To:
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Legal Division
Legislative Council Bureau
401 S. Carson Street
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RE: Continuing disregard of existing transportation laws and statutes

This letter intends to serve notice to the legislature and the citizens of Nevada about ongoing violations of the Constitution as it applies to transportation policy. The overwhelming majority of Nevada's traffic laws, and enforcement of these laws, is unquestionably unconstitutional.

When you asked for the law cite that backed up our claim that a bill was unconstitutional it illustrated the depth of the problem, because it's not a single cite, it's an entire body of superior law that must be the foundation of any act of the legislature in this field.

1979's *NRS 484.781 (Adoption of manual and specifications for devices for control of traffic by Department of Transportation,)* required that all traffic policy be consistent with a uniform system, based in proven safety tenants as accepted by American Association of State Highway Officials and the National Joint Committee on Uniform Traffic Control Devices as well as the National Committee on Uniform Traffic Laws and Ordinances

Today, more than 90 percent of traffic citations written in the State of Nevada are for violations that have zero effect on safety. This represents blatant disregard for public safety in favor of revenue generation.

State and local law enforcement continue to operate in an illegal manor because their practices remain unchecked by our elected representatives, who are charged with oversight of these policies and compliance with the law of the land. The oversight is understandable, as transportation legalese can be difficult to decipher. This problem is exacerbated by the fact that multiple lobbies- including state agencies and insurance companies- routinely serve as "expert witnesses" on technical issues. The hearings are essentially invalid without true expertise based in empirical findings.

During my attendance of the legislature's earlier hearings, the only testimony I witnessed that could pass for as expert, was submitted by a student who had introduced a school zone speed limit bill. The student identified a safety issue and researched the national practice database to find the best-accepted practices for this particular issue. If a student is aware of the legal procedures for introducing policy proposals, how can our elected representation and legislative legal council bureau be so uniformed about them?

One example of this is current penalization for failure to use turn signals. Enacted as part of a DMV "language cleanup" bill, the practice allows heavy penalties punishing motorists who are otherwise operating their vehicles safely. The penalty is one of the most frequently enforced as are other common citations that are often tied to a "three citations per-hour" quota in order to receive federal enforcement grant funding. Yet at the time of the bill's passage, NDOT's accident data attributed failure to use turn signals as a 0.00 percent factor in primary,

secondary or combined accidents. Sadly, this gross distortion of the law is one of many such examples.

The legislature cannot, in good faith continue to turn a blind eye to these dangerous mutations of the rule of law. Acts inconsistent with governing mandates that require conforming, reasoned, empirical findings that are constitutional in structure, application, and expectation, or in the exercise of police powers thereof; and no one in the process understands its effect or constraints or ramifications, including the legislative bureau. Below, I have outlined specifics regarding these policies.

"NRS 484.781 Adoption of manual and specifications for devices for control of traffic by Department of Transportation" as adopted in 1979, is in fact the nexus controlling law in Nevada statutes that governs all traffic control in the state as well as the exercise of police powers thereof? It recognized federal supremacy in this entire field.

> ***NRS 484.781 Adoption of manual and specifications for devices for control of traffic by Department of Transportation.***
>
> *1. The Department of Transportation shall adopt a manual and specifications for a uniform system of official traffic-control devices consistent with the provisions of this chapter for use upon highways within this State. The uniform system must correlate with and so far as possible conform to the system then current and approved by the American Association of State Highway Officials and the National Joint Committee on Uniform Traffic Control Devices.*
>
> *2. All devices used by local authorities or the Department of Transportation must conform with the manual and specifications adopted by the Department.*
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> *(Added to NRS by 1969, 1488; A 1979, 1814)*

Or that the majority of data cited by the Office of Traffic Safety is from a proscribed source because it's known to be factually inaccurate to point where Congress prohibited NHTSA from participating in state law proceedings.

> **This restriction imposes additional lobbying restrictions on NHTSA, such as by prohibiting agency officials from:**
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> *Visiting or sending letters to State or local legislators, urging them to favor or oppose specific State or local legislation pending in those jurisdictions; or*
> *Developing and providing to anyone (including lobbyists) materials developed specifically to advocate for the enactment or repeal of specific pending State or local legislation.*

Here is another example from the Federal Register in 1995 citing a NHTSA notice where they explicitly refused to condition speed enforcement aid on reasonable speed limits. This mindset is pervasive throughout this agency's actions, which violates both US Constitution and Congress' mandates.

> *"The agencies have not adopted West Virginia's suggestion to include a statement that enforcement funding be preceded by engineering evaluations of existing speed limits. To do so would hinder enforcement efforts, based on a blanket presumption that existing speed limits are not reasonable. The agencies are neither willing to*

accept that presumption nor to place conditions on enforcement efforts, which we view as a vital tool for effective speed control."

What's worse, Nevada wants to automate vis-à-vis photo enforcement revenue schemes its unconstitutional use of police powers by eliminating any pretext of due process within a courts system that also has financial interest in the outcome of traffic cases. Add to this the fact that DAs routinely threaten motorist with increased fines and jail if they have the audacity to insist on their day in court. This list of state denial of due process, equal protection and other judicial abuses is quite long. It doesn't end there.

Do the Legislators know that insurance companies have devised an underwriting practice (proprietary and secret), regardless if driver points are being accessed, to increase insurance premiums? How? Through what would otherwise appear to be reasonable justifications to have full access to the state DMV records, which have turned into a new major profit center. By mining the state databases, regardless of assigned guilt or a chance to rebut the claims, insurance premiums are being raised without recourse or notification or statement or cause, even when the automated equipment may have erred when it read the plate.

BACKGROUND STATEMENT ON GOVERNING LAWS

Despite the apparent belief of some within the USDOT in Washington, DC, it cannot in any manner facilitate unconstitutional federal administrative regulations or sanction conflicting state laws, non-conforming local customs, political whim or conjecture, permit anarchy in application, expectation or the related safety and due process or equal protection implications, or abrogate its standards oversight obligation. Nor can an administrative CFR clause contrary to the Constitution or Congress' intent or a "shall" condition of a federal regulation be asserted to be a mere suggestion or guideline or be ignored altogether, or can any non-conforming state law or practice be grandfathered in, or be taken as superior to federal law.

The Supremacy Clause invalidates state laws and federal agency administrative rules that interfere with, or are contrary to the US Constitution or the intent of Congress. As such, the USDOT is not empowered to abrogate or subvert these mandates, only enforce them.

Traffic Control laws shall be uniformly applied and they Must Have Factual Foundations. All laws have unintended consequences, and because the MUTCD is the minimum engineering, application and safety standard for traffic control on that applies to all highways open to public travel equally, regardless of type or class or the public agency having jurisdiction. Any practice or standard not consistent with its uniformity and safety mandates is, on its face, unlawful.

The authority to compel compliance or remedy errant practices that may have been purportedly authorized by the USDOT is founded in section 5 U.S.C. § 706. The Highway Safety Act of 1966 et al as adopted by Congress created a new paradigm for the Nation's traffic laws and its mandates encompass all of us; individuals, law enforcement, public entities, the courts and the USDOT, too!

The stakeholders and each of their responsibilities:

Constitution: We the People delegated the scope regulatory power of government. The US Constitution Article 1(8) delegated Congress to oversee the nation's general welfare, national defenses, commerce, its roadways and that all regulation thereof shall be uniform. Because all roadways are under Congress' regulatory authority and the Constitution; all regulations, duties, imposts and excises shall be uniform throughout the United States, fact based and applied equally regardless of entity classification, state lines or jurisdiction.

Congress: Congress' acts must be Constitutional.

USDOT: All rules adopted by the USDOT shall be constitutional and in conformance with the Constitution and Congress' mandates: including being fact based, uniformly applied; one nation, standard, appearance and expectation.

Congress delegated oversight of this field to the USDOT, thus all laws, regulations and the exercise of police powers must be fact based and uniformly applied regardless of entity classification, state lines or jurisdiction. Therefore in addition to traffic control devices, all expectations, regulations, expectation, excise and fines shall be substantially uniform – coordinated; and the safety of the entire roadway is within their domain, not just the traffic control on them. The USDOT oversight malfeasance in this area for the past 15 years is incredible. Consequently, we have state of anarchy in the rule of law, application and expectation, and last year they went so far as to disband of the Uniform Vehicle Code Committee. And, without uniformity there can be no due process or safety!

State Legislature: All laws and the exercise of police powers in this field are subordinate to the Federal Constitution, and they must be fact based and applied uniformly regardless of state lines. A motorist in Florida, California or North Dakota must have the same expectation in appearance, application and the exercise of police powers thereof. A belief of the Legislature, a political subdivision, public official, traffic engineer, or state or local practice, IS NOT THE STANDARD!

All laws and the exercise of police powers in this field are subordinate and shall conform. Each act in its promulgation shall:

1. Be in substantial conformance with a fact based uniform standard with one application, appearance and expectation regardless of entity type or jurisdiction in the United States.
2. Conform to a single federal equal protection standard and vague law prohibition.
3. Be fact based per nationally recognized engineering institutions et al; in which all subordinate act's foundation or justification can be cross-examined in court of law.
4. Shall be in conformance with the domain of the Commerce and Supremacy Clause, and Congress' intent in this field.

Uniformity and being fact based. Federal standards are the law that must be followed because there are as many as 80,000 entities within the US and its territories that have posting authority over traffic control devices that exercise police powers over them and travel between all of them is ubiquitous. If the Legislature, county, city etc. has a belief or safety hypothesis

they must apply to the USDOT for permission to experiment. Once they're approved to experiment, the trial results must be quantified by scientific means and protocols. If the trial is successful then it is up to the USDOT to promulgate the regulation, practice, standard or device; then all states that wish to adopt said practice shall be in substantial conformance with this federal standard.

Expectation, each law shall have the same expectation and consequence.

FHWA currently appears to interpret its "oversight" role, to begin and end with the development and modifications to the Manual on Uniform Traffic Control Devices (MUTCD). However, Congress' constitutional mandate gave the USDOT via FHWA, the responsibility for the oversight of the entire "field" of roadway safety and the uniformity of roadway regulations thereof. Since 1924 there has also been the Uniform Vehicle Code, which has been incorporated into the Code of Federal Regulations, therefore it too, in its entirety, is subject to the US Constitution and Congress' intent. This includes being fact based, the exercise of police powers and the uniform implementation of these rules and regulations, equal protection and due process. This reveals a large gap in USDOT's responsibility and legal obligation as it currently operates. USDOT (FHWA) has a higher mandate of enforcement than they are fulfilling through withholding of funds when compliance is clearly not occurring.

Notwithstanding the Constitution's domain over roadways and bike paths open to public travel or the exercise of police power thereon, Nevada's acceptance of Federal Highway Funding bars any state's rights claim. Adopting lawful conforming state statutes and practices must be part of the Legislative legal vetting process.

State DOT: Under the federal law, they are the per se party responsible for compliance on all facilities open to public travel, because the only remedy in the law for non compliance is the withholding of federal highway funds from the State of Nevada. In the context of a National standard, practice and engineering judgment, local or state custom or personal opinion is not the standard, the practitioner must be able to articulate what accepted and empirically vetted or approved national practice was applied, and why.

Local Government: All practices shall conform, no exceptions.

Courts: In matters involving public modes of transportation, the US Constitution, federal due process and equal protection is the standard, based on national accepted practices or standards, and all Nevada statutes, practices and the exercise of police powers are subordinate to the Law of the Land.

POINTS AND AUTHORITIES

I. THE LAW OF THE LAND APPLIES TO NEVADA: ONE NATION, APPEARANCE, EXPECTATION AND STANDARD BASED IN FACT, UNIFORMLY APPLIED TO ADVANCE ROADWAY SAFETY, REGARDLESS OF TYPE OR CLASS OR THE PUBLIC AGENCY HAVING JURISDICTION, AND;

A) THE HIGHWAY SAFETY ACT OF 1966 ET AL ENCOMPASSES THE ENTIRE FIELD OF TRAFFIC CONTROL AND SAFETY ON ROADWAYS AND BIKE PATHS OPEN TO THE PUBLIC; LEGISLATIVE ACTS IN THIS FIELD ARE

SUBORDINATE AND SHALL MEET THE INTENT, CRITERION AND PROTOCOLS OF SUPERIOR LAW.

B) ARBITRARY, CAPRICIOUS OR UNILATERAL ACTS BY THE USDOT, THE LEGISLATURE OR PRACTICES BY THE STATE OF NEVADA ET AL, THAT INTERFERE WITH CONGRESS' INTENT AND THE RULE OF LAW, ARE VOID.

C) FEDERAL BASED IN FACT, UNIFORMITY MANDATES INVOKES PANOPLY OF LAW: US CONSTITUTION, EQUAL PROTECTION, SUPREMACY AND COMMERCE CLAUSES, PROCEDURAL AND SUBSTANTIVE DUE PROCESS AND THE EXERCISE OF POLICE POWERS THEREOF.

D) SEPARATELY, NEVADA IS BARRED FROM ASSERTING STATES' RIGHTS WHEN IT ACCEPTS THE BENEFITS OF FEDERAL HIGHWAY FUNDS, US 23 CFR 630.112(a) ET AL.

I The Law of the Land governing the nation's roadways, safety thereon, and traffic control:

A) THE HIGHWAY SAFETY ACT OF 1966 ET AL ENCOMPASSES THE ENTIRE FIELD OF TRAFFIC CONTROL AND SAFETY ON ROADWAYS AND BIKE PATHS OPEN TO THE PUBLIC; USDOT AND LEGISLATIVE ACTS IN THIS FIELD ARE SUBORDINATE AND SHALL MEET THE INTENT, CRITERION AND PROTOCOLS OF SUPERIOR LAW.

1. Article 1 § 8(6) of the US Constitution, established federal supremacy over Post Roads [18th Century's highways], to "provide for the common defense and general welfare of the United States", and that its regulation "shall be uniform throughout the United States".

Article 1:

> Section 8. The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States;
> (6) To establish post offices and post roads;

2. Congress' Constitutional governance authority over the Nation's post roads (roadways) was affirmed in the Post Office Department Appropriations Bill for 1913 (enacted Aug. 24, 1912) appropriated $500,000 for an experimental program to improve post roads. In 1924 Uniform Vehicle Code (UVC) and in 1927 the Uniform Manual of Traffic Control Devices (MUTCD) was initiated.

3. The Interstate Highway System was authorized by the "Federal-Aid Highway Act of 1956" (Public Law 84-627), popularly known as the National Interstate and Defense Highways Act of 1956, on June 29. Shortly thereafter it became apparent that for the general welfare to be served, uniformity in traffic control was paramount to meet the roadway safety needs this ubiquitous travel system permitted.

When President Eisenhower's Interstate highway system became a reality in the mid 1960's, between 1960 and 1965, the annual number of traffic fatalities increased by nearly thirty percent. Congress felt compelled to act; and they determined that without uniform standards and expectation, based in fact, safety was being compromised, and substantive and procedural due process was unachievable. An equally concerned President Lyndon B. Johnson, stated at the signing of The Highway Safety Act of 1966 on September 9, 1966 " ... we have tolerated a raging epidemic of highway death ... which has killed more of our youth than all other diseases combined."

4. The Highway Safety Act of 1966 (P.L. 89-564, 80 Stat. 731) was enacted to enhance the common defense and general welfare of the United States, with an expressed emphasis on roadway safety. The act established a coordinated national highway safety program to reduce the death toll on the nation's roads. The act authorized states to use federal funds to develop and strengthen their highway traffic safety programs in accordance with uniform standards promulgated by the secretary of transportation.

5. Thus the Founding Fathers' foresight was vindicated, again, by Article 1 § 8(6) of the Constitution; federal oversight of our transportation infrastructure is indispensable to the general welfare of the nation. "The Highway Safety Act of 1966" became the 'Law of the Land' for the entire field of roadway safety, with a funded mandate of uniformity and based in fact practices, for all roadways and bike paths in the nation open to public travel, "regardless of type or class or the public agency having jurisdiction". Title 23 et al of the US Code of Federal Regulations is where the statutory authorities and traffic control standards were promulgated. Standards in bold are "shall" conditions.

2003 MUTCD: (Standards are in Bold, they are a shall)

Introduction
Standard: Traffic control devices shall be defined as all signs, signals, markings, and other devices used to regulate, warn, or guide traffic, placed on, over, or adjacent to a street, highway, pedestrian facility, or bikeway by authority of a public agency having jurisdiction.

The Manual on Uniform Traffic Control Devices (MUTCD) is incorporated by reference in 23 Code of Federal Regulations (CFR), Part 655, Subpart F and shall be recognized as the national standard for all traffic control devices installed on any street, highway, or bicycle trail open to public travel in accordance with 23 U.S.C. 109(d) and 402(a). The policies and procedures of the Federal Highway Administration (FHWA) to obtain basic uniformity of traffic control devices shall be as described in 23 CFR 655, Subpart F.

Support: The need for uniform standards was recognized long ago. The American Association of State Highway Officials (AASHO), now known as the American Association of State Highway and Transportation Officials (AASHTO), published a manual for rural highways in 1927, and the National Conference on Street and Highway Safety (NCSHS) published a manual for urban streets in 1930. In the early years, the necessity for unification of the standards applicable to the different classes of road and street systems was obvious. To meet this need, a joint committee of AASHO and NCSHS developed and published the original edition of this Manual on Uniform Traffic Control Devices (MUTCD) in 1935. That committee, now

called the National Committee on Uniform Traffic Control Devices (NCUTCD), though changed from time to time in name, organization, and personnel, has been in continuous existence and has contributed to periodic revisions of this Manual. The FHWA has administered the MUTCD since the 1971 edition. The FHWA and its predecessor organizations have participated in the development and publishing of the previous editions. There were eight previous editions of the MUTCD, and several of those editions were revised one or more times. Table I-1 traces the evolution of the MUTCD, including the two manuals developed by AASHO and NCSHS.

Standard: The U.S. Secretary of Transportation, under authority granted by the Highway Safety Act of 1966, decreed that traffic control devices on all streets and highways open to public travel in accordance with 23 U.S.C. 109(d) and 402(a) in each State shall be in substantial conformance with the Standards issued or endorsed by the FHWA.

Support: 23 CFR 655.603 adopts the MUTCD as the national standard for any street, highway, or bicycle trail open to public travel in accordance with 23 U.S.C. 109(d) and 402(a). The "Uniform Vehicle Code (UVC)" is one of the publications referenced in the MUTCD. The UVC contains a model set of motor vehicle codes and traffic laws for use throughout the United States. The States are encouraged to adopt Section 15-116 of the UVC, which states that, "No person shall install or maintain in any area of private property used by the public any sign, signal, marking, or other device intended to regulate, warn, or guide traffic unless it conforms with the State manual and specifications adopted under Section 15-104."

a) In 1971, “shall,” “should,” and “may” requirements were added. Hence, substantive and procedurally the term “standard” and word “shall’ became synonymous; “guidance’ and “should” are in-fact a “shall” starting place, that can be modified by a licensed traffic or civil engineer applying only nationally recognized engineering standards and practices; and “may” or “option” are also synonymous applying nationally acknowledged engineering judgment. Notwithstanding, engineering judgment per 2003 MUTCD Section 1A.09, the MUTCD is not a legal requirement to use a particular device per se, but when a device’s need is indicated, or used, all applicable standards and practices governing that particular device shall apply.

2003 MUTCD: Introduction

Standard: When used in this Manual, the text headings shall be defined as follows:

Standard - a statement of required, mandatory, or specifically prohibitive practice regarding a traffic control device. All standards are labeled, and the text appears in bold type. The verb shall is typically used. Standards are sometimes modified by Options.

Guidance - a statement of recommended, but not mandatory, practice in typical situations, with deviations allowed if engineering judgment or engineering study indicates the deviation to be appropriate. All Guidance statements are labeled, and the text appears in unbold type.

The verb should is typically used. Guidance statements are sometimes modified by Options.

Option - a statement of practice that is a permissive condition and carries no requirement or recommendation. Options may contain allowable modifications to a Standard or Guidance. All Option statements are labeled, and the text appears in unbold type. The verb may is typically used.

Support—an informational statement that does not convey any degree of mandate, recommendation, authorization, prohibition, or enforceable condition. Support statements are labeled, and the text appears in unbold type. The verbs shall, should, and may are not used in Support statements.

b) In 1978, the governing US Code Title 23 et al mandated that all traffic control devices were to be uniform in appearance etc, and non-complying devices were to be removed from all roads open to public travel.

c) In 1979, in exchange for federal highway funds and in response to National Maximum Speed Limit Nevada's Legislature adopts NRS 484.781 (first 1969) recognizing federal supremacy in this field.

d) In 1988, this Act required all practices, applications and expectations to be based in fact, and to be uniformly applied. Prior to 1988 federal practice and expectations mandates only applied during construction of federally funded projects, and when completed it was turned over to the states for maintenance and operation. With this 1988 change all practices shall conform on public and private roadways open to the public. Irrespective of how an individual state or territory accomplished it, all jurisdictions "shall" comply within two years and bring all nonconforming devices into conformity, US 23 CFR 655.603(b)(d).

> Sec. 655.603 Standards.
> (b) State or other Federal MUTCD. (1) Where State or other Federal agency MUTCDs or supplements are required, they shall be in substantial conformance with the national MUTCD. Changes to the national MUTCD issued by the FHWA shall be adopted by the States or other Federal agencies within 2 years of issuance. The FHWA Regional Administrator has been delegated the authority to approve State MUTCDs and supplements.
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> (d) Compliance--(1) Existing highways. Each State, in cooperation with its political subdivisions, and Federal agencies shall have a program as required by Highway Safety Program Standard Number 13, Traffic Engineering Services (23 CFR 1204.4) which shall include provisions for the systematic upgrading of substandard traffic control devices and for the installation of needed devices to achieve conformity with the MUTCD.

Substantial conformance to Uniform Vehicle Code also became the Law of the Land because without, The Constitution's and Congress' Uniformity mandate of application and

expectation was unattainable, therefore any act or regulation that would purport to authorize otherwise was in clear conflict with equal protect et al and these mandates, illegal.

Support: 23 CFR, Part 655.603 adopts the MUTCD as the national standard for any street, highway, or bicycle trail open to public travel in accordance with 23 U.S.C. 109(d) and 402(a). The "Uniform Vehicle Code (UVC)" is one of the documents referenced in the MUTCD. The UVC contains a model set of motor vehicle codes and traffic laws for use throughout the United States. The States are encouraged to adopt Section 15-117 of the UVC, which states that "No person shall install or maintain in any area of private property used by the public any sign, signal, marking, or other device intended to regulate, warn, or guide traffic unless it conforms with the State manual and specifications adopted under Section 15-104." Section 15-104 of the UVC adopts the MUTCD as the standard for conformance.

1988 MUTCD

Part 1. GENERAL PROVISIONS

lA-1 Purpose of Traffic Control Devices

The purpose of traffic control devices and warrants for their use is to help insure highway safety by providing for the orderly and predictable movement of all traffic, motorized and non-motorized, throughout the national highway transportation system, and to provide such guidance and warnings as are needed to insure the safe and informed operation of individual elements of the traffic stream.

Traffic control devices are used to direct and assist vehicle operators in the guidance and navigation tasks required to traverse safely any facility open to public travel. Guide and information signs are solely for the purpose of traffic control and are not an advertising medium.

1A-2 Requirements of Traffic Control Devices

This Manual sets forth the basic principles that govern the design and usage of traffic control devices. These principles appear throughout the text in discussions of the devices to which they apply, and it is important that they be given primary consideration in the selection and application of each device.

The Manual presents traffic control device standards for all streets and highways open to public travel regardless of type or class or the governmental agency having jurisdiction. Where a device is intended for limited application only, or for a specific system, the text specifies the restrictions on its use.

To be effective, a traffic control device should meet five basic requirements:

1. Fulfill a need.
2. Command attention.
3. Convey a clear, simple meaning.
4. Command respect of road users.
5. Give adequate time for proper response.

In the case of regulatory devices, the actions required of vehicle operators and pedestrians should be specified by State statute, or by local ordinance or resolution, which are consistent with national standards.

Uniformity of meaning is vital to effective traffic control devices. Meanings ascribed to devices in this Manual are in general accord with the Uniform Vehicle Code of the National Committee on Uniform Traffic Laws and Ordinances, which is the nationally recognized standard in this area.

e) In 1995, Repeal of federal limits: The National Highway System Designation Act of 1995 (Pub.L. 104-59, 109 Stat. 568), was signed into law by President Bill Clinton on November 28, 1995. It repealed both the national speed limits and the arbitrary absolute, not to exceed, enforcement mandate. Thereby returning the setting of speed limits to the states, per the conditions precedent of extant law, US 23 and the 1988 MUTCD et al.

f) Incredible as it may be, the Nevada Legislature has yet to make the connection that the Law of the Land in this field, or the federal MUTCD et al applies to them; to wit, all new or prior acts are subordinate regarding the domain of laws affecting interstate commerce, as well as its police powers or statues affecting traffic on roadways open to the public.

B. ARBITRARY, CAPRICIOUS OR UNILATERAL ACTS BY THE LEGISLATURE OR PRACTICES BY THE USDOT OR THE STATE OF NEVADA ET AL, THAT INTERFERE WITH CONGRESS' INTENT AND THE RULE OF LAW, ARE VOID.

1. Here is a US Supreme Court ruling that unambiguously defines the scope of "The Supremacy Clause", and the domain of acts of Congress that encompass an entire field. FIDELITY FEDERAL SAV. & LOAN ASSN. V. DE LA CUESTA, 458 U.S. 141 (1982)

II

> The pre-emption doctrine, which has its roots in the Supremacy Clause, U.S. Const., Art. VI, cl. 2, requires us to examine congressional intent. Pre-emption may be either [458 U.S. 141, 153] express or implied, and "is compelled whether Congress' command is explicitly stated in the statute's language or implicitly contained in its structure and purpose." Jones v. Rath Packing Co., 430 U.S. 519, 525 (1977). Absent explicit pre-emptive language, Congress' intent to supersede state law altogether may be inferred because "[t]he scheme of federal regulation may be so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it," because "the Act of Congress may touch a field in which the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject," or because "the object sought to be obtained by the federal law and the character of obligations imposed by it may reveal the same purpose." Rice v. Santa Fe Elevator Corp., 331 U.S. 218, 230 (1947).
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> Even where Congress has not completely displaced state regulation in a specific area, state law is nullified to the extent that it actually conflicts with federal law. Such a conflict arises when "compliance with both federal and state regulations is a physical impossibility," Florida Lime & Avocado Growers, Inc. v. Paul, 373 U.S. 132, 142 -143 (1963), or when state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress," Hines v. Davidowitz, 312 U.S. 52, 67 (1941). See also Jones v. Rath Packing Co., 430 U.S., at 526

; Bethlehem Steel Co. v. New York Labor Relations Bd., 330 U.S. 767, 773 (1947). These principles are not inapplicable here simply because real property law is a matter of special concern to the States: "The relative importance to the State of its own law is not material when there is a conflict with a valid federal law, for the Framers of our Constitution provided that the federal law must prevail." Free v. Bland, 369 U.S. 663, 666 (1962); see also Ridgway v. Ridgway, 454 U.S. 46, 54 -55 (1981).

Federal regulations have no less pre-emptive effect than federal statutes. Where Congress has directed an administrator to exercise his discretion, his judgments are subject to [458 U.S. 141, 154] judicial review only to determine whether he has exceeded his statutory authority or acted arbitrarily. United States v. Shimer, 367 U.S. 374, 381 -382 (1961). When the administrator promulgates regulations intended to pre-empt state law, the court's inquiry is similarly limited:

"If [h]is choice represents a reasonable accommodation of conflicting policies that were committed to the agency's care by the statute, we should not disturb it unless it appears from the statute or its legislative history that the accommodation is not one that Congress would have sanctioned." Id., at 383. See also Blum v. Bacon, 457 U.S. 132, 145 -146 (1982); Ridgway v. Ridgway, 454 U.S., at 57 (regulations must not be "unreasonable, unauthorized, or inconsistent with" the underlying statute); Free v. Bland, 369 U.S., at 668 .

A pre-emptive regulation's force does not depend on express congressional authorization to displace state law; moreover, whether the administrator failed to exercise an option to promulgate regulations which did not disturb state law is not dispositive. See United States v. Shimer, 367 U.S., at 381 -383. Thus, the Court of Appeal's narrow focus on Congress' intent to supersede state law was misdirected.

2. On point ruling by the 9th District Court of Appeals: STATE OF NEVADA, PETITIONER V. SAMUEL K. SKINNER, SECRETARY OF TRANSPORTATION, ET AL. No. 89-696; the 9th District affirmed federal supremacy over state statues regarding traffic control. Congress repealed the national speed limit, but it did not repeal its supremacy over safety, traffic control, expectations or the exercise of police powers.

/9/ Petitioner cites two sources in support of its contention that regulation of highways is a “traditional State function.” Its reliance on both is misplaced. Far from recognizing an exclusive state power over maximum rates of speed, the statute petitioner cites -- 23 U.S.C. 145 -- simply expresses Congress’s decision to permit the States to determine which highway projects shall be federally funded. The statute thus emphasizes precisely the cooperative federal and state control over the highways on which the court of appeals relied; it is entirely consistent with Congress’s determination in 23 U.S.C. 154 that federal funding would be available to a State only if it conformed to the 55/65 mph speed limits. See Pet. 11-12. Nor do the cases cited by petitioner (Pet. 12-13) that have adverted to the power of the States to regulate their own highways support petitioner’s

> contention that States have exclusive constitutional power over their highways. Both cases cited by petitioner, Bibb v. Navajo Freight Lines, Inc., 359 U.S. 520, 523 (1959), and Raymond Motor Transp., Inc. v. Rice, 434 U.S. 429, 444 (1978), struck down state highway regulations under the dormant Commerce Clause. They thus necessarily establish that there is a substantial federal interest – exercisable by Congress if it chooses to do so—in regulation of the nation's highways. See Pet. App. 24a.

3. Thus Acts of Congress also trump federal agency administrative rules, practices or acts; and the US Supreme Court has found that all acts within an agency's domain shall be consistent with the intent of Congress and be based in fact (5 U.S.C. § 706). MASSACHUSETTS v. EPA (No. 05-1120) (2007), et al.

> Federal Administrative Procedure Act
>
> 5 U.S.C. § 706. Scope of review
> To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall -
> (1) compel agency action unlawfully withheld or unreasonably delayed; and
> (2) hold unlawful and set aside agency action, findings, and conclusions found to be -
> (a) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
> (b) contrary to constitutional right, power, privilege, or immunity;
> (c) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;
> (d) without observance of procedure required by law;
> (e) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or
> (f) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.
> In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

4. The Supremacy Clause of the Constitution trumps state statutes, local law or practices.

5. The domain of the Commerce Clause trumps state and local laws, practices, and the US Supreme Court has found arbitrary regulations affecting its domain void; 450 U.S. 662; Kassel v. Consolidated Freightways Corp., No. 79-1320 et al.

6. Procedural and Substantive Due Process trumps arbitrary, capricious and vague laws.

7. UNIFORMITY is the unambiguous nexus of Article 1 of the Constitution, Congress' intent and "roadway safety" mandates; US title 23 et al and its Manual on Uniform Traffic Control Devices, MUTCD.

u·ni·form

adj
1. always the same in quality, degree, character, or manner
2. conforming to one standard or rule
3. being the same as another or others
vt
2. to make something homogeneous, unvarying, or consistent

2003 MUTCD Introduction
Support:
The need for uniform standards was recognized long ago. The American Association of State Highway Officials (AASHO), now known as the American Association of State Highway and Transportation Officials (AASHTO), published a manual for rural highways in 1927, and the National Conference on Street and Highway Safety (NCSHS) published a manual for urban streets in 1930. In the early years, the necessity for unification of the standards applicable to the different classes of road and street systems was obvious. To meet this need, a joint committee of AASHO and NCSHS developed and published the original edition of this Manual on Uniform Traffic Control Devices (MUTCD) in 1935. That committee, now called the National Committee on Uniform Traffic Control Devices (NCUTCD), though changed from time to time in name, organization, and personnel, has been in continuous existence and has contributed to periodic revisions of this Manual. The FHWA has administered the MUTCD since the 1971 edition. The FHWA and its predecessor organizations have participated in the development and publishing of the previous editions. There were eight previous editions of the MUTCD, and several of those editions were revised one or more times. Table I-1 traces the evolution of the MUTCD, including the two manuals developed by AASHO and NCSHS.

SEPARATELY, NEVADA IS BARRED FROM ASSERTING STATES' RIGHTS WHEN IT ACCEPTS THE BENEFITS OF FEDERAL HIGHWAY FUNDS, US 23 CFR 630.112(a) ET AL.

1. States' rights and unfunded mandates: Each state and territory, in exchange for federal highway funds, US 23 CFR 630.112(a), certifies compliance with these governing laws on all roadways and bike paths open to public travel therein regardless of jurisdiction type or classification. If the state accepts the benefit of federal funds, it cannot claim state's rights. Pennhurst v. Halderman, 451 U.S. 1, 17 (1981); Federal Power Commission v. Colorado Interstate Gas, 348 U.S. 492 (1955)

Sec. 630.112 Agreement provisions

> (a) The State, through its transportation department, accepts and agrees to comply with the applicable terms and conditions set forth in title 23, U.S.C., the regulations issued pursuant thereto, the policies and procedures promulgated by the FHWA relative to the designated project covered by the agreement, and all other applicable Federal laws and regulations.

Regardless if the FHWA publishes it in the Federal Register or not, a practice, or guidance or interpretation statement under the rule of law its stewardship mandate cannot be abrogated. It cannot shun the US Constitution or Congress' intent. Simply stated, despite the apparent belief of some within the FHWA, it cannot facilitate conflicting state law, non-conforming local customs, political whim or conjecture, permit anarchy in application, expectation or the related safety and due process implications, or abrogate its standards oversight obligation, either. A "shall" condition of a federal regulation or Congress' intent cannot be asserted to be a mere suggestion or guideline, nor can it be ignored altogether or can any non-conforming state law or practice be grandfathered in, or be superior.

The Supremacy Clause invalidates state laws and federal agency administrative rules that interfere with, or are contrary to, the intent of Congress, and the FHWA is not empowered to abrogate or subvert these mandates, only enforce them.

Nor can the State of NEVADA pick and chose, which laws it wishes to comply with, or not. Legislative acts, practices and the exercise of police powers within Nevada "shall" meet the intent, criterion and protocols of germane superior law: (1) The US and Nevada's Constitution(s) demand equal protection, substantive and procedural due process; (2) The Highway Safety Act of 1966 encompassed the entire field of traffic control on our Nation's roadways, as well as uniform, based in fact, standards, expectations and practices to achieve "roadway safety"; (3) The Commerce Clause requires fact based laws when those laws affect the field of its domain; (4) The US Supreme Court has found arbitrary, capricious and vague laws to be unconstitutional; (5) and the Supremacy Clause nullifies conflicting subordinate acts, statutes, practices et al.

The Legislature cannot pick and chose when equal protection or due process applies, or not, nor can it deny a defendant due process of law; including denying the ability of the defendant to cross examine the foundations of the state's case, including federal compliance or exculpatory evidence in a trial court of record.

Thus any standard, practice, statute or policy that purports to allow any entity to usurp Congress' intent of fully vetted, empirical best safety practices, uniformity and expectation mandates to achieve "Roadway Safety", The US Constitution, the Domain of the Commerce Clause et al, or due process, is repugnant on its face to the Rule of Law, and it is void.

II. THE RULE OF LAW [THE US CONSTITUTION, ACTS OF CONGRESS, COMMERCE AND SUPREMACY CLAUS ET AL OR THE CONSTITUTIONALITY OF A SUBSERVIENT STATE STATUE, OR PRACTICE, BY NEVADA] CAN NOT BE RAISED AS AN AFFIRMATIVE DEFENSE WITHIN THE DOMAIN OF NEVADA'S TRIAL COURTS OF RECORD.

The Law of the Land governing substantive and procedural due process:

1. It's an inalienable right per the 5th, 6th and 14th Amendments to the US Constitution et al to cross-examine all witness, including the foundation of the law the prosecution is based on. Just because an act has the form of a law, doesn't make it law. To be a law, an enactment must be constitutional, i.e., within the actual de jure authority of the Legislature. Nevada's trial courts of record have the scales of justice fixed at one end; and due process is unattainable. Our courts are an independent adjudicator of "all" fact, between the state and a defendant. The unanimity of the Constitution on the right to due process is unambiguous;

> Amendment V
> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.
>
> Amendment VI
> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.
>
> Amendment XIV
> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

2. The 14th Amendment states it best "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." Whereas in fact, Nevada's statutes and practices include a labyrinth of arbitrary, capricious and nonconforming unilateral acts that have the form of law, that are not within the de jure authority of the Legislature, including if due process applies, or not.

How can due process be served when defendants are denied Constitutional remedies, 5th, 6th and 14th amendments rights, exculpatory cites from Law of the Land vis-à-vis Acts of Congress, the Commerce and Supremacy Clause et al and compelling evidence that Nevada had not complied with the conditions precedent of governing law in the implementation of its police

powers, practices or acts that they shall be predicated on; or separately, unconstitutional acts per the state's Constitution?

The question here is not the merit per se of a defendant's arguments regarding points of law, judicial notice and res judicata, if a court denies the introduction or consideration of them into a Court of Record denies due process, and is reversible error.

The Law of the Land governing due process, "Roadway Safety" and Congress' intent is the sole conditions precedent in this field that the State of Nevada et al shall be in substantial compliance with in its promulgated laws, practices, protocols and rationales when exercising police powers or traffic control on roadways or bike paths that are open to public travel therein:

In the Assembly Transportation hearing there were 4 bills on the agenda and all four included non-conforming practices or testimony to the same effect.

School Zone Speed Limits:

1. All decision shall be factual on a location by location determination: Including a traffic plan, a comprehensive engineering study, a determination that a special school zone speed limit is warranted with mitigation for when school is in session, and set appropriately based on nationally recognized practices, etc. The current law is also illegal.

2. Definition of when children are present and notification requirements.

3. Violation fines consistent with UVC or national accepted practices.

4. Any invented value (15 or 25) set by the legislature is arbitrary and capricious, illegal.

5. Absolute maximum special enforcement, not to exceed, no longer legal after 1988. All limits are prima facie, safe for conditions and NRS 484.361 Basic rule et al (all invented values in the NRS) Sections (c), (d) and 2 are unconstitutional. Congress repealed the authority for NRS 484.361(c) in 1995. In addition the non-conforming language and invented value in section (d) was added to Senator Washington's bill in 1995 absent the condition precedents, after the rules were suspended in the final days of the legislature.

Red Rock Canyon Speed Limit comment by Nevada Director of Transportation:

1. The number on the sign does not determine the safety of a roadway.

2. It's not within her domain to ignore nationally prescribed safety practices.

3. She clearly stated they were going to ignore the 85th percentile rule… the national standard for setting limits. If she does, its unenforceable as a matter of law separately from the fact that absolute limits as practiced in Nevada are now also unconstitutional (1988). What's worse, from the national recognized empirical engineering findings this has been shown to actually make roads less safe.

Samples of Nationally accepted practices:

Nebraska Department of Road, NDOR

University of Nebraska Lincoln,
Department of Civil Engineering College of Engineering and Technology:
Research Report No. TRP-02-26-92
Evaluation of Lower Speed Limits on Urban Highways:

"SAFETY EFFECTS
The results of the analysis of the accident experience in speed zones indicate that zones with posted speed limits equal to the reasonable speed limits proposed by the NDOT method of speed zoning are safer than zones posted with limits that are 5 and 10 mph below the reasonable speed limits. Speed zones with speed limits 5 mph below the reasonable speed limits were found to have 5 percent more accidents than zones with reasonable speed limits. Speed zones with speed limits 10 mph below the reasonable speed limits were found to have 10 percent more accidents than zones with reasonable speed limits. Therefore, the speed zones on state highways in urban areas should be posted with reasonable speed limits proposed by NDOR method in order to minimize the numbers of accidents in the speed zones. Speed limits lower than the reasonable speed limits should not be posted."

Are those practices that are articulated as standard or guidance within the national MUTCD or adopted by reference therein. Adopted by reference are those that have been peer reviewed, accepted as guidance or recommended by AASHTO, FHWA and the ITE etc. It is not the personal opinion of an engineer or local practice, the engineer's duty is to apply accepted national practice to the best of their ability and be able to articulate which practice they applied and why.

Federal Highway Administration
Report No. FHWA/RD-85/096 Technical Summary, "Synthesis of Speed Zoning Practice" which states:

"Based on the best available evidence, the speed limit should be set at the speed driven by 85 to 90 percent of the free-moving vehicles rounded up to the next 5 mph increment. This method results in speed limits that are not only acceptable to a majority of the motorist, but also fall within the speed range where accident risk is lowest."

"No other factors need to be considered since they are reflected in the drivers speed choice."

AASHTO
A 1969 "Resolution of the annual meeting of the American Association of State Highway Officials"

"The review of existing practices revealed that most of the member departments use, primarily, the 85th percentile speed. Some agencies use the 90th percentile speed, and of secondary consideration are such factors as design speed, geometric characteristics, accident experience, test run speed, pace, traffic volumes, development along the roadway, frequency of intersections, etc."

"On the basis of the forgoing review, the Subcommittee on Speed Zoning recommends to the AASHTO Operating Committee on Traffic for consideration as an AASHTO Policy on Speed Zoning that:

The 85th percentile speed is to be given primary consideration in speed zones below 50 miles per hour, and the 90th percentile speed is to be given primary consideration in establishing speed zones of 50 miles per hour or above. To achieve the optimum in safety, it is desirable to secure a speed distribution with a skewness index approaching unity"

Institute Of Transportation Engineers; (urban highways)
ITE Committee 4M-25, Speed Zone Guidelines:

"Thus, the overriding basis (from a safety perspective) for speed zoning should be that the creation of the zone, and the speed limit posted, results in an increase in the percentage of motorists driving at or near the 85th percentile speed."

"A third rationale is the need for consistency between the speed limit and other traffic control devices. Signal timing and sight distance requirements, for example, are based on the prevailing speed. If these values are based on a speed limit that does not reflect the prevailing speed of traffic, safety may be compromised."

ITE Committee 4M-25, Speed Zone Guidelines: (continued)

"2. The speed limit within a speed zone shall be set at the nearest 5 mph increment to the 85th percentile of free flowing traffic or the upper limit of the pace of the 10 mph pace." "In no case should the speed limit be set below the 67th percentile speed of free flowing traffic."

1990 ITE PUB# PP-020 (sponsored by FHWA and AASHTO)

"It would be premature to draw any firm conclusions since the research is still underway. However the findings to date suggest that, on average, current speed limits are set too low to be accepted as reasonable by the vast majority of the drivers. Only about 1 in 10 speed zones has better than 50 percent compliance. The posted limits make technical violators out of motorists driving at reasonable and safe speeds.

For the traffic law system to minimize accident risk, then speed limits need to be properly set to define maximum safe speed. Our studies show that most speed zones are posted 8 to 12 mi/h below the prevailing travel speed and 15 mi/h or more below the maximum safe speed. Increasing speed limits to more realistic levels will not result in higher speeds but would increase voluntary compliance and target enforcement at the occasional violator and high risk driver.

One way for restoring the informational value of speed limits requires that we do a better job of engineering speed limits. Hopefully, the result of this research will provide engineers with the knowledge and tools needed to set maximum safe speed limits that are defensible and accepted by the public and the courts."

There was another study done on urban interstates in Indiana where the researchers were trying to determine if you should set speed limits at the 85th raised to the next 5 mph increment, or the 90th percentile raised to the next 5 mph increment. The conclusion was the 85th raised to

the next 5 mph increment as the best solution for urban interstates. This too is no longer distributed or available? All I have left is photocopied excerpts.

Or maybe the states got it wrong too, maybe, but at least the engineering portions of their websites got it right.

Chapter 8, California State Traffic Manual:

"Speed limits established on the basis of the 85th percentile conform to the consensus of those who drive highways as to what speed is reasonable and prudent, and are not dependant on the judgement of one or a few."

Chapter 8, California State Traffic Manual: (continued)

"Further studies have shown that establishing a speed limit at less than the 85th percentile (Critical Speed) generally results in an increase in accident rates."

Washington State DOT website:

"people don't automatically drive faster when the speed limit is raised, speed limit signs will not automatically decrease accident rates nor increase safety, and highways with posted speed limits are not necessarily safer than highways without posted limits.

Primary Engineering Tenets and Rationales in regards to Speed Limits:

The following is an excerpt from a speech given to engineers about their responsibilities in establishing proper and realistic speed limits. The following was accredited to Mathew C Sielski; bestowed the highest honor that the Institute of Transportation Engineers can give for lifetime achievement to their profession. The often-quoted text below can be found in many state DOT handouts and websites.

Primary Engineering Tenets and Rationales in regards to Speed Limits: (continued)

"One of the most important responsibilities of traffic engineers is the establishment of proper and realistic speed limits. Our profession has long recognized that most citizens will behave in a reasonable manner as they go about their daily activities.

Thus, traffic laws that are based upon behavior of reasonable motorist are found to be successful. Laws that arbitrarily restrict the majority of motorist encourage wholesale violations, lack of public support, and usually fail to bring about desirable changes in driving behavior. This is especially true of speed limits".

"Our profession, since the early 30's, based its speed zoning techniques on several concepts deeply rooted in our American system of government and law, namely:

1. Driving behavior is an extension of our social attitude, and the majority of drivers respond in a safe and reasonable manner, as demonstrated by their good driving records.
2. The careful and competent actions of a reasonable person should be considered legal.

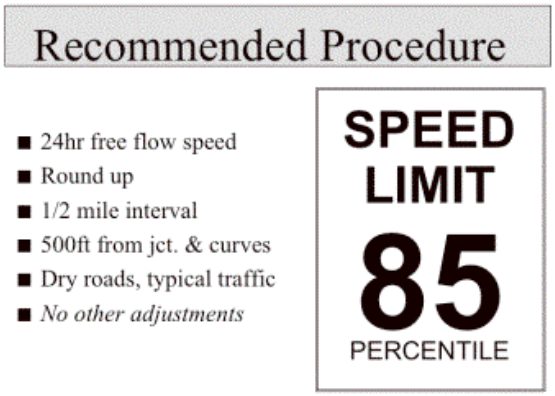
3. Laws are established for the protection of the public and the regulation of unreasonable behavior of an individual.
4. Laws cannot be effectively enforced without the consent and voluntary compliance of the public majority."

"Our profession also recognizes that an emotionally aroused public will reject these fundamentals and will rely on more comfortable and widely held misconceptions, such as:

1. Speed limit signs will slow the speed of traffic.
2. Speed limit signs will decrease accidents and increase safety.
3. Raising a posted speed limit will cause an increase in the speed of traffic.
4. Any posted speed limit must be safer than an unposted speed limit, regardless of the prevailing traffic and roadway conditions.

Before and after studies have proven conclusively that these are definitely misconceptions. Unfortunately, in too many instances influential pressures succeed in the application of such unrealistic regulations."

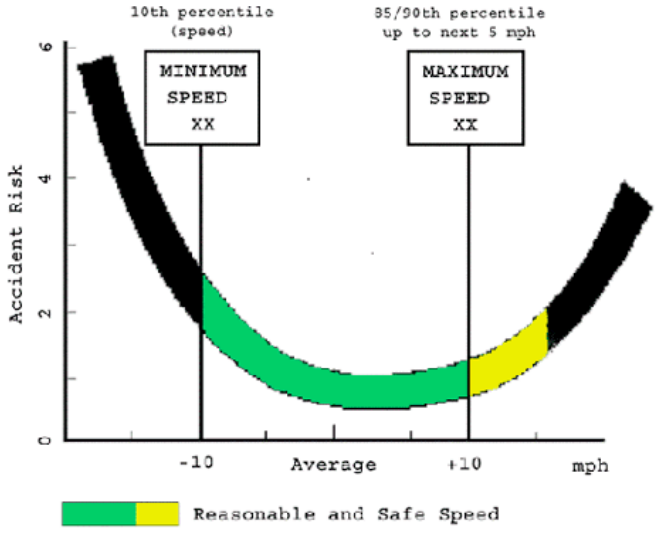
Slide from FHWA PowerPoint presentation by Davey Warren - Speed Limit Workshop here in Nevada where they offered NDOT federal funds to increase speed limits to show that, in fact, properly posted limits actually can reduce accident rates.



The food chain is in place, and anything that threatens it is anti-safety. Including an effort by the FHWA offering federal grant money to raise limits on a rural section of highway. A phone call from that town's local judge to the head of NDOT and the NHP killed that too; excerpt below.

Test canceled prior to start: *NHTSA; "The site selected for field testing will be on US 395, south of Gardnerville, NV, with testing scheduled to begin third quarter of 1997. The posted speeds will be raised from 55 to 65 and 70 mph (85th percentile level). The Nevada Highway Patrol will conduct strict enforcement during the testing. The treatment area will avoid raising limits in a residential and Indian reservation in the area. That area will remain posted at 55 mph and will be used as a control.*

Accident bell curve, virtually all of Nevada's speed limits are posted below the 50th percentile. It clearly illustrates that speeds in excess of the posted limits here in Nevada are known to be safe per the FHWA's own documents.



Report No. FHWA/RD-85/096

Work Zones and Double Fines:

1. Invented values that have been lowered to new invented values for limits that have an invented absolute speed enforcement condition.
2. Language of when it applies non-conforming.
3. Double fine has become popular but lacks legal foundation per the prescribed condition precedents of a law affecting a roadway open to public travel, unconstitutional.

This has become too long but on each point, including what constitutes accepted practice etc there is a body of law covering each component.

CONCLUSION

Unconstitutional Acts are not Law. We must distinguish form and substance. Not just anything passed by legislators that have the form of a law, is in fact, a law. To be a law, an enactment must be constitutional, i.e., within the actual de jure authority of the Legislature. This is res judicata. "All laws which are repugnant to the Constitution are null and void." Marbury v Madison, 5 US (2 Cranch) 137, 174, 176; 2 LE 60 (1803). "Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them." Miranda v Arizona, 384 US 436, 491; 86 S Ct 1602; 16 L Ed 2d 694 (1966). "An unconstitutional act is not law; it confers no rights; it imposes no duties; affords no protection; creates no office. It is in legal contemplation, as inoperative as though it had never been passed." Norton v Shelby County, Tennessee, 118 US 425, 442; 6 S Ct 1121; 30 L Ed 178 (1886).

Clearly there is no debate that there is an absolute intent of Congress to preempt the regulation of all traffic control devices to achieve "roadway safety" and "uniformity" within the United States and its territories.

Nevada can comply if it wishes to and you may not agree with all of my positions, but if you find merit with any of them it is to the same effect, the current legislative procedures in this field lack the prescribed federal legal foundations. In the past we have raised this issue with bureau staff to no avail, therefore we are going to explore other remedies.

Thus, please cite the authority, which says Nevada does not have to comply with the US Constitution or Congress' mandates in this field. Moreover we intend using this letter as a watershed document to show that the state of Nevada had constructive knowledge hence forth of non-conformity to controlling federal law, and any revenues garnered from these subsequent illegal acts should be refunded with penalties.

If you would like to find out more and ask questions about any aspect of this, please feel free to contact us and we will be happy to participate in an informational sessions on these issues that will hopefully give you a better understanding of our view on how this body of law could be comp lied with by Nevada.

Respectfully, Dated May 3, 2009

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