

MORRIS DUFFY ALONSO & FALEY MUNICIPAL LAW UPDATE

A Divided Court of Appeals Deems Unconstitutional a City Ordinance That Imposes a Curfew on Minors

*Anonymous ex rel. Anonymous v.
City of Rochester et al.*, 2009
Slip Op. 04697 (June 6, 2009)

A four justice majority struck down a Rochester City Ordinance which barred minors from being in public places between the hours of 11:00 p.m. and 5 a.m. on weekdays and 12:00 p.m. and 5 a.m. on Friday and Saturday. The curfew was challenged by a minor and his father on the grounds that it unduly infringed upon the minor's freedom of movement and both the father and son's due process rights.

The Ordinance was enacted in response to the murder of three minors, and aimed to reduce both the number of crimes perpetrated by minors and the number of minors who are victimized by criminal acts. The curfew was subject to several exceptions, namely that it did not apply if the minor was emancipated, accompanied by an adult, coming home from or engaged in an emergency situation, lawful employment, or religious or school activities. Those minors who

violate the curfew would be subject to police questioning, and even up to fifteen days in jail custody.

In determining that strict scrutiny was inapplicable, Justice Jones's majority opinion reasoned that the State had a legitimate interest in curbing the city crime levels with respect to minors and that intermediate scrutiny was "sufficiently skeptical and probing" to protect the minor's rights, yet "flexible" enough to accommodate the complexity of curfew ordinances. Further, the majority opined that the father's due process challenge did not warrant the application of strict scrutiny because the ordinance targeted minors, and not parental control.

Despite the various exceptions provided for in the curfew, it failed to pass constitutional muster even under intermediate scrutiny. The majority reasoned that even in light of the state's legitimate police power and role as *parens patriae*, the curfew lacked the sufficient nexus between the burden it imposed and the City's goal to protect minors and prevent juvenile crime. The Court found that a sufficient constitutional nexus was

lacking because the City relied mainly on out-of-state statistics and standards in crafting the curfew. The court found that a constitutional nexus was lacking also because the curfew provided less stringent curfew restrictions on the weekends despite statistics which indicate that minors are 64-160% more likely to be victimized during this time. Further, in striking down the ordinance, the Court relied on statistics indicating that minors were only 10% likely to be either suspects or victims in a crime during the curfew hours, whereas the likelihood that an adult would be either a crime victim or suspect was a staggering 83.6 and 87.8%. Citing *Ramos*, the Court bluntly stated that the City here had made "no effort to ensure that the population targeted by the ordinance represented that part of the population causing trouble or that was being victimized."

With regard to the father's due process challenge, the Court struck down the ordinance on the grounds that it failed to allot parents enough flexibility or autonomy in the supervision of their children. While the Court noted that the State can sometimes supersede parental rights, it ultimately found that Rochester's curfew unduly intruded on parental rights and was not substantially related to the goals that it was intended to accomplish. However, the Court noted that it would have been a closer case if the ordinance had

provided for a "parental consent" exception.

The concurring opinion by Justice Graffeo agreed in most of Justice's Jones reasoning, but added that with respect to both claims, the curfew was unconstitutional in its entirety because the objectionable portions could not logically be severed. Justice Graffeo also noted that even though the jail time imposed by the ordinance was temporary, it realistically bore the "hallmarks of a traditional arrest."

The two judge dissent, written by Justice Pigott argued for a rationale basis standard, relying heavily on the State's parental power. Further, the dissent argued that the curfew was minimal intrusive in light of a minor's inherently limited freedom of movement- movement that is limited by both the minor's own parents and the requirement that the child be in school for most of the school day. The dissent emphasized that the City's judgment was entitled to "considerable deference" and that the empirical data which it relied upon did not have to be exact. Nonetheless, the dissent submitted that under strict scrutiny, the curfew would not constitute as the least restrictive means to accomplish the City's goal.

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