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MOTOR VEHICLES AND TRAFFIC

Motor Vehicles: Ban Obscene Bumper Stickers

CODE SECTION: O.C.G.A. § 40-1-4 (new)
 BILL NUMBER: HB 172
 ACT NUMBER: 1398
 SUMMARY: The Act defines a new misdemeanor which prohibits a person from knowingly affixing or attaching an obscene bumper sticker to any motor vehicle that a person owns, operates, or uses.
 EFFECTIVE DATE: July 1, 1988

History

HB 172 was first introduced in January of 1987 in response to a public outcry against obscene bumper stickers. Numerous complaints were made to members of the legislature by people who did not want their children exposed to obscene bumper stickers.¹ The bill was favorably reported from the House Committee on Motor Vehicles and passed in committee substitute form.² It was then reported favorably from the Senate Committee on Public Safety, but never reached the Senate floor during the 1987 session.³

At the beginning of the 1988 session, the Senate passed the bill with a floor amendment unacceptable to the House.⁴ The Senate subsequently abandoned its position and passed the bill as submitted by the House Committee on Motor Vehicles.⁵

The bill encountered opposition on the floors of both the House and

1. Telephone interview with Representative Terry Lawler, House District No. 20 (Mar. 28, 1988) [hereinafter Lawler Interview] (Representative Lawler was one of the bill's sponsors.).

2. Final Composite Status Sheet, Mar. 12, 1987.

3. *Id.*

4. Final Composite Status Sheet, Mar. 7, 1988. The Senate, wishing to quash the bill, wanted the language changed back from "knowingly affix or attach" to "display" which, in the opinion of most, would assure its unconstitutionality. Lawler Interview, *supra* note 1. Cf. ALA. CODE § 13A-12-131 (Supp. 1988) ("It shall be unlawful for any person to display in public any bumper sticker, sign or writing which depicts obscene language descriptive of sexual or excretory activities."). The Alabama statute differs from the Act in that it prohibits "displaying" rather than "knowingly affixing" the stickers. As of September 1, 1988, no litigation challenging the constitutionality of the Alabama statute had been reported.

5. Final Composite Status Sheet, Mar. 7, 1988.

the Senate because of its questionable constitutionality. The bill probably impinges on the freedom of speech guaranteed under the United States Constitution and the Georgia Constitution of 1983.⁶

HB 172

As introduced in the House, the bill banned "displaying slang profane words or words describing sexual acts or excretory functions which may have an intent to be lewd."⁷ Concern that HB 172 probably restricted free speech prompted the House Committee on Motor Vehicles to change the language of the bill so that the owner, operator, or user of the vehicle was required to "knowingly affix or attach" the sticker in order to violate the law.⁸ The substitute was premised on the theory that when the intent element is added, there is no absolute bar to expression; therefore, first amendment freedoms are not abridged.⁹ The substitute also expanded the prohibited language to include "profane or lewd words describing sexual acts, excretory functions, or parts of the human body."¹⁰ Additionally, the House Committee added that punishment for the misdemeanor would be limited to "a fine not to exceed \$100.00."¹¹ All changes made by the committee were adopted in the final version of the Act.¹²

Opponents of the bill expressed concern that first amendment issues were not considered thoroughly and that the bill was a reaction to election year political pressures.¹³ The sponsors were criticized for leaving the question of the bill's constitutionality to the courts.¹⁴ The American Civil Liberties Union called the bill's passage a disappointment because it was "vague and an abridgement of First Amendment rights."¹⁵

6. Telephone interview with Senator Edward Hine, Jr., Senate District No. 52 (Mar. 29, 1988) [hereinafter Hine Interview]; see U.S. CONST. amend. I ("Congress shall make no law . . . abridging the freedom of speech . . ."); GA. CONST. art. 1, § 1, ¶ 5 ("No law shall be passed to curtail or restrain the freedom of speech or the press. Every person may speak, write, and publish sentiments on all subjects but shall be responsible for the abuse of that liberty.").

7. HB 172, as introduced, 1987 Ga. Gen. Assem.

8. HB 172 (HCS), 1987 Ga. Gen. Assem.

9. Telephone interview with Representative Pete Robinson, House District No. 96 (Mar. 31, 1988) [hereinafter Robinson Interview].

10. HB 172 (HCS), 1987 Ga. Gen. Assem. Representative Lawler reported that he was contacted by a concerned group from California who questioned whether "parts of the human body" would exclude the "I (heart symbol) my _____" stickers because they included a drawing of a human heart. He assured them that only body parts described in a profane manner were banned. Lawler Interview, *supra* note 1.

11. HB 172 (HCS), 1987 Ga. Gen. Assem.

12. O.C.G.A. § 40-1-4 (Supp. 1988).

13. Hine Interview, *supra* note 6.

14. *Id.*

15. Hesser, *House Votes to End Ride of "Lewd" Bumper Stickers*, Atlanta Const., Mar. 3, 1987, at 1C, col. 2 (quoting Gene Guerrero, Executive Director of the American Civil Liberties Union).

According to a sponsor of the bill, the Act will withstand constitutional scrutiny because viewers of bumper stickers are arguably a captive audience.¹⁶ Averting one's eyes while driving presents a safety hazard and thus cannot be done at the viewer's discretion. The viewers' inability to avoid the stickers opens the door to governmental regulation.¹⁷

In addition to its probable unconstitutionality, the Act has other inherent problems including the difficulty of enforcing the law, especially against out-of-state motorists, and the difficulty of defining "profane or lewd."¹⁸ The Act does not define "lewd" or "profane."¹⁹ While Georgia's definition of "obscene material"²⁰ includes "[a]cts involving excretory functions or lewd exhibition of the genitals," "profane" or "profanity" is not in the definition.²¹ Presumably, the standards used to determine whether material is obscene will be used to determine whether bumper stickers are profane or lewd.²² The sponsors have not addressed the manner in which the law will be enforced.²³

Proponents of the Act claim this legislation is the most logical way to solve the problem of obscene bumper stickers.²⁴ Because the Act does not outlaw the sale or ownership of the stickers, the Act's supporters insist there is no constitutional violation.²⁵

The issue of the bill's constitutionality is left to the courts.²⁶ However, since the average motorist probably will not challenge the statute, litigation may be rare.²⁷

A. Haney

16. Lawler Interview, *supra* note 1. See *Cohen v. California*, 403 U.S. 15 (1971) (offensive language is protected as long as it is not directed at a particular individual, does not create a breach of the peace, and there is not a captive audience).

17. Lawler Interview, *supra* note 1. A counterargument can be made that the distraction caused by bumper stickers applies regardless of their obscenity. However, the captive audience theory gives the government the potential authority to regulate a form of expression. See *Cohen*, 403 U.S. at 23—24.

18. *Strange Laws Happen*, Atlanta Const., Feb. 4, 1987, at 10A, col. 1. The author poses the query, "Would 'Guano Occurs' be OK?"

19. O.C.G.A. § 40-1-4 (Supp. 1988).

20. O.C.G.A. § 16-12-80 (1988).

21. *Id.*

22. Lawler Interview, *supra* note 1.

23. *Id.*

24. *Id.*

25. *Id.*

26. *Id.* Representative Lawler wanted only the public display of the stickers banned. Private display did not concern him. *Id.* This position is consistent with constitutional case law; private possession of obscene material cannot be regulated but its public display may be controlled. *Stanley v. Georgia*, 394 U.S. 557 (1969).

27. Robinson Interview, *supra* note 9. The average motorist would most likely prefer to remove the sticker rather than go through costly and time-consuming litigation. Presumably, this reaction is the desired effect of the Act. See Lawler Interview, *supra* note 1.