

## Blue Language Given Thumbs Up in North Carolina

### Digital Media and Data Privacy Law Blog

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Sorry, this blog post is not about the Duke-UNC rivalry. Instead, it is about a First Amendment decision handed down by a trial judge last month that qualifies as being on the lighter, if not cleaner, side. The case involved North Carolina's antiquated -- and quirky -- anti-profanity statute. The 98-year old statute made it a crime to utter profanity on a public highway, but with two of North Carolina's 100 counties exempted -- Pitt County in the east and Swain County in the west.

Judge Allen Baddour ruled in January that Samantha Elabanjo could not be prosecuted for a misdemeanor under the statute for using the word "damn" during a run-in with police officers (apparently as part of her assessment of the cleanliness of the officers' police cruiser). N.C. Gen. Stat. 14-197 reads in its entirety:

If any person shall, on any public road or highway and in the hearing of two or more persons, in a loud and boisterous manner, use indecent or profane language, he shall be guilty of a Class 3 misdemeanor. The following counties shall be exempt from the provisions of this section: Pitt and Swain.

The trial court reached the sensible and straightforward conclusion that the law is unconstitutionally vague under the First Amendment because of the lack of clarity as to what currently constitutes "indecent or profane language."

The more interesting question, one that vexed the Associated Press reporter who penned the article linked above, is why Pitt and Swain Counties were exempted. Apparently when the law was adopted, the legislators in their wisdom concluded that there needed to be places of refuge in which highwaygoers could let their tongues fly and the expletives rip. This approach later sparked one of the more memorable speeches on the floor of the North Carolina legislature, Representative Herbert Hyde's "cursing" speech.

In his impassioned defense of retaining two cursing sanctuaries in the state, Rep. Hyde stated the following, apparently after first acknowledging that the law was likely unconstitutional:

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But the folks in Swain wouldn't want me to stand on that kind of technicality and I'm not going to do that.

...

But there ought to be a refuge somewhere a man could go and when he really is provoked that he can say something with impunity. There's only two places left Pitt and Swain. One in the East and one in the West. I think it's most appropriate.

The link above contains the entire speech.