UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

TOMMY MEAD, Plaintiff – Versus – City of CLINTON, Louisiana; LORI ANN BELL, Mayor, City of Clinton, in her official capacity; FRED DUNN, Chief of Police, City of Clinton, in his official capacity; Defendants.	NUMBER: 3:13-cv-0484 JUDGE: Hon. Brian A. Jackson MAG. JUDGE: Hon. Richard L. Bourgeois

MEMORANDUM IN SUPPORT OF PLAINTIFF'S REQUEST FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

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I. Introduction

On May 30, 2013, the City of Clinton enacted a general curfew, barring every single one of its residents from public places between the hours of 11PM and 6AM, with few to no exceptions. During those effective hours, residents of all ages are reduced to prisoners in their own homes, confined indoors by a well-founded fear of arrest. Violators, including late-night dog-walkers, star-gazers, and patrons of the city's 24-hour convenience store, face harsh penalties for curfew violations: a $500 fine and/or 30 days in jail.

Originally proposed by Police Chief Fred Dunn, the curfew has been aggressively enforced. For cars driving during curfew hours, Dunn "want[s] the driver of that vehicle to be questioned as to why he's in that neighborhood at that time."[1] Concerning the curfew, Dunn has stated: "[t]he main reason is [that] we have people standing in the street."[2]

The curfew unconstitutionally burdens the fundamental rights of every adult living in or passing through Clinton. Plaintiff Tommy Mead, a Clinton resident who is subject to the curfew every evening, brings this action to relieve that burden and prevent further harm to his protected liberties.

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[1] Diero, Alex. *Clinton's Curfew For All Draws Mixed Feelings from Residents*. (June 11, 2013) Available at http://www.fox44.com/news/clintons-curfew-all-draws-mixed-feelings-residents

[2] *Entire Town Under Curfew for Summer Nights*. (June 12, 2013) Available at http://www.wjbo.com/articles/local-news-119442/entire-town-under-curfew-for-summer-11380949/

II. Facts

The Curfew

On May 30, 2013, Clinton implemented a general curfew barring all residents from leaving their homes between the hours of 11PM and 6AM. The curfew initially was set to expire on July 31, 2013, but the Clinton City Council renewed it on July 10th at the request of Defendant Police Chief Dunn. It is now effective until August 14, 2013, and the Clinton City Council intends to revisit it again at that time.

A copy of the curfew is attached to Plaintiff's complaint (Rec. Doc. 1) as **Exhibit A**. The first page of the document, signed by Defendant Mayor Lori Ann Bell and displayed in full below, appears to be an excerpt of relevant minutes from the city council meeting at which the curfew was established. It explains that the City Council created the curfew, at the request of Defendant Police Chief Dunn, by amending Clinton City Code §14-2, the City's existing juvenile curfew. Per the document's express language, §14-2 was amended "to include all citizens of the Town of Clinton, basically for walking, hanging out in the streets and suspicious vehicles and riding all hours of the night." **Ex. A**, p.1:

(over)

MAYOR & STAFF
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Anjanetha Shropshire, Town Clerk
Fredrick G. Dunn, Chief of Police
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Clinton Municipal Code

Sec. 14-2 Curfew for adults and certain minors.

Curfew hours means:

(1) 11:00 P.M. on any Sunday, Monday, Tuesday, Wednesday, and Thursday until 5:00 A.M. of the following day, and

(2) 12:01 A.M. until 5:00 A.M. on any Friday or Saturday.

Chief of Police, Fred Dunn asked the board for approval to amend the curfew to include all citizens of the Town of Clinton, basically for walking, hanging in the streets and suspicious vehicles and riding all hours of the night.

A motion was made by Alderman George Kilbourne seconded by Alderman Johnny Beauchamp to approve the curfew starting, May 30, 2013 - July 31, 2013; hours 11:00 P.M. - 6:00 A.M. Sunday - Saturday. Motion carried.

Lori Ann Bell
Mayor

The rest of City Code §14-2 appears on the last three pages of the document.

Plaintiff Tommy Mead

Mead is a resident of Clinton, and the curfew has affected him both personally and professionally. Personally, Mead, like many young adults, likes to go to parties and stay out late. He often visits friends' houses for social events, frequently traveling out of town and returning well after midnight – unquestionably

a curfew violation. Mead fears arrest and possible prosecution every time he returns home after 11PM.

Professionally, Mead regularly commutes to Baton Rouge to attend school at Louisiana State University, and he often stays on campus studying until late at night. As with his personal travels, he fears arrest and possible prosecution under the curfew each time he returns home from campus after 11PM.

Mead also regularly commutes to Baton Rouge to look for work, and was recently offered a position there with Catholic Charities. While he has no firm start date, he most likely will begin his new job on August 11, 2013. His duties will require him to commute to Baton Rouge every day, and he knows that he will often be required to work late and return to Clinton after 11PM, in violation of the curfew.

III. Argument

To win a preliminary injunction, Mead must show: (1) a likelihood of success on the merits, (2) a substantial threat of irreparable injury if the injunction is not granted, (3) that the injury he would suffer outweighs the potential harm to the defendant, and (4) that granting the preliminary injunction will not disserve the public interest. *Speaks v. Kruse*, 445 F.3d 396, 399-400 (5th Cir. 2006). "When analyzing the degree of 'success on the merits' that a movant must demonstrate to justify injunctive relief, the Fifth Circuit employs a sliding scale involving the balancing the hardships associated with the issuance or denial of a preliminary injunction with the degree of likelihood of success on the merits." *McWaters v.*

Federal Emergency Mgmt. Agency, 408 F. Supp. 2d 221, 228 (E.D. La. 2006). "Moreover, when the other factors weigh in favor of an injunction, a showing of some likelihood of success on the merits will justify temporary injunctive relief." *Id.*

Here, Mead wins on all points: (1) On the merits, general curfews are so offensive to protected liberties that they are unconstitutional in all circumstances short of outright civil breakdown; (2) on the element on injury, deprivation of one's constitutional rights is irreparable injury for the purpose of injunctive relief; (3) on the balance of harms, the constitutional violation Mead has suffered far outweighs the potential harm to the City of Clinton, which will, at the most, have to tolerate a few more pedestrians and drivers on the street between the hours of 11PM and 6AM instead of quarantining all of its residents in their homes and stopping or arresting anyone who looks out of place; and finally (4) a preliminary injunction is consistent with the public interest in protecting fundamental liberties. Mead addresses each point in turn.

A. Mead is Likely to Succeed on the Merits

i. The Curfew Violates Mead's Fundamental Fourteenth Amendment Right to Free Movement and Travel.

Freedom of movement is a fundamental liberty interest, "kin to the right of assembly and to the right of association." *Aptheker v. Sec'y of State*, 378 U.S. 500, 520 (1964) (Douglas, J., concurring). It is such a part of this Nation's history and tradition that the Supreme Court has held repeatedly that Americans have a fundamental right to walk, stroll and wander the streets as they wish, even with no lawful purpose:

> Walkers and strollers and wanderers may be going to or coming from a burglary. Loafers or loiterers may be 'casing' a place for a holdup. Letting one's wife support him is an intra-family matter, and normally of no concern to the police. Yet it may, of course, be the setting for numerous crimes.
>
> The difficulty is that these activities are historically part of the amenities of life as we have known them. They are not mentioned in the Constitution or in the Bill of Rights. These unwritten amenities have been in part responsible for giving our people the feeling of independence and self-confidence, the feeling of creativity. These amenities have dignified the right of dissent and have honored the right to be nonconformists and the right to defy submissiveness. They have encouraged lives of high spirits rather than hushed, suffocating silence.

Papachristou v. City of Jacksonville, 405 U.S. 156, 164 (1972); *Kent v. Dulles*, 357 U.S. 116, 126 (1958) ("freedom of movement," both internally and abroad, is "deeply engrained" in our history); *Aptheker*, *supra* ("This freedom of movement is the very essence of our free society, setting us apart. Like the right of assembly and the right of association, it often makes all other rights meaningful—knowing, studying, arguing, exploring, conversing, observing and even thinking. Once the right to travel is curtailed, all other rights suffer, just as when curfew or home detention is placed on a person.") (Douglas, J., concurring).

The right to travel is equally fundamental, as a "virtually unconditional" right that is "guaranteed by the Constitution." *Shapiro v. Thompson*, 394 U.S. 618, 643 (1969) (Stewart, J., concurring); *Mem'l Hosp. v. Maricopa Cnty.*, 415 U.S. 250 (1974). The freedom to travel is "necessary for a livelihood" and is an important aspect "of the 'liberty' of which the citizen cannot be deprived without the due process of law." *Kent* at 125-26. Though earlier jurisprudence concerned the right to

travel between the states, rather than travel within a particular state, subsequent decisions have erased this distinction.

Because the curfew restricts a fundamental right, it is subject to strict scrutiny. *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997) (substantive due process "forbids the government to infringe fundamental liberty interests ... unless the infringement is narrowly tailored to serve a compelling state interest") (internal quotation marks and alteration omitted). Strict scrutiny strongly favors the individual right in question. *See Brown v. Entertainment Merchants Ass'n*, 131 S. Ct. 2729 (2011) (strict scrutiny "is a demanding standard"); *Vieth v. Jubelirer*, 541 U.S. 267, 294 (2004) (plurality opinion) (strict scrutiny imposes "a strong presumption of invalidity" with a "thumb on the scales" in favor of the individual right); *Dunn v. Blumstein*, 405 U.S. 330, 343 (1972) (under strict scrutiny, "a heavy burden of justification is on the State").

The Clinton curfew does not advance a compelling governmental interest, nor is it narrowly tailored to a specific purpose. Mead addresses each point below.

a. The curfew is not necessary to further a compelling interest.

Conditions in Clinton do not justify a general curfew. So far as Mead can discern, Clinton is not embroiled in an open war with a foreign sovereign, *Korematsu v. United States*, 323 U.S. 214, 217 (1944); *Aptheker*, 378 U.S. at 520 (Douglas, J. concurring, and noting that "War may be the occasion for serious curtailment of liberty."), or at risk of "imminent terrorist attack." *City of Indianapolis v. Edmond*, 531 U.S. 32, 44 (2000). There are no race riots going on in

Clinton, *U.S. v. Chalk*, 441 F.2d 1277, 1280 (4th Cir. 1971); nor has the town suffered a catastrophic and otherwise uncontrollable outbreak of looting and arson. *Glover v. District of Columbia*, 250 A.2d 556 (D.C. Cir. 1969). Clinton does not appear to be "ravaged by flood, fire or pestilence." *Zemel v. Rusk*, 381 U.S. 1, 15 (1965). The National Guard has not been called to Clinton, and – again, so far as Mead knows – the Mayor has not asked President Obama to send federal troops. *Glover* at 561 (noting that the legal standard for a curfew is "essentially the same as that which applies to the executive's inherent power to restore order through the use of the military."), *citing Luther v. Borden*, 48 U.S. (7 How.) 1, 2 (1849) and *Sterling v. Constantin*, 287 U.S. 378 (1932). A Category 5 hurricane has not scoured Clinton's homes and buildings from the countryside, rendering its government powerless and its residents vulnerable to roving bands of outlaws. Reports of vampire invasion[3] likely are misconstrued.

Clinton Police Chief Fred Dunn has offered *some* basis for the curfew, stating that "The main reason is we have people standing in the street. We have cars from different areas riding through the town at all times of the night . . . It's to keep the juveniles as well as the adults off the street because it's more than the juveniles that's [sic] walking and hanging in the street."[4] However, concerns over general

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[3] The popular HBO Series "True Blood," about vampires who live in the fictional town of Bon Temps, LA, is filmed partly in Clinton. "'True Blood' Season 2 Film Crew Takes Over Clinton, La., then Heads for New Orleans." *The Times Picayune*, July 13, 2009. Available at: http://www.nola.com/tv/index.ssf/2009/07/after_hbos_true_blood_took_ove.html, *last visited* July 19, 2013.

[4] "Entire Town Under Curfew for Summer Nights." *NewsRadio 1150WJBO*. June 12, 2013. Available at:

crime do not justify a broad suspension of fundamental rights. *Aptheker* at 520; *City of Indianapolis* at 43 (noting that courts are "particularly reluctant to recognize exceptions to the general rule of individualized suspicion where governmental authorities primarily pursue their general crime control ends."). Neither, certainly, do concerns about "people standing in the street" or "cars from different areas." And while the Fifth Circuit has, within the context of curfews, recognized a compelling state interest in protecting the welfare of *minors*, "whose immaturity, inexperience, and lack of judgment may sometimes impair their ability to exercise their rights wisely," *Qutb v. Strauss*, 11 F.3d 488, 492 (5th Cir. 1993), *citing Hodgson v. Minnesota*, 497 U.S. 417, 444 (1990), that interest does not extend to adults. *Id.* (upholding a curfew "directed solely at the activities of juveniles" partly because, "under certain circumstances, minors may be treated differently from adults."). Accordingly, Clinton has no compelling interest in its curfew.

b. The curfew is not narrowly tailored.

Where an ordinance subject to strict scrutiny has already been deemed unconstitutional for lack of a compelling interest, an analysis of the 'narrowly tailored' requirement is superfluous. Nevertheless, if the Court decides that Clinton has a compelling interest in its curfew, the town still must show that the curfew is narrowly tailored, *i.e.*, the least restrictive measure necessary to curtail crime. *John Doe No. 1 v. Reed*, 130 S.Ct. 2811, 2839 (2010).

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http://www.wjbo.com/articles/local-news-119442/entire-town-under-curfew-for-summer-11380949/, last visited July 23, 2013.

Clinton's curfew is not even within the realm of "narrowly tailored." It places an immense burden on fundamental rights, imposing a state of communitywide house arrest during effective hours in order to curtail, in the words of Police Chief Dunn, "people standing in the street" and "cars from different areas." It restricts the freedom of not only all of Clinton's residents, but that of anyone who may pass through Clinton, and brings within its sweep all drivers and pedestrians within the city limits, regardless of their purpose. Moreover, because general, adult curfews are unconstitutional absent a total breakdown of civil society, *Chalk*, *supra*, 441 F.2d at 1280 ("Only when local law enforcement is no longer able to maintain order and protect lives and property may the emergency powers be invoked."), there is probably no narrower way the City could have drafted the measure to make it constitutional. Accordingly, the curfew is not sufficiently narrow to survive strict scrutiny.

ii. The curfew is unconstitutionally vague

The curfew ordinance is also unconstitutionally vague. Because the city created the curfew by haphazardly and incompletely amending its juvenile curfew, it is unclear to whom the curfew applies, what is prohibited, and what defenses are available to those stopped or arrested.

It is a basic tenet of due process that "an enactment is void for vagueness if its prohibitions are not clearly defined." *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972). To avoid vagueness, an enactment must meet two requirements: it must 1) be clear enough to provide a person of ordinary intelligence notice of what

conduct is prohibited, and 2) provide standards for those who enforce its prohibitions. *Id*.

Under the first prong, "Mathematical certainty" is not required," *id*., but where "[p]eople of common intelligence must necessarily guess at the law's meaning and differ as to its application," it is unconstitutional. *Citizens United v. Federal Election Commission*, 130 S.Ct. 876, 889 (2010) (citation omitted). Indeed, where a law "fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden," it must be struck down. *Papachristou* at 162.

Under the second prong, the law must provide enforcement officials with "explicit standards." *Grayned*, 108. It cannot "encourage arbitrary and erratic arrests and convictions," *Papachristou*, 162; nor can it place "unfettered discretion . . . in the hands of the [police]," *id*. at 168, or "furnish a convenient tool for harsh and discriminatory enforcement by local prosecuting officials, against particular groups deemed to merit their displeasure." *Id*. at 170. As the *Grayned* Court noted, a law is vague under the Fourteenth Amendment where it "impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application." *Id*. at 108-109.

The curfew fails the first prong – notice of prohibited conduct – in a glaring way. The City appears to have enacted the curfew simply by amending the title of §14-2 from "Curfew for certain minors" to "Curfew for adults and certain minors," leaving the rest of §14-2 unaltered. However, the rest of §14-2 sets forth the

conditions under which the curfew can be enforced, as well as the various defenses to prosecution. As a result, figuring out exactly what's legal in the town of Clinton between 11PM and 6AM is near impossible. As just one example of such hopeless confusion, the curfew lists the various defenses a minor may raise if charged with a curfew violation:

(c) *Defenses.*

(1) It is a defense to persecution under subsection (b) that the minor was:

a. Accompanied by the minor's parent or guardian;

b. On an errand at the direction of the minor parent or guardian, without any detour or stop;

c. In a motor vehicle involved in interstate travel;

d. Engaged in an employment activity, or going to or returning home from an employment activity, without any detour or stop;

e. Involved in an emergency;

f. On the sidewalk abutting the minor's residence or abutting the residence of a next door neighbor if the neighbor did not complain to the town marshall about the minor's presence;

g. Attending an official school, religious or other recreational activity supervised by adults and sponsored by the town, a civic organization or another similar entity that takes responsibility for the minor, or going to or returning home from, without any detour or stop, an official school, religious or other recreational activity supervised by adults and sponsored by the town, a civic organization or another similar entity that takes responsibility for the minor;

h. Exercising First Amendment rights protected by the United States Constitution, such as the free exercise of religion, freedom of speech and the right of assembly; or

i. Married or had been married or had disabilities of minority removed in accordance with the law.

Complaint (Rec. Doc. 1), **Exhibit A**, p. 4; also Rec. Doc. No. 1-2, p.4. But, despite that the curfew now applies to adults as well, there is no corresponding list of defenses for adults, and some of the defenses for minors simply don't fit. May an adult charged with a curfew violation state in her defense that she was accompanied by her parents, or on an errand at the behest of her legal guardian? Is she excused from her curfew violation if she was at "an official school, religious or other recreational activity supervised by [other] adults"? If so, it's certainly not clear from language. If not – if those exceptions simply don't apply to adults (which isn't clear from the ordinance either) – then the ordinance affords minors *more protection* than adults, creating a backward result. *Qutb*, *supra* at 492.[5]

On the second prong, the curfew provides no explicit standards, and indeed seems to have been enacted for the very purpose of encouraging "arbitrary and erratic" enforcement. Again, as only one example, Police Chief Dunn recently explained to media that he "knows everyone in his small town," "knows when crimes are going to occur," and that people headed to and from work "are not stopped."[6] However, Dunn was unclear about how the curfew affects people he *doesn't* know, or how Clinton police are able to determine, before stopping a curfew violator, whether that person is headed to and from work. Because the imprecise

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[5] This hypothetical assumes, of course, that the curfew can be enforced against adults in the first place, which it can't. *See* Part III. A. i., above.

[6] Sophia Rosenbaum, "Louisiana town imposes curfew to cut crime." *NBCNews.com*, June 13, 2013. Available at: http://usnews.nbcnews.com/_news/2013/06/13/18937662-louisiana-town-imposes-curfew-to-cut-crime?lite. Last viewed July 23, 2013.

language of §14-2 allows for such selective, arbitrary enforcement, it is almost certainly unconstitutionally vague.

B. Without a TRO and Preliminary Injunction, Mead Will Be Irreparably Harmed.

Because Mead is capable of demonstrating a likelihood of success on the merits, he has necessarily satisfied the second element: irreparable harm. *Forum for Academic & Inst. Rights v. Rumsfeld*, 390 F.3d 219, 246 (3rd Cir. 2004); *see also*, 11A Fed. Prac. & Proc. Civ. § 2948.1 (2d ed.) ("When an alleged constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary.").

This is because a "[v]iolation of constitutional rights constitutes irreparable injury as a matter of law." *Springtree Apartments, ALPIC v. Livingston Parish Council*, 207 F. Supp. 2d 507, 515 (M.D. La. 2001). As the Supreme Court has noted, specifically "the loss of First Amendment freedoms, even for minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976); see also *Deerfield Medical Ctr. v. City of Deerfield Beach*, 661 F.2d. 328 (5th Cir. 1981) ("we have already determined that the constitutional right of privacy is either threatened or is in fact being impaired and this conclusion mandates a finding of irreparable injury.") The Plaintiff, among other affected individuals, has suffered irreparable harm on each day that the restrictive curfew has been in effect. The Court should prevent future injury to fundamental liberties, and issue the injunction.

C. The Injury to Mead's Fundamental Rights Outweighs Any Harm that May Result if the Injunction is Granted.

The State has no legitimate interest in enforcing an apparently unconstitutional statute. *American Civil Liberties Union v. Johnson*, 194 F.3d 1149 (10th Cir. 1999) (upholding the district court's issuance of a TRO and noting that "the threatened injury to Plaintiffs' constitutionally protected speech outweighs whatever damage the preliminary injunction may cause Defendants' inability to enforce what appears to be an unconstitutional statute.")

Here, Clinton has a valid interest in combating crime, but it cannot resort to such heavyhanded measures as a general curfew, and the harm it will suffer – a few more cars and pedestrians on the street at night, a little more investigative work by its police department – will be minimal. Conversely, without an injunction, Plaintiff will continue to face possible arrest and prosecution just for setting foot outside his home between 11PM and 6AM.

D. A TRO and Preliminary Injunction Serve the Public Interest.

The public interest is always served by ensuring the government's compliance with the Constitution and civil rights laws. See, e.g., *Valley v. Rapides Parish School Board*, 118 F.3d 1047, 1056 (5th Cir. 1997) (finding that public interest would be undermined if the unconstitutional actions of a school board were permitted to stand); *G&V Lounge, Inc. v. Mich. Liquor Control Comm'n*, 23 F.3d 1071, 1079 (6th Cir. 1994) (holding that it is always in the public interest to prevent violation of constitutional rights), and *Forum for Acad. & Inst. Rights*, *supra*, 390

F.3d at 246 ("The public interest is best served by enjoining a statute that unconstitutionally impairs First Amendment rights").

IV. CONCLUSION

For the reasons set out above, this Court should issue a temporary restraining order and preliminary injunction prohibiting Defendants from continuing to enforce the curfew.

Respectfully Submitted,

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