SULLIVAN, J., with whom MCDONALD, C. J., joins, concurring in part and concurring in the result.

I agree with parts I, II and VII of the majority opinion. I would, however, for the reasons hereinafter provided, refuse to consider the facial challenges corresponding to certified questions two through five. Accordingly, I concur only in the result with respect to parts III, IV, V and VI of the majority opinion.

Certified questions two through five invite this court to pass upon the facial validity of the juvenile curfew ordinance of the named defendant, the town of Vernon (town), against challenges predicated upon article first, §§ 1, 7, 9, 10 and 20, of the Connecticut constitution. This court has shown a clear willingness to consider facial challenges under the state constitution in two limited areas: (1) free speech claims predicated upon the overbreadth doctrine; e.g., *State* v. *Linares*, 232 Conn. 345, 377–78, 655 A.2d 737 (1995); and (2) claims premised upon the vagueness doctrine. See, e.g., *Benjamin* v. *Bailey*, 234 Conn. 455, 482–84, 662 A.2d 1226 (1995). Therefore, I agree with the majority's consideration of the plaintiffs'[1] challenges premised upon overbreadth and vagueness in parts II and VII of the majority

opinion, respectively.[2]

In contrast, this court is reluctant to consider facial challenges involving constitutional issues outside of these limited contexts. See *Shawmut Bank, N.A.* v. *Valley Farms*, 222 Conn. 361, 368, 610 A.2d 652, cert. dismissed, 505 U.S. 1247, 113 S. Ct. 28, 120 L. Ed. 2d 952 (1992) (''[t]he fact that the [Act] might operate unconstitutionally under some conceivable set of circumstances is insufficient to render it wholly invalid, since we have not recognized an 'overbreadth' doctrine outside the limited context of the First Amendment'').[3] This court recently reaffirmed this view in *City Recycling, Inc.* v. *State*, 247 Conn. 751, 725 A.2d 937 (1999), in which this court stated: ''It is a settled rule of constitutional adjudication that a court will decide the constitutionality of a statute *only as it applies* to the particular facts at hand.'' (Emphasis added.) Id., 758. Accordingly, for the reasons provided in parts I, II and III of this opinion, I would decline to consider the plaintiffs' *facial*[4] constitutional challenges predicated upon article first, §§ 1 and 20 (equality of rights and equal protection), article first, § 7 (search and seizure), article first, § 9 (freedom from unwarranted arrest), and article first, § 10 (right of redress), of our state constitution because I conclude that these ''issues . . . can be addressed only in light of the facts of record.'' Id., 759.

I

I begin with general principles of constitutional adjudication relevant to certified questions two through five. As this court recently observed in *City Recycling, Inc.*, ''the reserved[5] questions as phrased require us to pronounce upon the facial validity of [the statute]. . . . A party who challenges the constitutionality of a statute must prove that the statute has adversely affected a protected interest under the facts of his [or her] particular case and not merely under some possible or hypothetical set of facts not proven to exist. . . .

''This principle reflects the conviction that under our constitutional system courts are not roving commissions assigned to pass judgment on the validity of legislative enactments. . . . The effect of an answer in the affirmative to any one of the reserved questions would be to declare [the statute] unconstitutional in its entirety. . . . We are bound never to anticipate a question of constitutional law in advance of the necessity of deciding it [and] never to formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied.[6] . . . A judicial holding that a legislative Act is unconstitutional is one of very grave concern. We ought not, and will not, declare a statute to be unconstitutional unless our judgment is formed in the light of this rule of our law: It is our duty to approach the question with caution, examine it with infinite care, make every presumption and intendment in its favor, and sustain the Act unless its invalidity is,

in our judgment, beyond a reasonable doubt. . . .

''These principles of constitutional jurisprudence are no less pertinent . . . merely because the issues have been presented by way of reservation.[7] This court declared long ago that our reservation procedures do not contemplate, and ought not to be construed to permit, that every question which a trial court may encounter . . . might be brought here at once upon its being either met or scented from afar . . . . We recognized that such a practice might inevitably result in this court being called upon to formulate principles of law which would never enter into the determination of a cause, to formulate such principles in an abstract form suited to more or less general application and not as related to a concrete state of facts and narrowed and simplified by such relation, to create a mass of dicta embodying statements of abstract general principles which might some day rise up to harass judicial action, and to unnecessarily multiply the number of appearances in this court which an action might have before final disposition was made of it.'' (Internal quotation marks omitted.) Id., 758–59.

This court's hesitancy to pass upon facial constitutional claims outside of the areas of overbreadth and vagueness, discussed in parts II and VII of the majority opinion, respectively, is long-standing in our jurisprudence. See, e.g., id., 759 (''the issues of due process and equal protection of the law [under our state constitution] can be addressed only in light of the facts of record''); *Shawmut Bank, N.A.* v. *Valley Farms*, supra, 222 Conn. 368 (declining to consider facial challenge under due process clause of federal constitution because ''[t]he fact that the [Act] might operate unconstitutionally under some conceivable set of circumstances is insufficient to render it wholly invalid'' [internal quotation marks omitted]); *State* v. *Floyd*, 217 Conn. 73, 88, 584 A.2d 1157 (1991) (''[T]he present record is inadequate to establish a factual basis for the defendants' asserted liberty interests, for essentially the same reasons that it is inadequate to support their claims under the fourth amendment. Decisions construing substantive liberty interests protected by the due process clause emphasize the fact-bound and relative nature both of the interests protected and of the procedural protections required by the constitution.''); *Heslin* v. *Connecticut Law Clinic of Trantolo & Trantolo*, 190 Conn. 510, 527, 461 A.2d 938 (1983) (''[This] case [involves] a facial attack [premised on the separation of powers doctrine of the state constitution] on the constitutionality of a statute which has a sphere of operation that need never intrude upon the exclusive province of the judiciary to control the conduct of attorneys as officers of the court. We cannot, of course, exclude the possibility that, at some time in the future, a more difficult confrontation will have to be resolved. Judicial restraint counsels us to await that event.'');

Weil v. *Miller*, 185 Conn. 495, 501, 441 A.2d 142 (1981) (rejecting facial procedural due process claim under state and federal constitutions because ''[a]ccording to well-established principles, a plaintiff who challenges the constitutionality of a statute must prove that the statute has adversely affected a constitutionally protected right under the facts of his [or her] particular case and not merely under some possible or hypothetical set of facts not proven to exist'' [internal quotation marks omitted]); *Kellems* v. *Brown*, 163 Conn. 478, 483, 313 A.2d 53 (1972), appeal dismissed, 409 U.S. 1099, 93 S. Ct. 911, 34 L. Ed. 2d 678 (1973) (declining to consider ''questions reserved [that address challenges under the equal protection and due process clauses of the state constitution and that] are not limited to the situation of the particular plaintiffs'' and noting that ''answers [supplied in the opinion] are applicable only within the limited context of the specific facts covered by the stipulation agreed on by the parties to [the] action'').

II

With these principles in mind, I turn to the specific certified questions. Certified questions four and five invite this court to determine whether the ordinance facially violates the equal protection rights of minors and the due process rights of the parents, respectively.[8] I first discuss Richard Ramos' equal protection claim. Our case law dealing with equal protection claims has reflected the importance that this court attaches to crafting constitutional doctrine only in cases in which an adequate factual record[9] is presented. See, e.g., *City Recycling, Inc.* v. *State*, supra, 247 Conn. 759 (''the issues of due process and *equal protection of the law* [under our state constitution] can be addressed only in light of the facts of record'' [emphasis added]); *Dubay* v. *Irish*, 207 Conn. 518, 528, 542 A.2d 711 (1988) (when plaintiff claims parental immunity doctrine violates equal protection clause of state constitution ''plaintiff bears the heavy burden of demonstrating that, *under the particular facts of* [*the*] *case*, the parental immunity doctrine violates . . . constitutional rights'' [emphasis added]); see also *Barton* v. *Ducci Electrical Contractors, Inc.*, 248 Conn. 793, 800, 730 A.2d 1149 (1999); *Bruno* v. *Civil Service Commission*, 192 Conn. 335, 339, 472 A.2d 328 (1984).[10]

For example, in *Barton* v. *Ducci Electrical Contractors, Inc.*, supra, 248 Conn. 793, this court stated: ''Before proceeding, we note that the reserved questions [which deal with claims under the equal protection clauses of the state and federal constitutions] are too broad for us to answer as framed. In evaluating the constitutionality of statutes, we are mindful of the principle that [a] party mounting a constitutional challenge to the validity of a statute must provide an adequate factual record in order to meet its burden of demonstrating the statute's adverse impact on some protected

interest of its own, in its own particular case, and not merely under some hypothetical set of facts as yet unproven.'' (Internal quotation marks omitted.) Id., 800.[11]

Similarly, in *Bruno* v. *Civil Service Commission*, supra, 192 Conn. 335, a case involving an equal protection challenge under the federal constitution to a residency requirement for employment, this court stated: ''[In *Bruno* v. *Civil Service Commission*, 184 Conn. 246, 440 A.2d 155 (1981)] [w]e opined that the record was not adequate for this court to determine the durational residency rule's constitutionality and that a determination as to its constitutionality must await the development, at the trial level, of a sufficiently complete record: '[T]he . . . record [in the case] is deficient because it contains no evidence or factual determinations concerning the governmental interests advanced by the rule, the degree to which the means employed by the rule are tailored to achieve its legislative objectives, or the extent to which various rights of the plaintiff are affected by the rule.' . . . [Id., 251].'' *Bruno* v. *Civil Service Commission*, supra, 339.[12] Therefore, I would conclude that the issue of ''*equal protection of the law* can be addressed only in light of the facts of record.'' (Emphasis added.) *City Recycling, Inc.* v. *State*, supra, 247 Conn. 759. Accordingly, with respect to certified question number four, I would decline to consider Richard Ramos' facial claim premised upon article first, §§ 1 and 20, of the Connecticut constitution.

I next discuss Janet Ramos' facial due process claim. In none of the cases cited by Janet Ramos in support of her due process claim did this court consider a facial challenge[13] under the due process clause of our state constitution. See generally *Ascuitto* v. *Farricielli*, 244 Conn. 692, 711 A.2d 708 (1998); *Castagno* v. *Wholean*, 239 Conn. 336, 684 A.2d 1181 (1996); *Dubay* v. *Irish*, supra, 207 Conn. 518; *In re Juvenile Appeal (Anonymous)*, 177 Conn. 648, 420 A.2d 875 (1979). On the contrary, as with this court's equal protection jurisprudence, the case law dealing with claims under the due process clause of the state constitution has manifested this court's belief in the benefit of developing constitutional doctrine only in cases in which an adequate factual record exists. See, e.g., *City Recycling, Inc.* v. *State*, supra, 247 Conn. 759; *State* v. *Floyd*, supra, 217 Conn. 88; *Weil* v. *Miller*, supra, 185 Conn. 501; *Kellems* v. *Brown*, supra, 163 Conn. 483.

The plaintiffs also cite to a number of decisions that have addressed whether a particular curfew ordinance violates the equal protection and due process clauses of the *federal* constitution. See *Hutchins* v. *District of Columbia*, 188 F.3d 531, 536 (D.C. Cir. 1999); *Schleifer ex rel. Schleifer* v. *Charlottesville*, 159 F.3d 843, 846–47 (4th Cir. 1998), cert. denied, 526 U.S. 1018, 119 S. Ct. 1252, 143 L. Ed. 2d 349 (1999); *Nunez* v. *San Diego*, 114

F.3d 935, 944, 951 (9th Cir. 1997); *Qutb* v. *Strauss*, 11 F.3d 488, 492 (5th Cir. 1993), cert. denied sub nom. *Qutb* v. *Bartlett*, 511 U.S. 1127, 114 S. Ct. 2134, 128 L. Ed. 2d 864 (1994); *Waters* v. *Barry*, 711 F. Sup. 1125, 1138 (D.D.C. 1989); *McCollester* v. *Keene*, 586 F. Sup. 1381, 1386 (D.N.H. 1984).[14] In the present case, however, only *state* constitutional issues are before the court.[15] Therefore, I would conclude that, with respect to certified question number five, our conclusion in *City Recycling, Inc.* that ''the [issue] of *due process* . . . can be addressed only in light of the facts of record''; (emphasis added) *City Recycling, Inc.* v. *State*, supra, 247 Conn. 759; governs. Accordingly, I would decline to consider Janet Ramos' facial claim premised upon article first, § 10, of the Connecticut constitution.

III

Certified questions two and three invite this court to determine whether the ordinance facially violates the rights of minors to be free from: (1) unreasonable searches and seizures as secured by article first, § 7, of the Connecticut constitution; and (2) unwarranted arrest, detention or punishment as secured by article first, § 9, of the Connecticut constitution.[16] In *all* of the cases cited in support of Richard Ramos' claims under article first, §§ 7 and 9, this court had a factual record upon which to determine the reach of the constitutional provision at issue. See *State* v. *Donahue*, 251 Conn. 636, 639–40, 742 A.2d 775 (1999), cert. denied, U.S. , S. Ct. , L. Ed. 2d (2000); *State* v. *White*, 229 Conn. 125, 147–48, 640 A.2d 572 (1994); *State* v. *Oquendo*, 223 Conn. 635, 640–42, 613 A.2d 1300 (1992); *State* v. *Geisler*, 222 Conn. 672, 677–79, 695, 610 A.2d 1225 (1992); *State* v. *Lamme*, 216 Conn. 172, 175–76, 579 A.2d 484 (1990); *State* v. *Marsala*, 216 Conn. 150, 152, 579 A.2d 58 (1990); *State* v. *Dukes*, 209 Conn. 98, 100–103, 123–25, 547 A.2d 10 (1988); *State* v. *Morrill*, 205 Conn. 560, 562–64, 534 A.2d 1165 (1987); *State* v. *Scully*, 195 Conn. 668, 669–72, 675–76, 490 A.2d 984 (1985); *Cinque* v. *Boyd*, 99 Conn. 70, 71–73, 94, 121 A. 678 (1923).[17] In contrast, this court demonstrated its reluctance to facially invalidate a statute pursuant to a search and seizure claim in *State* v. *Floyd*, supra, 217 Conn. 73. In *Floyd*, we reversed a trial court's decision that a statute violated the fourth amendment's prohibition against unreasonable searches and seizures because ''[t]he balancing of societal interests against personal interests required to analyze the reasonableness of an action under the fourth amendment demands that the court consider all the relevant facts. Absent such a consideration, the court's invalidation of the statute as applied is in effect an invalidation of the statute on its face, and its judgment cannot be sustained.'' (Internal quotation marks omitted.) Id., 85.

The foregoing case law reflects the highly fact dependent nature of constitutional jurisprudence under both

article first, § 7; id., 83 (search and seizure ''jurisprudence is pervasively fact-bound, whether the issue is the scope of the amendment itself . . . the definition of a seizure . . . or the appraisal of the reasonableness of a particular governmental intrusion'' [citations omitted; internal quotation marks omitted]); and article first, § 9; see, e.g., *State* v. *White*, supra, 229 Conn. 152–53 (reviewing our fact laden jurisprudence under article first, § 9, of Connecticut constitution).[18] Answering certified questions two and three would require this court to shape its constitutional doctrine in an area governed by such fact dependent doctrines as the ''totality of the circumstances''; *State* v. *Cobb*, 251 Conn. 285, 317, 743 A.2d 1 (1999), cert. denied, U.S. , S. Ct. , L. Ed. 2d (2000); in the absence of any such circumstances upon which to base its judgment. Therefore, I would conclude that the rationale for refusing to consider facial challenges under the state constitution discussed in parts I and II of this opinion; see, e.g., *City Recycling, Inc.* v. *State*, supra, 247 Conn. 758–59; is equally applicable to Richard Ramos' claims premised upon the search and seizure and unwarranted arrest provisions of the state constitution. Accordingly, I would decline to consider certified questions two and three.[19]

Accordingly, I concur with parts I, II and VII of the majority opinion and concur only in the result with respect to parts III, IV, V and VI of the majority opinion.

[1] I also agree with part I of the majority opinion in which the majority concludes that the plaintiff, Richard Ramos, has standing to raise his free speech claim, and that both Richard Ramos and another plaintiff, Janet Ramos, have standing to raise their vagueness claims.

[2] I also agree with the majority's resolution of the plaintiffs' overbreadth and vagueness challenges.

[3] The scope of our overbreadth doctrine does not extend to all manners of expressive activity. For example, our overbreadth doctrine does not apply to commercial speech. See *State* v. *Leary*, 217 Conn. 404, 418, 587 A.2d 85 (1991).

In addition, this court has expressed an unwillingness to consider facial vagueness challenges outside of those challenges that involve first amendment rights. See *State* v. *Wilchinski*, 242 Conn. 211, 217, 700 A.2d 1 (1997) (this court has ''never engaged in a facial vagueness analysis outside the context of the first amendment'').

[4] The plaintiffs have not raised, nor do I consider, an ''as applied'' challenge to the ordinance. Nonetheless, at oral argument, the plaintiffs and the town engaged in a vigorous debate as to the facts that could be relied upon in answering the certified questions. Although this debate would be relevant were I considering an *as applied* challenge to the ordinance, the existence or nonexistence of a factual record does not affect my analysis inasmuch as the plaintiffs' facial challenge in this case does not require any specific application of the ordinance. See *State* v. *Linares*, supra, 232 Conn. 363 n.14 (''We agree . . . that the nature of [the litigant's] as applied constitutional claims required the Appellate Court to conduct an independent review of the record. . . . Of course, such independent review was unnecessary for the Appellate Court's consideration of the [litigant's] facial vagueness and overbreadth claims because an analysis of a facial type of claim is not dependent on the facts of a particular case.'' [Citations omitted; internal quotation marks omitted.]); see also *37712, Inc.* v. *Ohio Dept. of Liquor Control*, 113 F.3d 614, 618 n.7 (6th Cir. 1997) (''[n]o essential issues of material fact are presented for resolution upon a facial challenge to a statute or ordinance''). Nonetheless, although the nonexistence of a factual record is not fatal to a facial challenge, the perilous endeavor of forging constitutional doctrine in a factual vacuum should cause us to consider facial challenges

only in exceptional circumstances.

[5] *City Recycling, Inc.* came to this court upon reservation from the trial court. *City Recycling, Inc.* v. *State*, supra, 247 Conn. 752; see General Statutes § 52-235; Practice Book § 73-1.

General Statutes § 52-235 provides: "(a) The Superior Court, or any judge of the court, with the consent of all parties of record, may reserve questions of law for the advice of the Supreme Court or Appellate Court in all cases in which an appeal could lawfully have been taken to said court had judgment been rendered therein.

"(b) The court or judge making the reservation shall, in the judgment, decree or decision made or rendered in such cases, conform to the advice of the Supreme Court or the Appellate Court."

Practice Book § 73-1 provides: "(a) Any reservation shall be taken to the supreme court or to the appellate court from those cases in which an appeal could have been taken directly to the supreme court, or to the appellate court, respectively, had judgment been rendered. Reservations in cases where the proper court for the appeal cannot be determined prior to judgment shall be taken directly to the supreme court.

"(b) All questions presented for advice shall be specific and shall be phrased so as to require a Yes or No answer.

"(c) Before any question shall be reserved by any court, counsel shall file in that court a stipulation which shall clearly and fully state the question or questions upon which advice is desired; that their present determination by the appellate court having jurisdiction would be in the interest of simplicity, directness and economy in judicial action, the grounds for such allegation being particularly stated; that the answers to the questions will determine, or are reasonably certain to enter into the final determination of the case; and that the parties request that the questions be reserved for the advice of the appellate court having jurisdiction. The stipulation shall also designate the specific pleadings in the trial court case file which are necessary for the presentation of the question or questions sought to be reserved and shall state the undisputed facts which are essential for determination of the question or questions sought to be reserved. With the stipulation the parties shall file a joint docketing statement in the format specified in Section 63-4 (a) (4) for regular appeals.

"(d) Upon the ordering of a reservation by the superior court, the clerk of the trial court shall send notice of the reservation to the appellate clerk and to all parties of record. The date of issuance of this notice shall be deemed the filing date of the appeal for purposes of the brief filing deadlines of Section 67-3. No entry fee shall be paid to the superior court and no costs shall be taxed in favor of any party. With the notice of reservation, the clerk of the trial court shall send to the appellate clerk two copies each of the stipulation, its accompanying joint docketing statement, the superior court's order of reservation, and the docket sheet (DS1) listing the counsel for all parties.

"(e) The court will not entertain a reservation for its advice upon questions of law arising in any action unless the question or questions presented are such as are, in the opinion of the court, reasonably certain to enter into the decision of the case, and it appears that their present determination would be in the interest of simplicity, directness and economy of judicial action.

"(f) The advice of the appellate court on a reservation may be reviewed by the supreme court only upon the granting of certification as provided in chapter 84."

[6] Justice Antonin Scalia of the United States Supreme Court recently has advocated a similar position with respect to facial federal constitutional challenges: "When a facial challenge is successful, the law in question is declared to be unenforceable in all its applications, and not just in its particular application to the party in suit. To tell the truth, it is highly questionable whether federal courts have any business making such a declaration. The rationale for our power to review federal legislation for constitutionality, expressed in *Marbury* v. *Madison*, [5 U.S. (1 Cranch)] 137 (1803), was that we had to do so in order to decide the case before us. But that rationale only extends so far as to require us to determine that the statute is unconstitutional as applied to [the] party, in the circumstances of [the] case." *Chicago* v. *Morales*, 527 U.S. 41, 74, 119 S. Ct. 1849, 144 L. Ed. 2d 67 (1999) (Scalia, J., dissenting).

[7] In this case, the relevant questions of constitutional law come to this court pursuant to the certification procedures outlined in Public Acts 1999, No. 99-107. Reservation and certification are similar in that certification provides this court with an opportunity to decide a "question of law certified

. . . by a court of the United States''; Public Acts 1999, No. 99-107, § 4; and reservation procedures allow ''[t]he Superior Court . . . [to] reserve questions of law for the advice of the Supreme Court . . . .'' General Statutes § 52-235 (a). Thus, the rationale outlined in this passage from *City Recycling, Inc.*, describing our unwillingness to entertain facial challenges in the reservation context, is equally applicable to certified questions brought before this court pursuant to Public Acts 1999, No. 99-107.

[8] I discuss both of these claims in part II of this opinion because, although, on the merits, such claims are distinct, the rationale for refusing to consider facial claims brought under both provisions is similar and the two have been discussed together in our case law. See *City Recycling, Inc.* v. *State*, supra, 247 Conn. 758–60.

[9] Richard Ramos cites to various alleged applications of the ordinance in the ''Plaintiffs' *Proposed* Findings of Fact and Conclusions of Law''; (emphasis added); in support of his claim of an equal protection violation. Even if it is assumed—and I do not assume—that such facts are undisputed, evidence relating to the application of the ordinance is irrelevant to our consideration of Richard Ramos' facial challenge. See footnote 4 of this opinion.

[10] I recognize that we have not uniformly refused to consider facial equal protection challenges under the state constitution. Compare *State* v. *Angel C.*, 245 Conn. 93, 125, 715 A.2d 652 (1998) (''[t]o implicate the equal protection clauses under the state and federal constitutions . . . it is necessary that the state statute in question, either *on its face* or in practice, treat persons standing in the same relation to it differently'' [emphasis altered; internal quotation marks omitted]) with *City Recycling, Inc.* v. *State*, supra, 247 Conn. 758 (''the issues of due process and *equal protection of the law* [under our state constitution] can be addressed only in light of the facts of record'' [emphasis added]).

[11] Although, in *Barton*, we went on to remedy the overbroad nature of a particular reserved question by modifying it to apply to the plaintiffs' particular *factual* claim; see *Barton* v. *Ducci Electrical Contractors, Inc.*, supra, 248 Conn. 801–802; in the present case, no such modification is possible in light of the *facial* nature of Richard Ramos' claim.

[12] Similarly, although Richard Ramos cites to *Sheff* v. *O'Neill*, 238 Conn. 1, 678 A.2d 1267 (1996), *Daly* v. *Delponte*, 225 Conn. 499, 624 A.2d 876 (1993), and *Gaines* v. *Manson*, 194 Conn. 50, 481 A.2d 1084 (1984), in support of his equal protection claim, in each of these cases, this court had an adequate factual record upon which to base its decision. See *Sheff* v. *O'Neill*, supra, 7–11; *Daly* v. *Delponte*, supra, 501–505; *Gaines* v. *Manson*, supra, 512–14.

[13] Janet Ramos' citation to her own testimony and that of other parents who testified in the District Court regarding the impact of the ordinance is irrelevant to our consideration of her facial claim. See footnote 4 of this opinion.

[14] Although Richard Ramos cites to *Johnson* v. *Opelousas*, 658 F.2d 1065 (5th Cir. 1981), in support of his equal protection claim, that case is inapposite because the court in *Johnson* expressly limited its holding to the plaintiff's overbreadth claim; id., 1074; and did not consider the plaintiff's equal protection claim. See id.

[15] I recognize that courts have considered facial claims premised upon the due process and equal protection clauses of the *federal* constitution. See, e.g., *Vacco* v. *Quill*, 521 U.S. 793, 799, 117 S. Ct. 2293, 138 L. Ed. 2d 834 (1997) (considering facial challenge to law prohibiting assisted suicide premised upon fourteenth amendment equal protection clause); *Reno* v. *Flores*, 507 U.S. 292, 299–300, 113 S. Ct. 1439, 123 L. Ed. 2d 1 (1993) (considering facial challenge to Immigration and Naturalization Service regulation based on alleged violation of substantive and procedural due process). A plaintiff asserting a facial claim generally must ''establish that no set of circumstances exists under which the [statute] would be valid.'' *United States* v. *Salerno*, 481 U.S. 739, 745, 107 S. Ct. 2095, 95 L. Ed. 2d 697 (1987). ''This rule, known as the *Salerno* rule, has been subject to a heated debate in the [United States] Supreme Court, where it has not been consistently followed.'' (Internal quotation marks omitted.) *United States* v. *Frandsen*, 212 F.3d 1231, 1235 n.3 (11th Cir. 2000) (discussing application of *Salerno* rule in federal constitutional adjudication).

The United States Supreme Court's reluctance to consider a facial challenge predicated on the due process clause of the federal constitution recently was demonstrated in *Troxel* v. *Granville*, U.S. , 120 S. Ct. 2054, L. Ed. 2d (2000), which affirmed *In re Custody of Smith*, 137 Wash. 2d 1, 969 P.2d 21 (1998), a case to which the plaintiffs cite in their

brief. In *In re Custody of Smith*, the Washington Supreme Court declared a third party visitation statute *facially* unconstitutional under the federal due process clause. See *In re Custody of Smith*, supra, 21. Rather than affirm the reasoning of the Washington Supreme Court, the United States Supreme Court, in a plurality opinion, held that the Washington visitation statute violated the due process clause of the fourteenth amendment only *as applied*. See *Troxel* v. *Granville*, supra, 2060–61 (plurality opinion) (''[the statute] *as applied* to [the parent] and her family in this case, unconstitutionally infringes on [a] fundamental parental right'' [emphasis added]). The plurality reasoned that, ''[b]ecause much state-court adjudication in this context occurs on a case-by-case basis, [it] would be hesitant to hold that specific nonparental visitation statutes violate the Due Process Clause as a *per se* [i.e., facial] matter.'' (Emphasis in original.) Id., 2064 (plurality opinion).

[16] I discuss both of these claims in part III of this opinion because, although, on the merits, such claims are distinct; compare *State* v. *Lamme*, 216 Conn. 172, 177, 579 A.2d 484 (1990) (''we have generally characterized article first, § 9, as one of our state constitutional provisions guaranteeing due process of law'') with id., 177 n.6 (''[b]y contrast, article first, § 7, of the Connecticut constitution provides constitutional protection from unwarranted searches and seizures''); the rationale for refusing to consider facial claims brought under both provisions, namely, the highly fact driven constitutional doctrine common to both provisions, is similar.

[17] Although Richard Ramos cites to *State* v. *Stoddard*, 206 Conn. 157, 164–67, 537 A.2d 446 (1988), in support of his claim under article first, § 7, of the Connecticut constitution, *Stoddard* involved a claim under article first, § 8, of the Connecticut constitution and, therefore, is inapposite.

[18] I recognize that we have considered facial claims under article first, § 9, of the Connecticut constitution under exceptional circumstances. E.g., *State* v. *Ross*, 230 Conn. 183, 248–49, 646 A.2d 1318 (1994), cert. denied, 513 U.S. 1165, 115 S. Ct. 1133, 130 L. Ed. 2d 1095 (1995) (considering facial challenge under article first, § 9, of Connecticut constitution to statute authorizing imposition of death penalty).

[19] I acknowledge that federal courts have considered facial challenges premised upon the fourth amendment right to be free from unreasonable searches and seizures. See, e.g., *Skinner* v. *Railway Labor Executives' Assn.*, 489 U.S. 602, 614, 109 S. Ct. 1402, 103 L. Ed. 2d 639 (1989) (considering facial challenge to government mandated drug testing program).