



United States  
Court of Appeals,  
Seventh Circuit, 2004.  
355 F.3d 1048.

## Hodgkins v. Peterson

ROVNER, Circuit Judge.

\* \* \* \*

Shortly after 11:00 P.M. on August 26, 1999, Colin Hodgkins and his three friends [all of whom were minors] left a Steak 'n Shake restaurant in Marion County, Indiana, where they had stopped to eat after attending a school soccer game. As they left the restaurant, police arrested and handcuffed them for violating Indiana's curfew regulation. The police took Colin and his friends to a curfew sweep processing site where he was given a breathalyzer test and \* \* \* tested for drugs. \* \* \*

\* \* \* At the time of Colin's arrest, the Indiana statute set a curfew of 11 P.M. on week-day nights [with a few exceptions].

\* \* \* \*

\* \* \* Nancy Hodgkins is \* \* \* the mother of \* \* \* Colin \* \* \*. Ms. Hodgkins would like to allow her children to participate in \* \* \* activities protected by the \* \* \* First Amendment \* \* \*, however, she is concerned that if they do so, they will be subject to arrest. \* \* \*

\* \* \* She seeks [an] \* \* \* injunction against defendants Bart Peterson, in his official capacity as Mayor of the City of Indianapolis and [other local government officials], barring them from enforcing the \* \* \* curfew law. \* \* \*

\* \* \* \*

\* \* \* [T]he court found \* \* \* only an incidental burden on minors' First Amendment rights. \* \* \* The plaintiffs filed a timely appeal [to the U.S. Court of Appeals for the Seventh Circuit].

\* \* \* \*

The strength of our democracy depends on a citizenry that knows and understands its freedoms, exercises them responsibly, and guards them vigilantly. Young adults are not suddenly granted the full panoply [array] of constitutional rights on the day they attain the age of majority. We not only permit but expect youths to exercise those liberties—to learn to think for themselves, to give voice to their opinions, to hear and evaluate competing points of view—so that they might attain the right to vote at age eighteen with the tools to exercise that right. A juvenile's ability to worship, associate, and speak freely is therefore not simply a privilege that benefits her as an individual, but a necessary means of allowing her to become a fully enfranchised [endowed with the privileges of citizenship, especially voting rights] member of democratic society. \* \* \*

[The Hodgkinses] assert that the consequences of violating the curfew law are so burdensome and intrusive that, rather than risk arrest, they will be discouraged from participating in expressive activity during curfew hours. In other words, the plaintiffs claim that the curfew regulation creates a "chill" that imposes on their First Amendment rights. \* \* \*

\* \* \* \*

\* \* \* The government claims that plaintiffs cannot mount a \* \* \* challenge to the curfew law \* \* \* because they have not demonstrated either that the curfew law imposes a disproportionate burden on those engaged in First Amendment activities or that it regulates conduct with an expressive element.

We agree that the Indiana curfew ordinance does not disproportionately impact First Amendment rights. As Colin Hodgkins can attest, it burdens minors who want to attend soccer games as much as it burdens those who wish to speak at a political rally. On the other hand, the curfew ordinance regulates minors' abilities to engage in some of the purest and most protected forms of speech and expression. [A] wide range of First Amendment activities occur during curfew hours, including political events, death penalty protests, late-night sessions of the Indiana General Assembly, and neighborhood association meetings or nighttime events. A number of religions mark particular days or events with late-night services, prayers, or other activities: many Christians, for example, commemorate the birth of Christ with a midnight service on Christmas Eve and the Last Supper with an all-night vigil on Holy Thursday; Jews observe the first night of Shavuot by studying Torah all through the night; and

throughout the month of Ramadan, Muslims engage in late-evening prayer. Late-night or all-night marches, rallies, and sleep-ins are often held to protest government action or inaction. And it is not unusual for political campaigns, particularly in the whirlwind final hours before an election, to hold rallies in the middle of the night. Thus, during the last weeks of the 1960 presidential campaign, then-Senator John F. Kennedy addressed a group of University of Michigan students at 2:00 A.M. on the steps of the Michigan Union. In unprepared remarks, he asked the students whether they would be willing to devote a few years of their lives working in underdeveloped countries in order to foster better relations between the people of those nations and the United States. The students responded with a petition calling for the creation of the Peace Corps, which came into being the following year. These are but a few examples. *The curfew ordinance regulates access to almost every form of public expression during the late-night hours. The effect on the speech of the plaintiffs is significant.* [Emphasis added.]

\* \* \* \*

\* \* \* Any juvenile who chooses to participate in a late-night religious or political activity thus runs the risk that he will be arrested if a police officer stops him en route to or from that activity and he cannot prove to the officer's satisfaction that he is out after hours in order to exercise his First Amendment rights.

\* \* \* \*

\* \* \* The prospect of an arrest is intimidating in and of itself; but one should also have in mind what else might follow from the arrest. \* \* \* We have no doubt that the authorities are well meaning in administering the drug and alcohol testing and in questioning the minor and his parents about his friends and family life. But these are also rather serious intrusions upon one's personal and familial privacy, and they represent a substantial price for a minor to have to pay in order to take part in a late-night political or religious event. *The chill that the prospect of arrest imposes on a minor's exercise of his or her First Amendment rights is patent [evident].* [Emphasis added.]

\* \* \* \*

In sum, we hold that the curfew law \* \* \* is not narrowly tailored to serve a significant governmental interest and fails to allow for ample alternative channels for expression. The statute restricts a minor's access to any public forum during curfew hours \* \* \*. The concrete possibility of arrest \* \* \* makes clear that the statute unduly chills the exercise of a minor's First Amendment rights. \* \* \* Consequently, we reverse the judgment and remand with directions to enjoin [prevent] the enforcement of Indiana's curfew until such time as the State's legislature removes the chill that the statute places on the exercise of First Amendment rights by minors.

## **QUESTIONS**

1. Why is it unfair to require minors to engage in protected activity only during noncurfew hours, during curfew hours accompanied by an authorized adult, or from the minors' homes by phone or over the Internet?
2. How might a curfew law be written to protect both the fundamental constitutional rights of minors and the safety of all citizens?