

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF 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,**

Plaintiffs,

vs.

CASE NO.:

**CITY OF WEST PALM BEACH
Defendant.**

_____ /

**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") and, 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 within the downtown area of West Palm Beach during the restricted curfew hours set forth by the City of West Palm Beach, but are unable to.

7. Plaintiff Philip desires to have his minor child enter or remain in any public place or on the premises of any establishment within the downtown area of West Palm Beach during the designated curfew hours set forth by

the City of West Palm Beach without incurring any legal liability from the City of West Palm Beach.

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 Constitutions of the United States and the State of Florida. The freedom of personal choice in private or family matters is a fundamental liberty interest protected by the First and the Fourteenth Amendments to the United States Constitution and 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 and the United States Constitutions protect the right of all persons, including minors to enjoy equal protection under the law.

11. The Ordinance violates the First Amendment of the United States Constitution and Article I, Section 5 of the Florida Constitution, which protect the rights of individuals to associate with whom they please and to assemble with others for political or for social purposes.

12. Article 1, Sections 1 and 23 of the Florida Constitution also protect the rights of minors.

13. The Ordinance violates Article 1, Sections 1 and 23 to the Florida Constitution and the First Amendment of the United States Constitution which applies to the State of Florida through the Fourteenth Amendment and through 42 U.S.C. Section 1983. These constitutional provisions protect the Plaintiffs' civil rights from infringement by the State.

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 RIGHTS AS
PROTECTED BY 42 U.S.C. SECTION 1983 DUE TO VAGUENESS OF
THE ORDINANCE**

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

16. The Ordinance fails to define the prohibited conduct with sufficient definiteness that ordinary people can understand what conduct is prohibited, and fails to establish standards to permit police to enforce the Ordinance in a non-arbitrary, non-discriminatory manner.

17. As written and applied Ordinance 4073-07 is void for vagueness for reasons which include the following:

a) Section 54-232(c) states that “A parent or guardian of a minor commits an offense if he or she knowingly permits, or by insufficient control allows...” a minor child to be in the prohibited area at the wrong time. Such language is unconstitutionally vague because it fails to define critical terms such as “insufficient control” in the Ordinance which would alert the reasonable parent to what actions are prescribed under the Ordinance. Under the Ordinance parents who share parental responsibility due to divorce would not know if they were in violation of the Ordinance if their child was determined to have violated the curfew while the minor child was in the custody and control of the other parent, nor would a parent know if they had violated the Ordinance if their minor child advised them that they were going to a friend’s house and then their minor child went from the friend’s house to the restricted area. Parents cannot know from the wording of the Ordinance how much interrogation of their minor child would be sufficient to prevent liability under the Ordinance. Parents would not know if their minor child lied and told them that he would not go in the restricted area, and then in fact, did go in this area, if the parent who believed their child would still be held liable for the penalties under the Ordinance. Nor is it clear if the standards for believing or disbelieving their

child or exerting control over their child is based on the reasonable child, or the particular trustworthiness or lack thereof of the minor child in question, which would invite different standards of control over different children. Many similar questions and potential vagueness in the Ordinance make it unfair to apply its punitive sanctions to parents of minors.

b) Section 54-233(a)(10) states that “It shall not be a violation of Section 54-232 if the minor is ... “on an errand”” is also unconstitutionally vague. The phrase fails to provide sufficient notice of what conduct is prohibited or clear standards for police officers to enforce that conduct. For example, parents can send their juvenile child to a neighbor’s house during curfew hours to deliver a package, or a child could pick up something from downtown and then spend three more hours there on his own with his friends and it would be unclear if the Ordinance had been violated by the minor child or his parents. Because the Ordinance fails to define the term “errand,” a police officer is furnished with little guidance and too much discretion as to whether the juvenile violated the Ordinance.

c) The Ordinance is also unconstitutionally vague and unenforceable as written and applied because it does not define the prohibited area with sufficient clarity and is not clear whether it applies to only public places, private property or both. If it applies to private property,

then it runs afoul of the rights of minors and private businesses to associate.

d) Because the Ordinance does not define the prohibited area with sufficient clarity and is not clear whether it applies to only public places, private property or both, security officers and/or law enforcement officers are not sure who or even if they should be enforcing the curfew Ordinance in the areas defined by the Ordinance.

e) The Ordinance is also unconstitutionally vague and unenforceable as applied because it does not establish standards which give security officers and/or law enforcement officers the ability to understand what conduct is allowed or prohibited, and thus the Ordinance is currently being applied in an arbitrary and discriminatory manner.

f) The Ordinance makes an exception for those minors “[A]ttending or traveling directly to or from an activity that involves the exercise of rights protected under the First Amendment of the United States Constitution.” This exception is vague and unenforceable. Almost all conceivable actions of a minor including associating with his friends and family, speaking, traveling freely etc. are covered by the First Amendment. Moreover, if the minor child carries a protest sign or wears a T-shirt proclaiming his beliefs in freedom of speech and/or association, it would appear from the Ordinance that this behavior would constitute an exception

under the Ordinance, although the police could still detain the minor and potentially hold the business owner and the child's parents liable under the Ordinance if they guess wrong as to the interpretation of this exception in a Court of law. By defining the exception in vague and ambiguous terms, the Ordinance impermissibly forces a person of normal intelligence to guess as to what conduct is illegal and fails to provide minimal guidelines for law enforcement.

g) The Ordinance makes an exception if the minor is accompanied by "a parent". A parent is defined as a person who has care and control of "a minor," but fails to indicate whether such parent must be a parent of the minor child in question;

h) The Ordinance places quasi-criminal responsibility upon a business owner if he "knowingly" allows a minor to enter or remain upon his premises in violation of the Ordinance. This provision is vague because it implies that the owner is liable only if he personally knows of the violation, and does not address clearly the situation if his employees know of such violation and he does not. The Ordinance appears to place responsibility upon the owner to determine violations of the Ordinance, which would require him to know not only the age, but also the marital status of his patrons, whether the patrons are on an "errand", whether the patrons are minor parents of children, whether the patrons are going to or coming from

an activity involving the First Amendment and countless other details about the lives of his patrons, which make the Ordinance impractical (if not impossible) and expensive for business owners to enforce, and impermissibly vague as to their liability under the Ordinance.

18. The geographical area covered by the Ordinance is also unconstitutionally vague as written and as applied by law enforcement and by their agents who appear unaware of the boundary of the proscribed area.

19. The Ordinance places too much discretion in the hands of the police, permitting the police to enforce the Ordinance in an arbitrary and discriminatory fashion.

20. The City of West Palm Beach recently attempted to enact an Ordinance restricting the rights of association and freedom of movement of homeless people which they later rescinded after litigation ensued. Because the Ordinance has no exception for homeless minors, the Ordinance could be used to arbitrarily and discriminatorily restrict the movement and freedom of homeless teens, while ignoring violations by other minors who are not targets of the Defendant.

WHEREFORE, Plaintiffs respectfully seek a temporary and permanent injunction declaring the Ordinance unconstitutional, declaring the Ordinance 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 2: VIOLATION OF CONSTITUTIONAL RIGHT TO PRIVACY AND FREEDOM OF MOVEMENT AS PROTECTED BY 42 U.S.C. SECTION 1983.

21. Plaintiffs repeat paragraphs 1 to 20 as if fully stated herein.

22. The Ordinance is subject to strict scrutiny because it impairs the exercise of a fundamental right.

23. The fundamental rights implicated by this juvenile curfew Ordinance include: the fundamental right of privacy guaranteed by Article I, Section 23, of the Florida Constitution; and freedom of movement.

24. To survive strict scrutiny, a classification created by the Ordinance must promote a compelling governmental interest, and the Ordinance must be narrowly tailored to achieve that interest.

25. There is no compelling interest to support the adoption of Ordinance 4073-07.

26. 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.

27. 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."

28. Ordinances that affect constitutional rights must be drawn with precision and must be 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.

29. 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.

30. 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 anyone else.

31. 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.

32. 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.

WHEREFORE, Plaintiffs respectfully seek a temporary and permanent injunction declaring the Ordinance unconstitutional, declaring the Ordinance 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 RIGHTS GUARANTEED UNDER THE FIRST AMENDMENT OF THE UNITED STATES CONSTITUTION AND THE FLORIDA CONSTITUTION AS PROTECTED BY 42 U.S.C. SECTION 1983

33. Plaintiffs repeat paragraphs 1 to 20 as if fully stated herein.

34. The Ordinance restricts a minor's access to enter or remain in any public place or on the premises of any establishment within the downtown area during the curfew hours.

35. The exceptions to the Ordinance recited in 54-233(4) do not significantly reduce the chance that a minor might be arrested for exercising his or her first amendment rights because the Ordinance fails to define with specificity what conduct is illegal. Thus, an officer would obviously have to make a decision about whether a minor is in violation or not of the Ordinance.

36. The unfettered discretion would allow police officers to target certain individuals that the city might find undesirable. The Defendant recently passed and rescinded an ordinance targeting homeless individuals, and thus may seek to use this Ordinance to target the homeless or others they deem to be undesirable.

37. The discretion of the officer combined with the failure to define with specificity what conduct is illegal makes the statute unconstitutional, and

there is a danger of chilling the exercise of constitutionally protected activity because of the uncertainty associated with the First Amendment exception.

WHEREFORE, Plaintiffs respectfully seek a temporary and permanent injunction declaring the Ordinance unconstitutional, declaring the Ordinance 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 4: VIOLATION OF CONSTITUTIONAL RIGHTS OF PARENTS TO PRIVACY OVER FAMILY MATTERS AND DECISIONS IN CHILD RAISING AS PROTECTED BY 42 U.S.C. SECTION 1983

38. Plaintiffs repeat paragraphs 1 to 20 as if fully stated herein.

39. Plaintiffs have rights guaranteed by the United States and the Florida Constitutions. The freedom of personal choice in matters of family life is a fundamental liberty interest protected by the Fourteenth Amendment to the United States Constitution. In addition, 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.

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

41. 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.

42. The Ordinance substantially interferes with parental authority.

43. 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.

44. The Ordinance appears to criminalize 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.

45. 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.

WHEREFORE, Plaintiffs respectfully seek a temporary and permanent injunction declaring the Ordinance unconstitutional, declaring the Ordinance 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.

TRIAL BY JURY IS REQUESTED OF ALL ISSUES SO TRIABLE.

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