasonably believes that an offense has occurred under the curfew law and that no defense exists, the minor will be detained by the police and then released into the custody of the minor's parent, guardian, or an adult acting *in loco parentis* [i.e., in place of the parent]. If no one claims responsibility for the minor, the minor may be taken either to his residence or placed into the custody of the Family Services Administration until 6:00 a.m. the following morning.
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> Minors found in violation of the curfew may be ordered to perform up to 25 hours of community service for each violation, while parents violating the curfew may be fined up to $500 or required to perform community service, and may be required to attend parenting classes.

A group of minors and their parents claimed the curfew was unconstitutional. The federal district court agreed and issued an injunction prohibiting the District of Columbia from enforceing the curfew. In so doing, the federal district court concluded that "it is a well-settled legal principle that the right to free movement is a fundamental right generally," and although the "[s]tate has a great interest in regulating the activities of, and providing protection for, minors," this "interest does not automatically dilute the constitutional rights of minors." The District of Columbia appealed.

FREEDOM TO WANDER STREETS AT NIGHT?

As noted by the appeals court, the parents had claimed a fundamental right under the Constituion “to direct and control their children's upbringing and that such a right is abridged by the curfew.” As “part and parcel” of their children’s “upbringing,” the parents asserted a constitutional right to determine “[w]hether children under the age of 17 are to be free to be abroad at night.” The appeals court disagreed.

> [I]nsofar as a parent can be thought to have a fundamental right, as against the state, in the upbringing of his or her children, that right is focused on the parents' control of the home and the parents' interest in controlling, if he or she wishes, the formal education of

> children. It does not extend to a parent's right to unilaterally determine when and if children will be on the streets-certainly at night. That is not among the "intimate family decisions" encompassed by such a right.

The appeals court then considered whether the minors themselves had a constitutional right "to freely wander the streets-even at night." In so doing, the appeals court acknowledged that children's constitutional rights "are not coextensive with those of adults."

> [A]lthough children generally are protected by the same constitutional guarantees as are adults, the State is entitled to adjust its legal system to account for children's vulnerability by exercising broader authority over their activities.

In particular, the appeals court found "juveniles do not have a fundamental right to be on the streets at night without adult supervision."

> The Supreme Court has already rejected the idea that juveniles have a right to "come and go at will" because "juveniles, unlike adults, are always in some form of custody," and we see no reason why the asserted right here would fare any better. That the rights of juveniles are not necessarily coextensive with those of adults is undisputed, and "unemancipated minors lack some of the most fundamental rights of self-determination-including even the right of liberty in its narrow sense, i.e., the right to come and go at will."...
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> Not only is it anomalous to say that juveniles have a right to be unsupervised when they are always in some form of custody, but the recognition of such a right would fly in the face of the state's well-established powers... in preserving and promoting the welfare of children. The state's authority over children's activities is unquestionably broader than that over like actions of adults. And it would be inconsistent to find a fundamental right here, when the Court has concluded that the state may intrude upon the "freedom" of juveniles in a variety of similar circumstances without implicating fundamental rights

As a result, the appeals court found no basis to support "the existence of a fundamental right for juveniles to be in a public place without adult supervision during curfew hours."

> [A] lesser degree of scrutiny is appropriate when evaluating restrictions on minors' activities where their unique vulnerability, immaturity, and need for parental guidance warrant increased state oversight.
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> Not only can juveniles be thought to be more vulnerable to harm during curfew hours

> than adults, but they are less able to make mature decisions in the face of peer pressure, and are more in need of parental supervision during curfew hours.

IMPORTANT GOVERNMENT INTEREST?

On the other hand, the court acknowledged that the curfew must be "substantially related" to the achievement of "important" government interests to withstand a constitutional challenge. In this particular instance, the appeals court noted that the "asserted government interest here" was "to protect the welfare of minors by reducing the likelihood that minors will perpetrate or become victims of crime and by promoting parental responsibility." Based upon the following "picture of juvenile crime and victimization," the appeals court agreed with the District's contention that "protecting the welfare of minors by reducing juvenile crime and victimization is an important government interest."

> The District presented reams of evidence depicting the devastating impact of juvenile crime and victimization in the District-the juvenile violent crime arrest rate for juveniles ages 10 to 17 was higher than that in any state and was more than three times the national average...[T]he District had the highest violent death rate for teens ages 15 to 19, which was four times the national average, and the District was ranked dead last, almost three times worse than the worst state, in children's overall well-being. This was the abysmal situation confronting the District when it voted to adopt the curfew law. Statistics showed the situation worsening.

Having found an important government interest, the appeals court then considered whether the curfew was "substantially related" to the achievement of that interest.

SUBSTANTIAL RELATIONSHIP?

As noted by the appeals court, plaintiffs had argued that the District's juvenile arrest statistics were "flawed because they included 17 year olds not covered by the curfew." According to the appeals court, these statistics were "the most fundamental factual premise for the need for a curfew."

The issue before the appeals court was, therefore, whether "whether it was impermissible for the [D.C. City] Council to rely on arrest statistics that included 17 year olds and victimization statistics that covered 15 to 19 year olds." Plaintiffs maintained that "including 17 year olds' arrests will necessarily overstate the magnitude of juvenile crime-at least as the District has defined juveniles." The appeals court, however, noted data from the District "showing that arrests for youths under 17 have been increasing steadily." Furthermore, the appeals court stated that "the District is not obliged to prove a precise fit between the nature of the problem and the legislative remedy." Rather, the court found the required "substantial relation" to an important governmental interest in the District's decision not to

include 17 year olds in the curfew.

> The District can hardly be faulted for determining not to include 17 year olds in the curfew; obviously that would be more intrusive and create more of an enforcement problem. And even if minors under 17 are less likely to commit crimes than 17 year olds, common sense tells us that younger children will surely be more vulnerable.

The federal appeals court also rejected plaintiff's claim that "the District's data is flawed because it failed to establish that the District had a problem with juvenile crime and victimization during curfew hours." In so doing, the court found it was "sufficient to demonstrate a 'fit' between the curfew ordinance and the compelling state interest."

> The material presented to the Council on this point consisted of a chart prepared by the Metropolitan Police Department which showed that most juvenile arrests took place during curfew hours... The bottom line is that the District's statistics indicate that more than 50% of juvenile arrests took place during curfew hours... That serious crimes such as murder, rape, and aggravated assault, committed by groups of all ages, were more likely to occur during curfew hours was sufficient to demonstrate a "fit" between the curfew ordinance and the compelling state interest.
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> Similarly, that the District did not produce data showing where juvenile crime and victimization occurred (i.e., that it occurred primarily outside of the home) is not problematic. That a substantial percentage of violent juvenile victimizations (approximately 33%) occurred on the streets adequately supports the relationship between the government's interest and the imposition of the curfew.

Plaintiffs had also argued that "the District was obliged to confine the curfew to high-crime areas of the city." The appeals court strongly disagreed, noting that this approach "would have opened the Council to charges of racial discrimination."

Plaintiffs had also claimed that "the District was not entitled to rely on curfew experiences in other cities." The federal appeals court characterized this argument as "particularly weak."

> Of course no city is exactly comparable to any other, but it would be folly for any city not to look at experiences of other cities. And in drawing conclusions from those experiences, legislatures are not obliged to insist on scientific methodology... [T]he judgment about the potential efficacy of a curfew is a political debate, not a judicial one.
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> In any event, the District had its own indications that the curfew was effective in the

> District of Columbia-the Deputy Chief of the Metropolitan Police Department testified before the D.C. Council that in its first three months the curfew had resulted in fewer juveniles on the streets during curfew hours, and thus a "reduction of the number of juvenile late night arrests," noting a 34% decrease in arrests of juveniles under 17 years old.

In so doing, the appeals court rejected plaintiffs claim that testimony from the police department was irrelevant because "the District did not demonstrate that this drop in juvenile arrests was attributable to the curfew as opposed to some other factor." In the opinion of the court, plaintiff's claim would require "an absurd preciseness in legislative decisionmaking which would make it virtually impossible for any city to adopt any curfew."

DEFENSES ENHANCE PARENTAL AUTHORITY

The appeals court further found that the eight defenses to the curfew "strengthen[ed] the relationship between the curfew and its goal of reducing juvenile crime and victimization by narrowing the scope of the curfew."

> To be sure, the defenses, to the extent they provide for juveniles to be out during curfew hours, will not by themselves necessarily result in reduced juvenile victimization. But the substantial relationship test does not demand that every aspect of the curfew law advance the asserted government interests equally. That is, the defenses... help ensure that the ordinance does not sweep all of a minor's activities into its ambit but instead focuses on those nocturnal activities most likely to result in crime or victimization.

In so doing, the court found that the curfew was constitutional because "it is carefully fashioned much more to enhance parental authority than to challenge it."

> If the parents' interests were in conflict with the state's interests, we would be faced with a more difficult balancing of sharply competing claims. The curfew's defenses allow the parents almost total discretion over their children's activities during curfew hours. There are no restrictions whatsoever on a juvenile's activities if the juvenile is accompanied by a parent, guardian, or an adult over the age of 21 authorized by the parent to supervise the juvenile. See D.C. Code §6-2183(b)(1)(A); id. at §6-2182(8). Parents can allow their children to run errands, which gives the parents great flexibility in exercising their authority.

Moreover, the appeals court rejected plaintiff's claim that "the curfew would preclude parents from allowing their children to walk the dog or go to the store."

> Juveniles may attend any "official school, religious, or other recreational activity sponsored by the District of Columbia, a civic organization, or another similar entity that takes responsibility for the minor" as well as to travel to and from such activities. §6-2183(b)(1)(G). Although the extent to which this "civic organization" defense would cover events at the Kennedy Center, lectures at the Smithsonian, church group activities, athletic events, early morning sports practice, high school band practice, and the like, can wait for the test of concrete cases raising those questions, the defense certainly gives parents a good deal of discretion over their children's activities.
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> Together with the defenses provided for employment and emergencies, §6-2183(b)(1)(D)-(E), parents retain ample authority to exercise parental control.
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> Since the curfew generously accommodates parental rights, preserving parental discretion to direct the upbringing of their children, it does not unconstitutionally infringe on such rights. We think under applicable precedent the curfew facilitates rather than usurps parental authority.

Finally, the appeals court considered plaintiffs' argument that the curfew was unconstitutional because several of the curfew's defenses were "woefully vague and undefined." As noted by the appeals court, the curfew would be "sufficiently definite" to withstand this constitutional challenge "so long as a person of ordinary intelligence would have a reasonable opportunity to know what is prohibited." In so doing, the court agreed with the District's contention that "the Constitution does not require unattainable feats of statutory clarity."

UNCONSTITUTIONALLY VAGUE?

On appeal, the parents had claimed that the First Amendment defense in the curfew was impermissibly vague because 'juveniles would need to be 'constitutional scholars' to know what activities were forbidden." Moreover, the parents claimed that "police officers untrained in the intricacies of the First Amendment will, in their unguided discretion, enforce the curfew unconstitutionally." The appeals court rejected this argument.

> [The First Amendment] defense simply ensures that the curfew will not be applied to protected expression; it is no more vague than the First Amendment itself... [I]t is perfectly clear that some activities, such as religious worship and political protests, would be protected under the defense, and that other activities, such as rollerblading, would not. That there may be marginal cases between these two poles can be addressed as they arise, but such cases do not render the provision void for

> vagueness....
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> In any event, the curfew does not itself regulate or proscribe expression, and thus would only be subject to scrutiny under the First Amendment if it regulated "conduct that has an expressive element," or if it "imposed a disproportionate burden upon those engaged in protected First Amendment activity."
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> The curfew regulates the activity of juveniles during nighttime hours; it does not, by its terms, regulate expressive conduct... [T]o be expressive, conduct must intend to convey a particular message, and the likelihood of that message being understood by others must be great.
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> Nor can the curfew, on its face, be said to burden disproportionately those engaged in expressive conduct-the curfew covers all activities and provides a specific defense for juveniles engaged in First Amendment activities.

As a result, the federal appeals court concluded that that “the curfew law is constitutional.” The appeals court, therefore, reversed the federal district court's judgment in favor of the parents and minors and ordered the the district court to enter judgment in favor of the District of Columbia.