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8 **SUPERIOR COURT OF CALIFORNIA**
9 **TRAFFIC-MUNICIPAL COURT**
10 **CITY OF SAN JOSE, COUNTY OF SANTA CLARA**
11

12 **PEOPLE,**) Case No.: **H02536834**
13)
14 Plaintiff,) **MOTION TO DISMISS**
15 **v.**) **w/ POINTS & AUTHORITIES**
16 **PELLETIER, MICHAEL VINCENT,**)
17 Defendant) **Trial Date: September 28, 2001, 9:00am**
18) **Traffic Facility, 935 Ruff Drive, San Jose**
19) **September 28, 2001**

20 **CASE SUMMARY**

21 Defendant, a competent adult citizen, is charged with a violation of California Vehicle Code
22 §23116(b), “no person shall ride in or on the back of a truck or flatbed motortruck being driven on a
23 highway.”

24 **MOTION**

25 On the grounds that this statute violates defendant’s liberty interest under the Fourteenth
26 Amendment to the Constitution of the United States in determining his own standards of health care and
27 physical safety by imposing state-mandated standards against his will in absence of due process, and is
28 therefore unconstitutional, defense moves that this case be dismissed with prejudice.
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1 **ARGUMENT AND AUTHORITIES**

2 The prohibition in VC §23116 parallels the prohibitions of §27315¹ and §27803 – the seatbelt and
3 motorcycle helmet laws, respectively – in that an activity that involves risk to no other person but the
4 defendant is criminalized for the purposes of “reducing deaths and injuries” [VC §27315(a)] or
5 providing “an additional safety benefit” [VC §27803(f)].

6 At first glance, the question of the constitutional validity of Calif. Vehicle Code §23116 may appear
7 to be a settled one.² Although it has not been challenged on any grounds,³ the California Superior
8 Courts and Courts of Appeals have denied numerous legal challenges to Vehicle Code §27315 and
9 §27803 under a variety of legal theories, even including a rather amusing and improbable “freedom of
10 speech” argument.⁴

11 However, the landscape of precedent has changed in the years following these validity decisions,
12 due to cases since decided in the U.S. Supreme Court. This has had the effect of reopening this question
13 to consideration by this Court.

14 This argument will touch on five issues: (1) balancing individual rights against those of society; (2)
15 the compelling state interest in saving lives as weighed against the right to health-care self-
16 determination; (3) informed consent and its corollary, informed refusal; (4) the relationship between
17 health care self-determination and personal safety self-determination, and (5) likely legislative intent.

18 **INTERESTS OF SOCIETY vs. INDIVIDUAL LIBERTY**

19 The balancing between the interests of the State and that of individual liberty dates back to our
20 nation’s founding. On May 20, 1782, Thomas Jefferson wrote to James Monroe,

21 “If we are made in some degree for others, yet in a greater degree are we made for
22 ourselves. It were contrary to feeling and indeed ridiculous to suppose that a man had
23 less right to himself than one of his neighbors, or indeed all of them put together. This
24 would be slavery and not that liberty which the bill of rights has made inviolable and for
25 the preservation of which our government has been charged. Nothing could so

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27 ¹ Calif. AB-153 (1993, Tucker) Committee Analysis, 3rd reading, June 29, 1993, Comment 1.

28 ² *People v. Coyle* (Super. 1988) 251 Cal.Rptr. 80; 204 Cal.App.3d Supp. 1, and
29 *People v. Elkins* (Super. 1992), 16 Cal.Rptr.2d 504

30 ³ *West’s Ann. Cal. Vehicle Code* §23116

⁴ *Buhl v. Hannigan* (App. 4 Dist. 1993) 20 Cal.Rptr.2d 740; 16 Cal.App.4th 1612

1 completely divest us of that liberty as the establishment of the opinion that the state has a
2 perpetual right to the services of all its members.”⁵

3 And before the turn of the century, the U.S. Supreme Court observed in *Union Pacific R. Co. v.*
4 *Botsford*,⁶

5 “No right is held more sacred, or is more carefully guarded, by the common law,
6 than the right of every individual to the possession and control of his own person, free
7 from all restraint or interference of others, unless by clear and unquestionable authority of
8 law.”

9 Of course, this sacred right has never been considered unlimited license to do as one pleases.
10 Each of us lives in a society with other individuals, whose lives and liberty the government is
11 charged with protecting. As the U.S. Supreme Court noted in *Jacobson v. Massachusetts*,⁷

12 “The liberty secured by the Constitution of the United States to every person within
13 its jurisdiction does not import an absolute right in each person to be, at all times and in
14 all circumstances, wholly freed from restraint. There are manifold restraints to which
15 every person is necessarily subject for the common good.”

16 The *Jacobson* case asked whether a mandatory smallpox vaccination of competent adult citizens,
17 under threat of a \$5 fine (equivalent to nearly \$100 today), was an invasion of liberty. The court ruled
18 that because the vaccination was only required when deemed necessary for the public health or the
19 public safety, it was a legitimate exercise of police power, since an infection of smallpox not only
20 endangered the individual citizen asserting a liberty interest, but every person with whom that individual
21 came in contact through the course of daily life.

22 On the other hand, the Court also drew a distinction between invasions of individual liberty that are
23 necessary to protect the public at large from harm (*i.e.*, the “common good”) – such as a vaccine against
24 a highly contagious and deadly disease – as opposed to other invasions of that liberty, in noting:

25 “There is, of course, a sphere within which the individual may assert the supremacy
26 of his own will and rightfully dispute the authority of any human government, especially
27 of any free government existing under a written constitution, to interfere with the exercise
28 of that will.”

29 ⁵ Thomas Jefferson to James Monroe, Monticello, May 20, 1782, cited from the Avalon Project at the Yale Law School,
30 <http://www.yale.edu/lawweb/avalon/jefflett/let18.htm>

⁶ *Union Pacific R. Co. v. Botsford*, 141 U.S. 250, 251 (1891).

⁷ *Jacobson v. Massachusetts*, 197 U.S. 1904; 25 S.Ct. 358; 49 L.Ed. 643 (1905).

1 The implication is that under circumstances such as in *Jacobson*, where harm may come to others
2 from the exercise of one’s free will, the State may legitimately act to limit that exercise, but in certain
3 other cases where the only postulated harm may befall the individual, it may not. Had a smallpox-prone
4 Jacobson resided on a deserted island within the jurisdiction of Massachusetts, and therefore posed no
5 risk to the “common good,” he would *not* have been liable for mandatory vaccination under the law,
6 regardless of the risk to his own health, and would have rightfully disputed such measures being forced
7 upon him.

8 Such self-ownership and self-determination is one of the fundamental principles of our society, and
9 Justice Cardozo cogently expressed this fact in his oft-quoted 1914 ruling in *Schloendorff v. The Society*
10 *of New York Hospital*: “Every human being of adult years and sound mind has a right to determine what
11 shall be done with his own body.”⁸

12 In *People v. Coyle*,² the California Appellate Court concluded, in ruling the seat-belt mandate
13 constitutional, that “the state has a compelling interest in saving lives and promoting the welfare of its
14 citizens,” or in other words, “protecting the common good.” But the foregoing evidence suggests that
15 they did not carefully consider that this compelling interest is not all encompassing – it must be weighed
16 against individual rights and interests, and that it generally extends to society taken as a whole, rather
17 than to a specific individual.

18 **COMPELLING STATE INTERESTS & SELF-DETERMINATION**

19 Three compelling state interests that can be immediately recognized as such are (1) the preservation
20 of life, (2) prevention of suicide, and (3) protection of innocent third parties. Each of these interests has
21 a direct relationship to the express purposes for which government was established in the United States
22 as noted in its founding documents.

23 Any state interest must be weighted against the rights of the individual, and in certain
24 circumstances, these interests may override the rights and freedoms of the individual. But where an
25 adult with capacity has made an informed decision, a state interest will rarely be found to override the
26 individual right, even when the exercise of that right poses a serious threat to the life and health of the
27 individual exercising that choice.⁹

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30 ⁸ *Schloendorff v. The Society of New York Hospital*, 211 N.Y. 125, 105 N.E. 92 (1914)

⁹ *Fosmire v. Nicoleau*, 144 A.D.2d 8 (1989), 536 N.Y.S.2d 492 (1988)

1 In 1990 – two years after the *Coyle* decision – the U.S. Supreme Court, looking to their previous
2 rulings in *Botsford*,⁶ *Jacobson*,⁷ and *Schloendorff*,⁸ noted in *Cruzan v. Director, Missouri Dept. of*
3 *Health*,¹⁰ that:

4 “The principle that a competent person has a constitutionally protected liberty
5 interest in refusing unwanted medical treatment may be inferred from our prior
6 decisions.”

7 This principle, put simply, is one of “informed refusal.”

8 **INFORMED CONSENT, INFORMED REFUSAL**

9 The doctrine of “informed consent” is a well-recognized and established one, both in statute and
10 case law. Calif. Penal Code §2672 provides “that a person must knowingly and intelligently, without
11 duress or coercion, and clearly and explicitly manifest his consent to the proposed” medical treatment to
12 meet the standard of informed consent. This transforms what would otherwise be a criminal act into a
13 lawful one, an “assault and battery using a weapon likely to do great bodily harm” into an
14 “appendectomy using a scalpel.”

15 Hand-in-hand with informed consent is its logical corollary, “informed refusal.” California law sets
16 forth this principle in recognizing that all persons with the capacity for informed consent, even those
17 imprisoned, have a fundamental right against involuntary medical treatments.¹¹

18 **HEALTH-CARE SELF-DETERMINATION / SAFETY SELF-DETERMINATION**

19 The informed consent right to refuse unwanted health-care measures also extends to a right to refuse
20 unwanted safety measures.

21 In the case of *UAW v. Johnson Controls, Inc.*,¹² the U.S. Supreme Court ruled that, despite the
22 benevolent intent in Johnson Controls’ policy of categorically excluding fertile women from battery-
23 manufacturing jobs due to the risk of reproductive or fetal harm due to elevated blood lead levels, “the
24 decision to become pregnant or to work while being either pregnant or capable of becoming pregnant
25 was reserved for each individual woman to make for herself.”

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29 ¹⁰ *Cruzan v. Director, Missouri Dept. of Health*, 497 U.S. 261 (1990)

30 ¹¹ Calif. Penal Code §2670 *et seq.*

¹² *UAW v. Johnson Controls, Inc.*, 111 S.Ct. 1196; 499 U.S. 187 (1991)

1 Just as each woman must have a right to an informed choice between the risks and rewards of a
2 battery-manufacturing job which poses a real and significant health risk, each competent adult individual
3 must have a right to informed choices with respect to the myriad risks he or she faces in life. One may
4 choose to drive a Volvo or a motorcycle, to travel by train or jump out of an airplane, to wade on the
5 beach or scuba dive, and yes, sit either in the cab or in the bed of a pickup truck. These are the
6 hallmarks of the freedom that has made this nation great.

7 TOWARDS LEGISLATIVE INTENT

8 It may be reasonably inferred from the legislative record during the passage of AB-153 (1993)
9 (which formed the statute at bar by expanding a prior prohibition against unrestrained pickup-bed riding,
10 which only applied to those 12 years old and younger, to encompass all California citizens), a Los
11 Angeles Times article about the bill in which a direct comparison to the seat-belt and helmet laws was
12 made,¹³ and the statute's relationship to these two sections with their specific statements of intent, that
13 the aim of §23116, as with §27315 and §27803, was one of a medical nature: revoking individual
14 freedom of choice in an effort to prevent the possible medical consequences of failing to observe its
15 edicts under certain circumstances.

16 SUMMARY

17 The essential message of this statute is that a competent adult citizen of California is to be treated
18 like a 12-year-old child, or like a dog¹⁴ – presumed by the legislative gentry to lack sufficient common
19 sense not to stand up or “horse around”¹⁵ while riding in a pickup bed. It represents the fruit of the
20 efforts of Ms. Connie Los, a wealthy Santa Barbara political dilettante, to salve her grief over the loss of
21 her son by imposing the coercive force of the state's police power on all its millions of competent adult
22 citizens in order, as she put it, to “prohibit someone else from feeling the pain I live with every day.”¹³

23 But it is self-evident that the role of government is to secure the inalienable right to the *pursuit* of
24 happiness,¹⁶ not to happiness (and the absence of pain) itself – and to secure the inalienable right to
25 *liberty*. In her zeal to ease her own pain, Ms. Los and her grief-driven, burning emotional appeal
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27 ¹³ 3/14/93 L.A. Times 3, “Seat Belt Bill Urged as Memorial to Son, 15”

28 ¹⁴ “We leash dogs in the back of trucks, and we don’t leash humans.” – Connie Los, 3/14/93 L.A. Times 3

29 ¹⁵ Calif. AB-153 (Tucker) Committee Analysis, 3rd reading, June 29, 1993, Comment 4.

30 ¹⁶ *Declaration of Independence* (1776)

1 influenced our legislators to set aside the rational, reasonable, and constitutional limits on the power of
2 government over the lives and freedom of competent adult citizens. The seductive notion that “if we
3 force people to do good, they will be free to be happy”¹⁷ is the antithesis of the American ideal.

4 A Fourteenth Amendment liberty interest is implicated by this statute, and the prevailing opinion of
5 the U.S. Supreme Court is that the liberty interest in refusing unwanted health-care and safety measures
6 must be weighed against the state interest, with a strong preference toward the individual right of self-
7 determination. The U.S. Supreme Court has thus superseded the ruling in *People v. Coyle*.

8 It is a fundamental principle that the legislature in enacting laws are to consider the least invasive
9 means to accomplish their objective, particularly when such laws impinge upon constitutionally-
10 protected individual rights and interests. Applying a prohibition not on “standing up in a pickup bed,”
11 or “horsing around in a pickup bed,”¹⁵ but rather on ordinary transport of an unrestrained, seated,
12 competent, consenting adult citizen – as was the case in the instant prosecution – does not appear to
13 meet this standard.

14 For these reasons, the defendant asks that the Court declare Calif. Vehicle Code §23116(b), and any
15 dependant or related statutes, unconstitutional, and that this prosecution be dismissed with prejudice
16 under the principle that “an unconstitutional statute, whether federal or state, though having the form
17 and name of law, is in reality no law, but is wholly void, and ineffective for any purpose.”¹⁸

18 The defendant thanks the Court for its scrupulous consideration of this matter.
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20 Dated this 28th day of September, 2001

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30 ¹⁷ *The Fountainhead*, Ayn Rand, New York, Signet Paperback Edition, 1993, p.555

¹⁸ 16 Am. Jur. 2d Constitutional Law 203 (1998)