

LIBERTY LEGAL INSTITUTE

KELLY J SHACKELFORD
Chief Counsel

HEADQUARTERS
903 East 18th St. Suite 230
Plano, Texas 75074
972-423-3131 Fax 972-423-8899
libertylegal@libertylegal.org
www.libertylegal.org

HIRAM SASSER*
Director of Litigation

*Also Licensed in Oklahoma

May 25, 2005

Tim Lambert
Texas Home School Coalition
P.O. Box 6747
Lubbock, TX. 79493

Re: Constitutionality of Daytime Curfews

To Whom It May Concern:

This letter is to discuss the legal issues related to the constitutionality of daytime curfews. If daytime curfews are developed they must provide for the rights of minors and adults who participate in home education and other legitimate daytime activities or they will not survive constitutional scrutiny. Daytime curfews may not suppress fundamental rights of minors for a legitimate purpose if less drastic means are available.

Any daytime curfew that prevent minors and adults from participating in home education and other legitimate daytime activities is likely to be overbroad and does not justify denying the same constitutional rights to minors that are afforded to adults. The U.S. Supreme Court has held that there are three reasons that allow a court to treat the rights of minors differently from the rights of adults: (1) the peculiar vulnerability of children; (2) their inability to make critical decisions in an informed, mature manner; and (3) the importance of the parental role in child rearing.¹ If the challenged government action classifies or distinguishes between two or more relevant groups an equal protection inquiry must be conducted.² But, such an inquiry is not necessary if a law is void on its face for overbreadth. Overbreadth results when a law does not aim specifically at wrongs within the allowable area of government control but sweeps within its ambit other activities that in ordinary circumstances constitute an exercise of protected expressive or associational rights.³

In *Qutb v. Strauss*, the court ultimately held that a City of Dallas juvenile nocturnal curfew ordinance was constitutional because of the broad exceptions and defenses included in the ordinance, exceptions include: it does not apply to a married or emancipated minor, allows for travel to and from work and to religious, school, or civic organizational meetings, interstate travel by minor, emergencies, and the parent retains the right to make decisions regarding his or her child by accompanying the child during the curfew hours. 11 F.3d 488, 496 (5th Cir. 1993). The *Qutb* court reasoned that the ordinance's distinction based upon age furthers the objectives of "the welfare of its young citizens, whose immaturity, inexperience, and lack of judgment may sometimes impair their ability to exercise their rights wisely,"⁴ and that the state's interest in

protecting the welfare of its young citizens provides the necessary compelling government interest for supporting the curfew ordinance. *Id.*

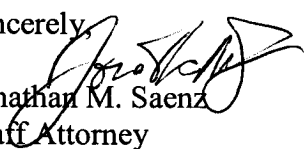
Conversely, in *Johnson v. Opelousas*, the 5th Circuit Court of Appeals held the Opelousas nocturnal juvenile curfew law was unconstitutionally overbroad. 658 F.2d at 1074. The Opelousas ordinance did not include any additional exceptions to its curfew, such as attendance of religious or school meetings and organized dances, or direct travel to and from; and being on the sidewalk in front of one's home, engaging in legitimate employment and travel to and from, or traveling through the town even on an interstate trip. *Id.* at 1072. As a result, the court concluded that although the government has a legitimate and substantial purpose behind the legislation, that purpose could not be sought by means that broadly stifle fundamental liberties when less drastic means to accomplish the same purpose are available. *Id.*

Conclusion

Therefore curfew laws, if sufficiently drafted, can survive strict constitutional scrutiny. Although the courts have only encountered challenges to nocturnal curfew laws to date it seems likely that the same criteria used to evaluate the constitutionality of nocturnal curfews would be used to judge daytime curfews. As long as the daytime curfew ordinances are narrowly drafted with sufficient exceptions and defenses they will survive constitutional examination and strict scrutiny review. But, if a daytime curfew ordinance is vaguely drafted and does not include enough exceptions to provide for legitimate daytime activity, such as home schooling, it will be struck down as unconstitutional. Therefore, if daytime curfews are developed they must provide for the rights of minors and adults who participate in home education and other legitimate daytime activities, or they will not survive constitutional scrutiny.

If you or your organization encounters any conflicts regarding this issue, please do not hesitate to contact our office.

Sincerely,


Jonathan M. Saenz
Staff Attorney
Liberty Legal Institute

¹ *Bellotti v. Baird*, 443 U.S. 622, 634 (1979)

² *Qutb*, 11 F.3d at 492.

³ *Johnson v. Opelousas*, 658 F.2d 1065, 1071 (5th Cir. 1981).

⁴ *Qutb*, 11 F.3d at 492 (citing *Hodgson v. Minnesota*, 497 U.S. 417, 444 (1990)).