THE STATE OF SOUTH CAROLINA

IN THE

COURT OF COMMON PLEAS

STATE OF SOUTH CAROLINA,
Respondent,

v.

MATTHEW J. HAYDUK,
Appellant.

RE: APPEAL FROM GREENVILLE COUNTY
Cleveland Magistrate: Jesse McCall, Magistrate
Case No. Uniform Traffic Citation 19039EM

TO THE HONORABLE COURT:
BRIEF BY THE BEST HIGHWAY SAFETY PRACTICES INSTITUTE AS *AMICUS CURIAE* IN SUPPORT OF APPELLANT

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II Inclusive in this Constitutional Authority, all regulations, traffic control or the exercise of police power thereof within these federal enclaves is subordinate, and shall be in substantial conformance.

III For a subordinate regulation to be legal: It shall be proposed with clearly stated goals; found to have merit for trials by the USDOT; crosschecked as to constitutionality; promulgated transparently in form designed for field trials that includes vetting all salient factors; adopted by subordinate entity for field trials; results documented for efficacy to meet it stated goals along with all unintended consequences; if found to be warranted as the result of the field trials; final version to be promulgated for others to adopt uniformly, in form that preserves the constitutional rights of the motorists.

I All laws and the exercise of police powers thereof in this federally regulated field shall be subordinate, fact based, uniform and in substantial conformance.

II A federal agency cannot in manner through administrative convenience adopt a regulation or through nonfeasance permit under the color of federal law inferior authorities to deny Constitutional rights or ignore Congress' intent.

III All fees, fines, assessments, expectations, service requirements and remedies shall be substantially uniform, provide all U.S. Constitutional rights et al, and be accessible regardless of state lines or jurisdiction per the Equal Protection Clause.

I Congress, under its "post road" authority et al, can encompass any transportation modality or communication network it chooses i.e. their incorporation of railroads and telegraph in the 19th Century.

II Congress' Constitutional governance authority over the Nation's post roads (roadways) was affirmed in the appropriations for the Cumberland Road - Jefferson, Madison presidencies, etc.

III The US Supreme Court recognized Congress' authority regarding driver's licenses once they occupied a field in 1920; JOHNSON V. MARYLAND, 254 U. S. 51 (1920)

I If speed limit is not warranted then Basic Speed Rule per the UVC § 11-801 applies.

II Absent a bonafide immediate hazard, speed in itself violates no laws. The "Basic Speed Law" standard trumps the posted limit.

III In order for due process and safety to be served there shall be a clear definable methodology to identify these safety thresholds for the "Basic Speed Law".

IV The standard applied must be both reliable and credible in identifying the threshold between safety and probable cause for a traffic stop.

V Because there is a reasoned and vetted process to identify this threshold, the "Basic Speed Rule" is Constitutional.

VI Under federal regulations, regardless if a roadway is posted or not, due diligence requires that the safety needs of the public are being met.

VII In engineering terms this "should" (engineering judgment modifiable shall) be done every 5 years or when there has been a substantive change in use or there is constructive knowledge of a safety problem.

VIII These ongoing studies in federal regulations are defined as an "engineering study" and they shall be comprehensive and documented and the USDOT cannot promulgate standards that recede this authority that makes our roads less safe, creates a state of anarchy in expectation and or the standards being applied.

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SALIENT APPLICABLE LEGAL PRECEPTS

Judicial notice
Narrowly tailored
Under the color of federal law
Federal enclave

SUBORDINATE / INFERIOR

Regulatory domain
Congress' intent
Acts of Congress
Federal agency and regulations
Administrative convenience
Substantial compliance
Legislative acts
Jurisprudence
Police powers
Arbitrary and Capricious (Invented)
Lacks foundation

ACRONYMS

MUTCD: Manual on Uniform Traffic Control Devices (CFR Title 23)
UVC: Uniform Vehicle Code (CFR Title 23)
HSA: Highway Safety Act of 1966
NMSL: National Maximum Speed Limit (1974-1995)
501(C)3 Public Advocacy Non Profit
CFR / U.S.C.: US Code of Federal Regulations
ETS: Engineering and Traffic Survey

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INTEREST OF BEST HIGHWAY SAFETY PRACTICES INSTITUTE

The Best Highway Safety Practices Institute is a 501(C)3 non-profit public advocacy organization, that among other things, works for fact based uniform federal safety standards and fair laws. The Institute was founded in 2004, in Portland, Oregon by professionals who specialize in highway safety issues. The Institute focuses on a holistic approach to education, research, best practices and their application, and assuring public policy is founded in best practices to achieve roadway safety and that the exercise of police powers thereof is Constitutional.

STATEMENT

This case raises consequential federal safety and due process issues including the exercise of *police powers* by the State of South Carolina *under the color of federal law*, because all right-of-ways open to public travel are Constitutionally protected enclaves within the regulatory domain of the US Constitution, Congress' intent and US Title 23 et al respectively; and a speed limit sign is federal regulatory device (R2-1) that the State of South Carolina is authorized to use and enforce providing these conditions precedent have been substantially met, which in this instance were not met, thus the State's case lacked foundation and violated the Appellant's Fundamental Rights and his Substantive and Procedural Due Process.

It's *stare decisis* under any interpretation of the US Constitution et al when a State exercises *police powers under the color of federal law*, law embodied by Declaration of Independence and Article 1 § 8(1)(3)(7) of US Constitution itself and Congress' Intent in a federal Constitutional field of powers not enumerated to the States by the 10th Amendment, the Supremacy Clause et al displaces conflicting inferior federal agency regulations, South Carolina's jurisprudence, laws and the exercise of police powers thereof.

Under our Constitution's prescripts citizens' have a *natural unalienable right* to travel within our millions of miles of transportation corridors that traverse approximately 80 thousand regulatory entities; and the regulation thereof shall not impinge on their rights within these federal protected and regulated travel enclaves and the exercise of police powers thereof shall be fact based with full due process; predicated on actual unsafe acts applying substantially uniform implementation, expectation and beyond a reasonable doubt substantive due process adjudication standards. Any inferior Act of Congress, a Federal Agency or Regulation or State etc respectively that does meet these core tenets on its face is unconstitutional, and is void.

The safety value to post on a federal regulatory device (R2-1) and probable cause are symbiotic matters of vetted science (engineering) that establishes the factual foundation for an unsafe act, which is to be uniformly codified and adjudicated to protect the safety interest of the State and the rights of the citizen. Whereas, the body of engineering knowledge has established that the recommended procedures to determine the value to post on a speed limit sign (R2-1), absent other factors, is NOT the maximum safe for conditions speed, thus the probable cause foundation for unsafe act cannot turn on the value posted.

Per FHWA recommended practice some jurisdictions allow motorists to prove their innocence for speeds in excess of the posted value under *prima facie* limit standards, rather than absolute limit standards like South Carolina. But that too violates due process because again in engineering terms the posted value does not meet the prima facie legal "*fact"* standard of evidence of an unsafe act. In either case, the FHWA cannot permit two disparate expectations under one standard, nor can they permit a probable cause enforcement threshold for federal devices *under the color of federal law* absent actual safety foundations per vetted findings and substantially conforming standards, or in a field under their domain can they allow inferior authorities to deny motorists' rights.

Nor can an adjudication standard, regulation or statute stand absent the individual's ability to cite exculpatory Constitutional rights or cross-examine the State's federal foundations for its adjudication standards, laws, engineering practices or the exercise of police powers thereof or disparate jurisdictional expectations, access to justice or penalties.

The *probable cause* must be based on intimate knowledge of the factual safety conditions then present, and not on an invented safety value, or probable cause.

Our federal regulations and body of law in this field has been allowed to mature outside of the constraints of the Constitution and fact based safety standards respectfully, and in particular the USDOT has been operating in bad faith in their governance of federal regulations, the rights of the people and their safety, as manifested in their purported sanctioning of South Carolina's proscribed practices under the *strict scrutiny* of the Constitution and Congress Intent, which led in this instance to the denial of the Appellant's *fundamental Constitutional rights*, *substantive* and *procedural due process*.

QUESTION PRESENTED

Whether under the color of federal law the USDOT and the State of South Carolina through administrative convenience, nonfeasance, misfeasance or malfeasance can suspend the Appellant's *unalienable and fundamental Constitutional rights* as well as his *substantive* and *procedural due process* by:

(1) Reversible Court error in denying exculpatory state law as to the lack of foundation for the posted speed limit;
(2) Enforcing an arbitrary and capricious *invented* safety value posted on a federally regulated traffic control device when there is a prescribed scientific method to first determine if a speed limit is warranted, and if so, the safety values to post and enforce; per SC § 56-5-1530 in this instance;
(3) South Carolina's unlawful use of an arbitrary and capricious SC § 56-5-1520(B)(A) "shall not" exceed authority, and or per se, prima facie or statutory authorities as constituted in UVC § 11-802 et al, which were de facto repealed by Congress in 1990 and 1997 respectively, thereby they now stand in direct conflict with the superior federal Basic Speed Rule UVC § 11-801, SC § 56-5-1520[A] and due process; thus
(4) South Carolina's posted safety value, enforcement threshold, *probable cause* for the traffic stop and subsequent conviction foundations were *invented*;
(5) Officer's testimony as to an unsafe act was also incompetent because it lacked foundation for a "Basic Speed Rule" violation, because the range of safe speeds had not been determined per a complying comprehensive engineering study on that particular segment of roadway;
(6) South Carolina's disparate crime classification and fine schedule in a field *under the color of federal law* violates the Equal Protection Clause; and
(7) Per inferior State Jurisprudence the Trial Court was de facto barred from giving judicial notice to the federal "supremacy pre-emption doctrine" in this field, including the inalienable Constitutional, substantive and procedural due process rights of the Appellant.

ARGUMENT

1. U.S. Constitution, Article 1§8 (1) national defense; (3) commerce; and (7) post roads (transportation regulation)[1] were symbiotic Constitutional powers our Founding Fathers deemed essential for the General Welfare of the Nation and they delegated their oversight to Congress; thus they're not powers enumerated to States in the 10th Amendment.

Federal Regulatory Supremacy in this Field became fait accompli when Congress invoked its Commerce Clause authority in "The Highway Safety Act of 1966"[2] with an expressed emphasis on "roadway safety", to "regulate the use of the channels of interstate commerce" and "to regulate and protect the instrumentalities of interstate commerce"[3]; thereby directly, by implication, or de facto effect[4] Congress encompassed all Constitutional rights, modalities, means, instrumentalities, adjudication standards and Constitutional protections governing federal regulations, standards or acts in this field.

From a regulatory and police powers perspective all instruments of travel became federally regulated and protected within these travel enclaves, and once a person enters an instrument of travel all their Constitutional Rights are preserved therein and the exercise of police powers thereof shall be uniform, transparent, and fact based regardless of state lines or entity type or classification.

2. Thus, all instruments of travel, traffic control and the exercise of police power thereof within a right-of-way open to public travel within the U.S., its Territories and Protectorates became a federally regulated and protected field and the regulation thereof by South Carolina shall be subordinate, fact based, uniform and in substantial conformance within the bounds of federal law and the Constitution.

Neither Congress or a federal regulatory agency can recede superior authority back to the States if said purported authority impinges on an unalienable or fundamental due process right[5] or Constitution authority et al; Substantive and Procedural due process, Equal Protection, Supremacy, Commerce, Confrontation Clause(s), Void for Vagueness protections, habeas corpus, 4th, 5th, 6th, 9th, 14th Amendments.

Nor can a federal agency or the State of South Carolina under color of federal law or inferior state laws, as in this instance, in any manner impinge on, or facilitate the denial of, or suspend the Appellant's Constitutional Rights.

3. South Carolina's exercise of police powers and conviction of the Appellant denied due process and lacked foundation because:

A) The Scales of Justice in South Carolina are fixed at one end because the Trier of Fact's Authority, per inferior or unconstitutional State Jurisprudence, is de facto barred from taking judicial notice of an affirmative defense vis-à-vis superior Fundamental Constitutional Rights or Protections et al when the local practices or State laws are in conflict; thereby denying due

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1 US Constitution Article 1§8 (1)(3)(7)

2 Highway Safety Act of 1966 (P.L. 89-564, 80 Stat. 731)

3 United States v. Lopez, 514 U.S. 549, 558 (1995)

4 FIDELITY FEDERAL SAV. & LOAN ASSN. V. DE LA CUESTA, 458 U.S. 141 (1982)

5 MELENDEZ-DIAZ v. MASSACHUSETTS (No. 07-591)

process because the Appellant's unalienable rights can only be raised on appeal, after a conviction;

B) Per the exculpatory evidence presented at trial, the State did not perform the required comprehensive engineering study[6] (SC § 56-5-1530) et al to determine the factual foundation for safety value posted on the federal traffic control device (R-2; Speed Limit Sign); thus value posted was an arbitrary and capricious invented numeric, lacking a factual foundation per the nation's engineering body of knowledge prescripts, and was void the force of law;

C) SC § 56-5-1520(B)(A) "shall not" exceed is arbitrary and capricious safety threshold on its face, and the federal UVC § 11-802[78] is also a per se statutory *invented numeric* speed limit posting and enforcement threshold authority, whose authority was de facto repealed in 1990[9] and 1997[10] respectfully by Congress.

The safety value posted on a federal device must be fact based as well so must its enforcement probable cause threshold be *narrowly tailored* to achieve a legitimate government objective; probable cause founded in invented numbers and enforcement thresholds are not legitimate justification for search and seizure under the 4th Amendment; aside from the fact the safety value to post and enforce is a scientific field per national recognized engineering practices, which were adopted by reference in 2003 MUTCD: Section 1A.13 et al, which are also cross-examinable by a defendant as to their foundations and application in a particular instance.

When a posted limit is set to the recommended[11] federal 85th percentile speed, the 85th percentile speed is the safest speed (lowest risk) on the relative risk curve, thus speeds in excess up to 100 percent of the measured traffic speeds can also still be within the safe for conditions speeds, thus a violation of the number on the sign does not in itself constitute an unsafe act.

In both instances herein per SC § 56-5-1520(B)(A) "a person shall not drive a vehicle on a highway at a speed in excess of these maximum limits" lacks foundation because it turns on either an invented numeric threshold (this instance) or a numeric below the maximum safe speed in itself vis-à-vis nationally recognized engineering tenets, not on an unsafe act;

D) Basic Speed Rule per the UVC § 11-801 (reasonable and prudent) and subordinate SC § 56-5-1520(A) trumps the posted limit, and SC § 56-5-1520(B)(A) which by definition is in direct conflict with the preceding.

Federal safety interest must be predicated solely on an unsafe act, as long as the basis is narrowly tailored and legally valid, ie, real safety, which is in turn based on interference with the Inalienable Rights of others - the Right to Life/SAFETY. - *"No person shall drive a vehicle greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing".* The standard applied must be both reliable and credible in

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[6] 2003 MUTCD: Section 1A.13 Definitions; 24. Engineering Study

[7] UVC § 11-802 Statutory Speed Limits

[8] http://www.nhtsa.dot.gov/people/injury/enforce/speedlaws501/uvcspeep.pdf

[9] 1988 MUTCD (effective 1990)

[10] 1995 Repeal NMSL (effective 1997)

[11] ITE District 6 - Speed Limits - When and why the 85th percentile, how it relates to safety, enforcement and our laws.
http://www.bhspi.org/BPpapers/files/BHSPI_ITE6_Denver090715f.pdf

identifying the threshold between safety and probable cause for a traffic stop and the subsequent exercise of police powers, and it cannot be based on invented values or premises;

E) An invented value, enforcement threshold and speed in excess of an invented value lacks foundation; because the public consensus' range of safe speeds (prima facie probable cause parameters) for what they have found safe for a particular section of roadway can determined by a complying "comprehensive engineering study" applying nationally recognized vetted practices, and it's the only standard that complies with our laws in determining factual safety thresholds because it's a matter of applied science that can be cross examined and does not rely on the capricious opinion of one, or a few.

F) The 5th Amendment requires Equal Protection and when the USDOT oversight nonfeasance and intentional[12] malfeasance purportedly sanctions 80 thousand political entities in the US and its Territories to establish disparate standards of expectation, adjudication and fees and fines[13] in a field *under the color of federal law,* which on its face alone violates the void for vagueness[14] doctrine.

Void for Vagueness doctrine: "If a person of ordinary intelligence cannot determine what persons are regulated, what conduct is prohibited, or what punishment may be imposed under a particular law, then the law will be deemed unconstitutionally vague. The U.S. Supreme Court has said that no one may be required at peril of life, liberty, or property to speculate as to the meaning of a penal law. Everyone is entitled to know what the government commands or forbids."

G) The South Carolina Legislature cannot pick and chose which laws it wishes to comply with, or not, and the South Carolina Code of Laws in regards to traffic control and police powers on roadways and bike paths open to public travel contain a labyrinth of practices, decrees, invented numerics, enforcement condition clauses and the exercise of police powers that are inferior, superseded or repealed by Congress and the Law of the Land.

> SC Code of Law 56-5-920
> Manual on Uniform Traffic Control Devices 2003 Edition
>
> The Department is authorized by S.C. Code of Laws Annotated Section 57-5-920 (1991) to adopt a manual of standards and specifications for a uniform system of traffic control devices for use on highways and streets within South Carolina. Effective as of May 1, 2004, SCDOT adopts the Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD) 2003 Edition issued by the U.S. Department of Transportation as its official traffic control manual. This manual is the guideline for SCDOT policies and procedures on installing and maintaining signs, markings, and signals in South Carolina. This manual replaces the Millennium Edition of the MUTCD.

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12 USDOT: illegal inclusions in the MUTCD and due process violations et al (12/20/2000) http://www.hwysafety.com/mutcd_statutory_letter.htm

13 United States v. Trimble, 487 F.3d 752, Ninth Circuit (2007)

14 Giaccio v. State of Pennsylvania, 382 U.S. 399; 86 S.Ct. 518 (1966)

Remarkable here is the use of the word *guideline*: "This manual is the guideline for SCDOT policies and procedures on installing and maintaining signs, markings, and signals in South Carolina." The US Constitution, Congress' intent, the Code of Federal Regulations (CFR) and the scope of the Law of the Land are not merely guidelines or suggestions, they represent the Rule of Law of the United States where every act, practice etc promulgated by South Carolina is subordinate and or shall substantially conform to its minimum standards in this field.

4. Under the Color of Federal Law: All federal regulations, laws and the exercise of police powers in this field are subordinate and shall be uniform and conform. Each act in its promulgation and the exercise of police powers thereof shall:

A. Be narrowly tailored and vetted as to factual foundations, that it will achieve its desired effect, unintended consequences, its effects on commerce and substantive due process;

B. Be in promulgated in substantial conformance with a single uniform application, appearance, expectation and adjudication standard regardless of entity type or jurisdiction in the United States and its Territories;

C. Be fact based per nationally recognized engineering institutions and scientific methodologies et al; in which all subordinate act's foundation or justifications can be cross-examined in court of law; and

D. Be in conformance with the domain of the Constitution per the Commerce, Supremacy and Equal Protection Clause(s), and Congress' intent et al in this field.

5. The "Law of the Land" and "Rule of Law" regarding traffic control, interstate travel and commerce on our nation's roadways must be taken in its entirety, and a Federal Agency or State et al under 5 USC 706 (under the color of federal law) cannot unilaterally select which governing laws it wishes to comply with, or reject, or under which enforcement conditions or roadways due process applies, or not, or permit within their domain a device, regulation or statute to become an instrument that facilitates the denial of due process or results in manifest unsafe practices.

We 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 standards oversight obligations. Nor can administrative convenience vis-à-vis 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 federal regulatory authority practices, or regulation, state law or practice authority be receded to an inferior entity, grandfathered in, or be superior to the US Constitution et al and federal law respectfully.

6. For all the forgoing, the Appellant's conviction should be reversed to advance due process and best safety practices, thus putting the Courts on notice that the Constitutional Rights' of a Citizen apply in South Carolina in a trial of record, and the State must promulgate its statutes and standards to recognize the full Federal Constitutional rights and protections for our Citizens, and South Carolina's statutes and practices must in substantial conformance with all applicable federal conditions precedent in this field.

7. To make sure this is kept in context in regards to the scope of federal supremacy regarding the use and factual foundations for traffic control devices, and in particular speed limits, the following are the major watershed events and cites:

> **U.S. Constitution, Article. VI.**
> This Constitution, and the Laws of the United States which shall be made . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby . . .
>
> **U.S. Constitution: Article I**
> The Legislative Branch - All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives;
>
> **Section 8 - Powers of Congress;**
> (1)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;
> (3) To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;
> (7) To establish post offices and ***post roads***;

Post roads were for commerce, common defense and general welfare therefore Article 1 § 8(1)(3) are inclusive in the governance of § 8(7); and in Highway Safety Act of 1966[15] Congress directly, by implication and de facto effect subsequently encompassed all modalities, means, instrumentalities and adjudication standards vis-à-vis the Commerce Clause all Constitutional protections governing federal regulations, standards or acts in this field.

Congress' Article 1§8 (1)(3)(7) powers in this Constitutional field [(1) national defense; (3) commerce; (7) post roads; transportation regulation][16] are not powers enumerated to States in the 10th Amendment.

Federal Supremacy in this Field became incontrovertible when Congress invoked its Commerce Clause authority in "The Highway Safety Act of 1966"[17] with an expressed emphasis on "roadway safety", to "regulate the use of the channels of interstate commerce" and "to regulate and protect the instrumentalities of interstate commerce"[18], thereby directly, by implication or de facto affect[19] Congress encompassed all modalities, means, instrumentalities, adjudication standards and Constitutional protections governing federal regulations, standards or acts in this field.

From a regulatory and police powers perspective all instruments (roadways, waterways, air, rail etc) of travel are federally protected travel enclaves, and once a person enters an instrument of

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15 Highway Safety Act of 1966 (P.L. 89-564, 80 Stat. 731)
16 US Constitution Article 1§8 (1)(3)(7)
17 Highway Safety Act of 1966 (P.L. 89-564, 80 Stat. 731)
18 United States v. Lopez, 514 U.S. 549, 558 (1995)
19 FIDELITY FEDERAL SAV. & LOAN ASSN. V. DE LA CUESTA, 458 U.S. 141 (1982)

travel all their Constitutional Rights are preserved therein and the exercise of police powers thereof shall be uniform, transparent, and fact based.

Thus, all traffic control and the exercise of police power thereof within a right of way open to public travel within the U.S., its Territories and Protectorates became a federally regulated field and the regulation thereof shall be subordinate, fact based, uniform and in substantial conformance within the bounds of federal law and the Constitution; because Congress or federal regulatory agencies cannot recede superior authority back to the States if said purported authority impinges on an unalienable or federal due process rights[20] or Constitution authority et al; Substantive and Procedural due process, Equal Protection, Supremacy, Commerce, Confrontation Clause(s), habeas corpus, 4th, 5th, 6th, 9th, 14th Amendments.

Nor can a federal agency or the State of South Carolina under color of federal law or inferior state laws, as in this instance, rely on any purported authority that in any manner impinges on, or denies the Constitutional Right's of the Appellant.

8. Scope of the constitutional rights, modalities, instrumentalities and implications of the US Constitution and Congress's intent when the entire field of transportation was encompassed in 1966:

A) Individual:

I. The right to travel is "unalienable" and "unalienable rights" are NOT "federal", they are Natural (Dec. of Independence); and they're unbridgeable without full constitutional protections, including search and seizure; acts by foreign courts are moot within the US for citizens et al; and all constitutional protections and rights are preserved and are superior to state law for any acts within the domain of a right, instrument of or facility open to travel within the US and its Territories. Example: Drive vehicle from Texas to Ohio to Florida back to Texas, your rights while traveling are transparent and uniform regardless of state lines or jurisdiction and shall not be abridged within the domain of travel or supporting facility open to the public.

II. 9th Amendment, limited powers prescribed and proscribed by the Constitution.

> **9th Amendment**
> The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Madison's draft submitted to Congress in order to clarify that the scope of government oversight is limited and when silent it should not be construed to expand its power over the people's rights:

> The exceptions here or elsewhere in the constitution, made in favor of particular rights, shall not be so construed as to diminish the just importance of other rights retained by the people; or as to enlarge the powers delegated by the constitution; but either as actual limitations of such powers, or as inserted merely for greater caution.[21]

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20 MELENDEZ-DIAZ v. MASSACHUSETTS (No. 07-591)

21 James Madison, Speech Introducing Bill of Rights (June 8, 1789)

Per the 9th Amendment it's unconstitutional for a State to deny, withhold, ransom or sanction an Unalienable Right or Constitutionally protected instrument of travel as a means to exert its non-germane political will over the people.

Over time the States have been expanding their asserted domain and lesser standards of adjudication, by whim, over instruments of travel, and in each instance they have been violating the explicit intent of the 9th and 14th Amendments et al. Under our 'We the People' Constitutional constructs where the government's powers originates with the people, and in particular under the 9th Amendment, rights are not inferior privileges to be denied, bartered, withheld to achieve political means, or be parsed out by the States.

III. Per the Highway Safety Act of 1966 and Congress' inherent Article 1 section 8 authorities and the invocation of the Commerce Clause in this field, an individual's inherent rights et al became federal and in all respects superior to State laws; and a driver's license became a de facto federally regulated instruments of travel and Commerce, where a State's authority is limited to the scope of the Constitution itself and a uniform test for knowledge and competence by vehicle classification etc to operate within the domain of the Right to Travel or Commerce.

IV. Per the REAL ID Act of 2005[22] driver licenses et al became federally regulated and protected extraterritorial instruments of national security and travel, whose regulation also invokes full federal due process and protections within the scope of a right or instrument of travel.

V. Separate from the 1966 Act, the US Supreme Court on four occasions now has ruled a driver's license is Constitutionally a property interest right23; therefore, it to is subject to federal Constitutional substantive and procedural due process and cannot be abridged or impinged with a lesser standard of preponderance of evidence or legislative fiat. We the People have not empowered our government or a State to grant a privilege for which is already an Unalienable and Constitutional Right.

The four U.S. Supreme Court cases that describe the drivers license as a "property interest" and that Due Process is required are: Bell v. Burson. (Georgia) - U.S. Supreme Court - 402 U.S. 535 (1971); Dixon v. Love. (Illinois) - U.S. Supreme Court - 431 U.S. 105 (1977); Mackey v. Montrym. (Massachusetts) - U.S. Supreme Court - 443 U.S. 1 (1979); Illinois V. Batchelder. (Illinois) - U.S. Supreme Court - 463 U.S. 1112 (1983)

Thus, personal and commerce regulations thereof of this instrument (license) and "unalienable right" of travel must be constrained to the scope of field being regulated and cannot be abridged for unrelated acts, agendas, the political whim of a State et al nor can a State have extraterritorial authority over an unalienable or Constitutional right outside the scope of the Constitution.

Example: A bike or pedestrian action should not infringe on a motor vehicle driver's license; nor should an unrelated personal mobility action impact a specialty commerce license thereby

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[22] REAL ID Act of 2005, Pub.L. 109-13, 119 Stat. 302 (May 11, 2005)

[23] Bell v. Burson. (Georgia) - U.S. Supreme Court - 402 U.S. 535 (1971); Dixon v. Love. (Illinois) - U.S. Supreme Court - 431 U.S. 105 (1977); Mackey v. Montrym. (Massachusetts) - U.S. Supreme Court - 443 U.S. 1 (1979); Illinois V. Batchelder. (Illinois) - U.S. Supreme Court - 463 U.S. 1112 (1983)

depriving a person from the right to work, or can a State sanction an instrument of travel for substantially non-germane acts or as a sanction or penalty against those without means. Raising the question can a constitutional right under the color of federal law vis-à-vis a personal and national security identification card, certification of competency to drive and or attain employment (instrument of travel) be ransomed or denied because a person is indigent or without means and cannot pay a fine or fee?

VII. Re individual rights police powers expectations, remedies, fees, assessments and standards for adjudication shall be substantially uniform, beyond a reasonable doubt, and accessible beyond state lines; with full due process rights of the US Constitution et al; Substantive Due Process, Equal Protection, Supremacy, Commerce, Confrontation Clause(s), habeas corpus, 4th, 5th, 6th, 9th, and 14th Amendments.

B) Vehicles:

I. All vehicle regulations shall be uniform, including truck laws because the HSA of 1966 also displaced all state vehicle and configuration laws in this field or any regulation thereof that affects commerce.

II. Once a vehicle configuration has been found safe, absent specific demonstrable exceptions that shall be posted or by national conditions precedent are specifically proscribed, its use shall be permitted universally. Likewise for vehicle equipment, safety, emergency lighting standards etc shall also be vetted, and standardized nationally; and they shall be based on performance criterion open to the aftermarket as well as the OEMs to encourage innovation.

C) Roadways:

I. The term "roadways" within scope of this Constitutionally governed field includes the entire right of way, public or private, for the more than 4 million miles of roads, bike paths, waterways, pedestrian facilities and supporting infrastructure in the nation open to public that traverse our 80,000 plus political entities in the U.S. and its territories; thus roadways, bikeways and pedestrian facilities etc open to the public are federally regulated enclaves for national defense, commerce and travel irrespective of jurisdiction or entity type; whose regulation shall be fact based, uniform and subject to all Constitutional protections and rights therein, and for safety and due process to be served there can be no exceptions.

II. Inclusive in this Constitutional Authority, all regulations, traffic control or the exercise of police power thereof within these federal enclaves is subordinate, and shall be in substantial conformance.

III. For a subordinate regulation to be legal: It shall be proposed with clearly stated goals; found to have merit for trials by the USDOT; crosschecked as to constitutionality; promulgated transparently in form designed for field trials that includes vetting all salient factors; adopted by subordinate entity for field trials; results documented for efficacy to meet it stated goals along with all unintended consequences; if found to be warranted as the result of the field trials; final version to be promulgated for others to adopt uniformly, in form that preserves the constitutional rights of the motorists.

D) Adjudication:

I. All laws and the exercise of police powers thereof in this federally regulated field shall be subordinate, fact based, uniform and in substantial conformance because once the law encompassed the entire field in 1966, Congress cannot recede superior authority back to the

States if the said adjudication would impinge federal due process rights of the US Constitution et al; Equal Protection, Supremacy, Commerce, Confrontation Clause(s), habeas corpus, 4th, 5th, 6th, 9th, 14th Amendments etc. On point: The US Supreme Court in Melendez-Diaz v. Massachusetts (6/25/2009) ruled again Constitutional rights cannot be suspended.

II. Nor can a federal agency in manner through administrative convenience adopt a regulation or through nonfeasance permit under the color of federal law inferior authorities to deny these rights, either; and within the USDOT's statutory oversight authority they have remedy to reign in non conforming practices; and 5 USC 706 gives parties with standing to cause them to compel compliance; separately, individuals retain all Constitutional rights and remedies to plead not guilty when charged with an unconstitutional act or law et al.

III. All fees, fines, assessments, expectations, service requirements and remedies shall be substantially uniform, provide all U.S. Constitutional rights et al, and be accessible regardless of state lines or jurisdiction.

E) Post Roads - Right to Use.

I. Post roads, highways or roadways are de facto synonymous; because mail travels on every roadway. Congress, under its "post road" authority et al, can encompass any transportation modality or communication network it chooses i.e. their incorporation of railroads and telegraph in the 19th Century.

1868, PRE-Automobile: "Angell":

> *Chapter 1. History of highways and types of roads. Page 3, "Highways". Highways are public roads, which every citizen has a right to use.*
>
> *Angell, Pages 74 & 75. § 84. Of the Public Use. [This discussion is on eminent domain, however, in § 85 it briefly discusses the rights of the public.] "One thing is, however, incontrovertible, which is, that the necessities of the public to the use to which the property is appropriated must exist as the basis upon which the right is founded. [2]*
>
> *Berry, Pages 198-199 - §165-166 Cont'd, "§165 Use of highway. "They belong from side to side and end to end to the public, that the public may ENJOY the right of traveling and transporting their goods over them.*
>
> *[69] [1st Ed., p104, §114: SAME]*
> *[Second Edition:] "The fundamental idea of a highway is not only that it is public for free and unmolested passage thereon by all persons desiring to use it, but the use of a highway is not a privilege, but a right, limited by the rights of others, and to be exercised in a reasonable manner."[70]*
> *[NOTE THE ONLY limitation is the "rights of others", and "reasonable manner"]*
>
> *"In the absence of any limitation imposed by lawful authority the highways may be used for any and every kind of public travel and transportation which the necessities or convenience of the public may require.". . .*

Circa 1895:

> *Atlantic reporter, Volume 32 - Page 883 West Publishing Company - Law - 1895 "At the same time the public has a paramount right to travel over a public highway."*

Circa 1894:

> *West Coast Reporter, Vol. IV, Oct.-Dec., 1884, p518, Sup. Ct. Cal. "As we have already said, the rights of the people in the navigable rivers of the state are*
>
> ***paramount and controlling**. . . . but she [the state] cannot grant the rights of the people to the use of the navigable waters flowing over it; these are inalienable. Any grant of the soil, therefore, would be subject to the paramount rights of the people to the use of the highway. . . . It is, therefore, beyond the power of legislatures to destroy or abridge such rights, or to authorize their impairment.*

Circa 1915:

> *Lawyers' Reports Annotated - Page 943 by Lawyers Co-operative Publishing Company - Law reports, digests, etc. United States - 1915 ". . . This, however, can only be done when the paramount right of the public to the full, free, and safe use of the street in all of its parts is not thereby infringed upon. West Chicago Masonic Asso. v. Cohn, 102 111. 210, 55 L.R.A. 235, 86 Am. St. Rep. 327, 61 N. E. 439." .. . ". . . the street under the surface of the ground could only be used in such a manner as would safeguard the paramount right of the public to the full and unobstructed use of the street for the purpose for which it was dedicated;"*
>
> Specifically, Huddy, beginning on page 314 states:
>
> *"The government, also, has its offices of secondary importance in all other parts of the country. On the seacoasts and on the rivers it has its ports of entry. In the interior it has its land offices, and its sub-treasuries. In all these it demands the services of its citizens, and is entitled to bring them to close points from all quarters of the nation, and no power can exist in a State to obstruct this right that would enable it to defeat the purposes for which the government was established.*
>
> *"The Federal power has a right to declare and prosecute wars, and, as a necessary incident, to raise and transport troops through and over the territory of any State of the Union.*
>
> *"If this right is dependent in any sense, however limited, upon the pleasure of a State, the government itself may be overthrown by an obstruction to its exercise. . . .*
>
> ***The correlative right of transit**. - "But if the government has these rights on her own account, the citizen also has correlative rights. He has the right to come to the seat of government to assert any claim he may have upon the government, or to transact any business he may have with it, to seek its protection, to share its offices, to engage in administering its functions. He has a right to free access to its seaports through which all the operations of foreign trade and commerce are conducted, to the sub- treasuries, the land offices, the revenue offices, and the courts of justice in the several States, and this right is in its nature independent of the will of any State over whose soil he must pass in the exercise of it.*
>
> Huddy also described the U.S. Supreme Court "Passenger Cases" of 1849, quoting the Court as follows:
>
> *"Living as we do under a common government, charged with the great concerns of the whole Union, every citizen of the United States from the most*

remote states or territories, is entitled to free access, not only to the principal departments established at Washington, but also to its judicial tribunals and public offices in every state in the Union. For all the great purposes for which the Federal government was formed, we are one people, with one common country."

"We are citizens of the United States, and as members of the same community, must have the right to pass and repass through every part of it without interruption, as freely as in our own states."

Berry, Pages 36-37 - "§31. Limitation of police power. By virtue of the constitution of our government the police power is limited by the organic law of the state and nation. Therefore, to justify the state in interposing its authority in behalf of the public, it must appear that the interests of the public generally, as distinguished from a particular class, require such interference, and that the means are reasonably necessary for the accomplishment of the desired purpose, and not unduly oppressive upon individuals. Thus, the Legislature cannot, under the guise of protecting public interests, impose unusual and unnecessary restrictions upon individual liberty, lawful occupation, or the use of property, nor overthrow vested rights. Its power is limited by the organic laws, and to enactments relating to the interests or welfare of the public, and, hence, the state will not be allowed to encroach or trample upon any of the just rights of the citizen, which the constitution intended to secure against diminution or abridgment. Thus, property rights will not be permitted to be invaded under the guise of a police regulation for the preservation of health when such is clearly not the object and purpose of the regulation."

NOTE the phrase, "must appear": today, criminal public officials steadfastly maintain this "appearance" while intentionally violating many Rights in order to enforcement and profit from traffic laws that are NOT "in the interests of the public".

Huddy, Page 201, § 10. Illegal police methods. "Notwithstanding the fact that the law is violated frequently by automobilists, there is no excuse for illegal depredations upon personal security and private property on the part of police officials who arrest persons for violating speed limits. . . "

II. Congress' Constitutional governance authority over the Nation's post roads (roadways) was affirmed in the appropriations for the Cumberland Road - Jefferson, Madison presidencies, etc.; and again in the Post Office Department Appropriations Bill for 1913 (enacted Aug. 24, 1912) appropriated $500,000 for an experimental program to improve Post Roads.

III. The US Supreme Court recognized Congress' authority regarding driver's licenses once they occupied a field in 1920; the state of Maryland fined a US postal truck driver for not have a state drivers license to drive a truck, the US Supreme Court reversed citing "post road" authority of Congress. JOHNSON V. MARYLAND, 254 U. S. 51 (1920)

F) Federal law does not tell an entity what to post per se, but it does require a comprehensive engineering study be done on virtually every roadway, and if a speed limit is warranted, it shall be based on a clearly articulated documented study, that would accomplish the requirements of Section 1A.02 and define the range of a probable cause safety violation.

I. If speed limit is not warranted then Basic Speed Rule per the UVC § 11-801 applies.

Basic Speed Rule: No person shall drive a vehicle greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing.

The "Basic Speed Law" is our nation's speed standard for enforcement purposes. If the driver is driving safe for conditions then present it's a safe act. The repeal of the NMSL in 1995 also repealed the federal UVC § 11-802 et al per se and invented numeric statutory speed limit authorities, which became effective 2 years after passage per US 23 CFR 655.603(b)(d).

II. Absent a bonafide immediate hazard, speed in itself violates no laws. The "Basic Speed Law" standard trumps the posted limit; and at this time there is no compliant standard that holds otherwise.

III. In order for due process and safety to be served there shall be a clear definable methodology to identify these safety thresholds for the "Basic Speed Law", otherwise due process is unattainable.

IV. The standard applied must be both reliable and credible in identifying the threshold between safety and probable cause for a traffic stop.

The bonafide and demonstrable probable cause factors need to be fact based, readily apparent, and clearly articulated in statute; probable cause is not an agency practice of fixed number(s) over a limit or feigned risk or the per se personal opinion of one or a few.

V. Because there is a reasoned and vetted process to identify this threshold, the "Basic Speed Rule" is Constitutional; and it can meet both the safety needs of the public and due process.

Moreover, there are many contemporary real world examples of highways (paved or unpaved) and Interstate class roadways without speed limits have been proven to be as safe, or safer, than roadways with speed limits.

VI. Under federal regulations, regardless if a roadway is posted or not, due diligence requires periodic safety audits to review roadway demand, hazards, accident rates and to assure that the safety needs of the public are being met.

VII. In engineering terms this "should" (engineering judgment modifiable shall) be done every 5 years or when there has been a substantive change in use or there is constructive knowledge of a safety problem, AKA "Notice of Defect".

VIII. These ongoing studies in federal regulations are defined as an "engineering study" and they shall be comprehensive and documented and the USDOT cannot promulgate standards that recede this authority that makes our roads less safe, creates a state of anarchy in expectation and or the standards being applied.

9. 1926, Uniform Vehicle Code (UVC) was published requiring in part motorists to drive at speeds "reasonable and prudent". In 1927 the American Association of State Highway Officials published the "Manual and Specifications for the Manufacture, Display, and Erection of U.S. Standard Road Markers and Signs (for rural roads)" which evolved into the MUTCD. Hence, these efforts were incorporated by Congress' intent et al into the fiduciary domain of the USDOT via oversight powers governed by 5 U.S.C. § 706; to assure the implementation of fact based uniform laws, devices and expectations to achieve its "roadway safety" mandate.

10. 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.

11. 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 that were based in fact, safety was being compromised, and substantive and procedural due process was unachievable.

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".

12. In addition to its inherent Article 1 powers in this field, Congress in this Act invoked its Commerce Clause authority to "regulate the use of the channels of interstate commerce" and "to regulate and protect the instrumentalities of interstate commerce, " United States v. Lopez, 514 U.S. 549, 558 to encompass all modalities and means open to public travel into this field.

The 1966 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.

Thus, "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, bike paths and pedestrian facilities in the nation open to public travel, "regardless of type or class or the public agency having jurisdiction", public or private as well as all modalities, persons and instruments of travel therein; and it cannot be altered now absent a Constitutional amendment.

In conjunction with the powers enumerated in Article 1 Section 8(1, 3, 7) of the Constitution, Title 23 et al of the US Code of Federal Regulations is where the statutory authorities and traffic control standards are promulgated; thus, all right of ways open to the public from a traffic control and judicial perspective are federally regulated and Constitutionally protected enclaves.

13. In the 1971 MUTCD, "shall," "should," and "may" requirements were added. Substantively 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.

MUTCD § 1A.09 Engineering Judgment and its "shall not be a legal requirement for their installation" in context, only applies to a licensed engineer's decision process to determine the need or application of a device; but when a device is indicated in the text as a supplementary requirement, or if the device is installed, then all applicable standards and practices governing that particular device shall apply. Caution: This intentional poor wording by the USDOT to obfuscate its oversight responsibilities is often misinterpreted, which included the US Supreme Court in CSX Transp. v. Easterwood, 507 U.S. 658 (1993).

14. In the 1978 MUTCD, 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.

15. In the 1988 MUTCD, this Act required all practices, applications and expectations to be based in fact, and to be uniformly applied. 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.*
> *(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.*

16. Thus in 1988, US Title 23 and its the MUTCD required a review of all roadways within 2 years to conform to the new standards for traffic control practices, signs and the safety value to post for speed limits.

This new 1988 federal speed limit sign conditional use authority had an "after" precondition that required a factual foundation for the number posted, it did not say what to post, only that if one is found to be warranted it be based on a conforming engineering study on all roadways.

> ***1988 MUTCD***
> ***2B-10 Speed Limit Sign (R2-1)***
> *The Speed Limit sign shall display the limit established by law, or by regulation, <u>after</u> an engineering and traffic investigation has been made in accordance with established traffic engineering practices.*

Thus, the word "after" nullified all invented numbers in state statutes except those posted under the authority of Congress' NMSL. If there was a need for the a few statutory exceptions, where limited prima facie statutory limits may be warranted; MUTCD § 1A.10 is the designated procedure to begin the vetting process, which still hasn't begun since 1988.

> Note: Regardless of the "after" mandate in 1988, by definition, once the national emergency was declared over by Congress, invented values were unconstitutional in a federally regulated field, particularly when they displace a nationally recognized science to determine if a speed limit is warranted, and if so, the safety value and the prevailing range of safe speed determinations they represent for that particular segment of roadway etc; invented values in federal law are arbitrary and capricious, and are void. The Constitution, and Congress intent encompasses this entire field

and they're both proscriptive, and prescriptive; thus, any instrumentally, be it a regulation, device, practice or police power shall be Constitutional in its construction, uniformly implemented and its promulgation and adjudication shall afford all Constitutional process requirements and protections for the rights of the individual.

17. Once verified, our federal system requires the promulgated standard be incorporated into the MUTCD for the engineering portions, and for the exercise of police powers thereof, the UVC is where the language guidance is promulgated to assure the states' adoption into their regulatory statutes is in substantial conformance.

These yet to be promulgated limited prima facie speed limit authorities would be for alleys, school zone practices by type, facility design features and roadway classifications, etc.

To be legal under our federal system all establishment procedures, standards, expectations, and adjudication shall be substantially uniform throughout the nation, transparent and fact based. This applies to any regulation applicable to any modality or means, Constitutional authority or inalienable right in this field.

18. Congress repealed the NMSL in 1995, therefore the extant 1988 standard applied to all speed limits, no exceptions.

In 1995, Congress repealed its invented value National Maximum Speed Limit (NMSL), and its not to exceed fuel saving enforcement clause. This repeal was in 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. Thereby Congress returned the setting of speed limits to the states, per the condition precedents of extant law; the US Constitution, Congress' intent, US 23 and the 1988 MUTCD, UVC et al, thus the conflicting clause(s) in the UVC were also de facto repealed, including invented statutory limits, presumptive, per se and civil adjudication standards.

> *MUTCD: (Standards are in Bold, a "shall" in federal regulations)*
> *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)***

19. Congress' intent in this field is a Constitutional authority, and South Carolina's (all States etc) 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. Therefore separately, 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)

The US Supreme Court unambiguously defined 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."*
>
> *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.*

20. 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.

Therefore the neither the USDOT or South Carolina can sanction non-compliant regulations or federal device use on roadways open to the public within these protected domains.

21. On point supremacy ruling by the 9th District Court of Appeals: STATE OF NEVADA, PETITIONER V. SAMUEL K. SKINNER, SECRETARY OF TRANSPORTATION, ET AL. 884 F.2d 445 Ninth Circuit (1989); 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 and traffic control.

> */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." … "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."*

22. Nor can administrative convenience or an inferior state law, practice, characterization or reclassification of a class of crime to a civil offense or infraction suspend Constitutional due process rights.

- Per Article 1§8(7) this field is not within the power enumerated to the states in the 10th Amendment, and the Constitution delegated its oversight to Congress;
- The Constitution applies to an Act of Congress;
- The "Highway Safety Act of 1966" became the 'Law of the Land' vis-à-vis the Commerce Clause et al for the entire field of roadway safety, with a funded mandate of uniformity and fact based practices, for all roadways and bike paths in the nation open to public travel et al, "regardless of type or class or the public agency having jurisdiction";

- An Act of Congress and its intent that encompasses an entire field trumps federal agency administrative rules, practices or acts;
- The Supremacy Clause of the Constitution trumps state or local law;
- The domain of the Commerce Clause trumps state or local laws;
- Equal Protection and Confrontation Clause(s), Procedural and Substantive Due Process, Habeas Corpus, the Constitution's 4th, 5th, 6th, 9th, 14th Amendments etc in a federal field trumps non conforming, arbitrary, capricious and vague laws; and
- Traffic laws MUST BE safety-based (fact-based) and turn on an demonstrable infringement of the Inalienable Rights of others, i.e., by placing the person of others at risk, and such an offense would need to be CRIMINAL, not civil, and must be done in the presence of the arresting officer.
- All Speed Law Violations are Misdemeanors per UVC §'17-101(a)[24] until further defined, but there can only be one application, expectation and adjudication standard and it shall provide for full due process.
- The presumption for speed limit violations is a federal class 3 or 4 misdemeanor but until a uniform expectation and penalty schedule is defined for the 80 thousand or so jurisdiction involved, this too is Void for Vagueness[25], violates Equal Protection[26] and is unenforceable. The following was on disparate treatment of fees alone:

  U.S. Court of Appeals for the Ninth Circuit, United States v. Trimble, No. 06-30298 "We reverse - demonstrating, again, that our Constitutional principles protect against monetary injuries large and small." ... "and therefore the fees violated the equal protection principles incorporated into the Fifth Amendment"

23. Uniformity is implicit, and all acts shall be in substantial conformance in this field.

Federal uniformity in this field includes: Look, expectation, class of crime, standard of adjudication, and fine assessment, as well as the right to travel that is BASED on the Inalienable Rights of both Liberty and Property, commerce and its instrumentalities; driver's license, vehicle, or Constitutional rights that become inclusive in a federally regulated field or within the domain of a designated instrument of travel.

The US Constitution and Congress' Intent et al mandates substantial conformity in all US states and Territories regardless of state lines, jurisdiction type or classification; including American Samoa, Guam, Northern Mariana Island, Puerto Rico, U.S. Virgin Islands, the District of Columbia and US Possessions etc.

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[24] UVC §'17-101(a) All Speed Law Violations are Misdemeanors

[25] Giaccio v. State of Pennsylvania, 382 U.S. 399; 86 S.Ct. 518 (1966)

[26] United States v. Trimble, 487 F.3d 752, Ninth Circuit (2007)

As you travel from place to place how could a person of common intelligence, acting safely, discern what standard is being applied on that particular section of roadway, or defend themselves from local ordinances or practices that are unique to that jurisdiction? Each with their own unique expectations, practices, laws or penalties that a person traveling through could never know. NHTSA speed limit regulation summary for the States alone is more than 400 pages and 100,000 words.

For safety to be achieved there must be uniform appearance, application and expectation. Moreover, because traffic control affects the safety of so many people and so many miles of roadway, it shall be based in fact. Congress charged the USDOT with this oversight. In addition, in 1972 Congress added roadway right-of-way hazard mitigation to this mandate. Important because the failure of the latter over 30 years still kills in excess of 5000 people a year.

For illustrative purpose the following data was gleaned from several government websites, here are the daunting numbers and why there can only be one standard under the color of federal law.

In the US[27], not counting its territories, there are 3143 counties, 44,829 incorporated cities, townships etc. and another 30,000 unincorporated self rule entities; AND hundreds of military bases, 391 National Parks, 177 national Forest, 258 million acres of BLM land, 562 Indian reservations and tens of thousands of other entities open to public travel that employ traffic control devices (shopping centers, private housing developments, golf courses etc.) Because of the nonfeasance of the USDOT, including their oversight of South Carolina, most of these entities claim some form of autonomy, home rule, sovereignty or that they can pick and chose in regards to traffic control and adjudication standards, and that the Constitution, UVC, and MUTCD mandates are nothing more than guidelines or that they don't apply to them.

Whereas, the current status quo and lack of any meaningful oversight has left motorists in a state of anarchy in expectation, with 18,898 local and state law enforcement agencies and 19,238 state and local courts (plus the Indian reservation police, military, federal and territorial authorities) enforcing their own local expectations, based on whim, on 4 million plus miles of road and untold miles of trails and waterways[28].

Subordinate federal agency, state or territory et al regulations shall also be substantially uniform; governed by a single standard where the rights of the individual cannot be abridged outside of the scope of Constitutional powers, equal protection and due process.

24. 5 U.S.C. § 706 is the regulation where Agency malfeasance and misconduct can be remedied. If a State, city etc is in violation, with this means the USDOT can be compelled to take remedial action until compliance is attained with the Law of the Land. Notwithstanding, when assessing the scope of disparate standards and expectation in the US and its Territories it's unassailable that the USDOT has been operating in Bad Faith to assure all traffic control, expectations, and the exercise of police powers thereof within the USDOT's domain are substantially uniform throughout the Nation as follows:

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[27] http://wwww.capitolimpact.com/

[28] http://nationalatlas.gov/transportation.html

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.

25. There are many federal laws that apply to violations of Inalienable and Fundamental Rights where actions against the promulgators or those who violate the individual's rights can be undertaken.

This sub-section will deal with only 18 U.S.C. 242 and 18 U.S.C. 241.

18 U.S.C. § 242: *The United States Department of Justice, Criminal Rights Division, on their web page [http://www.usdoj.gov/crt/crim/242fin.php] describes, "DEPRIVATION OF RIGHTS UNDER COLOR OF LAW" as follows: "Summary:*

"Section 242 of Title 18 makes it a crime for a person acting under color of any law to willfully deprive a person of a right or privilege protected by the Constitution or laws of the United States.

"For the purpose of Section 242, acts under "color of law" include acts not only done by federal, state, or local officials within the their lawful authority, but also acts done beyond the bounds of that official's lawful authority, if the acts are done while the official is purporting to or pretending to act in the performance of his/her official duties. . . ."

18 U.S.C. § 241: *The United States Department of Justice, Criminal Rights Division, on their web page [http://www.usdoj.gov/crt/crim/241fin.php] describes "CONSPIRACY AGAINST RIGHTS" as follows:*

-51-"Summary: "Section 241 of Title 18 is the civil rights conspiracy statute. Section 241 makes it unlawful for two or more persons to agree together to injure, threaten, or intimidate a person in any state, territory or district in the

free exercise or enjoyment of any right or privilege secured to him/her by the constitution or the laws of the Unites States, (or because of his/her having exercised the same). Unlike most conspiracy statutes, Section 241 does not require that one of the conspirators commit an overt act prior to the conspiracy becoming a crime."

NOTE that Black's defines "injury" as, "1. The violation of another's legal right, for which the law provides a remedy; a wrong or injustice." And: "direct injury" as "1. An injury resulting directly from violation of a legal right. 2. An injury resulting directly from a particular cause, without any intervening causes.

26. The US Supreme Court decided in Whren vs. U.S. that probable cause is a necessary pretext for any traffic stop:

The Fourth Amendment guarantees "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." Temporary detention of individuals during the stop of an automobile by the police, even if only for a brief period and for a limited purpose, constitutes a "seizure" of "persons" within the meaning of this provision. See Delaware v. Prouse, 440 U.S. 648, 653 (1979); United States v. Martinez Fuerte, 428 U.S. 543, 556 (1976); United States v. Brignoni Ponce, 422 U.S. 873, 878 (1975). An automobile stop is thus subject to the constitutional imperative that it not be "unreasonable" under the circumstances. As a general matter, the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred. See Prouse, supra, at 659; Pennsylvania v. Mimms, 434 U.S. 106, 109 (1977) (per curiam)

27. The legal test for probable cause, as pretext to a stop for an alleged speeding violation, requires a finding that a speed limit is warranted, and if so it simply requires comparison by the officer of the observed speed against the precedent determinations found in the ETS, i.e. the 85th percentile speed and safe speed range safety values: If the observed speed is greater than the safety value determined in a comprehensive ETS, and the safety value is properly posted on an R2-1 safety device and the officer has intimate knowledge of the safe range thresholds and which perimeters are codified into law, then there is probable cause to initiate a traffic stop. If a speed limit is based on an imaginary invented numeric safety value (sic), it follows that probable cause in this context will be an imaginary invention, resulting in unreasonable seizure for any related traffic stop. The safety values being enforced are universally an INVENTED NUMERIC or DO NOT represent the maximum safe for conditions speed. Therefore, these traffic stops comes from a prostitution of authority, which violates the 4th Amendment protections guaranteed by the US Constitution.

28. As to any argument that the wholesale violation of 4th Amendment protections from illegal seizure should continue in the interest of stare decisis, turn to the Supreme Court decision of Arizona v Gant, where the unconstitutional search powers granted to police officers vis-à-vis New York v Belton was overturned:

The doctrine of stare decisis is of course "essential to the respect accorded to the judgments of the Court and to the stability of the law," but it does not compel us to follow a past decision when its rationale no longer withstands "careful analysis." Lawrence v. Texas, 539 U.S. 558, 577 (2003). We have never relied on stare decisis to justify the continuance of an unconstitutional

> *police practice. And we would be particularly loath to uphold an unconstitutional result in a case that is so easily distinguished from the decisions that arguably compel it.*

The crux of the problem is that speed limit signs are rarely deployed according to Federal Regulations, which defeats their sole purpose as a safety device. Whereas, the Constitution, Congress' intent et al require Federal Regulations and a R2-1 device (speed limit sign) be based on safety, South Carolina's (all States) non conforming application serves two purposes: 1) To give police the unconstitutional authority to seize innocent motorists as an efficient means of policing the population; 2) To raise revenue without due process. Both are unconstitutional.

29. Unconstitutional Acts are not Law.

Clearly there is no debate that there is an absolute intent of our Founding Fathers to reserve to Congress the regulation of the nation's post roads (highways) in the interest of national defense and commerce, or of Congress' invocation of the Commerce Clause in the Highway Safety Act of 1966 to preempt the regulation of all traffic control devices to achieve "roadway safety" and "uniformity" within the United States and its Territories; via fact based standards and uniformity of expectations and the exercise of police powers thereof in a federal system that encompasses this entire field.

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).

SUMMARY

For all the forgoing, the Appellant's conviction should be reversed to advance due process and best safety practices, thus putting the Courts on notice that the Constitutional Rights' of a Citizen apply in South Carolina in a trial of record, and the State must promulgate its statutes and standards to recognize the full Federal Constitutional rights and protections for our Citizens, and South Carolina's statutes and practices must in substantial conformance with all applicable federal conditions precedent in this field.