

# Table of Authorities for *People v. Pelletier & Irwin*

California Pickup-Truck Seatbelt Law Challenge, October 2001

## 11 Am.Jur. Constitutional Law 329

Personal liberty largely consists of the right of locomotion – to go where and when one pleases – only so far restrained as the rights of others may make it necessary for the welfare of all other citizens. The right of a citizen to travel upon the public highways and to transport his property thereon, by horse-drawn carriage, wagon, or automobile, is not a mere privilege which may be permitted or prohibited at will, but a common right which he has under his right to life, liberty, and the pursuit of happiness. Under this constitutional guaranty one may, therefore, under normal conditions, travel at his inclination along the public highways or in public places, and while conducting himself in an orderly and decent manner, neither interfering with nor disturbing another’s rights, he will be protected, not only in his person, but in his safe conduct.

## *Doe v. Bolton*, [410 U.S. 179, 35 L.Ed.2d 201 (1973)]

But where fundamental personal rights and liberties are involved, the corrective legislation must be “narrowly drawn to prevent the supposed evil,” *Cantwell v. Connecticut*, 310 U.S. 296, 307, and not be dealt with in an “unlimited and indiscriminate” manner. *Shelton v. Tucker*, 364 U.S. 479, 490. And see *Talley v. California*, 362 U.S. 60.

## *Union Pac. Ry. Co. v. Botsford*, [11 S.Ct. 1000, 141 U.S. 250, 35 L.Ed. 734 (1891)]

No right is held more sacred, or is more carefully guarded by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law. As well said by Judge Cooley: ‘The right to one’s person may be said to be a right of complete immunity; to be let alone.’ Cooley, Torts, 29.

## *Boyd v. United States*, [6 S.Ct. 524, 116 U.S. 616, 29 L.Ed. 746, 3 A.F.T.R. 2488 (1886)]

It may be that it is the obnoxious thing in its mildest and least repulsive form; but illegitimate and unconstitutional practices get their first footing in that way, namely, by silent approaches and slight deviations from legal modes of procedure. This can only be obviated by adhering to the rule that constitutional provisions for the security of person and property should be liberally construed. A close and literal construction deprives them of half their efficacy and leads to gradual depreciation of the right, as if it consisted more in sound than in substance. It is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachment thereon. Their motto should be *obsta principiis*.

## *In re Conroy*, [486 A.2d 1209, 98 N.J. 321, 53 USLW 2372, 48 A.L.R.4<sup>th</sup> 1 (1985)]

The doctrine of informed consent presupposes that the patient has the information necessary to evaluate the risks and benefits of all the available options and is competent to do so.

The patient’s ability to control his bodily integrity through informed consent is significant only when one recognizes that this right also encompasses a right to informed refusal.

Finally, in *Quinlan, supra*, 70 N.J. at 40, 355 A.2d 647, we indicated that the right of privacy enunciated by the Supreme Court “is broad enough to encompass a patient’s decision to decline medical treatment under certain circumstances,” even if that decision might lead to the patient’s death. *Accord Saikewicz, supra*, 373 Mass. at 378, 370 N.E.2d at 424; *Quackenbush, supra*, 156 N.J.Super. at 289-90, 383 A.2d 785. While this right of privacy might apply in a case such as this, we need not decide the issue since the right to decline medical treatment is, in any event, embraced within the common-law right to self-determination. *Accord In re Storar*, 52 N.Y.2d 363, 376-377, 420 N.E.2d 64, 70, 438 N.Y.2d 266, 272-73, *cert. denied*, 454 U.S. 858, 1-2 S.Ct. 309, 70 L.Ed.2d 153 (1981);

While both of these state interests in life are certainly strong, in themselves they will usually not foreclose a competent person from declining life-sustaining medical treatment for himself. This is because the life that the state is seeking to protect in such a situation is the life of the same person who has competently decided to forego the medical intervention; it is not some other actual or potential life that cannot adequately protect itself.

***People v. Coyle*, [204 Cal.App.3d Supp. 1, 251 Cal.Rptr. 80 (1988)]**

California Seatbelt Validity. This decision is only two pages long, including West headnotes, and relied heavily on the precedent of *Wells v. State*, [495 N.Y.S.2d 591, 130 Misc.2d 113 (1985)] in its conclusion that a "rational relationship" standard can be applied to legislation that mandates public conduct and restricts individual choice.

***Cruzan v. Director, Missouri Dept. of Health*,**

**[110 S.Ct. 2841, 497 U.S. 261, 111 L.Ed.2d 224, 58 USLW 4916, 1 NDLR P 38 (1990)]**

A competent person has a liberty interest under the Due Process Clause in refusing unwanted medical treatment. Cf., e.g., *Jacobson v. Massachusetts*, 197 U.S. 11, 24-30, 25 S.Ct. 358, 360-363, 49 L.Ed. 643.

The logical corollary of the doctrine of informed consent is that the patient generally possesses the right not to consent, that is, to refuse treatment.

***People v. Elkins*, [12 Cal.App.4<sup>th</sup> Supp. 1, 16 Cal.Rptr.2d 504 (1992)]**

California Helmet Validity. This decision is similarly size-challenged as the *Coyle* case, relying on *People v. Poucher*, [67 Mich.App. 133 (1976)] for a denial of the liberty interest that *Elkins* argued. I felt, in my defense of my case, that the subsequent case law in the Supreme Court opens this ruling to further consideration.

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

Moreover, even assuming that no other medical treatment short of a blood transfusion would have saved the patient's life, the State's interest in preserving her life is not inviolate and, in and of itself, may not, under certain circumstances, be sufficient to overcome her expressed desire to exercise her religious belief and forego the transfusion.

The law in this state has consistently recognized that every adult of sound mind has the right to determine what shall be done to his or her own body and may decline medical treatment, even if lifesaving.

... it is the individual who must have the final say in respect to decisions regarding his [or her] medical treatment in order to insure that the greatest possible protection is accorded to his [or her] autonomy and freedom from unwanted interference with the furtherance of his [or her] own desires...

***Jacobson v. Massachusetts*, [25 S.Ct. 358, 197 U.S. 11, 49 L.Ed. 643, 3 Am. Ann. Cas. 765 (1905)]**

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

***UAW v. Johnson Controls, Inc.* [111 S.Ct 1196, 499 U.S. 187, 113 L.Ed.2d 158, 59 USLW 4209, 55 Fair Empl.Prac.Cas. (BNA) 365, 55 Empl. Prac. Dec. P 40,605, 14 O.S.H Cas. (BNA) 2102, 1991 O.S.H.D (CCH) P 29,256 (1991)]**

Ruling that presumptively fertile women cannot be barred from jobs that pose a risk to their reproductive health, that the decision of the tradeoff between the risks and rewards is the woman's to make for herself.

*See also: Echazabal v. Chevron USA, Inc.*; [226 F.3d 1063, 18 NDLR P 54, 00 Cal. Daily Op. Serv. 7915 (2000)]

***Mugler v. Kansas*, [8 S.Ct. 273, 123 U.S. 623, 31 L.Ed. 205 (1887)]**

“To what purpose,” it was said in *Marbury v. Madison*, 1 Cranch, 137, 167, “are powers limited, and to what purpose is that limitation committed to writing, if these limits may, at any time, be passed by those intended to be restrained? The distinction between a government with limited and unlimited powers is abolished, if those limits do not confine the persons on whom they are imposed, and if acts prohibited and acts allowed are of equal obligation.” The courts are not bound by mere forms, nor are they to be misled by mere pretenses. They are at liberty, indeed, are under a solemn duty, to look at the substance of things, whenever they enter upon the inquiry whether the legislature has transcended the limits of its authority. If, therefore, a statute purporting to have been enacted to protect the public health, the public morals, or the public safety, has no real or substantial relation to those objects, or is a palpable invasion of rights secured by the fundamental law, it is the duty of the courts to so adjudge, and thereby give effect to the constitution.

***Paris Adult Theatre v. Slaton*, [93 S.Ct. 2628, 413 U.S. 49, 37 L.Ed.2d 446, 1 Media L. Rep. 1454 (1973)]**

This case was used as a primary basis in *Wells v. State* (below) [the precedent behind *People v. Coyle* (above), the California seatbelt validity case] in the court’s decision that just because an activity is undertaken by and/or between consenting adults does not preclude all legislative regulation of such an activity. The *Wells* case stretched the bounds of common sense by considering such things as “prostitution, suicide, voluntary self-mutilation, brutalizing ‘bare fist’ prize fights, and duels,” along with “bigamy,” “bearbaiting and cockfighting,” to be parallel in principle to someone riding down the street, minding their own business, while not wearing a seatbelt.

***Powell v. McCormack*, [89 S.Ct. 1944, 395 U.S. 486, 23 L.Ed.2d 491 (1969)]**

The relevancy of prior exclusion cases is limited largely to the insight they afford in correctly ascertaining the draftsmen’s intent. Obviously, therefore, the precedential value of these cases tends to increase in proportion to their proximity to the Convention in 1787.

***Riley v. Carter*, [ 25 P.2d 666, 165 Okla. 262, 88 A.L.R. 1018, 1933 OK 448 (1933)]**

I am fully conscious of the economic condition which is said to be the excuse of the Legislature for attempting to do things which the Constitution prohibits, but I cannot believe that an economic condition justifies the violation of the Constitution.

***Board of Regents v. Roth*, [92 S.Ct. 2701, 408 U.S. 564, 33 L.Ed.2d 548, 1 IER Cases 23 (1972)]**

In a Constitution for a free people, there can be no doubt that the meaning of ‘liberty’ must be broad indeed.

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

Every human being of adult years and sound mind has the right to determine what shall be done with his own body; {This opinion was rendered by Justice Cardozo prior to his appointment to the U.S. Supreme Court.}

***Sloat v. Board of Examiners*, [9 N.E.2d 12, 274 N.Y. 367, 112 A.L.R. 660 (1937)]**

Disobedience or evasion of a constitutional mandate may not be tolerated even though such disobedience might, perhaps, at least temporarily, promote in some respects the best interests of the public.

***Poe v. Ullman*, [81 S.Ct. 1752, 367 U.S. 497, 6 L.Ed.2d 989 (1961)]**

[T]he full scope of the liberty guaranteed by the Due Process Clause cannot be found in or limited by the precise terms of the specific guarantees elsewhere provided in the Constitution. This ‘liberty’ is not a series of isolated points pricked out in terms of the taking of property; the freedom of speech, press, and religion; the right to keep and bear arms; the freedom from unreasonable searches and seizures; and so on. It is a rational continuum which, broadly speaking, includes a freedom from all substantial arbitrary impositions and purposeless restraints.

***Watson v. Memphis*, [83 S.Ct. 1314, 373 U.S. 526, 10 L.Ed.2d 529 (1963)]**

More significantly, however, it is obvious that vindication of conceded constitutional rights cannot be made dependent upon any theory that it is less expensive to deny than to afford them.

**Wells v. State of New York, [130 Misc.2d 113, 495 N.Y.S.2d 591 (1985)]**

This case is the basis of the California seatbelt validity case, *People v. Coyle, supra*. Seven pages long, it makes much of the "mounting carnage" on the roadways, and how the seatbelt law can "lessen the economic burden on the rest of society by reducing hospitalization and rehabilitation costs," but see *Watson, Sloat, & Riley* above.

The *Coyle* case also regards this decision as providing a "rational basis" reasoning rather than a "strict scrutiny" reasoning that would be required for statutes infringing upon individual rights, but in some respects, this may be a misreading - this case uses the "rational basis" test to address an "equal protection" challenge based on the classes of citizens exempted from the law, not on the liberty interest.

This case also relies on *Paris* (above) in its *argumentum ad absurdum* that if the seatbelt law goes, so goes laws against "obscenity, suicide, self-mutilation, adultery, and gambling," as if prior to passing the seatbelt law, unprosecuted self-mutilation was rampant.

Of supreme irony in this case was the argument of Wells' attorney, Colin Kenneally, that this statute by way of precedent could take us to "legislative prohibition of smoking." He said this in 1985, and as we all know, this is precisely what came to pass, ranging from indoor smoking bans in California and various other states, to the government attempts to bankrupt the tobacco industry in court, right up to the prohibition of smoking *outdoors* in public by Friendship Heights, Maryland. The court answered this with further *absurdum*, "the logical extension of that concept, in the extreme, is anarchy," again suggesting that law and order was nonexistent before the passage of the seat belt law.

A particularly offensive point of this document is the self-serving and sanctimonious, "They must change their elected representatives if they disagree with their collective legislative acts." In other words, "vote them out of office if you don't like their boot on your throat." (see *Boyd* above.)