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THE GOVERNMENT IS ESTABLISHING YOUR CHILD'S CURFEW

DANIELLE DIVIAIO*

INTRODUCTION

"Be home by 10:00 p.m.!” is normally commanded of children by parents, not the law. However, while the thought of a modern-day town imposing a curfew instead of a parent may alarm people, many towns and counties do currently impose juvenile curfews.1 The Second and Ninth Circuits have struck down such curfews,2 while the Fourth and District of Columbia

* J.D. Candidate, June 2007, St. John's University School of Law; B.A. Political Science, magna cum laude, Seton Hall University, May 2004. The author wishes to thank Professor Ruescher for his help with this Note and Brittony Hubbard for all her support.

1 Curfews have been around for centuries and were brought over to the United States from England. See Thistlewood v. Ocean City, 204 A.2d 688, 690 (Md. 1964). Curfews were used in America to control slaves before the Civil War. See id. By the year 1997, 80% of communities with a population of over 300,000 had some form of juvenile curfew. See Note, Juvenile Curfews and the Major Confusion over Minor Rights, 118 HARV. L. REV. 2400, 2403 (2005) [hereinafter Juvenile Curfews and the Major Confusion].

2 See Ramos v. Town of Vernon, 353 F.3d 171, 187 (2d Cir. 2003) (determining that juvenile curfew ordinance was unconstitutional because it infringed on juveniles' equal protection rights); see also Nunez v. City of San Diego, 114 F.3d 935, 951–952 (9th Cir. 1997) (holding defendant city's juvenile curfew ordinance was unconstitutional because
Circuits have upheld such ordinances. This note seeks to analyze the history and legality of juvenile curfews by cataloging the different and contradictory positions of the circuit courts. Section I will describe the meaning and purpose of curfews and briefly describe current curfews. Section II will introduce the legal issues involved and challenges made to those curfews and then discuss how circuits have split in deciding on these issues and challenges. Section III will catalog the early case law, and Section IV will analyze the recent case of Hutchins v. District of Columbia, examining the legal issues involved. Section V will offer resolutions for the discrepancies in the case law.

I. WHAT ARE JUVENILE CURFEWS?

A. The History and Birth of Juvenile Curfews

"Curfew" has been defined as "an order establishing a specific time in the evening after which certain regulations apply . . . ." The primary purpose of imposing curfews is to maintain social order. As such, curfews have a long history of being used as controlling devices. Even before the Civil War, slave-owners prohibited slaves from being outside or leaving their barracks.

ordinance was vague and not narrowly tailored to justify burdening minors' rights of free movement and speech as well as parents' rights to rear their children).

3 See Hutchins v. District of Columbia, 188 F.3d 531, 534 (D.C. Cir. 1999) (en banc) (plurality opinion) (upholding juvenile curfew ordinance as constitutional against heightened scrutiny); see also Schleifer v. City of Charlottesville, 159 F.3d 843, 855 (4th Cir. 1998) (finding juvenile curfew ordinance constitutional because it was narrowly tailored to serve legitimate state interest by providing various exceptions that enabled children to participate in necessary activities during the curfew hours); Lindsay LaCava, Note, Ramos v. Town of Vernon: Second Circuit Weighs in on Juvenile Curfew Debate, 23 QUINNIPIAC L. REV. 1197, 1198 (2005) (discussing circuit split).

4 188 F.3d 531 (D.C. Cir. 1999) (en banc) (plurality opinion).


6 See Kenneth Adams, Research Findings from Prevention and Intervention Studies: The Effectiveness of Juvenile Curfews at Crime Prevention, 587 ANNALS AM. ACAD. POL. & SOC. SCI. 136, 136 (2003) (asserting "[c]urfews . . . have been used throughout history as a provisional measure to control civil disorder and unrest"); see also Juvenile Curfews and the Major Confusion, supra note 1, at 2402 (noting during nineteenth century, children were threatening social order).

7 See Thistlewood v. Ocean City, 204 A.2d 688, 690 (Md. 1964) (explaining nearly thousand-year history and controlling uses of curfews); see also Juvenile Curfews and the Major Confusion, supra note 1, at 2402 (commenting that curfews were imposed partly to control juveniles who were "failing to mature into proper citizens").
past certain hours. In those situations, curfews were used to sustain dominance and keep order among the slaves. Other historical ways in which curfews were used were to punish, to control rebellion, and to protect citizens in emergencies, including wars and riots.

Although the use of curfews is not a new device, it was not until the late nineteenth century that curfew legislation aimed at juveniles gained support and popularity. In the late 1890s, over three thousand communities had implemented juvenile curfews. See Thistlewood, 204 A.2d at 690 (stating before Civil War, southern towns enacted curfew laws designating times slaves could lawfully walk streets); see also Patryk J. Chudy, Doctrinal Reconstruction: Reconciling Conflicting Standards in Adjudicating Juvenile Curfew Challenges, 85 CORNELL L. REV. 518, 523-24 (2000) (providing variety of contexts in which curfew laws have been utilized, including keeping African Americans off streets at night).

Between the years of 1066 and 1087, William the Conqueror implemented a curfew for all Englishmen in order to prevent the Saxons from assembling and rebelling. See Thistlewood, 204 A.2d at 690; see also Adams, supra note 6, at 137. The word curfew originated from the French words couvre feu, which translates to "covering fire." See Thistlewood, 204 A.2d at 690. Curfews originally required individuals to cover their home-fires at a certain time for protection throughout the night. See id. However, William the Conqueror used it to prevent the gathering of English on the streets. See id.

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curfews. The early curfews generally required children to be home by sunset. The reason cited for having juvenile curfews was to prevent children from engaging in criminal activity or from becoming victims of crime. Communities thought the sunset curfews worked well, and those curfews remained popular until the start of World War I. During World War I, however, instead of focusing on the protection of children and the cessation of crime, the United States turned all its efforts to fighting the war. Then, during World War II, states once again began implementing juvenile curfews. The purpose of these curfews was to make up for the absence of parents who were either in the service or working during the night in war plants. Though parents today are not faced with wartime scenarios, juvenile curfews continue to grow in popularity.

16 See ANDRA J. BANNISTER ET AL., POLICIES AND PRACTICES RELATED TO JUVENILE CURFEWS 4 (2000) (highlighting that, by nineteenth century's end, "it was estimated that as many as 3,000 towns, cities, and villages had implemented some form of curfew ordinance"); see also Jeff A. Beaumont, Nunez and Beyond: An Examination of Nunez v. City of San Diego and the Future of Nocturnal Juvenile Curfew Ordinances, 13 J. JUV. L. 84, 89 (1998) (explaining juvenile crime was why juvenile curfews gained support).

17 See BANNISTER, supra note 16, at 5 (arguing children should be required to be in their homes after sunset); see also Juvenile Curfews and the Major Confusion, supra note 1, at 2403 (noting America effectively closed streets to minors during nighttime).

18 See BANNISTER, supra note 16, at 4 (commenting that there are many reasons why communities implement juvenile curfews); see also Richard T. Ford, Juvenile Curfews and Gang Violence: Exiled on Main Street, 107 HARV. L. REV. 1693, 1698–99 (1994) (suggesting criminal activity targeted is gang related).

19 See Thistlewood, 236 A.2d at 690–91 (noting high level of support given to juvenile curfew legislation); see also BANNISTER, supra note 16, at 4 (describing popularity of National Home Employment Association's proposal for sunset curfews in the late nineteenth century).

20 See Thistlewood, 236 A.2d at 691 (highlighting public's brief lack of interest in juvenile curfew ordinances following the First World War); see also BANNISTER, supra note 16, at 4 (discussing possible reasons for early nineteenth century demise of curfew ordinances).

21 See Thistlewood, 236 A.2d at 691 (discussing waning interest in curfews throughout World War I); see also BANNISTER, supra note 16, at 4 (proposing Great Depression and Prohibition were additional reasons why curfews remained unpopular until World War II's end).

22 See BANNISTER, supra note 16, at 5 (discussing post-World War II renewed interest in curfews); see also Juvenile Curfews and the Major Confusion, supra note 1, at 2403 (explaining "absence of parents due to military service or wartime late-shifts resulted in a perceived lack of control over children").

23 See BANNISTER, supra note 16, at 4 (discussing how youth crime and misconduct took a backseat to new national priority of war); see also Juvenile Curfews and the Major Confusion, supra note 1, at 2403 (noting significant increase in popularity of juvenile curfews during war).

24 See Adams, supra note 6, at 137–38 (evaluating curfews' use during 1990s as crime control measure); see also Juvenile Curfews and the Major Confusion, supra note 1, at 2403 (reporting growing prevalence of curfews in large cities).
B. Current Juvenile Curfews

In the late 1990s, over 70% of the nation’s 200 largest communities had some form of juvenile curfew. The curfews normally prohibit minors, who are individuals under either seventeen or eighteen years of age, from being on the streets from 11 p.m. to 6 a.m. during the week and from 12 a.m. to 6 a.m. on weekends. They do, however, contain narrow exceptions. These narrow exceptions include emergencies, errands, and work or school-related travel. Though many reasons are cited for imposing curfews, the most prominent reason is their use as a crime control strategy. However, the use of curfews as an effective control strategy has sparked debate. On the one hand, those who favor curfews argue that curfews do in fact prevent

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25 See Adams, supra note 6, at 137 (listing curfew law survey results for cities across North America); see also Juvenile Curfews and the Major Confusion, supra note 1, at 2403 (highlighting that, by 1997, 80% of communities with populations over 30,000 had curfews).

26 See Gregory Z. Chen, Note, Youth Curfews and the Trilogy of Parent, Child, and State Relations, 72 N.Y.U. L. REV. 131, 135 (1997) (reporting Dallas curfew applied to individuals under seventeen years of age); Juvenile Curfews and the Major Confusion, supra note 1, at 2403 (noting traditional applicability of curfews to individuals younger than either seventeen or eighteen).

27 See Thistlewood v. Ocean City, 204 A.2d 688, 691 (Md. 1964) (stating there are two types of juvenile curfews: (1) “presence,” in which it is forbidden to be on street after specified time; and (2) “remaining,” or “loitering,” in which violation is against loitering or gathering); see also Juvenile Curfews and the Major Confusion, supra note 1, at 2403–04 (proffering “curfews forbid unaccompanied minors... from being in public spaces late at night, usually between 11 p.m. and 6 a.m. during the week, and midnight and 6 a.m. on weekends”).

28 See Chen, supra note 26, at 135–36 (describing how curfews started as bans on nearly all youth nighttime activities, but exceptions were created to help policies survive judicial scrutiny); see also Juvenile Curfews and the Major Confusion, supra note 1, at 2404 (noting there are usually exceptions enumerated, allowing minors to violate curfew laws under certain circumstances).

29 See Ramos v. Town of Vernon, 353 F.3d 171, 172 (2d Cir. 2003) (enumerating exceptions included in Vernon’s curfew ordinance); see also Juvenile Curfews and the Major Confusion, supra note 1, at 2404 (listing typical exceptions to curfew laws); LaCava, supra note 3, at 1199 (detailing exceptions to Vernon’s juvenile curfew law).

30 See Adams, supra note 6, at 138–39 (examining sources of juvenile curfews’ contemporary popularity); Ford, supra note 18, at 1698–99 (citing arguments supporting curfew implementation in Hartford and other cities).

31 See Adams, supra note 6, at 138–39 (referring to several arguments in favor of curfews that center around crime control); see Ford, supra note 18, at 1698–99 (explaining how supporters of Hartford’s curfew policy cite added weapon given to police to “detain suspicious youth and preempt potentially criminal activity” as important crime control function rationalizing curfew’s preservation).

32 See Ford, supra note 18, at 1688 (presenting both sides of the curfew policy debate); see also Juvenile Curfews and the Major Confusion, supra note 1, at 2404–05 (discussing common criticisms of modern curfew policies and denouncing them as unconvincing).
crime and make the community safer at a low cost. On the other hand, those who oppose the curfews argue that juvenile curfews do not work because they do not prevent crime and are only an intrusion into private family life. Several studies have been conducted regarding the effectiveness of the curfews. Although there are some studies that have found a correlation between crime and curfews, the vast majority of research proves that curfews are not effective tools in controlling juvenile crime.

33 See Adams, supra note 6, at 139 (recognizing curfew implementation as possible low cost remedy to juvenile crime problems); see also Bridget Remington, Recent Development, Constitutional Law: First Amendment: Privacy, State v. J.P., 907 So.2d 1101 (Fla. 2004), 35 STETSON L. REV. 641, 644 (2006) (describing how court found decrease in crime to be caused by Pinella Park curfew based on state's statistical evidence, but struck down curfew because it did not pass strict scrutiny).

34 See BANNISTER, supra note 16, at 6 (conceding that curfews and crime rates have no meaningful statistic relationship according to multiple studies conducted in the area between 1984 and 1998); see also Adams, supra note 6, at 144 (stating that "research fails to demonstrate that curfews produce a decrease in juvenile crime"); Juvenile Curfews and the Major Confusion, supra note 1, at 2405 (stating that critics of juvenile curfews often attack them as ineffective crime prevention mechanisms).

35 See Ford, supra note 18, at 1699 (emphasizing how curfews force law-abiding families to rearrange their daily lives and forfeit certain personal freedoms they would otherwise be entitled to); see also, Juvenile Curfew Ordinances and the Constitution, 76 MICH L. REV. 109, 132–37 (1977) [hereinafter Ordinances and the Constitution] (admitting that family rights are infringed upon, but arguing that governmental interests in protecting community from juvenile crime, protecting minors from harm, and reinforcing parental authority outweigh those rights).

36 See BANNISTER, supra note 16, at 6 (discussing various studies conducted regarding curfew laws' effects and their findings); see also Adams, supra note 6, at 141–47 (evaluating ten different studies conducted about effectiveness of juvenile curfews throughout America).

37 See BANNISTER, supra note 16, at 6 (stating that "[a] myriad of communities claim to have experienced wide success in reducing crime through the use of juvenile curfew ordinances" and discussing Hunt and Weiner study in 1977, which found Detroit's curfew to be effective in suppressing and displacing crime); see also Catherine Hutton, Curfews on Youths will be Tightened, WAIKATO TIMES, March 6, 2003, at 3. But see Adams, supra note 6, at 148–49 (examining "counterintuitive" findings of various studies that actually found positive correlations between curfew implementation and increased crime).

38 See Adams, supra note 6, at 141–47 (assessing various studies on juvenile curfews and concluding that findings suggest curfews are ineffective crime prevention measures); see also The Impact of Juvenile Curfew Laws in California, Center on Juvenile and Criminal Justice, http://www.cjcj.org/pubs/curfew/curfew.html (last visited Nov. 1, 2006) (evaluating curfew laws in California and concluding that "current available data provides no basis to the belief that curfew laws are an effective way for communities to prevent youth crime and keep young people safe").
II. THE LEGAL ISSUES AND THE CIRCUIT SPLIT

A. The Legal Issues

Not only is there a debate over the effectiveness of curfews, but curfews also raise several legal issues, and circuits are split on how many of those legal issues are resolved. The first and most complicated legal issue courts must resolve is whether curfews violate minors’ rights. Historically, courts analyzed juvenile curfews as infringing on the parents’ rights to control their children, not on the minors’ personal rights. Today, courts do agree that some minors’ right is being infringed, but exactly what right that is has sparked a difference of opinion among the circuits. The second legal issue courts must decide is whether

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39 Compare Adams, supra note 6, at 144 (concluding that curfews by themselves are ineffective means to decrease crime), and Stacey Stowe, Town to Fight Curfew Ruling, N.Y. TIMES, June 8, 2003, at 6, with BANNISTER, supra note 16, at 6 (stating “myriad of communities claim to have experienced wide success in reducing crime through the use of juvenile curfew ordinances” and discussing Hunt and Weiner study in 1977 which found Detroit’s curfew to be effective in suppressing and displacing crime).

40 See BANNISTER, supra note 16, at 4 (describing various unsettled questions in area of juvenile curfew laws); Juvenile Curfews and the Major Confusion, supra note 1, at 2413–15 (outlining approaches taken by various circuit courts in scrutinizing curfew laws since 1975 and emphasizing differences in opinion reflected in courts’ decisions).


42 See Chen, supra note 26, at 140 (commenting on how courts reviewed minors’ rights cases as infringing on parents’ right to raise their children); see also Privor, supra note 41, at 448–49 (explaining how early courts analyzed juvenile curfews based on parents’ right to raise their children).

43 See Ramos v. Town of Vernon, 353 F.3d 171, 172 (2d Cir. 2003) (stating judiciary must balance right to free movement and equal protection given to all citizens, including juveniles, under Constitution, with state’s interest in protecting children and decreasing crime); see also Juvenile Curfews and the Major Confusion, supra note 1, at 2409 (noting “no circuit has rejected the existence of a right” when dealing with children’s rights in curfew cases).

44 In Juvenile Curfews and the Major Confusion, the author discusses how the federal courts of appeals have had difficulty in defining the rights of juveniles involved in curfew cases. See Juvenile Curfews and the Major Confusion, supra note 1, at 2408–09. The Ninth Circuit, in Nunez v. City of San Diego, 114 F.3d 935 (9th Cir. 1997), also claimed the right involved is merely the broad right to free movement, while the District of
the right cited by the court should be protected with the same vigor as if the court were dealing with an adult. The third and most critical legal issue that must be decided is which level of scrutiny to apply to the curfew. Finally, once all other legal issues are resolved, the court must then apply the constitutional level of scrutiny it decided should govern and identify what interests the government may have in imposing such curfews.

B. What Rights are Raised when Juvenile Curfews are Challenged?

Today, challengers of juvenile curfews argue that many constitutional rights are being violated by the curfews. Among the constitutional rights cited are those contained in the First, Fourth, and Fourteenth Amendments, including the right to freedom of movement in curfew cases. Columbia Circuit, in Hutchins v. District of Columbia, 188 F.3d 531, 538 (D.C. Cir. 1999) (en banc) (plurality opinion), stated it must be careful to discuss the asserted right more narrowly because the broader the right, the easier to find protection for it.

See LaCava, supra note 3, at 1231 (analyzing juvenile curfews and noting that a major issue is to decide if a minor is going to be treated the same way as an adult); see generally Ramos v. Town of Vernon, 353 F.3d 171, 176 (2003) (taking on the issue of whether children’s rights are impacted by their age).

See Chen, supra note 26, at 150 (discussing how courts have not been able to decide what level of scrutiny to apply); see also LaCava, supra note 3, at 1230 (noting that courts need to determine what standard of review to apply when deciding whether rights have been violated or not).

See Ramos, 353 F.3d at 172 (asserting “constitutionality of a curfew is determined by balancing the recognized interests the state has in protecting children and fighting crime against the constitutional right of all citizens, including juveniles, to move about freely”); see also LaCava, supra note 3, at 1232 (stating that courts need to determine whether freedom of movement in curfew cases is something with which the states can “interfere”).

See Ramos, 353 F.3d at 173 (providing an example of a plaintiff who claimed that the curfew violated his equal protection rights under the Fourteenth Amendment and his right to free speech and association under the First Amendment); see also Schleifer v. City of Charlottesville, 159 F.3d 843, 846 (4th Cir. 1998) (analyzing the case of a plaintiff who claimed that the curfew violated his First, Fourth, Fifth and Fourteenth Amendment rights).

U.S. CONST. amend. I.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for redress or grievances.

Id.

U.S. CONST. amend. IV.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.
Plaintiffs argue that their First Amendment rights of free speech and association are being violated because they are forbidden from being allowed on the streets at night. For example, in Schleifer v. City of Charlottesville, the plaintiffs unsuccessfully argued that their First Amendment right to association was being violated because they were unable to rollerblade with their friends during curfew hours. Furthermore, in People v. Chambers, the juvenile plaintiffs made the ineffective contention that their rights to free association and assembly were being violated by a curfew because they were not allowed to choose when and where to associate.

Another less common challenge made by plaintiffs is that the curfews violate the Fourth Amendment's guarantee to be free from unlawful searches and seizures. The plaintiffs in Ramos v. Vernon and Waters v. Barry both argued that the juvenile curfews imposed by their communities violated their Fourth

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51 U.S. CONST. amend. XIV, § 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

52 See Prior, supra note 41, at 427–28 (mentioning curfew cases are usually brought under First, Fourth, Fifth and Fourteenth amendments); see also Danny R. Veilleux, Validity, Construction, and Effect of Juvenile Curfew Regulations, 83 A.L.R.4th 1056, at *2a (1991) (noting that success of challenge depends on judicial analysis of whatever constitutional right is involved).

53 See Ramos, 353 F.3d at 173 (stating that Ramos claimed his Fourteenth Amendment rights were violated because he was not allowed out late even with his mother's permission); see also Veilleux, supra note 52, at *6a (commenting about courts having "recogniz[ed] that curfews which prohibit the presence of a minor on the streets after a certain hour have been held unconstitutional as an overly broad restriction on minors' liberty interests and First Amendment activities... ").


57 See Chambers, 360 N.E.2d at 56.

58 See Prior, supra note 41, at 427–28 (discussing the wide array of constitutional challenges to juvenile curfew laws, including those based on the Fourth Amendment); Ramos, 353 F.3d at 173 (providing an example of a Fourth Amendment challenge to a juvenile curfew law).

59 353 F.3d 171 (2d Cir. 2003).

Amendment rights because the curfews exposed the minors to unreasonable stopping and detainment by law enforcement. While the Ramos court decided not to deal with the Fourth Amendment challenge, while the Waters court found that the curfew did not violate the minor's Fourth Amendment rights so long as the officer could reasonably believe that the individual looked young.

Though not made very often today, a challenge which retains its importance and relevance is the argument that curfews infringe on the parents' right to rear their children. The right to rear your child is a right that has a strong basis in the Supreme Court's jurisprudence. The Supreme Court has noted that the parental role is an important part of the "structure of our society." Parents argue that juvenile curfews strip them of the power to control their children's behavior and violate their rights of privacy and autonomy. For example, in Qutb v. Strauss, parents claimed that the Dallas curfew took away their right to control their children and set curfews of their own. The court in

61 See Ramos, 353 F.3d at 173; see also Waters, 711 F. Supp. at 1132.
62 Ramos, 353 F.3d at 172 (finding town ordinance infringed upon minor's equal protection right, court did not further analyze Fourth Amendment issue).
63 See Waters, 711 F. Supp. at 1132-33.
64 See Johnson v. City of Opelousas, 658 F.2d 1065, 1074 (5th Cir. 1981) (holding while city "may have legitimate concern over minors being on the streets at night in general," it is insufficient to remove parental decisions as to activities of their children); see also Allen v. City of Bordentown, 524 A.2d 478, 487 (N.J. Super. Ct. Law Div. 1987) (concluding city ordinance interfered with parents' rights to control their children's use of streets and right of parents to have their children exercise their own rights); Chen, supra note 26, at 157 (highlighting argument that youth curfew restrictions strip parents of power to control their children's behavior).
65 See generally Pierce v. Society of Sisters, 268 U.S. 510, 534-35 (1925) (emphasizing importance of parents' rights to send their children school of their choice, was trespassed upon by Oregon statute that had tried to regulate such choices); see also Meyer v. Nebraska, 262 U.S. 390, 401 (1923) (finding legislature had materially interfered with parents' authority to control their children's education); see also Chen, supra note 26, at 157-59 (noting how United States Supreme Court opinions regarding parental autonomy influenced circuit and state court opinions).
66 Ginsberg v. New York, 390 U.S. 629, 639 (1968); see also Prince v. Massachusetts, 321 U.S. 158, 166 (1944) (stating "it is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder").
67 See Qutb v. Strauss, 11 F.3d 488, 495 (5th Cir. 1993) (demonstrating the parents' argument that the city's curfew violates their right to privacy because it "dictates the manner in which their children must be raised"); Chen, supra note 26, at 157 (discussing parents' claim that their right of autonomy and privacy is violated when they lose ability to rear their own children).
68 11 F.3d 488 (5th Cir. 1993), cert. denied, 511 U.S. 1127 (1994).
69 Qutb, 11 F.3d at 495-96.
Qutb found that such intrusion was minimal at best and that it only took away the parents’ right to allow their minor children to remain unaccompanied in public places at night. This narrow tailoring of such right allowed the court to bypass the parents’ challenge. Although the parents’ challenge is an important one, many courts, such as Qutb, bypass the question of parental rights and fail to address the issue.

A final and very important challenge to juvenile curfews is made by asserting that minors have a right to intrastate travel, and, thus, imposing the curfews violates the Equal Protection Clause of the Fourteenth Amendment. Plaintiffs often base their challenge of the curfews on the Fourteenth Amendment by arguing that, because a fundamental right such as the freedom of movement is involved, the level of scrutiny the court will use to analyze the law is raised. The Fourteenth Amendment of the U.S. Constitution guarantees that “[n]o state shall... deny to any person within its jurisdiction the equal protection of the laws.” This has been interpreted to mean that a state must treat similarly situated individuals the same. Plaintiffs challenging

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70 See id. at 495–96.
71 See id. at 494 (concluding that curfews that are narrowly drawn to accomplish proper social objectives are valid); see also Johnson v. Opelousas, 658 F.2d 1065, 1074 (5th Cir. 1981) (stating curfews must be narrowly drawn in order to protect societies valid interests).
72 See Qutb, 11 F.3d at 494 (focusing on curfews’ breadth and exceptions as applied to juveniles themselves, rather than parental rights); see also Chen, supra note 26, at 158 (discussing how some courts have noted that parents’ liberty claims may have some merit, but have chosen not to address the issue as they often first find that curfew ordinances violate minors’ rights).
73 See Kolender v. Lawson, 461 U.S. 352, 358 (1983) (recognizing constitutional right to freedom of movement); see also Kent v. Dulles, 357 U.S. 116, 126 (1958) (stating how freedom of movement is “deeply engrained in our history”).
74 See U.S. CONST. amend. XIV, § 1 (declaring “[n]o state shall... deny to any person within its jurisdiction the equal protection of the laws”); see also Privor, supra note 41, at 443 (arguing curfews interfere with minors’ right of intrastate travel).
75 The idea of imposing a greater level of scrutiny when fundamental rights are involved came from the famous footnote four in United States v. Carolene Products, 304 U.S. 144, 153 n.4 (1938). See id. Although Carolene Products involved an economic regulation, Justice Stone noted that when fundamental rights are at issue, a greater level of scrutiny should be applied. See id. For further discussion on how minimal scrutiny does not adequately protect fundamental rights, see Jeffery M. Shaman, Article, Cracks in the Structure: The Coming Breakdown of the Levels of Scrutiny., 45 OHIO ST. L.J. 161, 162 (1984).
76 U.S. CONST. amend. XIV, § 1.
77 See City of Cleburne v. Cleburne Living Ctr., 473 U.S. 432, 439 (1985) (proclaiming “Equal Protection Clause... is essentially a direction that all persons similarly situated
the curfews argue that there is a fundamental right of travel that both adults and minors enjoy, and that these curfews interfere with the minors' right to travel while the adults have no restriction. In Ramos, the plaintiffs were challenging a curfew imposed on individuals eighteen years old and younger. The plaintiffs successfully argued that if this curfew were imposed on adults, the curfew would be subject to strict scrutiny and would be a violation of the adults' right to intrastate travel. The plaintiffs argued that they were prevented from enjoying the same protections as adults solely because they were minors.

C. Is a Minor's Right the Same as an Adult's Right?

Assuming that there is a right that is infringed upon as a result of juvenile curfews, the next issue is whether that liberty should be as vigorously protected as it is for an adult. There are many areas of the law in which a minor's liberty has less constitutional protection than an adult's. For example, when it comes to a child's right to purchase pornographic material, should be treated alike.

78 See Kolender, 461 U.S. at 358 (discussing "freedom of movement" as a constitutional right); see also Kent, 357 U.S. at 126 (recognizing that both travel abroad and travel within country may be necessary for one's livelihood).

79 See Ramos v. Vernon, 353 F.3d 171, 172 (2d Cir. 2003) (refusing to question Vernon's inherent ability to have curfew ordinance, reasoning that "[j]uvenile curfews have existed throughout our Nation's history"); see also Privor, supra note 41, at 443-44 (highlighting that some courts have held freedom of movement is not fundamental as applied to juveniles).

80 See Ramos, 353 F.3d at 172.

81 See id. at 176.

82 See id.

83 See Amitai Etzioni, Do Children Have the Same First Amendment Rights as Adults?: On Protecting Children From Speech, 79 CHI.-KENT. L. REV. 3, 33 (2004) (illustrating how public may have compelling interest in shielding its children from harmful material which is freely accessible to adults); see also Gilbert A. Holmes, The Tie That Binds: The Constitutional Right of Children to Maintain Relationships with Parent-Like Individuals, 53 Md. L. REV. 358, 386 (1994) (providing, "[w]hile courts have afforded children's constitutional rights only limited protection in comparison to adults, they usually restricted children's rights to preserve the corresponding rights of the adults who take care of them or to promote the children's best interests").

84 See, e.g., Schall v. Martin, 467 U.S. 253, 265 (1984) (stating "[c]hildren . . . are not assumed to have the capacity to take care of themselves" and thus, "juvenile's liberty interest may, in appropriate circumstances, be subordinated to the State's 'parens patriae' interest in preserving and promoting the welfare of the child" (quoting Santosky v. Kramer, 455 U.S. 745, 766 (1982))); see also Ginsberg v. New York 390 U.S. 629, 639 (1968) (discussing legislature's option to create law to support children's well-being).
children's rights are protected with less vigor than adults' rights. In Ginsberg v. New York, the Court found that a law banning the sale to minors of magazines that contained nudity was valid. The Court held that, although adults have an unfettered right to buy this material, a child's right to purchase such material can be limited and even banned. In certain cases, a child may have the same underlying rights as an adult.

However, those rights may be limited by certain state requirements. For example, states may not impose abortion laws that unduly burden a minor's right to get an abortion. They can, however, require parental notification and consent. Conversely, there are several areas of the law where minors' rights and adults' rights coexist. For instance, in W. v. California, Justice Marshall emphasized the Supreme Court's
traditional sensitivity to a minor's claim that a state had deprived her of her liberty. Further, in *Tinker v. Des Moines School District*, the Court protected a minor's right to freedom of speech just as it would an adult's. The Court held that minor students have a right to wear black armbands in protest of the Vietnam War because students are persons under the Constitution and their fundamental rights must be protected.

Courts are split, however, on whether a minor's right to intrastate travel should be treated the same way as an adult's right to intrastate travel. On the one hand, the court in *Hutchins* found that a juvenile curfew did not interfere with the intrastate travel of a minor. The court reasoned that, although minors are generally protected by the same constitutional guarantees as adults, the degree to which those rights are protected is lower for minors. However, the court in *Ramos* found that minors do have the same right to intrastate travel as adults. The court reasoned that the intermediate level of scrutiny was sufficient to protect the constitutional right to intrastate travel.

95 See *W.*, 449 U.S. at 1047 (Marshall, J., dissenting) (offering "our cases have exhibited particular sensitivity to minors' claims to constitutional protection against deprivations of liberty by the State").


97 See *Tinker*, 393 U.S. at 505 (holding that "wearing of an armband for the purpose of expressing certain views is the type of symbolic act that is within the Free Speech Clause of the First Amendment").

98 See id. at 511 (stating "[i]n the absence of a specific showing of constitutionally valid reasons to regulate their speech, students are entitled to freedom of expression of their views").

99 Compare *Hutchins* v. Columbia, 188 F.3d 531, 534 (D.C. Cir. 1999) (en banc) (plurality opinion) (holding that juvenile curfew implicated neither parents' nor minors' fundamental rights), with *Ramos* v. Town of Vernon, 353 F.3d 171, 182 (2d Cir. 2003) (holding that juvenile curfew ordinance interfered with juveniles' fundamental right to move about freely).

100 See *Hutchins*, 188 F.3d at 538.

101 See id. at 541.

102 See id.

103 See *Ramos*, 353 F.3d at 172.

104 See id. at 181. Even though the court in *Ramos* found that minors have the same rights as adults, the court employed an intermediate level of scrutiny. See id. The *Ramos* court cites Supreme Court language that states because a child is mentally and physically inferior their rights, although the same, can be treated with a little less vigor. See id. at 172, 181.
D. What Level of Scrutiny is Involved?

There are several levels of scrutiny that a court can apply when analyzing a constitutional challenge. The level of scrutiny applied is important because it determines who has the burden of proof and by what standard it must be proven. The lowest level of scrutiny and hardest for a plaintiff to overcome is rational basis. Rational basis requires that a law be rationally related to a legitimate government interest. The burden to prove that such law is not rationally related to a legitimate government interest is on the person challenging the law. The court accords great deference to the state when using the rational basis level of scrutiny, and nearly any law will survive unless the plaintiff can prove the law is irrational.

The next level of scrutiny is an intermediate standard. This intermediate level is mainly used when dealing with quasi-
suspect classes, such as gender, and dealing with important rights that, though important, are not considered fundamental rights. Gender has traditionally been categorized as a quasi-suspect class because of the stereotypes associated with males and females. Under this intermediate level of scrutiny, the government must show that the challenged legislation is substantially related to an important governmental interest.

The final and most stringent level of review is strict scrutiny. Strict scrutiny applies when the legislature discriminates against a suspect class or when it burdens an individual trying to exercise a fundamental right, such as freedom of speech. For a law to be upheld under strict

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112 See Craig v. Boren, 429 U.S. 190, 197 (1976) (holding gender is quasi-suspect); see also Mills v. Habluetzel, 456 U.S. 91, 98–99 (1982) (determining illegitimate children to be quasi-suspect class); Ramos, 353 F.3d at 175 (discussing how intermediate scrutiny is typically used to review laws that employ quasi-suspect classifications).

113 See Ramos, 353 F.3d at 175 (highlighting application of intermediate scrutiny to laws affecting important rights); see also United States v. Coleman, 166 F.3d 428, 431 (2d Cir. 1999) (stating that intermediate scrutiny may be applied to review a law that affects "important, though not constitutional, right").

114 See Craig, 429 U.S. at 192–93 (discussing reasons for reviewing gender classifications under intermediate scrutiny); see also Ramos, 353 F.3d at 175 (acknowledging gender as quasi-suspect class).

115 See Wengler v. Druggists Mut. Ins. Co., 446 U.S. 142, 150 (1980) (applying intermediate scrutiny to gender discrimination case and thus stating "gender-based discriminations must serve important governmental objectives and that the discriminatory means employed must be substantially related to the achievement of those objectives"); see also Ramos, 353 F.3d at 175 (noting intermediate scrutiny requires government to show that "challenged legislative enactment is substantially related to an important governmental interest").

116 See Clark v. Jeter, 486 U.S. 456, 461 (1988) (listing strict scrutiny as "most exacting scrutiny"); see also Ramos, 353 F.3d at 175 (describing when heightened level of review, that is, strict scrutiny should be employed).

117 See Regents of Univ. of Cal. v. Bakke, 438 U.S. 265, 357 (1978) (commenting that strict scrutiny applies to legislation that refers to suspect classes); see also Ramos, 353 F.3d at 175 (stating "strict scrutiny . . . applies when legislation discriminates on the basis of a person's membership in a suspect class").

118 See Clark, 486 U.S. at 461 (noting that classifications that affect fundamental rights are subject to strict scrutiny); see also Bakke, 438 U.S. at 357 (commenting that strict scrutiny applies to legislation limiting fundamental rights); Ramos, 353 F.3d at 175 (stating "strict scrutiny . . . applies when legislation . . . burdens a group's exercise of a fundamental right").

119 See Lac Vieux Desert Band of Lake Superior Chippewa Indians v. Mich. Gaming Control Bd., 172 F.3d 397, 410 (6th Cir. 1999) (explaining ordinance in question affects fundamental right of freedom of speech and therefore is subject to strict scrutiny); see also Dunagan v. City of Oxford, 718 F.2d 738, 752 (5th Cir. 1983) (proclaiming "[f]reedom of speech is of course a fundamental right that would ordinarily trigger strict scrutiny").
scrutiny, the government must show that the law is narrowly tailored to achieve a compelling governmental interest.\textsuperscript{120}

Courts have been divided on what level of scrutiny to apply to juvenile curfews.\textsuperscript{121} On the one hand, the court in *Hutchins* applied the lowest level of scrutiny,\textsuperscript{122} thereby placing the burden on the plaintiffs to prove the curfew was irrational.\textsuperscript{123} On the other side, the court in *W. v. State*,\textsuperscript{124} applying strict scrutiny, held that a juvenile curfew was unconstitutional because the curfew had no relationship to the government's purpose of controlling minors' activities past a certain time.\textsuperscript{125} Determining which level of scrutiny to apply is the most important aspect of a court's analysis; in many respects, it will determine the outcome of the case.\textsuperscript{126} For example, if rational basis is applied, the state is almost certain to have a valid statute as long as there is a legitimate state interest.\textsuperscript{127} However, when dealing with an intermediate level of scrutiny just having a valid state interest is

\textsuperscript{120} See Adarand Constructors, Inc. v. Pena, 515 U.S. 200, 227 (1995) (asserting that racial classifications will only be constitutional after they are analyzed under strict scrutiny and found to be narrowly tailored to further compelling governmental interests); see also Ramos, 353 F.3d at 175 (reviewing strict scrutiny burden on government).

\textsuperscript{121} See Chen, supra note 26, at 151–52 (discussing how some courts have applied rational basis standard while other courts apply strict scrutiny, believing that youth curfews should be given same constitutional tests that are accorded to adults); compare Ramos, 353 F.3d at 180 (applying intermediate level of scrutiny to curfew legislation), with Hutchins v. Columbia, 188 F.3d 531, 539 (D.C. Cir. 1999) (en banc) (plurality opinion) (analyzing juvenile's right of movement under rational basis review), and Waters v. Barry, 711 F. Supp 1125, 1139 (D.D.C. 1989) (using strict scrutiny to review District's curfew legislation).

\textsuperscript{122} Hutchins, 188 F.3d at 539.

\textsuperscript{123} See id.


\textsuperscript{125} See id. at 50 (holding statute unconstitutional "since it cannot be said that prohibition against the mere presence of a child . . . on a street or park . . . between 11:00 P.M. and 5:00 A.M. . . . has any real relationship to the primary purpose of the statute"); see also Veilleux, supra note 52, at *3b (explaining court's rationale in *W. v. State* for finding law unconstitutional).

\textsuperscript{126} See generally Hodgkins v. Peterson, 355 F.3d 1048, 1059-64 (7th Cir. 2004) (applying strict scrutiny standard to curfew law and finding it unconstitutional because it is not narrowly tailored even though it serves significant governmental interest); see also Nunez v. City of San Diego, 114 F.3d 935, 946-49 (9th Cir. 1997) (declaring curfew law unconstitutional under strict scrutiny because although City has compelling government interest, which would be enough under rational basis review, law is not narrowly tailored).

\textsuperscript{127} See Juvenile Curfews and the Major Confusion, supra note 1, at 2412 (commenting that to satisfy rational basis review, only mere rational basis is required); see also Douglas G. Smith, A Return to First Principles? *Saenz v. Roe and the Privileges or Immunities Clause*, 2000 Utah L. Rev. 305, 353 (2001) (explaining that courts applying rational basis review generally uphold curfew statutes).
not enough. The statute must actually have a legitimate goal and must be substantially related to that goal.

E. The Government's Interest Versus the Minor's Interest

Once a court decides what level of scrutiny to apply, the final step is to apply that level of scrutiny. The court must identify what interest(s) the government may have in imposing curfews and whether such interests are accomplished and related to the curfews. During the final analysis, courts may also address whether such governmental interests outweigh the rights of the minor.

Governments argue that they have an interest in protecting their citizens from becoming victims, preventing crime, and promoting responsible parental decision-making. The main
reason governments impose curfews is to protect children from crime and to reduce crime committed by minors. The rationale behind the juvenile curfew's effectiveness is that juveniles are less likely to commit crimes and be victimized if they are not on the streets at night. The issue is whether this rationale is correct and meets whichever level of scrutiny is applied. Courts are split on whether such interests meet the level of scrutiny applied and whether such interests are served by the curfew. In Ramos, the court held that the government failed to show how imposing a curfew reduced gang violence and protected minors. The court reasoned that the intermediate level of scrutiny required more than the mere incantation of a proper state purpose and also that most criminal activity happened at a time the curfew was not in effect. Conversely, in Hutchins, the court held that the government had a proper state purpose in preventing crime and that, although the challengers argued that most crime did not happen during curfew hours, the court found that there was a "fit" between the curfew and the stated purpose of crime reduction.

136 See Adams, supra note 6, at 139 (listing the various benevolent effects of curfews); see also Privor, supra note 41, at 423-24 (stating both government officials and members of public are in favor of the crime reducing effects of curfews).

137 See Adams, supra note 6, at 138 (emphasizing that children who are outside late at night or during early morning hours are being inappropriately supervised); see also World News Tonight with Peter Jennings (ABC television broadcast March 12, 1991) (transcript available on Lexis) (quoting Davetta Johnson as stating, "If a child is out late at night, then a child has failed to be supervised"); but see Privor, supra note 41, at 448 (suggesting "In some cases, a law forcing children to stay at home may actually increase the likelihood that they will become victims of violent crime").

138 There is great debate over whether such goals are met by juvenile curfews. One scholar argues that such curfews are ineffective because of the incorrect assumptions that crime happens during curfew hours and that delinquents will not change their criminal activity to a different time. See Adams, supra note 6, at 140. The scholar further argues that less crime happens during curfew hours then during afternoon hours. See id. at 151. Another scholar reinforces these contentions by pointing out that "a minor's decision to leave the house is plainly distinct from the decision to engage in criminal activity." Privor, supra note 41, at 447-48.

139 See, e.g., Ramos, 353 F.3d at 185–86 (concluding that curfew does not withstand review due to loose fit between curfew legislation and crime prevention); Hutchins, 188 F.3d at 543–44 (finding close statistical relationship between juvenile crime and curfew hours).

140 See Ramos, 353 F.3d at 186.

141 See id. at 185.

142 See Hutchins, 188 F.3d at 543–44.
F. Split in Courts

The Supreme Court’s denial of certiorari in juvenile curfew cases has left a circuit split on many of the important legal issues discussed above. In *Hutchins*, the District of Columbia Circuit read the minors’ right involved as being very narrow, mainly being on the street at night, and held that the imposition of a curfew did not violate that right because the government had a valid interest that was served by the curfew. Conversely, in *Ramos*, the Second Circuit interpreted a broad right, the right of intrastate travel, and held that, although the government had a valid interest in protecting its citizens from crime, the juvenile curfew did not further such goal.

III. EVOLUTION OF JUVENILE CURFEW CASE LAW


*Bykofsky v. Borough of Middletown* was the federal courts’ first case involving juvenile curfews. The court in *Bykofsky* was dealing with vagueness and First and Fourteenth Amendment challenges to a Pennsylvania curfew. The curfew prohibited minors under the age of eighteen to be on the streets past 10 p.m. The court first dealt with the vagueness challenge...
and held that, with the deletion of phrases such as “normal... nighttime activities,” the statute was not unconstitutionally vague. Next, the court went through several circumstances in which minors’ rights were not analogous to that of an adult, and held that the conduct of minors could be constitutionally regulated to a greater extent than the conduct of adults. The court finally held that there was a rational relationship between the government’s goals of protecting children, enforcing parental responsibility, and protecting the public from the nocturnal mischief of minors and imposing the curfew.

The Bykofsky case was a loss for juveniles for two reasons. First, the court used the lowest level scrutiny, the rational basis test, and second, the court specifically noted that minors do not enjoy the same constitutional protection as adults. Although Bykofsky set certain standards of review for juvenile curfew cases and was, overall, a loss for juveniles, cases that followed almost always took novel and different approaches to many of the legal issues caused by juvenile curfews.


The next major case was decided six years later and took a different approach than Bykofsky. The Fifth Circuit, in Johnson v. Opelousas, was dealing with a nearly identical curfew as the

152 See id. at 1252.
153 See id. at 1256 (listing rights to vote, enlist in military, contract, operate motor vehicles, and to purchase and consume alcoholic beverages as examples).
154 See id. at 1254.
155 See id. at 1255–56.
156 See id. at 1265 (explaining “since the curfew ordinance does not infringe upon a fundamental right and does not create a suspect classification, the traditional rational basis test is the proper yardstick to utilize in determining the constitutionality of the ordinance”).
157 See id. at 1254 (commenting how “it is apparent that the constitutional rights of adults and juveniles are not co-extensive”).
158 Compare Schleifer v. City of Charlottesville, 159 F.3d 843, 847 (4th Cir. 1998) (applying an intermediate level of scrutiny), and Hodgkins v. Peterson, 355 F.3d 1048, 1058 (7th Cir. 2004) (using an intermediate level of scrutiny, but stating that the application of either strict or intermediate scrutiny would make no difference on the outcome of the case), with Nunez v. City of San Diego, 114 F.3d 935, 946 (9th Cir. 1997) (applying a strict scrutiny standard but noting that strict scrutiny in the context of minors “may allow greater burdens on minors than would be permissible on adults as a result of the unique interests implicated in regulating minors”).
159 658 F.2d 1065 (5th Cir. 1981).
one in \textit{Bykofsky}.\textsuperscript{160} It required juveniles seventeen or younger to be off the street by 11 p.m.\textsuperscript{161} The appellants argued that the curfew law was overbroad and violated the minors' First Amendment rights.\textsuperscript{162} Unlike the \textit{Bykofsky} court, the \textit{Johnson} court noted that minors, though not the same as adults, do enjoy the First Amendment's guarantee to freedom of speech.\textsuperscript{163} The court further held that minors, certainly like any other United States citizen, enjoy the right to intrastate travel.\textsuperscript{164} In conclusion, the court found the curfew constitutionally invalid because it was overbroad.\textsuperscript{165}

The \textit{Johnson} case took an extremely different approach than the \textit{Bykofsky} case. First, it found that minors do have a strong First Amendment right that needs to be protected.\textsuperscript{166} Additionally, it found that minors do have an unfettered right to intrastate travel.\textsuperscript{167} Finally, instead of giving deference to the government's interest, the court found the minors' rights to be more important and invalidated the statute on broadness principals.\textsuperscript{168} Although this was a win for juveniles, the battle was far from over and the case law on juvenile curfews has continued to grow and differ.\textsuperscript{169}

\textbf{C. Qutb v. Straus (1993)}

\textit{Qutb v. Straus},\textsuperscript{170} the final case in the trilogy of early juvenile curfew cases, was decided twelve years after \textit{Johnson} and took a

\begin{footnotesize}
\textsuperscript{161} See Johnson, 658 F. 2d at 1067 n.1.
\textsuperscript{162} See id. at 1067–68.
\textsuperscript{163} See id. at 1072.
\textsuperscript{164} See id. at 1072 (5th Cir. 1981).
\textsuperscript{165} See id. at 1074.
\textsuperscript{166} See id. at 1072.
\textsuperscript{167} See id.
\textsuperscript{168} See id.
\textsuperscript{169} See generally \textit{Juvenile Curfews and the Major Confusion}, \textsuperscript{supra} note 1, at 2400 (emphasizing that there have been three decades of fragmented lawmaking at circuit court level since Supreme Court denied certiorari in Bykofsky v. Borough of Middletown, 429 U.S. 964 (1976); see also Cheri L. Lichtensteiger Baden, \textit{Note, When the Open Road is Closed to Juveniles: The Constitutionality of Juvenile Curfew Laws and the Inconsistencies Among the Courts}, 37 VAL. U. L. REV. 831, 847–53 (2003) (discussing varying case law throughout circuit courts regarding juvenile curfews).
\textsuperscript{170} 11 F.3d 488 (5th Cir. 1993).
\end{footnotesize}
completely different direction than the Johnson case. The curfew law at issue in Qutb was distinct from those in prior cases. The Dallas ordinance prohibited persons under the age of seventeen from remaining in a public place or establishment from 11 p.m. until 6 a.m. and from 12 midnight to 6 a.m. on the weekends. The difference with this curfew was that there were several exceptions. The exceptions included being accompanied by a parent or guardian, going on an errand, and attending school, religious, or First Amendment related activity. The above curfew law became the model law enacted by many jurisdictions across the country.

The plaintiffs argued that the ordinance violated the Equal Protection Clause of the Fourteenth Amendment. The court first dealt with the issue of whether there was an equal protection claim. The court reasoned that, because the statute distinguished between those who were seventeen or younger and those who were older, the court had to analyze the curfew ordinance under the Equal Protection Clause of the Fourteenth Amendment. Once the court found that there was a possible claim of unequal protection, the court next had to decide what

171 Compare Qutb, 11 F.3d at 490 (recognizing that the juvenile curfew ordinance under review contained a multitude of exceptions and defenses), with Johnson, 658 F.2d at 1074 (involving a curfew of broad general applicability).
172 See Qutb, 11 F.3d at 490.
173 See id. at 490.
174 See id. If a minor was suspected of being in violation of the ordinance, the ordinance also required the police to ask the age of the apparent offender and to ask why he or she was out past curfew. See id. An officer had discretion to either fine or arrest the offender so long as the officer reasonably believed that the person had violated the ordinance and that no exceptions applied. See id. at 490-91. The fine for a single violation of the ordinance could not exceed 500 dollars. See id. at 491. The ordinance did not apply to persons under the age of seventeen that were married or who had the disability of minority removed in accordance with the Texas Family Code. See id. at 490.
175 See Juvenile Curfews and the Major Confusion, supra note 1, at 2403, 2413 (recognizing that many municipalities modeled their juvenile curfew ordinances after Dallas' ordinance once it had withstood strict scrutiny analysis by the Fifth Circuit); see also Brian J. Lester, Comment, Is it Too Late for Juvenile Curfews? Qutb Logic and the Constitution, 25 HOPSTRA L. REV. 665, 697 (1996) (stating that cities emulated Dallas curfew ordinance from Qutb following decision in that case).
176 See Qutb, 11 F.3d at 491-92.
177 See id. at 492 (determining whether claim involved governmental action that distinguished between two or more groups).
178 See id. (stating that "because the curfew ordinance distinguishes between two groups, we must analyze the curfew ordinance under the Equal Protection Clause").
179 See id. The court declared that an equal protection inquiry was required when a "challenged governmental action classifies or distinguishes between two or more relevant
The court chose the strict scrutiny standard of review, assuming a fundamental right was abridged. The court then held that the government had a strong and compelling interest in protecting its citizens by reducing juvenile crime. Subsequently, the court analyzed whether the ordinance was narrowly tailored to accomplish such a purpose. The court failed to address the issue of whether juveniles, like adults, have a right to intrastate travel, but assumed the ordinance impinged on a fundamental right in order to apply the strict scrutiny standard of review.

At the end of its analysis, the court held that the statute was valid. The court's rationale for its decision was: (1) that although there was no data or evidence presented by the government that juvenile crimes happened during the curfew hours, the statute "fit" the government's compelling interest in protecting its citizens; and (2) that although a court should analyze the statute by what it prohibits and not what it exempts, the exemptions can not be viewed in isolation, but as part of the whole curfew ordinance, thus making it narrowly tailored.
After states started to model their statutes after the Dallas curfew, more case law began to develop and more confusion ensued.

D. Recent Developments

There are several recent cases that cite to Qutb and earlier case law that have cast doubt on a clear understanding of the legality of juvenile curfews. Those cases include Nunez v. San Diego, Ramos v. Town of Vernon, Schleifer v. City of Charlottesville, and Hutchins v. District of Columbia. In Nunez, the Ninth Circuit struck down a juvenile curfew law similar to that of the Dallas law by applying strict scrutiny. The court held that the ordinance was invalid because it violated the First and Fourteenth Amendments of the Constitution. The court held that, even though the Supreme Court, in Bellotti v. Baird, held that a minor’s constitutional rights are not

public during curfew hours under certain conditions. See id. The court reasoned that this was not overly broad and, taking the ordinance as a whole, it was narrowly tailored. See id. at 494.

See Hutchins v. District of Columbia, 942 F. Supp. 665, 678 (D.D.C. 1996) (illustrating juvenile curfew ordinance adopted by District of Columbia from “Dallas, Texas, juvenile ordinance that withstood scrutiny in Qutb”); see also Lester, supra note 175, at 697 (providing that “[a]fter the Qutb decision, cities across the country enacted curfew ordinances mirroring the Dallas curfew ordinance”).

See Juvenile Curfews and the Major Confusion, supra note 1, at 2414 (suggesting “cases since Qutb have plotted an uncertain course”); see also Lester, supra note 175, at 697 (concluding some cities that were “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”).

See Juvenile Curfews and the Major Confusion, supra note 1, at 2414 (listing facts and divergent holdings of major circuit cases following Qutb); see also LaCava, supra note 3, at 1237 (highlighting that “[t]here is a circuit split regarding almost every aspect of the constitutional analysis of juvenile curfew cases” meriting Supreme Court review).

189 See Juvenile Curfews and the Major Confusion, supra note 1, at 2414 (listing facts and divergent holdings of major circuit cases following Qutb).
190 See Juvenile Curfews and the Major Confusion, supra note 1, at 2414 (highlighting that “[t]here is a circuit split regarding almost every aspect of the constitutional analysis of juvenile curfew cases” meriting Supreme Court review).
191 114 F.3d 935 (8th Cir. 1997).
192 355 F.3d 171 (2d Cir. 2003).
193 159 F.3d 843 (4th Cir. 1998).
194 188 F.3d 551 (D.C. Cir. 1999).
195 See Nunez, 114 F.3d at 946.
196 See id. at 951–52.
197 443 U.S. 622 (1979). Although this case is important when analyzing minors’ rights, this case will not be dealt with in this note. The Court in Bellotti set forth a standard to determine if rights in juvenile right cases are more like rights that are so important that states cannot interfere, or more like activities over which states have authority to regulate minors. See LaCava, supra note 3, at 1232. In Bellotti, the court implemented an analysis with three factors and some circuits have taken this analysis in juvenile curfew cases as lowering the standard of review, while other courts have taken it to increase the importance state interest in the analysis. See id. at 1233.
always the same as those of an adult,198 this should merely strengthen the state's interest and not decrease the level of scrutiny.199 In Ramos, the Second Circuit cataloged earlier case law and decided to try a novel approach by applying an intermediate level of scrutiny to the challenged curfew law.200 In the end, the court invalidated the curfew because the city failed to show how juvenile curfews decreased juvenile crime when most crime happens during non-curfew hours.201

In Schleifer, the Fourth Circuit found the minor's rights to be less fundamental than an adult's and therefore applied the Ramos intermediate level of scrutiny.202 However, instead of invalidating the ordinance, the court held that such curfew, which was similar to the Dallas curfew,203 survived such intermediate level of scrutiny.204 Finally, and most importantly, the Hutchins court took a completely different approach by applying a low level of scrutiny and narrowly construing the minor's right involved.205 This approach led the District of Columbia Circuit, sitting en banc, to uphold the juvenile curfew.206 Each of the above courts took a different approach, and validated or invalidated curfew laws for different reasons.

198 See Bellotti, 443 U.S. at 634 (recognizing "three reasons justifying the conclusion that the constitutional rights of children cannot be equated with those of adults").
199 See Nunez, 114 F.3d at 945 (stating "Bellotti framework enables courts to determine whether the state has a compelling interest justifying greater restrictions on minors than on adults"); see also Juvenile Curfews and the Major Confusion, supra note 1, at 2414 (explaining "Bellotti should be used to strengthen the state's interest, not to decrease the level of scrutiny").
201 See id. at 185.
202 See Schleifer v. City of Charlottesville, 159 F.3d 843, 856–57 (4th Cir. 1998). The stated purpose of the ordinance was (1) ... protect the general public through the reduction of juvenile crime ... ; (2) promote the safety and well-being of persons under the age of seventeen ... ; and (3) foster and strengthen parental responsibility. Id.
203 See id. at 852 (noting Charlottesville curfew, which applies only to those under seventeen-years-old, begins at midnight during the week and 1:00 a.m. on weekdays, contains eight exceptions, and is even more narrowly tailored than Dallas curfew to achieve state's interest).
204 See id. (commenting that Charlottesville curfew "represents the least restrictive means" to advance state's compelling interest).
205 See Hutchins v. District of Columbia, 188 F.3d 531, 536–42 (D.C. Cir. 1999) (en banc) (plurality opinion) (concluding that intermediate scrutiny should be standard of review in examining scope of curfews and that children's constitutional rights need to be balanced against their immaturity and their need for state supervision); see also Ramos v. Town of Vernon, 353 F.3d 171, 177 (2d Cir. 2003) (noting Hutchins approach is problematic).
206 See Hutchins, 188 F.3d at 548.
Although the circuits disagree on whether such laws are invalid, the \textit{Hutchins} court went in a completely different direction than prior case law and it is suggested that both the courts' rationale and holding are flawed.

IV. A CLOSER LOOK AT \textit{HUTCHINS}

In \textit{Hutchins}, the District of Columbia Circuit, sitting en banc, was faced with a challenge to a juvenile ordinance similar to the model ordinance upheld in \textit{Qutb}.\textsuperscript{207} The Curfew Act of 1995 barred juveniles seventeen and under from being in a public place unaccompanied by a parent from 11 p.m. to 6 a.m. Sunday through Thursday, and from 12 midnight to 6 a.m. Saturday and Sunday.\textsuperscript{208} Under this law, a parent or guardian commits an offense by knowingly permitting, or through insufficient control allowing, the minor to violate the curfew.\textsuperscript{209} The curfew has eight defenses.\textsuperscript{210} There is no violation of the statute if the minor is (1) accompanied by a parent, guardian, or caretaker;\textsuperscript{211} (2) on an errand at the direction of the minor's parent, guardian, or caretaker, without any detour or stop; (3) in a vehicle involved in interstate travel; (4) engaged in certain employment activity, including going to or from employment, without any detour or stop; (5) involved in an emergency; (6) on the sidewalk that abuts the minor's or the next-door neighbor's residence, if the neighbor had not complained to the police; (7) in attendance at an official school, religious, or other recreational activity sponsored by the District of Columbia, a civic organization, or another similar entity that takes responsibility for the minor; and (8) exercising First Amendment rights including free exercise of religion, freedom of speech, and the right of assembly.\textsuperscript{212} Any violation of the curfew law by a minor could result in an order against the minor to perform up to twenty-five hours of community service.

\textsuperscript{207} Compare id. at 534 (describing District curfew ordinance), \textit{with Qutb v. Strauss}, 11 F.3d 488, 490 (5th Cir. 1993) (explaining the Dallas curfew ordinance).

\textsuperscript{208} See \textit{Hutchins}, 188 F.3d at 534.

\textsuperscript{209} See id.

\textsuperscript{210} See \textit{id.} at 536–42.

\textsuperscript{211} See \textit{id.} at 535. For the purpose of the statute, a caretaker is anyone over the age of twenty-one, who is authorized by a parent to take care of the minor. See \textit{id.}

\textsuperscript{212} See \textit{id.}
and any violation of the curfew law by the parent could result in
either community service or a fine of up to $500.00.\footnote{213}

A group of minors, parents and private businesses
(“Appellees”) sued the District to enjoin the enforcement of the
curfew law.\footnote{214} The Appellees argued that the curfew law violated
the minors’ Fifth Amendment Due Process and Equal Protection
rights to freedom of movement,\footnote{215} the minors’ Fourth
Amendment right to be free from unreasonable searches and
seizures, the minors’ First Amendment rights to freedom of
expression and assembly, the parents’ Fifth Amendment Due
Process rights to raise their children, and the allegation it is
unconstitutionally vague.\footnote{216} The district court granted summary
judgment for the Appellees and held that minors have a
fundamental right to free movement.\footnote{217} The court reasoned that,
because the curfew infringed on the minors’ rights to free
movement and the parents’ rights to raise their children, the law
was subject to strict scrutiny,\footnote{218} and the government failed to
meet such high level of scrutiny.\footnote{219}

Here, a plurality of the appellate court reversed and remanded
the case back to the district court to enter summary judgment for
the District of Columbia (Appellants).\footnote{220} The plurality held that
no fundamental rights of the minors or parents were involved.\footnote{221}
The court noted that even if fundamental rights were implicated,

\footnote{213}{See id.}
\footnote{214}{See id. at 534.}
\footnote{215}{See id. at 535.}
\footnote{216}{See id. The Appellees’ First and Fourth Amendment claims were not reached and
will not be discussed in this section of the note. For an earlier discussion involving
challenges to these rights see Section III.}
importance of “cherished freedom of movement”), rev’d en banc, 188 F.3d 531 (D.C. Cir.
1999) (plurality opinion).}
\footnote{218}{See Hutchins, 942 F. Supp. at 673–74.}
\footnote{219}{See id. at 679. As the District of Columbia had access to information concerning
what time of day juvenile crime was committed and did not try to access it, there was not
a substantially direct connection between the curfew law and the raw juvenile crime rates
the state was trying to lower. See id. Also, the district court found that four of the eight
defenses, the first defense, the emergency defense, the responsible entity defense, and the
sidewalk defense, were unconstitutionally vague and did not withstand constitutional
scrutiny. See id.}
\footnote{220}{See Hutchins v. District of Columbia, 188 F.3d 531, 548 (D.C. Cir. 1999) (en banc)
(plurality opinion).}
\footnote{221}{See id. at 534 (commenting “plurality believes that the curfew implicates no
fundamental rights of minors or their parents”).}
the curfew law could withstand strict scrutiny. The court first dealt with the issue of whether any fundamental rights of the minors were involved. The court reasoned that the right to intrastate travel is not deeply rooted in history and that in fact the early cases, like Shapiro v. Thompson, which held that a state cannot interfere with the right of interstate travel, were more concerned with a state discriminating against outsiders rather than the right to move about. The court then went on to reason that the right to interstate travel is not the same as intrastate travel. The court distinguished the vagrancy cases that the Appellees used to support the claim that intrastate travel was a fundamental right. The court held that laws against vagrancy did not violate any fundamental right, but were still invalid because the statutes gave no notice to perspective violators. The court concluded in its reasoning that no fundamental right of the minors was involved – perceiving the rights of minors to be narrower than the rights of adults. The right involved, the court stated, was the right to be on the streets at night without adult supervision, and that right was not fundamental. The reason the court used to support their narrow interpretation of any right was that the Supreme Court warned the judiciary that the broader the right, the more the

222 See id. at 541.
223 See id. at 536 (beginning discussion on whether due process right exists).
224 394 U.S. 618 (1969). In Shapiro, there was a Connecticut law that made all persons who did not live in the state for over a year ineligible for welfare assistance. See id. 622-23. A woman was denied welfare assistance because she had not lived in Connecticut for a year. See id.
225 See id. at 641 (holding state statute, which required one year residency for welfare benefits, was invalid).
227 See id.
228 See id.
229 See id. "While vagrancy statutes certainly prohibit individuals from moving about, the constitutional infirmity in these statutes is not that they infringe on a fundamental right to free movement, but that they fail to give fair notice of conduct that is forbidden and pose a danger of arbitrary enforcement. In other words, they do not afford procedural due process." Id.
230 See id. at 539 (concluding that the "state's authority over children's activities is unquestionably broader than that over like actions of adults").
231 See id. at 539 (providing "neither history nor precedent supports the existence of a fundamental right for juveniles to be in a public place without supervision during curfew hours, and we decline to recognize one here").
court should expand on substantive and equal protection rights.\textsuperscript{232}

The next issue the court dealt with was whether any fundamental rights of the parents were involved.\textsuperscript{233} The Appellees argued that the curfew interfered with the parents' fundamental right to raise their children.\textsuperscript{234} The court held that, although parents do have such a fundamental right, no such right was implicated by the curfew.\textsuperscript{235} The court reasoned that early case law held that parents have a fundamental right to make intimate family decisions, such as their children's education and upbringing,\textsuperscript{236} but do not have a right to determine when and if their children are allowed on the streets at night.\textsuperscript{237}

In the final part of its opinion, the court held that, even assuming fundamental rights were involved, the statute would survive a higher level of scrutiny.\textsuperscript{238} In Part A, the court analyzed the minors' rights,\textsuperscript{239} and in Part B, the court analyzed the parents' rights.\textsuperscript{240} Before analyzing either party's rights, the court first decided that instead of using strict scrutiny, it would use a lower level of strict scrutiny, even though it was only

\begin{footnotesize}
\begin{enumerate}[\textsuperscript{232}]
  \item See Collins v. City of Harker Heights, 503 U.S. 115, 125 (1992) (stating that it is imperative to look to allegations in complaint to determine how petitioner describes constitutional right which is at stake); see also Hutchins v. D.C., 188 F.3d 531, 538 (D.C. Cir. 1999) (en banc) (plurality opinion) (declaring that “Supreme Court has warned us that our analysis must begin with a careful description of the asserted right for the more general is the right's description, i.e., the free movement of people, the easier is the extension of substantive due process”).
  \item See id.
  \item See Hutchins, 188 F.3d at 540.
  \item See id.
  \item See id.
  \item See id.
  \item In Meyer v. Nebraska, 262 U.S. 390, 403 (1923), a statute banning the teaching of foreign languages was held to be unconstitutional. \textit{Id.} The Court held that it is the parents' right to decide what their children learn, and the state cannot interfere with parents' right to rear their children. \textit{See id.} at 399–400, 403. In Pierce v. Soc'y of Sisters, 268 U.S. 510, 535 (1925), the Court noted that a 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. \textit{See id.} In that case the Court was dealing with a law that required minors between the ages of eight and sixteen to attend public school. \textit{See id.} at 530. This law was invalidated because it is the parents' decision where their children attend school. \textit{See id.} at 534.
  \item See Hutchins, 188 F.3d at 540–41 (arguing that parents' fundamental rights do not extend to determining if and when children can be out on streets).
  \item See \textit{id.} at 541. “Even if the curfew implicated fundamental rights of children or their parents, it would survive heightened scrutiny.” \textit{Id.}
  \item See \textit{id.} at 541–45.
  \item See \textit{id.} at 545–46.
\end{enumerate}
\end{footnotesize}
assuming that a fundamental right was involved.241 In Part A, the court began its determination of the minors' rights by identifying an important state interest involved.242 The interest cited was the safety of the community from violence.243 Once an important interest of the state was identified, the court then went on to analyze whether such interest was substantially related to the law enacted.244 The Appellees argued that the statute was not substantially related because most violent activity was occurring during non-curfew hours, and was being committed by people older then seventeen.245 The court held that the state was not required to demonstrate an exact fit between the interest and the law,246 and concluded by reasoning that the statute is substantially related because statistics show that since the statute's enactment, there had been a 34% decrease in nighttime juvenile arrests.247

In Part B the court analyzed the parents' rights.248 The court again analyzed these rights using an intermediate level of scrutiny.249 It began by citing Ginsberg v. New York,250 which

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241 See id. at 541. Although the court stated it would survive heightened scrutiny, the court did not analyze the statute under the heightened level. See id. Instead it used a different type of intermediate scrutiny. Id. The level the court used had less protection then the normal intermediate level. See id. The court said the reason a lesser level of scrutiny was used was because children were not equal to adults, and that although they have fundamental rights, children are not as mature and a lesser level of protection is okay. See id.

242 See id. at 541–42 (concluding that government had interest in protecting minors' well-being).

243 See id. (noting “asserted government interest here is to protect the welfare of minors by reducing the likelihood that minors will perpetrate or become victims of crime and by promoting parental responsibility”).

244 See id. at 542 (stating that this test of whether government's interest in protecting minors is "substantially related" to law enacted calls for higher inquiry standard then rational basis, but more deferential one than strict scrutiny's narrow tailoring component).

245 See id.

246 See id. at 543 (explaining that this district does not have to prove precise fit between problem at issue and its legislative remedy since all that is required is some type of substantial relationship between two).

247 See id. at 543–44. The Metropolitan Police Department suggested that the curfew effectively kept juveniles off the streets, as prior to enacting the curfew "more than 50% of juvenile arrests took place during curfew hours." Id. at 544. Appellees argue that these statistics are flawed because they fail to recognize the possibility of other contributing factors to the decrease in arrests. See id.

248 See id. at 545.

249 See id. (concluding intermediate level scrutiny appropriate because curfew serves to enhance parental authority).

250 390 U.S. 629 (1968).
held that a law forbidding a minor from buying material with nudity did not unconstitutionally take away a parent's right to raise a child because the parent could always buy the magazine for the child.\textsuperscript{251} The court reasoned that the case under review was similar to \textit{Ginsberg} because a parent had the ability to send his or her child on an errand.\textsuperscript{252} The court concluded by stating that the errand exception together with the rest of the exceptions essentially gave the parent total control over her child.\textsuperscript{253}

\section*{V. \textit{Hutchins} is Flawed}

The \textit{Hutchins} case is flawed and wrongly interpreted the legality of juvenile curfews. There are several problems with the court's reasoning. The flaws are apparent in its identification of the parties' rights, the level of scrutiny, and the analysis of the statute in relation to the state's interests.

\subsection*{A. The Minors' Rights}

The \textit{Hutchins} case wrongly interpreted the minors' right as "the right to be on the streets at night without adult supervision."\textsuperscript{254} This narrow interpretation and the court's reasoning are incorrect for several reasons. First, contrary to the court's opinion in \textit{Hutchins}, which noted that intrastate travel is not the same or protected like interstate travel,\textsuperscript{255} the Supreme Court, in \textit{Kolender v. Lawson},\textsuperscript{256} recognized that there is a right to freedom of movement which is broader than interstate travel.\textsuperscript{257} Further, Justice Marshall, in \textit{Bykofsky v. Borough of}

\begin{footnotesize}
\textsuperscript{251} See \textit{Ginsberg}, 390 U.S. at 639.
\textsuperscript{252} See \textit{Hutchins v. District of Columbia}, 188 F.3d 531, 545 (D.C. Cir. 1999) (en banc) (plurality opinion) (highlighting that interpretation of \textit{Ginsberg} statute was comparable to curfew because both had been read as supporting parental authority).
\textsuperscript{253} See id. (asserting "curfew's defenses allow the parents almost total discretion over their children's activities during curfew hours").
\textsuperscript{254} Id. at 538; compare id. (defining "scope and dimensions" of asserted right narrowly so as to avoid level of generality against which Supreme Court warns), \textit{with} Ramos v. Town of Vernon, 353 F.3d 171, 177 (2d Cir. 2003) (rejecting \textit{Hutchins} court's interpretation of juveniles' constitutional interest as too narrow).
\textsuperscript{255} See \textit{Hutchins}, 188 F.3d at 536-38 (explaining that while interstate travel is a well-established right, circuits are split on whether right to intrastate travel is recognized).
\textsuperscript{256} 461 U.S. 352 (1983).
\textsuperscript{257} See \textit{Kolender}, 461 U.S. at 358.
\end{footnotesize}
Middletown, stated that "the freedom to leave one's house and move about at will is 'of the very essence of a scheme of ordered liberty.'" Second, if Hutchins were correct in interpreting the right to be analyzed as the right of the minor to be on the street at night without adult supervision, that would mean, as the Ramos court stated, that a minor's right to move around would be stronger during the day and disappear as soon as the curfew hour hit. Defining a right by the time of day does not comport with this country's founding principles and has no place in determining whether a fundamental right is involved. Finally, minors are protected by the same constitutional guarantees as adults. Although the Supreme Court has held that a minor's rights can be protected less vigorously than an adult's, that does not mean that those rights do not exist and are not fundamental. The court should not have narrowly construed the rights of the minors to being on the street at night, for such constriction virtually takes away any right of the minors. Instead, the court should have identified a right of intrastate

260 See Hutchins, 188 F.3d at 539 (determining that there was no case law supporting the legitimacy of a fundamental right for "juveniles to be in a public place without adult supervision" at night).
261 See Ramos v. Town of Vernon, 353 F.3d 171, 177 (2d Cir. 2003). "If the Hutchins formulation of the interest were correct, then juveniles' constitutional rights would appear in the morning and disappear at night." Id.
262 See id. at 176–77 (holding time of day is irrelevant as to question of existence of constitutional right, but may be relevant to discussion on state's interest in regulating that right); see generally LaCava, supra note 3, at 1228 (noting that when court defines right too narrowly there is real danger right becomes mirror image of particular scale-tipping burden).
263 See 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." Id. "[A]uthority possessed by the State to prescribe and enforce standards of conduct in its schools, although concededly very broad, must be exercised consistently with constitutional safeguards." Goss v. Lopez, 419 U.S. 565, 574 (1975). "[N]either the Fourteenth Amendment nor the Bill of Rights is for adults alone." In re Gault, 387 U.S. 1, 13 (1967).
264 See Bellotti v. Baird, 443 U.S. 622, 633 (1979) (noting that although minors are not beyond the protection of the Constitution, their status as "minors under the law is unique"); Planned Parenthood, 428 U.S. at 74 (1976) ("The Court... has recognized that the State has somewhat broader authority to regulate the activities of children than of adults."); see also Ramos, 353 F.3d at 177 (suggesting unique vulnerabilities and needs of children allow government greater range in regulating the manner in which children exercise their constitutional rights).
travel and reasoned that such right may be protected less than an adult's right.265

B. The Parent's Right

The Hutchins court spent little time on the important right of parents. The court's reasoning was flawed in holding that a parent's right to raise her children was not infringed by the curfew law, which set the time a child must be at home.266 The reason that the court's reasoning was flawed was that the United States has a long history of upholding parents' rights to raise their children and to make parental decisions.267 In Prince v. Massachusetts,268 the Court emphasized that "the custody, care, and nurture of the child reside first in the parents."269 The Hutchins court held that, although parents have these rights, assigning a curfew to their children and deciding what time is a reasonable time for their children to be home was not within that right.270 It is the parents' job to set limits for their child.271

265 Compare with Ramos, where the court explained certain inherent limitations of juveniles which may warrant special constitutional treatment. 353 F.3d at 177–78. As stated earlier, there are several areas of law where minors' rights are protected less vigorously than adults', and there are also certain areas where both groups' rights are coexistent. See, e.g., supra text accompanying note 84. The juvenile curfew law resembles those laws where both parties are protected equally. The right involved in curfew violations is more like minors' Fourth and First Amendment rights, which are protected just like adults' rights. Instead of implying that the rights are the same, which is very controversial, the position of this paper is that minors' rights can be treated differently.

266 Cf. Ramos, 353 F.3d at 182 (explaining that parents have right to determine when and where a child is to be permitted outside the home, as parents are primarily responsible for instilling children with their morals and values).

267 See Pierce v. Soc'y of Sisters, 268 U.S. 510, 534–35 (1925) (finding government may not unreasonably interfere "with the liberty of parents and guardians to direct the upbringing and education of children"); see also Meyer v. Nebraska, 262 U.S. 390, 401 (1923) (holding that parents have the fundamental right to decide how their children ought to be educated); Privor, supra note 41, at 449 (positing "role of the family unit in child rearing is well-defined in American jurisprudence").


269 Id. at 166.

270 See Hutchins v. District of Columbia, 188 F.3d 531, 540 (D.C. Cir. 1999) (en banc) (plurality opinion) (holding that although a parent possesses a fundamental right to control the upbringing of his child, it is not infringed by the application of the curfew).

271 See Prince, 321 U.S. at 166 (commenting parent's right to control his child is protected, although may be limited to accommodate state's or child's compelling needs); see also Privor, supra note 41, at 449–50 (urging that State authority to impose limits on juvenile behavior devolves from parent's inherent right to do so); Barbara Frazier, How to Make Rules and Give Commands, THE SUCCESSFUL PARENT, http://www.thesuccessfulparent.com/articles/discipline.htm (last visited Nov. 5, 2006) (opining that it is parents' unique role to set clear guidelines and model behavior in order
Often, when children exhibit good behavior and maturity, parents extend their children’s curfew and allow them more freedom.\textsuperscript{272} This method of disciplining and rewarding children is an important and commonly used parental tool.\textsuperscript{273} When the \textit{Hutchins} court concluded that it was not within a parent’s right to set a curfew, it effectively concluded that a parent could not utilize an important tool for raising her child.\textsuperscript{274} Several courts have found that curfews implicate the parents’ fundamental right to raise their children and have invalidated such curfews as a result.\textsuperscript{275} For example, in \textit{McCollester v. Keene},\textsuperscript{276} the court determined that the juvenile curfew ordinance did not aid parents in their supervisory roles and that it even undermined the parents’ rights to raise their children.\textsuperscript{277} A fundamental right of the parents was involved, and, for this reason, the \textit{Hutchins} court should have analyzed the case asking whether such right was violated.\textsuperscript{278}


\textsuperscript{272} See Frazier, supra note 271 (suggesting that parents write out a list of the rules that they would like their children to follow); see also KidsHealth, supra note 271 (positing that effective parenting tool is to focus on positive, treating good behavior with such rewards as extended curfew).

\textsuperscript{273} See Frazier, supra note 271 (highlighting punishment and reward as two fundamental parenting tools); see also KidsHealth, supra note 271 (noting that the rewarding and retracting of privileges is one of the most commonly employed parenting techniques); \textit{Psychologist Offers Do’s and Don’ts for Using ‘Time Out’ to Discipline Children}, 24 YALE BULL. & CALENDAR 34 (July - Aug. 1996), available at http://www.yale.edu/opa/ycb/v24.n34.news.12.html (observing that positive reinforcement by rewarding good behaviors with certain privileges is an "effective method for teaching good behavior").

\textsuperscript{274} See Privor, supra note 41, at 450 (suggesting that states, by adopting paternalistic role, may actually be functioning in opposition to authoritative parental role); see also Margaret Brooke Cobey, \textit{Teenage Curfew Laws: Beneficial or Detrimental?}, http://gcclearn.gcc.cc.va.us/writing/12.html (last visited Nov. 5, 2006) (hypothesizing that "curfew laws interfere with the rights of parents to set limits for their children and . . . [take] away the responsibility of parents to supervise their own children").


\textsuperscript{277} See id. at 1386.

\textsuperscript{278} See \textit{Allen}, 524 A.2d at 486 (suggesting need for higher level of scrutiny when dealing with fundamental rights); see also Daniel E. Hall, \textit{Curfews, Culture, and Custom in American Samoa: An Analytical Map for Applying the U.S. Constitution to U.S.
C. The Level of Scrutiny

The most important legal issue and one that Hutchins completely misconstrued is what level of scrutiny the court should apply. This is the most important issue because the questions of who has the burden of proof and how closely the law should be evaluated are contingent upon the level applied. The most important issue because the questions of who has the burden of proof and how closely the law should be evaluated are contingent upon the level applied. There were several problems with the Hutchins court’s evaluation of the statute. First, the Hutchins court never clearly defined what level of scrutiny it applied. Some believe that the rational basis level of scrutiny was applied while others believe that an intermediate level of scrutiny was used. The only thing that is clear from the opinion is that strict scrutiny was not used. Second, assuming that an intermediate level of scrutiny was applied, the court incorrectly applied the test. Although the Hutchins court was correct in finding that the protection of its citizens was an important interest, the court incorrectly analyzed whether the curfew was substantially related to that interest. Instead of placing the burden on the government to prove that the law was substantially related, it appears that the Appellees were under such burden. The Appellees argued that the government data on juvenile crime was incorrect. The court reasoned that the data did not have to be an exact fit and

Territories, 2 ASIAN-PAC. L. & POL’Y J. 69, 104 (2001) (discussing Hutchins court’s assumption that even if curfew did tread upon parents’ fundamental rights, it would nonetheless survive standard of heightened scrutiny).

279 See supra text accompanying notes 107–22 for analysis of the different levels of scrutiny and burdens of proof involved. See also Ramos v. Town of Vernon, for a brief explanation of how the challenger shoulders the burden of proof where a rational basis applies, whereas the government does so in the case of strict scrutiny. 353 F.3d 171, 175 (2d Cir. 2003).

280 See Hutchins v. District of Columbia, 188 F.3d 531, 541 (D.C. Cir. 1999) (en banc) (plurality opinion) (discussing court’s scrutiny selection); see also Chudy, supra note 8, at 541 (recognizing immense confusion as to appropriate level of scrutiny applied in Hutchins).


282 See Hutchins, 188 F.3d at 541 (rejecting district court’s use of strict scrutiny).

283 See id. at 541–42 (asserting importance of minors’ protection).

284 See id. at 553 (Rogers, J., dissenting) (arguing that court’s analysis failed to conform to intermediate scrutiny review).

285 See id. at 543 (focusing on Appellees’ failure to prove the evidence supporting the curfew’s effectiveness insufficient).

286 See id.
concluded that the data was not flawed. The government proved that the data showed a substantial relationship, the Appellees were obligated to prove that it was not substantially related. Finally, when analyzing the parents’ rights, the court used an intermediate level of review. The original reason for using an intermediate level was that the court noted that minors were less mature than adults. However, the court was no longer dealing with the minors’ right of intrastate travel. Instead, the court was dealing with the parents’ right to raise their children and a stricter level of scrutiny should have been applied.

D. Recommendations and Conclusions regarding Hutchins

The Hutchins court’s reasoning was flawed and it should have followed prior case law. The court should not have narrowly interpreted the minors’ right as the right to be on the street at night unsupervised. Instead, the court should have construed the right to be the right to intrastate travel. This narrow interpretation went in a very different direction than prior case law, and, as stated earlier, makes it seem that minors’ rights change depending on what time of day it is. More importantly, this narrow construction makes it very difficult for the court to properly inquire into the challenged law. Furthermore, the

287 See id.
288 See id. at 542–44.
289 See id. at 545.
290 See id. at 541.
291 See Kolender v. Lawson, 461 U.S. 352, 358 (1983) (recognizing constitutional right to freedom of movement); see also Ramos v. Town of Vernon, 353 F. 3d 171, 176–77 (2d Cir. 2003) (reasoning that Hutchins defined interest of minors too narrowly, which ultimately led court to deem that constitutional right relevant to minors’ interest did not exist); King v. New Rochelle Mun. Hous. Auth., 442 F.2d 646, 647 (2d Cir. 1971) (noting that right to intrastate travel is fundamental personal right).
292 See Ramos, 353 F.3d at 177 (explaining Hutchins approach is too narrow insofar as it permits finding of right to move in daylight, which disappears at nightfall); see also King, 442 F.2d at 648 (adopting broad rather than narrow view of constitutional right to free movement).
293 See supra text accompanying note 291.
294 See Erznoznik v. City of Jacksonville, 422 U.S. 205, 213–14 (1975) (discussing the infringement upon the rights of minors as justifiable given the status of minors, but nonetheless recognizing that the Court must treat First Amendment rights as no less applicable to minors than they are to adults); see also Ramos, 353 F.3d at 178 (stating that denying existence of constitutional right, which results from narrow construction, is “too blunt an instrument” to resolve question of juvenile rights to intrastate travel).
court's failure to explain what level of scrutiny was applied only makes it more difficult for lower courts and communities to apply its rationale. At the very least, the court should have explicitly stated which level of scrutiny to apply to avoid any confusion and create a framework for lower courts to follow.

E. Do the Curfews Work?

Even if the *Hutchins* court was not flawed in its reasoning, the curfews that communities implement do not work. Studies indicate that juvenile curfews do not protect society from juvenile crime. More specifically, they state that the curfews do not work because (1) most crime happens during non-curfew hours, (2) juveniles who do not fear getting caught for a crime will not fear violating juvenile curfew laws, (3) the statutes assume that a child's home life is a safe and better place to be, and (4) the statutes assume there will not be repeat offenders. In a study conducted in California, comparing those communities that implemented a curfew with those that did not, it was found that

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295 See *Juvenile Curfews and the Major Confusion*, *supra* note 1, at 2421 (explaining how circuits remain "undeniably split" on the issue of juvenile curfews and on the issue of what standard of review should be used to evaluate the constitutionality of juvenile curfews); see also *LaCava*, *supra* note 3, at 1237 (noting that courts are split on almost every aspect of juvenile curfew cases, and because of this, precedent will be difficult to apply until the Supreme Court rules definitively on these issues).

296 See Sheila Bedi, *[Your Turn] Youth Curfew A Bad Idea*, JACKSON FREE PRESS (Aug. 2, 2006), available at http://www.jacksonfreepress.com/comments.php?id=10321_0_7_0_C (stating that National Council on Crime and Delinquency found that curfew enforcement is ineffective at reducing crime and unnecessarily funnels innocent youth into criminal justice system); see also Kathleen Sullivan, *City Plans to Enforce Its Curfew For Youth*, SAN FRAN. CHRON. (Oct. 26, 2005), available at http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2005/10/26/BAGGAFE3L1D1.DTL (noting that expert research has shown juvenile curfews have only negligible effect).

297 See *Adams*, *supra* note 6, at 146–47 (recounting results of various studies which ultimately supported conclusion that youth curfews have little to no positive crime deterring effects); see also Bedi, *supra* note 296 (discussing curfews' failure to lower youth crime rates).

298 See *Adams*, *supra* note 6, at 154 (describing factors that are not considered in formulating juvenile curfews, including fact that not every child has responsible parents and a safe home and that some offenders are not deterred by curfew laws and are, in fact, repeat offenders); see also *LaCava*, *supra* note 3, at 1209 (noting "disconnect" between problem hours and curfew hours); *Sullivan*, *supra* note 296 (stating juvenile crime is most prevalent in afternoon while children are unsupervised rather than at night during curfew hours).
“curfews have [no] appreciable effect on juvenile crime.”

Furthermore, in data cited by the City of San Diego in 1995 in support of a juvenile curfew ordinance, violent crime was virtually unchanged since the implementation of a curfew.

While in 1994 there were 233 arrests, in 1995, at least one year after the curfew’s implementation, there were 222 arrests.

CONCLUSION

Juvenile curfew ordinances raise issues regarding the important rights of both minors and parents. When dealing with important rights such as the right to intrastate travel and parents' fundamental right to raise their children, a court should not narrowly construe those rights, graze over the selected level of scrutiny, and conclude that such law is valid even though there are studies that most juvenile crimes happen during non-curfew hours and are not effective. Although juvenile curfews are popular and many communities have them, the curfews do involve fundamental rights. As long as there is proof that such curfews do not effectively protect communities, society is, in essence, giving up rights not for security but merely to allow the government to set the limits for its children.

300 Budd, supra note 299.
301 Id.