

SCHLEIFER v. CITY OF CHARLOTTESVILLE

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

159 F.3d 843
May 5, 1998, Argued
October 20, 1998, Decided

WILKINSON, Chief Judge:

This appeal involves a challenge to the constitutionality of a juvenile nocturnal curfew ordinance enacted by the City of Charlottesville. The district court held that the ordinance did not violate the constitutional rights of minors their parents, or other affected parties and declined to enjoin its enforcement. We agree that the ordinance is constitutional and affirm the judgment of the district court.

I.

On December 16, 1996, the Charlottesville City Council, after several months of study and deliberation, amended Section 17-7 of the City Code to enact a new juvenile nocturnal curfew ordinance. Effective March 1, 1997, the ordinance generally prohibits minors, defined as unemancipated persons under seventeen, from remaining in any public place, motor vehicle, or establishment within city limits during curfew hours. The curfew takes effect at 12:01 a.m. on Monday through Friday, at 1:00 a.m. on Saturday and Sunday, and lifts at 5:00 a.m. each morning.

The ordinance does not restrict minors' activities that fall under one of its eight enumerated exceptions. Minors may participate in any activity during curfew hours if they are accompanied by a parent; they may run errands at a parent's direction provided that they possess a signed note. The ordinance allows minors to undertake employment, or attend supervised activities sponsored by school, civic, religious, or other public organizations. The ordinance exempts minors who are engaged in interstate travel, are on the sidewalk abutting their parents' residence, or are involved in an emergency. Finally, the ordinance does not affect minors who are "exercising First Amendment rights protected by the United States Constitution, such as the free exercise of religion, freedom of speech and the right of assembly."

The ordinance sets forth a scheme of warnings and penalties for minors who violate it. For a first violation, a minor receives a verbal warning, followed by a written warning to the minor and the minor's parents. For subsequent violations, the minor is charged with a Class 4 misdemeanor. The ordinance also makes it unlawful for certain other individuals, including parents, knowingly to encourage a minor to violate the ordinance. The full text of the ordinance is included as an appendix to the opinion.

Plaintiffs are five minors under age seventeen who are subject to the ordinance, one eighteen-year-old, and two parents of minor children. The minors allege that, with their

parents' permission, they occasionally wish to engage in lawful activities which the curfew will not permit. These activities include attending late movies; getting a "bite to eat"; playing in a band; socializing with older siblings; and attending concerts in Richmond, which would bring them back through Charlottesville during curfew hours. The eighteen-year-old plaintiff alleges that he has been deprived of opportunities to associate with his younger friends by the ordinance. The parent plaintiffs allege that the ordinance interferes with their decisions on which activities, at what times, are appropriate for their children.

Plaintiffs brought this action for declaratory and injunctive relief, alleging that the ordinance violates their rights under the First, Fourth, Fifth and Fourteenth Amendments. At trial, plaintiffs dismissed their Fourth Amendment claims. Following trial, by order dated May 20, 1997, the district court rejected plaintiffs' remaining claims and denied their motion for a permanent injunction. Plaintiffs now appeal.

II.

Initially we must consider the level of scrutiny appropriate to this case. Plaintiffs contend that the ordinance infringes minors' constitutional liberties and therefore should be subject to strict scrutiny. Minors enjoy some rights under the First and Fourteenth Amendments before they attain adulthood. At the same time, the Supreme Court has made abundantly clear that children's rights are not coextensive with those of adults.

In light of the case law, two things seem clear. First, children do possess at least qualified rights, so an ordinance which restricts their liberty to the extent that this one does should be subject to more than rational basis review. Second, because children do not possess the same rights as adults, the ordinance should be subject to less than the strictest level of scrutiny. We thus believe intermediate scrutiny to be the most appropriate level of review and must determine whether the ordinance is "substantially related" to "important" governmental interests. We also conclude, however, that the ordinance survives constitutional attack under either a substantial or a compelling state interest standard. The narrow means chosen by the City in the ordinance serve strong and indeed compelling public needs.

The text of the Charlottesville curfew ordinance identifies three legislative purposes: (1) to reduce juvenile violence and crime within the city; (2) to protect juveniles themselves from being swept up in unlawful drug activities and from becoming prey to older perpetrators of crime; and (3) to strengthen parental responsibility for children. These enumerated purposes represent important and compelling governmental interests.

Conceding for the sake of argument that the curfew's stated ends are sufficiently compelling, plaintiffs train their attack on the means by which the ordinance seeks to achieve its goals.

Charlottesville was constitutionally justified in believing that its curfew would materially assist its first stated interest -- that of reducing juvenile violence and crime. The City

Council acted on the basis of information from many sources, including records from Charlottesville's police department, a survey of public opinion, news reports, data from the United States Department of Justice, national crime reports, and police reports from other localities. On the basis of such evidence, elected bodies are entitled to conclude that keeping unsupervised juveniles off the streets late at night will make for a safer community. The same streets may have a more volatile and less wholesome character at night than during the day. Alone on the streets at night children face a series of dangerous and potentially lifeshaping decisions. Drug dealers may lure them to use narcotics or aid in their sale. Gangs may pressure them into membership or participation in violence. Those who succumb to these criminal influences at an early age may persist in their criminal conduct as adults. Whether we as judges subscribe to these theories is beside the point. Those elected officials with their finger on the pulse of their home community clearly did. In attempting to reduce through its curfew the opportunities for children to come into contact with criminal influences, the City was directly advancing its first objective of reducing juvenile violence and crime.

Plaintiffs dispute the effectiveness of the curfew in reducing juvenile crime. They say that the real problem of juvenile crime is not at night, but in the after school hours. Plaintiffs make much of a report entitled *Juvenile Offenders and Victims: 1996 Update on Violence*, which asserts that only seventeen percent of violent juvenile crime occurs during typical curfew hours, while twenty-two percent happens between 2:00 p.m. and 6:00 p.m. on school days. The City responds that the lower rate of late-night crime may reflect the fact that several of the South Carolina cities in the study actually had late-night curfews in effect. And with respect to conditions in Charlottesville before the curfew, City police officers and Charlottesville's Commonwealth's Attorney confirmed that the most serious crimes committed by juveniles occurred during curfew hours. Further, the City Council considered evidence that juvenile offenses occurring in Charlottesville between 11:00 p.m. and 6:00 a.m. increased by thirty-eight percent during 1995 and a further ten percent during 1996. Thus the City had reason to believe that, in both volume and severity, nighttime juvenile crime was a serious, growing problem in Charlottesville.

C.

The Charlottesville curfew is not only "substantially related" to its stated purposes. The limited scope of the curfew and its numerous exceptions would satisfy even the strict scrutiny requirement of narrow tailoring. Plaintiffs urge, however, that we follow the lead of the Ninth Circuit, which held that San Diego's curfew ordinance failed strict scrutiny review because the exceptions to the ordinance were not sufficiently detailed and comprehensive to make the curfew the least restrictive means of serving San Diego's compelling ends.

The San Diego curfew applied to all minors under the age of eighteen, began at 10:00 p.m., and extended until "daylight immediately following." It contained four exceptions: (1) when a minor is accompanied by a parent or other qualified adult; (2) when a minor is on an emergency errand for his parent; (3) when a minor is returning from a school-sponsored activity; and (4) when a minor is engaged in employment.

By contrast, Charlottesville's curfew applies only to minors less than seventeen years of age, does not begin until midnight on weekdays and 1:00 a.m. on weekends, lifts at 5:00 a.m. each morning, and contains no fewer than eight detailed exceptions. Under Charlottesville's curfew, minors are allowed, *inter alia*, to remain on the sidewalk directly abutting their residences; to attend supervised activities sponsored by school, religious, public, civic or other similar organizations; to run errands for their parents; to undertake interstate travel; and to engage freely in any activity protected by the First Amendment.

IV.

We next address plaintiffs' claims that the Charlottesville ordinance violates the constitutional rights of parents. Plaintiffs assert that parents have a constitutionally protected right to direct their children's upbringing without undue government interference. They urge that this right includes decisions whether to allow their children to engage in activities after the curfew takes effect. The ordinance interferes with this right, they conclude, by prohibiting children's activities that have the parents' full approval but do not fall under one of the ordinance's eight exceptions.

Not every state restriction of a child's freedom derivatively abridges the fundamental rights of parents. The Supreme Court has rejected the view that parents possess an unqualified right to raise children that trumps any government regulation of their children's conduct. In *Prince*, the Court recognized "that the state has a wide range of power for limiting parental freedom and authority in things affecting the child's welfare."

Several of the exceptions to the Charlottesville curfew do accommodate the rights of parents. These include the exception for minors accompanied by a parent and the exception for minors running an errand at the direction of a parent. In general, the same reasons that lead us to reject the constitutional challenges of the minor plaintiffs even under strict scrutiny apply to the claims of the parent plaintiffs.

AFFIRMED

DISSENT: MICHAEL, Circuit Judge, dissenting:

Today, the majority relegates kids to second-class citizenship by upholding Charlottesville's nighttime curfew for minors. Forbidding children to go out at night affects their fundamental rights, and such a restriction can be valid only if it withstands strict scrutiny. The Charlottesville curfew ordinance fails the test because it sweeps too broadly and usurps rather than supports parental authority over child rearing. The ordinance has another constitutional defect as well. Although it is a crime to violate the ordinance, the crime is only vaguely defined. The curfew does not apply when minors are "exercising First Amendment rights." This exception is unconstitutionally vague, leaving children, their parents, and the police to guess whether particular conduct is punishable as a crime. I respectfully dissent.

