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The Illinois Seat Belt Law: Should Those Who Ride Decide, 19 J. Marshall L. Rev. 193 (1985)

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RECENT DEVELOPMENTS

THE ILLINOIS SEAT BELT LAW: SHOULD THOSE WHO RIDE DECIDE?

Illinois has recently passed legislation which mandates the use of safety belts for front seat passengers in automobiles.[1] While mandatory use of restraint systems is an effective means to prevent injury, the enforcement of "buckle-up" laws raises the question of improper state encroachment on individual autonomy. The due process and equal protection clauses of the Fourteenth Amendment,[2] as well as challenges based upon improper use of the police power,[3] serve to protect the individual from undue state interference with personal decisions. The purpose of this paper is to investigate and evaluate the strength of these challenges when applied to the Illinois Legislature's attempt to mandate use of the seat belt as a personal safety device. Particular attention will be given to the Illinois Supreme Court's decision in *People v. Fries*,[4] which discussed these challenges in the context of motorcycle helmet legislation.

In *People v. Fries*,[5] the Illinois Supreme Court struck down an Illinois law which required motorcycle riders to wear helmets.[6] The court held that the state had abused its police power when it passed a law which was specifically intended to protect the health of the individual.[7] The Illinois seat belt law, like the helmet law, requires that the vehicle operator take affirmative steps to protect himself from injury. The seat belt law may therefore come under attack on the same constitutional grounds as the helmet laws of Illinois and other states.[8] The seat belt requirement may be challenged on the

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1. ILL. REV. STAT. ch. 95 ½, § 12-603.1 (Cum. Supp. 1985).

2. U.S. CONST. amend. XIV. "[No] state [shall] deprive any person of life, liberty, or property without due process of law, nor deny . . . the equal protection of the laws." *Id.*

3. *See* West Coast Hotel v. Parrish, 300 U.S. 379, 391 (1937) (challenge to state's interest in protecting women's working condition); Holden v. Hardy, 169 U.S. 366, 395 (1898) (challenge to state's interest in working conditions in mines); City of Carbondale v. Brewster, 78 Ill. 2d 111, 398 N.E.2d 829 (1979) (challenge to state's police power to require that sidewalks be clear of snow and ice).

4. 42 Ill. 2d 446, 250 N.E.2d 149 (1969).

5. *Id.*

6. ILL. REV. STAT. ch. 95 ½, § 11-1404 (1983).

7. People v. Fries, 42 Ill. 2d 446, 250 N.E.2d 149, 151 (1969).

8. *See* Love v. Bell, 127 Colo. 27, 465 P.2d 118 (1970); Commonwealth v. Howie, 354 Mass. 769, 328 N.E.2d 373 (1969); State v. Krammes, 105 N.J. Super. 345, 252

ground that it does not serve the public safety, health, or general welfare, and is therefore a violation of due process and an abuse of police power. It can also be challenged as a law which creates a legislative classification in violation of the equal protection clause. Unlike the Illinois Helmet Law[9] which was held unconstitutional in *Fries*,[10] however, the seat belt requirement can withstand these constitutional challenges.

Courts have long recognized the state's need to regulate highways for the public safety.[11] In fact, the state can invoke its police power to protect the safety, health, or general welfare of its citizens whenever the interests of the public require state interference.[12] The helmet law, it was argued, furthered public safety because helmets kept debris from striking the cyclist's head and, therefore, prevented accidents involving other vehicles. A majority of courts accepted this argument and upheld helmet legislation.[13] This same argument can be used to support mandatory restraint laws such as child restraint legislation,[14] and seat belt laws.[15] The restraints can keep the pas-

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A.2d 232 (1969); People v. Carmichael, 53 Misc. 2d 584, 279 N.Y.S. 2d 272, *rev'd*, 56 Misc. 2d 388, 288 N.Y.S. 2d 429 (1967), and the respective statutes which those cases attacked, COLO. REV. STAT. ANN. § 42-4-231 (1973); MASS. GEN. LAWS. ANN. ch. 90 § 70 (Law. Co-Op. 1980); N.J. STAT. ANN. § 39.3-76.7 (West 1973); N.Y. VEH. & TRAF. LAW § 381(6) (McKinney 1970).

9. ILL. REV. STAT. ch. 95 ½ § 11-1404 (1983).

10. 42 Ill. 2d 446, 250 N.E.2d 149 (1969). It could be noted, however, that Illinois circuit and appellate judges may properly consider themselves bound by the *Fries* decision, and forgo distinguishing between helmet and safety belt legislation. One Marion County judge has done so, and held that the seat belt law was unconstitutional. Chi. Daily L. Bull., Oct 28, 1985, no. 211, at 1, col.1.

11. *See, e.g.*, Haswell v. Powell, 38 Ill. 2d 16, 230 N.E.2d 178 (1967) (driving on roads and highways is subject to police power whether a right or privilege); Pierce v. Carpenter, 20 Ill. 2d 526, 169 N.E.2d 747 (1960) (motor vehicle code within state police power); *see generally* Nierkirk v. State, 260 Ark. 526, 542 S.W.2d 282 (1976) (speed limit regulated for safety and cost savings); Chicago Park Dist. v. Canfield, 370 Ill. 477, 19 N.E.2d 376 (1939) (advertising on vehicles controlled for public safety); Probus v. Sirles, 569 S.W.2d 707 (Ky. App. 1978) (auto insurance mandated even though it is a burden on the individual).

12. Goldblatt v. Heamstead, 369 U.S. 590, 594 (1962); West Coast Hotel v. Parrish, 300 U.S. 379, 391 (1937); Holden v. Hardy, 169 U.S. 366, 395 (1898); Lawton v. Steele, 152 U.S. 133, 137 (1894).

13. Kingery v. Chapple, 504 P.2d 831, 835 (1972); State v. Also, 11 Ariz. App. 227, 463 P.2d 122, 124 (1969); Penney v. City of North Little Rock, 455 S.W.2d 132, 134 (Ark. 1970); Love v. Bell, 171 Colo. 27, 465 P.2d 118, 122 (1970); City of Wichita v. White, 205 Kan. 408, 469 P.2d 287, 290 (1970); Everhardt v. City of New Orleans, 253 La. 285, 217 So. 2d 400, 403 (1969); Bisenius v. Karns, 42 Wis. 2d 42, 165 N.W.2d 377, 380 (1970).

14. *E.g.* CAL. VEH. CODE §§ 27350-27356 (West Cum. Supp. 1985); ILL. REV. STAT. ch. 95 ½ § 12-603.1 (1985 Cum. Supp.); MICH. STAT. ANN. § 9.2410(4) (Cum. Supp. 1985); NEB. REV. STAT. § 39-6103.1-03 (1983 Supp.); WIS. STAT. ANN. § 347.48 (1984 Cum. Supp.).

15. Illinois, New York, New Jersey, and Michigan are the first states to pass such legislation. ILL. REV. STAT. ch. 95 ½ § 12-603.1 (1984 Supp.); N.J. STAT. ANN. § 1174 (West 1984); N.Y. VEH. & TRAF. LAW § 1229-C (as amended June 18, 1984); MICH. STAT. ANN. § 9.2410(5) (1985).

sengers in place during an accident and thereby prevent the driver from losing control of the vehicle after the accident. Theoretically, this would serve to protect the general public in addition to the individual vehicle occupants because fewer vehicles would become involved.

When applied to safety belts, however, the public safety argument goes too far. While most courts accepted the relationship between flying debris and public safety when considering the helmet laws,[16] it can reasonably be said that the helmet may prevent an accident. The relationship between public safety and the seat belt law, on the other hand, is more tenuous because it assumes that an accident has already occurred. The law only serves to protect drivers who might become involved in an accident because passengers who have already been involved in an accident did not wear their safety belts. Requiring passengers to wear seat belts is therefore, clearly designed to enhance personal, not public, safety. Furthermore, the Illinois Supreme Court did not accept the public safety rationale in *Fries*, and is not likely to accept its weaker application in support of the seat belt law.

Some courts have stated that helmet legislation would be valid even if designed to protect only the rider.[17] These courts upheld the legislation on public health grounds, noting the substantial increase in motorcycles on the road and the alarming number of serious injuries.[18] The term "public" to these courts encompassed the relatively small number of motorcycle riders. Most public health legislation, however, reflcts a much broader view of the term "public." Legislation that requires innoculations against infectious disease[19] or the fluoridation of water,[20] for example, concern health problems which affect a greater percentage of the public. In addition, this type of legislation concerns dangers over which the individual has little control.

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16. *See supra* note 13.

17. State v. Also, 11 Ariz. App. 227, 463 P.2d 122, 125 (1969); Penney v. City of North Little Rock, 455 S.W.2d 132, 134 (Ark. 1970); State v. Lee, 51 Hawaii 516, 465 P.2d 573, 577 (1970); State v. Darrah, 466 S.W.2d 745, 750 (Mo. 1969); Arutanoff v. Metropolitan Government, 223 Tenn. 535, 448 S.W.2d 408, 411 (1969); State v. Laitinen, 77 Wash. 2d 130, 465 P.2d 789, 792 (1969).

18. *See* City of Wichita v. White, 205 Kan. 408, 469 P.2d 287, 289 (1970); Commonwealth v. Coffman, 453 S.W.2d 759, 760 (Ky. App. 1970); State v. Darrah, 466 S.W.2d 745, 747 (Mo. 1969); State *ex rel.* Colvin v. Lombardi, 104 R.I. 28, 241 A.2d 377 (1969). *See also supra* note 17.

19. Jacobsen v. Massachusetts, 197 U.S. 11 (1905) (Massachusetts' law requiring smallpox vaccination upheld); Daniel v. Putnam County, 113 Ga. 570, 38 S.E. 980 (1901) (court recognizes power of state to require smallpox innoculations).

20. Schuringa v. City of Chicago, 30 Ill. 2d 504, 198 N.E.2d 326 (1964) (power to fluoridate water upheld); Rogowski v. City of Detroit, 374 Mich. 408, 132 N.W.2d 16 (1965) (summary judgment granted against plaintiff's effort to prevent fluoridation).

In terms of public health, the size of the group which the seat belt law protects is analagous to that in other public health legislation. In this respect, courts may recognize that the pervasive use of automobiles and the alarming rate of injuries and deaths which inevitably accompany their use, constitute a public "health" problem. Efforts to curb these injuries and fatalities through the voluntary use of seat belts have consistently failed.[21] Curbing this threat to the collective health of the citizenry obviously requires state interference.

Unlike health problems over which the individual has little control, however, the health problem which is sought to be cured by the seat belt law is one over which the individual has the ultimate control. Should an individual choose not to "buckle-up," it is only the individual's health that will suffer should that decision turn out to be unwise. In this respect, the government cannot dictate the individual decision to buckle up any more than it can dictate other individual decisions regarding matters of personal health. On the other hand, when an individual uses the roads and highways he is acting in an environment over which the state has a right to control. Courts will therefore have to balance the individual rights at stake against the state's interest in protecting the public health. The public health rationale, though somewhat better than the public safety rationale, is not, however, the best justification for Illinois' new safety belt law.

By far, the best justification for the seat belt law is that it benefits the general welfare of the public. The state's right to promote the general welfare assumes a state interest in preserving a strong and viable citizenry. A viable citizenry is one which is capable of supporting the state with its tax dollars and one which does not create a drain on the state treasury.[22] The seat belt law becomes important in this regard because, despite insurance, the cost to the state in providing care to accident victims is quite high.[23] The state also

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21. *See* Arnould, Grabowski, *Automobile State Regulation: A Review of the Evidence*, 5 RES. LAW. & ECON. 233, 239-245 (1983). On the other hand, where seat belts are required, as in many foreign countries, use rates vastly improve, and injuries vastly decrease. Mackay, *Seat Belts in Europe, Their Use and Performance in Collisions* in PROCEEDINGS, INTERNATIONAL SYMPOSIUM ON OCCUPANT RESTRAINT, 39 (E. Petrucelli R. Green, eds. 1981).

22. *See* Simon v. Sargent, 346 F. Supp. 177, 279 (D. Mass. 1972); State v. Also, 11 Ariz. App. 227, 463 P.2d 122, 124 (1969); Love v. Bell, 127 Colo. 27, 465 P.2d 118, 121 (1970); Commonwealth v. Coffman, 253 S.W.2d 759, 762 (Ky. App. 1970); State v. Anderson, 275 N.C. 168, 166 S.E.2d 49, 53 (1969); *see also* Sherman—Reynolds v. Mahin, 47 Ill. 2d 323, 265 N.E.2d 640 (1970) (police power includes interest in the public treasury); Zeigler v. People, 109 Colo. 252, 124 P.2d 593, 598 (1942) (police power protects public from financial loss).

23. *See* O'Day, *State Legislation and Occupant Restraining* in PROCEEDINGS, INTERNATIONAL SYMPOSIUM ON OCCUPANT RESTRAINT, 24 (E. Petrucelli, R. Green, eds. 1981). It is estimated that the state of Michigan could save over two million dollars a year on medical costs alone, assuming only a 15 percent reduction in injuries. *Id.* at 2.

incurs other costs related to accidents such as police, fire, and ambulance service, as well as the costs involved in supporting the disabled worker and his family. Because the police power includes an interest in protecting the public treasury,[24] these costs add up to the power to regulate the use of safety belts in automobiles.

Justifying the use of safety belt legislation as a valid exercise of police power satisfies the requirements of due process because, by definition, a valid exercise of police power contemplates that the state is acting reasonably for the good of all and is not depriving any person or minority of their constitutional rights.[25] The chance that the courts will give the decision to "buckle-up" a more protected status and apply strict scrutiny[26] is slim indeed. The Supreme Court has thus far recognized fundamental rights of personal autonomy in abortion,[27] contraception,[28] and family relations,[29] but has balked at extending this protected status to the rights to dress as one pleases,[30] grow one's hair,[31] or choose one's sexual preference.[32] It is doubtful that courts will grant fundamental status to the right not to "buckle-up," while leaving unprotected these more personal decisions. When dealing with a non-fundamental right, the courts require only a reasonable relation between the ends sought by the legislation and the means which the state uses to accomplish these ends.[33] Mandatory use of seat belts is a reasonable method of decreasing the costs which the state incurs from automobile accidents.

The Equal Protection Clause[34] provides the most interesting challenges to the Illinois Seat Belt Law. Equal protection requires that statutory classifications be reasonably related to the ends which the statute seeks to attain.[35] This insures that those who are simi-

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The estimated savings on direct costs is approximately 13 million. *Id.* at 25.

24. *See supra* note 22.

25. Chicago, B. & Q. R.R. v. Illinois, 200 U.S. 561 (1905); City of West Frankfort v. Fullop, 6 Ill. 2d 609, 129 N.E.2d 682, 687 (1955); Zeleny v. Murphy, 387 Ill. 492, 56 N.E.2d 754 (1944).

26. *See* United States v. Caroline Products, 304 U.S. 144 at n.4 (1938) (Justice Stone's footnote, commonly cited as the inception of the strict scrutiny doctrine).

27. Roe v. Wade, 410 U.S. 113 (1973).

28. Griswold v. Connecticut, 381 U.S. 479 (1965).

29. Moore v. East Cleveland, 431 U.S. 494 (1977).

30. Kelley v. Johnson, 425 U.S. 238 (1976).

31. East Hartford Educ. Ass'n v. Board of Educ., 526 F.2d 838 (remanded because teacher had a speach interest as well as a fourteenth amendment claim).

32. Friedman v. Dist. Court, 201 Cal. 2d 28, 611 P.2d 77 (1980) (attorney subject to dress code in court).

33. *See* People v. Bradley, 79 Ill. 2d 410, 403 N.E.2d 1029 (1980) (reasonableness applied to legislation on controlled substances); Illinois Gamefoul Breeders Ass'n v. Block, 75 Ill. 2d. 443, 389 N.E.2d 529 (1979) (reasonableness applied to regulations on raising gamefoul); Finishline Express v. Chicago, 72 Ill. 2d 131, 379 N.E.2d 290 (1978) (reasonableness applied to off-track betting).

34. U.S. CONST., amend. XIV.

35. *See infra* note 37.

larly situated will be treated similarly. The classification created under the Illinois law is reasonably related to the law's objective, but is extremely under inclusive. This is because the Illinois law, like the seat belt laws of other states,[36] only requires that front seat passengers use seat belts. For equal protection purposes, the classification created divides all front seat passengers from all automobile passengers. Whether the public health, safety, or general welfare is chosen as the proper basis for the law, this classification is under-inclusive.

If the seat belt law stands on public safety grounds, reason would require that all passengers buckle up. The public safety is served when the driver maintains control of the vehicle. An unbelted occupant, wherever seated, can easily be hurled into the front compartment. This could obstruct the driver's view or even injure the driver and thereby interfere with his control of the vehicle. This would defeat the purpose of requiring the driver to use his safety belt for the purpose of public safety. In the context of public safety, all passengers of the vehicle constitute one class and should be treated similarly.

Public health and general welfare arguments cannot justify the legislative separation of the front and back seat passengers. The public health justification is based upon protecting the numerous victims of automobile accidents. Requiring only front seat passengers to wear seat belts is like innoculating only certain members of the public from an infectious disease, and leaving other members unprotected. The general welfare argument is similarly flawed. It assumes that only injuries incurred by front seat passengers become a drain on the public treasury.

Within the context of its legislative purpose, the Illinois Seat Belt Law treats similarly situated persons differently. The exclusion of the back seat passengers is not reasonably related to the purpose of the law, thereby discriminating against front seat passengers. Courts, however, generally do not set aside under-inclusive laws on the basis of their under-inclusiveness.[37] Legislatures are permitted to attack a problem one step at a time. It is doubtful, therefore, that the Illinois Seat Belt Law will be declared unconstitutional on equal protection grounds.

The seat belt law has sufficient police power and constitutional grounds on which to stand. The law employs a reasonable means to protect the state's financial interest, foreclosing any challenges based upon improper use of police power. Because the right not to

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36. *See supra* note 15.

37. *See* Williams v. Lee Optical Co., 348 U.S. 483 (1955); Railway Express v. New York, 336 U.S. 106 (1949).

buckle up is not a fundamental right, due process and equal protection only require a rational basis for the law. The rationality test allows the legislature wide discretion in how it enforces its police power objectives. This discretion is constitutionally exercised in the case of the Illinois Seat Belt Law. Despite the constitutional challenges which will no doubt be employed to set aside Illinois' seat belt law, one fact cannot be denied: the use of safety belts is an effective device to enhance public safety which can be mandated by law.

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