

No Sound of Silence for Florida Streets

A statute that prohibits a person amplifying sound that could be heard more than 25 feet from a vehicle while at the same time allowing such amplification for business or political purposes is an unconstitutional restraint on the freedom of expression and thus invalid.

The Florida Supreme Court found the statute was an “unreasonable restriction on First Amendment rights.” The case arose when two persons were cited for violating the statute, which made it a non-moving traffic violation for operating a radio or other soundmaking devices in a vehicle that was “plainly audible at a distance of 25 feet or more from the motor vehicle.” The law exempted “motor vehicles used for business or political purposes, which in the normal course of conducting such business use soundmaking devices.”

The defendants argued that the law was vague because “whether a police officer can hear amplified sound beyond twenty-five feet is necessarily subject to each particular police officer’s auditory faculties, leading to arbitrary enforcement based on whether a police officer personally finds the amplified sound disturbing.” The Supreme Court disagreed, finding that the “standard provides fair warning of the prohibited conduct and provides an objective guideline—distance—to prevent arbitrary and discriminatory enforcement.”

However, the court found the provision that prohibited playing music but allowed sound for business or political purposes was unconstitutional. The court agreed that protecting the public from excessively loud noise is a compelling state interest but found “it is unclear how the statute advances those interests by allowing commercial and political speech at a volume ‘plainly audible’ beyond twenty-five feet, but not allowing noncommercial speech to be heard at the same distance.”

The court said the state’s argument “fails to explain how a commercial or political vehicle amplifying commercial or political messages audible a mile away is less dangerous or more tolerable than a noncommercial vehicle amplifying a religious message audible just twenty-five feet away from the vehicle. Further, the statute protects commercial speech to a greater degree than noncommercial speech; commercial speech, however, is generally afforded less protection.”

As a result, the court said the statute was not narrowly tailored to achieve the government’s interest and is an unreasonable restriction of First Amendment rights.

[*Florida v. Catalano*](#), S. Ct. Fla. No. SC11-1166, issued December 13, 2012.