

CAR CRUISING: ONE GENERATION'S INNOCENT FUN BECOMES THE NEXT GENERATION'S CRIME

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*"Well she got her daddy's car
And she's cruising' through the hamburger stand now
Seems she forgot all about the library
Like she told her old man now
And with the radio blasting
Goes cruising just as fast as she can now
And she'll have fun fun fun
'Til her daddy takes the T-Bird away"*

— The Beach Boys, *"Fun, Fun, Fun"* (1964)

*"So many people wanna ride with me
bumpin' through the streets gettin' high with me"*

- Dr. Dre, *"Let Me Ride"* (1992)

I. INTRODUCTION

On Friday night, July 9, 1999, the Salt Lake City police were out in force along downtown's State Street. They were not there to issue the usual speeding and moving violation tickets, however. Rather, their purpose was to put an end to car cruising on that popular cruising strip. To do so, the police set up four checkpoints and logged the license plate number of every car that passed by between the hours of 11:00 p.m. and 4:00 a.m. When a car passed a checkpoint three times, an officer on motorcycle was dispatched to issue a citation for violating the city's new anti-cruising law, with fines starting at \$100 and going as high as \$500 for subsequent offenses.¹ At 11:11 p.m., Kenneth Larsen, a

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I See Rebecca Walsh, Lawsuit Says SLC Must Get State Permission to Ban Cruising; Anti-cruising Law Successful But Challenged, SALT LAKE TRIBUNE, July 27, 1999, at B1; Group Protests State Street Cruising Ban, ASSOCIATED PRESS, July 12, 1999. See also SALT LAKE CITY, UTAH CODE § 1.12.050(1987).

fifty-seven-year-old adjunct associate professor of medical research at the University of Utah and an outspoken Liberterian, received the first citation after he repeatedly drove his red 1979 Ford Thunderbird up and down the 400 block of State Street with his attorney in the passenger seat, waving to police and all but begging for a ticket.²

For decades, local teenagers had cruised State Street. Most of the hundreds of teenagers driving up and down State Street in 1999 probably were no different than their elders who had gone cruising in the 1950s and 1960s, looking to impress someone of the opposite sex, show off a new set of wheels or stave off the boredom of a Saturday night with nothing else to do. But the cruising scene in Salt Lake City in 1999 had some remarkable differences from its innocent past.

In the late 1990s, the State Street cruise scene attracted gang members and prostitutes from throughout Utah. Fights, robberies, homicides and sexual assaults were, in the opinion of the police, the result of the charged atmosphere created by too many people looking for fun and rebellion in too confined an area, and the situation was getting worse.³ From 1997 to 1998, according to police and City Council findings, cruising had led to over 900 reported assaults, nearly 3,000 reports of disturbing the peace and two murders.⁴ In a scene reminiscent of *West Side Story*, one of the murders involved the stabbing of a fifteen-year-old boy when two cruiser groups challenged each other.⁵ Traffic accidents on affected streets had more than doubled, in part due to intoxicated cruisers. So-called "road rage" by motorists incensed at the cruisers' behavior was on the rise. Local residents complained of loud car stereos and excessive yelling and honking.⁶

² See Alan Edwards, *Cruise-Law Tirade Batters Ear of COUNCIL*, DESERETNEWS (Salt Lake City, Utah), July 14, 1999, at A1; Nesreen Khashan, *State Street Cruiser a Loser; Court Rejects His Constitutional Appeal of Traffic Ticket*, SALT LAKE TRIBUNE, Sept. 29, 2000, at B3. Cruising was not the only issue concerning Larsen at the time; he also took issue with gun laws and marijuana laws, and, although acknowledging that he was heterosexual, he once applied with his male attorney for a marriage permit in an admitted publicity stunt to protest a ban on same-sex marriage. See Hans Camporreales, *Court Upholds S.L. Cruising Law*, DESERET NEWS (Salt Lake City, Utah), Oct. 1, 2000, at B4.

See Group Protests State Street Cruising Ban, *supra* note 1.

⁴ SALT LAKE CITY, UTAH CODE ANN. § 12.12.090(A) (1999) (Preamble).

⁵ See Alan Edwards, *S.L. May Slam Brakes On Cruising State*, DESERET NEWS (Salt Lake City, Utah), April 19, 1999, at B1.

⁶ See § 12.12.090(A) (1999) (Preamble); Alan Edwards, *A Noisy Life*, DESERET NEWS (Salt Lake City, Utah), June 13, 1999, at B1.

Reacting to the situation and to police assertions that traditional methods for battling cruising — issuing citations for traffic infractions, impounding cars, arresting those in violation of existing criminal laws — were not working, the Salt Lake City Council passed the anti-cruising ordinance, prohibiting cars from driving repeatedly (defined as driving three or more times in the same direction) past a "mobile traffic-control point" between the hours of 11:00 p.m. and 4:00 a.m. in an area identified by police as being congested.⁷ The police identified eighteen blocks of State Street, as well as nearby Main and West Temple Streets, as congested areas subject to the anti-cruising ban and designated the mobile traffic-control points.

After receiving his inaugural citation, Larsen, with the backing of the American Civil Liberties Union ("ACLU") and a citizens' coalition that marched 100-strong in protest of the ban on July 10, 1999, vowed to fight his citation in court and collected 800 names on a petition to repeal the ban. The ACLU, Larsen's attorney and the citizens' coalition initially indicated they would raise a technical point at trial: that the city was not authorized to enact the ban without permission from the Utah Department of Transportation, being that State Street was a state highway. That argument was quickly deflated, however, when the city obtained a permit, rendering the argument moot. The challengers told the press that they would raise other arguments as well, some addressing specific legal points and others addressing public policy concerns: that the law was not a wise use of police resources (twenty police officers were required to man the checkpoints); was not necessary in light of existing laws covering speeding, blocking traffic and excessive noise; was open to selective enforcement; was overbroad and vague; and gave insufficient notice of prohibited behavior.¹⁰ To the ACLU and the citizens' coalition, the politicians were blind to those facts and saw the cruising ban as a panacea." But none of those arguments persuaded the city.

⁷ See *supra* note 4. See also Walsh, *supra* note 1.

⁸ See Jennifer Dobner and Jana McQuay, *Marchers Protest Ordinance Against State Street Cruising*, DESERET NEWS (Salt Lake City, Utah), July 11, 1999, at B2; *Mayoral Candidate Presents Petition Opposing Cruising Ban*, ASSOCIATED PRESS, July 14, 1999, at B5. That year Larsen also ran for mayor of Salt Lake City and told reporters that getting ticketed for cruising was not a publicity stunt for his campaign for mayor, but rather that his campaign for mayor was a publicity stunt for his fight against the cruising ban. *Mayoral Candidate Confesses He'd Rather Cruise State Than Run for City Hall* SALT LAKE TRIBUNE, Sept. 5, 1999, at B5.

⁹ See Walsh, *supra* note 1.

¹⁰ See Edwards, *supra* note 2; Walsh, *supra* note 1.

¹¹ See Walsh, *supra* note 1. The Salt Lake City police praised the self-enforcing

Larsen's efforts to have his ticket thrown out at the trial court level were also unsuccessful. On appeal, appearing *pro se* (and apparently without the ACLU's support), Larsen argued a host of points to the Utah Court of Appeals, some of them far-fetched, but all of them echoing his basic theme that cruising and the right to move about the streets freely is an inherent right.¹² In his appellate brief, Larsen argued that the cruising ban deprived youth of their right to participate in "a rite of passage celebrating freedom, adulthood, and the authority to drive a car."¹³

Specifically, Larsen argued that the ban was an unconstitutional restriction on free speech because cruising is an expression of "youthful rebellion," that the ban was a denial of equal protection to the subculture of cruisers, and that the ban was a denial of freedom of religion because cruising is like a religious exercise "no less [deserving of] a constitutional protection of religion than is Easter egg hunting, Halloween trick-or-treating and Christmas caroling."¹⁴ Larsen also argued various other legal theories, including unenumerated constitutional rights, the constitutional right to travel and "the pursuit of happiness."¹⁵

The court tersely rejected each of Larsen's arguments in a short, unpublished memorandum decision, *Salt Lake City v. Larsen*.¹⁶ Although conceding that there might be some expressive elements in cruising, the court held that First Amendment protections only apply when there is an intent to convey a particularized message and there is a likelihood that message would be understood by those who viewed it. The expression of "youthful rebellion" asserted by Larsen, held the court, was not particularized and was not likely to be understood that way by others. Furthermore, even if it was protected speech, said the court, the ordinance was a reasonable time, place and manner restriction that was narrowly tailored during limited times and locales to serve a significant government interest in curing problems related to cruising and left open ample alternative channels for communication and alternative means of transportation (such as foot travel).¹⁷

effectiveness of the ban, reporting that traffic congestion was down, complaints from residents were down and only a few citations actually had to be handed out *See id.*

¹² *See Mayoral Candidate Confesses He'd Rather Cruise State Than Run for City Hall*, *supra* note 8, at B5. *See also* *Salt Lake City v. Larsen*, No. 20000117-CA, slip op. at 3 (UT App. 265, Sept. 28, 2000).

¹³ Khashan, *supra* note 2.

¹⁴ *SaltLakeCity, No. 20000117-CA at 3.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *See id.* at 2.

Addressing Larsen's equal protection claim, the court held that cruisers are not a suspect or quasi-suspect class, and in any event no particular person or group was singled out or targeted.¹⁸ The court dismissed without comment Larsen's claims based on freedom of religion, unenumerated rights, pursuit of happiness and the right to travel, saying only that those claims were without merit.¹⁹

Salt Lake City's response to cruising and the reactions to it evidenced many of the themes common to the cruising debate. Whether the result of fond memories of cruising as a teenager or of images of cruising in popular culture, the public today is likely to think of cruising as innocent fun, certainly not something that deserves any punishment stricter than a stern look from a disapproving adult. But the reality of cruising in many cities today is just the opposite and includes violence, excessive traffic congestion and a host of other problems. The question is, can cruising be defined and criminalized without penalizing drivers who are not cruisers in the commonly understood sense of the word?

This article examines the recent evolution of anti-cruising laws and the constitutional challenges they have faced in court. It also addresses the policy issues involved and the concerns of those who live with the laws, whether they be the cruisers who are restricted by them, the police who enforce them or the residents they are designed to protect. Section I provides a background on cruising as a social phenomenon and gives a history of its evolution from the 1940s and 1950s to today and describes an early, unsuccessful attempt in one California city to ban cruising. Section II explores constitutional challenges to more recent anti-cruising laws, including the *Lutz*²⁰ decision cited by all cruising cases following it. Section III looks at the state of anti-cruising laws today and the policy concerns at issue.

n. BACKGROUND

Salt Lake City is just one of many towns and cities across America that have anti-cruising laws on the books, and Ken Larsen is not the first and probably will not be the last cruiser to challenge an anti-cruising ban. Anti-

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See id. at 2-3. City Attorney Roger Cutler, the draftsman of the ordinance, told the press that he drafted the ordinance with equal protection concerns in mind. *See Edwards, supra* note 5.

¹⁹ *See id.* at 3.

²⁰ *Lutz v. City of York, Pennsylvania*, 899 F.2d 255 (1989).

cruising laws have been slowly gaining momentum for at least the past twenty years. Legal challenges to the wave of anti-cruising sentiment have for the most part failed, although the United States Supreme Court has yet to address the issue or the basic legal principle—the right to travel freely within a single state — that lies at the core of most of the challenges.

A. History of Cruising

It is hard to say exactly when cruising, also known as "repetitive unnecessary driving" in legal parlance, began or when it became such a pariah.²¹ Some trace cruising back to the 1940s or even 1930s,²² mostly in rural areas,²³ but it is more commonly associated with the 1950s and early 1960s. According to Jeff Tann, a past editor of *Rod & Custom* magazine, "People cruised . . . for a host of reasons, but the obvious ones were to check out the cool cars, show off your car, and try to get into races. Ultimately, though, most guys and gals cruised for social reasons."²⁴ The car became more than just transportation; it became, according to auto writer J.P. Vettraino, a "stage on which to socialize."

Thanks to films such as 1973's *American Graffiti* and 1980's *The Hollywood Knights* and musical odes to cruising such as those of the Beach Boys, the idea of cruising has been planted in our collective conscience as innocent, nostalgic fun, as described by authors Michael K. Witzel and Kent Bash in their ode to cruising, *Cruisin': Car Culture in America*:

On the biggest cruising nights, a spectator could witness plenty of chicanery, including the ubiquitous Chinese Fire Drills (a game where car occupants burst from the doors at a traffic light and run around the vehicle to change seats, annoying motorists waiting behind), cars bumping other cars, kids popping out of trunks, riders on the outside of cars, flashing headlamps, musical horns, and lane blocking.

²¹ See *Brandmiller v. Arreola*, 525 N.W.2d 353, 355 (Wis. Ct. App. 1994), *ajfd*, 544 N.W.2d 894 (Wis. 1996).

²² See J.P. Vettraino, *Cruise Control*, AUTOWEEK, Oct. 22, 1990, at 18.

²³ See Lindsay Gruson, *Cruising's Clamor Is Back on Main Street U.S.A.*, N. Y. TIMES, Oct. 5, 1986, § I, at 54.

²⁴ MICHAEL K. WITZEL & KENT BASH, *CRUISIN': CAR CULTURE IN AMERICA* 9 (Motorbooks Int'l 1997).

²⁵ Vettraino, *supra* note 22.

²⁶ WITZEL & BASH, *supra* note 24, at 127-29.

But even in the 1950s and 1960s, cruising was not always welcomed by those in authority or by local merchants. According to legend, as far back as the late 1940s, the police chief of Los Angeles was alleged to have issued an "arrest on sight" order for cruisers.²⁷ As described by Witzel and Bash;

In America, the police in general never did approve of cruising or the ruffraff and black-leather-jacketed hoodlums that the pastime supposedly attracted Cruising the strip was never an unregulated activity. Police patrols were always on hand to keep street racers in check and limit the activities of overexuberant youth. . . . Though it was heaven for cruisers, it was hell for merchants. The playful activities enjoyed by the cruisers completely jammed the main business corridor. On the busiest nights when the show was under way, cruisers took over the street and choked the economic life out of it! Crosstown travel or patronage of local businesses was impossible. Regular commuter and shopping traffic couldn't even get into the downtown area much less park[.]²⁸

The popularity of cruising leveled off in the mid-1970s owing to the gas crisis of that time.²⁹ But with the end of the gas crisis in the late 1970s, cruising returned and has appeared to gain momentum ever since. In Pasadena, California, 800 cars an hour cruised Colorado Boulevard before a cruising ban went into effect in 1999. On Whittier Boulevard in Pico Rivera, California, 5,000 cars a night came to cruise, at least until the city penalized cruising with six months in jail and a fine of up to \$1,000 in 1999. Not to be shown up by its neighbor to the North, South Bristol Street in Santa Ana, California, attracted 8,000 cars each Sunday night until police cracked down in 1996.³⁰ And in Modesto, California, a rural town in central California and the setting for the movie *American Graffiti*, a once-a-year ritual known as "Graffiti Night" inspired by the movie sometimes attracted up to 60,000 cruisers on thirty blocks of McHenry Avenue.³¹

²⁷ See Gruson, *supra* note 23,

²⁸ WITZEL & BASH, *supra* note 24, at 67, 85, 127-29.

²⁹ See Gruson, *supra* note 23,

³⁰ See Hugo Martin, *Cruise Control; From Whittier Boulevard to the Valley, the See-and-Be Seen Ritual of Youths and Their Cars is Being Curbed by Police*, LOS ANGELES TIMES, Sept. 24, 1999, at B2. For a discussion of the popularity of Sunday nights for cruising, see Michael Connelly, *Officials Try to Put Brakes on Cruising in Pacoima; Laurel Canyon Blvd.: The Arrival of Gangs — and Violence — Has Prompted LA. Police to Propose a Ban*, LOS ANGELES TIMES, March 1, 1992, at B3. See also *infra* note 34 and accompanying text.

³¹ See Patrick Goldstein, *American Graffiti, Still Cruisin' After All These Years*, LOS ANGELES TIMES, June 22, 1986, at 3. Modesto was an oasis for cruisers and drag racers,

Today's cruisers come in a variety of flavors: low riders whose chassis ride just inches off the ground; pick-up truck cruisers on huge wheels and jacked up suspensions; mini-truck cruisers (a sort of marriage of the low rider and pick-up truck cruiser); classic car cruisers (who tend to be older and cruise to show off their expensively restored classic cars); muscle car cruisers; Euro cruisers driving customized imports and Harley-Davidson motorcycle cruisers.³²

No one can say for certain why cruising's popularity increased so dramatically starting in the late 1970s or early 1980s. Some guess that it had something to do with automobile ownership becoming more accessible to teenagers,³³ but cruising has different faces depending on where it occurs, and no one explanation suffices. On many cruising strips, for example, the popularity of cruising comes from its embrace by Hispanic culture, typically on Sunday nights.³⁴ Hispanic culture, which has typically looked to the street as a meeting place, embraced low rider cruising in the late 1960s as an expression of cultural pride, coinciding with the civil rights movement.³⁵ Recently, Hispanic cruisers have been some of the staunchest supporters of the right to cruise, marching against a ban in Phoenix in 1996³⁶ and meeting with police and local business leaders in Santa Fe, New Mexico, in 1998 to come up with a solution to the cruising problem that would allow cruisers to keep cruising.³⁷

In some areas, cruising's embrace by gangs accounts for its increased numbers, as witnessed in Salt Lake City and other places, including the obvious, like Los Angeles,³⁸ and the not-so-obvious, like rural Modesto.³⁹

attracting the faithful from all over Northern and Central California. *See also* Vettraino, *supra* note 22. By the 1980s the traffic was so dense that it could take 30 minutes to travel one mile. Fights, prostitution and drugs were all on the increase on account of cruising, according to the Modesto police. Local businesses complained that the cruisers were scaring off their customers. In reaction, in the Spring of 1990 the Modesto city council empowered police to prohibit cruising anytime they declared a "cruise situation" to exist. *Id.* at 19-20.

³² *See* Gruson, *supra* note 23; Martin, *supra* note 30.

³³ *See* Matthew Fernandes, *With Spring Comes Teens Cruising, Others to Stop It*, ST. LOUIS POST-DISPATCH, March 16, 2000, at 1.

³⁴ The popularity of Sunday nights for cruising is not limited solely to Hispanics, as evidenced by well known rapper Snoop Doggy Dogg, who sang in *Gin & Juice #2*, "I got a crew, but I choose to roll solo; Especially on Sundays dippin' in my low-low." SNOOP DOGGY DOGG, *Gin & Juice #2*, on DA GAME IS TO BE SOLD, NOT TO BE TOLD (Priority Records 1998).

³⁵ *See* Elizabeth Barker, *Cruising the High Road; Low-riders Battle Image as Lowlifes*, ARIZONA REPUBLIC (Phoenix, Ariz.), May 26, 1996, at B1.

³⁶ *See id.*

³⁷ *See* David Holmstrom, *Cruising Chrome, Culture, Conflict On the Streets of Santa Fe*, CHRISTIAN SCIENCE MONITOR, Aug. 26, 1998, at B1.

³⁸ Scott Armstrong, *Colliding into Tough New Law*, SAN DIEGO UNION-TRIBUNE, Aug. 11,

B. Social Ills of Cruising

Whatever the genesis of cruising's popularity, problems seem to follow. Some of the problems are the natural outcome of having too many cars driving the same street at the same time: congestion, moving violations, lack of access for emergency vehicles, pollution, danger to pedestrians and excessive noise from car engines and stereos. Other problems are not necessarily the result of cruising but seem to follow: fights, underage drinking, crime, prostitution, profanity and public urination. As observed by an Omaha, Nebraska, Councilman in 1999, "Unfortunately, this is not the '50s and '60s... [T]he joy of riding up and down the street has been replaced by a time when, unofficially, one in every five cars has a handgun in it."⁴⁰

None of the problems in themselves are particularly unique or without traditional remedies. Laws exist on the books of almost every state and municipality prohibiting battery, excessive noise, reckless driving, prostitution and public urination. Congestion can be combated by diverting traffic or by closing streets to all but emergency vehicles. But enforcing those laws can be expensive and time-consuming for local police. With the rise in popularity of cruising, states and city governments began looking at ways to prohibit cruising itself, not just its by-products. The problem was how to define cruising.

C. California — Early Attempts to Ban Cruising

Los Gatos, California, located midway between San Jose and Santa Cruz, came up with an early attempt to define and ban cruising in the early 1980s. The Los Gatos Town Code defined cruising as "driving a motor vehicle on a highway (1) for the sake of driving, without immediate destination, (2) at random, but on the lookout for possible developments, or (3) for the purposes of (a) sightseeing repeatedly in the same area, and (b) while driving with the purpose of socializing with other motorists or pedestrians" and made it illegal to do so in the central business district.⁴¹ Michael Aguilar, age twenty, was issued two citations for cruising in May and June of 1980.⁴² After Aguilar was unsuccessful in asking the Municipal Court to throw out the citations and failed to obtain a writ of prohibition from the Superior Court, the ACLU appealed on

1988, at B20.

³⁹ See Miles Corwin, *Modesto Made it Immortal but Now May Ban Cruising*, LOS ANGELES TIMES, Feb. 6, 1990, at A1; Vettraino, *supra* note 22.

⁴⁰ Gary Newman, *Council Tells Car Lover: You Cruise, You Lose*, OMAHA WORLD-HERALD (Omaha, Neb.), June 15, 1999, at 15.

⁴¹ See *Aguilar v. Mun. Court*, 130 Cal. Rptr. 516, 517 (1st Dist. 1982).

⁴² See *National News Briefs*, UNITED PRESS INTERNATIONAL, March 25, 1982.

behalf of Aguilar, citing various claims under both the United States and California Constitutions.⁴³ The Court of Appeals, in *Aguilar v. Municipal Court*,⁴⁴ found it unnecessary to reach the constitutional issues, however, holding that state law preempted the ordinance because it was not expressly authorized by statute. At that time, the California Vehicle Code preempted any local traffic law unless expressly authorized by the California legislature. The court rejected the town's assertion that the cruising ban was authorized by a particular statute that allowed cities to adopt rules regulating "processions and assemblages," pointing out that the authorizing statute only applied to group activities, whereas the anti-cruising ordinance regulated individual drivers.⁴⁵

Although the court did not reach the constitutional issues, it is highly probable that, if the court had done so, the ordinance, with its definition of cruising as driving "without immediate destination" or "on the lookout for possible developments" or for "sightseeing,"⁴⁶ would have been found unconstitutional for vagueness under United States Supreme Court precedent addressing loitering and vagrancy statutes.⁴⁷

Following on the heels of *Aguilar*, and possibly in response to it, the California legislature, after declaring that cruising "interferes with the conduct of business, wastes precious energy resources, impedes the progress of general traffic and emergency vehicles, and promotes the generation of local

⁴³ *See id.*

⁴⁴ 130 Cal. Rptr. 516 (1st Dist. 1982).

⁴⁵ *See id.* at 517-18.

⁴⁶ *See id.*

⁴⁷ *See* *Kolender v. Lawson*, 461 U.S. 352 (1983) (city loitering ordinance required people who loitered or wandered on the streets to provide a credible and reliable identification and account for their presence when requested by police; held unconstitutionally vague because it encouraged arbitrary enforcement by failing to clarify what is contemplated by the requirement of credible and reliable identification); *Papachristou v. City of Jacksonville*, 405 U.S. 156, 162 (1972) (city vagrancy ordinance prohibited persons wandering or strolling around from place to place without any lawful purpose or object; held void for vagueness because it did not give a person of ordinary intelligence fair notice that his or her contemplated conduct was prohibited by the ordinance, and because it encouraged arbitrary and erratic arrests and convictions). *See also* *City of Chicago v. Morales*, 527 U.S. 41 (1999) (pursuant to a Chicago ordinance, if a police officer observed a person reasonably believed to be a gang member and other people remaining in any one public place with no apparent purpose, the officer could order them all to disperse, and failure to disperse promptly was deemed a criminal offense; held void for vagueness because it failed to establish standards for the police and public that are sufficient to guard against the arbitrary deprivation of the public's liberty interests).

concentrations of air pollution and undesirable noise levels, unanimously adopted a statute authorizing municipalities to adopt ordinances prohibiting cruising.⁴⁹ Perhaps aware of the potential constitutional issues that likely would have arisen from a statute like that adopted by Los Gatos, the California legislature adopted a detailed definition of cruising that focused on the behavior, rather than the mental state, of the driver. The statute defined cruising as:

[T]he repetitive driving of a motor vehicle past a traffic control point in traffic which is congested at or near the traffic control point, as determined by a peace officer, within a specified time period and after the vehicle operator has been given an adequate written notice that further repetitive driving will be a violation of the ordinance or resolution.⁵⁰

As a safeguard, the California statute required that signs citing the no-cruising restriction must be clearly posted at the beginning and end of the no-cruising zone.⁵¹ The statute originally required the driver to drive past the traffic control point at least twice before the written notice could be given (i.e., only the third trip could earn a citation), but that requirement was removed in 1984.⁵² Thus, in California a simple roundtrip to the market could be subject to citation should a local municipality choose to adopt such a definition of cruising. San Diego's Municipal Code does just that, defining cruising as simply driving past the same traffic control point twice within six hours.⁵³ Los Angeles, on the other hand, requires that one drive past a traffic control point two or more times in the same direction in a six-hour period, thus permitting one roundtrip, but not the next pass.⁵⁴

⁴⁸ CAUVEH. CODE §21100(1) (West 1982).

⁴⁹ See A.B. No. 2579, 1982 Gen. Assem. (Cal. 1982).

⁵⁰ §2M00(2)(k).

⁵¹ See §21100(2)(k).

⁵² See *id.*

⁵³ SAN DIEGO, CA, MUNICIPAL CODE § 12.08.135 (1984).

⁵⁴ City Of Los ANGELES, CA, MuNiciPALCoDE §80.36.10(1997). When the Los Angeles City Council put to a vote the current version of the ordinance in 1988, some council members expressed concern that it was "overkill." Nevertheless, the ordinance passed unanimously. See Ted Vollmer, *LA. Council Passes Measure to Put Brakes on Cruising*, LOS ANGELES TIMES, July 27, 1988, Part 2, at 3.

III. CONSTITUTIONS CHALLENGES

Following the California example, a host of cities and states began adopting statutes and ordinances defining and banning cruising. Like the California statute, the new breed of anti-cruising laws focus on driving behavior rather than just the driver's purpose (or lack of it) and impose stiff fines for violations.⁵⁵ These laws have enjoyed substantial acceptance by the courts.

A. *Lutz—Establishment of the Right of Intrastate Travel in The Cruising Context*

An ordinance adopted by the town of York, Pennsylvania, in 1988, typified the new breed of anti-cruising law. The ordinance defined cruising generally as "unnecessary repetitive driving" and specifically as "driving a motor vehicle on a street past a traffic control point, as designated by, the York City Police Department, more than twice in any two (2) hour period, between the hours of 7:00 p.m. and 3:30 a.m."⁵⁶ The fine was set at fifty dollars and was to be imposed on the owner of the car if he or she was in the car at the time of citation, otherwise the driver was to be cited. Exceptions were made for municipal and commercial vehicles and public transportation vehicles.⁵⁷

Passage of the ordinance was based on legislative findings that cruising caused dangerous traffic congestion, excessive noise and pollution, and prevented access for emergency vehicles through affected areas. Police testified that congestion between 9:00 p.m. and 11:00 p.m. on a Friday night was as bad as congestion during the afternoon rush hour, that traffic could be backed up for five blocks, that police cars responding to calls would often have to drive on the sidewalk, and that cruisers would often stop in the middle of the street to talk to pedestrians or the occupants of other cars.

When the anti-cruising law was challenged in court, however, it was not a cruiser like Michael Aguilar or a civil libertarian like Ken Larsen who challenged it. It was not even a cruiser cited for violating the ordinance.

⁵⁵ Los Angeles, for example, imposes a fine of \$100 for the first violation, \$200 for the second violation in one year and \$250 for the third and subsequent violations in one year. § 80.36.10(1997).

⁵⁶ See *Lutz v. City of York*, 692 F. Supp. 457, 457-58 (M.D. Pa. 1988), *affd*, 899 F.2d 255 (3d Cir. 1990).

⁵⁷ See *id.*

⁵⁸ See *id.* at 460; Paul Reidinger, *Off Road: Right to Travel, but Not to Cruise*, 6 A.B. A. J. 82 (July 1990).

Rather, David Lutz, an after-market auto equipment dealer who sold parts favored by cruisers, sued the City of York in federal court, seeking a preliminary injunction to stop the ban from doing damage to his business. The case would eventually find its way to the Federal Court of Appeals for the Third Circuit and would set the legal framework for virtually all cruising cases that would follow.

In his lawsuit, Lutz argued that the ordinance violated the constitutional rights of travel and association and was overbroad.⁵⁹ Addressing the right of travel, the federal trial court in *Lutz* refused to accept that travel within a state (as opposed to interstate travel, such as for purposes of migration from state to state) is a separately recognized constitutionally protected right.⁶⁰ However, the court accepted that the right to "go where one pleases, and to use the public streets in a way that does not interfere with the personal liberty of others" is implicit in the concept of ordered liberty and protected by substantive due process under the Fourteenth Amendment.⁶¹ The court rejected the City's argument that such liberty interest goes away just because one is driving a car rather than walking.⁶² The court refused, however, to accept that cruising, which the court described as a right "to use the streets for the purposes of amusement only," implicated any fundamental right of travel, although the court hinted that such a right of intrastate travel might exist but only in the context of migrating from one part of a state to another.⁶³

Because the court refused to find that cruising implicated any fundamental right of intrastate travel, it applied a rational basis standard of review and found that the ordinance was a rational attempt to deal with the City's legitimate interest in the "orderly flow of motorized traffic."⁶⁴ The court refused to accept Lutz's arguments that the City singled out cruising by not imposing similar restrictions on rush hour traffic and that cruising could have been more effectively dealt with by enforcing existing traffic regulations such as prohibitions against double parking and blocking traffic. Such arguments went to the wisdom of the ordinance, not its constitutionality, said the court.⁶⁵

⁵⁹ See *Lutz*, 692 F. Supp. at 458.

⁶⁰ See *id.* at 460.

⁶¹ See *id.* at 458.

⁶² See *id.* at 459.

⁶³ See *id.* at 460-61.

⁶⁴ See *id.* at 460.

⁶⁵ See *id.*

The court also rejected Lutz's freedom of association claim, which Lutz based on the fact that cruisers cruise, in part, to meet and socialize with others. The court found that the cruising ban did not affect either of two freedom of association protections: the protection against unjustified government interference with an individual's choice to enter into and maintain intimate or private relationships, and the right to associate for the purpose of engaging in protected speech or religious activities.⁶⁶

Lutz argued that the ordinance was overbroad because it could ensnare those who violated it through innocent conduct. In support of his argument, he presented the testimony of a resident who testified that she passed a traffic control point three times in two hours while running legitimate errands (and thus ostensibly violating the ordinance).⁶⁷ The court rejected the overbreadth argument, holding that Lutz failed to establish the existence of the requisite chilling effect on First Amendment rights required under constitutional overbreadth analysis.⁶⁸

On appeal, the Third Circuit, in *Lutz v. City of York*?⁶⁹ affirmed the lower court's validation of the York anti-cruising law but also crafted a new, heightened standard of review for anti-cruising laws. Citing a Second Circuit case, *King v. New Rochelle Municipal Housing Authority*, which found a right to intrastate travel in the context of a durational residency requirement for public housing eligibility,⁷¹ as well as Supreme Court loitering and vagrancy

⁶⁶ See *id.* at 459.

⁶⁷ See *id.* at 461.

⁶⁸ See *id.*

⁶⁹ 899 F.2d 255 (3d Cir. 1990).

⁷⁰ 442 F.2d 646 (2d Cir. 1971) (holding that requirement of residing in municipality for five years before being eligible for public housing violated the right of intrastate travel, relying on, *inter alia*, *Shapiro v. Thompson*, 394 U.S. 618 (1969)).

⁷¹ The *Lutz* court relied substantially on *King* after noting that the Third Circuit's own precedent on intrastate travel was not helpful. The *Lutz* court could only point to two Third Circuit cases on the subject: *Wellford v. Battaglia*, 343 F. Supp. 143 (D. Del. 1972), *affd*, 485 F.2d 1151 (3d Cir. 1973) (invalidating municipal five-year durational residency requirement as prerequisite for eligibility to run for town mayor) and *Hague v. Comm. for Indus. Org.*, 101 F.2d 774 (3d Cir. 1939), *modified* 307 U.S. 496 (1939) (involving heavy-handed attempts by Jersey City, New Jersey, authorities to prevent union organizers from coming into the city). Although the *Wellford* court invalidated the city charter requirement in question because it burdened both intrastate and interstate travel, the *Lutz* court felt that it was not good precedent because of the interstate travel element, not found in the case before the *Lutz* court. See *Lutz*, 899 F.2d at 261 n. 16. *Hague* held that the actions of Jersey City authorities violated the "right of locomotion... of free transit from or through the territory of any state." 101 F.2d at 780-81 (citing *Williams v. Fears*, 179 U.S. 270 (1900)). However, as pointed out by the *Lutz* court, the *Hague* court held

cases⁷² that did not explicitly mention the right of intrastate travel but from which the *Lutz* court found implicit support, the court held that the York cruising ban implicated an unenumerated fundamental right of intrastate travel that exists under substantive due process under the Fourteenth Amendment and is "implicit in the concept of ordered liberty" and "deeply rooted" in the country's history.⁷³ The court's finding of a right of intrastate travel was a substantial expansion of the right, which had generally only been applied previously in the context of so-called migration cases involving durational residency requirements; in contrast, the *Lutz* court made clear that the right also extended to laws affecting movement generally, regardless of residence.⁷⁴

such right to exist under the Privileges and Immunities Clause of the Fourteenth Amendment, a notion that was discredited by the Supreme Court on certiorari, which stated that such "natural rights" are not protected by the Fourteenth Amendment's Privileges and Immunities Clause, which only concerns equal application of state privileges and immunities to residents and non-residents of a state. *Hague*, 307 U.S. at 511. Thus, according to the *Lutz* court, *Hague* was also not useful precedent. Mat 261.

⁷² See *Kolender v. Lawson*, 461 U.S. 352 (1983); *Papachristou v. City of Jacksonville*, 405 U.S. 156 (1972). The two cases were decided under the void-for-vagueness doctrine, but both contained language in *dicta* referring directly and indirectly to a generalized freedom of movement. 461 U.S. at 358; 405 U.S. at 164. For a discussion of these cases, see *supra* note 47.

⁷³ See *Lutz*, 899 F.2d at 267. In holding that a right of intrastate travel exists, the *Lutz* court went against numerous courts that had rejected such a right. Each of such cases, however, involved residency requirements for city employees, rather than *durational* residency requirements for receipt of governmental benefits. See *Eldridge v. Bouchard*, 645 F. Supp. 749 (W.D. Va. 1986), *affd without op.*, 823 F.2d 546 (4th Cir. 1987) (holding that there is no right of intrastate travel in situations other than those involving durational residency requirements); *Andre v. Bd. of Tr.*, 561 F.2d 48 (7th Cir. 1977) (rejecting challenge to residency requirement for municipal employees on the ground that the right of intrastate travel only applies in challenges to durational residency requirements); *Wardwell v. Bd. of Educ.*, 529 F.2d 625 (6th Cir. 1976) (upholding municipal residency requirement for Cincinnati teachers using rational basis review since no fundamental right was involved); *Wright v. City of Jackson*, 506 F.2d 900 (5th Cir. 1975) (refusing to find right of intrastate travel in suit by firefighters who objected to requirement that they live in the employer city); *Ector v. City of Torrance*, 514 P.2d 433 (Cal. 1973) (holding that there is no right of travel implicated by a residency requirement for city employees because it is reasonable to expect residency as a prerequisite to receipt of the benefit of employment); *Ahem v. Murphy*, 457 F.2d 363 (7th Cir. 1972) (rejecting equal protection challenge to Chicago ordinance requiring police officers to reside in the city).

⁷⁴ See *Lutz*, 899 F.2d 268. Cases involving curfew laws were perhaps the best factual analogy to cruising cases among intrastate travel cases decided prior to *Lutz* in that curfew laws, like cruising laws, restrict generalized movement within a state and target a demographic population only slightly younger than the demographic population most affected by cruising laws. Curfew laws present significantly different issues than anti-cruising laws, however, and the case law on curfews prior to *Lutz* was not entirely consistent, nor was it cited by *Lutz*. For a

The court refused, however, to apply a strict scrutiny test to the right of intrastate generalized movement, which would have required that the restriction be necessary to promote a compelling governmental interest. In seeking to fashion the appropriate level of scrutiny for generalized movement intrastate travel cases, the court disregarded the application of strict scrutiny in *King* and in a long line of interstate travel cases involving migration issues decided by the Supreme Court, including *Shapiro v. Thompson*? Rather, the court drew an analogy to the First Amendment's time, place and manner doctrine typically applied to content-neutral restrictions on speech in public forums. The court did so not because anti-cruising laws implicate any First Amendment issues, but rather because the time, place and manner doctrine similarly deals with a right that, although fundamental, cannot necessarily be exercised with complete discretion by the public. If the expressly enumerated right of free speech could be qualified, then so could the unenumerated right of intrastate travel, said the court.⁷⁶ The court added that the concerns driving the time, place and manner doctrine similarly apply to localized travel — in each case a right may be protected by the Constitution but nevertheless cannot be exercised whenever, wherever and however one pleases, or the result would be chaos.⁷⁷ In the free speech context, that meant the government could impose reasonable content-neutral time, place and manner restrictions on speech in public places, and in the localized travel context the government could impose reasonable time, place and manner restrictions on the use of public highways.⁷⁸ Thus, the proper test, held the court, was one similar to the First Amendment's intermediate scrutiny test, requiring that the restriction be narrowly tailored to serve a significant governmental interest, but need not be the least restrictive means of serving that interest.⁷⁹

discussion of the prior curfew cases, see *infra* note 82 and accompanying text, as well as note 94.

⁷⁵ 394 U.S. 618 (1969).

⁷⁶ S<?*Z*/z,899F.2dat269.

⁷⁷ *See id.*

⁷⁸ *See id.*

⁷⁹ *See Lutz*, 899 F.2d at 269-70 (citing *Bd. of Trs. v. Fox*, 492 U.S. 469 (1989) (upholding state university ban on demonstrations and sales of house wares in student dormitories)); *see also Clark v. Cmty. for Creative Non-Violence*, 468 U.S. 288 (1984) (upholding denial of camping permit to demonstrators for the homeless who wished to camp in a "symbolic tent city" on the Washington Mall). It is worth noting that the *Lutz* court failed to analogize to another requirement of the First Amendment's time, place and manner doctrine — the requirement that ample alternative channels for communication be left open. *See Clark*, 468 U.S. at 293. Had the *Lutz* court addressed that element, however, it would have been unlikely to have helped Mr. Lutz's case, because the York anti-cruising law, although restricting some forms of driving, did not prevent getting from one place to another. The *Lutz* court noted that the First Amendment's

One commentator has criticized *Lutz* for ignoring its own cited precedent and applying intermediate scrutiny, not strict scrutiny, despite labeling intrastate travel a fundamental right.⁸⁰ The commentator points out that each of the intrastate travel cases cited by *Lutz*, as well as a host of other intrastate travel cases not cited by *Lutz*, had held the right to be fundamental and had applied strict scrutiny.⁸¹ However, each of those cases involved municipal residency requirements found to burden the ability to migrate, something traditionally protected by the rights of interstate and intrastate travel. *Lutz*, in contrast, did not involve the ability to migrate but rather involved a restriction on generalized movement and did not discriminate between residents and nonresidents. Its facts were thus closer to other intrastate travel cases restricting generalized

strict scrutiny test applicable to content-specific restrictions was not the proper analogy, because the purpose of applying a strict scrutiny test to content-specific speech restrictions is to weed out invidious distinctions between forms of speech, while anti-cruising laws make no invidious distinctions (among drivers or otherwise, since all persons are subject to the laws).

⁸⁰ See Andrew C. Porter, *Toward a Constitutional Analysis of the Right of Intrastate Travel*, 86 Nw. U. L. REV. 820 (1992). The author argues that it was inconsistent for the *Lutz* court to say that intrastate travel is a fundamental right and then apply a test that gave it the status of a quasi-fundamental right. See *id.* at 852. Until the Supreme Court holds otherwise, says the author, all travel cases should be decided under strict scrutiny. See *id.* at 857. The author also argues that it was improper for the *Lutz* court to draw an analogy to the First Amendment when the closer analogy was the right of interstate travel. See *id.* at 855. The article, published in 1992, predicted that *Lutz* would lead to a large volume of litigation over cruising cases, and that the central issue would be the right of intrastate travel. See *id.* at 856. The author was only partially correct; as will be discussed subsequently, cruising cases after *Lutz* (all state court cases) accepted the right of intrastate travel and adopted *Lutz's* intermediate scrutiny test without much further thought.

⁸¹ See, e.g., *King v. New Rochelle Mun. Hous. Auth.*, 442 F.2d 646 (2d Cir. 1971) (invalidating municipal durational residency requirement as prerequisite to apply for public housing); *Stoner v. Miller*, 377 F. Supp. 177 (E.D.N.Y. 1974) (finding no compelling state interest in local ordinance denying mentally ill persons the right to reside in city hotels); *Wellford v. Battaglia*, 343 F. Supp. 143 (D. Del. 1972), *affd.*, 485 F.2d 1151 (3d Cir. 1973) (invalidating five-year municipal durational residency requirement as prerequisite for eligibility to run for town mayor; in *dicta* court pointed out that strict scrutiny might not be required for an intrastate travel case involving "only" travel but not a burden on migration); *Krzewinski v. Kugler*, 338 F. Supp. 492 (D.N.J. 1972) (upholding municipal residency requirement for city police and firemen); *Cole v. Hous. Auth. of Newport*, 312 F. Supp. 692 (R.I. 1970), *affd.*, 435 F.2d 807 (1st Cir. 1970) (holding void a municipal durational residency requirement as prerequisite to apply for public housing); *Eggert v. City of Seattle*, 505 P.2d 801 (Wash. 1973) (invalidating municipal one year residency requirement as prerequisite to apply for city employment); *Donnelly v. City of Manchester*, 274 A.2d 789 (N.H. 1971) (invalidating municipal residency requirement for city employees). In only one of the cases did the government restriction in question survive strict scrutiny. See *Krzewinski v. Kugler*, 338 F. Supp. 492 (D.N.J. 1972) (involving city residency requirement for municipal police officers).

freedom of movement, such as curfew cases and police roadblock cases, which had been inconsistent in the standards of review applied.⁸²

Applying its newly announced test to the facts, the *Lutz* court found that the York ordinance was a reasonable time, place and manner restriction on intrastate movement. The City, said the court, had a significant interest in ensuring public safety and reducing congestion, and the ordinance was limited to only those streets affected by cruising, left open alternative routes and did not prohibit driving to the affected area and then walking.⁸³

The *Lutz* court nevertheless acknowledged that the York ordinance was problematic in many ways. The ordinance applied on weekday nights, when cruising was generally not a problem, and most of cruising's ills were already addressed by existing traffic laws. However, the court pointed out that while those arguments would prevail under a strict scrutiny test, they were irrelevant

⁸² See *Bykofsky v. Borough of Middletown*, 401 F. Supp. 1242 (M.D. Pa. 1975), *affid without op.*, 535 F.2d 1245 (3d Cir. 1975). In *Bykofsky*, the court held that the curfew at issue implicated both the rights of freedom of movement and intrastate travel (which it deemed identical), saying, "The rights of locomotion, freedom of movement, to go where one pleases, and to use the public streets in a way that does not interfere with the personal liberty of others are basic values 'implicit in the concept of ordered liberty' protected by the due process clause of the fourteenth amendment." 401 F. Supp. at 1254 (citing *United States v. Wheeler*, 254 U.S. 281 (1920)). Although the court found that intrastate travel is a liberty interest, the court refused to label it a fundamental right and thus refused to apply strict scrutiny in the context of the plaintiffs' equal protection challenge. Instead, the court applied a kind of quasi-rational basis review in which it looked to see whether the curfew was reasonable, with reasonableness being determined by balancing the city's legitimate interests against the burden on minors' right of movement. *See id.* at 1255. It was not clear whether the court reached this conclusion on the basis that the plaintiff was a minor. Although the court stated that the rights of minors could be regulated more than the rights of adults, the court did not explicitly state whether its standard of review was to apply only to minors. *See id.* at 1257. *See contra* *Waters v. Barry*, 711 F. Supp. 1125 (D.C. 1989) (juvenile curfew nearly identical to that at issue in *Bykofsky* struck down under strict scrutiny on the grounds that a fundamental liberty interest was involved; the court explicitly rejected *Bykofsky* as precedent, although the right of interstate travel was not addressed nor was the word "travel" explicitly mentioned by the *Waters* court). See also *New Jersey v. Barcia*, 549 A.2d 491 (N.J. Super. 1988), *affid* 562 A.2d 246 (N.J. 1989), involving a police roadblock in Fort Lee, New Jersey, to check for intoxicated drivers coming off the George Washington Bridge from New York. Finding that a fundamental liberty interest in travel was involved, the court applied strict scrutiny and held that the traffic jam of one million cars created by the roadblock was unconstitutionally unreasonable. (Although the court did not distinguish whether interstate or intrastate travel was at issue, neither did it say anything to limit its holding to interstate travel despite the presence of an interstate element insofar as the roadblock was near the state border.) *See id.* at 502.

⁸³ *See Lutz*, 899 F.2d at 270.

under the intermediate scrutiny test, which does not require the least restrictive means.

B. Scheunemann —Acceptance of the Lutz Intermediate Scrutiny Test

A year after the *Lutz* decision in Pennsylvania, the City of West Bend, Wisconsin, about an hour drive north of Milwaukee, experienced its own problems with cruising. Police received increasingly frequent reports from residents about cruisers who drove Main Street after 8:00 p.m. The complaints included the usual ills of cruising: traffic congestion, safety hazards, traffic violations, noise, profanity, public alcohol consumption and public urination. The troublemakers included drivers, their passengers and pedestrian onlookers. The police tried increasing their enforcement of existing traffic laws, but that did not lower the number of complaints. After six months of weathering the problem, the City passed an anti-cruising ordinance.

The West Bend ordinance differed markedly from the ordinance passed in York, Pennsylvania, in that it required a specific intent to repetitively drive without a necessary purpose and contained safeguards so that it would not snare those non-cruisers who innocently violated the law.⁸⁵ Nevertheless, Kevin

⁸⁴ See *Lutz*, 899 F.2d at 269. The court also rejected the plaintiffs overbreadth argument on the grounds that the overbreadth doctrine only applies in the First Amendment context *See id.* at 271. (One could question why the court refused the First Amendment analogy in the overbreadth context but accepted it in the context of determining the proper level of scrutiny). The plaintiff did not raise his lower court freedom of assembly argument because of negative Supreme Court precedent that came down before the appeal. *See City of Dallas v. Stanglin*, 490 U.S. 19 (1989) (upholding age restrictions at dance halls, because the First Amendment does not give a general right of "social association" without any expressive element).

⁸⁵ The ordinance defined cruising as:

[D]riving a motor vehicle in the same direction past a traffic control point on a street in the designated area three (3) or more times within a two (2) hour period between the hours of 8:00 P.M. and 4:00 A.M. in a manner and under circumstances manifesting a "purpose" of unnecessary, repetitive driving in such area. Among the circumstances which may be considered in determining whether such purpose is manifested are that such person or any other person present in the vehicle attempts to gain the attention of other motorists or pedestrians or engages them in conversation, whether by hailing, arm waving, horn blowing, or another action or device; that such person or any other person present in the vehicle enters or exits the vehicle directly from or to another vehicle driven in or parked in close proximity to the designated area; that such person or any other person present in the vehicle violates state or municipal traffic regulations or municipal ordinance; or that such person has declared his or her purpose for driving to be that of cruising. The violator's conduct must be such as to demonstrate a specific intent to cruise. No arrest shall be made for a

Scheunemann, a nineteen-year-old Dairy Queen delivery driver, despite claiming he was delivering ice-cream cakes while on the job, was ticketed for cruising. Incensed at what he considered a waste of tax money and police time, Scheunemann organized a protest of 200 drivers and an equal number of pedestrians that brought traffic to a standstill on a subsequent Saturday night. Telling the crowd to "test the ban, get ticketed, take it to court and take it from there," Scheunemann took his own advice and along with four others sought a declaratory judgment in Wisconsin Circuit Court that the ordinance was unconstitutional.⁸⁶ The Circuit Court upheld the constitutionality of the ordinance, and the plaintiffs appealed.

On appeal, the plaintiffs raised three arguments: that the ordinance violated state precedent that held traffic laws could not have a discriminatory application; that the ordinance was unconstitutionally overbroad under the First Amendment right of assembly; and that the ordinance violated the right of intrastate travel.⁸⁸ Addressing the state law argument, the appellate court in *Scheunemann v. City of West Bend*⁹ held that the ordinance regulated all motorists uniformly and thus was not discriminatory.⁹⁰ To the overbreadth

violation of this section unless the arresting officer first affords an opportunity to explain such conduct; and no person shall be convicted of violating this section if it appears at trial that the explanation given was true and disclosed a lawful purpose, not unnecessary, repetitive driving. Lawful purposes include traveling to a specific destination by a person whose residence address is in the designated area or by a person whose business or employment requires driving in the designated area, and operating an official emergency or police vehicle in the designated area.

Scheunemann v. City of West Bend, 507 N.W.2d 163,165 (1993) (citing WEST BEND, WIS., ORDINANCES § 7.131 (1992)).

⁸⁶ See *Hundred's Defy Town's Anti-cruising Ordinance*, CHI. TRIB., July 22, 1991, at 3; Deirdre R. Schweisow, *The Gen X Philosophy*, USA TODAY, July 26, 1995, at A1. At the time of the writing of this article, Scheunemann, now 29, owns two of his own Dairy Queen franchises and is serving a one-year term on the Village Board of Kewaskum, Wisconsin, capping a ten year effort of previously unsuccessful political campaigns on the Libertarian ticket, including runs for Alderman of West Bend, Washington County board member, Secretary of State and State Assembly member. *Election 2001 Results*, MILWAUKEE JOURNAL SENTINEL, April 4, 2001, at B8; Jeff Cole, *Even Opponents Expect Panzer to Win*, MILWAUKEE JOURNAL SENTINEL, Oct. 22, 1996, at 7; Nancy Rump, *Growth Key in Kewaskum Race*, MILWAUKEE JOURNAL SENTINEL, March 30, 2001, at B3; Susan Lampert Smith, *Obscure Office Has Heated Race; Light Shines on Secretary of State*, WISCONSIN STATE JOURNAL, Oct. 16, 1994, at C3.

⁸⁷ See *City of Madison v. Reynolds*, 180 N.W.2d 7 (Wis. 1970) (invalidating ordinance that limited use of one-way street to only city buses and taxicabs because the ordinance discriminated against general public).

⁸⁸ See *Scheunemann v. City of West Bend*, 507 N.W.2d 163, 166,168 (1993).

⁸⁹ 507 N.W.2d 163 (Wis. Ct. App. 1993).

⁹⁰ See *id.* at 168.

argument, the court responded that the proper test is whether the ordinance regulates speech or conduct, and if it only regulates conduct then the question is whether it is so sweeping as to have a chilling effect on constitutionally protected conduct.⁹¹ The court found that the ordinance affected only conduct, not speech, and constitutionally carved out, on a spatial (designated areas) and temporal (designated times) basis, a narrow slice of driving, and thus was not overbroad.⁹² In response to the intrastate travel argument, the court cited *Lutz* extensively and adopted its intermediate scrutiny test.⁹³ Applying the test, the court found that as a result of the ordinance's built-in limitations (i.e., its limitation to a specific place and time period, its prescribed standards for determining whether a violation occurred and its granting of an opportunity for an "on-the-scene" explanation), the City had narrowed the application of the ordinance to the safety and congestion problems identified by police.⁹⁴ The court went on to say that the ordinance actually enhanced, rather than hindered, intrastate travel because its purpose was to create safer- and less congested public streets so that the general populace could more easily travel in the affected area.⁹⁵

C. A Brief Victory for Cruisers, and Then Defeat

1. Stallman — Minnesota's Lone Voice

A year after *Scheunemann*, cruisers were handed their only post-Lutz court victory. The case, an appellate decision in Minnesota, concerned an anti-cruising ordinance in Anoka, Minnesota, a Minneapolis suburb once called the cruising capital of that state. Responding to what should by now sound like familiar problems associated with cruising (traffic congestion, fighting, traffic

⁹¹ See *id.* at 166.

⁹² See *id.* at 167.

⁹³ See *id.* at 166-68.

⁹⁴ See *id.* The holding of *Scheunemann* was criticized by one commentator for ignoring a 1988 Wisconsin Supreme Court precedent. Gregory J. Mode, Comment, *Wisconsin, A Constitutional Right to Intrastate Travel, and Anti-Cruising Ordinances*, 78 MARQ. h. REV. 735 (1995). The case, *Milwaukee v. K.F.*, 426 N.W.2d 329 (Wis. 1988), involved K.F., a 15 year old who violated Milwaukee's nighttime curfew for minors. Although the court upheld the curfew, the author points out that it nonetheless had "the strongest language from the Wisconsin Supreme Court on the issue of the right to intrastate travel" and "[i]t is possible that the comments of the Wisconsin Supreme Court would have changed the outcome in *Scheunemann*." *Id.* at 756.

⁹⁵ See *Scheunemann*, 507 N.W.2d at 167.

violations, criminal activity, etc.), the city passed an ordinance prohibiting driving three or more times in a designated no-cruising zone between 9:00 p.m. and 2:00 a.m. Taxi cabs, buses, emergency vehicles, city vehicles and commercial delivery vehicles were excepted.⁹⁶ After establishing Main Street as a no-cruising zone, the city posted signs that stated, "No Cruising 9:00 p.m. to 2:00 a.m.," but gave no further information about prohibited conduct, such as the boundaries of the no-cruising zone, the existence of traffic control points or that it took three passes to constitute cruising, nor did the signs list the exceptions.⁹⁷ Jason Stallman, age 19, was cited for driving past a traffic control point four times in ten minutes on May 6, 1993. Stallman believed that because he had caused no traffic problems it was arbitrary and capricious for the police to stop him.⁹⁸ Stallman hired an attorney and challenged the constitutionality of the ordinance.

After failing to persuade the trial court, Stallman appealed on two main grounds: that the ordinance was a violation of the constitutional right of intrastate travel and that the ordinance was void for vagueness. The Court of Appeals, in *State v. Stallman*,¹⁰⁰ found the ordinance unconstitutional on both grounds.¹⁰¹

Addressing the intrastate travel argument, the court cited both *Lutz* and *Scheunemann*, relying more on the latter.¹⁰² Applying the *Lutz* intermediate scrutiny test, the court found that although the city had a significant interest in reducing traffic congestion, safety hazards and criminal activity, the ordinance was not narrowly tailored to achieve those objectives. According to the court, the ordinance was too sweeping in its application and allowed unimpeded and arbitrary decision making by police as to whom to cite.¹⁰³ Said the court, "(N) matter how 'undesirable* out-of-town teenagers may be, this ordinance sweeps

⁹⁶ See *State v. Stallman*, 519 N.W.2d 903,905 (Minn. Ct. App. 1994).

⁹⁷ See *id.*

⁹⁸

See Pat Pheifer, *Court Rules Against Anoka 's 'No-cruising' Ordinance*, STAR TRIBUNE (Minneapolis, Minn.), July 26, 1994, at B7.

⁹⁹ See *Stallman*, 519 N.W.2d at 906.

¹⁰⁰ 519 N.W.2d 903 (Minn. Ct. App. 1994). Stallman also argued that the ordinance was not authorized by state law. The court did not address that point but said the ordinance probably was authorized. See *id.* at 905-06.

¹⁰¹ See *id.* at 90.

¹⁰² See *id.* at 906-08.

For a brief analysis of various types of anti-cruising ordinances and their capacity to allow arbitrary and/or discriminatory enforcement, see Debra Livingston, *Police Discretion and the Quality of Life in Public Places: Courts, Communities and the New Policing*, 91 COLUM. L. REV. 551,617-18(1997).

too broadly, paints with too broad a brush, and, when studied line by line, lists conduct that laws on the books already control."¹⁰⁴ The court pointed out that "fighting, traffic violations, drinking, vandalism, car assaults, sexual assault, and drug trafficking are *already* identified as violations of Minnesota Criminal Code There is no hole in the Minnesota Criminal Code for this cruising ordinance to plug."¹⁰⁵

The court found the ordinance void for vagueness because the notice sign did not adequately inform the public of prohibited conduct; specifically, drivers were not notified of the definition of cruising or the location of traffic control points (which could change). The court pointed out that "cruising" is not a commonly understood term, like "Speed Limit 35 mph" or "No U-turn."¹⁰⁶

The opinion clearly evinced the court's suspicions about the city's motives in enacting the ordinance and expressed fear that it would catch within its net non-lawbreakers at the whim of police. Said the court, "It is clear from the Anoka Police Department's statement of the problem that this ordinance is aimed at an 'undesirable' class of people, namely teenagers who come to downtown Anoka to be there and, in the vernacular, "hang-out." However, despite pointing out that all of cruising's ills are addressed by existing laws, the court said that anti-cruising ordinances could be constitutional if properly drafted, citing as example the ordinance at issue in *Scheunemann*, in particular its requirement that there be a purpose to drive unnecessarily and repetitively, and its allowance for a lawful explanation (which prevents arbitrary enforcement). In contrast, said the *Stallman* court, the Anoka ordinance made legitimate purposes (other than delivery services) illegal.¹⁰⁸ The court gave numerous examples of lawful activity that could be criminalized, such as a doctor who makes an emergency call, goes home and then has to check on the patient again, or a school teacher who drives home, then goes back to school to retrieve a forgotten item, and then goes back home again. In response to the city's argument that each of those people could drive around the no-cruising zone, the court said such persons should not be subject to that burden. The court was also troubled by the fact that the ordinance did not affect passengers, even if they were "bent on mischief."¹⁰⁹

¹⁰⁴ *Staitman*, 519 N.W.2d at 908.

¹⁰⁵ *Id.* at 907.

¹⁰⁶ *Id.* at 909-10.

¹⁰⁷ *Id.* at 908.

¹⁰⁸ *Id.* at 909.

¹⁰⁹ *Id.*

2. *Reactions to Stallman*

Reactions to *Stallman*, whether explicit or implicit, fell into one of two categories. The first was to accept its holding that for an anti-cruising law to be valid, it must be drafted along the lines of the ordinance at issue in *Scheunemann*. For obvious reasons, that is how the City of Anoka reacted. Soon after the decision was handed down, the City Manager of Anoka obtained a copy of the West Bend, Wisconsin, ordinance and recommended that the Anoka city council adopt a new ordinance based on it. Specifically, recommendations were made that the new ordinance allow drivers to give a lawful explanation.¹¹⁰

The second reaction to *Stallman* viewed it as having incorrectly required more than is necessary under *Lutz's* intermediate scrutiny test. That was exactly what happened two years after *Stallman* in a case before the Wisconsin Supreme Court, *Brandmiller v. Arreola*.¹¹¹

5. *Brandmiller—Clarification by Wisconsin*

Brandmiller concerned anti-cruising ordinances in Milwaukee and three of its suburbs — West Allis, Greenfield and Hales Corners. The ordinances all followed the York, Pennsylvania, model, prohibiting driving past a traffic control point more than twice in a two-hour period during nighttime hours. The ordinances had exclusions for emergency, public and some business vehicles, but did not require a specific intent to cruise or offer a chance for an explanation, as did the West Bend, Wisconsin, ordinance at issue in *Scheunemann*.

Diane Brandmiller, age twenty-five, received the first citation under the West Allis ordinance. A doctoral candidate in clinical psychology, she insisted she was not a cruiser. Nevertheless, she was quoted as saying, "It's a ridiculous law. I think Checkpoint Charlie was taken down in Europe and put up here... [Cruising] is a Milwaukee tradition. I expect my parents were cruisers."¹¹³ The ACLU took up her case along with those of others cited and filed a class action

¹¹⁰ See Donna Halvorsen, *How to Park the Cruisers; Anoka Official to Advise Rewriting City Ordinance to Meet Legal Standards*, STAR TRIBUNE (Minneapolis, Minn.), July 27, 1994, at B1.

¹¹¹ 544 N.W.2d 894 (Wis. 1996).

¹¹² See *Brandmiller v. Arreola*, 525 N.W.2d 353, 355-56 (Wis. Ct. App. 1994), *aff'd*, 544 N.W.2d 894 (Wis. 1996).

¹¹³ *To Young Milwaukee Drivers, Cruising Ban Is Un-American*, N. Y. TIMES, Aug. 7, 1990, at A20.

against the four cities, which the ACLU claimed had gone too far by enacting laws that hurt more than cruisers.¹¹⁴

After losing at the trial court level, the plaintiffs appealed to the Court of Appeals, which, in *Brandmiller v. Arreola*¹¹⁵ ruled against the plaintiffs and ignored *Lutz* by holding that cruising does not implicate the right of intrastate travel (which, said the court, only protects the right to change one's residence within a state).¹¹⁶ The Court of Appeals did, however, find that there is a general constitutional "freedom of movement" to move about on streets and sidewalks of a community.¹¹⁷ Despite finding this right of movement, however, the court applied no level of scrutiny to the ordinances and simply held that because the ordinances did not prohibit all movement (they still permitted foot, bus and taxi travel), and because driving is a privilege, not a right, the right of movement was not even implicated.¹¹⁸ The court also rejected the plaintiffs' overbreadth challenge on the ground that no First Amendment issues were raised, and the court distinguished *Scheunemann's* overbreadth analysis as being dictum since no First Amendment issue was raised in that case either.¹¹⁹ The plaintiffs appealed to the state's high court.

¹¹⁴ See *Teenage Cruising Takes a Bruising*, NEWSWEEK, Aug. 20, 1990, at 45; *To Young Milwaukee Drivers, Cruising Ban Is Un-American*, supra note 113. The ordinances were also the subject of an editorial in *The Washington Times*, which commented,

Give the Stupid Law of the Year award to Milwaukee, Wis [Cruising is] a favorite pastime for the city's young people, who apparently don't have the imagination to use their leisure in more creative ways but have not yet evolved to the higher stage of drive-by shootings, like others of their generation in Los Angeles and New York. Probably it never dawned on the city fathers that the foolish law they enacted is almost impossible to enforce fairly. The law illustrates the unwillingness or inability of authorities in this country to catch or punish offending parties and of their penchant for passing stupid measures that impede only the innocent. . . . [A]s any reasonable person can predict, the youths of Milwaukee will cruise despite the silly laws their elders write.

Commentary: The Decline and Fall of Milwaukee, WASHINGTON TIMES, Aug. 8, 1990, at G2.

¹¹⁵ 525 N.W.2d 353 (Wis. Ct. App. 1994), *affd*, 544 N.W.2d 894 (Wis. 1996).

¹¹⁶ See *Brandmiller*, 525 N.W. 2d at 356-57.

¹¹⁷ See *id.* at 357.

¹¹⁸ See *id.*

¹¹⁹ See *id.* at 358-59. A vigorous dissent to the *Brandmiller* appellate decision argued that the court should have applied *Scheunemann's* overbreadth analysis on the ground that the decision of one appellate court in Wisconsin is binding on all other Wisconsin appellate courts until overturned by the Wisconsin Supreme Court. Under *Scheunemann's* overbreadth analysis,

The Wisconsin Supreme Court affirmed the lower appellate court's holding, but found that the anti-cruising ordinances did implicate the right of intrastate travel, thus rehabilitating *Lutz* in Wisconsin.¹²⁰ Applying *Lutz's* intermediate scrutiny test, the court found a significant governmental interest in ensuring public safety and reducing traffic congestion and held that the ordinances were sufficiently limited in scope to affected areas and left open alternative routes.¹²¹ In response to the plaintiffs' argument that the ordinances were not narrowly drawn because they did not require specific intent or allow for a lawful explanation, the court said that the ordinances need not be the least restrictive means, and in any case, the fact that the ordinances did not allow for on-the-scene explanations actually decreased arbitrary enforcement and abuse of discretion because the police did not have to subjectively evaluate the explanation.¹²²

The court also upheld the ordinances against the overbreadth challenge, saying they only affected a narrow slice of driving conduct. In its analysis, the court narrowed *Scheunemann's* overbreadth analysis by saying that lack of a specific intent requirement and an opportunity to explain (the two facts deemed important by the *Scheunemann* court in reaching its overbreadth holding) were not sufficient to create overbreadth.¹²³

The fact that *Brandmiller* was decided by the Wisconsin Supreme Court is important because *Scheunemann*, decided by a lower court in Wisconsin, could have been read as requiring anti-cruising laws in Wisconsin to have the type of detailed protections contained in the West Bend, Wisconsin, ordinance. To the extent the *Scheunemann* case could be read for that proposition, *Brandmiller* implicitly overruled it. In addition, although *Brandmiller* never specifically

said the dissent, the ordinances at issue in *Brandmiller* would fail because they did not have the *Scheunemann* ordinance's safeguards of specific intent and an opportunity for explanation. *See id.* at 360-61 (Schudson, dissent). The dissent's argument was apparently based on a reading of *Scheunemann's* overbreadth analysis that did not require the First Amendment to be affected; this may or may not be a correct reading of *Scheunemann*, which applied its analysis in the context of a freedom of association challenge yet did not specifically mention freedom of association in its overbreadth holding, although it did mention "constitutionally protected conduct."

¹²⁰ *See Brandmiller*, 544 N.W.2d at 894.

¹²¹ *See id.* at 901.

¹²²

See id. at 896, 899, 901. The court also addressed the argument raised by one commentator (Mode, *supra* note 94, at 754) that *Milwaukee v. K.F.*, 151 N.W.2d 329 (Wis. 1988), required strict scrutiny in intrastate travel cases. The *Brandmiller* court stated that because the ordinance in question in *K.F.* survived strict scrutiny, it was not necessary to decide whether strict scrutiny was the proper test. *See Brandmiller*, 544 N.W.2d at 898.

¹²³ *See id.* at 902.

mentioned *Stallman*, the *Brandmiller* decision clearly established that Wisconsin rejected the Minnesota appellate court's requirement that anti-cruising laws must contain the type of safeguards present in the West Bend ordinance.

IV. THE PRESENT STATE OF AFFAIRS, AND A LOOK AT THE FUTURE

Lutz has established itself as the majority rule on anti-cruising laws, not only because it is the highest and only federal court to address the issue, but also because all cruising cases since have adopted the *Lutz* intermediate scrutiny standard. To date, the U.S. Supreme Court has not addressed cruising, nor for that matter has it directly addressed intrastate travel,¹²⁴ although it did mention intrastate travel in passing in *Memorial Hospital v. Maricopa County*,¹²⁵ a welfare benefits case involving interstate travel, in which the court said, "Even were we to draw a constitutional distinction between interstate and intrastate travel, a question we do not now consider ____" With such sparse authority on the subject, it is possible that a court faced with the issue in the future could decide in favor of cruisers. The ACLU appears willing to keep trying for that outcome, as evidenced by its recent efforts on behalf of the plaintiff in *Larsen*.

¹²⁴ Some lower federal courts (*see, e.g.*, *Wright v. City of Jackson*, 506 F.2d 900,902 (5th Cir. 1975) and *Ahem v. Murphy*, 457 F.2d 363, 364-65 (7th Or. 1972)) have interpreted the Supreme Court as having rejected the right of intrastate travel. Those lower courts based their refusal to recognize a right of intrastate travel, at least in the context of residency requirements for city employees, on the Supreme Court's dismissal of *Detroit Police Officer's Ass'n v. City of Detroit*, 190 N.W.2d 97 (Mich. 1971) (concerning municipal ordinance requiring police officers to reside in city but allowing fireman to obtain a waiver from the residency requirement) for want of a federal question, implying that intrastate travel does not implicate any federal or constitutional issues. *Detroit Police Officer's Ass'n v. City of Detroit*, 405 U.S. 950 (1972). That logic is not very persuasive, however, in light of the lack of any reasoning provided with the Court's dismissal, and in light of *Memorial Hosp. v. Maricopa County*, 415 U.S. 250 (1974), discussed *supra* note 127 and accompanying text, in which the Supreme Court expressly stated that it would not consider the question of whether there is a right of intrastate travel. *See id.* at 255-56. Furthermore, *Detroit Police Officer's Ass'n* dealt more with the question of whether city policeman could be treated differently from city fireman than with the question of intrastate travel.

¹²⁵ 415 U.S. 250 (1974).

¹²⁶ *Id.* at 255-56. *See also* *Bykofsky v. Borough of Middletown*, 429 U.S. 964 (1976) (Marshall, J., in dissent from denial of certiorari, used language indicating approval of a general freedom of movement by saying, "The freedom to leave one's house and move about at will is 'of the very essence of a scheme of ordered liberty.'" *Bykofsky*, 415 at 251 (quoting *Palko v. Connecticut*, 302 U.S. 319, 325 (1937))).

Local governments enacting anti-cruising ordinances have added some procedural safeguards, such as a requirement that adequate notice be given, but have generally not gone so far as to include *Stallman's* requirements of a specific intent and an opportunity to give a lawful explanation. A case in point is the enabling California legislation, enacted in 1982, which prescribes the limits for local ordinances. The statute requires that local ordinances must provide that a cruiser cannot be ticketed unless he or she has been given a written warning after passing a traffic control point, and that adequate notices be posted at the beginning and end of the portion of the street subject to cruising controls.¹²⁷ The statute is broadly written, however, and theoretically could authorize a local ordinance that criminalizes one round trip, as long as the written warning was given in between the first and second passes. Some California local governments have, in fact, enacted ordinances and laws that do just that, including Modesto and San Diego.¹²⁸ Most ordinances, for example the ordinances in Los Angeles City and County, however, require either driving past the traffic control point three times without regard to direction of travel or twice in the same direction.¹²⁹

Local ordinances are also inconsistent in who can be charged with a violation. Most ordinances probably apply only to the driver since they do not specify who can be charged. Others apply to passengers as well, for example the City and County of Los Angeles ordinances, or to the car's owner if he or she is in the car, like the ordinances at issue in *Lutz* and *Brandmiller*. The Modesto, California, ordinance, perhaps in deference to that town's cruising history, requires not only that the cruiser be guilty of repetitive driving but also that it be at a time of traffic congestion, and gives a lengthy list of factors for finding traffic congestion (for example, that vehicles cannot move through a 100 yard approach corridor to an intersection within two complete green light cycles due to the presence of other vehicles).¹³⁰

¹²⁷ See CAL. VEH. CODE § 21100(2)(k) (West 2000). One could question, however, whether the average teenager would have a complete understanding of the conduct prohibited by some of the notices in place in California. The signs posted on the famous Sunset Strip in West Hollywood, California, for example, state: "No cruising zone; motorists passing the traffic control point 2 or more times in 4 hours are subject to citation," without specifying what or where the "traffic control point" is.

¹²⁸ See MODESTO, CAL., MUNICIPAL CODE art. 18, § 3-2.1804 (1994); SAN DIEGO, CAL., MUNICIPAL CODE § 12.08.135 (1984).

¹²⁹ See CITY OF LOS ANGELES, CAL., MUNICIPAL CODE § 80.36.10 (1997); LOS ANGELES COUNTY, CAL., CODE § 15.78.010 (1997).

¹³⁰ See art. 18 §3-2.1802.

The ills of cruising can and have been addressed in numerous ways other than anti-cruising ordinances, such as diverting traffic, establishing traffic checkpoints and stepping up enforcement of curfews and existing traffic laws—¹³¹ sometimes effectively, sometimes not. For example, as part of the same legislation enacting the separate California anti-cruising statute, California adopted another statute that authorizes municipal ordinances to empower police to divert traffic from streets on which a significant number of vehicles are not promptly moving when an opportunity arises to do so. Although the statute does not explicitly mention cruising, the preamble to the legislation explicitly states that it was enacted to combat cruising.¹³²

To deal with the worst of gang-related cruising, cities have erected barriers to block off affected streets on one end. That practice was challenged in St. Louis by a resident as being an unconstitutional infringement of her right of intrastate travel to get in and out of her neighborhood. Citing *Lutz*, a federal district court for the Eastern District of Missouri in *Townes v. St Louis*¹³³ upheld the practice. The court said that it would not decide whether a right of intrastate travel exists because the practice would survive *Lutz's* intermediate scrutiny test anyway insofar as the practice was designed to enhance the

¹³¹ See *City's Enforcement Efforts Curb Cruising in Pico Rivera by 80 Percent; Statistics Show Increase in Citations, Huge Drop in Cruising Activity*, BUSINESS WIRE, Sept. 21, 1999 (discussing effectiveness of traffic diversion tactics); Laura Michaelis & Danny Sullivan, *Curbing Cruisers*, LOS ANGELES TIMES (Orange County Ed.), June 3, 1990, at B1 (concerning effectiveness of traffic checkpoints and curfews in Newport Beach, California); Martin, *supra* note 30 (discussing various methods in various Southern California cities).

¹³² See CAL. VEH. CODE, §21101.2. The preamble reads:

The Legislature finds and declares that the cruising of vehicles in business areas of cities and communities in this state for the purpose of socializing and assembling interferes with the conduct of business, wastes precious energy resources, impedes the progress of general traffic and emergency vehicles, and promotes the generation of local concentrations of air pollution and undesirable noise levels.

The Legislature further finds and declares that the remedies to prevent the massive traffic jams and other undesirable effects of cruising, without unreasonably interfering with constitutionally protected rights to peacefully assemble, to be free from unreasonable search and seizure, and to be treated equally by the law, necessarily must vary depending upon local conditions, including, but not limited to, the local street width, businesses, hours of the day, and capability of the road to carry traffic.

Therefore, the Legislature declares that local regulation of local traffic problems caused by cruising in motor vehicles should be implemented by local authorities.

CAL. VEH. CODE, §21100(k).

¹³³ 949 F. Supp. 731 (E.D. Mo. 1996), *affid.* No. 4:94 CV 75 DDN, 1997 U.S. App. LEXIS 8861 (8th Cir. Sept. 6, 1997).

stability of the neighborhood and left open alternative routes to get to the plaintiff's house.¹³⁴

Despite the apparently favorable view of anti-cruising ordinances by almost all courts, challenges still take place on a policy level. Some legislators and police officers have complained that logging license plate numbers and staking out the affected cruise strips for long periods of time distracts police from more serious problems.¹³⁵ Local businesses who cater to a youth market, such as fast food restaurants and night clubs, complain about being hurt by the bans.¹³⁶ Some argue that police issue citations in a discriminatory fashion against Hispanics and other minorities, or at least in an arbitrary fashion against those deemed socially undesirable.¹³⁷ Others argue that the typical drop in cruising activity after institution of a ban ignores the often inevitable diversion of cruisers to a different street or a different town in response to the ban.¹³⁸

V. CONCLUSION

Despite America's car-obsessed culture, which values the freedom of the open road and embraces the notion that one should be able to drive wherever one pleases whenever one pleases, more and more local communities are making it illegal to drive in the particular manner commonly known as cruising,

¹³⁴ See *id.* *it* 136.

¹³⁵ See Rick Bans, *Who Needs the Scum?*, NEW TIMES LOS ANGELES, Aug. 24, 2000; Hugo Martin, *Oxnard Police Report Backs Policy of Tolerating Cruisers*, LOS ANGELES TIMES (Ventura County Ed.), Dec. 18, 1990, at B3; *Teenage Cruising Takes a Bruising*, *supra* note 114.

¹³⁶ See Stella M. Hopkins, *Whiteville, N.C., Residents Protest Recent Ban on Cruising*, CHARLOTTE OBSERVER, Oct. 29, 2000; Reed Johnson, *Restless ID of LA. Can't Be Tamed by Authority; Sunset Strip Flaunts its Eclectic Essence Amid Sheriffs Effort to Crack Down on Cruising*, LOS ANGELES TIMES, July 17, 2000, at E1.

¹³⁷ See Barrs, *supra* note 135 (quoting NAACP official as saying, "I wouldn't be surprised if it is used for racial profiling, especially in an area that is not African-American" after noting that a West Hollywood, California, ban exempted the mostly white local residents); Fernandes, *supra* note 33 (discussing defeat of anti-cruising law in St. Louis in 1999 due to concerns about police abuse; one alderman was quoted as saying, "Police have 100 ways of dealing with cruisers; we aren't willing to give them 101 ways."); Vollmer, *supra* note 54 (quoting police officer as saying, "You can tell [who the cruisers are]. People going to the [theater] aren't wearing tank tops and shorts and tennis shoes and three girls in the back seat and two guys in the front and a six-pack in the trunk. You can tell").

¹³⁸ Bob Pool, *Cruising Ban Backfirt; Sunset Strip Traffic Spills Into Neighborhoods; Policy Under Review*, LOS ANGELES TIMES, NOV. 26, 2000; Connelly, *supra* note 30; Newman, *supra* note 40.

even though cruisers may not be violating any traditional traffic or other laws. It is ironic that many of the baby-boomer legislators passing anti-cruising laws today may have been cruisers themselves in the 1950s and 1960s, a time when cruising, at least in the light of nostalgia, seemed entirely innocent. But to many communities, cruising today presents problems not seen in the 1950s and 1960s, such as congestion, crime and excessive noise to the extent not seen in the past.

Like many traffic laws, anti-cruising laws can be applied in a discriminatory manner. Unlike almost all other traffic laws, however, anti-cruising laws can also be applied to those entirely innocent of what the laws are intended to prevent — driving repetitively without a purpose other than to cruise. Some species of anti-cruising laws, such as those mandated by California statute, seek to address those concerns by requiring that violators cannot be cited until after being given a written warning. But while that will surely prevent the innocent from unknowingly violating the law after receipt of the notice, it has the negative effect of curtailing the future movement of the well-intentioned person who has been warned.

The most equitable solution is probably the type of anti-cruising law at issue in *Scheunemann* and held up as a model in *Stallman*, which requires not only proof of an intent to drive repetitively and unnecessarily (i.e., to cruise) but also that the accused be exonerated if a credible explanation is given that shows an innocent reason for repetitive driving. That type of anti-cruising law avoids the risk of punishing those innocent persons whose repetitive driving is done for a necessary purpose and avoids the chilling effect of those laws that, although unlikely to result in citation, may cause innocent persons to take out-of-the-way routes to avoid citation. While that type of law may be required to pass constitutional muster in Minnesota, however, it has not been required by any other state that has looked at the issue.

The legal future of anti-cruising laws seems less than certain. On the one hand, every court faced with a challenge to the modern variety of anti-cruising laws, with the exception of one Minnesota appellate court, has upheld them. On the other hand, the case law is not extensive, and the vast majority of states and federal jurisdictions have not passed on the issue. The United States Supreme Court has yet to even address the ostensible constitutional right—the right of intrastate travel—that has formed the basis for any serious challenge to the laws. Further legal challenges seem inevitable.