JUVENILE CURFEW LAWS: IS THERE A STANDARD?

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I. INTRODUCTION

The implementation of juvenile curfew laws has markedly increased in the United States.[1] With increased violence among juveniles, many United States cities have viewed curfew ordinances as a viable option to cure the problems associated with juvenile violence.[2] With curfew implementation, however, comes controversy and litigation.[3] Not surprisingly, the majority of controversy concerns the constitutional implications of juvenile curfew ordinances.[4] Suits challenging these ordinances have resulted in the courts

1. Neela Banerjee, *Curfews Spread, But Effects Are Still Not Clear*, WALL ST. J., Mar. 4, 1994, at B1 (stating that juvenile curfew laws have increased in use, but that their results are questionable); Arnold Binder, *Restrictions on Youths Strain Families, Burden Government*, L.A. TIMES, Sept. 18, 1994, at B11 (discussing how juvenile curfew laws are currently increasing, and that curfew ordinances have been around since the 1800s).

2. Binder, *supra* note 1, at B11.

3. Anthony Crowell, *Minor Restrictions: The Challenge of Juvenile Curfews*, PUB. MGMT., Aug. 1, 1996, at 4; *President Clinton Suggests Teen-age Curfews on Local Levels to Help Curb Juvenile Crime Rates* (NBC television broadcast, May 30, 1996).

4. *See generally* Johnson v. City of Opelousas, 488 F. Supp. 433, 440 (W.D. La. 1980) (holding that a juvenile curfew ordinance did not unconstitutionally interfere with parents' right to direct upbringing of children or impinge on minors' right of travel); City of Panora v. Simmons, 445 N.W.2d 363, 369-70 (Iowa 1989) (holding that a curfew ordinance did not interfere with parents' right to raise a minor).

playing a role in developing city policy.[5] Generally, juvenile curfew ordinances impose fines and possible jail time on parents and juveniles when children are on city streets during the imposed curfew hours.[6] In many instances, there are exceptions within the juvenile curfew ordinances which allow youths to violate the curfew for "good" cause or when accompanied by a parent or guardian.[7]

Common justifications for enacting juvenile curfew laws are: protecting children from street-related violence; curtailing street-related juvenile crime; and encouraging parental supervision.[8] Legislatures who enact curfews expect to decrease instances of crime while increasing parental responsibility.[9] Depending on who you ask, curfews meet with varying degrees of local success. Some claim that curfews decrease crime,[10] while others claim that curfews are generally ineffective.[11] Regardless of their relative failures and successes, curfew laws have been attacked as unconstitutional, and as a result, courts have become involved in the juvenile curfew debate.

Because the validity of a city's ordinance depends on judicial interpretation, it is important for city governments to understand the framework used by courts to analyze juvenile curfew ordinances. The purpose of this Note is to determine what standards, if any, a court may apply in analyzing juvenile curfew ordinances. Part II analyzes the historical context of the United States Supreme Court's treatment of juvenile rights. Part III examines

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5. *See generally* Toni Locy, *D.C. Curfew Overturned in Federal Court; Judge Cites City's Use of 'Flawed Statistics'*, WASH. POST, Oct. 30, 1996, at A1; Fox Butterfield, *Curfews for Teens Show Signs of Lessening Crime*, SEATTLE POST-INTELLIGENCER, June 3, 1996, at A1.

6. *See, e.g.*, Edward Felsenthal, *Teen-Age Curfew Law in Atlanta Fizzles*, WALL ST. J., July 12, 1991, at A5A (explaining an Atlanta ordinance prohibiting juveniles under the age of 17 from walking the streets after 11 p.m., which imposes up to $1000 fine and jail sentences up to 60 days); Banerjee, *supra* note 1, at B1 (giving examples of various juvenile curfew laws throughout the United States).

7. City of Maquoketa v. Russell, 484 N.W.2d 179, 181 (Iowa 1992) (describing a Maquoketa ordinance that allowed an exception for travel with a parent, or for travel in "a direct route between home and bona fide employment or between home and a parentally approved supervised activity"); McCollester v. City of Keene, 514 F. Supp. 1046, 1048 (D.N.H. 1981) (explaining a Keene ordinance and its exemption for traveling from employment, public accommodation, public entertainment, or place of worship), *rev'd on other grounds*, 668 F.2d 617 (1st Cir. 1982).

8. Michael Jordan, *From the Constitutionality of Juvenile Curfew Ordinances to a Children's Agenda for the 1990s: Is It Really a Simple Matter of Supporting Family Values and Recognizing Fundamental Rights?*, 5 ST. THOMAS L. REV. 389, 390 (1993); Felsenthal, *supra* note 6, at A5A (offering various opinions on justifications for enacting curfew laws including parental responsibility).

9. *See supra* note 6 and accompanying text.

10. *See* Banerjee, *supra* note 1, at B8 (suggesting that curfew laws have decreased crime rates and increased local business). *But see* Felsenthal, *supra* note 6, at A5A (stating that curfews may lead to increased arrests, but do not decrease crime).

11. *See* Banerjee, *supra* note 1, at B8 (suggesting that crimes have actually increased and that curfew ordinances do not have an impact on crime); Felsenthal, *supra* note 6, at A5A (suggesting that police officers may not enforce the curfew ordinance); Binder, *supra* note 1, at B11 (claiming that curfew laws may only change when crimes occur).

the constitutionality of curfew laws with specific reference to the United States Supreme Court, lower federal courts, and Iowa state court decisions. Finally, Part IV collates several of these courts' holdings and identifies any overlapping trends or similarities in the decisions.

II. JUVENILE RIGHTS

A. *States' Interests*

The United States Supreme Court has consistently held that minors are entitled to the same constitutional rights and protections as adults.[12] It is equally well established, however, that the State may limit children's constitutional rights in certain circumstances.[13] The Court in *Prince v. Massachusetts*[14] made it clear that a minor's rights must be subjugated to the greater needs of society:

> The state's authority over children's activities is broader than over like actions of adults. This is peculiarly true of public activities and in matters of employment. A democratic society rests, for its continuance, upon the healthy, well-rounded growth of young people into full maturity as citizens, with all that implies. It may secure this against impeding restraints and dangers, within a broad range of selection. Among evils most appropriate for such action are the crippling effects of child employment, more especially in public places, and the possible *harms arising from other activities subject to all the diverse influences of the street.*[15]

The language of the Court seems broad enough to include the juvenile curfew laws at issue in this Note. In fact, there appears to be enough leeway in the language to allow state intervention in almost any activity. The vagueness of "all the diverse influences of the street" appears to open a floodgate through which state and local governments could inundate minors with restrictions and restraints.[16]

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12. *See, e.g.*, Planned Parenthood v. Danforth, 428 U.S. 52, 74 (1976) ("Constitutional rights do not mature and come into being magically only when one attains the state-defined age of majority. Minors, as well as adults, are protected by the Constitution and possess constitutional rights."); Tinker v. Des Moines Indep. Community Sch. Dist., 393 U.S. 503, 506 (1969) ("It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.").

13. *See, e.g.*, McKeiver v. Pennsylvania, 403 U.S. 528, 534 (1971) (holding that juvenile proceedings are governed by lesser due process standards than traditional criminal proceedings); Ginsberg v. New York, 390 U.S. 629, 638 (1968) (stating that children's free speech rights are not violated by state regulation of profanity).

14. Prince v. Massachusetts, 321 U.S. 158 (1944).

15. *Id.* at 168 (emphasis added).

16. *Id.*

Cognizant of the possibility of local and state abuse against minors, the Supreme Court limited the power of a state to curtail children's rights.[17] There are some discrepancies, however, as to exactly what standards a state or local government must meet in order to limit minors' constitutional rights. In *H.L. v. Matheson*,[18] for example, the Court upheld a state statute because it "serve[d] *important* state interests, [was] narrowly drawn to protect only those interests, and [did] not violate any guarantees of the Constitution."[19] Similarly, the Court in *Planned Parenthood v. Danforth*[20] struck down a state statute regulating juvenile activities because there was not a *significant* state interest for mandating a differing standard for minors than for adults.[21] Also, in *Wisconsin v. Yoder*,[22] the Court set forth yet another variation for analyzing when a state may restrict juvenile rights, requiring "a state interest of *sufficient magnitude* to override the interest claiming protection."[23] It is apparent that slight differences in language between courts and factual scenarios may lead to confusion in the interpretation of children's rights. Consequently, one may not know exactly what constitutes an important, significant, or sufficient state interest.

B. Bellotti *Criteria*

The Court in *Bellotti v. Baird*[24] sought to clarify some of these constitutional issues and present a more definitive standard for analyzing limits on juvenile rights.[25] *Bellotti* reaffirmed what was universally recognized: "[a] child, merely on account of his minority, is not beyond the protection of the Constitution."[26] The Court also noted that the Court has "long recognized that the status of minors under the law is unique in many respects."[27] The Court was more specific than in many prior decisions and explicitly set forth its justifications for modifying children's constitutional

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17. *See, e.g.*, H.L. v. Matheson, 450 U.S. 398, 423 (1981) (upholding as constitutional an abortion statute requiring parental or guardian notification); Bellotti v. Baird, 443 U.S. 622, 623 (1979) (invalidating an abortion statute requiring parental consent in every instance and preventing a "mature and fully competent" minor to make decisions alone); Planned Parenthood v. Danforth, 428 U.S. at 53 (holding, in part, as unconstitutional the requirement of an abortion statute that absolutely required parental consent in order to obtain an abortion); Wisconsin v. Yoder, 406 U.S. 205, 234-36 (1972) (finding unconstitutional a state statute requiring Amish children to attend formal high school—the Court cautioned, however, that the holding was limited to unique instances of the Amish and their alternative means of education).

18. H.L. v. Matheson, 450 U.S. 398 (1981).

19. *Id.* at 413 (emphasis added).

20. Planned Parenthood v. Danforth, 428 U.S. 52 (1976).

21. *Id.* at 75.

22. Wisconsin v. Yoder, 406 U.S. 205 (1972).

23. *Id.* at 214 (emphasis added).

24. Bellotti v. Baird, 443 U.S. 622 (1979).

25. *Id.* at 622.

26. *Id.* at 633.

27. *Id.* (focusing on the unique role of the State in ensuring that proper values are instilled in minors).

rights: "the peculiar vulnerability of children; their inability to make critical decisions in an informed, mature manner; and the importance of the parental role in child rearing."[28] The Court focused on the interaction between parent and state and justified some state intervention as necessary and beneficial.[29] "Legal restrictions on minors, especially those supportive of the parental role, may be important to the child's chances for the full growth and maturity that make eventual participation in a free society meaningful and rewarding."[30] Based upon the holding in *Bellotti*, it appears a state can prove a sufficient, significant, or important state interest if it can prove that its interests in protecting and upholding the criteria set forth in *Bellotti* outweigh the individual autonomy interests of the juvenile.[31]

After considering the "state interests" and *Bellotti* framework for juvenile rights analysis, the next step is to look at federal and state courts' interpretations of juvenile curfew statutes. The *Bellotti* and state interests criteria will resurface as courts attempt to develop a coherent and logical standard of review—a goal easier to set than to achieve.

III. CONSTITUTIONALITY OF CURFEW LAWS

A. *Supreme Court*

1. *Denial of Certiorari*

Despite the Supreme Court's affirmative stance on juvenile rights in *Bellotti*, the Court appears reluctant to decide the constitutionality of juvenile curfew ordinances. In fact, the Supreme Court has refused to grant certiorari in cases challenging the constitutionality of juvenile curfew laws.[32] As a result, the Court has left judicial decisionmaking to lower federal and state courts.

Dissenting from the Court's refusal to grant a writ of certiorari in *Bykofsky v. Borough of Middletown*,[33] Justice Marshall believed it was time for the Supreme Court to address the constitutionality of juvenile curfew laws.[34] Marshall reasoned that a curfew ordinance applied broadly to all citizens would likely "not survive constitutional scrutiny."[35] According to Marshall, the issue was whether such an ordinance could survive constitutional muster

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28. *Id.* at 634.
29. *Id.* at 638.
30. *Id.* at 638-39.
31. *See id.* at 635-37. Although the Court in *Bellotti* found in favor of the juvenile, it also set forth significant criteria for analyzing state interests and affirmatively provided that state intervention can be constitutional, if not necessary. *Id.*
32. Qutb v. Bartlett, 511 U.S. 1127, 1127 (1994) (denying petition for a writ of certiorari); Bykofsky v. Borough of Middletown, 429 U.S. 964, 964 (1976) (denying petition for a writ of certiorari).
33. Bykofsky v. Borough of Middletown, 429 U.S. 964 (1976).
34. *Id.* at 965-66.
35. *Id.* at 965.

when applied strictly to juveniles.[36] Despite Marshall's admonitions in 1976, in May 1994 the Court denied certiorari in *Qutb v. Bartlett*, which addressed nearly the same issues.[37]

2. *Possible Standards of Review*

a. *States' interests.* Although the Supreme Court has denied certiorari for challenges to juvenile curfew laws, prior decisions concerning juvenile rights offer insight into possible outcomes should the Court grant certiorari. Applying the *Prince v. Massachusetts*[38] analysis, a state could argue that juvenile curfew laws address "harms arising from other activities subject to all the diverse influences of the street."[39] A state's desire to curtail crime and increase parental responsibility are definitely goals that could be considered crucial to the development of a democratic society. These justifications would seem to fulfill the significant, sufficient, or important state interests that prior Supreme Court decisions have required.[40] Prior Supreme Court holdings have justified limiting children's rights in order to instill proper ideals and values central to a democratic polity.[41] If this is the true purpose behind limiting juvenile constitutional rights, then state mandated detention of juveniles appears to portray a jaded representation of democracy in America.[42] There does not seem to be a significant, sufficient, or important state interest in restricting juveniles' rights based upon the pretext of family values and preventing crime. If family values and crime prevention can be achieved by violating a minor's rights, one can envision a tidal wave of state regulation over other areas of juvenile activity under the pretext of promoting democratic ideals.[43]

b. Bellotti *criteria.* Applying the *Bellotti* criteria to juvenile curfew laws presents an even more complex and controversial situation. In the context of juvenile curfew laws, there appear to be inherent conflicts within each of the *Bellotti* criteria. The first criterion looks at the particular vulnerability of

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36. *Id.*

37. Qutb v. Bartlett, 511 U.S. 1127, 1127 (1994).

38. Prince v. Massachusetts, 321 U.S. 158 (1944).

39. *Id.* at 168.

40. *See supra* notes 18-23 and accompanying text.

41. *See* Hazelwood Sch. Dist. v. Kuhlmeier, 484 U.S. 260, 276 (1988) (upholding regulation of school sponsored newspaper); Bethel Sch. Dist. No. 403 v. Fraser, 478 U.S. 675, 685 (1986) (upholding three day suspension of student who used "an elaborate, graphic, and sexual metaphor" during a speech before a school assembly).

42. *Compare* Bellotti v. Baird, 443 U.S. 622, 633 (1979) (reaffirming that a child is not beyond the protection of the Constitution) *with* Hazelwood Sch. Dist. v. Kuhlmeier, 484 U.S. at 276 (allowing school administration restrictions on student run newspaper).

43. Prior to *Bethel* and *Hazelwood*, the Court held in *Tinker* that it was unconstitutional to deny students' right of expression by prohibiting students from wearing armbands to school to express their disapproval of Vietnam hostilities. Tinker v. Des Moines Indep. Sch. Dist., 393 U.S. 503, 511 (1969). The holdings in *Bethel* and *Hazelwood* represent a possible trend toward limiting student rights which may find its way into juvenile curfew laws if a case is accepted for review by the Supreme Court. *See* Bethel Sch. Dist. No. 403 v. Fraser, 478 U.S. at 686; Hazelwood Sch. Dist. v. Kuhlmeier, 484 U.S. at 276.

children.[44] This broad based, all encompassing justification has been upheld in prior Supreme Court holdings, and the Court seems willing to accept this as a legitimate concern.[45] In general, children are more vulnerable than adults. There are, however, varying degrees of vulnerability depending on the age and maturity of a child. A juvenile curfew ordinance that mandates a curfew for all children does not take such differences into account. Often, curfews are imposed upon juveniles of ages fifteen, sixteen, and seventeen, many of whom have jobs and even children of their own. Such an ordinance cannot purport to protect the vulnerability of a class of citizens who are mature enough to maintain employment and support a family.

Furthermore, because of their vulnerability, children need to be protected from crimes that occur during late night hours. Curfews, however, seem to punish children for the acts of others, rather than merely protecting them from their own vulnerability. Thus, curfews address the effect, rather than the cause. Arguably, children are no more vulnerable to crimes at night than are adults.

The second criterion set forth in *Bellotti* claims that children are unable to "make critical decisions in an informed, mature manner."[46] The same arguments listed for the vulnerability of children are also relevant regarding a child's ability to make informed decisions. This argument is even more tenuous regarding older juveniles. Certainly, a child under the age of thirteen is likely ill equipped to make informed, mature decisions. A child fourteen or older, however, is confronted with many important decisions regarding sex, drug use, future employment, and education. In fact, this is when a juvenile is most likely to make some of the most important decisions of his or her life. Societal and familial communication may enable these youths to make such important decisions. Society supports and encourages individuality and freedom of thought and expression in its children, then mandates that these same children cannot walk the streets past a certain hour. There seems little doubt that a child of fourteen is at a stage in life—confronted with numerous other complicated decisions—in which she is capable of making an informed decision about the time of night she should be out.

Finally, *Bellotti* looks at the "importance of the parental role in child rearing."[47] Traditionally, the Supreme Court and society have focused on the importance of the family in socializing children.[48] The interesting dilemma

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44. Bellotti v. Baird, 443 U.S. at 634.

45. The Supreme Court justifies differing constitutional rights (*e.g.*, no constitutional right to jury) trial for juvenile proceedings because "of fairness, of concern, of sympathy, and of paternal attention that the juvenile court system contemplates." McKeiver v. Pennsylvania, 403 U.S. 528, 550 (1971). Such a statement assumes juveniles are in a more vulnerable position than adults and need more compassion, understanding, and special treatment. Bellotti v. Baird, 443 U.S. 622, 633-39 (1978). Such treatment, however, entitles the state to modify juvenile rights for the juvenile's alleged protection. *Id.* at 653.

46. Bellotti v. Baird, 443 U.S. at 634.

47. *Id.*

48. *See* Pierce v. Society of Sisters, 268 U.S. 510, 535 (1925) ("The child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations."); *see also*

posed by juvenile curfew laws is that they profess to increase parental duty and responsibility, but at the same time, infringe upon a parent's right to raise his or her children.[49] This dichotomy seems difficult to overcome. It is confusing for a parent to be told they have a right and duty to raise their children, yet the state may also impose an affirmative duty and punish both child and parent if that duty is not met.[50] The state is in the peculiar position of limiting children's rights in order to enforce greater parental control, but also restricting parents' rights to raise their children.[51]

Although some similarities are evident between traditional juvenile rights issues and juvenile curfew laws, there is no clear framework of analysis. The Supreme Court's reluctance to take an affirmative stance on juvenile curfew laws is likely to create a lack of uniformity and confusion among lower federal and state courts. The absence of any clear cut standard may prevent local governments from drafting curfew laws which follow constitutional guidelines. Absent guidance from the Supreme Court, governments and plaintiffs must turn to lower federal and state court decisions to fashion a framework for analyzing juvenile curfew laws.

B. *Federal Courts*

The federal courts are split in their holdings on juvenile curfew ordinances; some invalidate[52] and others uphold the ordinances.[53] Without Supreme Court guidance, the lower federal courts are free to determine their own criteria for evaluating juvenile curfew issues.[54] The justifications for

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Wisconsin v. Yoder, 406 U.S. 205, 233 (1972) (reaffirming *Pierce* as "a charter of the rights of parents to direct the religious upbringing of their children").

49. *Compare* Pierce v. Society of Sisters, 268 U.S. at 535 ("[T]hose who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.") *with* Bykofsky v. Borough of Middletown, 401 F. Supp. 1242, 1247-48, 1262-64 (M.D. Pa. 1975) (holding that curfew ordinance which provided for punishment of parents for violations by minor did not "impermissibly impinge on parents' constitutional right").

50. Bykofsky v. Borough of Middletown, 401 F. Supp. at 1256.

51. *Id.*

52. *See, e.g.*, Naprstek v. City of Norwich, 545 F.2d 815, 818 (2d Cir. 1976) (invalidating an ordinance for failure to provide the hour at which the curfew ends); McCollester v. City of Keene, 514 F. Supp. 1046, 1053 (D.N.H. 1981) (holding that an ordinance unduly burdens minors' rights), *rev'd on other grounds*, 668 F.2d 617 (1st Cir. 1982).

53. *See, e.g.*, Qutb v. Strauss, 11 F.3d 488, 495 (5th Cir. 1993) (upholding the constitutionality of a curfew ordinance and recognizing that although parents have a "right to rear their children without undue governmental influence . . . [the challenged] ordinance presents only a minimal intrusion into the parents' rights") (citations omitted); Johnson v. City of Opelousas, 488 F. Supp. 433, 445 (W.D. La. 1980) (upholding the constitutionality of an ordinance upon finding that "the curfew ordinance has a real, rational and substantial relationship to the [objective] sought to be achieved"); Bykofsky v. Borough of Middletown, 401 F. Supp. 1242, 1264 (M.D. Pa. 1975) ("[I]t is clear that the ordinance fosters in a constitutional manner the welfare of both minors and the general community.").

54. *See infra* Part III.B.3.

upholding or striking down any particular curfew ordinance are as multifarious as the various claims and defenses asserted by the plaintiffs and defendants.

1. *Juvenile Curfew Ordinances Invalidated*

A federal district court has recognized that curfew laws may support valid state and governmental interests.[55] Despite these justifications, however, a federal court may determine that the juvenile's rights outweigh the state and governmental interests and, in such instances, it is the duty of the court to intervene.[56] A federal court may refuse to address the constitutional validity of a particular ordinance and instead base its holding on purely technical matters.[57] Such "technical" holdings focus on the precise language of the statute and invalidate the ordinance as "void for vagueness."[58] In order for an ordinance to overcome a challenge on its vagueness, it must "give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute."[59] In applying the Supreme Court criteria to *Naprstek*, it would be impossible for underage citizens of Norwich to avoid the forbidden conduct because the curfew could theoretically run twenty-four hours a day, seven days a week.[60] Obviously, careful drafting is a state's easiest means of combating such attacks.[61] Because curfew ordinances have existed since the

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55. *See,* McCollester v. City of Keene, 514 F. Supp. at 1051-52. In *Keene*, the plaintiff, a girl under sixteen years of age, challenged the City of Keene's curfew ordinance prohibiting persons under the age of sixteen from being on the public streets after nine o'clock at night unless accompanied by a "parent, guardian, or other suitable person." *Id.* at 1047. The plaintiffs alleged that the Keene curfew ordinance violated the Fourteenth Amendment Due Process Clause, the Fourteenth Amendment Equal Protection Clause, and the First Amendment. *Id.* at 1048. The court eventually struck down the ordinance, but recognized that the state can have an interest in the "safety and general welfare of vulnerable, impressionable minors." *Id.* at 1050. The court further stated that, "A city's legislative body does have authority within its delegated police power to take steps to control such problems as it perceives to exist in the community." *Id.* at 1053.

56. *Id.* at 1053 ("Where the legislation goes beyond the bounds of discretion available to the city, the judiciary, if called upon, must step in.").

57. *See, e.g.*, Naprstek v. City of Norwich, 545 F.2d 815, 816-17 (2d Cir. 1976). In *Naprstek*, the plaintiffs, minors under the age of seventeen and their parents, challenged a Norwich City Ordinance which prohibited children under the age of seventeen to be in public places without the supervision of an adult or guardian. *Id.* Instead of ruling on the plaintiffs' substantive First Amendment and due process allegations, the court "expressly limited" its holding to the infirmity presented by a strict interpretation of the ordinance, which was not specific in determining when the curfew ended. *Id.* at 818.

58. *Id.* at 818. In *Naprstek*, the court struck down the ordinance as vague because it did not "provide the hour at which the curfew ends." *Id.*

59. United States v. Harriss, 347 U.S. 612, 617 (1954).

60. *See, e.g.*, Naprstek v. City of Norwich, 545 F.2d at 818. The federal district court gave the City of Norwich discretion in setting a cut-off time. *Id.* The appeals division, however, mandated a "legislative enactment." *Id.*

61. Natalie M. Williams, Comment, *Updated Guidelines for Juvenile Curfews:* City of Maquoketa v. Russell, 79 IOWA L. REV. 465, 471 (1994).

1800s, it is likely that plaintiffs will continue to prevail due to faulty drafting.[62]

A federal court may take the more substantive approach and rule directly on the constitutionality of the statute. Primarily, the constitutional attacks would allege violations of the First and Fourteenth Amendments of the United States Constitution. Interestingly, both minors' and parents' rights are affected by the alleged constitutional violations of curfew. Minors' interests are affected because their liberty interests, protected by the Fourteenth Amendment, are implicated.[63] Parents' rights to control and raise their children are also implicated.[64] As the Supreme Court stated, however, the query does not end with the determination that a personal liberty interest has been violated.[65] The second question to be addressed in a constitutional analysis of a curfew is whether a state interest exists that justifies a diminution in personal liberty interests.[66]

In striking down curfew ordinances, a federal court can rely on the criteria set forth in *Bellotti v. Baird*.[67] In *Bellotti*, the Court stated three

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62. *See* Binder, *supra* note 1, at B11.

63. *See, e.g.*, McCollester v. City of Keene, 514 F. Supp. 1046, 1050 (D.N.H. 1984), *rev'd on other grounds*, 668 F.2d 617 (1st Cir. 1982). The court in *McCollester* adamantly held that minors have liberty interests in:

> [T]he right to use public streets and facilities . . . "the right to locomotion, freedom of movement, to go where one pleases, and to use the public streets and facilities in a way that does not interfere with the personal liberty of others" . . . are invaluable and in fact central to American citizenship.

Id. (quoting Memorandum in Support of Plaintiff's Motion for Summary Judgment, at 6).

64. *See, e.g., id.* at 1051. The court in *McCollester* acknowledged that a juvenile curfew ordinance can be seen as "an intrusion to family autonomy and as a possible threat to family serenity and integrity." *Id.* The court made marked distinctions between Keene's curfew ordinance on the one hand, and the New Hampshire's Children in Need of Services Act (CHINS) and the Delinquent Children Act (DCA) on the other, both of which were upheld as constitutional. *Id.* at 1051-52. The possible actions under CHINS against parents are supportive in nature, whereas actions against parents under Keene's curfew ordinance are in the criminal code. *Id.* at 1052. Although the DCA proscribes criminal penalties on parents, criminal liability can only be found if a parent intentionally contributed to the minor's actions; civil sanctions arise when the parent failed to exercise reasonable supervision and control to prevent a child from acting. *Id.* Under the Keene curfew ordinance, however, a parent can be held liable for not acting or for acting competently and merely letting the child remain outside after the curfew hours.

65. *Id.* at 1049.

66. *Id.*

67. Bellotti v. Baird, 443 U.S. 622 (1979); *see, e.g.*, McCollester v. City of Keene, 514 F. Supp. at 1050. In relying on *Bellotti*, the court in *McCollester* recognized the necessity for the Supreme Court to address more fully the issue of juvenile constitutional rights regarding curfew ordinances:

> Although the Supreme Court still has not clearly defined the amount of protection afforded minors' due process rights, at least in this context, the Court did set out an analysis helpful in making such determinations in a decision involving a minor's right to decide whether to have an abortion.

Id. This method of analysis, however, presents the dilemma of whether there is a proper connection between abortion rights and curfew rights. *Id.* at 1051.

justifications for limiting a minor's rights when commensurate actions by an adult could not legitimately be regulated: "the peculiar vulnerability of children; their inability to make critical decisions in an informed, mature manner; and the importance of the parental role in child rearing."[68] A federal court may have trouble relating the "critical decision" factor of the *Bellotti* test to juvenile curfew ordinances.[69] A logical distinction does not seem to exist between making an informed decision about having an abortion and making an informed decision to go out at night. The decision to have an abortion necessarily appears more critical and requires more maturity than the decision to go out at night. The courts, however, have recognized that in some instances the decision to go out at night may be a critical choice.[70] In such instances, the state "has a valid interest in the well-being of its minor citizens."[71]

The final justification given by the *Bellotti* court for limiting minors' rights concerns the parental role in child rearing and the extent to which the state is justified in regulating that relationship.[72] It is generally recognized that parents are the primary vehicle for "[i]nstilling the principles of morality, ethical conduct, religion, and citizenship . . . and, in large part, [instilling those principles] is beyond the competence of impersonal political institutions."[73] There are instances, however, when the state can intrude if the law is "designed to aid [the parent in] discharge of [the parental] responsibility."[74] Regarding juvenile curfew laws, however, there may be many situations in which the parent and juvenile are in violation of the ordinance even though the parent exercised the utmost and reasonable parental control or guidance.[75]

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68. Bellotti v. Baird, 443 U.S. at 634.

69. *See, e.g.*, McCollester v. City of Keene, 514 F. Supp. at 1051. The court in *McCollester* recognized the difficulty in "characterizing a decision of a minor to venture into the darkness at night as a 'critical' decision when compared to a decision of a minor to opt for abortion of her pregnancy." *Id.*

70. *See, e.g.*, Ginsberg v. New York, 390 U.S. 629, 640 (1968). Although courts have declined to set forth when such decisions are critical, the Supreme Court in *Ginsberg* set forth two justifications for regulating minors' decisions. First, the Court stated that parents and teachers should be able to depend on the support of laws to aid in the discharge of caring for their children. *Id.* at 639. Second, after acknowledging parental control, the Supreme Court claimed that it is the state's responsibility to step in when the parental process breaks down. *Id.* at 640. It appears that the Court would classify as critical those decisions ordinarily controlled by a parent or teacher, but would require the state to step in to pick up the slack or support the discipline process if there are break-downs in parental control. *Id.* Although of questionable practical help, the Supreme Court's decision in *Ginsberg* does provide some guidance in determining what is a "critical decision."

71. McCollester v. City of Keene, 514 F. Supp. at 1051.

72. Bellotti v. Baird, 443 U.S. 622, 634 (1979).

73. McCollester v. City of Keene, 514 F. Supp. at 1051.

74. Bellotti v. Baird, 443 U.S. at 639.

75. *See, e.g.*, McCollester v. City of Keene, 514 F. Supp. at 1052. The court in *McCollester* set forth a number of situations that would violate the City of Keene's ten o'clock curfew ordinance even though the parent exercised reasonable control: (1) the parent could allow a child to participate in a basketball game in a neighbor's backyard until 10:15 and then come promptly home unattended; (2) a parent could allow children ages seventeen and fifteen to

The courts seem reluctant to set forth any broad standards or criteria to analyze juvenile curfew ordinances. The courts that have struck down the ordinances based on constitutional claims have done little to help predict what future rulings might entail. The next logical approach to establish some semblance of predictability is to look at those curfew ordinances that courts have upheld and examine the similarities and differences in the courts' reasoning.

2. *Juvenile Curfew Ordinances Upheld*

Although federal courts have sometimes skirted around the issue of minors' substantive rights when invalidating curfew ordinances, those federal courts upholding the ordinances have been forced to address the substantive constitutional issues in order to satisfy plaintiffs' constitutional attacks.[76] The constitutional attacks have focused primarily on substantive due process rights and equal protection arguments.[77] Before courts address any specific constitutional claims, however, they are quick to assert that the "conduct of

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drive and visit grandmother, but would drive through Keene after ten o'clock; and (3) a parent could send a minor out due to a medical emergency after ten o'clock. *Id.*

76. *See, e.g.*, Qutb v. Strauss, 11 F.3d 488, 490 (5th Cir. 1993); Johnson v. City of Opelousas, 488 F. Supp. 433, 436-37 (W.D. La. 1980); Bykofsky v. Borough of Middletown, 401 F. Supp. 1242, 1254 (M.D. Pa. 1975). In *Qutb*, the court upheld a juvenile curfew ordinance that prohibited "persons under seventeen years of age from remaining in a public place or establishment from 11 p.m. until 6 a.m. on week nights, and from 12 midnight until 6 a.m. on weekends." Qutb v. Strauss, 11 F.3d at 490 (footnote omitted). There were a number of exceptions to the ordinance: being accompanied by a parent, doing an errand for a parent, traveling to and from work, emergency situations, or attending a religious, school, or civic activities. *Id.* In *Opelousas*, the court upheld a juvenile curfew ordinance which prohibited:

> [A]ny unemancipated minor under the age of seventeen (17) years to travel, loiter, wander, stroll, or play in or upon or traverse any public streets, highways, roads, alleys, parks, places of amusements and entertainment, places and buildings, vacant lots or other unsupervised places in the City of Opelousas, Louisiana, between the hours of 11:00 p.m. on any Sunday, Monday, Tuesday, Wednesday, or Thursday night and 4:00 a.m. of the following day, or 1:00 a.m. on any Friday or Saturday night and 4:00 a.m. of the following day.

Johnson v. City of Opelousas, 488 F. Supp. at 436-37. Like *Qutb*, the Opelousas ordinance had exceptions for minors accompanied by a parent or emergency situations. *Id.* at 437. Finally, the *Bykofsky* court upheld a juvenile curfew ordinance that prohibited minors under the age of eighteen "from being on or remaining in or upon the streets within the Borough of Middletown between the hours of 10:00 p.m. (minors under twelve years of age), 10:30 p.m. (minors twelve or thirteen years of age), or 11:00 p.m. (minors fourteen through seventeen years of age) and 6:00 a.m.," unless among other exceptions: (1) the minor is accompanied by a parent or guardian; (2) the minor is "exercising first amendment rights protected by the Constitution;" (3) returning home from school, religious, employment, or civic activity; or (4) engaged in interstate travel. Bykofsky v. Borough of Middletown, 401 F. Supp. at 1246-47.

77. Bykofsky v. Borough of Middletown, 401 F. Supp. at 1253.

minors may be constitutionally regulated to a greater extent than those of adults."[78]

The substantive due process claims of plaintiffs are based upon 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" as protected by the Due Process Clause of the Fourteenth Amendment.[79] In fact, the Supreme Court has stated that no right is more sacred or protected than the right to control one's own person.[80] As with all rights, "personal freedoms are not absolute, and the liberty guaranteed by the Due Process Clause implies absence of arbitrary interferences but not immunity from reasonable regulations."[81] The question, therefore, is whether the curfew ordinance is reasonable—whether the states' interests are justified when weighed against the interests of minors being out at night.[82] Courts upholding curfew ordinances have found a legitimate state interest and have recognized limitations of juvenile rights.[83]

In addressing the equal protection claims of juvenile curfew laws, there is no unanimity among the courts. At least two federal district courts have held that juvenile curfew ordinances should be analyzed using a rational basis standard.[84] One court reasoned that although certain fundamental liberty interests are implicated by a juvenile curfew ordinance, because the state is justified in regulating the due process liberty interests of minors, the ordinance does not "impinge on the exercise of 'fundamental' rights."[85]

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78. *Id.* at 1254; *see also* McKeiver v. Pennsylvania, 403 U.S. 528, 540 (1971) (holding that a juvenile was not entitled to a jury trial in juvenile court; Prince v. Massachusetts, 321 U.S. 158, 168 (1944) (holding that the "state's authority over children's activities is broader than over like actions of adults").

79. Bykofsky v. Borough of Middletown, 401 F. Supp. at 1254; *see also* United States v. Wheeler, 254 U.S. 281, 293 (1920) (holding that all United States citizens possess the fundamental right to move at will from place to place).

80. *See, e.g.*, Union Pac. Ry. Co. v. Botsford, 141 U.S. 250, 251 (1891) (affirming the circuit court's finding that it had no legal right or power to order a civil plaintiff to submit to a surgical examination without his or her consent).

81. Bykofsky v. Borough of Middletown, 401 F. Supp. 1242, 1255 (M.D. Pa. 1975) (citations omitted).

82. *Id.* at 1256.

83. *Id.* In *Bykofsky*, the court held that the "interest of minors in being abroad during the nighttime hours . . . is not nearly so important to the social, economic, and healthful well-being of the community as the free movement of adults." *Id.* (citation omitted). The court further stated "due to their immaturity, legislation peculiarly applicable to minors is warranted for the protection of the public, *e.g.*, to protect the community from youths aimlessly roaming the streets during the nighttime hours." *Id.* at 1257. The court in *Opelousas* followed the general *Bykofsky* analysis in its holding that "[t]he well-being of its children is of course, a subject within the State's constitutional power to regulate." Johnson v. City of Opelousas, 488 F. Supp. 433, 440 (W.D. La. 1980). "Children are in a class of their own." *Id.* at 439.

84. *See* Johnson v. City of Opelousas, 488 F. Supp. at 440; Bykofsky v. Borough of Middletown, 401 F. Supp. at 1264-66.

85. Bykofsky v. Borough of Middletown, 401 F. Supp. at 1265. The court in *Opelousas* did not bother justifying its use of the rational basis review, but instead merely stated that "[s]ince the ordinance applies alike to all persons under the age of seventeen (17),

Once a court decides to enlist a rational basis standard, a "legislative classification must be sustained unless it is patently arbitrary or bears no rational relationship to a legitimate governmental interest."[86]

The Fifth Circuit has taken the opposite approach to analyzing juvenile curfew equal protection claims.[87] The *Qutb* court began its analysis by recognizing that, because the ordinance treats individuals under seventeen years of age differently than those over seventeen, the Equal Protection Clause is implicated.[88] The court agreed with the various standards of review, but diverged on the standard applicable to juvenile curfew ordinances.[89] The court conceded that a classification based upon age is not a suspect class.[90] It did state, however, that the juvenile curfew ordinance in question impinged upon a fundamental right to "move about freely in public."[91] Having determined that a fundamental interest was involved, the court then looked for a compelling governmental interest and narrowly tailored means.[92]

This discrepancy among federal courts regarding equal protection claims could lead to drastically different results in factually similar cases. In one instance, an ordinance is virtually guaranteed to survive an equal protection challenge under the rational basis review. If the court applies strict scrutiny, however, the state must meet a much higher burden.

3. *Trends*

The lack of Supreme Court guidance has left the lower federal courts without any concrete method of analysis.[93] Courts are forced to rely on standards and criteria established to evaluate juvenile rights that pertain to abortion issues[94] or formulate their own justifications,[95] thereby further preventing any uniformity or predictability. There are even discrepancies as to

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there is clearly no equal protection violation with the class subject to the curfew." Johnson v. City of Opelousas, 488 F. Supp. at 440.

86. Bykofsky v. Borough of Middletown, 401 F. Supp. at 1265.

87. *See* Qutb v. Strauss, 11 F.3d 488 (5th Cir. 1993).

88. *Id.* at 492.

89. *Id.*

90. *Id.*

91. *Id.* The court recognized that in some instances "minors may be treated differently than adults." *Id.*

92. *Id.* at 492-93. The court ultimately held that the curfew ordinance fulfilled both requirements. *Id.* The plaintiffs conceded that the state had a compelling governmental interest, and the court held that the city had "provided sufficient data to demonstrate that the classification created by the ordinance 'fits' the state's compelling interest." *Id.* at 493.

93. Katherine Hunt Federle, *Children, Curfews, and the Constitution*, 73 WASH. U. L.Q. 1315, 1338 (1995); Peter L. Scherr, Note, *The Juvenile Curfew Ordinance: In Search of a New Standard of Review*, 41 WASH. U. J. URB. & CONTEMP. L. 163, 176 (1992).

94. *See, e.g.*, Waters v. Barry, 711 F. Supp. 1125, 1136-37 (D.D.C. 1989) (applying *Bellotti* standards to juvenile curfew case); McCollester v. City of Keene, 586 F. Supp. 1381, 1385 (D.N.H. 1984) (applying *Bellotti* three-prong test to juvenile curfew case), *rev'd on other grounds*, 668 F.2d 617 (1st Cir. 1982).

95. *See, e.g.*, Johnson v. City of Opelousas, 658 F.2d 1065, 1073 (5th Cir. 1981) (holding that *Bellotti* did not apply to the curfew ordinance in that case).

which equal protection analysis should apply.[96] If the Supreme Court looks at the importance of an issue, the likelihood the issue will come up again, the division among the courts on the issue, and the presentation of the issues as criteria for granting certiorari,[97] it would appear that juvenile curfew laws are due for Supreme Court adjudication.

C. *Iowa Courts*

The Supreme Court of Iowa struck down a juvenile curfew ordinance in one city[98] and upheld virtually the same juvenile curfew ordinance in another.[99] This Note turns to those ordinances and analyzes the Iowa Supreme Court's justifications for its holdings.

1. *Iowa Curfew Law Upheld*

The Iowa Supreme Court upheld a juvenile curfew ordinance in *City of Panora v. Simmons*.[100] The ordinance prohibited minors under the age of eighteen from being in a public place between the hours of ten o'clock p.m. and five o'clock a.m.[101] The plaintiff did not raise the traditional equal protection and due process claims, but chose to raise the vagueness and right to travel issues.[102]

In addressing the vagueness issue, the court held that in order for a statute to pass constitutional muster, it must give fair notice of what is prohibited and provide an enforceable standard for law enforcement officers.[103] On the right to travel issue, the court found "that a minor's right of intracity travel is not a fundamental right for due process purposes."[104] Therefore, the court applied a rational basis standard of review.[105] In reaching its decision, the court held that the ordinance was a "reasonable exercise of the City's power to legislate for the good of its citizens."[106]

In a striking dissent, Justice Lavorato followed the *Qutb* line of reasoning and voiced his opinion in favor of strict scrutiny analysis.[107] Justice Lavorato would have struck down the statute as a violation of the plaintiff's fundamental First Amendment rights to associate with others and move freely

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96. *See* Natalie M. Williams, Comment, *Updated Guidelines for Juvenile Curfews:* City of Maquoketa v. Russell, 79 IOWA L. REV. 465, 476 (1994).

97. Justice Sandra Day O'Connor, Address to Students at Drake University (Oct. 1994).

98. *See* City of Maquoketa v. Russell, 484 N.W.2d 179, 181 (Iowa 1992).

99. *See* City of Panora v. Simmons, 445 N.W.2d 363, 369 (Iowa 1989).

100. City of Panora v. Simmons, 445 N.W.2d 363 (Iowa 1989).

101. *Id.* at 364. The ordinance allowed for certain exceptions related to work, church, school, or civic functions. *Id.*

102. *Id.* at 365.

103. *Id.* at 365-66. The court dismissed the plaintiff's challenge for vagueness because he did not preserve error as to this issue. *Id.* at 366.

104. *Id.* at 369.

105. *Id.*

106. *Id.*

107. *Id.* at 371 (Lavorato, J., dissenting).

within society.[108] Furthermore, Justice Lavorato stated "[t]he very purpose of the Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy."[109] According to Justice Lavorato, such an infringement on a person's constitutional rights could not be upheld under any standard.[110]

2. *Iowa Curfew Law Struck Down*

On the tails of the *Panora* decision, the Maquoketa city council enacted a juvenile curfew ordinance that was also challenged in the courts.[111] The ordinance was modeled after the Panora statute and had essentially the same provisions.[112] Much to the local government's surprise, however, the ordinance was struck down.[113] In *Maquoketa*, Justice Lavorato, writing for the majority, was given the opportunity to expound the ideas he had first expressed in his dissent in *Panora*.[114] The *Maquoketa* majority recognized Supreme Court decisions limiting the constitutional rights of minors, but nevertheless asserted, as in *Qutb*, that juvenile curfew laws implicate fundamental rights guaranteed in the First Amendment and protected by the Due Process Clause of the Fourteenth Amendment: "freedom of religion, speech, assembly and association."[115] As such, the court held the statute must survive a strict scrutiny analysis to be upheld.[116] Achieving the result Justice Lavorato so adamantly pushed for in his dissent in *Panora*, the court held that the statute was unconstitutional because it was not narrowly tailored to "provide exceptions for emancipated minors and fundamental rights under the First Amendment."[117]

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108. *Id.* at 374.

109. *Id.* at 370 (citing West Virginia State Bd. of Educ. v. Varnette, 319 U.S. 624, 628 (1943)).

110. *Id.* at 374.

111. *See* City of Maquoketa v. Russell, 484 N.W.2d 179 (Iowa 1992).

112. *Id.* at 181. The differing provision concerned a time differential of 11:00 p.m. until 6:00 a.m., instead of 10:00 p.m. until 5:00 a.m. *Id.*

113. *Id.* Justice Lavorato noted that in *Panora* the court "was not deciding whether the ordinance was unconstitutionally overbroad or whether the right to travel was in some instances protected by the First Amendment." *Id.* at 182. The significant difference between *Panora* and *Maquoketa* was that in *Panora* the defendant did not assert his right to gather, walk, or loiter in terms of a right guaranteed by the First Amendment. *Id.* at 182-83. In *Maquoketa*, the defendants raised their First Amendment rights at the trial level and the Iowa Supreme Court found that "the Fourteenth Amendment protects those First Amendment liberties from encroachment by the states." *Id.* at 181 (citing Cantwell v. Connecticut, 310 U.S. 296, 303 (1940)).

114. *Id.* at 182-86.

115. Qutb v. Straus, 11 F.3d 488, 495 (5th Cir. 1993); U.S. CONST. amend. XIV.

116. City of Maquoketa v. Russell, 484 N.W.2d at 184.

117. *Id.* at 186.

VI. CONCLUSION

Juvenile curfew ordinances present the courts with a fundamental constitutional dilemma. At the core of the debate is the conflict between state interests in protecting a child and upholding democratic ideals, children's constitutional rights, and parents' rights to raise their children. There does, however, seem to be one constant—a lack of uniformity among the courts. It is difficult to rectify holdings and discern any identifiable trends or standards of review based on current court decisions. If there was ever an issue ready for the Supreme Court's review, this would appear to be one. Until such time, however, local governments must attempt to carefully draft curfew ordinances cognizant of the possible pitfalls, while plaintiffs—minors and their parents—can only hope their constitutional claims fall on sympathetic ears.

Scott A. Kizer