LEGAL MEMORANDUM

ON

Constitutionality of Mandatory Motorcycle Helmet Use Statutes

By

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March 14, 1977
Report No. UM-HSRI-77-16

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MARCH 1977

QUESTION PRESENTED

Whether a State or local requirement, that any person riding upon or operating a motorcycle upon the streets or highways shall wear upon his head a protective head device of the type approved by the State, is unconstitutional under the Fourteenth Amendment.

BRIEF ANSWER

The overwhelming weight of case law upholds the validity of State and local headgear legislation against a variety of constitutional challenges. These laws are held to be a valid exercise of the police power, since they employ reasonable means to create a direct or indirect benefit to the public.

However, the courts generally concerned themselves only with the existence of State power to enact headgear legislation; the wisdom of such laws is a matter for individual legislative branches to decide. With the repeal of the mandatory federal helmet-use standard, the decision whether or not to retain these laws is up to the State legislatures.

DISCUSSION OF AUTHORITY

I. Background

The Highway Safety Act of 1966, 23 U.S.C. Section 402(a), requires each State to have a highway safety program approved by the Secretary of Transportation and in accordance with uniform standards promulgated by him.

In June, 1967, the Secretary released Highway Standard 4.4.3 (23 C.F.R. Part 204), entitled "Motorcycle Safety," which required each State to have a motorcycle safety program providing as a minimum, inter alia, that when a motorcycle is being operated on streets and highways, each motorcycle operator and passenger shall wear an approved safety helmet.

A typical statute requiring the use of protective headgear by motorcycle operators and/or passengers might read:

> No person shall ride upon or operate a motorcycle on the streets or highways of this State (city) without wearing upon his head a protective head device (crash helmet, safety headgear, protective helmet) of a type approved by the Director of Public Safety (Commissioner, City Council Department of Health).

As of March, 1976, 46 States had enacted protective headgear legislation. Of the remaining States, Iowa, California, and Utah either had no law or one of limited applicability, and Illinois's law was struck down by a State supreme court ruling (discussed infra).

The Congress, in May, 1976, passed the Federal-Aid Highway Act, Public Law 94-280, which contained a provision specifically excluding motorcycle headgear legislation, insofar as it applies to cyclists over the age of 18, from the penalty-enforcement provisions of the Highway Safety Act. This provision permitted the States to repeal their motorcycle helmet laws, and, as of January, 1977, nine States (Alaska, Arizona, Connecticut, Iowa, Kansas, Louisiana, Rhode Island, South Dakota, and Oklahoma) had done so.

Prior to the passage of the Federal-Aid Highway Act, resistance to State headgear legislation took the form of court challenges initiated by motorcyclists' associations or appeals by cyclists apprehended and convicted for violating the helmet laws. Most State courts upheld these laws against challenges to their constitutionality; and only one State court of last resort (Illinois) has held that State's helmet law unconstitutional. However, the courts are not in agreement on their reasons for sustaining the validity of the helmet-use statutes.

II. Legal Basis for Headgear Legislation

Headgear legislation is primarily justifiable as an exercise of a State's police power, which includes the power to enact laws--within

constitutional limits--to promote the public health, safety, morals, or welfare. While the bounds of this power are not capable of precise definition, Berman v. Parker, 348 U.S. 26 (1954), the Supreme Court has established general guidelines for its valid exercise when individual liberties are threatened: first, the public interest (as opposed to that of any particular group) requires interference with individual rights; second, the means of carrying out this public end are both reasonably necessary to accomplish it, and are not unduly oppressive upon individuals. Lawton v. Steele, 152 U.S. 133 (1894).

Two other considerations strengthen the case for the constitutionality of headgear legislation: The first is the general presumption of constitutionality afforded statutes passed by the legislature. This presumption is recognized by the Michigan courts. Cady v. City of Detroit, 289 Mich. 499, 286 N.W. 805 (1939). The second consideration goes to the State's plenary power to regulate for the safety and the best interests of the public. Hess v. Pawolski, 274 U.S. 352 (1927). Michigan has recognized this important State interest in highway safety. Smith v. Wayne County Sheriff, 278 Mich. 91, 270 N.W. 227 (1936).

In enacting headgear laws, legislatures must rely upon a "public purpose" to support them. This "public purpose," as defined by the courts, has ranged from the indirect public benefits of protecting an individual motorcyclist from his own dangerous conduct to the direct harm to all highway users who share the public roads with unprotected cyclists.

The "self-protection" theory of public benefit focuses on the interdependence of an individual's actions and the interests of the State; that is, when a person neglects his own health, safety or welfare, all of society suffers. Therefore, by this reasoning, the State may protect itself by forcing individual members to protect themselves.

Typically, a court relying upon the "self-protective" rationale would point out that all of society must pay for injuries resulting from an individual cyclist's improvidence in the form of lost productivity, welfare costs, increased insurance rates, and the like.

The "direct harm" argument limits itself to the dangers posed to specific members of society as a direct result of an individual's failure to protect himself. A typical example cited by the courts involves a helmetless motorcyclist, who is struck in the head by a flying object, loses control of his cycle, and collides with other traffic.

Not all public benefits and costs involved in headgear legislation fit into either of these "pure" categories; for example, such developments as no-fault insurance create public costs which could be classified someplace between the pure categories.

III. Constitutional Attacks on Headgear Legislation

A. Substantive Attack: Public Purpose.

Since the validity of the police power depends on the existence of a public purpose and reasonable means for carrying it out, constitutional attacks on its exercise turn on challenges to the existence of either or both of them.

Many earlier court challenges to helmet laws alleged that they lacked a public purpose, since these statutes dealt only with an individual's private welfare and not that of society as a whole. Those courts which answered this attack have found a valid public benefit flowing from these allegedly self-protective enactments.

The chief justification for self-protective safety legislation is the so-called "public charge" theory which the court articulated in Simon v. Sargent, 346 F. Supp. 278, 279 (D. Mass.), affirmed 409 U.S. 1020 (1972) as follows:

> From the moment of the injury, society picks the person up off the highway; delivers him to a municipal hospital and municipal doctors; provides him with unemployment compensation if, after recovery, he cannot replace his lost job, and, if the injury causes permanent disability, may assume the responsibility for his and his family's continued subsistence. We do not understand a state of mind that permits plaintiff to think that only he himself is concerned.

A number of courts have cited a variation of the "public charge" rationale, namely that headgear legislation indirectly prevents a social harm in the form of increased insurance rates for all motorists. State v. Anderson, 275 N.C. 168, 166 S.E. 2d 49 (1968).

A small minority of courts have advanced a State interest in maintaining a productive citizenry, see, e.g., Commonwealth v. Coffman, 453 S.W. 2d 759 (Ky. 1970), People v. Carmichael, 56 Misc. 2d 388, 288 N.Y.S. 2d 931 (Gennessee Cty. Ct. 1968).

In Bisenius v. Karns, 42 Wis. 2d 42, 165 N.W. 2d 377, appeal dismissed, 395 U.S. 709 (1969), the court cited numerous examples of valid statutes aimed primarily at protecting individuals from themselves (hunters must wear brightly-colored jackets, aerial performers must have nets beneath them while performing, construction workers must wear hard hats on job sites, etc.) and alluded to the strong public policy against deliberate self-destruction, evidenced by laws such as those against suicide pacts and self-maiming.

Those courts and judges which rejected the self-protective motivation in the helmet law cases have refused to find a substantial public purpose behind these statutes. Lacking a public purpose, these laws infringe upon an individual's right to privacy. A typical statement of this "no public purpose" reasoning was made by the Illinois Supreme Court in People v. Fries, 42 Ill. 2d 446, 250 N.E. 2d 149, 150-151 (1969):

> However, the legislature may not, of course, under the guise of protecting the public interest, interfere with private rights...The manifest function of the headgear requirement in issue is to safeguard the person wearing--whether it is the operator or a passenger--from head injuries. Such a laudable purpose, however, cannot justify the regulation of what is essentially a matter of personal safety.

The dissent in the Michigan Supreme Court's ruling in favor of the validity of these statutes, City of Adrian v. Poucher, ___ Mich. ___, 247 N.W. 2d 798, 801 (1976) (T. J. Kavanagh, C.J., dissenting) cited other dissenting opinions and then stated that the protection of an individual from himself is "not among the proper functions of government."

Some courts, including the Michigan Supreme Court, have accepted the headgear requirement despite its self-protective aspects, but carefully limited their rulings to the helmet laws themselves and reserved the option to strike down in the future more restrictive safety measures, for example, mandatory seatbelt laws. See State v. Mele, 103 N.J. Super. 353, 247 A.2d 176 (Hudson Cty. Ct. 1968). These courts used a balancing test to sustain the challenged headgear legislation; the Hawaii Supreme Court, in State v. Cotton, 55 Haw. 138, 516 P. 2d 709, 710-11 (1973), articulated its version of the balancing test or, its theory of "significant secondary harms:"

> Viewed without limit, of course, 'secondary harm' arguments could justify an impermissibly wide range of governmental interference with private liberties.(citation omitted)...[H]owever, that merely because protecting the public from secondary harms could logically justify a vast range of governmental interferences with individual liberty, and merely because we could define secondary harms as including anything lessening the full development of an individual's perfection, this does not mean that such interference is always improper.

Then, after noting the relationship between headgear legislation and reduction of injuries to cyclists, the court observed:

> With the great danger of primary harm to helmetless cyclists as well as the rationality of helmet wearing as a safeguard thus statistically supported, the magnitude of secondary harms of the nature indicated above is sufficiently great to justify the law at issue in this case. In answer to the reductio ad absurdum argument of the dissent in this case with respect to the extent of governmental intrusions justifiable by secondary harm analysis, we refer to the statement in (State v. Lee, 51 Hawaii 516, 465 p. 2d 573 (1970), which upheld the state helmet law as constitutional) that "this holding is limited to this case" (citation omitted).

The court concluded:

> Particularly, we note that a tool which has aided us significantly in drawing the line between the police power and individual freedom in this case is the well-established doctrine that in regulating the use of public highways, the state has always been afforded exceptionally broad discretion. Certainly it is not beyond the permissible scope of legislation to mitigate by mandatory safety laws the tremendous economic and social costs occasioned by the extent of presentday highway carnage.

The Michigan court applied a similar standard in its decision in City of Adrian v. Poucher, supra; it found the Michigan statute to place a relatively minor burden upon cyclists, while bringing about benefits both to cyclists as a class and society as a whole.

Most state court decisions upholding headgear legislation rest upon the "direct-harm" argument, described earlier. A typical judicial statement of this rationale is as follows:

> [N]ot all highways are deserted these days; in fact, few are. If the loss of cyclist control were to occur on a well-travelled highway, the separation between consequence and incidence is less sharp. Anything that might cause a driver to lose control may well tragically affect another driver. If the loss of cyclist control occurs on a crowded freeway with its fast-moving traffic, the veering of a cyclist from his path of travel may pile up a half-dozen vehicles.

Bisenius v. Karns, 165, N.W. 2d at 380.

The Michigan court made a similar argument in Poucher, supra, 247 N.W. 2d at 800:

> For example, the ordinance benefits the driver of a vehicle which may accidentally collide with a motorcyclist. Since the helmet is designed to reduce injury to the cyclist, it also has a concomitant effect on the status of the automobile driver. If the helmet succeeds in mitigating what would otherwise be a fatal injury, then not only has the cyclist survived, but the automobile driver has not killed anyone.

Courts regard their "direct-harm" rationale as stronger than arguing the indirect social effects of the "self-protective" theory, and even some courts which may endorse self-protection as a valid grounds for legislation have preferred to base their holdings on the former. See, e.g., State v. Odegaard, 165 N.W. 2d 677 (N.D. 1969)

B. Attack on Means of Furthering the Public Purpose.

More recent court attacks on headgear legislation have begun to focus on the means of furthering the public purposes served by these statutes. Challenges have come on equal protection, delegation-of-powers, and vagueness grounds, and the courts have bluntly rejected every one of them.

Equal protection attacks on headgear legislation allege that cyclists are unreasonably put into a class separate from other motorists and then unjustly regulated on the basis of that distinction. The courts have had little difficulty rejecting such claims, pointing out that the differences between cyclists and other motorists are obvious, and that the legislature could rationally distinguish between them. People v. Fries, supra (holding that headgear legislation violated due process but not equal protection); Simon v. Sargent, supra.

Some have attacked the helmet laws on the grounds of vagueness; however, virtually all courts have held that these statutes are clear enough to give persons sufficient notice as to the standards to be obeyed. For example, in Cesin v. State, 288 So. 2d 473 (Fla. 1974), the court concluded that the term "helmet" was a term of art denoting a specific use and design as did football, police, and fire helmets.

Another type of challange to helmet laws was based on alleged illegal delegation of powers to an administrative body by the legislature. The courts have replied that delegation is permissible so long as reasonably clear standards exist to govern the administrators' exercise of discretion. Headgear laws, continued the courts, lawfully delegated the police power if they described the job to be done, who must do it, and the scope of his authority. See Bowles v. Willingham, 321 U.S. 502, 575 (1944).

Finally, in Love v. Bell, 171 Colo. 27, 465 P. 2d 118 (1970), the court turned down a challenge to that state's helmet law which alleged that it placed an undue burden upon interstate commerce.

IV. Conclusions

A review of the case law dealing with headgear legislation leads to the following conclusions about the legal status of these laws:

(1) With but one exception (Illinois), every state court of last resort has sustained headgear legislation as a valid and constitutional exercise of the police power. There have, however, been dissents by appellate judges, most of them based on the theories of "individual liberty" or the right of privacy.

(2) The courts are not in agreement as to the rationale for sustaining headgear legislation. Specifically, courts are divided on whether "self-protection" is a valid purpose of such laws, and most courts have not sustained them on self-protection grounds alone.

(3) More generally, in court challenges to safety statutes similar to headgear legislation, the case for their validity will depend on whether the court finds a significant social benefit flowing from the law, and what form that benefit takes. Such analysis will become more important if and when more restrictive safety statutes, such as mandatory seat belt laws, are passed by the legislatures and challanged in court.

(4) Since courts have generally agreed that states may constitutionally enact headgear legislation, and since Congress has repealed Highway Standard 4.4.3, disputes over headgear legislation will shift, at least in the immediate future, from the courts to the legislatures. Those arguments unsuccessfully raised in court by opponents of headgear statutes, particularly individual arguments grounded on individual rights of privacy and to "liberty" in general, may carry greater weight in the legislatures.

APPENDIX

Recorded Judicial Decisions Dealing with the Validity of Headgear Legislation

A. State Courts of Last Resort

Alaska: Kingery v. Chapple, 504 P. 2d 831 (Alaska 1972) (administrative regulations not void for vagueness).

Arkansas: Penney v. City of North Little Rock, 248 Ark. 1158, 455 S.W. 2d 132 (1970) (upheld municipal headgear ordinance).

Colorado: Love v. Bell, 171 Colo. 27, 465 P. 2d 118 (1970) (upheld state headgear law; court rejected challenge based on Commerce Clause).

Florida: State v. Eitel, 227 So. 2d 489 (Fla. 1969) (upheld state headgear law; rejected challenge based on "right to be left alone").

State v. Cesin, 288 So. 2d 473 (Fla. 1974) (upheld; rejected vagueness claim).

Hawaii: State v. Lee, 51 Hawaii 516, 465 P. 2d 573 (1970) (upheld state headgear law as "proper exercise of police power").

State v. Cotton, 55 Hawaii 138, 516 P. 2d 709 (1973) (state goggles and face shield requirements upheld against due process and equal protection attacks).

Idaho: State v. Albertson, 93 Idaho 640, 470 P. 2d 300 (1970) (upheld state headgear law).

Illinois: People v. Fries, 42 Ill. 2d 446, 250 N.E. 2d 149 (1969) (invalidated helmet law as violation of due process, but rejected equal protection challenge).

Kansas: City of Wichita v. White, 205 Kan. 408, 469 P. 2d 287 (1970) (upheld municipal headgear ordinance).

Manzanares v. Bell, 214 Kan. 589, 522 P. 2d 1291 (1974) (upheld state headgear legislation).

Kentucky: Commonwealth v. Coffman, 453 S.W. 2d 759 (Ky. 1970) (upheld state headgear law, court asserted state interest in continued productivity of its citizens).

Louisiana: Everhardt v. City of New Orleans, 253 La. 285, 217 So. 2d 400 (1968) cert den., 395 U.S. 212 (1969) (upheld municipal headgear statute; reversing lower court).

Massachusetts: Commonwealth v. Howie, 354 Mass. 769, 238 N.E. 2d 373, cert den., 393 U.S. 999 (1968) (upheld state headgear law).

Michigan: City of Adrian v. Poucher, ___ Mich. ___, 247 N.W. 2d 798 (1976) (upheld municipal headgear ordinance).

Minnesota: State v. Edwards, 287 Minn. 83, 177 N.W. 2d 40 (1970) (upheld state headgear legislation; rejected equal protection attack).

Mississippi: City of Jackson v. Lee, 252 So. 2d 897 (Miss. 1971) (upheld municipal headgear ordinance).

Missouri: State v. Darrah, 446 S.W. 2d 745 (1969) (upheld state headgear legislation).

New Hampshire: State v. Merski, 113 N.H. 323, 307 A.2d 825 (1973) (upheld state headgear legislation).

New Mexico: City of Albuquerque v. Jones, 87 N.M. 486, 535 P. 2d 1337 (1975) (upheld municipal headgear ordinance).

North Carolina: State v. Anderson, 275 N.C. 168, 166 S.E. 2d 49 (1969) (upheld state headgear legislation; found social benefit in reduction of insurance costs for all motorists).

North Dakota: State v. Odegaard, 165 N.W. 2d 677 (N.D. 1969) (upheld state headgear legislation; accepted self-protective rationale in dicta).

Oklahoma: Elliott v. City of Oklahoma City, 471 P. 2d 944 (Okla. Crim. 1970) (upheld municipal headgear ordinance).

Oregon: State v. Fetterly, 254 Ore. 47, 456 P. 2d 996 (1969) (upheld state headgear legislation).

Rhode Island: State ex rel Colvin v. Lombardi, 104 R.I. 28, 241 A.2d 625 (1968); State v. Lombardi, 110 R.I. 776, 298A. 2d 141 (1972) (state headgear legislation upheld in both).

Tennessee: Arutanoff v. Metropolitan Government of Nashville and Davidson County, 223 Tenn. 535, 448 S.W. 2d 408 (1969) (upheld state and local headgear legislation).

Utah: State v. Archer, 26 Utah 2d 104, 485 P. 2d 1038 (1971) (upheld state headgear legislation, which applied only to speeds of 35 mph and over).

Vermont: State v. Solomon, 260 A.2d 377 (Vt. 1969) (upheld state headgear legislation).

Washington: State v. Laitinen, 77 Wash. 2d 130, 459 P. 2d 789 (1969) cert den., 397 U.S. 1055 (1970) (upheld state headgear legislation as reasonable exercise of police power).

Wisconsin: Bisenius v. Karns, 42 Wis. 2d 42, 165 N.W. 2d 377, appeal dismissed, 395 U.S. 709 (1969) (declaratory judgement; court upheld validity of state headgear legislation).

City of Kenosha v. Doremagen, 54 Wis. 2d 269, 195 N.W. 2d 462 (1972) (upheld local headgear ordinance; followed Bisenius).

B. State Intermediate Appellate Courts

Arizona: State v. Beeman, 25 Ariz. App. 83, 541 P. 2d 409 (Ariz. App. 1975) (upheld revised state headgear legislation).

Delaware: State v. Brady, 290 A.2d 322 (Del. Super. 1972) (upheld state headgear legislation).

Illinois: People v. Henninger, 28 Ill. App. 3d 557, 328 N.E. 2d 580 (Ill. App. 1975) (upheld equipment requirements for passengers on motorcycles; requirements not "patently unconctitutional, "distinguishing Fries).

New Jersey: State v. Krammers, 105 N.J. Super. 345, 252 A.2d 223 (App. Div. 1969) (upheld state headgear legislation).

Ohio: State v. Craig, 19 Ohio App. 2d 29, 48 Ohio Ops. 2d 28, 249 N.E. 2d 75 (Ohio App. 1969) (upheld state headgear legislation).

Pennsylvania: Commonwealth v. Arnold, 215 Pa. Super. 444, 258 A.2d 885 (Pa. Super. 1969) (upheld state headgear legislation).

Texas: Ex parte Smith, 441 S.W. 2d 544 (Tex. Crim. App. 1969) (habeas corpus case; court upheld state headgear legislation and rejected delegation-of-powers argument).

C. Trial Courts (all upholding headgear legislation unless otherwise noted)

New Jersey: State v. Mele, 103 N.J. Super. 35?, 247 A.2d 176 (Hudson Cty. Ct. 1968) (distinguishing headgear legislation from more purely self-protective enactments such as mandatory seat belt laws).

New York: People v. Carmichael, 56 Misc. 2d 388, 288 N.Y.S. 2d 931 (Gennessee Cty. Ct. 1968) (asserted state interest in healthy citizenry capable of bearing arms).

People v. Newhouse, 55 Misc. 2d 1064, 287 N.Y.S. 2d 713 (Cty. Ct. Ithaca 1968); People v. Bielmeyer, 54 Misc. 2d 466, 282 N.Y.S. 2d 466, 282 N.Y.S. 2d 797 (Cty. Ct. Buffalo 1967).

Ohio: State v. Betts, 21 Ohio Misc. 175, 49 Ohio Ops. 22, 252 N.E. 2d 866 (Mun. Ct. Franklin 1969) (found state headgear law unconstitutional, having no real and substantial relation to valid state purpose; declined to follow State v. Craig).

D. Federal Courts

1. Supreme and Appellate Courts: Neither the U.S. Supreme Court nor any Circuit Court of Appeals has decided a headgear legislation case on the merits. However, the Supreme Court has denied certiorari to a number of state court rulings upholding these laws, and has affirmed, in memorandum decisions, District Court rulings upholding state headgear laws.

2. District Courts:

Florida: Bogue v. Faircloth, 316 F. Supp. 486 (S.D. Fla. 1970) (sustained Florida headgear legislation against constitutional attack).

Massachusetts: Simon v. Sargent, 346 F. Supp. 277 (D. Mass.) affirmed, 409 U.S. 1020 (1972) (declaratory judgment action; upheld Massachusetts' law as reasonable exercise of police power).

E. Opinions of States Attorneys - General

Opinion of Attorney - General of New Mexico, No. 69-14 Feb. 25, 1969. In response to an Attorney for the New Mexico legislative Counsel, the opinion notes cases contra position taken in No. 66-15 but states "we are unwilling to completely abandon our past position."

Opinion of Attorney - General of Oklahoma, No. 68-267, Dec. 31, 1968, that 470. S. Supp. 1967 Sec. 40-105(b), is unconstitutional.

Opinion of Attorney - General of New Mexico, No. 66-15, Feb. 1, 1966. Proposed city ordinance unconstitutional as to citizens over 18.

F. Law Review Notes and Articles

Constitutional Law - Due Process - Statute Requiring Motorcyclist to Wear Crash Helmet is Unconstitutional, (American Motorcycle Ass'n. v. Davids), 82 Harv. L. Rev. 469 (1968).

Constitutional Law - Police Power - Motorcycle Crash Helmet Laws' Relation to Public Welfare, 1969 Wisc. L. Rev. 320 (1969).

Constitutional Law - Validity of Safety Helmet Requirements, 71 W. Va. L. Rev. 191 (1969).

Constitutionality of Mandatory Motorcycle Helmet Legislation, 73 Dick. L. Rev. 100 (1968).

Motorcycle Helmets and the Constitutionality of Self-Protective Legislation, 30 Ohio S.U.L.J. 355 (1969).

Note, 2 Conn. L. Rev. 150 (1969).

Note, 67 Mich. L. Rev. 360 (1968).

Note, 37 U. Mo. K.C. L. Rev. 385 (1969).

Note, 30 U. Pitt. L. Rev. 421 (1968).

Note, 26 Wash. & Lee L. Rev. 119 (1968).

The Validity of Motorcycle Helmet Statutes, part of a symposium at 35 Albany C. Rev. 431 (1971).