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January 27, 2020

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**LETTER-BRIEF ON BEHALF OF DEFENDANT-PETITIONER IN RESPONSE
TO THIS COURT'S LETTER DATED DECEMBER 6, 2019**

SUPREME COURT OF NEW JERSEY
DOCKET NO. 083221

STATE OF NEW JERSEY,	:	<u>CRIMINAL ACTION</u>
Plaintiff-Appellant,	:	On Petition for Certification of
v.	:	a Judgment of the Superior Court
DARIUS J. CARTER.,	:	of New Jersey, Appellate
Defendant-Respondent.	:	Division.
	:	Sat Below:
	:	Hon. Robert J. Gilson, J.A.D.
	:	Hon. Arnold L. Natali Jr., J.A.D.
	:	
	:	

DEFENDANT IS CONFINED

Your Honors:

Please accept this letter-brief submitted per this Court's instruction.

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PRELIMINARY STATEMENT

In September of 2014, Darius Carter was subjected to what the trial court recognized as an "absolutely pretextual" stop with "miniscule" justification. He and his three passengers were seized. His papers were demanded, his identity checked, and his person searched - all because a license plate frame, affixed to a friend's mother's car, covered up the words "Garden State."

More than five years later, Mr. Carter's case has finally made its way before this Court, on Petition for Certification. In evaluating the petition, this Court has posed two questions of its own: First, is there any rational basis for a statute which would authorize these events? There is not. Second, could such a capacious reading of the statute open the door to arbitrary and discriminatory enforcement? It most assuredly can.

It is these abstract legal realities which pave the way for the events of this case and others like it: The statute's lack of rational basis leads to stops with "miniscule" justification and the margin for arbitrary discriminatory enforcement leads to stops which are "absolutely pretextual."

LEGAL ARGUMENT

POINT I

THE "FRAME" PORTION OF N.J.S.A 39:3-33, AS HYPOTHETICALLY CONSTRUCTED,¹ CANNOT BE REASONABLY SAID TO SERVE A LEGITIMATE STATE INTEREST AND THEREFORE LACKS A RATIONAL BASIS.

Laws are tested for constitutional compliance to ensure that fundamental rights, the *sine qua non* of a free society, are protected. Such checks a timeless liberties against the whims and winds of political expediency. The "rational basis" test is the first line of defense.² See Katie R. Eyer, *The Canon of Rational Basis Review*, 93 Notre Dame L. Rev. 1317 (2018) (explaining that, far from being "uniformly deferential," rational basis review is a meaningful constitutional safeguard).

All "irrational legislation is...barred." Secure Heritage, Inc. v. Cape May, 361 N.J. Super. 281, 301 (2003) (citing McKenney v. Byrne, 82 N.J. 304 (1980)). Thus, in order to pass muster, even those statutes which touch neither fundamental

¹ Petitioner construes this Court's question to concern the applicability of the statute to the words "Garden State," rather than the interchangeability of the word "obstruct" and the statutory term "obscure," but wishes to register the position that insertion of an "obstruction" standard, arguably broadening the statute further, would compound the extant irrationality.

² New Jersey has declined to adopt the "rational basis" test when reviewing statutes under the state constitution. Lewis v. Harris, 188 N.J. 415, 443 (2006). This section thus concerns federal constitutional analysis, although performed by both state and federal courts.

right nor suspect class, must bear a rational relation to some legitimate state interest. Romer v. Evans, 517 U.S. 620, 631 (1996). Even when applying the most deferential standard available, courts must “insist on knowing” the actual relationship between a legislation’s object and its means. Id. at 632. Where the alleged relationship does not exist, is not reasonable, or does not comport with principles of equal protection, it fails rational basis review. Reed v. Reed, 404 U.S. 71, 75-76 (1971).

A. The Legislature’s Principal Interest in the Display of Registration Plates is Concrete and Narrow.

N.J.S.A. 39:3-33 is the section of the Motor Vehicle Code which compels the use of registration plates. The purpose of the plates is to allow access to “the status of the vehicle, and the status of the registered owner;” to wit, “whether the car is registered, stolen, and whether the registered owner is licensed.” State v. Donis, 157 N.J. 44, 55 (1998). Notably, 1989 N.J. Law 132, which amended N.J.S.A. 39:3-33 and added the license plate frame language, was accompanied by several sponsor and committee statements, none of which suggested that the amendment changed the purpose of the statute, or was added for any other reason than to further the existing statutory goals. (Da at 4-10).³ Put another way, the law’s history does not

³ Da: Appendix to this letter-brief.

suggest that the enacting Legislature intended the frame section of N.J.S.A. 39:3-33 to further any other interests than those underlying the rest of the registration plate statute.

B. The Statute, As Hypothetically Construed, Is Not Reasonably Related to the Enacting Legislature's Goals.

No matter how unassailably legitimate the interest presented by a government is, it will not justify a statute which cannot rationally be expected to advance that interest. See Reed, 404 U.S. at 75-76. Each prong of the rational-basis analysis must be fulfilled separately; an abundance of support for one cannot make up for a lack of support in the other. Here, the second prong - reasonable relation between the statute's ends and means - is not met. Neither, therefore, is the minimum standard of constitutionality.

1. The Legislature's Interest in Making Registration Status Ascertainable is not Advanced by the Display of "Garden State".

The bulk of N.J.S.A. 39:3-33, requiring that government-issued license plates display uniform, legible registration numbers, advances the purpose of the statute, as would a requirement that frames do not obstruct a registration number. Defendant-Petitioner therefore freely concedes that those measures have a rational foundation. However, this purpose would not be advanced by a section of the statute compelling the display of the slogan at the bottom edge of a license plate for

two reasons: First, uniformity is not promoted since the slogan itself is not uniformly required; dozens of customized plates with differing slogans and designs are available. Second, ascertaining the legal status of vehicle or its owner is utterly impossible without the plate number and does not require knowledge of the cosmetic slogan. Thus, the hypothetically construed statute would not serve the legislature's purpose.

2. The Prosecutor's Interest in Enforcing Unrelated Laws is not a Sufficient Basis for Requiring the Display of Cosmetic License-Plate Slogans.

Because the customary purposes of N.J.S.A. 39:3-33 are not advanced by the display of "Garden State" (or its readily interchanged substitutes), a proponent of the "Garden State"-focused reading must rely on speculative and attenuated law-enforcement interest. While there is no dispute that enforcement of the laws is, in general, a legitimate state interest, that is only a preliminary question. United States v. Salerno, 481 U.S. 739 (1987). Crucially, this Court and the parties alike would have to guess at what such hypothetical justifications might be since no ancillary law enforcement concern was propounded by the enacting legislature. As such, the deference applied to the legislature's normative and strategic judgments is less warranted. "Under rational-basis review [courts should] accept a legislature's generalization." Heller v. Doe, 509 U.S. 312, 321 (1993). This makes sense: rational basis review is a logical

outgrowth of the fact that legislatures are “responsive and deliberative” bodies, attuned and accountable to their constituencies - qualities not shared by non-legislative actors. Loving v. United States, 517 U.S. 748, 757-58 (1996).

Yet the proffered law-enforcement interest here is offered only by county law enforcement officials far outside the state legislature; there is no legislative wisdom to defer to because no legislative determination was made. These non-legislative actors cannot make the statute anew decades after its enactment. Equally, a statute cannot be retroactively justified by simple reference to a state interest - no matter how worthy. See Reed, 404 U.S. at 75-76 (advising no statute should authorize unequal treatment “unrelated to the [valid] objective of the statute”). There must be a reasonable relationship between the statute’s actual object and the statutory means. No such relationship would exist for the statute as hypothetically construed.

One law-enforcement justification proposed for a “Garden State”-protecting statute is that the display of cosmetic slogans helps police and witnesses track down those who have already committed crimes. The contention seems to be that the display of “Garden State” furthers this law enforcement interests since it is a state-specific moniker which will differentiate a New Jersey plate in the event that the words

"New Jersey" are not visible. This argument is undercut by the government's own actions: New Jersey offers many license plates which do not even carry the "Garden State" slogan, and in fact replace it with slogans identical to those available in neighboring states. For example, both New Jersey and New York offer special plates for fans of area sports teams including the New York Giants, New York Jets, New York Yankees, and New York Mets.⁴ New Jersey, New York, Pennsylvania, and Delaware all provide special plates to alumnae of the Alpha Kapa Alpha Sorority.⁵ Indeed, New Jersey readily offers dozens of specialty plates for hobbies, vocations, and charitable causes - with untold others available on request - which match those on offer just over the state border. If the unique "Garden State" inscription was expected to promote law and order, as the State contends, surely it would not throw such a tool away so easily.

Moreover, a rule prohibiting a frame covering material printed at the bottom of the plate could not reliably be enforced. Obviously, no out-of-state plate is issued by the New Jersey government, nor could New Jersey mandate that any other

⁴ "Custom Plates," New York Department of Motor Vehicles (<https://dmv.ny.gov/nav/custom-plates>); "Dedications Plates," New Jersey Motor Vehicle Commission (<https://www.state.nj.us/mvc/vehicles/dedicated.htm>).

⁵ Id.; Pennsylvania Department of Transportation, (<https://www.dmv.pa.gov/VEHICLE-SERVICES/Registration%20Plates/Pages/default.aspx>); Delaware Division of Motor Vehicles, (https://dmv.de.gov/VehicleServices/tags/index.shtml?dc=tags_all).

state include decorative slogans on the bottom edge of their plates. Apart from the registration information required nationwide, plates are not required to have any elements in common. In fact, plates currently in service from (among others) New York, Virginia, Oregon, California, Kansas, and Maryland have no material imprinted on the bottom edge of their plate. Therefore, because N.J.S.A 39:3-33, at most, protects printed material, police could not determine whether the bottom of a plate must be frame-free unless they have already determined the state which issued the plate. Put another way: the proposed interpretation would require the display of decorative phrases. The State contends that decorative phrases on the bottom of a plate must be visible in order to determine which state issued the plate. However, one cannot determine whether there is any decorative phrase required to be displayed unless they have already determined which state issued the plate. Thus, in such situations, the requirement would serve no purpose at all.

The utility of the frame statute in detecting vehicles which fail to carry necessary identifiers, i.e., car services or commercial vehicles is similarly illusory. While, at first blush, this argument seems sensible, it does not withstand interrogation. The simple reason is this: an officer cannot know simply by looking whether a Lincoln Towncar, for example, is a personal vehicle or falls within the "limousine" statute or

whether a Ford F-150 is sometimes used to transport locally-grown squash and thus requires a "farm truck" plate. In order to find out, an officer has two options: (1) run the plate number through a mobile data terminal ("MDT") on the spot to examine its registration status. Once he does, he will know whether it is registered with the appropriate commercial label; the "obscuring" frame will be of no moment. (2) Otherwise, the vehicle must be surveilled extensively to determine its use, during which time it will likewise be possible to run the plates; if not, it will be because the registration number itself is blocked; an obstructed slogan will be of no moment. Finally, if used for this purpose, the statute at the very least would be wildly overbroad since the special-registration statutes constrain the individual who registers the vehicle, whereas N.J.S.A. 39:3-33 punishes any driver of such a vehicle, regardless of whether he is aware either of the underlying registration requirement or the presence of an unlawful frame.

In sum, the proposed reading of the statute cannot be reasonably expected to serve a legitimate state interest. Instead, as the trial court unambiguously found in this case, N.J.S.A. 39:3-33 is being used as a pretext to stop otherwise-unsuspicious drivers and commence unabashed fishing expeditions. See also State v. Roman-Rosado, __ N.J. Super. __, slip op. *3 (App. Div. 2020) (explaining how an officer relied on N.J.S.A.

39:3-33 "to look for traffic code violations with the sole purpose to develop criminal investigations"). Such a law, operating a license to perform otherwise-unconstitutional seizures while failing to reasonably promote the state interest asserted, is devoid of any rational basis.

C. The "Frame" Portion of N.J.S.A 39:3-33, as Hypothetically Construed, Fails the Tests of Constitutional Scrutiny Which Generally Apply Where Fundamental Rights are Implicated.

The prospect of arbitrary enforcement, specifically along racial lines (see Point II.C, *infra*), implicates a constellation of core constitutional rights, including due process, equal protection, freedom of movement, and freedom from unreasonable search and seizure. See West Virginia Bd. of Educ. v. Barnette, 319 U.S. 624, 638 (1943) (explaining that the constitution exists to put such rights beyond the reach of the political branches). Therefore, while petitioner directs this letter-brief to this Court's interrogatories, it is respectfully submitted that such laws are generally subject to more searching review.

In order to pass muster under federal Equal Protection safeguards, statutes which implicate such "fundamental rights" face "strict scrutiny" and are upheld only if they are "narrowly tailored" to serve a "compelling state interest" which cannot be satisfied by any less-restrictive means. See, e.g., Loving v. Virginia, 388 U.S. 1, 11 (1967); Harper v. Virginia Bd. of

Elections, 383 U.S. 663 (1966). Even under the less-exhaustive “intermediate scrutiny,” (appropriate for those statutes which may indirectly effect fundamental rights), a statute must be “substantially related” to an “important government objective.” Bullock v. Carter, 405 U.S. 134 (1972). Under either test, the burden is on the government to prove the validity of the law. Fisher v. Univ. of Texas, 570 U.S. 297, 310 (2013) (strict scrutiny); United States v. Virginia, 518 U.S. 515, 533 (1996) (intermediate scrutiny). The related but distinguishable due-process analysis, a “more exacting” standard than rational basis review, similarly demands that laws “must not needlessly, arbitrarily, or capriciously impinge” on such rights. Greenberg v. Kimmelman, 99 N.J. 552, 563-644 (1985) (quoting in part Cleveland Bd. of Ed. v. Laflour, 414 U.S. 632 (1974)).

This Court has applied a more nimble test to state-constitution claims which reach beyond their federal counterparts: “unless the public need justifies statutorily limiting the exercise of a claimed right, the State’s action is deemed arbitrary.” Lewis v. Harris, 188 N.J. 415, 443-44 (2006). (citing Robinson v. Cahill, 62 N.J. 473 (1973)). Because the parties were not asked to evaluate the statute under these standard, such an analysis is not herein performed. Suffice it to say that N.J.S.A. 39:3-33, which does not survive even rational basis review, certainly fails under these standards.

POINT II

BECAUSE N.J.S.A 39:3-33 IS VAGUE AND CONCERNS UBIQUITOUS BEHAVIOR, IT PERMITS ARBITRARY AND DISCRIMINATORY ENFORCEMENT. MOREOVER, AVAILABLE DATA SUGGESTS IT IS BEING ENFORCED IN A RACIALLY DISPROPORTIONATE MANNER.

Even a statute which survives ends/means rational basis testing may nonetheless be struck down if it is susceptible to arbitrary and discriminatory enforcement. See, e.g., Chicago v. Morales, 527 U.S. 41 (1999). This test is not a matter of equal protection designed to safeguard discrete groups, but rather, a matter of due process designed to protect each of us against being singled out for reason that at best indiscernible, at worst discriminatory, and often wholly non-existent.

A. Vague, Obscure, and Expansive Laws, By Their Nature, Enable Arbitrary and Discriminatory Enforcement.

This Court and the United States Supreme Court alike have long warned that vagueness in a statute "allows arbitrary and discriminatory enforcement of the laws." State v. Ramseur, 106 N.J. 123, 201 n.27 (1987) (citing severally Kolender, 461 U.S. at 357-58, Town Tobacconist v. Kimmelman, 94 N.J. 85, 118 (1983), and State v. Sharkey, 204 N.J. Super. 192, 199 (App. Div. 1985)). Where the outer-limits of a statute are vague, it "may permit a standardless sweep that allows policemen, prosecutors, and juries to pursue their personal predilections." Kolender, 461 U.S. at 358; see also United States v. Davis, 139

S. Ct. 2319, 2326 (2019) (warning that vague statutes put too much power in the hands of "relatively unaccountable police [and] prosecutors"). The "vagueness" which poses such danger is not the linguistic ambiguity that fails to warn individuals of the terms of an ordinance. Rather it refers to the kind of limitlessness that necessitates constant unguided judgment calls and all but guarantees uneven, unpredictable application.

Relatedly, a statute is amenable to selective and discriminatory enforcement if it prohibits a particularly common behavior. If violation is common, the number of infractions will far exceed the practicable number of enforcement actions. As a result, individual officers must pick and choose among a panoply of vulnerable targets and, absent legislative advice on how to prioritize enforcement, have the option to exercise that vast discretion in an arbitrary and discriminatory way.

As early as 1876, the Court advised that: "it would certainly be dangerous if the legislature could set a net large enough to catch all possible offenders, and leave it to" police, prosecutors, or even courts to take their pick of possible enforcement targets. United States v. Reese, 92 U.S. 214, 221 (1876). In the intervening century and a half, courts from state trial to United States Supreme, are constantly called upon to beat back such capacious legislation. In 1948, discussing an

invalidated New Jersey vagrancy law, Justice Frankfurter observed that "definiteness is designedly avoided so as to allow the net to be cast at large, to enable men to be caught who are vaguely undesirable in the eyes of police and prosecution." Winters v. New York, 333 U.S. 507, 540 (1948) (discussing Lanzetta v. New Jersey, 306 U.S. 451 (1939)).

Again, in Papachristou v. Jacksonville, the court struck down a statute for the same reason, observing that "the net cast is large...to increase the arsenal of police". 405 U.S. 156, 166 (1972). Such broad laws, the Court held, impermissibly "encourage[] arbitrary and erratic arrests and convictions." Id. at 161 (citing Thornhill v. Alabama, 310 U.S. 88 (1940), then citing Herndon v. Lowry, 301 U.S. 242 (1937)). By 1999, the Court was still fighting the same battle, holding yet again that an ordinance which "necessarily entrusts lawmaking to the moment-to-moment judgment of the policeman on his beat," permits of arbitrary and discriminatory enforcement and thus is unconstitutional on its face. Morales, 527 U.S. at 60.

If N.J.S.A. 39:3-33 is construed to prohibit obstruction of "Garden State," this Court will be fighting that battle again. Such a prohibition would be exceptionally far-reaching, gathering up an enormous numbers of New Jersey drivers. An ordinance authorizing the roadside seizure of innumerable

travelers for the most trivial and inconsequential violations, would plainly lack the legislative guidance needed to save it. The result would be a law which not only allowed but in fact encouraged arbitrary enforcement.

B. There is No Exogenous Mechanism to Effectively Prevent Pretextual Stops.

The initial danger of broad, vague statutes is that they resist comprehensive oversight and arbitrary enforcement is difficult to detect. But one need look no further than this case, to see that even when pretext is recognized, the accused are seldom vindicated. The reason is simple: the vast majority of pretextual stops are not illegal. The Supreme Court of the United States has squarely and repeatedly held a pretextual stop does not offend the Fourth Amendment. United States v. Whren, 517 U.S. 806, 813 (1996); United States v. Villamonte-Marquez, 462 U.S. 579, 584 n.4 (1983); United States v. Robinson, 414 U.S. 218, 221, n.1 (1973) (approving of an arrest for a traffic infraction even though it was "a mere pretext for a narcotics search"). New Jersey has followed its example. State v. Dickey, 152 N.J. 468, 475 (1998).

More concerningly, the Court has insisted that not even an allegation of racial animus will defeat the stolid rule that where there is probable cause, there is no the Fourth Amendment violation. See, e.g., Florida v. Jardines, 569 U.S. 1, 10 (2013)

("The defendant will not be heard to complain that although he was speeding the officer's real reason for the stop was racial harassment.") (citing Whren, 517 U.S. at 810, 813). While the theoretical prospect of a collateral attack on equal protection grounds exists, such litigation would take a different form, replete with extraordinarily high burdens on the claimant and without the remedy of evidentiary suppression: the most potent prophylactic against unconscionable search and seizure.

Indeed, 42 U.S.C. 1983, the federal law specifically designed to punish and deter state actors' violation of constitutional rights, provides no remedy for pretextual stops or even arrests, outside of clear-cut racial animus cases. In Reichle v. Howards, the Court held that officers could not be held responsible for arresting an individual in retaliation for his political speech. 566 U.S. 658 (2012). This rule was reaffirmed in Nieves v. Bartlett, where the Court held that where an officer has probable cause to arrest, he may do so, even when his actual aim is to punish speech protected by the First Amendment. 139 S. Ct. 1715 (2019). In sum, neither constitutional nor civil remedies can shield defendants against even the most obvious pretextual enforcement.

C. Data Compiled by New Jersey Governmental Entities Suggest that N.J.S.A 39:3-33 Is Being Enforced in an Arbitrary and Discriminatory Manner.

Arbitrary enforcement can take many forms and be deployed on many bases, from something as central as speech, creed, or political affiliation, to something as peripheral as familial conflict or business disputes. At present, we have no mechanisms to detect such inequalities. However, available data does provide insight into how N.J.S.A. 39:3-33 has been enforced along racial lines. This data, regrettably, validates the fears about discriminatory enforcement shared by the Reese, Ramseur, Kolender, and myriad other courts.

In preparing to answer the questions posed by this court, counsel gathered publicly available population data produced by New Jersey's Department of Labor and Workforce Development and State Police car stop data produced by the Office of Law Enforcement Professional Standards ("OLEPS"). The information used was from 2016, the last year that OLEPS published such a report. These data were compiled and processed into succinct tables comparing the demographics of New Jersey to the rates of traffic stops, traffic stops for non-moving violations, traffic stops for suspected N.J.S.A. 39:3-33 violations, [Table 1, "Stops"] and to outcomes following traffic stops [Table 2, "Post-Stop Outcomes"]. These tables - designed to most efficiently convey the data discussed below - as well as an explanation of the related sources, methodology, and notation, are produced at Da 11-12.

Several concerning trends emerged in the data, beginning with the information compiled in Table 1. According to the Department of Labor, in 2016, approximately 74% of New Jerseyans were white, 26% were non-white, and 15% were black. According to OLEPS, only 59% of State Police car stops that year targeted white drivers (20% lower than would be expected based on state demographics), while 41% involved non-white drivers (57% higher than expected) and 20% targeted black drivers (29% higher than expected). The variance between population and stops was even more pronounced with respect to traffic stops for less dangerous "non-moving violations" (e.g., license plate violations or tinted windows as opposed to speeding or reckless driving), with only 57% targeting whites (23% lower than expected), 43% non-whites (66% higher than expected), and 24% blacks (55% higher than expected). The split was even larger when it came to N.J.S.A. 39:3-33 violations with only 56% of stops targeting white drivers (25% less than expected), 44% targeting non-white drivers (71% more than expected) and 25% targeting black drivers (63% more than expected). These statistics are based on a robust collection of more than 299,000 stops over the course of 6 months, catalogued by the State Police themselves. While they are of course only a sample, they provide a substantial basis for concern that N.J.S.A. 39:3-33 is being enforced arbitrarily,

discriminatorily, and in a manner that trespasses on the rights of people of color traveling the roads of New Jersey.

The appended Table 2 additionally tracks the disposition of the same instances following the stop. While, unlike Table 1, this data does not bear directly on the issue of *whether* N.J.S.A. 39:3-33 is being used to justify arbitrary or discriminatory stops, it draws into sharp relief just how much such unequal enforcement *matters*. Once a stop occurs, only 39% of cases where individuals are asked to exit the vehicle involve white drivers (48% below the rate expected based on population), while 61% involved non-white drivers (137% above the expected rate), and 39% involved black drivers (158% above the expected rate). The same trend continued for arrests and charges. The most dramatic discrepancy of all involved obstruction charges, 31% of which (59% below the expected rate) were issued against whites, 69% were issued against non-whites (169% more than expected) and 52% were issued against blacks (fully 241% above the expected rate). Importantly, obstruction charges - unlike, for example, DWI, possession of a weapon, or possession of drug paraphernalia - arise *solely* from the interaction with police after a stop has taken place and do not depend on existing unlawful behavior.

The available data shows that, at every stage, inequitable enforcement compounds. What starts with small but meaningful differences balloons into wildly disproportionate outcomes, driving the experiences of different racial and ethnic communities further and further apart. Whether a product of policy or chance, vagueness or broadness, discriminatory enforcement is more than a specter: it is here.

CONCLUSION

The questions of statutory validity posed by this Court show the cracks in the statute, hypothetically constructed to protect the words "Garden State": the statute would be too irrational to justify the liberties it costs and too unrestricted to avoid arbitrary enforcement. To endorse it would be to allow the iniquity in enforcement to grow, unchecked. Because the hypothetically-construed statute would fail the tests of legitimacy on equal protection and due process grounds alike, it must either be otherwise-construed or be struck down.

Respectfully submitted,

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BY: s/ *Emma R. Moore*

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Dated: January 27, 2020

[FIRST REPRINT]

ASSEMBLY COMMITTEE SUBSTITUTE FOR

ASSEMBLY, Nos. 57 and 1254

STATE OF NEW JERSEY

ADOPTED FEBRUARY 1, 1988

By Assemblymen ALBOHN and ROONEY

1 AN ACT concerning the displaying of motor vehicle license
plates and amending R.S.39:3-33.

3

BE IT ENACTED *by the Senate and General Assembly of the*
5 *State of New Jersey:*

1. R.S.39:3-33 is amended to read as follows:

7 39:3-33. The owner of an automobile which is driven on the
public highways of this State shall display not less than 12 inches
9 nor more than 48 inches from the ground in a horizontal
position, and in such a way as not to swing, an identification
11 mark or marks to be furnished by the division; provided, that if
two marks are issued they shall be displayed on the front and
13 rear of the vehicle; and provided, further, that if only one mark
is issued it shall be displayed on the rear of the vehicle; and
15 provided, further, that the rear identification mark may be
displayed more than 48 inches from the ground on tank trucks,
17 trailers and other commercial vehicles carrying inflammable
liquids and on sanitation vehicles which are used to collect,
19 transport and dispose of garbage, solid wastes and refuse.
Motorcycles shall also display an identification mark or marks;
21 provided, that if two marks are issued they shall be displayed on
the front and rear of the motorcycle; and provided, further, that
23 if only one mark is issued it shall be displayed on the rear of the
motorcycle.

25 The identification mark or marks shall contain the number of
the registration certificate of the vehicle and shall be of such
27 design and material as the director prescribes. All registration
plates issued by the division after January 1, 1982 shall be of a
29 permanent nature and shall be fully treated with a reflectorized
material designed to increase the nighttime visibility and
31 legibility thereof, according to specifications prescribed by the

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in the
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows.

Senate floor amendments adopted March 20, 1989.

1 division, except that the division shall first use any existing
2 supplies of nonreflectorized plates which it ordered prior to that
3 date. Whenever reflectorized registration plates are issued for
4 any vehicle for which a registration fee is normally charged, the
5 division may charge an additional fee not to exceed \$0.05 above
6 actual costs. All identification marks shall be kept clear and
7 distinct and free from grease, dust or other blurring matter, so
8 as to be plainly visible at all times of the day and night.

9 No person shall drive a motor vehicle which has a license
10 plate frame or identification marker holder that conceals or
11 otherwise obscures any part of any marking imprinted upon the
12 vehicle's registration plate or any part of any insert which the
13 director, as hereinafter provided, issues to be inserted in and
14 attached to that registration plate or marker.

15 The director is authorized and empowered to issue
16 registration plate inserts, to be inserted in and attached to the
17 registration plates or markers described herein. They may be
18 issued in the place of new registration plates or markers; and
19 inscribed thereon, in numerals, shall be the year in which
20 registration of the vehicle has been granted.

21 No person shall drive a motor vehicle the owner of which has
22 not complied with the provisions of this subtitle concerning the
23 proper registration and identification thereof, nor drive a motor
24 vehicle which displays a fictitious number, or a number other
25 than that designated for the motor vehicle in its registration
26 certificate. ¹During the period of time between the application
27 for motor vehicle registration and the receipt of registration
28 plates from the division, no person shall affix a plate or marker
29 for the purpose of advertisement in the position on a motor
30 vehicle normally reserved for the display of the registration
31 plates required by this section if the plate or marker is designed
32 with a combination of letters, numbers, colors, or words to
33 resemble the registration plates required by this section.¹

34 A person convicted of displaying a fictitious number, as
35 prohibited herein, shall be subject to a fine not exceeding
36 \$500.00 or imprisonment in the county jail for not more than 60
37 days.

38 A person violating any other provision of this section shall be
39 subject to a fine not exceeding \$100.00. In default of the

1 payment thereof, there shall be imposed an imprisonment in the
2 county jail for a period not exceeding 10 days. A person
3 convicted of a second offense of the same violation may be
4 fined in double the amount herein prescribed for the first
5 offense and may, in default of the payment thereof, be punished
6 by imprisonment in the county jail for a period not exceeding 20
7 days. These penalties shall not apply to the display of a
8 fictitious number.

9 (cf: P.L.1983, c.428, s.1)

10 2. This act shall take effect on the 120th day after the day of
11 enactment.

12

MOTOR VEHICLES

14

Motor Vehicle - License and Registration

15
16 Prohibits use of license plate holders which conceal or obscure
17 markings on plate; prohibits use of advertising plates resembling
18 registration plates.
19

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ASSEMBLY, No. 57

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1988 SESSION

By Assemblyman ALBOHN

1 AN ACT concerning the displaying of motor vehicle license
plates and amending R.S. 39:3-33.

3

BE IT ENACTED by the Senate and General Assembly of the
5 State of New Jersey:

1. R.S. 39:3-33 is amended to read as follows:

7 39:3-33. The owner of an automobile which is driven on the
public highways of this State shall display not less than 12 inches
9 nor more than 48 inches from the ground in a horizontal
position, and in such a way as not to swing, an identification
11 mark or marks to be furnished by the division; provided, that if
two marks are issued they shall be displayed on the front and
13 rear of the vehicle; and provided, further, that if only one mark
is issued it shall be displayed on the rear of the vehicle; and
15 provided, further, that the rear identification mark may be
displayed more than 48 inches from the ground on tank trucks,
17 trailers and other commercial vehicles carrying inflammable
liquids and on sanitation vehicles which are used to collect,
19 transport and dispose of garbage, solid wastes and refuse.
Motorcycles shall also display an identification mark or marks;
21 provided, that if two marks are issued they shall be displayed on
the front and rear of the motorcycle; and provided, further, that
23 if only one mark is issued it shall be displayed on the rear of the
motorcycle.

25 The identification mark or marks shall contain the number of
the registration certificate of the vehicle and shall be of such
27 design and material as the director prescribes. All registration
plates issued by the division after January 1, 1982 shall be of a
29 permanent nature and shall be fully treated

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in the
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 for the first offense and may, in default of the payment thereof,
2 be punished by imprisonment in the county jail for a period not
3 exceeding 20 days. These penalties shall not apply to the display
4 of a fictitious number.

5 2. This act shall take effect immediately.

7

STATEMENT

9

10 This bill prohibits the use of any license plate holder or frame
11 which conceals or otherwise obscures any of the markings
12 imprinted on a motor vehicle license plate or any insert or
13 sticker which is required to be attached to or affixed on that
14 license plate by the Director of the Division of Motor Vehicles.

15

17

MOTOR VEHICLES

Motor Vehicle- License and Registration

19

20 Prohibits use of license plate holders which conceal or obscure
21 markings on plate.

ASSEMBLY, No. 1254

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1988 SESSION

By Assemblyman ROONEY

1 AN ACT concerning the displaying of motor vehicle license
plates and supplementing chapter 3 of Title 39 of the Revised
3 Statutes.

5 BE IT ENACTED *by the Senate and General Assembly of the
State of New Jersey:*

7 1. a. No person shall drive a motor vehicle which has a
license plate frame or identification marker holder that
9 conceals or otherwise obscures any part of any marking
imprinted upon that vehicle's registration plate or any part of
11 any insert which, at the direction of the director, is attached
thereto or affixed thereon.

13 Any operator violating the provisions of this act shall be
subject to a fine of \$25.00.

15 b. Any new or used car dealer who places upon a vehicle any
license plate frame or identification marker holder that
17 conceals or otherwise obscures any part of any marking
imprinted upon a vehicle's registration plate or any part of any
19 insert which, at the direction of the director, is attached
thereto or affixed thereon shall be subject to a fine of \$50.00.

21 c. No motor vehicle which has a license plate frame or
identification marker holder that conceals or otherwise obscures
23 any part of any marking imprinted upon its registration plate or
any part of any insert which, at the direction of the director, is
25 attached thereto or affixed thereon shall be certified as
approved by any official inspection station or any licensed
27 private inspection center.

2. This act shall take effect immediately.

1

STATEMENT

3 This bill prohibits the use of any license plate holder or frame
5 which conceals or otherwise obscures any of the markings
7 imprinted on a motor vehicle license plate or any insert or
9 sticker which is required to be attached to or affixed on that
11 license plate by the Director of the Division of Motor Vehicles.

13 Under the provisions of the bill, the operator of a motor
15 vehicle that has a license plate frame or holder which conceals
17 or obscures any of the information on the plate is subject to a
19 fine of \$25.00. If a new or used car dealer installs or places any
21 such frame or holder on a motor vehicle, he is subject to a fine
23 of \$50.00.

25 Finally, the bill provides that no motor vehicle that has a
27 license plate frame or holder which conceals or obscures any of
29 the information on its license plate shall be certified as
31 approved by an official inspection station or a licensed private
33 inspection center.

35

37

MOTOR VEHICLES

Motor Vehicle - License and Registration

39

41 Prohibits use of license plate holders which conceal or obscure
43 markings on plate.

45

ASSEMBLY LAW, PUBLIC SAFETY AND CORRECTIONS
COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR

ASSEMBLY, Nos. 57 and 1254

STATE OF NEW JERSEY

DATED: FEBRUARY 1, 1988

The Assembly Law, Public Safety and Corrections Committee favorably reports a Committee Substitute for Assembly Bill 57 and Assembly Bill 1254.

The Assembly Committee Substitute for Assembly Bill 57 and Assembly Bill 1254 amends R.S. 39:3-33 to prohibit the use of any license plate holder or frame which conceals or otherwise obscures any of the markings imprinted on a motor vehicle license plate or any insert or sticker which is required to be attached to or affixed on that license plate by the Director of the Division of Motor Vehicles.

The Committee notes that the provisions of the Committee Substitute take effect on the 120th day following the day of its enactment.

SENATE LAW, PUBLIC SAFETY AND DEFENSE COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR

ASSEMBLY, Nos. 57 and 1254

STATE OF NEW JERSEY

DATED: JANUARY 12, 1989

The Senate Law, Public Safety and Defense Committee reports favorably the Assembly Committee Substitute for Assembly Bill Nos. 57 and 1254.

The committee substitute amends R.S.39:3-33 to prohibit the use of any license plate holder or frame which conceals or otherwise obscures any of the markings imprinted on a motor vehicle license plate or any insert or sticker which is required by the Director of the Division of Motor Vehicles to be attached to or affixed on that license plate .

1 with a reflectorized material designed to increase the nighttime
visibility and legibility thereof, according to specifications
3 prescribed by the division, except that the division shall first use
any existing supplies of nonreflectorized plates which it ordered
5 prior to that date. Whenever reflectorized registration plates
are issued for any vehicle for which a registration fee is
7 normally charged, the division may charge an additional fee not
to exceed \$0.05 above actual costs. All identification marks
9 shall be kept clear and distinct and free from grease, dust or
other blurring matter, so as to be plainly visible at all times of
11 the day and night.

The director is authorized and empowered to issue
13 registration plate inserts, to be inserted in and attached to the
registration plates or markers described herein. They may be
15 issued in the place of new registration plates or markers; and
inscribed thereon, in numerals, shall be the year in which
17 registration of the vehicle has been granted.

No person shall drive a motor vehicle which has a license
19 plate frame or identification marker holder that conceals or
otherwise obscures any part of any marking imprinted on that
21 plate or any part of any plate insert which, at the direction of
the director, is attached thereto or affixed thereon.

23 No person shall drive a motor vehicle the owner of which has
not complied with the provisions of this subtitle concerning the
25 proper registration and identification thereof, nor drive a motor
vehicle which displays a fictitious number, or a number other
27 than that designated for the motor vehicle in its registration
certificate.

29 A person convicted of displaying a fictitious number, as
prohibited herein, shall be subject to a fine not exceeding
31 \$500.00 or imprisonment in the county jail for not more than 60
days.

33 A person violating any other provision of this section shall be
subject to a fine not exceeding \$100.00. In default of the
35 payment thereof, there shall be imposed an imprisonment in the
county jail for a period not exceeding 10 days. A person
37 convicted of a second offense of the same violation may be
fined in double the amount herein prescribed

Disproportionality of State Police Traffic Enforcement (2016) Sources and Methodology

Sources

- **Population Data:** sourced from "Population Estimates by Sex, Race, and Hispanic Origin: April 2010 to July 1, 2018", Population & Household Estimates, New Jersey Department of Labor and Workforce Development. Available at https://www.nj.gov/labor/lpa/dmograph/est/nj_srh2018.xlsx
- **Enforcement Data:** sourced from "Fifteenth Aggregate Report of Traffic Enforcement Activities of New Jersey State Police," New Jersey Office of Law Enforcement Professional Standards. Available at https://www.nj.gov/oag/oleps/pdfs/OLEPS-2018-Fifteenth-Aggregate-Report_TEANjsp.pdf

Methodology & Notation

- The column labeled " δ " (delta) for rows "White, Non-White, Black," describes the percent difference between the expected value based on population demographics and actual value.
- 2016 is used as the exemplar year because it is the last one for which OLEPS produced the "Aggregate Report of Traffic Enforcement Activities."
- The Department of Labor population data is self-identified and allows for individuals to identify as belong to one race or to two or more races. In 2016, approximately 2% of the population did so. The New Jersey State Police data underlying the OLEPS report does not identify individuals as multi-racial. Therefore, multiracial individuals are excluded from the population-wide data to eliminate confounding variables.
- While the Department of Labor data recognizes "Hispanic" as an ethnicity and not a race, it allows individuals to identify as Hispanic in addition to their race. It is unclear whether the State Police data underlying the OLEPS report allows for this. However, the report itself proceeds by considering "Hispanic" a race (i.e., reporting that of the individuals stopped, 59% were white, 20% black, 14% Hispanic, 6% Asian, 0% American Indian, and 1% other, adding up to 100%). Because the definitions for "Hispanic" clearly do not map onto each other, no attempt has been made to compare expected vs reported enforcement rates against Hispanics. Thus, the category "non-white" includes individuals designated by the State Police data as "Hispanic" and not as "white."
- It may be observed that the data for each successive phase is a subset of the prior phase (i.e., each non-white person stopped for a 39:3-33 violation is a constituent of the group of non-white people stopped for non-moving violations). This introduced some endogeneity. However, this is not a flaw in the calculations; rather, the tables are designed to show the multiplying effects of disproportionality. In any event, the fact that variance increases in each successive phase shows that additional disparities are added at every step, even once endogenous variables are accounted for.

Disproportionality of State Police Traffic Enforcement by Population (2016)

Table 1: Stops

	Population			Stops			Non-Moving Violations			39:3-33		
	Number	%	δ	Number	%	δ	Number	%	δ	Number	%	δ
Overall	8,682,950			299,596			62,033			4,613		
White	6,446,880	74%		178,173	59%	-20%	35,463	57%	-23%	2,580	56%	-25%
Non-White (Any)	2,236,070	26%		121,423	41%	57%	26,570	43%	66%	2,033	44%	71%
Black	1,325,075	15%		58,841	20%	29%	14,697	24%	55%	1,149	25%	63%

Table 2: Post-Stop Outcomes

	Vehicle Exits			Arrests			Charges			Obstruction Charges		
	Number	%	δ	Number	%	δ	Number	%	δ	Number	%	δ
Overall	11,605			13,895			16,733			6,693		
White	4,523	39%	-48%	5,098	37%	-51%	6,704	40%	-46%	2,049	31%	-59%
Non-White (Any)	7,082	61%	137%	8,797	63%	146%	10,029	60%	133%	4,644	69%	169%
Black	4,571	39%	158%	5,935	43%	180%	6,775	40%	165%	3,482	52%	241%