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COMMENT

IS IT TOO LATE FOR JUVENILE CURFEWS?
QUTB LOGIC AND THE CONSTITUTION

I. INTRODUCTION

Juvenile crime has risen dramatically in recent times. As a result, local governments have again turned to juvenile curfews to fight the infestation of drugs and violent crime. Although curfews have been struck down as unconstitutional, the Fifth Circuit has recently ruled that a narrowly tailored curfew for Dallas, Texas survived constitutional scrutiny. Consequently, many cities have begun implementing juvenile curfews mirroring the Dallas ordinance. These cities, however, should tread carefully before adopting wholesale the Dallas curfew. As this Comment demonstrates, the Fifth Circuit’s rationale contains some problems, and therefore, the constitutionality of such curfews may still be in question.

Part II of this Comment briefly traces the use of curfews through history from feudal times to the present. Part III reviews the jurisprudence surrounding the constitutionality of juvenile curfews. Part IV gives a brief overview of the Fifth Circuit’s decision in Qutb v. Strauss. In Part V, this Comment identifies and examines some of the problems with the Qutb rationale. More specifically, this Part analyzes the Fifth Circuit’s dismissal of the factors prescribed by the Supreme Court in Bellotti v. Baird. Finally, Part VI describes the reaction to the Qutb ruling and discusses some potential concerns with curfews in general.

1. See infra notes 69-119 and accompanying text.
3. See infra notes 204-08 and accompanying text.
4. 11 F.3d at 488.
II. HISTORY OF CURFEWS

The word “curfew” can be traced to the old French expression “couverfeu,” which means “cover-fire.” In feudal times, it was customary to ring a bell each evening as “a signal to put out fires and go to bed.” In 1068, William the Conqueror strictly enforced a curfew in England which commenced at 8:00 p.m. and required the English to be off the streets or away from a particular area to prevent gatherings. This curfew proved so unpopular that it was repealed in 1103 by William’s son Henry I. In the United States, many southern towns, prior to the Civil War, used curfews to indicate times at which slaves were required to be off the streets.

Throughout the years, curfews have been used in a variety of circumstances: to maintain peace in emergencies, to limit public park

7. Id. “[D]uring the reign of Alfred there was an ordinance that Oxford inhabitants should retire at the tolling of a curfew bell . . . .” Thistlewood v. Trial Magistrate, 204 A.2d 688, 690 (Md. 1964); see also 8 ENCYCLOPEDIA AMERICANA 330 (Grolier Int’l ed., 1995) (“In England the custom of extinguishing fires when the evening bell was rung probably dates back to the time of Alfred the Great (reigned 871-899), and it was common in most of Europe as well.”); 6 ENCYCLOPEDIA BRITANNICA 903 (1971) (curfews originated from the fear of fires during a time when cities were built of timber).
8. See Thistlewood, 204 A.2d at 690; see also BREWER’S DICTIONARY OF PHRASE & FABLE, supra note 6, at 289; 8 ENCYCLOPEDIA AMERICANA, supra note 7, at 330.
11. See United States v. Chalk, 441 F.2d 1277, 1283 (4th Cir. 1971) (upholding a curfew imposed as a result of a riot between police and African-American high school students); see also People v. McKelvy, 100 Cal. Rptr. 661, 665 (Ct. App. 1972) (declaring that a “clear showing of emergent necessity” engendered by race riots justified imposition of a curfew); Davis v. Justice Court, 89 Cal. Rptr. 409, 414 (Ct. App. 1970) (upholding a curfew imposed over a housing project in which riotous conditions existed); State v. Boles, 240 A.2d 920, 925 (Conn. Ct. Ct. 1967) (upholding curfew where property destruction and riotous conditions threatened the city’s general welfare); Glover v. District of Columbia, 250 A.2d 556, 559-60 (D.C. 1969) (upholding a curfew barring all persons except police, firefighters, medical personnel, and sanitation workers from the streets as a reasonable and usual police regulation in response to serious disorder throughout the city); Municipal Court v. Patrick, 234 So. 2d 193, 194-95 (Fla. 1971) (invalidating a mayor’s curfew issuance because the power to issue curfews during times of emergency belonged to the City Commission); Walsh v. City of River Rouge, 189 N.W.2d 318, 326 (Mich. 1971) (holding that in times of civil disorder and riot the city may not issue curfews absent an action by the governor, because state action preempts city action in such circumstances); State v. Dobbins, 178 S.E.2d 449, 456-59 (N.C. 1971) (upholding an emergency curfew ordinance as a valid use of the state’s police power when the city faced imminent threat of widespread burning and other destruction to public and private property); Ervin v. State, 163 N.W.2d 207, 210-11 (Wis. 1968) (upholding a municipal curfew imposed to restore order after the outbreak of local riots).
operating hours, to keep vagrants off the streets, and to provide for national security during wartime. Currently, a curfew is recognized 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."

Juvenile curfews first received substantial support in the latter portion of the nineteenth century. President Benjamin Harrison called the curfew "the most important municipal regulation for the protection of the children of American homes, from the vices of the street." At the National Convention of the Boys and Girls Home Employment Association in 1884, Colonel Alexander Hogeland, known as "the Father of the curfew law," urged the adoption of curfew ordinances.

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12. See Peters v. Breier, 322 F. Supp. 1171, 1171-72 (E.D. Wis. 1971) (upholding a curfew ordinance because it restricted use of a carefully defined area (a park) during specified hours, provided appropriate notice, and applied to all persons indiscriminately); see also People v. Trantham, 208 Cal. Rptr. 535, 544 (App. Dep't Super. Ct. 1984) (holding that a city ordinance prohibiting a person from entering, remaining, staying, or loitering in a public park between the hours of 10:30 p.m. and 5:00 a.m. was not overbroad or vague); Chicago Park Dist. v. Altman, 262 N.E.2d 373, 374 (Ill. App. Ct. 1970) (holding that a "regulation limiting use of the parks between 11:00 P.M. and 4:00 A.M. is a reasonable exercise of the Park District's powers"); People v. Zalon, 145 N.Y.S.2d 269, 270-71 (Magis. Ct. 1955) (holding that a park department regulation prohibiting persons from loitering or remaining in parks between midnight and one-half hour before sunrise did not unconstitutionally infringe upon one's civil liberties); State v. Allred, 204 S.E.2d 214, 218-19 (N.C. Ct. App.) (holding that imposing a curfew on a park during a state of emergency was a valid use of the state's police power), appeal dismissed, 205 S.E.2d 724 (N.C. 1974).

13. See Guidoni v. Wheeler, 230 F. 93, 96-97 (9th Cir. 1916) (upholding a city ordinance defining vagrants as all persons without known employment found wandering on the street after 11:00 p.m.); cf. Ruff v. Marshall, 438 F. Supp. 303, 305 (M.D. Ga. 1977) (invalidating as overbroad a curfew ordinance restricting loitering upon any public place of business after business hours); City of Shreveport v. Brewer, 72 So. 2d 308, 309-10 (La. 1954) (invalidating for vagueness an ordinance providing penalties for people "who shall be on the streets of the City after midnight without a satisfactory explanation"); City of Portland v. James, 444 P.2d 554, 556 (Or. 1968) (in bane) (invalidating for vagueness an ordinance making it unlawful for "any person to roam or be upon any street, alley or public place, without having and disclosing a lawful purpose" between 1 a.m. and 5 a.m.).


17. Id. (quoting 8 ENCYCLOPEDIA AMERICANA, supra note 16, at 306).

18. Id.
Hogeland's recommendation was widely supported. 19 During the late 1800s, urban juvenile crime was often attributed to a lack of parental responsibility, thought to exist chiefly in the large numbers of immigrant families entering into the United States. 20 Curfews were intended to impose parental responsibility on these immigrant families, in an attempt to curb unwholesome juvenile activity. 21 By the turn of the century, approximately three thousand juvenile curfew ordinances were enacted in municipalities across the country. 22

From the beginning of the twentieth century until the Second World War, the interest in juvenile curfews waned. 23 However, the outbreak of war led to a resurgence in the use of these curfews. 24 After World War II, juvenile curfews were still widely used to fight the perceived increase in juvenile crime. 25 In the 1960s and 1970s, an "increase" in social problems resulted in a "spate" of curfew laws being enacted around the country. 26

In recent years, the use of juvenile curfews has again become "[p]erhaps the most popular local fad." 27 State legislatures around the country have resorted to curfews to fight the perceived national epidemic

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19. See Mrs. John D. Townsend, Curfew for City Children, 163 N. Am. Rev. 725, 728 (1896) ("In June, 1896, I received a statement announcing that two hundred cities had adopted the Curfew, and that city officials, parents, school teachers, employers of youthful labor, and especially chiefs of police were emphatic in their praise of its efficacy."). But see Winifred Buck, Objections to a Children's Curfew, 164 N. Am. Rev. 381, 382 (1897) (stating that it would be "almost impossible to enforce [a curfew] without at once breeding more of the crime it is supposed to prevent").

20. See Townsend, supra note 19, at 725.

21. See id. at 725-26.

22. See 8 Encyclopaedia Americana, supra note 10, at 306.


24. See H.L. & R.R.O, supra note 16, at 66-67 n.5. "With parents in the armed forces or working in war industries, often on night shifts, and with the influx of servicemen into urban areas, control of juveniles became an increasingly difficult task. Resultant wartime curfews attempted to prevent juveniles from roaming the streets or loitering in public places." Id.

25. See id. at 66-67.


27. After Dark, Economist, Mar. 5, 1994, at 25; see also Sue Anne Pressey, Nightly Youth Curfews: Clamping Down Across America, Wash. Post, July 13, 1994, at A1 ("In the span of less than five years, officials in nearly 1,000 jurisdictions across America . . . have chosen the controversial method [juveniles curfews] as a way of fighting fear with formal action, of trying to regain some measure of control over a society where family values seem to be slipping.").
of illegal drugs, gang activity, and increased juvenile crime.

III. CONSTITUTIONALITY OF JUVENILE CURFEWS

The first United States case to hold a juvenile curfew ordinance unconstitutional was *Ex Parte McCarver*. The court held:

The rule laid down here is as rigid as under military law, and makes the tolling of the curfew bell equivalent to the drum taps of the camp. In our opinion, it is an undue invasion of the personal liberty of the citizen, as the boy or girl . . . have the same rights of ingress and egress that citizens of mature years enjoy.

Judicial evaluation of juvenile curfews in the mid-1900s turned on the distinction between loitering and the mere presence of minors engaged in lawful pursuits on the streets. Under this presence/loitering distinction, some courts deemed it unconstitutional to proscribe the presence of a juvenile in public. On the other hand, if the juvenile's presence resulted in that individual remaining at a location for an extended period of time, then the juvenile's activity could be restricted. In actual practice, however, the presence/loitering distinction did not make a difference in the enforcement of the juvenile curfew ordinances; police

34. See *Alves*, 306 P.2d at 603; see also *Mosier*, 394 N.E.2d at 376.
acting under the “loitering” type curfew enforced it as if it was a “presence” type curfew.\textsuperscript{36}

While some courts have retained the presence/loitering distinction,\textsuperscript{37} other courts, during the mid-1970s, abandoned this distinction and turned to a liberty interest approach. Under this new approach, courts focused on whether the ordinance curtailed juveniles’ liberty interests.\textsuperscript{38} There were two factors that led courts to adopt this new approach. First, “[t]he Supreme Court began to specify the areas of a minor’s life which could not be subject[ed] to intrusive state regulation.”\textsuperscript{39} Second, the Court “delineated procedural protections which must be extended to minors even when the State could lawfully subject a minor to state control.”\textsuperscript{40}

Under the liberty interest approach to analyzing juvenile curfews, a small number of courts have found the curfew ordinances constitutional.\textsuperscript{41} The Illinois Supreme Court was one of the first state courts to find a juvenile curfew constitutional under this liberty interest rationale.\textsuperscript{42} In \textit{People v. Chambers}, the court held that when the state legislates for the benefit of its children, it is not required “to proceed upon the assumption that minor children have an absolutely unlimited right not only to choose

\textsuperscript{36} See id. at 73; see also Jordan, supra note 28, at 398 (noting that “this initial attempt to define the constitutionality of juvenile curfew statutes rested upon a distinction between types of conduct that in reality may not have existed, and if they did, were often too subtle to discern by police officers charged with enforcing the ordinance”).

\textsuperscript{37} See In re Daniel W., 41 Cal. Rptr. 2d 202, 205-06 (Ct. App. 1995) (upholding a curfew that proscribed loitering rather than mere presence); see also In re Frank O., 247 Cal. Rptr. 655 (Ct. App. 1988) (holding a curfew void for vagueness for failing to provide fair notice of what was forbidden conduct); Hendrickson v. Nancy C. (In re Nancy C.), 105 Cal. Rptr. 113, 119-20 (Ct. App. 1972) (upholding a loitering-type juvenile curfew ordinance).

\textsuperscript{38} See Jordan, supra note 28, at 398.

\textsuperscript{39} Id. Professor Jordan cites to numerous cases in which the United States Supreme Court held that states may not constitutionally legislate against the liberty interests of minors. See Bellotti v. Baird, 443 U.S. 622 (1979) (holding that a state may not have a per se rule requiring parental consent before a minor can have an abortion); Goss v. Lopez, 419 U.S. 565 (1975) (requiring notice and hearing prior to suspending a student from school); In re Winship, 397 U.S. 358 (1970) (requiring proof beyond a reasonable doubt in adjudications involving juvenile delinquents); Tinker v. Des Moines Indep. Community Sch. Dist., 393 U.S. 503 (1969) (protecting students’ First Amendment right to free speech during school).

\textsuperscript{40} Jordan, supra note 28, at 398.


\textsuperscript{42} See People v. Chambers, 360 N.E.2d 55, 57-58 (Ill. 1976).
their own associates, but also to decide when and where they will associate with them.\textsuperscript{43}

The decision in \textit{Chambers} came two years before \textit{Bellotti v. Baird},\textsuperscript{44} in which the Court identified three factors for courts to consider in determining whether minors' rights are equal to those of adults.\textsuperscript{45} \textit{Bellotti} involved a Massachusetts statute that required an unmarried woman under the age of eighteen to obtain parental consent before an abortion could be performed.\textsuperscript{46} If one or both parents refused to consent, an abortion could only be performed if "good cause" was shown to a superior court judge.\textsuperscript{47} In finding the statute unconstitutional, the Supreme Court's plurality decision articulated a framework to determine when a state may give less deference to the constitutional rights of minors than to those of adults.\textsuperscript{48} The three crucial factors found by the Court were: "[1.] the peculiar vulnerability of children; [2.] their inability to make critical decisions in an informed, mature manner; and [3.] the importance of the parental role in child rearing."\textsuperscript{49}

In 1990, an Illinois appellate court revisited the juvenile curfew question and, in doing so, discussed the three \textit{Bellotti} factors.\textsuperscript{50} The court found that two of the \textit{Bellotti} factors were applicable.\textsuperscript{51} In analyzing these factors, the court relied heavily upon the \textit{Chambers'} decision.\textsuperscript{52} The problem with the court's rationale, however, is that in attempting to remain true to precedent, the court attempted to fit the old \textit{Chambers'} rationale into the \textit{Bellotti} factors.\textsuperscript{53}

\begin{footnotesize}
\begin{itemize}
\item[43.] Id. at 57.
\item[44.] 443 U.S. at 622.
\item[45.] See id. at 634.
\item[46.] See id. at 625-26.
\item[47.] See id.
\item[48.] See id. at 634.
\item[49.] Id.
\item[51.] See id. at 16. The court stated that "[t]he thrust of the defendant's ambiguous argument appears to be that, in order for the curfew ordinance to be constitutionally permissible as applied to minors, one of the three reasons outlined in \textit{Bellotti} must be present in order to justify the ordinance." Id.
\item[52.] See id. at 16-17.
\item[53.] See supra notes 49-51 and accompanying text. In discussing the application of the first \textit{Bellotti} factor, justification for the curfew as a protection for children, the \textit{Greenberg} court held:
\begin{quote}
"The statute proceeds upon the basic assumption that when a child is at home during the late night and early morning hours, it is protected from physical as well as moral dangers. Although there are instances, unfortunately, in which this assumption is untrue, we are satisfied that the State is justified in acting upon it.

In legislating for the welfare of its children, the State is not required, in our opinion, to proceed upon the assumption that minor children have an absolutely unlimited
\end{quote}
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The Wisconsin Supreme Court has also addressed the constitutionality of a juvenile curfew and found that it passed constitutional muster.\textsuperscript{54} The court acknowledged that the fundamental rights of juveniles were impinged upon by the curfew ordinance,\textsuperscript{55} but held that the ordinance was not overly broad since the state has greater authority to regulate the activities of children.\textsuperscript{56} The court reasoned that the state interest in protecting youths and curtailing juvenile crime was compelling and that the ordinance was narrowly drawn.\textsuperscript{57}

The Colorado Supreme Court similarly held that a juvenile curfew was constitutional.\textsuperscript{58} The court concluded that the juveniles' interest in freedom of movement was not a fundamental right. Consequently, the court applied a rational basis test and held that the curfew was drawn carefully enough as to not infringe upon the liberty interest of minors.\textsuperscript{59}

The Iowa Supreme Court found that only a rational basis test applied to its juvenile curfew ordinance.\textsuperscript{60} The court held that "a
minor’s right of intracity travel is not a fundamental right for due process purposes. The court, in applying a rational basis test, determined that the ordinance was constitutional as a “reasonable exercise of the City’s power to legislate for the good of its citizens.” The Iowa court, in making its decision, relied in part on the decision rendered by the United States district court in Bykofsky v. Borough of Middletown.

Bykofsky represents the first time a federal court addressed the issue of juvenile curfews. The district court acknowledged that the curfew, if applied to adults, would amount to an infringement of their fundamental rights, but found that the borough’s interest in protecting the safety of children and the community outweighed the liberty interests of minors. The court decided that the liberty interest of minors involved was not fundamental and used a rational basis test to conclude that the age classification was reasonably related to the government’s stated purpose. The rational basis test has not been used by any other federal court in analyzing juvenile curfews and is rarely used by state courts. Furthermore, Bykofsky’s use of it has been criticized.

Despite the few cases where curfews have been found constitutional, many courts have held juvenile curfews to be unconstitutional. In 1973, the Hawaii Supreme Court, upon reviewing a curfew, found that minors’ rights deserved the same protection as adults and therefore held that a Honolulu curfew prohibiting loitering by juveniles at night was so vague and overbroad that it violated due process standards. In the same year,
the Washington Supreme Court declared an ordinance, prohibiting persons under the age of eighteen from loitering in public areas, unconstitutionally vague and held the ordinance to be an invalid exercise of legitimate police power.  

In 1976, the Court of Appeals for the Second Circuit found that a curfew which lacked a termination time was excessively vague and therefore violated the First and Fourteenth Amendments of the United States Constitution.  

In 1981, the Fifth Circuit also reviewed the constitutionality of a juvenile curfew ordinance. The court stated that even though a minor's rights are "not coextensive with those of adults," minors do have certain fundamental rights, such as freedom of speech, religion, association, and travel. The court found that the curfew ordinance burdened these rights. While recognizing the constitutional factors listed in Bellotti, the court concluded that they did not apply, and that the ordinance did not justify restraining the actions of juveniles in a way that would be unconstitutional if applied to adults. As a result, the

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71. Id. at 1063 (quoting City of Seattle v. Drew, 423 P.2d 522, 524 (Wash. 1967) (en banc)).
72. Id. at 1064 (citing Lazarus v. Faircloth, 301 F. Supp. 266, 272 (S.D. Fla. 1969)).
73. See Naprstek v. City of Norwich, 545 F.2d 815, 818 (2d Cir. 1976); see also W. J. W. v. State, 356 So. 2d 48, 50 (Fla. Dist. Ct. App. 1978) (finding that a juvenile curfew that "[r]estrain[ed]... from freely walking upon the streets or other public places when no emergency exist[ed]... [was] incompatible with the freedoms of speech, association, peaceful assembly and religion," and was therefore unconstitutional); In re Mosier, 394 N.E.2d 368, 372 (Ohio Ct. C.P. 1978) (holding that, in the absence of a compelling state interest, an ordinance that deprived minors of their fundamental rights under the First and Fourteenth Amendments was unconstitutional).
75. Id. at 1072.
76. See id.
77. See id. (citing West Virginia State Bd. of Educ. v. Barnette, 319 U.S. 624, 638 (1943)).
78. See id. (citing Sawyer v. Sandstrom, 615 F.2d 311, 316 (5th Cir. 1980)).
79. See id. (citing Shapiro v. Thompson, 394 U.S. 618, 629 (1969)).
80. See id.
81. See Belloti v. Baird, 443 U.S. 622, 634 (1979); see also supra notes 44-49 and accompanying text.
82. See Johnson, 658 F.2d at 1073 ("We need not conduct such an inquiry in [Bellotti]... since none of the three factors... apply to the overly broad restrictions with which we are concerned."). The court held that no issue of "peculiar vulnerability" of children existed with respect to children attending or traveling to or from school, religious activities, employment, or even being on the sidewalk in front of their house. See id. Secondly, the court held that the activities prohibited by the ordinance did not involve any "critical decisions" on the part of minors. See id.
court held that the ordinance was unconstitutionally overbroad.\textsuperscript{83}

In 1983, the Florida District Court of Appeals invalidated a curfew ordinance after finding that the “relationship between the practice of barring children... from public places... and the objective of safeguarding minors is not compelling enough to justify the serious invasion of personal rights and liberties.”\textsuperscript{84} A year later, a federal district court in New Hampshire reviewed a juvenile curfew and found that it violated the Due Process Clause of the Fourteenth Amendment and was therefore unconstitutional.\textsuperscript{85} The court held that the curfew impinged upon juveniles’ liberty interest in free movement to pursue legitimate activities\textsuperscript{86} and the parents’ protected liberty interest in child rearing.\textsuperscript{87} Additionally, the court stated that even though juvenile rights are not as extensive as those of adults, and can be restricted in a manner that would be unconstitutional if applied to adults, the ordinance in question was so broad as to “not meet even these diluted standards for regulation of juvenile activities.”\textsuperscript{88}

In 1989, the Iowa Supreme Court in \emph{City of Panora v. Simmons} found that a juvenile curfew was constitutional.\textsuperscript{89} In 1992, the court reviewed another juvenile curfew in \emph{City of Maquoketa v. Russell} and found that the curfew was unconstitutional.\textsuperscript{90} In the latter case, the court held that the ordinance implicated the fundamental rights of minors,\textsuperscript{91}

Lastly, the court held that the curfew inhibited, rather than promoted, the parental role of child rearing, because the curfew removed from the parent the decision of when and where a child might permissibly be away from home. See id. at 1073-74.

\textsuperscript{83} See id. at 1074.

\textsuperscript{84} S.W. v. State, 431 So. 2d 339, 341 (Fla. Dist. Ct. App. 1983). In 1991, Florida’s First District Court of Appeal revisited the juvenile curfew question and again ruled that the curfew was unconstitutional. See K.L.J. v. State, 581 So. 2d 920, 922 (Fla. Dist. Ct. App. 1991) (finding the curfew overbroad since it could “be applied in a manner which would infringe on the basis [sic] rights guaranteed by the United States and Florida Constitutions”).


\textsuperscript{86} See id. at 1385.

\textsuperscript{87} See id. at 1386 (ordinance restricts parents’ liberty interest in child rearing by “usurping parental discretion in supervising a child’s activities and imposing parental liability”).

\textsuperscript{88} Id. at 1385; see also Allen v. City of Bordentown, 524 A.2d 478, 486-87 (N.J. Super. Ct. Law Div. 1987) (holding that the state’s juvenile curfew ordinance violated the fundamental rights of children without a compelling state interest at stake and “interfere[d] with the right of parents to have their children exercise those rights”); City of Wadsworth v. Owens, 536 N.E.2d 67, 68-69 (Ohio Mun. Ct. 1987) (finding that minors have certain constitutional rights that are also guaranteed to adults, and holding that the state’s curfew violated minors’ First Amendment freedom of religion and Ninth Amendment right to move about freely).

\textsuperscript{89} 445 N.W.2d 363 (Iowa 1989).

\textsuperscript{90} 484 N.W.2d 179, 186 (Iowa 1992).

\textsuperscript{91} See id. at 184 (rights included religion, speech, assembly, and association).
even though such rights were not "automatically coextensive" with the rights of adults. The court distinguished its earlier ruling in Simmons by noting that in Russell, it was not deciding whether the "ordinance was unconstitutionally overbroad or whether the right to travel was in some instances protected by the First Amendment." In Waters v. Barry, the district court for Washington, D.C. reviewed a juvenile curfew using an approach that best illustrates the contemporary approach used by courts in assessing the constitutionality of juvenile curfew ordinances. The Washington, D.C. City Council had enacted a juvenile curfew in an effort "to reduce the incidence of juvenile violence, both against and by juveniles, to reduce juveniles' exposure to drug trafficking and other criminal activity, and to aid parents and others responsible for juveniles in carrying out their supervisory obligations." The court held that the curfew was "constitutionally unacceptable" since it could not be enforced "without violating the constitutional rights of thousands of innocent minors." The court found that the curfew infringed upon First Amendment rights of expression and association, as well as Fifth Amendment substantive due process rights.

Rights are not absolute. Fundamental rights can be infringed upon if the government narrowly tailors the ordinance to cover the perceived harm and does not "needlessly intrude upon the constitutional interests of the innocent." In applying this principle, the Waters court thoroughly discussed the importance of the exceptions to the ordinance.

92. See id. at 184-86. The court found that "the ordinance here is not drawn narrowly to provide exceptions for emancipated minors and fundamental rights under the First Amendment." Id. at 186.
95. See Jordan, supra note 28, at 399.
96. Waters, 711 F. Supp. at 1127.
97. Id. at 1128.
98. See id. at 1134. The court held that "[t]he right to walk the streets, or to meet publicly with one's friends for a noble purpose or for no purpose at all—and to do so whenever one pleases—is an integral component of life in a free and ordered society." Id.
99. Id. at 1135.
100. See id. at 1141-43. The ordinance provided in pertinent part:
(6) 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
Although these exceptions were found to be constitutionally significant, the act still "broadly stifle[d]" the fundamental liberty interests of thousands of perfectly innocent, law-abiding juveniles who live in or who may visit the District of Columbia.\textsuperscript{101}

The court also held that the constitutional rights of minors are as deserving of constitutional protection as are the rights of adults.\textsuperscript{102} In reaching this conclusion, the court reviewed the three \textit{Bellotti} factors—the peculiar vulnerability of children; children's inability to make critical decisions in an informed, mature manner; and the importance of the parental role in child rearing\textsuperscript{103}—and found that the factors, as applied to the curfew involved, made it "clear that there is no basis for treating juveniles differently than adults."\textsuperscript{104}

In applying the first \textit{Bellotti} factor, the peculiar vulnerability of children, the court found that "the plague afflicting the District poses no \textit{peculiar} danger to children; those thousands of the District's juveniles who engage in wholly legitimate nocturnal activities are no more endangered in the current climate than are the District's adults."\textsuperscript{105}

In addressing the second \textit{Bellotti} factor, a juvenile's inability to make critical decisions in an informed, mature manner, the \textit{Waters} court concluded that "the decision to either stay inside or roam at night simply does not present the type of profound decision which \textit{Bellotti} would
leave to the state.” The court reasoned that the decision to stay out late did not pose the “serious consequences” that the Bellotti court envisioned.

The third Bellotti factor, the importance of the parental role in child rearing, was found to be inapplicable in this context because the curfew “frustrat[ed] the parental role in the vast majority of the District’s families,” rather than furthering it. According to the court, the “curfew rests upon the . . . assumption that the traditional family unit, in which parents exercise control over their children’s activities, has dissolved.” However, the court disagreed with this assumption, stating that it ignored the many families in which parents still maintain control over their children. For those families, the curfew “gracelessly arrogates unto itself and to the police the precious rights of parenthood.”

The court held that the curfew violated the Fifth Amendment’s Equal Protection Clause by impermissibly distinguishing between juveniles and non-juveniles. The court applied a strict scrutiny analysis since the curfew burdened First Amendment rights and Fifth Amendment liberty interests. In applying a strict scrutiny analysis, the court stated that the law would only be sustained if it was “narrowly tailored to serve a compelling state interest.” The court conceded that a compelling state interest was involved, but concluded that the ordinance was not narrowly tailored to serve that interest.

The ordinance assumed that juveniles who went out at night to engage in illegal activities would be deterred from doing so by the imposition of the curfew. However, engaging in illegal activities carries a stricter punishment than violating a curfew ordinance similar to the one in Waters. Therefore, if the juveniles are not already deterred by the heavier sanctions of the underlying crime, the curfew sanction will have little, if any, additional impact. Indeed, the curfew will likely only impact

106. Id.
107. See id.
108. Id.
109. Id.
110. See id.
111. Id.
112. See id. at 1138.
113. Id.
114. See id. at 1139 (“[N]o practical effect, the challenged classification simply does not operate so as rationally to further’ the Act’s express objectives.” (quoting United States v. Moreno, 413 U.S. 528, 537 (1973))).
115. See id.
those "already inclined to obey the law."\textsuperscript{116} Additionally, curfews do not seem to solve the problem. The Waters court cited statistics to support its finding that the ordinance was not "so closely related to the protection of minors . . . as to justify the infringement of constitutional interests."\textsuperscript{117} In fact, the court found that not one juvenile was killed at a time when the curfew would have been in effect.\textsuperscript{118} Furthermore, half of the juveniles killed were killed at their homes.\textsuperscript{119}

\section*{IV. \textit{Qutb v. Strauss}}

In an effort to combat juvenile violence and gang activity, the City Council of Dallas, Texas enacted a comprehensive juvenile curfew on June 12, 1991.\textsuperscript{120} The ordinance prohibits a person under the age of seventeen from remaining in a public place or establishment from 11:00 p.m. until 6:00 a.m. on weeknights, and from 12 midnight until 6:00 a.m. on weekends.\textsuperscript{121} The curfew’s broad-scaled restrictions are dotted with numerous exceptions.\textsuperscript{122} For example, the curfew is not violated if the juvenile is accompanied by or on an errand for a parent or guardian.\textsuperscript{123} Furthermore, juveniles engaged in interstate travel, attending a school or religious function, or even exercising their First Amendment rights, also fall outside the ambit of the curfew.\textsuperscript{124}

Two weeks after the Dallas curfew first went into effect, Elizabeth Qutb and three other parents filed suit in federal district court challenging

\footnotesize{\bibitem{116} When dealing with fundamental rights, this inversion of anticipated effect renders the ordinance unconstitutional. \textit{See id.} \bibitem{117} \textit{Id.} The court specifically found the following: 
In 1988, of the 26 juveniles killed in the District (out of 372 total killed, or 7\%), not one was clearly killed at a time or place that he or she would not have been had the curfew been in effect. Precisely half of these killings occurred in the juvenile's home. As the plaintiffs point out, this would suggest that it is as dangerous in one's home as it is in the street. Moreover, according to the District's own figures, approximately half of the homicides in the District between 1985 and 1988 occurred during non-curfew hours. The daytime would therefore appear to be just as hazardous as the night, at least in terms of homicides. \textit{Id.} (footnotes omitted). 
\bibitem{118} \textit{See id.} 
\bibitem{119} \textit{See id.} 
\bibitem{121} \textit{See id.} 
\bibitem{122} \textit{See id.} 
\bibitem{123} \textit{See id.} For the full text of the Dallas curfew ordinance, see Appendix. 
\bibitem{124} \textit{See id.}
the constitutionality of the curfew.125 "The district court certified the plaintiffs as a class that consisted of two sub-classes: persons under the age of seventeen, and parents of persons under the age of seventeen."126

The district court found that the curfew violated the United States Constitution and the Texas constitution.127 Specifically, the court held that the ordinance restricted the First Amendment right of free association of juveniles, and the juveniles' equal protection rights were also violated.128 The city appealed and the Fifth Circuit reversed, finding that the curfew was constitutional.129

Under the Equal Protection Clause, the government may not treat similarly situated persons differently.130 If the legislation does not disadvantage a "suspect class" or infringe upon a fundamental right, the legislation will survive an equal protection challenge if it is rationally related to a compelling governmental interest.131 A strict scrutiny analysis will be applied to legislation if it disadvantages a "suspect class" or infringes upon a fundamental right.132 In Qutb, the Fifth Circuit performed a strict scrutiny analysis of the juvenile curfew ordinance.133 Because a classification based upon age is not a recognized suspect

125. See Qutb, 11 F.3d at 491. On July 3, 1991, Qutb and others filed suit seeking a temporary restraining order. See id. On July 9, 1991, the court decided to hear the case on the merits and consolidated with the hearing on the application for temporary and permanent injunctions. See id. The case was tried on July 22-23, 1991. See id. The city voluntarily delayed enforcement of the curfew pending the court's decision. See id. On June 10, 1992, the city substantially amended the ordinance, and on June 25, 1992, the complaint was amended to include the amended ordinance. See id. Further evidence was presented by both sides on July 20, 1992. See id. For cases addressing curfews after the decision in Qutb v. Strauss, see In re Juvenile Action No. JT9065297, 887 P.2d 599 (Ariz. Ct. App. 1994) (relying heavily on Qutb, the court held the juvenile curfew constitutional); Metropolitan Dade County v. Pred, 665 So. 2d 252 (Fla. Dist. Ct. App. 1995) (holding a curfew constitutional); and Hutchins v. District of Columbia, 942 F. Supp. 665 (D.D.C. 1996) (applying the Bellotti factors to a curfew ordinance modeled after the Dallas ordinance and finding it unconstitutional).

126. Qutb, 11 F.3d at 491.


128. See id. at 30-38.

129. See Qutb, 11 F.3d at 488.


131. See Qutb, 11 F.3d at 492 (citing Plyler v. Doe, 457 U.S. 202, 216-17 (1982)).

132. See id.

133. See id.
classification, the court of appeals "assume[d] without deciding that the
right to move about freely [was] a fundamental right." Since the
ordinance involved a fundamental right, the court reviewed it with strict
scrutiny.

To survive a strict scrutiny analysis, a classification created by the
ordinance "must promote a compelling governmental interest, and it must
be narrowly tailored to achieve this interest." In this case, the city
of Dallas enacted the ordinance to reduce juvenile crime and victimization,
while promoting juvenile safety. The court recognized this interest
as compelling and found it unnecessary to apply the Bellotti factors,
since the plaintiffs and the district court both conceded that the state’s
interest was compelling.

The court next determined that the curfew ordinance was narrowly
tailored to achieve the requisite compelling interest. "To be narrowly
tailored, there must be a nexus between the stated government interest
and the classification created by the ordinance." This nexus test "ensures
that the means chosen ‘fit’ this compelling goal so closely that
there is little or no possibility that the motive for the classification was
illegitimate." Although precise data could not be supplied, the court
found that the city had presented sufficient data for it to conclude that
the classification created by the ordinance “fit” the state’s compelling
interest.

134. Id.
135. See id.
136. Id.
137. See id. “The Supreme Court has recognized that the state ‘has a strong and legitimate
interest in the welfare of its young citizens, whose immaturity, inexperience, and lack of judgment
may sometimes impair their ability to exercise their rights wisely.’” Id. (quoting Hodgson v.
Minnesota, 497 U.S. 417, 444 (1990)).
138. See id. at 492 n.6.
139. See id. at 493.
140. Id. (quoting City of Richmond v. J. A. Croson Co., 488 U.S. 469, 493 (1989)).
141. Id. (quoting J. A. Croson Co., 488 U.S. at 493).
142. See id. The court based its determination on the following statistics presented by the city
of Dallas to the district court:

1. Juvenile crime increases proportionally with age between ten years old and sixteen
years old.
2. In 1989, Dallas recorded 5,160 juvenile arrests, while in 1990 there were 5,425
juvenile arrests. In 1990 there were forty murders, ninety-one sex offenses, 233 robberies,
and 230 aggravated assaults committed by juveniles. From January 1991 through April
1991, juveniles were arrested for twenty-one murders, thirty sex offenses, 128 robberies,
107 aggravated assaults, and 1,042 crimes against property.
3. Murders are most likely to occur between 10:00 p.m. and 1:00 a.m. and most likely
to occur in apartments and apartment parking lots and streets and highways.
The court also decided that the curfew employed the least restrictive means of accomplishing its goals because of the ordinance's numerous defenses. The court found that the numerous defenses narrowed the scope of the ordinance and therefore allowed the city to meet its stated goals, while still respecting minors' rights. The court conceded that the ordinance would restrict some late-night juvenile activities, but when these restrictions were balanced with the compelling interest sought to be protected, the impositions were found to be minor. Furthermore, the court dismissed the parental plaintiffs' argument "that the curfew ordinance violates their fundamental right of privacy because it dictates the manner in which their children must be raised." Although the court "recognize[d] a parent's right to rear their children without undue governmental interference," the court concluded this intrusion was minimal.

V. PITFALLS OF THE QUTB RATIONALE

Since the curfew in Qutb infringed upon a fundamental right, the ordinance was subjected to strict scrutiny. The district court and the court of appeals differed, however, as to whether the ordinance was tailored narrowly enough to achieve its stated goal and thus survive a strict scrutiny analysis. This Comment contends that, for numerous reasons, the

4. Aggravated assaults are most likely to occur between 11:00 p.m. and 1:00 a.m.
5. Rapes are most likely to occur between 1:00 a.m. and 3:00 a.m. and sixteen percent of rapes occur on public streets and highways.
6. Thirty-one percent of robberies occur on streets and highways.

Id.; see also id. at 493 n.7 (stating that the court will "not insist upon detailed studies of the precise severity, nature, and characteristics of the juvenile crime problem in analyzing whether the ordinance meets constitutional muster when it is conceded that the juvenile crime problem in Dallas constitutes a compelling state interest").

143. See id. at 493.
144. See id. at 494 (citing Johnson v. City of Opelousas, 658 F.2d 1065, 1072 (5th Cir. Unit A 1981)) (distinguishing its earlier ruling in Johnson by specifically reserving an opinion on the "validity of curfew ordinances narrowly drawn to accomplish proper social objectives"). The court stated that the ""curfew ordinance, however valid might be a narrowly drawn curfew to protect society's valid interests, [swept] within its ambit a number of innocent activities which are constitutionally protected."" Id. (quoting Johnson, 658 F.2d at 1072, 1074 (alteration in original)).
145. See id. at 495 ("Thus, after carefully examining the juvenile curfew ordinance enacted by the city of Dallas, we conclude that it is narrowly tailored to address the city's compelling interest and any burden this ordinance places upon minors' constitutional rights will be minimal.").
146. Id.
147. Id. The right of parents to rear their children without governmental interference has been recognized as a fundamental component of due process in Ginsberg v. New York, 390 U.S. 629, 639 (1968).
court of appeals failed to adequately review the facts presented to find the required nexus.

A. Dismissal of a Full Bellotti Analysis

The existence of a compelling state interest does not necessarily justify the disparate treatment the court of appeals afforded the juveniles in this case, and therefore, the court should have undertaken a full Bellotti analysis to determine whether the disparate treatment was warranted. In concluding that the Equal Protection Clause was not violated, the court of appeals used the parties’ concession that a compelling state interest existed to avoid conducting a Bellotti analysis.

A state can restrict a minor in ways that would be unconstitutional if applied to an adult, provided that the restriction furthers a “significant state interest . . . that is not present in the case of an adult.” The Bellotti Court formulated three factors to guide courts in determining what restrictions a state can place on minors that it cannot impose on adults. According to the Bellotti Court, if these factors are present, juveniles may be treated differently than adults. The mere fact that a compelling state interest exists should not carry as much weight as it did in the Qutb court’s analysis. Courts can use a concession by all parties as to the existence of a compelling state interest to assist in balancing the factors, but it does not give courts the authority to bypass the balancing of the factors. A Bellotti analysis still should be performed to determine if a significant state interest not present in the case of adults is applicable to children. A significant state interest exists in protecting all citizens from crime, but general curfews affecting adults have been held to be unconstitutional. The Bellotti analysis allows a court to determine if the particular characteristics of a child elevates this interest to the point where the state can restrict a juvenile’s activity, even though they cannot restrict adults in the same manner. A proper analysis of the Bellotti factors shows that the particular characteristics of children do not

148. See Hananel, supra note 130, at 316.
149. See Qutb, 11 F.3d at 492 n.6.
152. See id.
153. See Qutb, 11 F.3d at 492 n.6.
make the interest of the city of Dallas such that they can restrict the rights of children differently than adults in this context.

The first *Bellotti* factor, the peculiar vulnerability of children, does not justify reducing the level of a minor's constitutional protection. Simply because there is crime on the streets at night does not make minors any more susceptible to that crime than adults walking the same streets at night. Furthermore, the evidence presented by the city of Dallas regarding street crime did not establish that minors were peculiarly vulnerable.

The second *Bellotti* factor, children's inability to make critical decisions in an informed, mature manner, does not apply because a curfew that keeps children off the streets is not an attempt to shield children from any specific emotional traumas to which they are particularly susceptible, but rather is "an attempt to shelter them from some unspecified future harm—an attempt that simultaneously forecloses many beneficial opportunities." Additionally, most activities restricted by a curfew do not present the type of the difficult choices that *Bellotti* would relegate to the states. For example, deciding whether to go for ice cream after a movie, or to stay late at a friend's house, arguably does not present juveniles with the same type of profound decision as does the choice to have an abortion, or to purchase pornographic material.

Lastly, the third *Bellotti* factor, the importance of a parental role in child rearing, is not furthered by the enactment of a juvenile curfew. A juvenile curfew does not promote the parental role, but rather inhibits it. The ordinance does not give parents the power to make decisions concerning the amount of freedom and responsibility they should give their children, but instead exchanges this parental judgment with the presumed superior judgment of the state.

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158. See Waters, 711 F. Supp. at 1137; see also Johnson v. City of Opelousas, 658 F.2d 1065, 1073 (5th Cir. Unit A 1981).
160. See id. at 636 (citing Ginsberg v. New York, 390 U.S. 629 (1968), which dealt with the sale of sexually oriented magazines).
161. See Johnson, 658 F.2d at 1073-74; see also Waters, 711 F. Supp. at 1137.
B. Ignoring the Statistics Against Curfews

The Fifth Circuit in *Qutb* applied a strict scrutiny analysis to the curfew ordinance.\(^\text{163}\) Under a strict scrutiny analysis, the classifications created by the ordinance are accorded "no presumption of constitutionality."\(^\text{164}\) In this case, the classification is based upon age, separating those under seventeen from those seventeen and older.\(^\text{165}\) A strict scrutiny analysis requires the classification to promote a compelling state interest and the ordinance to represent the least "restrictive means available to effectuate the desired end."\(^\text{166}\) In *Qutb*, the desired end was to increase juvenile safety and to decrease juvenile crime. The district court found that "the City totally failed to establish that the Ordinance’s classification between minors and nonminors is narrowly tailored to achieve the stated goals of the curfew."\(^\text{167}\) Additionally, the city of Dallas failed to establish that "the curfew would cause a reduction in juvenile crimes or victims."\(^\text{168}\) The city presented the following evidence:

1. Juvenile crime increases proportionally with age between ten years old and sixteen years old.
2. In 1989, Dallas recorded 5,160 juvenile arrests, while in 1990 there were 5,425 juvenile arrests. In 1990 there were forty murders, ninety-one sex offenses, 233 robberies, and 230 aggravated assaults committed by juveniles. From January 1991 through April 1991, juveniles were arrested for twenty-one murders, thirty sex offenses, 128 robberies, 107 aggravated assaults, and 1,042 crimes against property.
3. Murders are most likely to occur between 10:00 p.m. and 1:00 a.m. and most likely to occur in apartments and apartment parking lots and streets and highways.
4. Aggravated assaults are most likely to occur between 11:00 p.m. and 1:00 a.m.
5. Rapes are most likely to occur between 1:00 a.m. and 3:00 a.m. and sixteen percent of rapes occur on public streets and highways.

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\(^{164}\) *Town of Ball v. Rapides Parish Police Jury*, 746 F.2d 1049, 1059 (5th Cir. 1984).

\(^{165}\) *See Qutb*, 11 F.3d at 492.

\(^{166}\) *Pugh v. Rainwater*, 557 F.2d 1189, 1195 (5th Cir. 1977).

\(^{167}\) *Qutb*, No. 3:91-CV-1310-R, at 35 (finding that the city did not have statistics showing the number of juveniles who commit or are the victims of crimes during curfew hours).

\(^{168}\) *Id.*
6. Thirty-one percent of robberies occur on streets and highways.\textsuperscript{169}

\[7\] Juveniles commit a significant percentage of the crimes in Dallas: 5-6%.

\[8\] ... for the five-month period between January and May, [1992] the City has a record of only 256 arrests that occurred during curfew hours and in public places. Of these, 8% (26 offenses) involved harm to another individual, either by aggravated assault or aggravated robbery.

\[9\] ... Over 54% of the gang members are 17 or over and would not be subject to the curfew.\textsuperscript{170}

The district court held that the evidence produced by the city of Dallas did not establish that juveniles committed crimes or that they were victims of crimes during the curfew hours.\textsuperscript{171} According to the court, the statistics merely demonstrated that crimes occurred during the curfew hours; the city assumed that the juveniles committed some of the crimes; and that some juveniles were victims during these curfew hours.\textsuperscript{172} The court concluded that the city's assumption did not prove that the curfew was narrowly tailored to achieve the compelling state interest and, therefore, did not support the claim that the curfew infringed upon a juvenile's fundamental rights.\textsuperscript{173}

In contrast to the district court, the Fifth Circuit held:

Although the city was unable to provide precise data concerning the number of juveniles who commit crimes during the curfew hours, or the number of juvenile victims of crimes committed during the curfew, the city nonetheless provided sufficient data to demonstrate that the classification created by the ordinance “fits” the state’s compelling interest.\textsuperscript{174}

In view of the compelling state interest, the court would not “insist upon

\textsuperscript{169} \textsuperscript{171} \textsuperscript{172} \textsuperscript{173} \textsuperscript{174}
detailed studies of the precise severity, nature, and characteristics of the juvenile crime problem."\(^{175}\)

The depth of the district court's analysis was more in line with a strict scrutiny analysis because, as one commentator has noted, the request that proof be offered to show that "the ordinance would affect the juvenile crime problem is hardly a demand for 'scientifically certain' data."\(^{176}\) As the district court recognized, the data offered did not show how many juveniles committed, participated in, or were victims of crime during the curfew hours, and therefore, no hard support for the curfew was offered. Without support, the required nexus between the compelling state interest and the classification created by the ordinance cannot be established.

A review of the available statistics reveals that the support necessary to prove that a juvenile curfew will be an effective crime preventer and victim protector is lacking. As the Waters court observed, the statistics from the District of Columbia revealed that in 1988, of the twenty-six juveniles killed, not one was killed in a place or at a time when the curfew would have been in effect.\(^{177}\) Additionally, half of these killings occurred in the home, thereby making it just as dangerous for the juveniles to stay home as it was to go out.\(^{178}\)

According to the U.S. Department of Justice, "violent crimes committed by juveniles peak at the close of the school day and decline throughout the evening hours."\(^{179}\) Interestingly, juveniles are the victims of violent crimes usually during the same time period when juveniles are committing violent crimes.\(^{180}\) Furthermore, according to the National Counsel on Crime and Delinquency in San Francisco, four-fifths of all violent crimes occur during the daylight hours.\(^{181}\) If the

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\(^{175}\) Id. at 493 n.7. The court further stated that "we 'do not demand of legislatures scientifically certain criteria of legislation.'" \(\text{Id.} \) (quoting Ginsberg v. New York, 390 U.S. 629, 642 (1968)).

\(^{176}\) Hananel, supra note 130, at 317.


\(^{178}\) See id.

\(^{179}\) HOWARD N. SNYDER & MELISSA SICKMUND, JUVENILE OFFENDERS AND VICTIMS: A NATIONAL REPORT 48 (Office of Juvenile Justice & Delinquency Prevention ed., 1995) (the peak hour of violent juvenile crime is 3 p.m.).

\(^{180}\) See id.; see also H.J. Cummins, Fear of Crime, NEWSDAY (N.Y.), July 29, 1995, at B1 (leading criminologist James Fox providing statistics demonstrating that the highest time of risk for teen crime and teen pregnancy is 3 p.m. to 6 p.m.).

\(^{181}\) See After Dark, supra note 27, at 26; see also 20/20: Time to Go Home, at 12 (ABC television broadcast, Apr. 8, 1994) (transcript on file with the Hofstra Law Review) [hereinafter Time to Go Home] ("[M]ore kids are killed or injured by their parents, so if you really want to protect
government is truly concerned about protecting juveniles and preventing juveniles from committing violent crimes, judging from the statistics, a curfew would be most effective if imposed immediately after school. If the court of appeals had examined the statistics presented, it would have been clear that the curfew restricted the freedom of thousands of innocent juveniles based upon statistics which, upon closer examination, demonstrated that the required nexus was not present.

C. Dismissal of a General Right of Association

The district court in *Qutb* held that a minor’s First Amendment right of association was impermissibly impinged upon by the enacted curfew. The district court found that the right to free association is a fundamental right. The Supreme Court has recognized the fundamental right of association in two contexts: intimate relationships, and the exercise of First Amendment rights of “speech, assembly, petition for the redress of grievances, and the exercise of religion.” The Supreme Court has also recognized the right to associate for social purposes and the right to move about freely in public places. The rights of social association and locomotion have been recognized


186. See generally *Gilmore* v. City of Montgomery, 417 U.S. 555, 575 (1974) (right to associate for social clubs or organizations) (citing *Moose Lodge No. 107* v. Irvis, 407 U.S. 163, 179-80 (1972) (Douglas, J., dissenting)); *Coates* v. City of Cincinnati, 402 U.S. 611, 615 (1971) (recognizing the First and Fourteenth Amendment rights to gather in public places for social or political purposes); *Griswold*, 381 U.S. at 483 (free association not limited only to political assemblies, but also to those that “pertain to the social, legal, and economic benefit” (citing *NAACP* v. *Button*, 371 U.S. 415, 430-31 (1963))).

187. See generally *Papachristou* v. City of Jacksonvillle, 405 U.S. 156, 165-66 (1972) (discussing the right to walk, wander, or stroll without any reason as falling in the “sensitive First Amendment area”); *Aptheker* v. Secretary of State, 378 U.S. 500, 520 (1964) (discussing freedom of movement as “kin to the right of assembly and to the right of association”).

188. See *Johnson* v. City of Opelousas, 658 F.2d 1065, 1072 (5th Cir. Unit A 1981) (recognizing the First Amendment right to association for social purposes and the right of “all citizens” to travel freely within and between the states without unreasonable governmental burden).
and upheld\textsuperscript{189} by the Fifth Circuit and other federal courts.\textsuperscript{190} These authorities led the district court in \textit{Qutb} to conclude that the right to associate for social purposes and to freely use public streets and public places are fundamental liberties under the First and Fourteenth Amendments.\textsuperscript{191}

The Fifth Circuit dismissed this freedom of association claim in a footnote, observing that the Supreme Court has held there to be no "generalized right of social association."\textsuperscript{192} The Supreme Court in \textit{City of Dallas v. Stanglin} held that chance meetings in dance halls and other purely recreational functions are not protected by the First Amendment.\textsuperscript{193} The district court acknowledged this Supreme Court ruling but distinguished it by reasoning that "a juvenile curfew ordinance operates in a much more 'blunderfuss' fashion and proscribes a wide range of protected First Amendment activities that were not addressed in \textit{Stanglin}."\textsuperscript{194} The curfew effectively prohibits not only "chance encounters" in dance halls and other random associations, but also forms of expression clearly encompassed and protected by the First Amendment.

The Fifth Circuit overcame this problem by relying on the numerous exceptions that the ordinance allows. The court held that as a result of the exceptions, the ordinance was tailored narrowly enough to address the city's compelling state interest and that any burden the ordinance placed

\textsuperscript{189} See \textit{Aladdin's Castle, Inc. v. City of Mesquite}, 630 F.2d 1029, 1041 (5th Cir. 1980) (upholding the fundamental right to "go where one pleases"), \textit{rev'd in part}, 455 U.S. 283 (1982); \textit{Sawyer v. Sandstrom}, 615 F.2d 311, 316-17 (5th Cir. 1980) (granting constitutional protection to associate on street corners).

\textsuperscript{190} See generally \textit{Gomez v. Turner}, 672 F.2d 134, 143-44 n.18 (D.C. Cir. 1982) (stating that the right of "citizens to walk the streets, without explanation or formal papers, is surely among the cherished liberties that distinguish this nation from so many others"); \textit{Waters v. Barry}, 711 F. Supp. 1125, 1134 (D.D.C. 1989) (characterizing the right to walk the streets whenever one pleases as an "integral component of life in a free and ordered society"); \textit{Johnson v. Carson}, 569 F. Supp. 974, 976 (M.D. Fla. 1983) (stating that "the rights of locomotion, freedom of movement, to go where one pleases, and to use the public streets in a way that does not interfere with the personal liberty of others" are implicit in the first and fourteenth amendments) (quoting \textit{Bykofsky v. Borough of Middletown}, 401 F. Supp. 1242, 1254 (M.D. Pa. 1975), \textit{aff'd}, 535 F.2d 1245 (3d Cir. 1976)).


\textsuperscript{194} \textit{Qutb}, No. 3:91-CV-1310-R, at 23 n.45 (agreeing with the court in \textit{Waters v. Barry}, 711 F. Supp. 1125, 1135 n.16 (D.D.C 1989)).
upon a minor's rights would be minimal. According to the court, through the exceptions, the state was able to draw the curfew so that the least restrictive means were used to accomplish its goals. The problem with this rationale, however, is that the numerous exceptions have problems of their own and will result in more than a minimal intrusion into the fundamental rights of juveniles.

If a minor is attending a recreational activity supervised by adults and sponsored by the city of Dallas, a civic organization, or another similar entity that takes responsibility for the minor, or if the minor is returning home from this activity, the minor will have a defense to the imposition of the curfew. According to the district court, due to the vagueness of the term "recreational activities" and "other similar entity," "this exception is unworkable from the standpoint of the minor facing arrest, the enforcing officer, and the fact finder that must determine guilt or innocence." The problem with this rationale, however, is that the numerous exceptions have problems of their own and will result in more than a minimal intrusion into the fundamental rights of juveniles.

If a minor is attending a recreational activity supervised by adults and sponsored by the city of Dallas, a civic organization, or another similar entity that takes responsibility for the minor, or if the minor is returning home from this activity, the minor will have a defense to the imposition of the curfew. According to the district court, due to the vagueness of the term "recreational activities" and "other similar entity," "this exception is unworkable from the standpoint of the minor facing arrest, the enforcing officer, and the fact finder that must determine guilt or innocence." The term "recreation" can be interpreted in numerous ways depending on the person making the interpretation. For some, reading a book is recreational, while for others it is boring. Likewise, walking the streets may be recreational for some, while for others it is just "being up to no good." Therefore, what constitutes a "recreational activity" is a subjective determination. A minor planning to attend an event must guess as to whether a police officer who might stop him would consider his activity recreational. Furthermore, those responsible for enforcing the curfew maintain vast amounts of discretion in determining whether the activity is recreational; therefore, they also have a lot of discretion to determine whether or not to arrest for a curfew violation. Lastly, those who must determine guilt or innocence after the arrest have vast discretion as well.

The term "other similar entity" is just as vague and ambiguous as "recreation." The only guideline provided for this term is that some degree of adult supervision and responsibility over the minor is involved,

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195. See Qutb, 11 F.3d at 495 n.9.
196. See id. at 493-94.
197. See id. at 498 (noting § (c)(1)(G) of the Dallas curfew ordinance).
199. See id.; see also AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE 1511 (3d ed. 1992) (defining recreation as the "[r]efreshment of one's mind or body after work through activity that amuses or stimulates; play").
which could result in this term being interpreted differently each time it is applied.  

Another defense to the curfew involves a minor who is “exercising First Amendment rights protected by the United States Constitution, such as the free exercise of religion, freedom of speech, and the right of assembly.” It was clear to the district court that “the City ha[d] no intention of permitting minors to exercise their due process and associational rights to move about the City during curfew hours without an officially sanctioned purpose.” Moreover, if the police and others responsible for enforcing the curfew were to honor the First Amendment exception, the ordinance would be self-defeating because a “gaping hole” would exist in the ordinance. If the First Amendment exception is respected and enforced appropriately, the exception encompasses many of the activities the curfew is meant to prohibit. Since this exception may well have put the curfew out of existence, and the proof offered shows that the rights were not going to be respected, one cannot say that the exception provides the kind of protection to minors that the Fifth Circuit relied so heavily upon in finding the curfew constitutional.

V. IN THE WAKE OF QUTB AND GENERAL PROBLEMS WITH CURFEWS

A. Floodgates of Curfews

Cities across the country awaited the Fifth Circuit’s decision before determining whether they should enact their own curfews. After the Fifth Circuit found the Dallas curfew constitutional and the United States Supreme Court denied certiorari, “[o]rdinances banning youths from city streets [began] popping up like mushrooms after a spring rain.” Dallas officials received forty calls from cities across the country requesting a copy of the curfew that passed constitutional review. In June 1994,

201. Qutb, 11 F.3d at 498 (quoting § (c)(1)(H) of the Dallas curfew ordinance).
203. See Hananel, supra note 130, at 317.
204. With Dallas Curfew OK’d, Others Rush to Follow Suit, LAW ENFORCEMENT NEWS, June 30, 1994, at 6 [hereinafter Dallas Curfew]. For a summary of statutory provisions relating to curfews in U.S. cities with a population of more than 100,000, see BUREAU OF JUSTICE STATISTICS tbl. 1.97 (1995).
the following curfew-related activities took place:

Denver officials began enforcing a curfew for youths under 18 . . . .
Orlando, Fla., officials said . . . they [would] enforce a curfew in a downtown club district.
Enforcement of a curfew that was approved by the Dallas suburb of Cedar Hill . . . .
Officials in Fort Worth, Texas, said they [would] adopt a curfew law patterned after the one in Dallas.
New Orleans police reported that 46 teenagers were detained on the night of June 1, [1994] when its dusk-to-dawn curfew went into effect.
Ten police officers in Columbus, Ohio, were assigned June 10 to enforce a midnight curfew in effect on weekends in some areas of the city. Enforcement sites [were to] be based on the number of complaints from residents and information supplied by patrol officers.

City lawyers in Springfield, Mass., . . . [were] drawing up a curfew plan that [would] prohibit youths under 18 from being on the streets from 11 P.M. to 6 A.M. Sunday through Thursday and after midnight on Friday and Saturday.

The Washington, D.C., District Council failed to approve a proposed curfew law following a hearing on the issue . . . . The curfew would banish youths under 17 from the streets, beginning at 11 P.M. Sunday through Thursday and at midnight on Fridays and Saturdays.206

With the rush to enact juvenile curfews, the effectiveness of these curfews is being questioned,207 making one wonder whether the

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206. *Dallas Curfew*, supra note 204, at 6. Other cities that have enacted curfews after the decision in *Qutb v. Strauss* include Pasadena, Rosenberg, Richmond, Humble, South Houston, and Missouri City. See *Houston Suburbs Find Teen Curfews Help Reduce Crime*, DALLAS MORNING NEWS, Aug. 22, 1994, at 11A [hereinafter *Houston Suburbs*].

207. See, e.g., Scott Parks, *Hanging Out No Longer in New Orleans’ Curfew Keeps Kids Off Streets; Effect on Crime Debated*, DALLAS MORNING NEWS, Dec. 7, 1994, at 1A (people disagree about the effectiveness of the curfew in New Orleans); see also *Houston Suburbs*, supra note 206, at 11A. “While experts debate the benefits of such laws, officials in [Pasadena, Rosenberg, Richmond, Humble, and South Houston] have noticed a drop in crime.” *Id.* The number of major crimes in Pasadena clearly decreased. See *id.* The Pasadena police captain stated:

“It’s been effective in reducing juvenile presence on the streets during the late-night hours,” . . . “although it doesn’t necessarily show up in juvenile arrest reports.”

Mr. Gilmore, the Richmond city manager, said juvenile arrests have increased since the curfew was implemented in February, but he attributes that as par for the course with most law enforcement agencies today and believes that it has little to do with the curfew.

*Id.* One commentator has noted:

The jury is out as to whether curfew laws really do reduce crime or protect kids. In Phoenix, violent crimes among 16- and 17-year-olds have decreased since the beginning
politicians are attempting to protect the youth of its community or to appease the public to which it must answer.\(^{208}\)

\[\text{B. Domino Curfews and Diversion of Police Resources}\]

When a centrally located city enacts a curfew, many surrounding communities are forced to enact and enforce curfews of their own.\(^{209}\) These secondary, "domino effect" curfews are enacted by these smaller towns for "self-protection."\(^{210}\) These towns, due to their geographic location, must enact a juvenile curfew to keep the juveniles out of their towns, after the normal hangouts in a neighboring city become unavailable because of the city's curfew.\(^{211}\)

The problem that arises, for both centrally located cities that enact curfews and peripheral cities that enact domino curfews, is that curfews do not enforce themselves. Once a curfew is passed, police resources of the curfew, but they've increased for kids 14 and 15 years old. Results are also inconclusive in other cities. But whether curfew laws work or fail to work, they are increasingly appealing to politicians desperate to do something about crime. Time to Go Home, supra note 181, at 12; see CBS Evening News, at 5 (CBS television broadcast, Dec. 27, 1995) (transcript on file with the Hofstra Law Review) (curfew opponents in San Diego dispute statistics indicating a decrease in juvenile crime and claim it makes good kids into criminals); see also Christopher Lee, Dallas Youth Crime Down Since Curfew, DALLAS MORNING NEWS, Feb. 6, 1996, at 1A (examining the crime rate in Dallas two years after the imposition of the curfew). The Chief of the Dallas Police Department noted that during curfew hours overall juvenile detentions have decreased by forty-two percent, detention of juveniles for burglaries has decreased by sixty-six percent, and detention of juveniles for narcotics has decreased by sixty percent. See id. The Assistant Chief of the Dallas Police Department, however, cautioned that it was impossible to determine how much of the crime reduction was due to the curfew, and noted that the drop in juvenile crime rate occurred at a time when overall crime also dropped. See id.

208. See generally Time to Go Home, supra note 181, at 12 ("[Curfews] are increasingly appealing to politicians desperate to do something about crime."); Pressley, supra note 27, at A14 (quoting Joe Cook, executive director of the ACLU of Texas, Northern Region, who stated that juveniles are a "convenient target" to be scapegoats for the crime problem, and that since juveniles do not vote they have no power); Ellen Yan, Patchogue Debates Teen Curfew, NEWSDAY (N.Y.), May 8, 1994, at A4. The Mayor of Patchogue, New York, in proposing a curfew for his village, stated:

"It gives the village a sense of security." . . . "People are concerned about kids just hanging out. Very often, they give the impression they are up to no good, whether they are or not. I don't know if they [curse] at people, they just curse in general. They got their hats on backwards, and if there are half a dozen doing nothing, you hear, 'Why don't you do something about these kids?'"

Id. 209. See Pressley, supra note 27, at A14.


211. See Pressley, supra note 27, at A14.
must then be diverted to enforce the curfew effectively. Some cities have formed special patrols, but many argue that these curfews turn police officers into baby-sitters.\footnote{212} Other cities are not willing to spend the extra money\footnote{213} or reassign personnel necessary to enforce the curfew across the board.\footnote{214} Many cities have expressed concern that the time invested into prosecuting curfew violators is not worth the payoff. One policeman has stated that a curfew “is effective but not enough to warrant the program’ . . . . ‘You are bringing in kids who may or may not have done anything as opposed to targeting high-crime areas for patrol.’”\footnote{215}

Some cities, in an attempt to get police back onto the streets more quickly, have established centers in which the police may “drop off” curfew violators.\footnote{216} These centers usually are staffed by police, park and recreation employees, and social services personnel.\footnote{217} Activities at the centers vary from reading and playing board games, to sitting quietly listening to classical music.\footnote{218} Once a violator is brought to the center, the staff notifies the parent to pick up their child.\footnote{219} When the parents come, some centers have counselors available to talk to the juvenile and his or her parent.\footnote{220} These programs may help keep police from baby-sitting, but they cost money, and not all cities, especially the small towns forced to enact domino curfews, have the resources to fund them.

\footnote{212}{See Time to Go Home, supra note 181, at 10 (Savannah Mayor Susan Weiner stated that “[t]his new role of policeman as babysitter is necessary . . . because too many parents have lost control.”); see also After Dark, supra note 27, at 25 (a Miami police officer stated: “We don’t like the baby-sitting part.”); Denver Cops Rethink Curfew Response to Achieve Speedier Return to Patrols, LAW ENFORCEMENT NEWS, Aug. 20, 1994, at 7 [hereinafter Denver Cops].}

\footnote{213}{See generally Sarah Sturmon, Curfew Should Help, Not Hurt Kids, CINCINNATI POST, Jan. 18, 1996, at 10A (recreation officials estimate that they spent $107,860 in 1995 for staff and equipment at the curfew centers).}


\footnote{215}{Parks, supra note 207, at 1A.}

\footnote{216}{See Denver Cops, supra note 212, at 7; see also Marc H. Morial, A Solution to Crime: Juvenile Curfews, SALT LAKE TRIB., Jan. 9, 1995, at A7; Office of Juvenile Justice & Delinquency Prevention, Curfew: An Answer to Juvenile Delinquency and Victimization?, JUV. JUST. BULL., Apr. 1996, at 1; Parks, supra note 207, at 1A.}

\footnote{217}{See Denver Cops, supra note 212, at 7.}

\footnote{218}{See id. But see Curfew Penalty: No TV, N.Y. TIMES, Nov. 3, 1995, at A18.}

\footnote{219}{See Denver Cops, supra note 212, at 7.}

\footnote{220}{See id.}
C. Use of Curfews as a Pretext for Stops

A pretextual stop occurs when the police, using a legal justification such as a minor infraction of the law, "make[s] the stop in order to search a person or place, or to interrogate a person, for an unrelated serious crime for which they do not have the reasonable suspicion necessary to support a stop." The evil of pretextual stops is the unlimited power and discretion it gives to police officers to make arrests and searches based upon minor offenses. With the use of pretextual stops an officer, who normally would not pursue a minor infraction, could pursue the minor infraction in the hopes that she will find evidence of a greater offense the officer suspects exists but does not have the level of suspicion necessary to investigate. Without restricting or abolishing this authority, a person's right to be free from unreasonable searches and seizures, as protected by the Fourth Amendment, will be trampled upon.

The Supreme Court has recognized two types of pretextual stops, legal and fabricated pretexts. A "legal" pretext occurs when the "government offers a justification that is not the true reason for the police activity, but that, if the motivation of the officer is not considered, legally justifies the activity." A fabricated pretext occurs when "the government offers a justification that is not the true reason for the police activity and, in fact, is legally insufficient because it is not supported by the facts." Curfew legislation can result in both of these pretexts occurring.

First, under a legal pretext, the police can use the curfew as a reason to approach a juvenile that they suspect is engaged in a serious crime. The justification for approaching is legitimate, but the officer's actual motivation is a pretext. If the juvenile is out past the curfew, an arrest might result in a search and discovery of contraband. The selective

221. United States v. Guzman, 864 F.2d 1512, 1515 (10th Cir. 1988). The court gave what it called a "classic example" of a pretextual stop: "when an officer stops a driver for a minor traffic violation in order to investigate a hunch that the driver is engaged in illegal drug activity." Id.
223. See Guzman, 864 F.2d at 1517.
224. See Butterfoss, supra note 222, at 59-60.
225. See id. at 5.
226. Id. at 6.
227. Id.
enforcement of the curfew to search particular people can result in
discrimination. The police could essentially use the curfew as a pretext
to search someone they believe is in possession of contraband. For a
curfew to be effective, the offending juveniles must be taken into
custody, but the courts must be wary of the pretextual use of curfew
arrests and selective enforcement of the curfew.

The fabricated pretextual use of a curfew occurs when the police
stop someone who is outside the parameters of the curfew but uses the
curfew as the basis for the stop. Curfews draw a distinction between two
age groups and police are forced to look at someone and decide if they
are in violation of the curfew. If the police believe the person is age six-
teen or under, they can then approach, ask for identification, and even
effect an arrest if the person does not provide sufficient identification.
With the arrest, a police officer may search the individual, which may
produce contraband. The discretion left to the police to stop anyone they
believe might be under the statutory curfew age leads to the concern that
police will abuse their power and make improper pretextual stops and
arrests. Courts have reviewed cases where the police have stopped,
searched, and even arrested an individual believing that he or she was
under the curfew age.228 The consensus of the courts is that the stop-
paring of “youthful-looking” adults does not unconstitutionally interfere
with an individual’s right to freedom of movement since the youthful
appearance provides the reasonable basis for the stop as required by
Terry v. Ohio.229 The problem that arises is that courts must now
review and make sure that the person arrested actually looks under the
proscribed age. As a result, courts must watch for police who are using
the curfew as an excuse to stop all young-looking people just to see what
the stop produces.

VI. CONCLUSION

Curfews have been on the books since William the Conqueror. Over
the years, the use of juvenile curfews has been in waves. Recently, the
rise in juvenile crime has forced many politicians to turn to curfews to
control crime. As a result, the debate on the effectiveness of juvenile

other grounds, 660 A.2d 447, (Md. 1995); People v. Smith, 276 N.W.2d 481 (Mich. Ct. App. 1979);
City of Richmond Hts. v. Marando, 1992 WL 114598 (Ohio Ct. App. May 28, 1992); City of Akron
curfews has been rekindled, leading to the same discussion that occurred 100 years ago. This debate has recently culminated in the *Qutb* ruling, where the Fifth Circuit held that the curfew ordinance in the city of Dallas, Texas was constitutional. After the *Qutb* decision, cities across the country enacted curfew ordinances mirroring the Dallas curfew ordinance.

This "curfew-copying" is illustrated in *Hutches v. District of Columbia*. In *Hutches*, a group of minors, parents, and private businesses challenged the constitutionality of a juvenile curfew ordinance that the District of Columbia had copied "wholesale [from] the Dallas, Texas, juvenile ordinance that withstood scrutiny in *Qutb*." The district court in Washington, D.C. found, after applying the *Bellotti* factors, that there were no "legitimate grounds for treating minors’ fundamental right to free movement differently from those of adults." The district court found that the ordinance was unconstitutional, on the grounds that the statistics offered by the District of Columbia "d[id] not demonstrate that the curfew law is narrowly tailored to support the District’s compelling interest in responding to crime."

The *Hutches* decision demonstrates that the *Qutb* ruling is not as reliable as some cities may have originally perceived. Those cities that are quick to adopt the Dallas ordinance’s language should review the problems with the *Qutb* court’s rationale and tread carefully before restricting their juveniles.

*Brian J. Lester*

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230. As one commentator noted 100 years ago:

Do the advocates of curfew realize that the mere fact of being arrested makes a boy lose caste among the better class of his associates? Everyone knows the power of suggestion. Arrest a boy and call him a lawbreaker, and he is just one step nearer to becoming one in fact. And yet there is nothing intrinsically wrong in playing on the streets. Nature places the child there for want of better conditions in which to exercise his imagination and his muscles; and then we make a law which, in obeying nature, he must break. That done, we propose sending him to some institution where his associates will be youthful thieves and gamblers; even if sent to the 'Truant Home,' it would be away from the very parents and home the ordinance was erected to keep him with.

*Buck*, supra note 19, at 384.


232. Id. at 678.

233. Id. at 674.

234. Id. at 679.

* The Author expresses his thanks to Professor J. Herbie DiFonzo, Hofstra University School of Law, for his assistance and guidance in the writing of this Comment.
An ordinance amending Section 31-33, "Curfew Hours for Minors," of CHAPTER 31, "OFFENSES-MISCELLANEOUS," of the Dallas City Code, as amended; repealing Section 2 of Ordinance No. 20966; defining terms; creating offenses for minors, parents and guardians of minors, and business establishments violating curfew regulations; providing defenses; providing for enforcement by the police department; providing for waiver by the municipal court of jurisdiction over a minor when required under the Texas Family Code; providing for review of this ordinance in lieu of Ordinance No. 20966 within six months after the date of initial enforcement; providing a penalty not to exceed $500; providing a saving clause; providing a severability clause; and providing an effective date.

WHEREAS, the city council has determined that there has been an increase in juvenile violence, juvenile gang activity, and crime by persons under the age of 17 in the city of Dallas; and

WHEREAS, persons under the age of 17 are particularly susceptible by their lack of maturity and experience to participate in unlawful and gang-related activities and to be victims of older perpetrators of crime; and

WHEREAS, the city of Dallas has an obligation to provide for the protection of minors from each other and from other persons, for the enforcement of parental control over and responsibility for children, for the protection of the general public, and for the reduction of the incidence of juvenile criminal activities; and

WHEREAS, a curfew for those under the age of 17 will be in the interest of the public health, safety, and general welfare and will help to attain the foregoing objectives and to diminish the undesirable impact of such conduct on the citizens of the city of Dallas; Now, Therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

SECTION 1. That Section 31-33, "Curfew Hours for Minors," of CHAPTER 31, "OFFENSES-MISCELLANEOUS," of the Dallas City Code, as amended, is amended to read as follows:
SEC. 31-33. CURFEW HOURS FOR MINORS.
(a) Definitions. In this section:
(1) CURFEW HOURS means:
(A) 11:00 p.m. on any Sunday, Monday, Tuesday, Wednesday, or Thursday until 6:00 a.m. of the following day; and
(B) 12:01 a.m. until 6:00 a.m. on any Saturday or Sunday.

(2) EMERGENCY means an unforeseen combination of circumstances or the resulting state that calls for immediate action. The term includes, but is not limited to, a fire, a natural disaster, or automobile accident, or any situation requiring immediate action to prevent serious bodily injury or loss of life.

(3) ESTABLISHMENT means any privately-owned place of business operated for a profit to which the public is invited, including but not limited to any place of amusement or entertainment.

(4) GUARDIAN means:
(A) a person who, under court order, is the guardian of the person of a minor; or
(B) a public or private agency with whom a minor has been placed by a court.

(5) MINOR means any person under 17 years of age.

(6) OPERATOR means any individual, firm, association, partnership, or corporation operating, managing, or conducting any establishment. The term includes the members or partners of an association or partnership and the officers of a corporation.

(7) PARENT means a person who is:
(A) a natural parent, adoptive parent, or step-parent of another person; or
(B) at least 18 years of age and authorized by a parent or guardian to have the care and custody of a minor.

(8) PUBLIC PLACE means any place to which the public or a substantial group of the public has access and includes, but is not limited to, streets, highways, and the common areas of schools, hospitals, apartment houses, office buildings, transport facilities, and shops.

(9) REMAIN means to:
(A) linger or stay; or
(B) fail to leave premises when requested to do so by a police officer or the owner, operator, or other person in control of the premises.

(10) SERIOUS BODILY INJURY means bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

(b) Offenses.

(1) A minor commits an offense if he remains in any public place or on the premises of any establishment within the city during curfew hours.

(2) a parent or guardian of a minor commits an offense if he knowingly permits, or by insufficient control allows, the minor to remain in any public place or on the premises of any establishment
within the city during curfew hours.

(3) The owner, operator, or any employee of an establishment commits an offense if he knowingly allows a minor to remain upon the premises of the establishment during the curfew hours.

(c) Defenses.

(1) It is a defense to prosecution under Subsection (b) that the minor was:

(A) accompanied by the minor's parent or guardian;
(B) on an errand at the direction of the minor's parent or guardian, without any detour or stop;
(C) in a motor vehicle involved in interstate travel;
(D) engaged in an employment activity, or going to or returning home from an employment activity, without any detour or stop;
(E) involved in an emergency;
(F) on the sidewalk abutting the minor's residence or abutting the residence of a next-door neighbor if the neighbor did not complain to the police department about the minor's presence;
(G) attending an official school, religious, or other recreational activity supervised by adults and sponsored by the city of Dallas, a civic organization, or another similar entity that takes responsibility for the minor, or going to or returning home from, without any detour or stop, an official school, religious, or other recreational activity supervised by adults and sponsored by the city of Dallas, a civic organization, or another similar entity that takes responsibility for the minor;

(H) exercising First Amendment rights protected by the United States Constitution, such as the free exercise of religion, freedom of speech, and the right of assembly; or

(I) married or had been married or had disabilities of minority removed in accordance with Chapter 31 of the Texas Family Code.

(2) It is a defense to prosecution under Subsection (b)(3) that the owner, operator, or employee of an establishment promptly notified the police department that a minor was present on the premises of the establishment during curfew hours and refused to leave.

(d) Enforcement.

Before taking any enforcement action under this section, a police officer shall ask the apparent offender's age and reason for being in the public place. The officer shall not issue a citation or make an arrest under this section unless the officer reasonably believes that an offense has occurred and that, based on any response and other circumstances, no defense in Subsection (c) is present.

(e) Penalties.

(1) A person who violates a provision of this chapter is guilty of a separate offense for each day or part of a day during which the
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violation is committed, continued, or permitted. Each offense, upon conviction, is punishable by a fine not to exceed $500.

(2) When required by Section 51.08 of the Texas Family Code, as amended, the municipal court shall waive original jurisdiction over a minor who violates Subsection (b)(1) of this section and shall refer the minor to juvenile court.

SECTION 2. That Section 2 of Ordinance No. 20966, passed by the city council on June 12, 1991, is repealed.

SECTION 3. That within six months after the initial enforcement of this ordinance, the city manager shall review this ordinance and report and make recommendations to the city council concerning the effectiveness of and the continuing need for the ordinance. The city manager's report shall specifically include the following information:

(A) the practicality of enforcing the ordinance and any problems with enforcement identified by the police department;

(B) the impact of the ordinance on crime statistics;

(C) the number of persons successfully prosecuted for a violation of the ordinance; and

(D) the city's net cost of enforcing the ordinance.

SECTION 4. That CHAPTER 31 of the Dallas City Code, as amended, shall remain in full force and effect, save and except as amended by this ordinance.

SECTION 5. That the terms and provisions of this ordinance are severable and are governed by Section 1-4 of CHAPTER 1 of the Dallas City Code, as amended.

SECTION 6. That this ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the Charter of the City of Dallas, and it is accordingly so ordained.¹
