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, ~~without going into detail, which~~ as the 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, Johnson v.City of Opelousas, 658 F.2d 1065 (5th Cir. 1981),Naprstrek v. City of Norwich, 545 F.2d 815 (2d Cir.1976, and others cited at page nine of plaintiffs" brief. 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 of 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 stricken 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 stuck 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 ~~necessary to~~ essential "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 ~~which the Court believes can be found~~. Nor does it justify throwing the baby out with the bath water as former Chief Judge David L. Bazelon was often heard to say.

The court also agrees with plaintiffs that this case involves a penal statute which violates 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 equually 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 dues 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) and others. See also, e.g. 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 just will not pass Constitutional muster. Therefore. it is to be hoped that further analysis will reveal 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 here involved~~.

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

within the law.

enforcement of our criminal laws must proceed unabated, ~~but~~ 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