

# HOME SCHOOL LEGAL DEFENSE ASSOCIATION

*Advocates for Family & Freedom*

J. MICHAEL SMITH, ESQ.  
PRESIDENT (CA, DC, VA)

CHRISTOPHER J. KLICKA, ESQ.  
SENIOR COUNSEL (VA)

DEWITT T. BLACK III, ESQ.  
SENIOR COUNSEL (AR, SC, DC)

SCOTT W. SOMERVILLE, ESQ.  
ATTORNEY (VA)

MICHAEL P. FARRIS, ESQ.  
GENERAL COUNSEL (DC, WA)

JAMES R. MASON III, ESQ.  
LITIGATION COUNSEL (OR)

SCOTT A. WOODRUFF, ESQ.  
ATTORNEY (VA, MO)

DARREN A. JONES, ESQ.  
ATTORNEY (CA)

TO: HSLDA Members Inquiring About Daytime Curfew Ordinances

Thank you for notifying us of the impending daytime curfew battle in your city. We appreciate your willingness to join the fight for freedom from unconstitutional laws that interfere with parental freedoms in America.

Enclosed, please find a packet of information that hopefully will assist you in organizing a resistance to the daytime curfew. Contained within the enclosures are organizational tips and suggestions and arguments against the daytime curfew. Additionally, we enclose a sample letter that can be submitted in opposition to the daytime curfew.

What has been effective in those cities that have either defeated or withdrawn their daytime curfew are, among other things, petition drives and phone calls to the elected officials considering passage of the curfew.

Once you have obtained a copy of the daytime curfew, if you will forward it to us we will prepare a written memorandum in opposition that can be distributed among the elected officials and attorneys for the government agency considering the daytime curfew.

If you have any questions or need further assistance, please do not hesitate to contact us at the above number. Again, thank you for your willingness to participate in this most worthwhile battle.

Very truly yours,



James R. Mason III

## **A SUMMARY OF ARGUMENTS AGAINST DAYTIME CURFEW ORDINANCES:**

1. Daytime curfews violate a minor's fundamental constitutional right to freedom of movement as guaranteed by the Fourteenth Amendment on the public streets, highways and areas of the city without being subjected to prior governmental restraint.
2. Daytime curfews violate the fundamental legal principle of the presumption of innocence. This presumption is protected by the Due Process Clause of the 14th and 5th Amendments to the United States Constitution.
3. Daytime curfews result in violations of the minors' 4th Amendment rights to be secure against unreasonable searches and seizures.
4. Daytime curfews interfere with the parents' fundamental right to direct the upbringing and education of their children, especially for parents with children in small private school; that are not restricted only to the confines of the classroom to provide a quality education for their children.
5. Daytime curfews are, in essence, beefed-up truancy ordinances. All states have already addressed the area of truancy in a comprehensive way. There is no need for new laws addressing the issue of truancy. The present laws addressing minors simply need to be enforced.
6. Daytime curfews will result in selective enforcement. Since officers will not be stopping every juvenile during school hours to check their ID, they will be selective. This opens up the extremely dangerous potential for unequal treatment of minors based upon race, looks, dress, etc. This type of ordinance will simply divert attention from real crime prevention programs and interfere with effective police work.
7. The serious juvenile law-breaker will not be deterred by the daytime curfew. However, hundreds, if not thousands of innocent minors will suffer the inconvenience of unwarranted stops, detentions and harassment, not to mention the added cost for taxpayers for the enforcement of the curfew.
8. Daytime curfews dangerously train young citizens to accept, as normal, constraints that are inconsistent with the freedom they should be educated to enjoy and use responsibly in their adult years.
9. Daytime curfews send a message to self-disciplined and responsible young people that the community makes no distinction between them and irresponsible adults who abuse freedom in ways detrimental to the community.
10. Daytime curfews will likely result in registration of privately educated students with police departments with the attendant issuance of ID cards and badges.

## **RESOLUTION ON DAYTIME CURFEWS**

BE IT HEREBY RESOLVED, that the [county name] Board of Education:

PRONOUNCES that no daytime curfews for children should be imposed in any municipality in [name] County;

RESPECTS the constitutional rights of all parents and children;

TAKES very seriously its obligation to ensure that each school district diligently pursues the proper enforcement of the compulsory attendance laws of the state;

CONFIRMS that the State Legislature has enacted a complete, comprehensive and carefully devised system for enforcing compulsory attendance which properly balances the interest of the state and the rights and responsibilities of the students and parents;

BELIEVES daytime curfews intrude upon such fundamental constitutional rights as the freedom to travel; the right of parents to direct the upbringing of their children; the right to be presumed innocent unless evidence to the contrary; and

BELIEVES daytime curfews are preempted from being constitutional in the state of [state name] by virtue of the Legislature's enactment of complete, comprehensive and carefully devised truancy provisions.

## Strategy Ideas for Daytime Curfews

March 13, 2003

*“For the Lord gives wisdom, and from his mouth come knowledge and understanding. He holds victory in store for the upright, He is a shield to those whose walk is blameless, for He guards the course of the just and protects the way of His faithful ones.” Proverbs 2:6-8*

### **General Tips**

- No matter how rude or condescending your opponent is, be polite, calm, and respectful.
- Do your homework. When attending meetings bring documented facts in an easy-to-read format. Don't feel you have to have a solution for every problem brought up, but do know about your own issue.
- At City Council Board of Supervisors (CC/BOS) meetings, follow general meeting procedure:
  - Do not interrupt the meeting - wait until you are given the floor.
  - Do not disrupt the meeting by talking to those around you.
  - Address the chairman as "Sir" or "Ma'am." Address all members by Mr., Mrs. or Ms., as appropriate - do not use first names in a CC/BOS meeting.
  - Thank the CC/SOS members for their time and consideration.
  - Follow time restrictions. If no limits are given, do not speak so long that the chairman needs to stop you.
  - Wear appropriate business attire for your locale.
- Never say anything you cannot back up with facts. Don't repeat what someone else told you without checking it out yourself. If you don't know the answer to a question, say so calmly and offer to find out. Then follow through with your offer.
- Do not speak on anyone else's behalf. For example, you do not represent “the home school community” or state organization. Regarding your local group, you can say, "I am a member of \_\_\_\_\_ which has \_\_\_\_\_ members in our city (or county.)" But do not presume to know or speak for every member's position.
- Never agree to ordinance revisions without first checking with your contact attorney at HSLDA. It is always appropriate to state that you need to check with your legal counsel. Anyone who suggests that you should not need to take time to do so is acting in an unethical manner, so don't be intimidated – there is no agreement that cannot wait for 24 hours.

### **Find Out What Is Happening:**

Start by calling your City Council members or your County Supervisor. In most cities, council members are not assigned to represent just one area of the city. All council members represent all

of the city's citizens, so you should try to talk with each one. For county governments, the Supervisors are usually assigned to a specific area, so you will want to call your own Supervisor. If you don't know your local representative, you may ask the City Clerk or County Clerk. Tell him you have heard that there may be a proposal about daytime curfews in your city or county. Ask him to confirm this. If the clerk does confirm that there is such a proposal, mention that you are interested in what is happening and ask when the issue will be discussed by the Council. Also ask how you can get a copy of the proposed ordinance. If he states that there has been no discussion of daytime curfews, no proposed ordinance, or no interest on the Council in this issue, tell the clerk that if such an issue comes up, you would like to know.

Give your name and telephone number and thank him for his time. Make sure you do not leave the impression that you are calling to suggest a daytime curfew!

Follow up any information you receive by calling your City Attorney, Chief of Police, and Sheriff. It's a good idea to have two or three people call each official because there is often a different story or perspective given by each official, depending on the caller. Although this can be difficult, try to ascertain how each official approaches his role in the community. Does he feel it's his job to protect the children, to protect our liberties, to punish wrongdoers? Knowing how each views his role in government can help you know how to approach him, and which talking points to focus on.

If daytime curfews are not an issue in your local area, they may be within the next year. Do not expect that your Council Member or Supervisor will remember to contact you if curfews are discussed. You will need to watch the local newspaper and check the Council's meeting agenda. Copy the article, "Daytime Curfews: Guilty Until Proven Innocent," for your local group members, for your church members, and for others who would be good candidates for involvement in the issue should it arise in the next year.

### **Prepare Ahead:**

Once daytime curfews are proposed, you may have only a couple of weeks to oppose them. Find out now how your CC/BOS works. Attend a meeting if at all possible to see them in action. Ask your own representative at the Council to tell you how ideas become ordinances. Learn all you can ahead of time.

If you receive a confirmation that daytime curfews are being considered, expect to work quickly. Get a copy of the proposal as soon as possible and make several photocopies. Send one copy to your contact attorney at HSLDA immediately. Read it carefully yourself and get familiar with it.

It may be that a proposed ordinance has not yet been written, but that it is instead at the study phase. Find out when study sessions are being held and be sure to attend. If you have already established your core group, bring as many of your coordinators as possible. Your groups attendance will show that there is opposition and will provide an invaluable opportunity to educate your own group members. Listen more than you speak, using this as an opportunity to observe who the key players are and what the major arguments are. Show that you are concerned about the issue, and be prepared to give one or two reasons. If there is a lot of excitement for daytime curfews, you will probably not be able to stop them at this point. Focus on showing that

there is opposition within the community and giving a few reasons that may not have been discussed yet in an effort to cause some of the planners to reconsider.

The following ideas have worked in other areas. They are not listed as a set of rules to follow; your area may be different. These ideas are given as a starting point only, with the understanding that you will adapt them to fit your own situation.

### **Gather Your Forces for Opposition:**

Contact local home school groups, educational groups, Christian action groups, libertarian groups, parent groups, churches, friends and relatives who have shown involvement in political issues in the past. Talk to a leader from each group you contact. Ask if he will be involved and if there are any others in his group who would be good candidates for your core group. Send him the introductory article, "Daytime Curfews: Guilty Until Proven Innocent."

Form a core group and name the group. Orange County, CA, named their group "Citizens for Responsible and Constitutional Laws." It's very effective to say that this is a group of [name of community] citizens who have come together for the express purpose of keeping daytime curfews out of the county. Make sure that there are non-homeschoolers involved, preferably among your coordinators, so you can honestly say that this is not just a group of homeschoolers.

Have your first meeting with your core group only. Bring them up to speed on the basics, including handing out a copy of your city/county's proposed ordinance. Discuss the general etiquette for addressing CC/BOS members by phone, letter and in person at meetings. Stress God's perspective as a means of tempering emotions, attitude, and actions. Take time to pray and agree to support each other in prayer throughout the entire process. Make sure all core group members are like-minded in the effort to "kill" the proposed ordinance. Some people may be satisfied with having wording included that protects their own children, then back out of their jobs before the measure is defeated.

### **Preemptive Strikes:**

Often, the first one to provide information has the most influence. If you can talk with your council or board members before the issue comes up at a public meeting, you might accomplish far more than when they are in the spotlight. Public officials do not like to be caught by surprise. If you show up en masse at a meeting on an issue without attempting to first discuss it peacefully behind the scenes, you can antagonize them and they will feel more ownership of their position.

Use your connections with these people if you have them. If not, this may be a chance to establish relationships with your local representatives. Approach them in a friendly, non-combative way, offering to share your concerns and the information you have found as you have studied this issue. (Don't think of them as the enemy.) This can be done in person or by phone.

Consider the political implications that might interfere with their taking an anti-curfew position (soft on crime image, non-supportive of schools, etc.). You might agree with their concerns about education and law and order while pointing out that the daytime curfew is not the solution, and in fact might be the cause of additional problems. If you find them sympathetic, request their

advice in approaching other council or board members, or possibly in devising strategy. Be cautious that you are not taken in by false assurances. Do not share internal strategy unless you are absolutely sure you are talking to an ally.

## **Divide the Work:**

This issue can quickly become all consuming. Dividing the responsibilities will protect each member of your group from burning out before the battle is won, and it will also help to build unity in your coalition by having this be a group effort. It will also help you to make the best use of the various gifts and skills among your group members. Here are some suggested coordinators and responsibilities:

### *Strategy Coordinator*

Call your contact attorney at HSLDA. Send him a copy of your city or county's proposed ordinance. To respect his time and to maintain efficiency and good coordination the Strategy Coordinator should be sole or primary contact with HSLDA. Keep in regular communication with your HSLDA attorney, especially if the ordinance is revised or compromise proposals are given to you. Never approve any compromise or revision without taking the time to check it with HSLDA.

Communicate with your coordinators. An important part of your job is to encourage them as they work. Get copies of all written materials prepared by each coordinator.

Keep track of your opponents. Who are the key players? Find out who drafted the ordinance and who is emotionally involved with it. Listen to the arguments used to support the ordinance. As your arguments in opposition are presented, it is likely that the supporting arguments will change. Keep track of which arguments appear to be the major ones used in your community. Ask for copies of all the information that CC/BOS members are being given from the city, district attorney, police chief, etc. Find out how these materials are funded.

Be the key contact for your group, so that if a CC/BOS member wants to ask a question, he knows whom to call. Be sure that your group knows to notify you of any calls they may receive from their own local representatives. Make sure all your core group members know that they are not to agree to any ordinance revisions or alternate CC/BOS actions.

Watch for opportunities for good publicity. In Visalia, a brief radio interview helped get the word out. If a member of your group is good at interviews, look for radio programs with sympathetic, activist audiences: Christian Activist shows, libertarians, or secular radio shows with hosts who treat their guests fairly. If the fight continues, consider asking to make presentations to activist groups like Eagle Forum, Conservative Women for America, Parents Involved in Education, or political groups who may be sympathetic. If there is not time, you might try to win over these groups' leaders by phone and e-mail.

Read the Education Code for your state. Be careful about quoting sections which could be turned against you. For example, while it is important to point out that there are already laws which deal

with truancy, you don't want to unintentionally encourage local police to investigate homeschoolers.

Be the first of your group to arrive at CC/BOS meetings. Ask someone to save a seat for you and stay at the entrance to greet and encourage your members. You may want to prepare ribbons for your members to wear as a visual reminder of the number of people opposed to daytime curfews. If you are all wearing ribbons, your CC/BOS members will be reminded of your presence even when they are discussing other agenda items. Whether or not you use ribbons or buttons to identify your members, take a moment in your introductory address to ask everyone who came to the meeting to oppose daytime curfews to stand up. Show your CC/BOS the amount of opposition that exists.

Be careful when asked for alternate solutions to truancy or other juvenile problems. Don't offer any solution without first running it by your HSLDA contact. Do not allow yourself to feel pressured to come up with quick solutions. More than likely, you will find yourself entangled in ineffectual compromises that ultimately will not serve your purpose. Avoid being drawn into discussions on how to solve juvenile crime and truancy problems. These are complex issues which require much study and work to address. Your focus is on the present issue - daytime curfews. Maintain your position of objective concern over the issue at hand, and hold your elected officials accountable to base their decisions on sound Constitutional principles. Do not let them base their decisions on pragmatism and isolated anecdotes to the exclusion of sound principle. Practice saying, "Yes, juvenile crime [or \_\_\_\_\_] is a serious issue. However, daytime curfews are not the answer. While it is certainly necessary to discuss other possible solutions, today we are here to discuss the issue at hand - daytime curfews and why they are not acceptable in our community.

If you are fighting a county wide daytime curfew ordinance, you need a County Strategy Director or a tiny core group to coordinate the whole effort (or at least keep tabs). You will need a Strategy Coordinator for each city.

### *Communications Coordinator*

Establish a prayer list. There may be some who cannot attend Council meetings or be core group members, but who are willing to support you in prayer. It will be vital to have a strong prayer group. Be sure to give the prayer group notice of the days and times of any meetings.

Establish a phone/e-mail tree. One separate branch should include core group members and coordinators who will be involved in any necessary planning meetings. Keep a separate list for people who are willing to show up at council meetings or public awareness events.

The opposition may quickly get on your phone tree if you are not careful. If you don't know everyone on your tree, you may have to limit your information to basics and not strategy.

Use your phone tree to inundate the CC/BOS with phone calls the day before their meeting (when daytime curfews are on the agenda) as well as on the day of the meeting itself.

*Research Coordinator*

Find out the general information about your City Council or Board of Supervisors (CC/BOS). Make a list of the names, addresses, phone and fax numbers for the Mayor and CC/BOS members. If your county is proposing that each city pass its own ordinance, include information for every city in your county.

Find out information about the CC/BOS meetings: location (including directions, cross streets, and parking - availability as necessary), dates and times. Make a calendar of all the meetings in your county or city. Be aware that meeting sites are sometimes changed, especially if a large crowd is expected. Verify the site for each meeting you plan to attend.

Find out the phone number of the city clerk or county clerk, city manager, and police chief. These are the people that you may need to check with on a regular basis.

Find out all you can about how your CC/BOS meetings are run, including:

- format of meetings;
- when agendas are set, and how to get a copy;
- the number of minutes that speakers may each speak on an agenda item;
- the number of minutes that speakers may each speak on a non-agenda items;
- how many people will be allowed to address an issue;
- the format for being able to speak; for example, do speakers need to fill out a speaker's card? If so, can you get a few ahead of time for your group? If cards are to be filled out at the meeting, where do you get them when you arrive and to whom are they turned in; and
- How far in advance documentation on agenda items, such as the proposed curfew, will be made available to the public.

*CC/BOS Watchdog*

Check the agenda for every CC/BOS meeting. The agenda can change up to 72 hours in advance, so be sure to double check during those last 72 hours. Ask if you can send a written request for notification of agenda items which include daytime curfews. It is important to follow up anyway - don't risk missing a meeting because a clerk forgot to notify you.

As soon as curfews are discovered on the agenda, start your phone tree to get people to the meeting and to have your prayer group mark their calendars.

*Writing Committee*

Create a sign-up sheet for those who are willing to attend CC/BOS meetings.

Draft a petition against daytime curfews. This can be as simple as the following:

We, the undersigned, are absolutely opposed to daytime curfews, in any form, being implemented in _____ County.		
Printed Name:	Signature:	City:
_____	_____	_____
_____	_____	_____
_____	_____	_____

Draft a letter from your group to every CC/BOS member and mayor in your city or county, saying that your group is opposed to daytime curfews in any form. See the sample letters included in this packet for content ideas. Have more than one person working on this for editing.

Draft an editorial for your local paper(s). See the articles in the Daytime Curfew Issue Folder on the HSLDA website ([www.hsllda.org](http://www.hsllda.org)) for ideas to include.

Prepare responses to letters to the editor that appear in the newspaper. Don't engage in a written debate that bounces back and forth between you and your opponents, but do create a concise and logical rebuttal. Since only a small number of letters to the editors are selected for publication, have several people send in letters. This accomplishes two purposes: it shows that there is a lot of interest within the community and it increases the odds that one of the letters will be selected for publication.

#### *Newspaper Coordinator*

Find subscribers to each of the major papers. Ask each one to take the responsibility of watching for editorials and letters to the editor. Send a copy of the pieces that you find to the Writing Committee so a response can be prepared, if necessary.

Check the newspapers for announcements of upcoming CC/BOS discussions and votes on the issue.

#### *Speaker Coordinator*

Identify those who will make good speakers at CC/BOS meetings. Ask the local leaders for confirmation to help you avoid accidentally choosing a "loose cannon." Make sure your speakers can be available at the regular time your CC/BOS meetings are. Also make sure they can come with only a day or two notice. Assign someone to take notes at every CC/BOS meeting you attend.

As needed, help your speakers to prepare their talks, following any time limits. Even if your CC/BOS does not set a time limit, three minutes is a good rule of thumb. Three minutes is long enough to make a point and to keep your listeners interest. Assign one key argument to each speaker so that you complement each rather than repeat each other. Choose one person to introduce your group and issue (this may be the Strategy Coordinator.) Choose a person to give closing remarks, summing up the key reasons for opposition. The enclosed "Talking Points" are meant as a source of arguments and rebuttal preparations.

Your group of speakers should be as diverse as possible. Visalia's successful panel of speakers included a retired schoolteacher, a computer repair technician, an attorney, a city code analyst, a private school parent, a physician, and a dental technician. Try to present a cross-section of citizens, avoiding being pegged as a group of the "religious right," "homeschoolers," or over-emotional fanatics. Although your choice of speakers will depend upon what volunteers are available, play up your speakers' differences. For example, while you will try to have speakers from various educational settings, it may be that all your volunteers are homeschoolers. This is

workable as long as you remember not to focus on homeschooling - that isn't the issue. You all fill other roles as well: parent, consumer, professional, voter, etc.

Ideally, residents of the city (for City Council meetings) or county (for Board of Supervisors meetings) should be your speakers. But articulate and informed people from neighboring cities can be used if needed. Remind your CC/BOS that this issue affects more than your own community's residents. Tourists and residents of neighboring communities (especially "bedroom" communities) are also affected.

Have a practice session for your speakers. You will build confidence by letting each one hear and encourage the others. Play the part of a CC/BOS member and ask questions of each of your speakers. In particular, ask a question which could pull each one off his subject so each one can be prepared for this common tactic. Ask, "Well, if we don't pass a daytime curfew, what other option shall we pursue?" Train your speakers to respond to this question by quickly returning to the issue at hand - the reasons to oppose daytime curfews. See the "Talking Points" for specific response ideas to this question.

Make sure your speakers arrive early - a half hour ahead of the start of the meeting. You will want to get speaker cards in (if needed in your CC/BOS meetings) and you will want your seats to be close to the microphone.

#### *Support Coordinator*

Find babysitters, either jointly or put together a list of moms willing to baby-sit. A significant problem is that CC/BOS meetings are sometimes during the day and mothers can't attend because they don't have a babysitter.

If you can, find several moms who are willing to cook a meal. If the battle becomes very heated, the coordinators will be overloaded. Having a meal brought over for the day of the CC/BOS meeting could be a great encouragement.

#### *Local Group Leaders*

Distribute copies of "Daytime Curfews: Guilty Until Proven Innocent" and copies of your city or county's proposed ordinance to your group members.

Get a copy of the CC/BOS list from your Research Coordinator. Encourage your group members to write individual letters to the CC/BOS. Phone calls to CC/BOS members are tricky unless the callers have a lot of background. As your opposition gains momentum, the CC/BOS members who favor curfews will be better prepared with rebuttals to your most common arguments.

Let the Speaker Coordinator know of any of your group members who would make good speakers.

# HOME SCHOOL LEGAL DEFENSE ASSOCIATION

*Advocates for Family & Freedom*

J. MICHAEL SMITH, ESQ.  
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DARREN A. JONES, ESQ.  
ATTORNEY (CA)

TO: Interested Parties

FROM: J. Michael Smith

RE: Expected Rebuttal Arguments Against Daytime Curfew Ordinances

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In anticipation of rebuttals to our arguments against the Orange County daytime curfew ordinance, we will set out our argument, the anticipated rebuttal to our argument, and our response to the rebuttal.

1. **Argument:** Daytime curfews violate a minor's fundamental constitutional right to freely move about in public without being subject to prior Governmental restraint.

**Argument in Rebuttal:** No right, no matter how fundamental, is an absolute right. Evidence shows that minors skipping school (truants) commit crimes. Therefore, minors seen by officers not in school during school hours cannot complain about being detained because of daytime curfews because there is reasonable suspicion to believe that they are committing a crime, i.e., truancy or something worse.

**Response to Rebuttal:** Although there is no absolute right, fundamental rights cannot be interfered with unless the government can demonstrate a compelling interest in the subject of the legislation and that they are using the least restrictive alternative available to achieve a legitimate compelling interest, nor can the government enforce laws that violate provisions of the State and/or U.S. Constitutions. Government does have a compelling interest in prohibiting crime to protect innocent citizens; however, government is obligated to use the least intrusive method to do that. Daytime curfews are the most intrusive method to prevent crime. Less restrictive measures, in the form of laws which are presently on the books, are available. Strict enforcement of those laws will eliminate the need for daytime curfews. California's preemption doctrine prevents local government entities from passing truancy laws.

2. **Argument:** Daytime curfews violate the fundamental legal principle of the presumption of innocence until proven guilty. In other words, minors should not be a stopped by police officers unless there is reasonable suspicion to believe that the minor has committed a crime.

**Argument in Rebuttal:** There is reasonable suspicion to believe that a minor on public streets during school hours is in violation of the truancy law.

**Response to Rebuttal:** There are more innocent minors on the streets during daytime curfew hours than there are those that are skipping school by a large majority. There are a number of legitimate excuses minors may have not to attend school, which include flexible schedules utilized by students enrolled in private and home schools. This is especially true in Orange County, due to the large tourist population. Therefore, there is no reasonable suspicion that any minor who is simply not in a public place during school hours is in violation of the truancy law in Orange County.

3. **Argument:** Daytime curfews violate the California constitutional principle of the "preemption doctrine."

**Argument in Rebuttal:** Daytime curfews do not violate the preemption doctrine in California because they are not truancy laws. It is true that the California legislature has an extensive truancy prevention legislative scheme. However, daytime curfew ordinances are not truancy laws.

**Response to Rebuttal:** The Orange County District Attorney's Office was involved in drafting the proposed daytime curfew. They have indicated that the ordinance is not designed to be punitive. Its purpose is to get kids back into school. If kids go back to school fines can be cancelled. The bottom line is that this daytime curfew is a truancy law. It is not coincidental that a joint committee of the Orange County School Superintendents Association and Police Officers Association are behind this daytime curfew in Orange County. The stated goal for the daytime curfew is to reduce the dropout rate and cut juvenile crime. A rose by any other name is still a rose.

4. **Argument:** Curfew laws do not deter crime. San Diego City's experience with curfews and juvenile crime rates indicate that the percentage of crimes committed during curfew hours has remained almost exactly the same as before it had a curfew.

**Argument in Rebuttal:** That can't be true. Where are your facts?

**Response to Rebuttal:** In San Diego the facts speak for themselves. Since the enactment of a curfew in San Diego, the percentage of crimes committed during curfew hours remain almost exactly the same - 16.7% for June through November, 1993, before the curfew; and 15.6% for June through November, 1994, after the curfew. In other words, the percentage of juveniles arrested during curfew hours has remained at almost exactly the same rate.

**Argument:** Daytime curfew ordinances are really beefed-up truancy ordinances. The California legislature has already addressed the area of truancy in a comprehensive way. No new laws are needed. The present truancy laws simply need to be enforced.

**Argument in Rebuttal:** There is not enough force in the present truancy law. Sure, officers can pick up suspected truants on the street during school hours, but they have to return them to the school. This does not have any impact on truants and the prevention of truancy.

**Response to Rebuttal:** The present California scheme of legislation dealing with truancy is extensive and specific in its attempts to curb truancy. After the third unexcused absence in a year, a truant is subject to being referred to a School Attendance Review Board (SARB), where their parents will have to appear and respond to a group of adults regarding why the child has been absent from school. If the SARB board is not satisfied that the meeting will cure the truancy, the matter can be referred either to the City Attorney's Office for prosecution of the parents for truancy or to the juvenile court for wardship proceedings pursuant to Welfare and Institutions Code § 601. Certainly, there is enough force in the truancy law to address truancy. However, for those juveniles who have no interest in attending school, no truancy law, including the daytime curfew violation penalties, will cause these juveniles to attend school. The only way to deal with this problem is through proceedings available in juvenile court to address the incorrigible and delinquent behavior of law-breaking juveniles.

The Honorable Mary Louise Vivier  
Members of the Visalia City Council  
707 West Acequia  
Visalia, CA 93291

Re: Project A.I.M.

Dear Mayor Vivier and Members of the Visalia City Council:

A joint project by the Visalia Unified School District, the Tulare County Probation Department and the Visalia Police Department is proposing a city-wide daytime curfew for children ages between 12-17 during the hours of 8:30 a.m. and 1:30 p.m. This coalition is drafting an ordinance which they would like to see passed in Visalia by the start of school in September. Under a current draft of this ordinance, it becomes a crime for a child between 12-17 years of age to be on any public property during school hours unless he or she falls under one of the excuse categories listed in the ordinance. We, the undersigned, respectfully ask you to oppose this ordinance for the following reasons:

1. Reduction of crime and cutting juvenile truancy are two of the major stated reasons for bringing in daytime curfew ordinances to Visalia. The California legislature has already extensively addressed these two issues with legislation. This brings up two important points. First, we already have laws that deal with truancy and juvenile crime, although some of these laws, particularly in regard to truancy, are not being enforced. Adding more laws won't solve the problem. Some key members of the police community probably don't know what the current truancy laws say, yet they support passage of daytime curfew laws, which are really "redefined" truancy laws. Second, passing local ordinances on issues which are already extensively addressed in California law is a violation of the preemption doctrine of the California Constitution and opens the city up to court challenges of the ordinances.

2. Daytime curfews turn the fundamental legal principle of the presumption of innocent until proven guilty on its head and are an ominous threat to a free society. Minors, like adults, should have the peace of mind of knowing that they will not be stopped by police officers unless there is reasonable suspicion to believe that the minor has committed a crime. The daytime curfew creates a new crime. It now becomes illegal for a minor "to be found to idle, wander, or be in or upon any public place" during the hours in which that minor should be in school, unless the minor has a lawful excuse as listed in the ordinance. Because of the wording of the ordinance, children between the ages 12-17 are possible suspects and police have probable cause to stop any child to see if he or she is in violation of the law. A child who is simply skating on a neighborhood sidewalk, playing in a park, eating at McDonalds or sitting in an office building or in a theater is now a possible suspect.

3. Police will have no way of knowing which students have the legal right to be out of school without stopping and questioning them. Thousands of minors have a legitimate right to be in public places on any given day.

Children in public schools, private schools, and home based private schools (homeschooling) attend school for approximately 180/days year. That means that students in Visalia have a minimum of 80 weekdays when they are not required to attend school.

Questioning all children who are out would be an incredible waste of police time and an equally incredible assault on the minor's right to move about in public without prior government restraint. Police will have to judge which minors "look" like truants. This will inevitably lead to selective enforcement of the ordinance, which will likely result in lawsuits against our city if it appears that minorities are being singled out.

4. Parental rights are violated by this proposed ordinance. It used to be that parents would notify the school when they chose to have their child miss school for something they deemed important, and the school accepted the parental right to make such determinations. Under the new ordinance, the school makes such determinations and parental rights are irrelevant. We are also concerned that schools are left as the ultimate arbiters of whether or not a child should be in school rather than parents. If a child is having serious emotional problems, school-related or otherwise, a parent might decide to keep a child home for a day to relieve some of the stress. We are told that absences such as these are not acceptable and both parents and children might wind up with citations as a consequence.

We the undersigned stand in opposition to the proposed daytime curfew ordinances in Visalia and are in agreement with the objections stated in the attached letter.

Name (signature)

Name (print)

City

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## SUMMARY ON

### **TIANA HUTCHINS, ET AL. v. DISTRICT OF COLUMBIA**

Civil Action No. 95-2050 (EGS)

US DISTRICT COURT, DISTRICT OF COLUMBIA

The above case was a nighttime curfew cases decided by U.S. District Judge Emmet G. Sullivan on October 29, 1996 for the District of Columbia (the "District"). Judge Sullivan struck down a nighttime curfew law using the following constitutional defenses raised by the minors and their parents against the nighttime curfew:

1. The curfew violated the minors' Fifth Amendment Equal Protection and Due Process right to freedom of travel.
2. The curfew violated the parents' Fifth Amendment Due Process rights to exercise parental discretion and control over their minor child.

In reaching his decision, the Judge concluded that minors were being treated differently than adults and that a fundamental right, i.e., freedom of travel, was being interfered with; therefore, the nighttime curfew was subject to "strict scrutiny. " The Judge also determined that the parents' fundamental right to direct the upbringing of their children under the Fifth and Fourteenth Amendments was interfered with; therefore, also subject to strict scrutiny analysis.

Once the Judge determined that the law was subject to strict scrutiny, the District was required to prove that the law addressed a legitimate compelling interest of the city and that the law was the least intrusive available to the city. By "compelling interest," courts have interpreted to mean "of the high interest" of a city or a state.

Although the Judge concluded that the District had a compelling interest in addressing juvenile crime and protecting juveniles. However, the Judge struck down the statute because he found that the District did not meet its burden in producing facts that the curfew was sufficiently narrowly tailored as to not over burden the fundamental right of minors and their parents.

The District had produced general statistical information about juvenile crime, with very little statistical information about juvenile crime in the District. The minors and their parents produced statistics that indicated that 90% of juveniles do not commit crimes and only 5% of the total juvenile population had ever been arrested for anything.

The District also argued that because of the eight defenses to arrest for the curfew violation, it had satisfied the strict scrutiny requirement. However, the Judge concluded that many of the defenses were vague, therefore, not useful for minors and parents or police officers in determining whether a violation had occurred.

The bottom line of the decision appears to be that although the Judge concluded that there was a factual basis existing in America and the District for government to be concerned about a growing juvenile problem, there did not exist enough factual basis in the District to justify

treating juveniles differently than adults in imposing a nighttime curfew. The District failed to produce statistics to meet its burden that: (1) the curfew law was narrowly tailored to serve the government's interest in the least intrusive manner; and (2) an evidential nexus existed between the curfew law and the juvenile crime rate, such that the curfew law could survive strict scrutiny.

This writer's comments on this important decision, as they relate to our continuing arguments against daytime curfews, are as follows:

1. We have appropriately and correctly raised the due process right to travel as a fundamental right; however, I am not certain that we have sufficiently raised the equal protection argument to get to the due process fundamental right to travel.
2. We need to hit the due process Fifth and Fourteenth Amendment right of parents to exercise direction and control of their children harder.
3. We have hit "right on" on the vague and overbroad argument under the First Amendment.
4. I am encouraged that our Fourth Amendment argument to be free from unreasonable searches and seizures has been argued by someone else. This is a new and novel argument. The unfortunate part of the D.C. case is the Judge did not address this constitutional argument.
5. The Judge sets out the standard that these daytime curfews cannot not just be slopped together and quickly passed without sufficient testimony and reliance by the council, upon crime and juvenile statistics indicating a factual nexus between a daytime curfew and an achievement of the stated coal of the council. Without this evidentiary proof by the city proffering the daytime curfew, the city will not be able to establish a compelling interest in the ordinance and/or that it is sufficiently narrowly tailored to the desired objective. Cities won't pass ordinances simply because other jurisdictions have them and have had some success. This assumes, of course, that a court will agree with this judge that the freedom to travel is a fundamental right entitled to strict scrutiny.
6. In reviewing the curfews and testimony that I have seen from the various cities in California, no council has presented anything close to the evidence that was presented in this D.C. case, yet D.C. lost. This is encouraging for any future case that we might handle.
7. In the California curfew cases, eight to ten defenses are being used to argue that the curfew is being narrowly drawn. The D.C. judge was not convinced of this argument indicating that the defenses, in many cases, were vague and ultimately could not cure the lack of statistical proof to connect the ordinance to the desired result.
8. It seems that we should be able to argue that if a nighttime curfew addressing a crime and prevention problem cannot be sufficiently established for lack of proof that the curfew can accomplish the stated objective, certainly the same argument can be made against a daytime curfew in light of the fact that more crime and injuries to minors occur at night.

9. In light of the fact that many of the daytime curfews are beefed-up truancy ordinances, we need to argue that the intrusion or interference with the fundamental right of minors to travel cannot ever be justified considering that there are already laws on the books which can, if enforced, address the interest of the city in passing daytime curfews.

The Judge in his final points regarding the nighttime curfew addressed the District's argument that if the Judge found some of the defenses to be unconstitutionally vague, the Judge should simply strike those and leave the curfew in tact. The Judge responded in a very intelligent way by indicating that it would be impossible for the Judge to conclude that the City Council would have enacted the curfew without all of the enumerated defenses. By severing any of the defenses, the Judge would have effectively and impermissibly rewritten the curfew law. The Judge concluded it was beyond his jurisdiction to engage in such an exercise.

In conclusion, the Judge concluded that criminal activity in the District imposed a serious threat to health, safety, and the exercise of liberties for minors and adults, alike. However, the District failed to show that the curfew furthered the District's interest in reducing criminal activity as well as victimization. The Judge concluded that the curfew did adversely impact the rights of minors and parents. That the curfew was not sufficiently narrowly tailored to sanction the government's erosion of one of the most important liberty interest afforded citizens of a civilized society - the cherished freedom of movement. The Judge stated: "Were this Court to sustain the constitutionality of the present curfew law – on the inadequate record assembled before it the Court would impose wholesale custodial control over all young people either residing in or visiting the District and also the Supreme Court's principle that 'deeply rooted in our nation's history and tradition (of individual liberty) is the belief that the parental role implies and substantial measure of control over one's children."

The Judge concluded that it would not sanction the District's substantial intrusion into the private domain of the family and the rights of parents to make appropriate decisions for their minor children and to raise their children in a responsible manner.

For that reason, the judge struck the "Juvenile Curfew Act of 1995' as not being narrowly tailored to serve a compelling interest in the least restrictive manner.

Respectfully submitted,

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J. Michael Smith, Vice President  
Home School Legal Defense Association