UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SIMBI WATERS, et al.,

Plaintiffs,

v.

MARION BARRY, et al.,

Defendants.

CA No. 89-0707

TEMPORARY RESTRAINING ORDER
by
JUDGE CHARLES R. RICHEY
UNITED STATES DISTRICT JUDGE

On Friday afternoon, March 17, 1989, the Court's attention was directed to the Complaint filed herein and its prayer for temporary and permanent injunctive relief. Upon consideration thereof, and after arranging for a joint telephonic scheduling conference with counsel for plaintiffs and two representatives of the Corporation Counsel's Office for the District of Columbia, it was determined that this matter would be set down for a hearing at 11:00 a.m. on March 20, 1989, on the application by plaintiffs for a Temporary Restraining Order. All counsel were so notified after the Corporation Counsel advised that they and the Mayor would not agree to a voluntary stay so as to give the Court more time to consider the matter.

Over the week-end, the Court has done some independent legal research, and now has had the benefit of the briefs and oral argument of the parties, and has studied the record compiled in this Court to date. Upon consideration thereof, the Court finds preliminarily that there is a justiciable controversy before the Court; that plaintiffs have standing to sue and are likely to succeed on the merits of their action; that some or all of them may suffer irreparable injury if the defendants, their agents, servants, and employees are not restrained and enjoined from enforcing the "Short Term Curfew Emergency Act of 1989;" and, that the defendants will not be harmed if the implementation or enforcement of the Act is temporarily restrained. Moreover, in view of the serious Constitutional claims asserted, the public interest would best be served by issuance of the Injunction. Accordingly, it is, by the Court, this 20th day of March, 1989,

ORDERED, that the defendants and each of them, their agents, servants, and employees, be and are hereby restrained and enjoined from implementing or enforcing the District of Columbia's "Short Term Curfew Emergency Act of 1989," for a period of ten (10) days from the date of hereof, without prejudice to an application for a further ten (10) day extension thereof, and it is,

FURTHER ORDERED, that notice of this Order shall be immediately given by the Mayor, in writing, to all members of the law enforcement community of this City, and those who may or might operate in concert with them, and this includes but is not limited to, the members of the Metropolitan Police Department, and all

those who from time to time assist in the enforcement of the laws of the District of Columbia; and, it is

FURTHER ORDERED, that nothing herein shall be construed to constitute an opinion, one way or the other, by the Court on the proposal by the Mayor on the law he has submitted to the City Council to supercede the one that is the subject of this Order,. nor shall it be considered by anyone that the Court condones narcotic trafficking or homicide in public or private places in the Nation's Capitol. On the contrary, the Court applauds all those associated with finding out the causes of crime, drug addiction, and its terrible costs in financial and human terms. After eighteen years of judicial service, the Court is well aware of the pain and anguish that the use and sale of drugs brings to anyone associated with them. While vigorous enforcement of our criminal laws must proceed unabated, it must be done with total regard for the civil liberties of all those affected by the current epidemic and the Constitutional system in this republic. In short, the problem must be solved, but not by throwing the baby out with the bath water. The Court also notes that the instant law is more of a reaction than a solution because of the defendants' admission in their brief that "it cannot be certain that the curfew of minors will prove a sufficient deterrent to criminal involvement or protection for the ravages of drug related crime and violence."

THIS ORDER SHALL BE EFFECTIVE UPON PLAINTIFF'S POSTING OF $100.00 IN CASH, OR A SURETY BOND IN SUCH AMOUNT IN ACCORDANCE WITH FED. R. CIV. P. 65.1.

March 20, 1989
Date
Time: 12:40 p.m.

Charles R. Richey
CHARLES R. RICHEY
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SIMBI WATERS, et al.,

Plaintiffs,

v. CA No. 89-0707

MARION BARRY, et al.,

Defendants.

OPINION
OF
CHARLES R. RICHEY
UNITED STATES DISTRICT JUDGE

This case involves a constitutional attack on the emergency legislation passed by the City Council on February 28, 1989, which became effective on March 16, 1989, because the Mayor had neither signed nor vetoed it within ten business days. It is known as the "Short Term Curfew Emergency Act of 1989" (hereinafter the curfew law).

First, as Plaintiffs' affidavits make clear, it must be said that the law applies to adults as well as minors. Plaintiffs contend that the law fails on its face because of its vagueness and overbreadth. Due to this they say, in part, that the law would inevitably lead to enforcement in an arbitrary and discriminatory

manner. Additionally, the plaintiffs argue that the impact of this emergency legislation would impact most severely upon the black community and those who are economically disadvantaged.

While courts should always view attacks on the constitutionality of a legislative enactment with caution and deference, it must be said here that plaintiffs are not without precedent in their favor and they rely upon well reasoned and established constitutional doctrine. See, e.g., Johnson v. City of Opelousas, 658 F.2d 1065 (5th Cir. 1981); Naprstrek v. City of Norwich, 545 F.2d 815 (2d Cir. 1976). They have also satisfied the standards set forth in WMATA v. Holiday Tours, Inc., 559 F.2d 841, 844 (D.C. Cir. 1977), for the issuance of temporary or preliminary injunctive relief, although the Court wishes to make clear that the Order accompanying this Opinion grants only a Temporary Restraining Order, and not a Preliminary Injunction.

It cannot be gainsaid that curfew laws restrict some of our most basic freedoms, and perhaps more broadly than many loitering laws. See, Papachristou v. City of Jacksonville, 405 U.S. 156 (1972) and Ricks v. District of Columbia, 414 F.2d 1097 (D.C. Cir. 1968), which struck down the D. C. loitering law.

Laws less expansive than the D. C. law in question here have been struck down as overbroad. See McCollester v. City of Keene, 586 F. Supp. 1381 (D.N.H. 1984) and Allen v. City of Bordentown, 216 N.J. Super. 557, 524 A.2d 478 (1987). The Second Circuit also struck down an ordinance that specified a curfew with only a beginning hour, and not an ending hour, and, therefore, was

unconstitutional and void for vagueness. See, Naprstek v. City of Norwich, supra.

The only District of Columbia case of which the Court is aware is Glover v. District of Columbia, 250 A.2d 556 (D.C. 1969), where a curfew arrest was upheld involving a person arrested in the 1968 riots. There the Court made clear that the curfew was necessary because it was essential to "quell the rioting." While the situation in the District of Columbia and in other major metropolitan communities has reached epidemic proportions, it does not justify an unconstitutional legislative response thereto. Nor does it justify throwing the baby out with the bath water, as former Chief Judge David L. Bazelon was often heard to say. Moreover, to say that people have not been arrested yet, while admitting this "temporary" statute may not deter crime or satisfy its objective and to imply that the remedy of damages after an arrest under an unconstitutional statute is just plain inexcusable. This ignores the seriousness of the constitutional claims here of which our City Council had to be aware. The Court directs that the defendants examine Justice Blackmun's opinion in Doe v. Bolton, 410 U.S. 179, 187-89 (1973), where Plaintiffs were allowed to sue before arrest or prosecution regarding an abortion statute. See also Virginia v. American Booksellers Ass'n, Inc., 108 S.Ct. 636, 642 (1988), of more recent vintage.

The Court also tentatively agrees with plaintiffs that this case involves a penal statute which may very well violate the constitutional void-for-vagueness doctrine. Indeed the Supreme Court of the United States in Kolender v. Lawson, 461 U.S. 352, 357 (1983), struck down a California law under which a black man who lived in a white neighborhood was arrested 15 times because his identification at the time of his arrest was not sufficiently "credible and reliable." The curfew law in question here is equally fallible because it will vest unlimited discretion in the police who are not given proper and workable standards with which to make arrests or interpret their duties under the law. Also, the law in question may also violate the liberty interests of parents as well as the Fourth Amendment rights of young adults. See, e.g, Meyer v. Nebraska, 262 U.S. 390 (1923). It is worth noting as well the late Judge Edward A. Tamm's decision in Gomez v. Turner, 672 F.2d 134, 141, (D.C.Cir.1982), where he said:

> That citizens can walk the streets,
> without explanation or formal papers.
> is surely among the cherished liberties
> that distinguish this nation from so
> many others.

The Court today will not analyze the equal protection argument of the plaintiffs on behalf of minors. It is sufficient to say that the record herein and the above authorities clearly show that the instant law may not pass constitutional muster. Therefore, it is to be hoped that further analysis will reveal that this kind of law is either not a proper response to a very serious and difficult problem, or, that a better statute can be drafted which will

survive similar challenges like the one involved here.

CONCLUSION

The Court today will grant plaintiffs' application for a Temporary Restraining Order. However, nothing in this brief and hurried opinion and accompanying Order should be considered by anyone as a condonation of narcotic trafficking in public or private places. On the contrary, the Court applauds all those in the City government and others in our national government, and elsewhere, who are keenly seeking to find out about the cause of crime, violence, and drug addiction, and its terrible cost in financial and human terms. After almost eighteen years of judicial service, the Court is well aware of the pain and anguish associated with drug addiction and crime. Yet, it is also true that vigorous enforcement of our criminal laws must proceed unabated within the law. Whatever is done should be consistent with the civil liberties of all of those affected by this scourge and epidemic as well as the venerable constitutional system of this Republic.

CHARLES R. RICHEY
UNITED STATES DISTRICT JUDGE

March 20, 1989