

Lawsuit Creates Noise About Noise

Written by Jeff Ignatius

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A \$25 million class-action civil-rights lawsuit filed by three African Americans against the City of Rock Island faces an uphill battle in court, according to people familiar with similar challenges. On January 18, three men filed a class-action lawsuit seeking \$25 million in damages and asking the federal district court to overturn a Rock Island city ordinance forbidding drivers from playing their car stereos loudly. The suit also challenges a city code that gives the police the right to search and impound vehicles in violation of the sound-amplification law.

“I’ve been trying to resolve this issue informally,” said Jimmy A. Bell, a Washington D.C.-area attorney representing the plaintiffs. “There are some serious problems with the way this law is implemented.”

Bell said that city officials, especially Police Chief Anthony Scott, declined to discuss the issue with him, and that a lawsuit was his last option.

Chief Scott, City Manager John Phillips, and city attorney John Konecky declined to discuss the lawsuit with the *River Cities’ Reader*. Phillips and Konecky claimed they had not been served copies of the lawsuit.

David L. Lowery of East Moline, Barry S. Smith of East Moline, and Spencer Holliday of Rock Island filed the suit and have all been cited for violating the sound-amplification law – Lowery twice and Holliday at least four times. The ordinance forbids any amplified sound that can be heard 75 feet away from the vehicle producing it.

The lawsuit makes a compelling case that Rock Island’s enforcement of the car-stereo ordinance has disproportionately affected African Americans. According to the suit, 403 vehicles were impounded under the city’s sound-amplification law between 1997 and November 2000, and 260 (nearly 65 percent) of those belonged to African Americans. The plaintiffs also argue that the law should be struck down because of a 1999 Illinois Supreme Court ruling that threw out the state’s car-stereo-noise statute.

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Those facts might suggest that the class-action suit has a decent chance at success. But car-stereo laws have been upheld around the country.

“They’re holding up well,” said Les Blomberg, founder of the Noise Pollution Clearinghouse. He said that his organization used to track all states and communities with amplified-sound laws, but they’ve become too numerous. The group now only keeps records of what it considers “model” noise-pollution regulations – those that are effective and constitutional.

Ed Yohnka, director of communications for the American Civil Liberties Union (ACLU) of Illinois, said that courts up to the U.S. Supreme Court have declared car-stereo laws constitutional. “They have been allowed to be enforced,” he said.

While Illinois’ car-stereo-noise statute was struck down by the Illinois Supreme Court in 1999 as unconstitutional, that law contained a problematic clause not present in most ordinances, including Rock Island’s.

Two principles were key in the Illinois Supreme Court ruling in *People v. Jones*. On the one hand, the playing of music is protected speech under the First Amendment to the U.S. Constitution. But a 1994 U.S. Supreme Court decision found that government may, “within reasonable bounds and absent censorial purpose, regulate audible expression in its capacity as noise.”

The result is that car-stereo ordinances such as the one in Rock Island can be constitutional, but government bodies crafting them need to be careful.

Legislators didn’t do that very well in Illinois. The state law prohibited loud amplified sound coming from automobiles but made an exception for advertising. The Illinois Supreme Court ruled in *People v. Jones* that the law was therefore a content restriction, because it did not apply equally to all speech. “Prohibition against the use of sound trucks emitting ‘loud and raucous’ noise ... is permissible if it applies equally to music, political speech, and advertising,” the U.S. Supreme Court wrote in a 1993 decision cited by the Illinois court.

Exacerbating that problem was the fact that the state law gave preference to commercial speech, which enjoys less protection under the First Amendment than other forms of expression. Rock Island’s ordinance does not have an exception for advertising, only exempting emergency vehicles and sound systems “being operated to request assistance or warn of a hazardous situation.”

The class-action lawsuit argues that the ordinance should be overturned because it does not cover all amplified-sound “speech” – including the sirens of emergency vehicles. The reasoning borrows from the *People v. Jones* case but ignores that emergency vehicles – unlike speakers blaring advertising – have a public-safety purpose for their volume.

The class-action suit also claims that Rock Island’s Car Owner Responsibility Assignment – which allows the city to impound vehicles – should be invalidated because of its vagueness, saying that a vehicle may be seized for violation of either the Rock Island sound-amplification

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ordinance or the overturned state law. Those arguments address the more technical components of the city ordinance.

The difficult issue for both the city and the plaintiffs is the law's enforcement. The city will have to explain how its implementation of the law is not discriminatory, even though 65 percent of people cited for violating the ordinance have been African-American. (The lawsuit claims that less than 6 percent of Rock Island residents are black, and that therefore the enforcement of the ordinance targets racial minorities.)

And the plaintiffs' task is also tough. Class-action lawsuits such as this are a "very difficult way to do litigation," said Yohnka. The ACLU has brought similar lawsuits on the issue of racial profiling, he said, and results have been "mixed."

The first element of successful litigation is a careful statistical analysis, similar to what has been done in this case, Yohnka said.

But the next part can "prove very difficult," he said. The plaintiffs must find "others similarly situated who were not charged" – in other words, whites who violated the sound-amplification ordinance who weren't cited by police. This is especially challenging because it's not always clear what "similarly situated" should mean. Does it need to be a person in the same color car, at the same intersection, and at the same time of day? "What is a similarly situated person?" Yohnka asked.

Whatever the legal merits of the case against Rock Island, Yohnka said, car-stereo laws are problematic from a civil-rights perspective. "The application of these tends to be very selective and highly targeted," he said. Such laws are "bound to be violated by a fairly wide range of people," but police tend to cite different race and age groups disproportionately.