

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

THE NATIONAL YOUTH RIGHTS
ASSOCIATION OF SOUTHEAST
FLORIDA, INC., JEFFREY NADEL
on his own behalf and by and through
his father, PHILIP NADEL, PHILIP
NADEL, AND ZACHARY GOODMAN,

502009CA 039170 XXXXNB

Plaintiffs,

vs.

CASE NO.: **AA**

CITY OF WEST PALM BEACH
Defendant.

FILED
09/11/09 2:00 PM
CIRCUIT CIVIL 4

COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES DUE TO VIOLATIONS
OF CONSTITUTIONAL RIGHTS

COME NOW the Plaintiffs The National Youth Rights Association of Southeast Florida, Inc. (hereinafter "NYRA"), Jeffrey Nadel on his own behalf and by and through his father, Philip Nadel, (hereinafter "Jeffrey"), Philip Nadel (hereinafter "Philip"), Zachary Goodman (hereinafter "Goodman"), by undersigned counsel, and hereby sue the City of West Palm Beach and as grounds therefor state:

COMMON ALLEGATIONS

1. This is an action for a temporary and permanent injunction, nominal damages, costs and attorney's fees.
2. Plaintiff NYRA is a youth-led organization dedicated to protecting the civil rights of the youth of our country and which operates, inter alia, in Palm Beach County, Florida.
3. Plaintiff Jeffrey is a minor, and at this time in American jurisprudence he is not regarded as sui juris. He therefore brings this case on his own behalf and through his father, Philip Nadel. Plaintiff Jeffrey resides in Palm Beach County, Florida.

4. Plaintiff Philip is the father of minor Jeffrey and is sui juris. Plaintiff Philip resides in Palm Beach County, Florida.

5. Plaintiff Goodman is a minor, and at this time in American jurisprudence he is not regarded as sui juris. Plaintiff Goodman resides in Palm Beach County, Florida.

6. Plaintiffs Jeffrey and Goodman desire and have a constitutional right to enter or remain in any public place or on the premises of any establishment in downtown West Palm Beach during the restricted curfew hours set forth by the City of West Palm Beach, but are unable to do so.

7. Plaintiff Philip desires to have his minor child enter or remain in any public place or on the premises of any establishment within downtown West Palm Beach during the designated curfew hours set forth by the City of West Palm Beach without incurring legal liability.

8. Defendant the City of West Palm Beach is a municipality in Palm Beach County, a subdivision of the State of Florida.

9. On July 30, 2007, the Defendant passed Ordinance # 4073-07, (hereinafter "The Ordinance"), which purports to make it illegal for minors to enter or remain in any public place or on the premises of any establishment within the downtown area during the restricted hours. The Ordinance contains various exceptions.

10. Plaintiffs have rights guaranteed by the Florida Constitution. The freedom of personal choice in private or family matters is a fundamental liberty interest protected by Article 1, Section 23 of the Florida Constitution, which provides that "[e]very natural person has the right to be let alone and free from governmental intrusion into the person's private life." Under such provisions, the State of Florida recognizes a fundamental liberty interest of parents in determining the care and upbringing of their children free from the heavy hand of governmental paternalism. Moreover, the Florida Constitution protects the right of all persons, including minors to enjoy equal protection under the law.

11. The Ordinance violates Article I, Section 5 of the Florida Constitution, which protects the rights of individuals to associate with whom they please and to assemble with others for political or for social purposes.
12. The Ordinance violates Article 1, Sections 1 and 23 of the Florida Constitution, which protects the privacy rights of minors and adults from infringement by the State.
13. Article 42 U.S.C. Section 1983 prohibits the States from violating the Constitutional rights of its citizens. The violations of Florida law described herein, also constitute violations of parallel and analogous provisions of the United States Constitution, and thus the violations described herein also constitute violations of Article 42 U.S.C. 1983, which protects the civil rights of all citizens.
14. Plaintiffs have retained the undersigned attorney to represent them in this matter and have agreed to pay him a reasonable fee for his services.

**COUNT 1: VIOLATION OF CONSTITUTIONAL RIGHT TO PRIVACY AS
PROTECTED BY ARTICLE I, SECTION 23, OF THE FLORIDA CONSTITUTION**

15. Plaintiffs repeat paragraphs 1 to 14 as if fully stated herein.
 16. The Ordinance is subject to strict scrutiny because it restricts fundamental rights.
 17. The juvenile curfew Ordinance implicates the Plaintiffs' fundamental right of privacy guaranteed by Article I, Section 23, of the Florida Constitution
 18. To survive strict scrutiny, a classification created by Ordinance must promote a compelling governmental interest, and the Ordinance must be narrowly tailored to achieve that compelling interest.
 19. There is no compelling interest to support the adoption of Ordinance 4073-07.
 20. In addition, the Ordinance itself does not attempt to identify any legislative purpose.
- Thus, it is impossible to discern any compelling governmental interest from the Ordinance.

21. The Ordinance violates the rights of the Plaintiffs in that it provides that a law enforcement officer can take the minor into protective custody indefinitely against the wishes of the parents and the minor child under circumstances which are highly unreasonable. For instance, if the child were with an uncle or other guardian with the parents' permission, and the parents were not at home for whatever reason at the time he was apprehended by the police, the police could take the child into "protective custody."

22. Ordinances that affect constitutional rights must be drawn with precision and must be narrowly tailored to serve their legitimate objectives. When there are other reasonable ways to achieve those goals with a lesser burden on constitutionally protected activity, the government may not choose the way of greater interference.

23. By restricting the freedom of minors during curfew hours, the Ordinance treats all minors under the age of eighteen the same, and the Ordinance makes no exception for minors who pose little or no threat to society.

24. As previously noted, the Ordinance does not disclose a legislative purpose for its enactment. Presuming that the Ordinance was enacted for some type of safety interest among patrons and employees in the downtown area, not all minors pose an inordinate threat to those in the downtown area, and in fact it is not at all clear that minors pose any more threat to those in the downtown area than those of any other age group.

25. Moreover, if safety is the concern, then not all minors should be prohibited from the downtown area. Those minors with no criminal record are targeted, whereas adults with criminal records are not targeted. Minors with good grades and of good character should be exempted from the Ordinance. Indeed, such an exemption would make at least as much sense as the exemption for married minors, since there is no empirical evidence that married minors place less threat of harm than non married minors.

26. By lumping all minor children together and making no rationally based exemptions the Ordinance is overbroad, serves no compelling interest, and has no rational basis.

27. As described above, the Ordinance violates Article 1, Section 23 of the Florida Constitution since it is vague and overbroad.

WHEREFORE, Plaintiffs seek a temporary and permanent injunction declaring the Ordinance unconstitutional, null and void and of no further effect, blocking the implementation of the Ordinance against Plaintiffs and others, awarding Plaintiffs nominal damages, reasonable costs and attorney's fees pursuant to 42 U.S.C. Section 1988 and granting any other relief deemed just and proper by this Court.

**COUNT 2: VIOLATION OF CONSTITUTIONAL RIGHTS OF PARENTS TO
PRIVACY OVER FAMILY MATTERS AS PROTECTED BY ARTICLE I, SECTION 23,
OF THE FLORIDA CONSTITUTION**

28. Plaintiffs repeat paragraphs 1 to 14 as if fully stated herein.

29. Plaintiffs have rights guaranteed by the Florida Constitution. Article I, Section 23, of the Florida Constitution provides that "[e]very natural person has the right to be let alone and free from governmental intrusion into the person's private life." Florida recognizes a fundamental liberty interest of parents in determining the care and upbringing of their children free from the heavy hand of government paternalism.

30. The Ordinance as written and applied violates parents' privacy rights as protected by Article 1, Section 23 of the Florida Constitution, because it infringes their liberty interest to make decisions about their children's upbringing without undue interference by the State.

31. The Ordinance presents a risk that a minor will be detained whenever a law enforcement officer cannot reasonably determine that the minor is engaging in some activity encompassed by its delineated defenses or exceptions.

32. The Ordinance substantially interferes with parental authority.

33. The Ordinance paternalistically displaces the exercise of parental discretion by making it illegal for parents to allow their children to move about independently at night. Parents are better able to assess their children's maturity and capacity for judgment than a city council.

34. The Ordinance criminalizes a parent's decision to allow permission for his or her mature minor children to engage in constitutionally protected conduct and requires a parent to become a law enforcement officer for the City of West Palm Beach and to be able to interpret and apply the vague and ambiguous language of the Ordinance in order to avoid potential criminal liability.

35. Article 1, Section 23 of the Florida Constitution provides even greater protection for the right of privacy than Federal law, and the Ordinance runs afoul of these protections.

36. The Ordinance violates Article 1, Section 23 of the Florida Constitution because it is vague, unenforceable and over broad.

WHEREFORE, Plaintiffs respectfully seek a temporary and permanent injunction declaring the Ordinance unconstitutional, null and void and of no further effect, blocking the implementation of the Ordinance against Plaintiffs or anyone else, awarding Plaintiffs nominal damages, reasonable costs and attorney's fees pursuant to the provisions of 42 U.S.C. Section 1988 and any other relief deemed just and proper by this Court.

COUNT 3: VIOLATION OF FLORIDA CONSTITUTION ARTICLE 1, SECTION 5


37. Plaintiffs repeat paragraphs 1 through 14 as if fully set forth herein.

38. Article 1, Section 5 of the Florida Constitution provides that the people shall have the right to peaceably assemble. The Ordinance under review violates Plaintiffs' rights as minors to peaceably assemble and to associate with whomever they please for any lawful purpose anywhere in this State, and violates the rights of a parent, to permit their children to peaceably assemble without harassment or interference from the government.

39. This constitutional provision applies to all people as written, and makes no distinction for minors. Accordingly, any law which improperly restricts the rights of minors to assemble violates Article 1, Section 5 of the Florida Constitution.

40. The restrictions on this Constitutional right, serve no compelling purpose, have no rational basis, and violate Plaintiffs' rights.

TRIAL BY JURY IS REQUESTED OF ALL ISSUES SO TRIABLE.


Barry Silver FBN 382108
1200 South Rogers Circle Suite 8
Boca Raton, Fl. 33487
(561) 483-6900
Barryboca@aol.com