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## Constitutional Law—Juvenile Curfews in Illinois: A Step Backward

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## JUVENILE CURFEWS IN ILLINOIS: A STEP BACKWARD

Juvenile curfew laws have been in force throughout the United States since the late 1800's.<sup>1</sup> Most courts have considered the imposition of such curfews to be a reasonable exercise of the police power of the state.<sup>2</sup> Recently, a significant minority of courts has condemned such laws as violations of due process.<sup>3</sup> This trend was arrested, however, by the recent case of *People v. Chambers*,<sup>4</sup> in which the Illinois Supreme Court reversed a lower court decision<sup>5</sup> which had found the Illinois state-wide juvenile curfew unconstitutional. In so doing, the *Chambers* court missed an opportunity to reform an area of the law already fraught with archaic legal fictions.<sup>6</sup>

1. *People v. Chambers*, 32 Ill. App. 3d 444, 450, 335 N.E.2d 612, 615 (1975). At the turn of the century approximately 3000 municipalities had enacted juvenile curfew ordinances. *Thistlewood v. Trial Magistrate*, 236 Md. 548, 552, 204 A.2d 688, 690-91 (1964). Until World War II there was no great increase in the use of such laws, but wartime conditions (e.g., parents in the armed services or at work late at night in war plants; greater number of servicemen in urban areas) provided the impetus for a new state of legislation.*Id.*

Interest in such laws has not been limited to small communities. As of 1966 (the most recent date for which comprehensive statistics are available), 48 cities with populations over 100,000 had juvenile curfews in force. *City of Eastlake v. Ruggiero*, 7 Ohio App. 2d 212, 214, 220 N.E.2d 126, 128 (1966). Besides Illinois (*see notes 7, 8 infra*) there are presently three states with some form of statewide juvenile curfew law. MICH. STAT. ANN. § 28.342(2) (Supp. 1976) provides that no person under 16 "shall . . . loiter, idle or congregate in or on any public street, highway, alley or park between the hours of 12 midnight and 6 A.M." MINN. STAT. ANN. § 169.131 (Supp. 1976) prohibits persons under 17 "from driving a motor vehicle upon any public highway between the hours of 12 midnight and 5 A.M." ORE. REV. STAT. § 419.710 (1975) prohibits the presence of minors in public "between the hours of 12 midnight and 4 A.M. the following morning" with certain exceptions. The New Hampshire State Legislature has promulgated a "model" juvenile curfew ordinance, N.H. REV. STAT. ANN. § 31:43-c (Supp. 1975), which the cities of that state may adopt. For a general discussion of curfew laws, *see Note, Curfew Ordinances and the Control of Nocturnal Juvenile Crime*, 107 U. PA. L. REV. 66 (1958); Annot., 59 A.L.R.3d 321 (1974).

2. *See, e.g., Bykofsky v. Borough of Middletown*, 401 F. Supp. 1242 (M.D. Pa. 1975); *In re C.*, 28 Cal. App. 3d 747, 105 Cal. Rptr. 113 (1972); *People v. Walton*, 70 Cal. App. 2d 862, 161 P.2d 498 (1945); *Thistlewood v. Trial Magistrate*, 236 Md. 548, 204 A.2d 688 (1964); *City of Eastlake v. Ruggiero*, 7 Ohio App. 2d 212, 220 N.E.2d 126 (1966).

3. *See Alves v. Justice Court*, 148 Cal. App. 2d 419, 306 P.2d 601 (1957); *In re Doe*, 54 Haw. 647, 513 P.2d 1385 (1973); *Ex Parte McCarver*, 39 Tex. Crim. 448, 46 S.W. 936 (Crim. App. 1898); *City of Seattle v. Pullman*, 82 Wash. 2d 794, 514 P.2d 1059 (1973).

4. — Ill. 2d —, 360 N.E.2d 55 (1977).

5. 32 Ill. App. 3d 444, 335 N.E.2d 612 (1975).

6. In many respects, the entire area of juvenile law remains under the sway of the nineteenth century idealism which gave birth to it. Juvenile court judges continually

In *Chambers*, two juveniles sitting in an auto parked on a rural highway at approximately 1:00 a.m. were arrested for violating the Illinois juvenile curfew law.<sup>7</sup> The law made it "unlawful for a person less than 18 years of age to be present at or upon any public assembly, building, place, street, or highway" between certain hours of the night.<sup>8</sup> Defendants were convicted in the lower court despite their claim that the restriction of their freedom of movement deprived them of liberty without the due process required by the Illinois<sup>9</sup> and United States<sup>10</sup> Constitutions. The appellate court accepted the arguments of the defendants and reversed the convictions. The Illinois Supreme Court, however, found that the impact on these constitutional rights was trivial and that, in light of the increase in juvenile crime, a statewide juvenile curfew was justified by the state's interest in the moral and physical well-being of its children.<sup>11</sup>

The curfew has long been regarded as an effective means of community peace-keeping.<sup>12</sup> Oftentimes, general curfew laws, not con-  
recommend "treatment" for delinquents in what are euphemistically called "receiving homes" or "industrial schools," but which are actually little better than prisons where the juvenile's world becomes "a building with whitewashed walls, regimented routine, and institutional hours." *In re Gault*, 387 U.S. 1, 27 (1967), citing *Holmes's Appeal*, 379 Pa. 599, 616, 109 A.2d 523, 530 (1954). See also *Kent v. United States*, 383 U.S. 541, 556 (1966). Examples abound in which a juvenile sentenced to a "home" actually degenerates in the "care" of the state due to the deplorable conditions there. See *Gesicki v. Oswald*, 336 F. Supp. 371 (S.D.N.Y. 1971), *aff'd without opinion*, 406 U.S. 913 (1972).

7. ILL. ANN. STAT. ch. 23, § 1 (Smith-Hurd Supp. 1976).

8. The law forbids the presence of juveniles under 18 in public "[b]etween 12:01 A.M. and 6 A.M. Sunday." *Id.* Defendants, aged 15 and 17, were arrested on a Sunday about an hour after "curfew." The curfew was also enforced "[b]etween 12:01 A.M. and 6 A.M. Saturday" and "[b]etween 11 P.M. on Sunday to Thursday, inclusive, and 6 A.M. on the following day." *Id.* Exceptions were made for juveniles accompanied by legal guardians or other persons over 21 approved by a parent, or for juveniles engaged in some lawful business. *Id.* It has been held that the failure to include any exceptions in a curfew law may render it unconstitutional. *People v. Kears*, 58 Misc. 2d 277, 295 N.Y.S.2d 192 (Onondaga County Ct. 1968). The same result may occur if the exceptions are vague. *Shreveport v. Brewer*, 225 La. 93, 72 So. 2d 308 (1954). Neither *Kears* nor *Shreveport* are juvenile curfew cases.

9. "No person shall be deprived of life, liberty or property without due process of law, . . ." ILL. CONST. art. I, § 2.

10. "No state shall . . . deprive any person of . . . liberty . . . without due process of law . . ." U.S. CONST. amend. XIV, § 1.

11. — Ill. 2d at —, 360 N.E.2d at 57-58.

12. The curfew is said to have originated with William the Conqueror, who utilized the curfew as a device to prevent potentially "dangerous" assemblies of vanquished Anglo-Saxons. *Thistlewood v. Trial Magistrate*, 236 Md. 548, 552, 204 A.2d 688, 690 (1964). In the United States, curfews designating the hours slaves were permitted in public were common in the ante-bellum South. *Id.* at 552, 204 A.2d at 690-91. See *Jennings v. Washington*, 13 F. Cas. 547 (C.C.D.C. 1838) (No. 7284); *Memphis v.*

trated challenges to the validity of juvenile curfew laws.<sup>24</sup> Recently, however, some courts have departed from this superficial method of review.<sup>25</sup>

In *In re Doe*<sup>26</sup> a Honolulu curfew ordinance prohibited minors under eighteen years old from "loitering about" in public places between 10 p.m. and sunrise.<sup>27</sup> The Supreme Court of Hawaii noted "the trend toward extending full constitutional protection to juveniles"<sup>28</sup> and held that the curfew law, which would be unconstitutionally vague and overbroad if applied to adults, was similarly vague and overbroad when applied to juveniles.<sup>29</sup> In *City of Seattle v. Pullman*,<sup>30</sup> the Washington Supreme Court went further and found that a law, indistinguishable from the ordinance considered in *Doe*, violated due process not only because of its vagueness but because "it [bore] no real or substantial relationship to the proclaimed governmental interest—the protection of minors."<sup>31</sup> In neither case was the court willing to accept the state's special power over juveniles as a justification for the infringement of important rights.

The appellate court in *Chambers* held the Illinois juvenile curfew unconstitutional primarily because, by restricting the freedom of movement, the law in large measure vitiated the freedom to exercise other rights protected by the first amendment, particularly "the freedom to enter into an invaluable social relationship."<sup>32</sup> While this right

24. See note 2 *supra*.

25. The reasons have ranged from lack of authority in the promulgating administrator, *Ex Parte McCarver*, 39 Tex. Crim. 448, 46 S.W. 936 (Crim. App. 1898), to undue restriction of personal freedom, *Alves v. Justice Court*, 148 Cal. App. 2d 419, 306 P.2d 601 (1957), to the unconstitutional vagueness of laws which use "loitering" as the standard of enforcement, *In re Doe*, 54 Haw. 647, 513 P.2d 1385 (1973); *City of Seattle v. Pullman*, 82 Wash. 2d 794, 514 P.2d 1059 (1973). Both *Doe* and *Pullman*, have departed significantly from previous cases in many substantive aspects. Most notably, the courts were not content, as other courts have been, to let their decision rest on a more or less summary invocation of the state's "special authority" over juveniles. Rather the courts undertook to examine the law's reasonableness in light of the purpose underlying the existence of the special authority, namely to protect minors from abuses. In both cases the actions of the legislatures were found wanting. See notes 26-35 and accompanying text *infra*.

26. 54 Haw. 647, 513 P.2d 1385 (1973).

27. HONOLULU, HAWAII, REV. ORDINANCES § 13-3A.1 (1969). Exceptions were made for juveniles accompanied by parents or legal guardians.

28. 54 Haw. at 649, 513 P.2d at 1388.

29. *Id.*

30. 82 Wash. 2d 794, 514 P.2d 1059 (1973).

31. 82 Wash. 2d at 800, 514 P.2d at 1063.

32. 32 Ill. App. 3d at 448-49, 335 N.E.2d at 617.

is not specifically mentioned in the first amendment, it is certainly synonymous with the freedom of association, which the Supreme Court has "repeatedly held . . . is protected by the First Amendment"<sup>33</sup> and which "is entitled to no less protection than any other First Amendment right."<sup>34</sup> The appellate court also held that juveniles shared this right equally with adults.<sup>35</sup>

The Illinois Supreme Court disagreed and dismissed the first amendment claim, stating that "the statute is not aimed at any of the fundamental values of speech, association or expression protected by the first amendment."<sup>36</sup> But the fact that the legislature did not intend the law to have such consequences is not determinative. If the statute seriously infringes on fundamental constitutional rights, the law may be found invalid regardless of legislative intent.<sup>37</sup> The court also rejected "the suggestion" that first amendment rights were impaired by the curfew.<sup>38</sup> However the court's view of the effect of the statute on first amendment rights seems overly narrow. Other courts have asserted that "[a] curfew . . . doubtless has an incidental effect on first

33. See *Williams v. Rhodes*, 393 U.S. 23, 30 (1968).

34. See *Bates v. City of Little Rock*, 361 U.S. 516, 528 (1960) (Black & Douglas, JJ., concurring), citing *NAACP v. Alabama*, 357 U.S. 449, 460 (1958). See also *United States Dep't of Agriculture v. Moreno*, 413 U.S. 528, 542-43 (1973) (Douglas, J., concurring); *Healy v. James*, 408 U.S. 169, 181 (1972); *Shelton v. Tucker*, 364 U.S. 479 (1960). See generally Emerson, *Freedom of Association and Freedom of Expression*, 74 *YALE L.J.* 1 (1968).

35. 32 Ill. App. 3d at 449, 335 N.E.2d at 617.

36. — Ill. 2d at —, 360 N.E.2d at 57.

37. In *United States v. O'Brien*, 391 U.S. 367 (1968), the Supreme Court discussed the problems of motivation and effect. Plaintiff had alleged that the 1965 amendment to the Military Training and Service Act, 50 U.S.C. § 462(b), was unconstitutional because the purpose of Congress in enacting it was "to suppress freedom of speech," 391 U.S. at 382-83, relying on *Grosjean v. American Press Co.*, 297 U.S. 233 (1936), and *Gomillion v. Lightfoot*, 364 U.S. 339 (1960). The Court held that plaintiff's position was based on a misunderstanding of these cases.

These cases stand, not for the proposition that legislative motive is a proper basis for declaring a statute unconstitutional, but that the inevitable effect of a statute on its face may render it unconstitutional. . . . In these cases, the purpose of the legislation was irrelevant, because the inevitable effect—the 'necessary scope and operation,' *McCray v. United States*, 195 U.S. 27, 59 (1904)—abridged constitutional rights.

391 U.S. at 385. The statute in question was held not to have "such inevitable unconstitutional effect" since destruction of a draft card was not necessarily expressive. *Id.* Some courts, however, have already noted the inevitable effect curfews have on first amendment rights. See notes 39 & 40 *infra*. Thus, unless the court justifies the infringement of first amendment rights due to a compelling state interest (see note 15 *supra*), legislative motive should be irrelevant.

38. — Ill. 2d at —, 360 N.E.2d at 57.

fined to children, are used to help restore order during riots and other public emergencies.<sup>13</sup> Courts approve general curfews under the theory that the nature of civil disorders and emergencies requires extraordinary measures.<sup>14</sup> Although courts recognize that curfews seriously infringe personal liberties<sup>15</sup> and thus require a showing of great necessity,<sup>16</sup> inevitably they are persuaded by the compelling interest in community order to approve the curfew.<sup>17</sup> Concerns with personal liberty are eased since the curfew is imposed only during the period of the emergency.<sup>18</sup> The emergency curfew imposed in good faith has thus found acceptance in the courts and is generally treated as a reasonable exercise of the state's police power.<sup>19</sup>

Winfield, 27 Tenn. 707 (1848). For a brief history of vagrancy laws, which have often had the effect of curfews, see *Ledwith v. Roberts*, [1937] 1 K.B. 232, 271.

13. For municipalities, curfews have become perhaps the most common device for dealing with riots. *Glover v. District of Columbia*, 250 A.2d 556, 560 (D.C. App. 1969). A number of states presently have provisions in their codes granting express authority to the chief executives or legislative councils of municipalities to impose curfews in times of emergency. See, e.g., ARIZ. REV. STAT. ANN. § 26-311B(1) (1976); FLA. STAT. ANN. § 870.045(1) (West Supp. 1976); LA. REV. STAT. ANN. § 14:329.6(1) (West 1974); MASS. ANN. LAWS ch. 40, § 37A (Michie/Law. Co-op 1973); MISS. CODE ANN. § 45-17-5 (1972); NEB. REV. STAT. § 28-827(3) (Cum. Supp. 1974); TEX. REV. CIV. STAT. art. 5890e, Sec. 3 (Vernon Supp. 1976).

14. The law in this area is settled. The curfew is definitely a legitimate alternative open to executives and legislatures faced with riots or other pressing public emergencies. Note, *Judicial Control of the Riot Curfew*, 77 YALE L.J. 1560 (1968). Although the imposition of curfews during emergencies is not beyond judicial review, in the majority of cases the courts are reluctant to engage in retrospective condemnation of municipal discretion. See, e.g., *United States v. Chalk*, 441 F.2d 1277, 1281 (4th Cir.), cert. denied, 404 U.S. 943 (1971); *Davis v. Justice Court*, 10 Cal. App. 3d 1002, 89 Cal. Rptr. 409 (1970); *State v. Boles*, 5 Conn. Cir. Ct. 22, 29, 240 A.2d 920, 925 (1967); *Glover v. District of Columbia*, 250 A.2d 556, 560 (D.C. App. 1969); *State v. Dobbins*, 277 N.C. 484, 496-97, 178 S.E.2d 449, 456 (1971); *Ervin v. State*, 41 Wis. 2d 194, 201-02, 163 N.W.2d 207, 211 (1968). See also Note, *Riot Control: The Constitutional Limits of Search, Arrest and Fair Trial Procedure*, 68 COLUM. L. REV. 85, 113 (1968).

15. See *United States v. Chalk*, 441 F.2d 1277, 1280 (4th Cir.), cert. denied, 404 U.S. 943 (1971); *Ervin v. State*, 41 Wis. 2d 194, 200, 163 N.W.2d 207, 210 (1968).

16. See *People v. McKelvy*, 23 Cal. App. 3d 1027, 1035, 100 Cal. Rptr. 661, 665 (1972) ("[O]nly a clear showing of emergent necessity can justify [a curfew's] imposition . . ."); *Davis v. Justice Court*, 10 Cal. App. 3d 1002, 1010, 89 Cal. Rptr. 409, 414 (1970) ("[T]he right to free movement cannot be interfered with unless extraordinary and perilous conditions exist.").

17. See, e.g., *State v. Boles*, 5 Conn. Cir. Ct. 22, 240 A.2d 920 *passim* (1967); *Glover v. District of Columbia*, 250 A.2d 556, 559 (D.C. App. 1969).

18. *People v. Chambers*, 32 Ill. App. 3d 444, 446, 335 N.E.2d 612, 615 (1975). In fact, it is perhaps this element of the curfew more than any other which courts continually identify as a redeeming feature. See *Glover v. District of Columbia*, 250 A.2d 556, 560-61 (D.C. App. 1969); *Ervin v. State*, 41 Wis. 2d 194, 201, 163 N.W.2d 207, 211 (1968).

19. See cases in notes 13-14 *supra*.

By contrast, the law surrounding juvenile curfews is less settled.<sup>20</sup> However one principle has commanded a judicial consensus. Courts agree that states have a greater interest in controlling the conduct of juveniles than the conduct of adults.<sup>21</sup> This interest has been given explicit recognition by the Supreme Court of the United States<sup>22</sup> and is based upon the doctrine of *parens patriae*, which decrees that the state must provide for the welfare of its juveniles in "parent-like" fashion when necessary.<sup>23</sup> Unfortunately, the question of whether or when a state needs to function as surrogate parent receives little attention in most juvenile curfew cases. The presumption of validity of all legislation coupled with a summary assertion of the "special capacity" of the state to make laws regarding juveniles has, for the most part, frus-

20. See Note, *Curfew Ordinances and the Control of Nocturnal Juvenile Crime*, *supra* note 1, at 98 ("Judicial guidance on the particular constitutional issue involved in curfew regulation of juveniles is sparse. . . .").

21. "It has been recognized that the activities and conduct of minor children under 18 years may be regulated and restricted to a far greater extent than those of adults." *City of Eastlake v. Ruggiero*, 7 Ohio App. 2d 212, 215, 220 N.E.2d 126, 128 (1966). See note 23 *infra*. See also *Bykofsky v. Borough of Middletown*, 401 F. Supp. 1242 (M.D. Pa. 1975); *People v. Walton*, 70 Cal. App. 2d 862, 867, 161 P.2d 498, 501 (1945); *Thistlewood v. Trial Magistrate*, 236 Md. 548, 554, 204 A.2d 688, 691-92 (1964). Cf. *Smith v. State*, 444 S.W.2d 941, 947 (Tex. Ct. App. 1969) ("Classifications based on age are no strangers to our law. Especially familiar are laws designed for the protection of children, such as those prohibiting the sale of intoxicants to minors . . .").

22. "The state's authority over children's activities is broader than over like actions of adults." *Prince v. Massachusetts*, 321 U.S. 158, 168 (1944). See also *Ginsberg v. New York*, 390 U.S. 629, 640-41 (1968). In *Prince*, plaintiffs were Jehovah's Witnesses and had challenged the constitutionality of a law forbidding minors under a certain age from selling magazines in public places. The Court upheld the regulation as a legitimate exercise of the state's police power in view of the vital interest the state has to protect against "the crippling effects of child employment." 321 U.S. at 168. The Court noted, however, that "[i]t is true children have rights, in common with older people, in the primary use of the highways." *Id.* at 169. The court also observed that "[s]treet preaching, whether oral or by handing out literature, is not the primary use of the highway, even for adults." *Id.*

23. *Thistlewood v. Trial Magistrate*, 236 Md. 548, 554, 204 A.2d 688, 692 (1964), provides the best explanation of the doctrine:

In its inception, jurisdiction over minors belonged to the King as *parens patriae* to protect his young subjects. Because of the special powers of the State over minors, many laws pertaining to them or restricting them only, which would not be effective as to adults, have been upheld on the ground that the classification was not unreasonable or illegally discriminatory . . . .

This doctrine pervades the juvenile law and may in fact be the foundation of it. The formation of a special law for juveniles began with the creation of a separate court system for juveniles, organized in Cook County, Ill. in the late 1800's. Its creation was primarily a response to the harsh treatment of juveniles who were designated to be juvenile delinquents and then placed alongside hardened adult criminals. Constitutional objections to the new court system were obviated because the state was allowed to proceed as *parens patriae*. See *In re Gault*, 387 U.S. 1, 16-17 (1967).

amendment rights"<sup>39</sup> and that "freedom of movement is inextricably involved with the freedoms set forth in the first amendment."<sup>40</sup> To say that a law which makes it a criminal offense for a teenager and his friends to sit outside the house on a warm summer night at 11 p.m. does not curtail freedom of association is untenable.

Recognizing that any statute must bear some reasonable relation to a legitimate state purpose, the state advanced, and the court accepted, the proposition that the "traditional right of the State to protect its children"<sup>41</sup> justified the restrictions found in the curfew. The court asserted that if minors were given "an absolutely unlimited right not only to choose their own associates, but also to decide when and where they will associate with them,"<sup>42</sup> the large body of law enacted for the protection of minors and posited on the doctrine of *parens patriae* would have to be reformed.<sup>43</sup> While it is true that under the doctrine the state may regulate the activity of juveniles to a greater extent than would be constitutionally permissible for adults, the mere fact that a law pertains to juveniles does not signal the abandonment of due process. There are limits on the state's power to control the actions of any of its citizens, young or old.<sup>44</sup>

The policy underlying *parens patriae* is that the state must have broad discretion to protect its young citizens from the untoward consequences of decisions they are not ready to make.<sup>45</sup> In justifying the

39. *United States v. Chalk*, 441 F.2d 1277, 1280 (4th Cir.), *cert. denied*, 404 U.S. 943 (1971).

40. *Ervin v. State*, 41 Wis. 2d 194, 200, 163 N.W.2d 207, 210 (1968). *But see* *Bykofsky v. Borough of Middletown*, 401 F. Supp. 1242 (M.D. Pa. 1975).

41. — III. 2d at —, 360 N.E.2d at 57-58.

42. *Id.*

43. *Id.* See note 23 *supra*.

44. See, e.g., *Pierce v. Society of Sisters*, 268 U.S. 510 (1925); *Meyer v. Nebraska*, 262 U.S. 390 (1923). In *Pierce*, the Supreme Court recognized that parents have the right to provide their children with secular as opposed to public schooling. Thus, an act requiring all children between the ages of eight and sixteen to be enrolled at public schools only, unreasonably interfered with the liberty of parents "to direct the upbringing and education of children under their control." 268 U.S. at 534-35. In *Meyer*, a child's right to receive teaching in a foreign language was protected from state encroachment. 262 U.S. at 399. Cf. *Danforth v. Planned Parenthood*, 428 U.S. 52 (1976) (minor may get abortion without parental consent).

45. See *Danforth v. Planned Parenthood*, 428 U.S. 52, 104 (1976) (Stevens, J., dissenting). Thus, for example, minors below a certain age may be prohibited from purchasing intoxicants, working long hours, marrying or making enforceable contracts. The dangers to the health and welfare of juveniles, if allowed to engage in the above activities without restriction, is more or less apparent. The same cannot be said about the decision to move about in public. If the average juvenile is prepared to make this decision, then the state should not make it for him. The juvenile is allowed to make this



reasonableness of nighttime restrictions the Supreme Court of Illinois offered only 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."<sup>46</sup> In *Danforth v. Planned Parenthood of Central Missouri*<sup>47</sup> the United States Supreme Court limited the extent to which a state may interfere with the protected rights of juveniles in attempting to provide for their welfare.<sup>48</sup> The Court held, against a strong dissent by Mr. Justice Stevens, that a minor may obtain an abortion without parental consent as a matter of right.<sup>49</sup> Currently in Illinois, a juvenile may decide to obtain an abortion without her parent's consent but that same juvenile may not be present on the street after 11 p.m. even with her parent's permission.<sup>50</sup>

The court also undertook a somewhat "tedious statistical demonstration" tending to show that juvenile crime is on the rise. The court concluded from this analysis that the General Assembly did not act on "whim or caprice" but was attempting to cope with a serious problem.<sup>51</sup> While it is clear that the action of the legislature in promulgating the curfew was not arbitrary, it is not clear whether the action taken was therefore constitutionally permissible. For it is apparent that the reason the state has traditionally been accorded broad discretion to regulate juvenile activity is so that the state can provide protection *for* its juveniles, not *from* them. Unless the court is acting on the dubious assumption that something in the night turns otherwise law-abiding juveniles into criminals,<sup>52</sup> the court cannot logically claim that the act

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decision for three-quarters of the day; neither the state nor the court was able to cite evidence demonstrating that there is anything about the remaining one-quarter of the day (the curfew hours) which compels the state to invoke its authority as *parens patriae*. Thus a strong argument exists that the state's expanded powers to regulate juveniles under *parens patriae* is an improper justification for the curfew and the decision of the juvenile to move about in public should be respected as would that of an adult. The issue then would not be whether the person being regulated is a juvenile, but whether the regulation itself is reasonable. It bears noting that the Supreme Court of Washington, facing a law similar to the one involved in *Chambers*, held that a curfew for juveniles bore no reasonable relation to the objective of safeguarding minors and therefore exceeded the police power of the state. See *City of Seattle v. Pullman*, 82 Wash. 2d 794, 514 P.2d 1059 (1973).

46. — Ill.2d at —, 360 N.E.2d at 57.

47. 428 U.S. 52 (1976).

48. *Id.* at 70-75.

49. *Id.* at 75.

50. The Illinois Juvenile Curfew Law provides that "it is unlawful for a parent, legal guardian or other person to knowingly permit a person in his custody or control to violate [the curfew]." ILL. ANN. STAT. ch. 23, § 1(b) (Smith-Hurd Supp. 1976).

51. — Ill. 2d at —, 360 N.E.2d at 59.

52. None of the statistics marshalled by the court indicate that the problem of

“protects” juveniles. The “traditional right of the state to protect its children” then falls away as a justification for the law.

What remains is a law prohibiting a certain class of people from exercising what are arguably constitutionally protected first amendment rights, which should call into play not only due process but the equal protection clause. Where “fundamental rights and liberties are asserted under the equal protection clause, classifications which might invade or restrain them must be closely scrutinized and carefully confined.”<sup>53</sup>

Yet, courts rarely reach these types of issues when dealing with laws pertaining to juveniles. If the curfew cases are representative, courts could impose serious restrictions on any juvenile conduct with a perfunctory reference to “the traditional right of the state to protect its children.” This right is unquestionably an important state interest but, as with any state interest, it must be balanced against the interest in vindicating individual liberty which is shared by all of society. Hopefully, the decisions in *Washington* and *Hawaii* were not aberrations and other courts confronted with challenges to juvenile curfews will recognize the limits of the state’s power over juveniles.

*Richard D. Grossman*

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juvenile criminality is any more acute during the curfew hours than it is during the non-curfew hours. *Id.* at —, 360 N.E.2d at 58.

53. *Harper v. Virginia Bd. of Elections*, 383 U.S. 663, 680 (1966). The Court also noted that “[i]n determining what lines are unconstitutionally discriminatory, we have never been confined to historic notions of equality, any more than we have restricted due process to a fixed catalogue of what was at a given time deemed to be the limits of fundamental rights. Notions of what constitutes equal treatment for purposes of the Equal Protection Clause *do* change.” *Id.* at 675 (emphasis in the original).

Thus, although courts have historically eschewed equal protection analyses in juvenile curfew cases, in an era of growing recognition of juvenile rights (*see In re Gault*, 387 U.S. 1 (1967); *In re Doe*, 54 Haw. 647, 513 P.2d 1385 (1973)), such an approach has not been foreclosed.

