

Exhibit "C"

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I.

THE HELMET LAW IS UNENFORCEABLY VAGUE AND IRRATIONAL.

A law which curtails the constitutional rights of so many people in so many ways ought at the very least to be one which citizens and law enforcement can understand. When individual liberties are at issue, the law ought to apply in a way that makes sense. The Helmet Law fails on both counts.

There is no way for a motorcycle rider to determine whether a particular helmet will actually meet the impact attenuation, penetration and retention standards of FMVSS 218 and thus comply with the law [App. 55:6-10, 92:4-14, 130:14-21, 183:2-4]. There is no way a law enforcement officer can tell whether the helmet a rider is wearing actually complies with the legal standard at the time the officer stops a motorcyclist [App. 123:13-124:17, 129:11-130:21, 134:4-25, 179:9-13, 183:12-27]. Compliance is impossible because the 8-page scientific

standard [App. 213-221] cannot be translated into a practical, everyday test.

Vehicle Code §27802 and FMVSS 218 require manufacturers' labelling which shows compliance with the standard. Both say such labels "constitute the manufacturer's certification that the helmet conforms" to the standard. In other words, a label says only that the helmet's manufacturer made certain representations, not that the helmet actually meets the law's requirements [App. 55:5-10, 64:12-65:14, 92:11-14]. Indeed, officers have been stopping riders with helmets labeled "DOT" without knowing whether such helmets conform to the standard [App. 115:6-17, 123:25-125:27, 129:11-130:16, 133:22-136:3].

The trial court, confronted with the vagueness problem, concluded that the Helmet Law is "not vague or uncertain as to its applicants" because "the specifications of the helmet are defined with specificity, and the requirements are founded in Federal Motor Vehicle Safety Standards, although there are many pages to it, it's in there" [RT 28:22-29:1].

This does not address the law's deficiency; it highlights the problem.

A. VAGUENESS

"It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined" (Grayned v. City of Rockford (1972) 408 U.S. 104, 108-109, 33 L.Ed.2d 222, 227-228, 92 S.Ct. 2294). A vague law "trap[s] the innocent by not providing fair warning" and "impermissibly delegates basic policy matters to policemen.

judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application" (Grayned, supra, 408 U.S. at 108-109, 92 S.Ct. at 2299, emphasis added). Such a statute violates both the Due Process Clause of the United States Constitution (Id.) and Article I, §7 of the California Constitution (People v. Superior Court (Caswell) (1988) 46 Cal.3d 381, 389).

To withstand a challenge for facial vagueness, a statute must satisfy two basic requirements. "First, a statute must be sufficiently definite to provide adequate notice of the conduct proscribed. '[A] statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law'" (Caswell, supra, 46 Cal.3d at 389, citations omitted). "Second, a statute must provide sufficiently definite guidelines for the police in order to prevent arbitrary and discriminatory enforcement" (Id. at 390). The Helmet Law fails to satisfy either of these criteria.

If the Helmet Law said merely, "A person may not ride a motorcycle without a helmet," the proscribed conduct would be clear. But when the Legislature set about defining -- or, more accurately, letting the federal government define -- the nature of the helmet to be used, the law became impossible to apply because the definition is one which could be applied only by a physicist or engineer in a laboratory.