DA 9-1-92

IN THE
SUPREME COURT OF FLORIDA

CASE NOS. 79,924
80,126

FILED
SID J. WHITE
AUG 14 1992
CLERK, SUPREME COURT
By _____
Chief Deputy Clerk

STATE OF FLORIDA, Appellant,

versus

RICHARD STALDER, Appellee.

STATE OF FLORIDA, Appellant,

versus

EVAN DALE LEATHERMAN, Appellee.

BRIEF OF AMICUS CURIAE, THE AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF FLORIDA, INC.

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I. STATEMENT OF INTEREST

The American Civil Liberties Union Foundation of Florida, Inc. ("ACLU") is a nonprofit, non-partisan organization dedicated to preserving and implementing the principles of liberty and equality embodied in our federal and state constitutions.[1] These cases, in which the lower court struck down the criminal prejudice statute, Section 775.085, Florida Statutes (1989), raises issues of significant and longstanding concern to the ACLU. On the one hand, the ACLU has vigorously defended the right of all Americans to equal protection of the law, and has repeatedly called on government to intercede when that right is threatened. On the other hand, the ACLU has vigorously resisted efforts to curtail freedom of expression resulting from the unpopular or offensive nature of the message. Striking the correct balance between theses competing interests is a difficult and sensitive task. The ACLU respectfully submits this brief in the hope of assisting the Court as it considers where the appropriate constitutional lines must be drawn.

II. STATEMENT OF THE CASE AND THE FACTS

These two cases were consolidated by the Court sua sponte on July 23, 1992. They present a challenge to the constitutionality of Florida's "criminal prejudice" statute. The cases were assigned to the same trial judge, who in each case struck down the statute as facially unconstitutional.

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[1] On July 24, 1992, this Court granted the ACLU's motion for leave to file an amicus brief in support of the lower court's decision.

Defendant Richard Stalder was charged with battery after allegedly making remarks about the victim's ethnic background while in a shoving match. The State enhanced the crime to a third degree felony pursuant to Section 775.085(1), Florida Statutes (1989).[2]

Defendant Dale Evan Leatherman was charged, inter alia, with violating the same version of Section 775.085(1) after he allegedly made racial remarks to the victim while threatening an assault.

Section 775.085(1) provides for the reclassification of any felony or misdemeanor

> if the commission of such felony or misdemeanor evidences prejudice based on the race, color, ancestry, ethnicity, religion, or national origin of the victim.

Both Stalder and Leatherman filed motions to dismiss their respective charges, challenging the constitutionality of the statute. In Stalder, the trial court granted the motion, ruling expressly that the statute was unconstitutional because it failed to contain "a clear requirement for proof beyond a reasonable doubt in reference to the issue of prejudice". (R. 70). Recognizing that the statute suffered from other constitutional defects as well, the court also adopted by reference the arguments set forth in Stalder's motion to dismiss. (R. 68-70). In Leatherman, the trial court simply reiterated its ruling in Stalder. (Order on Motion to Dismiss, April 21, 1992.)

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[2] Section 775.085(1) was subsequently amended. See n. 12 below for a discussion of that amendment.

From these orders, the State of Florida appealed to the Fourth District Court of Appeal. Upon the State's motions, the District Court certified both cases as requiring this Court's immediate resolution. This Court accepted jurisdiction and consolidated both cases for all appellate purposes.

III. INTRODUCTION AND SUMMARY OF ARGUMENT

These cases present an issue which has spurred a growing debate in this country: the constitutionality of legislation that seeks to outlaw hate crimes. Individuals and organizations traditionally allied in support of the same principles have separated on the issue of the legitimacy of certain hate crime statutes.[3] Indeed, that has occurred in this case. The ACLU shares with the Anti-Defamation League ("ADL") and the other groups that have joined in the ADL's amicus curiae brief[4] a grave concern that hate crimes are an increasing menace to our society, threatening to undermine the equal protection to which all are entitled. On the other hand, the ACLU is less willing to

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[3] "[T]he debate over these laws is occurring not merely between traditional allies, but between one side and itself. Moreover, whenever either viewpoint prevails, whether in the legislature, the courts, or even in a purely academic argument, its proponents do not seem to be very happy about it. It is as if everyone involved in the debate over the permissibility and desirability of ethnic intimidation laws were actually on both sides at once." Susan Gellman, Sticks and Stones Can Put You in Jail, But Can Words Increase your Sentence? Constitutional and Policy Dilemmas, 39 UCLA L. Rev. 333, 334 (1991) (emphasis in the original).

[4] These groups are the American Jewish Congress and the International Association of Jewish Lawyers and Jurists (American Section). For simplicity, they will be referred collectively as "the ADL."

compromise basic First Amendment protections to combat this threat.

To resolve these cases, however, this Court need not enter the fray. Viewed in comparison to other hate crimes statutes, the Florida criminal prejudice statute does not present a close question of facial unconstitutionality[5]. Nor does it call upon the Court to parse closely reasoned arguments to determine where the constitutional line should be drawn. As will be demonstrated in Section IV. A. below, the arguments advanced by the ADL, as well as the State, in defense of this statute simply do not apply to it. This statute does not -- contrary to its characterization by its proponents -- criminalize discrimination in the selection of victims. Rather, by its express terms, this statute punishes those who "evidence[] prejudice" -- who display a bigoted state of mind -- while committing an already criminal act. Thus understood, the statute does not require this Court to resolve the difficult social/legal question of whether hate crimes can be lawfully proscribed. This statute falls so far short of how a lawful proscription might be constructed[6] as to not even genuinely raise the larger question.

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[5] In Stalder case, the State concedes that under R.A.V. v. City of St. Paul, ___ U.S. ___, 60 U.S.L.W. 4667 (June 22, 1992), the criminal prejudice statute is unconstitutional as applied State's Brief ("SB"), at 8.

[6] The ACLU believes that hate crime proscriptions can be drafted in a constitutional manner. See n. 8, infra.

As will be demonstrated in Section IV. B. below, the statute -- read as it is written, not as its proponents mistakenly characterize it -- does precisely what it is not constitutionally permitted to do: it creates a thought crime in flagrant disregard of the First Amendment. Moreover, even if the statute is stretched to encompass the meaning attributed to it by its proponents, it remains outside the constitutional pale. For, as will be demonstrated in Section IV. C. below, even if viewed as criminalizing discriminatory selection of victims, the statute is irremediably vague and overbroad in violation of due process of law, and no limiting construction can save it.

IV. ARGUMENT

A. FLORIDA'S CRIMINAL PREJUDICE STATUTE PUNISHES THE DEFENDANT'S DISPLAY OF PREJUDICE, NOT THE DEFENDANT'S DISCRIMINATORY SELECTION OF A VICTIM.

The starting point of the analysis of Section 775.085(1) is, perforce, the language of the statute itself:

> [Any felony or misdemeanor is reclassified one degree upward] if the commission of such felony or misdemeanor evidences prejudice based on the race, color, ancestry, ethnicity, religion, or national origin of the victim.

On its face, the statute does one thing and one thing alone: it punishes more severely those criminals who "evidence[] prejudice" while committing an already criminal act. §775.085(1), Fla. Stat.

In urging this Court to resurrect the statute, the State and the ADL mischaracterize it as a statute that punishes a

discriminatory motive in the selection of victims. Thus, the State declares in its brief:

> The Statute seeks to punish indisputable [sic] illegal activity that would not have been perpetrated but for the defendant's reasonable belief that the victim belonged to a class encompassed by the Statute.

SB at 14 (emphasis in original); see id. at 22 ("the Statute creates a but for crime"). Likewise, the ADL describes the statute as a "penalty enhancement statute for crimes . . . . directed at individuals who target victims because of race, color, ethnic origin, or religion." ADL Brief, at 4; see id. at 5 ("the enhancement comes into play only when an individual's demonstrated bigotry prompts that offender"); id. at 10 ("Florida merely reclassifies already criminal conduct which is perpetrated by reason of the status of the victim"); id. at 14 ("the statute reaches out to concededly criminal conduct which is committed upon individuals because of prejudice or bias"); id. at 18 ("The defendant has committed a crime, and in doing so has shown a victim selection [sic] for discriminatory reasons"). (All emphases added.)

These characterizations are plainly wrong; they do not hew to the text and the meaning of Section 775.085(1). The statute does not criminalize the selection of victims according to certain proscribed categories.

The statute's words tell us what it does do. "Evidences" means "indicates", "makes clear", or "evinces". Webster's New Universal Unabridged Dictionary (2d Ed. 1979) ("Webster's").

"Prejudice," as defined by Webster's, runs the gamut from "judgment" to "opinion" to "idea" to "bias" to "suspicion" to "intolerance" to "hatred"[7] -- a range of definitions but all describing a mental activity. Reading these terms together, it is clear that what the statute aims at is the revelation of a defendant's state of mind. Stated another way, the statute punishes either a person's bigoted thought or the expression or display of that thought.

Whichever way the statute is read -- as punishing either thought itself or the expression of that thought -- it certainly cannot be read, as the State and the ADL would have this Court do, as regulating wrongful acts motivated by or because of prejudice, nor as criminalizing the selection of victims due to their race, national origin, religion, or the like.

To be sure, such a statute can be written. Indeed, the ADL model statute quoted in the State's brief, SB at 9-10, n.3, is an

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[7] Webster's defines prejudice as:

> 1. a judgment or opinion formed before the facts are known; preconceived idea, favorable or, more usually unfavorable.
>
> 2. a judgment or opinion held in disregard of facts that contradict it; unreasonable bias; . . . .
>
> 3. the holding of such judgments or opinions.
>
> 4. suspicion, intolerance or hatred of other races, creeds, regions, occupations, etc.

(Emphasis added).

example of that approach.[8] But as the State concedes, the ADL model is "quite different in form" from the Florida statute. Id. (emphasis added).

The mischaracterization of Section 775.085(1) as a discriminatory selection statute is not a minor matter. It is, indeed, the very premise on which the state and the ADL have constructed their arguments. Stripped of that premise, those arguments are entirely inapposite here; they simply do not apply to Section 775.085(1). Moreover, as will be demonstrated below, thought crimes, like those created by Section 775.085(1), fall way outside of constitutional bounds.

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[8] Another example of that approach is found in an amendment to Section 775.085(1) presently before the Florida Legislature and proposed with the support of the ACLU. That amendment would substitute the following language for the present Section 775.085(1):

> [Penalties are increased] if the commission of [a] felony or misdemeanor is proven beyond a reasonable doubt to have been motivated, in whole or in part, by the defendant's specific intent to commit such act because of the victim's race, color, ancestry, ethnicity, religion, sexual orientation, or national origin.

Amendment No. 02, Bill No. HB 75-H, Committee on Judiciary, filed June 2, 1992. The proposed amendment also provides additional protection of First Amendment activity:

> Neither speech nor association, either prior to, during, or after the commission or [sic] the act, is sufficient by itself to support reclassification unless the speech or association provides direct evidence that the defendant was motivated, in whole or in part, by specific intent to commit such crime because of the victim's race, color, ancestry, ethnicity, religion, sexual orientation, or national origin. Id.

B. THE CRIMINAL PREJUDICE STATUTE UNCONSTITUTIONALLY PUNISHES SPEECH BY CREATING A THOUGHT CRIME.

Both this Court and the United States Supreme Court have unflinchingly adhered to the principle that the state "cannot constitutionally premise legislation on the desirability of controlling a person's private thoughts." Stanley v. Georgia, 394 U.S. 557, 565, 566 (1969). "At the heart of the First Amendment[9] is the notion that an individual should be free to believe as he will and that in a free society one's beliefs should be shaped by his mind and his conscience rather than coerced by the state." Abood v. Detroit Board of Education, 431 U.S. 209, 234-35 (1977). "[T]he state may never force one to adopt or express a particular opinion." Coca-Cola Company v. Dep't of Citrus, 406 So.2d 1079, 1087 (Fla. 1982).

This protection of thought and belief includes unpopular and antisocial belief as well as the popular and socially acceptable.

> If there is a bedrock principle underlying the First Amendment, it is that the Government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.

Simon & Schuster, Inc. v. New York State Crime Victims Board, ___ U.S. ____, _____, 112 S. Ct. 501, ____ (1991), quoting United States v. Eichman, 469 U.S. ___, ___ (1990) (quoting Texas v.

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[9] The Florida Supreme Court has expressly declared that the guarantee of expressive activity set forth in Article I, Section 4, of the Florida Constitution is co-extensive with that of the First Amendment. Florida Canners Assoc. v. Development of Citrus, 371 So.2d 503, 517 (Fla. 1979).

Johnson, 491 U.S. 397, 414 (1989)). In the words of Justice Holmes:

> If there is any principle of the constitution that more imperatively calls for attachment than any other, it is the principle of free thought -- not free thought for those who agree with us but freedom for the thought that we hate.

United States v. Schwimmer, 279 U.S. 644, 654-55 (1920) (dissent), overruled, Girouard v. United States, 328 U.S. 61 (1946). Even where "protected speech . . . provoke[s] violent dissent," White v. State, 330 So.2d 3, 6 (Fla. 1976), it does not lose its protected status:

> Indeed, that is what freedom of speech is about -- the right vigorously to advance a minority opinion even though that opinion may anger others and arouse forceful disagreement.

Id.

Echoing these same principles, the United States Supreme Court recently declared:

> The First Amendment generally prevents government from proscribing speech, or even expressive conduct, because of disapproval of the ideas expressed. Content-based regulations are presumptively invalid.

R.A.V. v. City of St. Paul, ___ U.S. ____, 60 U.S.L.W. at 4669 (citations omitted; emphasis added).[10]

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[10] In R.A.V., the Supreme Court struck down an ordinance that had been substantially narrowed by judicial interpretation to prohibit the expression of "fighting words" which tended to invite immediate violence "on the basis of race, color, creed, religion, or gender." 60 U.S.L.W. at 4672-73. The Court held that the ordinance was facially unconstitutional because it prohibited otherwise permitted speech (heretofore unregulated fighting words) solely on the basis of the subject the speech addressed.

Florida's criminal prejudice statute clashes with these principles full force. A charge brought under the criminal prejudice statute is, by definition, predicated on the commission of some other crime, proscribed elsewhere in the criminal code. Since this underlying crime -- necessarily involving conduct of some sort -- is already punishable, all that the criminal prejudice statute adds is an increased penalty on the basis that the commission of the underlying crime "evidences prejudice." What this means, as is demonstrated in Section IV. A. above, is that the criminal prejudice statute aims at and seeks to punish expression or communication of some thought or idea, independently from the underlying conduct.

To be sure, neither the Florida nor the United States constitution provides a shield to protect a defendant from prosecution for the conduct that constitutes the underlying crime. Neither, however, does the State's power to punish criminal conduct somehow remove the constitutional barriers to adding punishment for the beliefs that may accompany that conduct. Indeed, as did St. Paul in R.A.V., the Florida Legislature

> has proscribed [speech] . . . that communicates messages of racial, . . . , or religious intolerance. Selectivity of this sort creates the possibility that the [state] is seeking to handicap the expression of particular ideas[, which] . . . . would alone be enough to render [it] presumptively invalid. . . .

R.A.V., 60 U.S.L.W. at 4672.

Applying these same principles, courts in other jurisdictions have struck down similar statutes. In an Ohio case, State v. Van Gundy, No. 90 AP-473, 1991 Ohio App. LEXIS 2066 (1991),[11] the court explained:

> In most instances, the words or conduct of a person charged with ethnic intimidation will be the only indicia of his attitude or opinion on a subject, and this attitude or opinion is inseparably intertwined with the content of the statements or the conduct. . . . The First Amendment's Free Speech Clause cannot be laid aside simply on the basis that the speaker was penalized not for his speech but for a state of mind manifested thereby.

Slip Op. at 6-7.

So, too, the court in Michigan v. Justice, No. 1-90-1793 (Mich. Dist. Ct. Dec. 18, 1990), rejected the argument that the Michigan ethnic intimidation statute "punishes conduct rather than words or expression" as "hollow," explaining that because "the [underlying] punishable conduct . . . is already punishable under other criminal statutes," and because

> [w]hat is punished is the spoken or written words or expression thereof by conduct[,] . . . [t]he reach of this statute prohibits the exercise of constitutionally protected speech and expression . . . in violation of the federal constitution.

Slip Op. at 6.

Protection of the right to believe ideas offensive to the majority is not at the fringe of the First Amendment; it is at its very core. Like the Ohio and Michigan statutes addressed in Van Gundy and Justice, Florida's criminal prejudice statute does

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[11] Van Gundy is presently on appeal to the Ohio Supreme Court.

violence directly to that core. It punishes no conduct not already criminalized; rather, it creates a thought crime. For this reason, the lower court's decisions to strike down Section 775.085 must be affirmed.

C. THE CRIMINAL PREJUDICE STATUTE IS UNCONSTITUTIONALLY VAGUE AND OVERBROAD.

Even if this Court is not convinced that the ACLU's thought-crime reading of Section 775.085(1) is compelled, and that -- contrary to the ACLU's analysis -- the statute can be read to proscribe discriminatory selection, still the statute cannot stand. For such a reading renders the statute unconstitutionally vague and overbroad for two reasons.

First, a statute susceptible of two such widely disparate interpretations -- one punishing thought, the other criminalizing victim selection -- is simply not definite enough in meaning to give reasonable persons notice of what is proscribed. Simply put, how can one know which of these two interpretations applies?

Second, even if read as only a discriminatory selection statute, Section 775.085(1) suffers from fatal unclarity. The key term in such a reading, "based on," as used in the phrase "based on [a characteristic] . . . . of the victim," provides no guidance whatsoever as to what is proscribed. Does this term mean "motivated by," in the sense of constituting a reason which the action is subjectively aware of and moved by? Or, does it mean "because of," with no subjective content? Assuming that "based on" means some kind of reason, what degree of that reason does it mean: the sole reason? the predominant reason? a "but

for" reason? a substantial reason? a significant reason? a minor reason? a theoretical reason? And, "based on" what is the accused's prejudice supposed to operate: an actual characteristic of the victim? or a perceived but possibly non-existent characteristic?[12] Nor does the statute make clear whether "based on" even limits the reach of the statute to situations in which the victim is a member of a class which is the subject of the actor's "prejudice." And if it does, does that mean that an act of violence against a victim on account of his or her political position on, e.g., the issue of segregation, would not come within the statute's reach? With the term "based on" raising more questions that it answers, the criminal prejudice statute, interpreted even as a discriminatory selection statute, is simply too vague to survive.

It has long been recognized by both this Court and the United States Supreme Court that before a citizen can be held to answer for violating a criminal statute, due process requires that the statute itself give fair warning of the precise conduct

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[12] Subsequent to the arrests of Stalder and Leatherman, the legislature acted to cure this particular ambiguity by adding the following new sub-paragraph to the criminal prejudice statute:

> (3) It shall be an essential element of this section that the record reflect that the defendant perceived, knew or had reasonable grounds to know or perceive that the victim was in the class delineated herein.

While this provision, added during the 1991 legislative session, does not apply to this case, its enactment is evidence of the ambiguity that riddles the discriminatory-selection reading of the statute that does apply to this case.

deemed unlawful. As the Court explained in State v. Wershow, 343 So.2d 605, 608 (Fla. 1977):

> The requirements of due process of Article I, Section 9, Florida Constitution, and the Fifth and Fourteenth Amendments to the Constitution of the United States are not fulfilled unless the Legislature, in the promulgation of the penal statute, uses language sufficiently definite to apprise those to whom it applies, what conduct on their part is prohibited. It is constitutionally impermissible for the Legislature to use such vague and broad language that a person of common intelligence must speculate about its meaning and be subjected to arrest and punishment if the guess is wrong.

See State v. Ashcraft, 378 So.2d 284, 285 (Fla. 1979); Grayned v. City of Rockford, 408 U.S. 104, 108-09 (1972); Kolender v. Lawson, 461 U.S. 352, 357 (1983); Lanzetta v. New Jersey, 306 U.S. 451, 453 (1939); Connally v. General Construction Co., 269 U.S. 385 (1926).

This principle remains vital in Florida today, as this Court made clear in Perkins v. State, 576 So.2d 1310, 1312 (Fla. 1992) (citations omitted):

> One of the most fundamental principles of Florida law is that penal statutes must be strictly construed according to their letter. . . . Indeed, our system of jurisprudence is founded on belief that everyone must be given sufficient notice of those matters that may result in a deprivation of life, liberty, or property.

Accordingly, criminal statutes that do not meet "the due process requirement of definiteness" -- i.e., that are impermissibly vague and overbroad -- must be stuck down. Id. (quoting State ex rel. Lee v. Buchanan, 191 So.2d 33, 36 (Fla. 1966)).

That is precisely the result required here. As the Court stated in State v. Wershow, 343 So.2d at 609 (quoting Aztec Motel Inc. v. State ex rel. Faircloth. 251 So.2d 849 (Fla. 1971)) (emphasis added):

> No matter how laudable a piece of legislation may be in the minds of its sponsors, objective guidelines and standards must appear expressly in the law or be within the realm of reasonable inferences from the language of the law.

Here "objective guidelines and standards" appear nowhere in the law, forcing anyone arguably subject to Section 775.085 to act at his peril.

So, too, the lack of precision and indefiniteness of the terms of the statute dangerously invite "arbitrary and discriminatory application." Grayned, 408 U.S. at 108-109. Whenever an offender and victim happen to be of different races, different ethnicities, or different religions, etc., or whenever a discriminatory epithet is uttered in connection with the commission of a crime, there will be a risk that even well-meaning police, prosecutors and juries will use this statute to "pursue their personal predictions." Kolender v. Lawson, 461 U.S. at 358.[13] As the United States Supreme Court observed in Kolender, 461 U.S. at 357, n.7:

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[13] Indeed, because of our societal consensus that bigots are ignorant, antisocial and even dangerous, a prosecutor may choose to pursue a questionable charge of an underlying offense when the offender is suspected of being a bigot in the hope the jury may be moved to convict more on the penalty-enhancing criminal prejudice statute than on the underlying offense.

> Our concern for minimal guidelines finds its roots as far back as our decision in United States v. Reese, 92 U.S. 214, 25 L.Ed 563 (1876):
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> "It would certainly be dangerous if the legislature could set a net large enough to catch all possible offenders, and leave it to the courts to step inside and say who could be rightfully detained, and who should be set at large. This would, to some extent, substitute the judicial for the legislative department of government."

The Florida Supreme Court reiterated the same concern in State v. Wershow, 343 So.2d at 608, quoting the very same passage from Reese.

In striking down their states' ethnic intimidation laws, the courts in Van Gundy and Justice found these principles compelling. In Van Gundy, Slip. Op. at 4, the Ohio Court noted:

> [T]he statute does not indicate upon whose sensitivity a violation must depend: the sensitivity of the judge or jury; the sensitivity of the prosecutor; the sensitivity of the arresting officer; or the sensitivity of a hypothetical reasonable man.

Even more important to the Van Gundy court was that:

> [T]he statute confers on the police a virtually unrestrained power to arrest and charge persons with a violation of ethnic intimidation. . . .[, thus] furnish[ing] a convenient tool for harsh and discriminatory enforcement by local prosecuting officials against particular groups who are deemed to merit their displeasure.
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> Id. at 5 (citations omitted). Accord State v. May, 1991 Ohio App. LEXIS 3051 (June 27, 1991).[14]

Similarly, the court in Michigan v. Justice found:

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[14] May, with Van Gundy, is presently on appeal to the Ohio Supreme Court.

> [The Michigan statute] allows arbitrary and discriminatory action by police, prosecutor, court and jury, permitting them, on a case by case basis, to subjectively determine whether the conduct before them violates the statute. It does not provide fair warning to a person of ordinary intelligence that contemplated conduct will violate statute.
>
> Slip. Op. at 8.

The same dangers and risks are inherent here. And the same result -- striking down the statute as void-for-vagueness -- is required here as well.

Nor can any limiting construction save this statute. There is simply no way a court can adequately rewrite the statute to eliminate its facial applicability to the display of thought, or to provide objective guidelines and standards regarding discriminatory selection of victims. The process of judicial construction works best when the distance to be travelled from an unconstitutional statute to a constitutional one is relatively short. When the distance is great -- as it would be here -- an effort to save the statute from invalidation would inevitably substitute one set of constitutional problems for another. This statute is so extreme in its disregard of constitutional boundaries, provides so little foundation for a saving construction, and inhibits whole categories of constitutionally protected expression, that it simply cannot be redeemed through judicial interpretation. See, e.g., R.A.V., 60 U.S.L.W. 4667; Board of Airport Comm'rs of Los Angeles v. Jews for Jesus, 482 U.S. 569 (1987); Houston v. Hill, 428 U.S. 451 (1987); Secretary

of State of Maryland v. Joseph H. Munson Co., 467 U.S. 947 (1984).

Amicus respectfully submits that the correct response to the issues raised in this case -- from the perspective of constitutional theory and democratic governance -- is to return the matter to the Florida Legislature for its consideration under appropriate guidelines from this Court.

IV. CONCLUSION

For the foregoing reasons, the ACLU respectfully requests this Court to affirm the lower court's orders declaring the criminal prejudice statute, Section 775.085(1), unconstitutional.

Respectfully submitted,

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