

Richard Glen Colter  
P.O. Box 11312  
Pleasanton, CA 94588  
925.202.7776 – rgcolter@gmail.com

UNITED STATES DISTRICT COURT  
District of Nevada – Las Vegas

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RICHARD GLEN COLTER, ) **Case No. 2:11-cv-00630**  
Petitioner/Plaintiff; )  
)  
v. ) **Notice of Motion**  
)  
Ray LaHood; Brian Sandoval; State of Nevada; )  
United States of America )  
)  
Respondents/Defendants )  

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Petitioner hereby provides notice of his intent to move this honorable court for Judgment on the Pleadings in favor of Petitioner, within approximately 60 days of receipt of Respondents answers to the enclosed request for admissions and discovery; based on facts, peer reviewed scientific studies, other evidence, codes, laws, regulations, traffic engineering covenants, arguments, pleadings, and the admissions and/or lack of proofs submitted by Respondents.

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DATE

SIGNATURE

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2 P.O. Box 11312  
3 Pleasanton, CA 94588  
4 925.202.7776 – rgcolter@gmail.com

5 UNITED STATES DISTRICT COURT  
6 District of Nevada – Las Vegas

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8 RICHARD GLEN COLTER, ) **Case No. 2:11-cv-00630**  
9 Petitioner/Plaintiff; )  
10 )  
11 v. ) **Petitioner’ Opposition to Motions by**  
12 ) **Ray LaHood, United States of America**  
13 Ray LaHood; Brian Sandoval; State of Nevada; ) **& Brian Sandoval, State of Nevada.**  
14 United States of America )  
15 Respondents/Defendants )  
16

17  
18 Petitioner received a Motion dated July 1, 2011, by Counsel Daniel Bogden representing  
19 the USA and Ray LaHood, and opposes that Motion for creating an undue delay. The points  
20 made in this Opposition also apply to any pending Motion by Counsel Daniel Bogden to  
21 strike, dismiss, or reject any portion of Petitioner’ complaint.  
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23 Petitioner contacted the Nevada Attorney General’s office on July 11, 2011, because  
24 Petitioner had not received a reply or Motion from Respondents Sandoval/Nevada, and the  
25 Attorney General’s office provided Petitioner with an email copy of a Motion that was dated  
26 June 27, 2011. Petitioner opposes this Motion on the following grounds:  
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1) Considering the complexity of the subject matter, Petitioner' complaint is succinct in covering issues of jurisdiction, the specific wrongdoing of the Respondents, the resulting conflicts of law, harm inflicted on Petitioner by Respondents' wrongdoing, his prayers for relief, and the legal basis for his requests for relief.

2) Ostensibly, Counsel Roger Madsen is requesting relief from the 20 day reply period simply because he has no experience in the complex area of traffic engineering and traffic law: Petitioner asserts that is not a valid basis for ignoring FRCP 8(b) and 12(a).

3) Petitioner cited in his complaint the 9<sup>th</sup> Circuit Court of Appeals decision of Skinner vs Nevada, a case which decided the rights of a State to set speed limits, as balanced against Congressional oversight in a field governed by the Supremacy Clause et al. Petitioner simply asks that the Skinner vs Nevada case be expanded to include review of the US Constitutional rights of the individual (1<sup>st</sup> 4<sup>th</sup> 5<sup>th</sup> 6<sup>th</sup> 8<sup>th</sup> 14<sup>th</sup>) Amendments, vetted against the duties and rights of a state to set speed limits, as balanced against the expressed interests of Congress. All parties to this case would be well advised to study the Skinner vs Nevada case, because THIS case could be considered a continuation of that case, in that review and specific conclusions of law that logically follow Skinner vs Nevada have been requested by Petitioner.

4) Respondent Sandoval and Nevada had ample time to prepare for this case, because Petitioner gave notice to Esmeralda County officials that this case would be filed in Federal Court, by and through service of his Intent to Remove in January 2011. A "Frank's Hearing" was held in Esmeralda County in March 2011. Respondents knew, or should have known, that this case was imminent.

5) Respondent Nevada writes many thousands of speeding tickets every year, and they should be prepared to justify these tickets at any moment of notice; whereas, the record clearly

1 demonstrates that Respondents have given no justification or defense for writing these  
2 tickets...not one single substantive defense in support of the regulatory standard they have  
3 manufactured, enforced, and adjudicated against Petitioner (emphasis).

4 6) As stated in the attached Case Management Statement, Counsel Roger Madsen simply  
5 doesn't know how to support an engineering determination (speed limit), without the  
6 documentation of a licensed Traffic Engineer, and the expert witness of the licensed Traffic  
7 Engineer who set the speed limit: But that is no justification for exemption from FRCP Rules  
8 8(b) and 12(a).

9  
10 For the foregoing reasons, Petitioner asserts that Respondent Counsel Madsen's Motion  
11 should be denied because it serves only to delay judgment in this case. And because the 20  
12 day reply period has expired, Petitioner further requests that Respondents Nevada/Sandoval  
13 be barred from submitting and/or raising any defenses to Petitioner' Complaint; unless they  
14 can show that a valid defense did exist within the 20 day answer period, unknown to them  
15 because of a clear and identifiable deficiency in Petitioner' Complaint. As it stands,  
16 Respondent Counsel Madsen's "boiler-plate" Motion fails to make any connection to a valid  
17 defense which existed during the 20 day answer period, but was unknown to Respondents  
18 because of a specific, identifiable deficiency in Petitioner' Complaint.  
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21 In the interest of Justice, Petitioner requests that the Motion filed by Respondents  
22 Sandoval/Nevada be denied, and that they be barred from submitting any reply to Petitioners'  
23 Complaint.  
24  
25  
26  
27

28 Date

Signature

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P.O. Box 11312  
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UNITED STATES DISTRICT COURT  
District of Nevada – Las Vegas

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RICHARD GLEN COLTER, ) **Case No. 2:11-cv-00630**  
Petitioner/Plaintiff; )  
 )  
v. ) **Case Management Statement**  
 )  
Ray LaHood; Brian Sandoval; State of Nevada; )  
United States of America )  
 )  
Respondents/Defendants )  

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**Case Management Statement: Introduction**

This case is the subject of two Constitutional imperatives: The first issue turns on the U.S. Constitutional imperative that neither a state, nor the Executive Branch of the U.S. Government, can nullify a Congressional law passed under Congress’ plenary Constitutional powers of: **Commerce, Post Roads, National Defense, General Welfare, Spending, and Necessary and Proper**. Indeed, Petitioner will show that Respondents have nullified a regulatory standard mandated by the Congressional intent of the Highway Safety Act of 1966, by comparing and contrasting the applicable legal doctrines, codes, and laws for R2-1 safety devices (Speed Limit Sign); i.e. federal regulatory device use by Nevada which is subject to

1 the condition precedents of the US Constitution, Congress' intent in this field as codified  
2 under the Highway Safety Act of 1966 et al.

3 Petitioner' Complaint listed specific examples where Respondents have preempted the  
4 regulatory standards enacted by Congress' Highway Safety Act of 1966:

- 5 1. The numerical values promulgated in NRS 484.361(1)(c)...(d) {70/75 MPH} nullify  
6 Uniform Vehicle Code (UVC) 11-801.
- 7 2. NRS 484.361(1)(c)...(d) nullified the administrative requirements (circa 1995 – 1997)  
8 of Federal Regulation 1988 MUTCD 2B-10.
- 9 3. Federal Regulation 2009 MUTCD 2B-13 nullifies UVC 11-801.
- 10 4. The fine schedule under NRS 484.361(1)(c)...(d) nullifies the fine schedule set under  
11 the Uniform Vehicle Code 17-101(a)...(b).
- 12 5. Federal Regulation 2003/2009 MUTCD 2B-13 nullifies Congress' intent, in the context  
13 of the administrative duties imposed by 5 USC 706, under the Highway Safety Act.

14 The second issue for review concerns rights secured under the U.S. Constitution, namely  
15 the 1<sup>st</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 8<sup>th</sup>, and 14<sup>th</sup> Amendments; and whether a sovereign state, in concert with an  
16 officer acting under the executive branch of the U.S. Government, can enact and enforce a  
17 regulation that nullifies these rights. Petitioner' Complaint outlined the regulatory codes that  
18 are responsible for nullifying rights secured under the U.S. constitution:  
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- 20 1. NRS 484.361(1)(c)...(d) nullifies the 1<sup>st</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 8<sup>th</sup>, and 14<sup>th</sup> Amendments of the  
21 US Constitution.
- 22 2. Federal Regulation 2003/2009 MUTCD 2B-13 nullifies the 1<sup>st</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, and 14<sup>th</sup>  
23 Amendments of the US Constitution.

24  
25 **Case Management: Regulatory Standards for Review**

26 Implicit to Petitioner' Complaint is a request for review of two contradictory regulatory  
27 standards. These regulatory standards are contradictory precisely because they are based on  
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1 contradictory legal doctrines. On one hand, the legal doctrine of the “Basic Speed Rule”  
2 states that drivers are required to drive “reasonable and prudent” for the conditions, and this  
3 has been the preeminent legal doctrine and guidance for motorists since 1926 when a  
4 committee under Commerce Secretary Herbert Hoover compiled the first national Uniform  
5 Vehicle Code, a model for traffic laws in all states:

6 No person shall drive a vehicle greater than is **reasonable and**  
7 **prudent** under the conditions and having regard to the actual and  
8 potential hazards then existing. **Uniform Vehicle Code 11-801**

9 Congress integrated the “Basic Speed Rule” into a uniform framework known as the  
10 Uniform Vehicle Code (UVC) and Manual for Uniform Traffic Control Devices (MUTCD),  
11 and made them the absolute “National Safety Standards” vis-à-vis the Highway Safety Act of  
12 1966, in order to achieve “Roadway Safety”: Thereby creating unimpeachable “National  
13 Safety Standards” for *traffic control* (MUTCD), *vehicle codes and laws* (UVC); with uniform  
14 application, expectation, and adjudication throughout the land.  
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17 On the other hand, Respondents have impeached a portion of Congress’ Highway Safety  
18 Act of 1966, by implementing a regulatory standard under the premise that a “Sovereign  
19 State” has unlimited “Police Powers” to manufacture and enforce any regulation, code, or law  
20 based solely on its “Police Powers” objectives. However, Petitioner will show that the  
21 standard manufactured, legislated, and enforced by Respondents nullifies the Basic Speed  
22 Rule “National Safety Standard” (UVC 11-801) enacted under the Highway Safety Act of  
23 1966: A direct violation of the Constitutional imperative, under Article I of the U.S.  
24 Constitution, vesting legislative powers with Congress (emphasis). More specifically,  
25 “Respondents’ Standard” acts to nullify a traffic engineering system integral to the framework  
26 of a uniform national standard required for public safety, commerce, general welfare, national  
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defense, post roads, constitutional rights, etc.; despite all 50 states having agreed to promulgate their codes, laws, and adjudication standards in substantial conformance within the bounds of the system.

The rivalry between these two competing regulatory standards is illustrated in the following table:

	<u>National Safety Standard</u>	<u>Respondents' Standard</u>
	<b>Uniform Vehicle Code 11-801</b>	<b>NRS 484.361(1)(c)</b>
Genesis	1926	1995
Companion Statutes	NRS 484.361(1)(a)...(b)	NRS 484.361(1)(d)
USDOT Analogue	1988 MUTCD 2B-10; 2000 MUTCD 2B.11	2003/2009 MUTCD 2B-13
Legal Doctrine	Basic Speed Rule	Police Powers
Engineering Standard	85th Percentile	None
NV Analogue	NRS 484.369(1) Factual Foundation	None
Legal Implication	Driving is a Conditional Right	Safe Driving is a Crime
Affect on Safety	Minimizes Accidents & Fatalities	Increases Accidents & Fatalities
Conforming States	50*	1
Freedom to Travel (1st)	No Interference	Nullifies 1st Amendment
Right to Privacy (4th)	No Interference	Nullifies 4th Amendment
Due Process (5th)	Provides Due Process	Nullifies Due Process
Confrontation (6th)	Allows Rebuttable Defenses	Nullifies Any Defense
Equal Protection (14th)	Uniform National Safety Standard	Arbitrary & Capricious

\*The “basic speed rule” language appears in the vehicle code statutes of all 50 states.

### **Table X**

Although the terminology in Table X is abstract, it neatly describes the essence of this case: That of two competing legal doctrines/regulatory standards. Here, we see that “Respondents’ Standard” is relatively new, has no scientific support, has never been shown to reduce accidents; while it nullifies the legal doctrine of the “Basic Speed Rule”, and nullifies the constitutional rights of motorists. On the other hand, the “National Safety Standard” is



1 well referenced, has been the law of the land for many decades; and has proven to promote  
2 life, liberty, commerce, rights, and most importantly: Safety. **Because the “National Safety  
3 Standard” has been fully vetted since 1926, and has been the law of the land since 1966,  
4 it is the touchstone for review, evaluation, and adjudication of any competing standard.**

5 Therefore, the “National Safety Standard”, codified as UVC 11-801, is not on trial per se:  
6 The standard manufactured and enforced by Respondents is on trial, and they should be  
7 prepared to defend it, which requires that “Respondents’ Standard” pass several legal tests:  
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9 First, Respondents must prove that their regulatory standard does not conflict or nullify  
10 the unimpeachable “National Safety Standard” codified as the “Basic Speed Rule” under  
11 UVC 11-801. There is only one way for Respondents to show that their regulatory standard  
12 accords with the “Basic Speed Rule”, because there is only one approved method for  
13 determining the “**reasonable and prudent**” range of speeds for a given section of roadway,  
14 and that is by a **comprehensive** traffic engineering study for each particular roadway segment  
15 that is regulated to determine the range of safe speeds and recommended value to post if a  
16 speed limit has been found to be warranted: And all parties should take notice that a traffic  
17 engineering study is a prerequisite to using an R2-1 safety device per federal regulation 1988  
18 MUTCD 2B-10 {see also Nevada analogue statute NRS 484.369(1)}. Hence, it follows that  
19 the “Basic Speed Rule” regulatory standard is synonymous with “Traffic Engineering  
20 Studies”. In practice, this means that where the Doctrine of the Basic Speed Rule “National  
21 Safety Standard” is raised (sic), traffic engineering documentation must be produced:  
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25 Half a century ago, the late Senator Daniel Patrick Moynihan wrote in  
26 his earlier life: “If citizens are fined for violating the traffic law, they  
27 have the right to know that there is some scientific evidence that the law  
28 should be obeyed in the first place.”<sup>2</sup> Should traffic engineers tolerate a  
29 rule that runs counter to their duty to assure safe and expeditious travel?  
30 1. *39 American Jurisprudence 2d*, Highways, Streets and Bridges, § 184,  
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1999. 2. Daniel Patrick Moynihan. "Public Health and Traffic Safety."  
*International Road Safety and Traffic Review*, summer 1960

The U.S. Supreme Court emphatically agreed with the late Senator Patrick Moynihan in the case of **Bullcoming vs New Mexico**: A DUI case where the "accuser" was a gas chromatograph machine, the results of which were used to convict Bullcoming of a DUI offense. However, the US Supreme Court overturned the conviction, because the individual responsible for the chromatograph results did not testify against Bullcoming, a violation of Bullcoming's 6<sup>th</sup> Amendment right to confront his accuser. In the instant case, the "accuser" is the person(s) who set the speed limit, and all their supporting documentation: A licensed Traffic Engineer is the "accuser" in the instant case, because State and Federal Regulations require speed limits to be set ONLY by a licensed Traffic Engineer applying nationally recognized practices and procedures for the particular segment of roadway being regulated, and it shall be comprehensive and documented. Therefore, Respondents are obligated to produce the "accuser" (and the accusers supporting documentation) responsible for setting the speed limit, so that Petitioner can cross examine the foundations for his arrest, citation, and conviction for a safety violation; or they run afoul of the precedent set by **Bullcoming vs New Mexico** (emphasis).

Next, Respondents must prove that their regulatory standard does not violate other rights secured by the US Constitution. For example, Respondents must show that NRS 484.361(1)(C)...(D) properly establishes the "probable cause" for arresting motorists, as required by the 4<sup>th</sup> Amendment of the US Constitution. In this context, "Probable Cause" means that a motorist has violated the Basic Speed Rule "National Safety Standard" of UVC 11-801. Therefore, Respondents must prove that NRS 484.361(1)(C)...(D) targets only those drivers who violate the Basic Speed Rule UVC 11-801, in order to show that "probable cause"

1 is properly established. Again, where the Doctrine of the Basic Speed Rule is applicable, the  
2 corresponding comprehensive traffic engineering documentation (and Traffic Engineer) must  
3 be produced.

4 As another example, Respondents must prove that their regulatory standard does not  
5 violate motorist' "due process" rights secured under the 5<sup>th</sup> Amendment. In the context of an  
6 R2-1 safety device, a regulatory standard can only achieve substantive "due process" if it  
7 regulates (targets) motorist' behavior in accord with the Basic Speed Rule "National Safety  
8 Standard". As mentioned already, the Basic Speed Rule presumptive range of safe speed and  
9 relative risk foundations are synonymous with traffic engineering documentation; therefore,  
10 "Respondents' Standard" provides substantive "due process" when and if they can produce  
11 the traffic engineering documentation (and Traffic Engineer) conforming to federal regulation  
12 1988 MUTCD 2B-10.  
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15 As will be fully explicated in Petitioner' Motion for Judgment on the Pleadings, rights  
16 secured under the 1<sup>st</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 8<sup>th</sup>, and 14<sup>th</sup> Amendments turn on the cross examination of  
17 traffic engineering documentation (and cross examination of the licensed Traffic Engineer)  
18 that outlines the Basic Speed Rule "reasonable and prudent" speeds for a given section of  
19 roadway. And Respondents must produce the traffic engineering documentation, and the  
20 licensed Traffic Engineer, and/or conclusive peer-reviewed-scientific-evidence that proves  
21 motorists who are driving in accordance with the "Basic Speed Rule" are never arrested,  
22 charged, and convicted under "Respondents' Standard" NRS 484.361(1)(C)...(D)  
23 (EMPHASIS).  
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26 The astute observer will notice that Table X lists NRS 484.361(1)(a) and NRS  
27 484.361(1)(b) as corollaries to the Basic Speed Rule "National Safety Standard". NRS  
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1 484.361(1)(a)...(b) is more than a corollary to the Basic Speed Rule: It is an example of how  
2 a state regulatory standard works in cooperation with a federal regulatory standard mandated  
3 by Congress. When we collate Nevada Revised Statutes 484.361(1)(a)...(b) to the “National  
4 Safety Standard”, we see they are substantively identical:

5 **NRS 484.361 Basic rule...**

6 1. It is unlawful for any person to drive or operate a vehicle of any  
7 kind or character at:

8 (a) A rate of speed greater than is reasonable or proper, having due  
9 regard for the traffic, surface and width of the highway, the  
10 weather and other highway conditions.

11 (b) Such a rate of speed as to endanger the life, limb or property of  
12 any person.

13 For tickets written under authority of NRS 484.361(1)(a)...(b), the exercise of police  
14 powers is in accord with the Basic Speed Rule “National Safety Standard”: In practice,  
15 motorists can rebut the charge of a Basic Speed Rule violation by requesting the engineering  
16 documentation that demonstrates the range of safe speeds, because under the Basic Speed  
17 Rule, speed in itself violates no laws. If the officer cannot produce either the engineering  
18 documentation demonstrating that the speed limit is properly posted, or an offer of plain  
19 testimony articulating why the motorist was driving without regard to the Basic Speed Rule,  
20 the Officer cannot file charges for a safety violation. More interesting is that a ticket can be  
21 written under authority of NRS 484.361(1)(a)...(b) when a motorist has not exceeded the  
22 posted speed limit, because the Basic Speed Rule “National Safety Standard” operates  
23 independent of the (traffic engineering) number posted on an R2-1 safety device (emphasis).  
24 From the understanding of how NRS 484.361(1)(a)...(b) operates, we get a clearer picture of  
25 how Respondents have nullified the Basic Speed Rule “National Safety Standard”, by placing  
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1 an arbitrary and capricious Artifice on R2-1 safety devices without regard to the consequence  
2 that their actions nullify the Basic Speed Rule “National Safety Standard”.

3 A keen student of traffic law will know that NRS 484.361(1)(a)&(b) was the regulatory  
4 standard many years before the Highway Safety Act of 1966: Proof that Nevada had already  
5 adopted the Basic Speed Rule before it became the “National Safety Standard” adopted by  
6 Congress vis-à-vis the Highway Safety Act of 1966 (Nevada NRS § 484.781 codified its  
7 prodigy in perpetuity in 1969). As such, it would be duplicitous for Respondents to argue  
8 against the authority of the Basic Speed Rule “National Safety Standard” adopted by Congress  
9 in 1966, because Nevada has been adhering to this regulatory standard on its urban streets and  
10 highways circa 1926. But Respondents cannot avoid duplicity, because NRS 484.361  
11 contains two standards: 1) The Basic Speed Rule standard endorsed by Congress under the  
12 Highway Safety Act of 1966; 2) Artifice values of 70/75 MPH. Which begs the question:  
13 How does a motorist know when/where the Federal Standard applies, and when/where the  
14 State Standard applies, and the legal justification for these disparate adjudication standards?  
15

16  
17 Another legal test concerns the administrative duties imposed on Respondent LaHood  
18 under 5 USC 706, regarding federal regulation 1988 MUTCD 2B-10 and 2003/2009 MUTCD  
19 2B-13, as juxtaposed in Table X. Although common sense tells us that safety is dependent on  
20 the application of sound traffic engineering principles, Federal regulation MUTCD 2B-13  
21 (2003; 2009) nullifies the traffic engineering covenants set forth under 1988 MUTCD 2B-10  
22 and the Millennium Edition of the MUTCD 2B.11 (2000), by inexplicably replacing  
23 determinations made by licensed traffic engineers with determinations made by those  
24 interested in “Police Powers”. Therefore, judicial review is required to determine if  
25 2003/2009 MUTCD 2B-13 passes the legal tests imposed under 5 USC 706 as they relate to  
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1 Congress' intent under the Highway Safety Act of 1966. In addition, because 2003/2009  
2 MUTCD 2B-13 is a federal analogue under "Respondents' Standard", Respondent LaHood  
3 must show that MUTCD 2B-13 does not allow states to enact regulations that conflict with the  
4 "National Safety Standard" of UVC 11-801, or the constitutional rights of motorists; as  
5 required under 5 USC 706. Again, UVC 11-801 is synonymous with engineering  
6 documentation; thus requiring Respondent LaHood to produce the traffic engineering  
7 documentation and/or conclusive peer-reviewed-scientific-evidence that all parts of  
8 "Respondents' Standard", including federal analogues, do not conflict with the doctrine of the  
9 Basic Speed Rule "National Safety Standard" nor do they violate the "Constitutional Rights"  
10 of motorists.  
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14 **Case Management Outline**

15 In consideration of the foregoing points and authorities, it is clear that Respondents must  
16 capitulate, or provide engineering documentation, engineering covenants, and/or peer-  
17 reviewed-published-scientific-studies in support of Respondents' Standard. In addition,  
18 Respondents must produce the licensed Traffic Engineer (accuser) responsible for  
19 determining the speed limit at the location where Petitioner was cited for a safety violation.  
20 Nevada's silent answer to the complaint indicates they have no substantive defenses for  
21 "Respondents' Standard" i.e. no Traffic Engineering documentation, and no Traffic Engineer  
22 who can testify that the speed limit where Petitioner was cited was properly engineered. A  
23 simple phone call to the Nevada Department of Transportation will reveal that Nevada has  
24 never performed a comprehensive engineering study for the section of roadway where  
25 Petitioner was cited, or for any other sections of highway and/or interstate in Nevada, to  
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document the need for a speed limit, the range of safe speeds, and the proper speed limit. NRS 484.361(1)(C)&(D) simply has no factual, logical, or legal foundation; and this explains why Counsel Roger Madsen is “confused” by Petitioner’ complaint. He simply doesn’t know how to support an engineering determination (speed limit), without traffic engineering documentation, and testimony from the Licensed Traffic Engineer responsible: But that is no excuse for not meeting his obligations under FRCP 8(b) and 12(a).

In consideration that the essential facts of this case are codified as law, Petitioner asserts that a trial is unnecessary. The admissible record of evidence for this case will be built on codes, laws, traffic engineering covenants, and scientific studies published by the engineering community, and the lack of evidentiary support for Respondents’ Regulatory Standard. There may be a need for an evidentiary hearing, but a trial is not warranted, because most all of the evidence will be sourced from the archives of a Federal Agency (US DOT), vehicle codes, and law; as to which this Court is not required to follow strict evidentiary procedures or take judicial notice. As such, testimony at trial will not change the law or the conclusions of published studies: Any hyperbole put on by Respondents arguing the “Police Power” benefits of their regulatory standard, such as criminal arrests, revenue generation, etc., are irrelevant for the review of issues presented. Given that the facts for this case are already sealed as a matter of public record, a trial is unnecessary; and a trial would only divert attention from the codes, laws, traffic engineering covenants, and conclusive scientific evidence to be referenced in this case.

Petitioner will develop the record with the necessary published studies, and in that direction, provides a source list herein of all published studies that might be called into the record. If Respondents have any objections to the published studies listed herein, and/or other

evidence to be submitted, they should give notice of their objection along with their reason(s) for objecting.

### **Evidence List**

A) DVD Video (4 hours): Joint Presentation by California Department of Transportation and California Highway Patrol – “Setting Proper Speed Limits”; Redding, California – November 5th, 2009

B) Engineering Studies: 102 Traffic Engineering studies; Pleasanton, California

1. Kent B. Joscelyn and Patricia A. Elston, Maximum Speed Limits - Volume II: The Development of Speed Limits: A Review of the Literature, Institute for Research in Public Safety, Indiana University, Bloomington, Indiana, October 1970.
2. John W. English and Steven H. Levin, “Traffic Speed Limit Laws in the United States,” *Traffic Laws Commentary*, Vol. 7, No. 1, National Committee on Uniform Traffic Laws and Ordinances, Washington, DC, January 1978.
3. M. R. Parker, Jr., *Synthesis of Speed Zoning Procedures*, Publication No. FHWA- RD-85-096, Federal Highway Administration, Washington, DC, July 1985.
4. David Solomon, *Accidents on Main Rural Highways Related to Speed, Driver, and Vehicle*, Federal Highway Administration, Washington, DC, 1964 (Reprinted 1974).
5. J. M. Munden, “The Relation Between a Driver’s Speed and His Accident Rate,” *Road Research Laboratory Report LR88*, Road and Research Laboratory, Crowthorne, United Kingdom, 1967.
6. L. B. West, Jr. and W. J. Dunn, “Accidents, Speed Deviation, and Speed Limits,” *Traffic Engineering*, Institute of Traffic Engineers, Washington, DC, July 1971.
7. D. L. Harkey, H. D. Robertson, and S. E. Davis, “Assessment of Current Speed Zoning Criteria,” *Transportation Research Record 7287*, Transportation Research Board, Washington, DC, 1990.
8. Institute of Transportation Engineers, *Transportation and Traffic Engineering Handbook*, Second Edition, Washington, DC, 1982.
9. Davey L. Warren, “Chapter 17 - Speed Zoning and Control,” *Synthesis of Safety Research Related to Traffic Control and Roadway Elements*, Volume 2, Publication No. FHWA-TS-82-233, Federal Highway Administration, Washington, DC, December 1982.
10. M. R. Parker, Jr., *Fundamental Studies on Speed Zoning and Control - Task C Experimental Plan*, Federal Highway Administration, Washington, DC, April 1986.
11. Transportation Research Board, *Highway Capacity Manual*, Special Report 209, Washington, DC, 1985.
12. Joseph W. Guyton and A. K. Stonecipher, ‘Sampling Procedures for Determining Speed Characteristics at Rural Locations: A Progress Report,’ *Highway Research Board Bulletin 208*, Washington, DC, 1959.



13. Marvin Fields, "Speed Regulation," *Traffic Engineering Handbook*, Institute of Traffic Engineers, Washington, DC, 1965.
14. Fred R. Hanscom, *Improved Techniques for Collecting Speed Data-Final Report*, Federal Highway Administration, Washington, DC, November 1984.
15. M. Ross Palmer, "The Development of Traffic Congestion," *Quality and Theory of Traffic Flow*, Bureau of Highway Traffic, New Haven, Connecticut, 1961.
16. Sarasota Automation, Inc., *VC1900 Operators Handbook, Software Issue V8*, Sarasota, Florida, undated.
17. Dominic Zaal, *Traffic Law Enforcement: A Review of the Literature*, Report Number 53, Monash University Accident Research Centre, Clayton, Victoria, Australia, April 1994.
18. Federal Highway Administration, *FHWA Study Tour for Speed Management and Enforcement Technology*, Washington, DC, February 1996.
19. R.F. Crowther and R.P. Shumate, *Sampling Design for Fixed-Point Speed Measurements*, Project No. R-1 8, Traffic Institute, Northwestern University, Evanston, Illinois, 1960.
20. Fred R. Hanscom, *An Assessment of Speed Measurement Techniques and Practices: A Literature Review*, Federal Highway Administration, Washington, DC, 1983.
21. M. R. Parker, Jr., *Comparison of Speed Zoning Procedures and Their Effectiveness*, Final Report, prepared for the Michigan Department of Transportation, Lansing, Michigan, September 1992.
22. Eugene V. Avery, "Effect of Raising Speed Limit on Urban Arterial Streets," *Highway Research Board Bulletin* 244, Washington, DC, 1960.
23. Curt M. Elmsberg, *Effects of Speed Zoning in Suburban Areas*, Report No. 9, Joint Highway Research Project, Purdue University, Lafayette, Indiana, June 1960.
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25. Robert R. Roberts, "The Influence of Speed Limits on Urban Speed Distribution Parameters" *Traffic Engineering*, Vol. 38, No. 3, Institute of Traffic Engineers, Washington, DC, December 1967.
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4 Safety", National Motorists Association

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6 and Highways”; Institute of Transportation Engineers, annual meeting presentation.

### 7 Case Management Timeline

8 Petitioner wishes to submit this case for decision (see the attached “Notice of Motion for  
9 Judgment on the Pleadings”) at the earliest possible time, and that is dependent on  
10 Respondents degree of cooperation in expeditiously and faithfully answering Petitioner’  
11 request for admissions and discovery. Petitioner prays that Respondents act with honor, and  
12 admit to all questions put forth by Petitioner, and also declare they have no admissible  
13 evidence in support of “Respondents’ Standard”: In that scenario, all parties would be spared  
14 the time and expense for unnecessary discovery, briefing, and trial.  
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17 If the Honorable Judge agrees that a trial is not necessary, but this case does go to  
18 briefing, Petitioner will likely require at least 40 pages for arguments and at least 40 pages for  
19 appendices, tables, charts, and graphs. This amount of space is reasonable, considering the  
20 complexity of the subject matter, and that this is a case of first impression. Therefore,  
21 Petitioner respectfully requests the Judge to approve additional space for briefing, and  
22 promises to do his best to succinctly present all issues for review.  
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### 25 Summary

26 Petitioner respectfully asks the Honorable Judge to consider Nevada vs Skinner, and  
27 then fully review and weigh the traffic engineering documentation, traffic engineering  
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covenants, and/or peer-reviewed-scientific-studies submitted by Respondents in favor of  
“Respondents’ Standard” against: 1) Congress’ intent; 2) the Highway Safety Act of 1966; 3)  
Basic Speed Rule “National Safety Standard” UVC 11-801; 4) constitutional rights secured  
under the 1<sup>st</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 8<sup>th</sup>, and 14<sup>th</sup> Amendments; 5) administrative duties imposed under 5  
USC 706. After taking into account the foregoing, and on Petitioner’ Motion and/or briefing,  
Petitioner prays that the Honorable Judge will carefully review and adjudicate the issues  
raised.

DATE

SIGNATURE

Richard Glen Colter  
P.O. Box 11312  
Pleasanton, CA 94588  
925.202.7776 – rgcolter@gmail.com

UNITED STATES DISTRICT COURT  
District of Nevada – Las Vegas

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RICHARD GLEN COLTER, ) **Case No. 2:11-cv-00630**  
Petitioner/Plaintiff; )  
 ) **Request for Admissions &**  
v. ) **Discovery – Respondents Sandoval**  
 ) **& Nevada**  
Ray LaHood; Brian Sandoval; State of Nevada; )  
United States of America )  
 )  
Respondents/Defendants )

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Valuable time and resources can be saved if Respondents will stipulate and/or admit to some of the foregoing points and authorities. In that direction, Petitioner makes the following requests for admissions and discovery:

**Request for Admissions & Discovery – Respondents Sandoval/Nevada**

1. Do you admit that Nevada’s traffic control, vehicle codes, and laws are subordinate to the Highway Safety Act of 1966? **Discovery: If answer is “No”, please cite the legal authorities where Nevada has been exempted from substantial conformance with the Highway Safety Act of 1966.**

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2. Do you admit that the 70/75 MPH numerical values posted on R2-1 safety devices throughout Nevada under authority of NRS 484.361(1)(C)...(D) are not based on the “Basic Speed Rule” standard appearing in UVC 11-801? **Discovery: If answer is “No”, please provide the requisite engineering documentation that properly establishes the presumptive range of safe speeds, including the 85<sup>th</sup> Percentile calculus demonstrating that the speed limit is properly posted, for all locations where tickets were issued under NRS 484.361(1)(C)...(D) since 1/1/97.**
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3. Do you admit that convictions rendered under NRS 484.361(1)(C)...(D) are NOT based on the “Basic Speed Rule” of UVC 11-801, but rather they are based solely on whether a motorist has exceeded the numerical values of 70/75 MPH? **Discovery: If the answer is “No”, please provide the speed data collected by NDOT (Nevada Department of Transportation) indicating the speeds of traffic, for all coil/tube transponder locations on every highway and Interstate in Nevada; for all dates of collection since 1/1/1995 - with average speeds and 85<sup>th</sup> percentile speeds delineated by hour, and the posted speed limit corresponding to the speeds indicated.**
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4. Do you admit that motorists who drive at speeds exceeding the numerical thresholds appearing in NRS 484.361(1)(C)...(D) (i.e. 70/75 MPH) may be in compliance with the “Basic Speed Rule” of UVC 11-801? **Discovery: If the answer is “No”, please provide the speed data collected by NDOT indicating the average speeds of traffic, for all coil/tube transponder locations in Nevada, for all collection dates since 1/1/1995 - with average speeds and 85<sup>th</sup> percentile speeds computed, and the posted speed limit corresponding to the speeds indicated. In addition: If answer is “No”, please provide any scientific studies and/or engineering documentation to**
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1 demonstrate that motorists who drive above the numerical thresholds appearing in  
2 NRS 484.361(1)(c)...(d) (70/75 MPH) are ALWAYS violating the basic speed rule of  
3 UVC 11-801.

4 5. Do you admit that only a licensed traffic engineer can determine the presumptive range of  
5 “reasonable and prudent” speeds for a given section of highway? **Discovery: If answer**  
6 **is “No”, please provide any scientific studies, engineering covenants, and/or traffic**  
7 **engineering documentation that demonstrates other methods/parties for**  
8 **determining the range of “reasonable and prudent” speeds for a given section of**  
9 **highway, on which you rely in answering “no”.**

10 6. For R2-1 safety devices posted throughout Nevada under authority of NRS  
11 484.361(1)(C)...(D) since 1995, do you admit that Nevada did not perform the required  
12 prerequisite comprehensive engineering studies for each segment of 70/75 MPH roadway  
13 in Nevada i.e. engineering studies conforming to the requirements of Federal Regulation  
14 1988 MUTCD 2B-10 et al; findings that determine the factual foundation for the safety  
15 values to be posted prior to adoption? **Discovery: If answer is “No”, please provide**  
16 **the engineering studies and/or engineering documentation and/or other admissible**  
17 **evidence that you rely in answering “No”.**

18 7. Do you admit that the 70/75 MPH numerical values posted on R2-1 safety devices  
19 throughout Nevada under authority of NRS 484.361(1)(C)...(D) are not “safety  
20 thresholds”? **Discovery: If answer is “No”, please provide any scientific studies**  
21 **and/or engineering documentation that substantiates that the 70/75 numerical**  
22 **values constitute “safety thresholds”.**

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8. Do you admit that the penalties imposed by Nevada under NRS 484.361(1)(C)...(D), inclusive of all enhancements and/or related fees that may be imposed, exceed the penalties prescribed under the Uniform Vehicle Code 17-101(a)...(b)? **Discovery: If answer is “No”, please provide the actual penalty schedule for NRS 484.361(1)(C)...(D), including all enhancements and related fees, upon which you rely in answering “No”. Also include the actual fine amount charged and paid by Petitioner to Esmeralda County.**

9. Do you admit that Nevada periodically certifies compliance with 23 USC 109(d) and/or 23 USC 402(a) and/or 23 CFR 655.603, in acknowledgement of Nevada’s responsibilities to the US-DOT, in exchange for Federal Highway Funding? **Discovery: If answer is “No”, please provide the documentation that indicates the receipt dates, amounts, and any special conditions for which Nevada DID receive Federal Highway Funding since 1995.**

10. Do you admit that the 85<sup>th</sup> Percentile is the major guideline for establishing the proper numerical value that is posted on an R2-1 safety device when a speed limit has been determined to be warranted? **Discovery: If the answer is “No”, please provide the scientific studies and/or engineering covenants/authorities upon which you rely in answering “No”.**

11. Do you admit that the numerical values of 70/75 MPH appearing in NRS 484.361(1)(C)...(D), are not based on the engineering principle commonly known as the “85<sup>th</sup> percentile”, which is employed by licensed traffic engineers to determine the speed of lowest risk? **Discovery: If the answer is “No”, please provide the scientific**



1 studies, data, engineering documentation, and/or other admissible evidence upon  
2 which you rely in answering “No”.

3 12. Do you admit that NRS 484.361(1)(C)...(D) targets drivers who are: Driving at speeds  
4 that are “reasonable and prudent” for the conditions, as required by the Basic Speed Rule  
5 “National Safety Standard” appearing in UVC 11-801? **Discovery: If the answer is**  
6 **“No”, please provide the speed data collected by NDOT indicating the average**  
7 **speeds and 85<sup>th</sup> Percentile Speeds of traffic, for all coil/tube transponder locations**  
8 **on Nevada Interstates and highways, for all dates since 1/1/1995 - with average and**  
9 **85<sup>th</sup> Percentile speeds delineated by hour and geographical location, along with the**  
10 **posted speed limit corresponding to the average/85<sup>th</sup> Percentile speeds indicated for**  
11 **each coil/tube speed collection device.**

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14 13. **Discovery: Please provide any data, traffic engineering studies, scientific studies,**  
15 **witness lists, or other evidence that you plan to use in support of “Respondents’**  
16 **Standard” - NRS 484.361(1)(C)...(D).**

1 Richard Glen Colter  
2 P.O. Box 11312  
3 Pleasanton, CA 94588  
4 925.202.7776 – rgcolter@gmail.com

5 UNITED STATES DISTRICT COURT  
6 District of Nevada – Las Vegas

7  
8 RICHARD GLEN COLTER, ) **Case No. 2:11-cv-00630**  
9 Petitioner/Plaintiff; )  
10 v. ) **Request for Admissions &**  
11 ) **Discovery – Respondent LaHood**  
12 ) **& United States of America**  
13 Ray LaHood; Brian Sandoval; State of Nevada; )  
14 United States of America )  
15 Respondents/Defendants )

16  
17 **Request for Admissions & Discovery – Respondent LaHood**

- 18  
19 1. Do you admit that the 70/75 MPH numerical values posted on R2-1 safety devices under  
20 authority of NRS 484.361(1)(C)...(D) are not based on the “reasonable and prudent”  
21 standard appearing in UVC 11-801? **Discovery: If answer is “No”, please provide**  
22 **any scientific studies, engineering documentation, legal authorities, and/or other**  
23 **admissible evidence that prove the 70/75 MPH enforcement thresholds appearing**  
24 **in NRS 484.361(1)(C)...(D) are based on the “reasonable and prudent” standard.**  
25  
26 2. Do you admit that convictions rendered under NRS 484.361(1)(C)...(D) are NOT based  
27 on the “Basic Speed Rule” of UVC 11-801, but rather they are based solely on whether a  
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1 motorist has exceeded the numerical values of 70/75 MPH? **Discovery: If the answer**  
2 **is “No”, please provide the legal cites, documentation, and/or proof that the**  
3 **adjudication standards under NRS 484.361(1)(C)...(D) have a probative basis**  
4 **collateral to the numerical thresholds of 70/75 MPH appearing in NRS**  
5 **484.361(1)(C)...(D).**

6 3. Do you admit that motorists who drive above the numerical thresholds appearing in  
7 NRS 484.361(1)(C)...(D) may be in compliance with the basic speed rule of UVC 11-  
8 801? **Discovery: If answer is “No”, please provide any scientific studies and/or**  
9 **engineering documentation to demonstrate that motorists who drive above the**  
10 **numerical thresholds appearing in NRS 484.361(1)(C)...(D) (70/75 MPH) are**  
11 **ALWAYS violating the basic speed rule of UVC 11-801.**

12 4. Do you admit that only a licensed traffic engineer can determine the presumptive range  
13 of “reasonable and prudent” speeds for a given section of established highway?  
14 **Discovery: If answer is “No”, please provide any scientific studies and/or**  
15 **engineering documentation giving clear support for other methods/parties in**  
16 **determining the range of “reasonable and prudent” speeds for a given section of**  
17 **highway.**

18 5. For R2-1 safety devices posted throughout Nevada under authority of NRS  
19 484.361(1)(C)...(D) since 1/1/97, do you admit that Nevada did not perform engineering  
20 studies i.e. engineering studies conforming to the requirements of Federal Regulation  
21 1988 MUTCD 2B-10? **Discovery: If answer is “No”, please provide the engineering**  
22 **studies and/or traffic engineering documentation that you rely in answering “No”.**  
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6. Do you admit that the 70/75 MPH numerical values posted on R2-1 safety devices throughout Nevada under authority of NRS 484.361(1)(C)...(D) are not “safety thresholds”? **Discovery: If answer is “No”, please provide any scientific studies and/or engineering documentation that substantiates that the 70/75 numerical values constitute “safety thresholds”.**
  7. Do you admit that the penalties prescribed under NRS 484.361(1)(C)...(D), inclusive of all enhancements and/or related fees that may be imposed, exceed the penalties prescribed under the Uniform Vehicle Code 17-101(a)...(b)? **Discovery: If answer is “No”, please provide the actual penalty schedule for NRS 484.361(1)(C)...(D), including all enhancements and related fees, upon which you rely in answering “No”.**
  8. Do you admit that Nevada periodically certifies compliance with 23 USC 109(d) and/or 23 USC 402(a) and/or 23 CFR 655.603 which acknowledge Nevada’s responsibilities to the US-DOT for *traffic control, vehicle codes and laws*, in exchange for Federal Highway Funding? **Discovery: If answer is “No”, please provide the documentation that indicates the receipt dates for which Nevada DID receive Federal Highway Funding since 1995, and the conditions for their disbursement.**
  9. Do you admit that the sampling statistic known as the “85<sup>th</sup> Percentile” is the major guideline for establishing the proper numerical value that is posted on an R2-1 safety device? **Discovery: If the answer is “No”, please provide the scientific studies and/or traffic engineering covenants upon which you rely in answering “No”.**
  10. Do you admit that the numerical values of 70/75 MPH appearing in NRS 484.361(1)(C)...(D) have no relationship to the “85<sup>th</sup> percentile” calculus employed by

1 licensed traffic engineers? **Discovery: If the answer is “No”, please provide the**  
2 **scientific studies, data, and/or engineering documentation upon which you rely in**  
3 **answering “No”.**

4 **11. Do you admit that the current version of Federal Regulation 2003-2009 MUTCD 2B-13**  
5 **has not been vetted against the US Constitution’s 4<sup>th</sup> Amendment requirement of**  
6 **“probable cause”, where probable cause is defined as “evidence that a motorist has**  
7 **violated the Basic Speed Rule of UVC 11-801”?** **Discovery: If answer is “No”, please**  
8 **provide any scientific studies, engineering documentation, or other admissible**  
9 **evidence that demonstrates the legal test for “probable cause” in arresting a**  
10 **motorist for a “speeding violation”.**

11  
12 **12. Do you admit that *traffic control, vehicle codes, and laws* are governed by the Highway**  
13 **Safety Act of 1966?** **Discovery: If answer is “No”, please cite the legal authorities**  
14 **where traffic control, vehicle codes, and laws are exempted from the Highway**  
15 **Safety Act of 1966.**

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17 **13. As regards the use of R2-1 safety devices, do you admit that the U.S. DOT has not**  
18 **audited the several states for compliance with the Highway Safety Act of 1966 regarding**  
19 ***traffic control, vehicle codes and laws* inclusively?** **Discovery: If answer is “No”,**  
20 **please provide the US DOT’s audit findings, delineated by State and year, for each**  
21 **year since 1995; and any other admissible evidence that you rely in answering**  
22 **“No”.**

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24 **14. Discovery: Please provide any data, scientific studies, or other evidence that you**  
25 **plan to use in support of NRS 484.361(1)(C)...(D) and 2003/2009 MUTCD 2B-13.**  
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1 Richard Glen Colter  
2 P.O. Box 11312  
3 Pleasanton, CA 94588  
4 925.202.7776 – rgcolter@gmail.com

5 UNITED STATES DISTRICT COURT  
6 District of Nevada – Las Vegas

7 \_\_\_\_\_ )  
8 RICHARD GLEN COLTER, ) **Case No. 2:11-cv-00630**  
9 Petitioner/Plaintiff; )  
10 v. ) **Petition to use PACE system;**  
11 )  
12 Ray LaHood; Brian Sandoval; State of Nevada; )  
13 United States of America )  
14 Respondents/Defendants )  
15 \_\_\_\_\_ )

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18 Petitioner respectfully requests permission from this honorable court to use the PACE  
19 system for the purpose of sending and receiving documents to the court and all Respondents.  
20 Petitioner’ email address for the purpose of the PACE system will be: rgcolter@gmail.com  
21

22 \_\_\_\_\_ Petition DENIED;  
23

24 \_\_\_\_\_ Petition APPROVED;  
25

26  
27 Signature

Date

1 Richard Glen Colter  
2 P.O. Box 11312  
3 Pleasanton, CA 94588  
4 925.202.7776 – rgcolter@gmail.com

5 UNITED STATES DISTRICT COURT  
6 District of Nevada – Las Vegas  
7

8 RICHARD GLEN COLTER, ) **Case No. 2:11-cv-00630**  
9 Petitioner/Plaintiff; )  
10 ) **Declaration Statement**  
11 v. )  
12 )  
13 Ray LaHood; Brian Sandoval; State of Nevada; )  
14 United States of America )  
15 Respondents/Defendants )  
16

17 The undersigned swears, affirms, and declares under penalty of perjury that the facts  
18 and statements made in the Petitioner’ Opposition to Motion(s), Notice of Motion, and Case  
19 Management Statement are true and correct to the best of his abilities.  
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25 DATE RICHARD COLTER  
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1 Richard Glen Colter  
2 P.O. Box 11312  
3 Pleasanton, CA 94588  
4 925.202.7776 – rgcolter@gmail.com

5 UNITED STATES DISTRICT COURT  
6 District of Nevada – Las Vegas  
7

8 RICHARD GLEN COLTER, ) **Case No. 2:11-cv-00630**  
9 Petitioner/Plaintiff; )  
10 ) **Declaration of Service**  
11 v. )  
12 )  
13 Ray LaHood; Brian Sandoval; State of Nevada; )  
14 United States of America )  
15 Respondents/Defendants )  
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20 **DECLARATION OF SERVICE**  
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22  
23 I, THE UNDERSIGNED, HEREBY declare and certify that I am over 18 years of age,  
24 and a resident of the State of California.  
25

26 That on July 15, 2011, I served true and correct copy(ies) of the attached “Notice of  
27 Motion”, “Petitioner’ Opposition to Motion”, “Case Management Statement”; “Request for  
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1 Admissions & Discovery Sandoval”; “Request for Admissions & Discovery Ray LaHood”;  
2 “Petition to use PACE”; “Declaration”, by placing said copy(ies) in a postage paid envelope  
3 addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail.  
4  
5

6 Daniel Bogden – United States Attorney  
7 333 Las Vegas Boulevard South, Suite 5000  
8 Las Vegas, NV 89101  
9 (702) 388-6336

10 Roger Madsen - Deputy Attorney General  
11 Office of the Attorney General  
12 555 East Washington Avenue, Suite 3900  
13 Las Vegas, NV 89101  
14 (702) 486-3379

15 Clerk, U.S. District Court  
16 District of Nevada – Las Vegas  
17 Lloyd D. George U.S. Courthouse  
18 333 Las Vegas Blvd. South – RM 1334  
19 Las Vegas, NV 89101  
20  
21

22 DECLARANT

SIGNATURE