SANTA BARBARA COUNTY SUPERIOR COURT
LOMPOC DIVISION, STATE OF CALIFORNIA

STATE OF CALIFORNIA, Plaintiff

v.

THOMAS RANDAL COOPER, Defendant

Citation #43616 KC

NOT GUILTY PLEADING & MOTION IN LIMINE

On March 13, 2009, at 2:50 P.m., Defendant THOMAS RANDAL COOPER was traveling northbound on PCH 1, when he was stopped, and cited by a California Highway Patrol officer, solely, for violating an arbitrary and capricious 55 mph posted value on a federally regulated traffic control device in a passing lane, per VC § 22349(b), with an additional unconstitutionally legislated (invented) "at a speed greater than" special enforcement condition, which was used as the purported foundation of an illegal seizure of the defendant, vis-à-vis this traffic stop.

ARGUMENT

California's VC § 22349(b) in this instance is non-conforming and in direct conflict with California's Uniform Standards VC § 21400 et al, and is void. Ipso facto California in VC § 21400 recognizes federal supremacy in the field of traffic control and regulations thereof, per the U.S. Constitution, Congress' intent, U.S. Title 23 et al, and certifies compliance with the receipt of each disbursement of federal highway funds. Separately, the defendant makes a Motion in Limine to exclude all evidence as to the defendant's speed or the posted limit.

Per 1 CCR § 14(3) a federal regulation or statute is presumed to exist when properly cited.

> (b) Sources of "Reference." "Reference" shall be presumed to exist if an agency is empowered to implement, interpret or make specific a:
> (3) federal statute or regulation; or

A Speed Limit Sign is a federal device (MUTCD 2B.13: R2-1) that California is authorized to use providing it complies with the conditions precedent of the Law of the Land: The U.S. Constitution, Congress' intent in this field, Title 23 and its MUTCD et al, Supremacy, Commerce and Equal Protection Clause(s), the 4th, 5th, 6th and 14th amendment protection regarding the exercise of police powers enforcing a federally regulated device; and California's Uniform Standards VC § 21400 et al.

Speed Limit Sign (federal designation R2-1): Not only is the shape, size, color, placement, hardware, reflective backing quality and the breakaway post design set by federal regulations, the practices and procedures to determine the safety value of the number on the sign and the exercise of police powers thereof SHALL also be fact based and uniformly applied regardless of state lines, entity type or classification on any public or private roadway, pedestrian facility or bikeway open to the public within the U.S. and its territories.

California's statutes, acts, excise, penalties, consequence and practices in this field are subordinate and shall substantially conform. In this instance the state failed to conform to the conditions precedent in promulgating VC § 22349(b) for this R2-1 device use, therefore the prosecution of the defendant lacks foundation and was an unconstitutional exercise of police powers, it is unenforceable as a matter of law, void; and the citation must be dismissed with prejudice.

This is unique application of federal supremacy, because it holds that for safety and due process to be served, the local engineers who have responsibility for traffic control must perform a comprehensive engineering study (safety audit) reviewing each roadway to assure traffic control meets the needs of traffic, it SHALL be documented, and that all decisions thereon are based on this finding of fact, applying their licensed profession's nationally recognized best practices. In this finding the engineer is directed to outline all the prescribed remedies that could accomplish optimum safety/compliance, including the number to post if it has been determined to be warranted, and then the roadway's regulatory authority, can chose which of the authorized remedies to adopt. It is the duty of the regulatory authority to codify it per the conditions precedent and protections of the Law of the Land, to give it the force of law.

In every salient area in this instance, the State of California failed to conform; the promulgation of the law, exercise of police powers, and the factual foundations of the 55 mph limit vis-à-vis an Engineering and Traffic Survey (ETS; engineering study) that conforms to federal standards for this section of roadway to establish the factual foundation for the posted limit, that also found that the additional absolute shall not exceed clause was warranted. And, a seizure vis-à-vis a traffic stop that had no factual foundation violated the defendant's 4th amendment rights.

Exhibit 1: The informal discovery request clearly states there is no Engineering and Traffic Survey (ETS; engineering study) for this section of roadway, nor is there an record that VC §

22349(b) 55 mph numeric or its invented absolute not to exceed clause was based on a finding of fact by Caltrans for this particular section of roadway.

In 1988 the MUTCD became the National Standard for Traffic Control per the conditions precedent of the U.S. Constitution, The Highway Safety Act of 1966, U.S. CFR Title 23 and its promulgated Manual on Uniform Traffic Control Devices (MUTCD), Uniform Vehicle Code (UVC) et al, the Supremacy, Commerce and Equal Protection Clause(s).

Thus in 1988, California's posting authority per prior VC § 22349(b) was superseded by federal regulation (1988 MUTCD 2B-10), and California was given 2 years to bring all posted speed limits into conformance, including the exercise of police powers, and to cease non-conforming practices and to cause all non conforming devices to be removed. The only exceptions were those speed limits posted per the National Maximum Speed Limit (NMSL), and Congress repealed that authority in 1995. Hence all speed limits were to be fact based and prima facie, with no exceptions. The California Legislature adopted VC § 22349(b) (Amended and Repealed Sec. 22, Ch. 766, Stats. 1995. Effective January 1, 1996), absent the conditions precedent of controlling law, therefore it's void. The controlling standard in this instance is the 1988 extant federal law, because the California Legislature per the legislative record has not acted since to bring VC § 22349(b) into conformance with the 1988 MUTCD, Congress' 1995 repeal conditions precedent, or the 2000 and 2003 MUTCD progeny.

California in VC § 21400 recognized Federal Supremacy in this field in 1984; notwithstanding the conflicting exception clause(s) for local governments, which were superseded in 1988. California's Uniform Standards, and Conformity to Uniform Standards VC § 21401 recognizes federal supremacy in the entire field of traffic control and the regulation thereof; subordinate to Congress' Highway Safety Act of 1966 et al, the Supremacy, Commerce and Equal Protection Clause(s), and the U.S. Constitution as the 'traffic control device' use condition precedent for all traffic control within California, including VC § 22349.

> **Uniform Standards**
> 21400. The Department of Transportation shall, after consultation with local agencies and public hearings, adopt rules and regulations prescribing uniform standards and specifications for all official traffic control devices placed pursuant to this code, including, but not limited to, stop signs, yield right-of-way signs, speed restriction signs, railroad warning approach signs, street name signs, lines and markings on the roadway, and stock crossing signs placed pursuant to Section 21364.

The Department of Transportation shall, after notice and public hearing, determine and publicize the specifications for uniform types of warning signs, lights, and devices to be placed upon a highway by any person engaged in performing work which interferes with or endangers the safe movement of traffic upon that highway.

Only those signs, lights, and devices as are provided for in this section shall be placed upon a highway to warn traffic of work which is being performed on the highway.

Any control devices or markings installed upon traffic barriers on or after January 1, 1984, shall conform to the uniform standards and specifications required by this section.
Amended Ch. 291, Stats. 1983. Effective January 1, 1984.

Conformity to Uniform Standards
21401. (a) Except as provided in Section 21374, only those official traffic control devices that conform to the uniform standards and specifications promulgated by the Department of Transportation shall be placed upon a street or highway.
(b) Any traffic signal controller that is newly installed or upgraded by the Department of Transportation shall be of a standard traffic signal communication protocol capable of two-way communications. A local authority may follow this requirement.
(c) In recognition of the state and local interests served by the action made optional for a local authority in subdivision (b), the Legislature encourages local agencies to continue taking the action formerly mandated by this section. However nothing in this subdivision may be construed to impose any liability on a local agency that does not continue to take the formerly mandated action.
Amended Sec. 6, Ch. 889, Stats. 2004. Effective September 29, 2004.

Chapter 2. Traffic Signs, Signals, and Markings
Article 2. Official Traffic Control Devices
Manual on Uniform Traffic Control Devices (MUTCD)
As of September 26, 2006, the California Department of Transportation has adopted the California Manual on Uniform Traffic Control Devices (FHWA's MUTCD 2003 Revision 1, as amended for use in California), also called the California MUTCD, to prescribe uniform standards and specifications for all official traffic control devices in California. This action was taken pursuant to the provisions of the California Vehicle Code Section 21400 and the recommendation of the California Traffic Control Devices Committee (CTCDC).

The "Rule of Law" regarding traffic control, interstate travel and commerce on our nation's roadways must be taken in its entirety, and the STATE cannot be allowed to unilaterally select which governing laws it wishes to comply with, or reject, or under which enforcement conditions or roadways due process applies, or not.

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

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

The stakeholders and each of their responsibilities:

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

Congress: Congress' acts must be Constitutional.

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

Congress delegated oversight of this field to the USDOT, thus all laws, regulations and the exercise of police powers must be fact based and uniformly applied regardless of entity classification, state lines or jurisdiction. Therefore in addition to traffic control devices, all expectations, regulations, expectation, excise and fines shall be substantially uniform – coordinated; and the safety of the entire roadway is within their domain, not just the traffic control on them. The USDOT oversight malfeasance in this area for the past 15 years is incredible. Consequently, we have a state of anarchy in the rule of law, application and expectation, and in 2008 the USDOT went so far as to disband the Uniform Vehicle Code

Committee. And, without uniformity there can be no due process or safety! Nonetheless, there is nothing that prevents state statutes from substantially conforming in this field.

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

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

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

Uniformity and being fact based: Federal standards are the law that must be followed because there are as many as 80,000 entities within the U.S. and its territories that have posting authority over traffic control devices that exercise police powers over them, and travel between all of them is ubiquitous. If the Legislature, county, city etc. has a belief or safety hypothesis they must apply to the USDOT for permission to experiment. Once they're approved to experiment, the trial results must be quantified by scientific means and protocols. If the trial is successful then it is up to the USDOT to promulgate the regulation, practice, standard or device; then all states that wish to adopt said practice shall be in substantial conformance with this federal standard.

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

FHWA currently appears to interpret its "oversight" role, to begin and end with the development and modifications to the Manual on Uniform Traffic Control Devices (MUTCD). However, Congress' constitutional mandate gave the USDOT via FHWA, the responsibility for the oversight of the entire "field" of roadway safety and the uniformity of

roadway regulations thereof. Since 1924 there has also been the Uniform Vehicle Code, which has been incorporated into the Code of Federal Regulations, therefore it too, in its entirety, is subject to the U.S. Constitution and Congress' intent. This includes being fact based, the exercise of police powers and the uniform implementation of these rules and regulations, equal protection and due process.

This reveals a large gap in USDOT's responsibility and legal obligation as it currently operates. USDOT (FHWA) has a higher mandate of enforcement than they are fulfilling through withholding of funds when compliance is clearly not occurring.

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

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

Local Government: All practices shall conform, no exceptions.

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

1. U.S. Constitution: Article 1 - 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; Clause 6 - Post Offices and Post Roads, delegated the domain of our transportation infrastructure and the regulation thereof to Congress.

2. The Supremacy Clause applies to an Act of Congress that encompasses an entire field.

3. The "Highway Safety Act of 1966" became the 'Law of the Land' for the entire field of roadway safety, with a funded mandate of uniformity and based in fact practices, for all roadways and bike paths in the nation open to public travel, "regardless of type or class or the public agency having jurisdiction".

4. An Act of Congress trumps federal agency administrative rules, practices or acts.

5. The Supremacy Clause of the Constitution trumps state or local law.

6. The domain of the Commerce Clause trumps state or local laws.

7. Equal Protection Clause, Procedural and Substantive Due Process trumps arbitrary, capricious and vague laws.

8. Unconstitutional Acts are not Law.

9. Separately, a state cannot accept the benefits of a law, then claim state's rights to circumvent its mandates.

10. This "Law of the Land" applies to any public or private roadway, pedestrian facility or bikeway open to public travel within a U.S. territory or State, and all subordinate administrative rules, statutes, standards and or practices etc. shall advance "uniformity" and "roadway safety" vis-à-vis one standard, appearance, application and expectation based in fact (due process), "regardless of type or class or the public agency having jurisdiction"!

11. The California Legislature cannot pick and chose which laws it wishes to comply with, or not, and the California Vehicle Code 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 were superseded or repealed by Congress.

12. Equal Protection Clause and Void for Vagueness: How can a person traversing the 4 million miles of roadways and the 80,000 plus posting authorities in the U.S. know which standard applies where?

> *"Men of common intelligence cannot be required to guess at the meaning of [an] enactment" Musser v. Utah, 333 U.S. 95, 97 (1948)*

Particularly in California where you have at least 3 primary distinct standards of use and police power enforcement practices, for the same federal device - Speed Limit Sign: R2-1

> Absolute Limits – Decreed by legislature, no ETS or due process protections, arbitrary invented values, with additional superseded and or repealed any "speed greater than" special enforcement condition. Where VC § 41100 - Rebuttable Presumption doesn't apply, nor does due process - VC § 40802 et al (factual foundation only apply to narrow conditions, not applicable), and challenges to arbitrary acts have been decreed inadmissible by the Legislature as an affirmative defense in VC § 23349 traffic cases, unconstitutional; and
>
> Prima Facie Limits – Decreed by Legislature, no ETS required; arbitrary prima facie limits with invented values without due process, unconstitutional; and
>
> Prima Facie Limits – Limited due process protection (40802), requires ETS and must be based in fact only when radar is used, where speeds in excess can be considered safe and due process applies, in part unconstitutional.

California's arbitrary and capricious foundations, multiple expectations and standards of enforcement for the same sign violates Congress' uniformity mandate, the U.S. Constitution et al, and is void.

13. A speed limit is sign is a federally regulated device (R2-1) whose use by California shall conform. Standards in bold are a SHALL.

> 1988 MUTCD
> 2B-10 Speed Limit Sign (R2-1)
> The Speed Limit sign shall display the limit established by law, or by regulation, after an engineering and traffic investigation has been made in accordance with established traffic engineering practices. The speed limits shown shall be in multiples of 5 miles per hour.
>
> 2000 Millennium Edition of the MUTCD
> Section 2B.11 Speed Limit Sign (R2-1)
> **Standard:**
> **After an engineering study has been made in accordance with established traffic engineering practices, the Speed Limit (R2-1) sign shall display the limit established by law, ordinance, regulation, or as adopted by the authorized agency.**
>
> 2003 MUTCD
> Section 2B.13 Speed Limit Sign (R2-1)
> **Standard:**
> **After an engineering study has been made in accordance with established traffic engineering practices, the Speed Limit (R2-1) sign shall display the limit established by law, ordinance, regulation, or as adopted by the authorized agency.**

14. All speed limits require a factual foundation, and the standard for the starting point of the value posted is the 85th percentile speed as determined by the condition precedent: "After" a comprehensive engineering study, and it SHALL be documented.

> MUTCD:
> Section 1A.13 Definitions of Words and Phrases in This Manual
> **Standard:**
> **Unless otherwise defined herein, or in the other Parts of this Manual, definitions contained in the most recent edition of the "Uniform Vehicle Code," "AASHTO Transportation Glossary (Highway Definitions)," and other documents specified in Section 1A.11 are also incorporated and adopted by reference. The following words and phrases, when used in this Manual, shall have the following meanings:**
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> 24. Engineering Study - the comprehensive analysis and evaluation of available pertinent information, and the application of appropriate principles, Standards, Guidance, and practices as

contained in this Manual and other sources, for the purpose of deciding upon the applicability, design, operation, or installation of a traffic control device. An engineering study shall be performed by an engineer, or by an individual working under the supervision of an engineer, through the application of procedures and criteria established by the engineer. An engineering study shall be documented.

15. Legal milestone of note that regarding the posted limit per VC § 22349(b) as adopted by the Legislature in 1995.

Since 1990 VC § 22349(b) lacked foundation per federal law because California was given 2 years to conform in 1988 to MUTCD 2B-10 and it failed to act, and 22349 in its entirety (invented numerics and absolute clauses) has been in direct conflict with federal law since 1997, void, 2 years after the repeal of the NMSL in 1995. To wit: The safety value posted shall be determined by a prerequisite engineering study based on nationally accepted practices: Per exhibit one, no study exist to support the safety value posted, therefore it lacks legal foundation.

1988 MUTCD 2B-10:
2B-10 Speed Limit Sign (R2-1)
The Speed Limit sign shall display the limit established by law, or by regulation, after an engineering and traffic investigation has been made in accordance with established traffic engineering practices. The speed limits shown shall be in multiples of 5 miles per hour.

Accepted FHWA practice circa 1980's through 1995, 1996 FHWA Speed Limit Workshop: Absolute limits, a practice not based on safety where even if the driver could prove they were driving safe for conditions, it's irrelevant:

Absolute Speed Limit
- Illegal to exceed
- Reasonable and safe speed not relevant
- Not fair unless speed limit set for optimal conditions

Conversely – Recommended practice:

Prima Facie Limit
- Exceeding limit is evidence of traveling at unsafe speed
- Recognizes no one speed is safe for all conditions
- Post for prevailing conditions

16. California recognized the supremacy of the MUTCD for speed limits in 2003, despite the fact that in 1984 VC § 21400 California acknowledged federal supremacy over traffic control devices, and compliance has been in fact mandated since 1977 in exchange for federal highway funds.

17. Exhibit 1, the CHP response to the informal discovery request clearly states there is no ETS and one isn't required; which is in conflict with VC § 21400 and federal law, which governs the use of speed limit signs (federal device R2-1). The method cited in the email to determine the posted value has no probative value because it is not an approved method.

Aside this mandate in the MUTCD, in the U.S. and its territories there are close to 80,000 posting authorities and if each one posted its roadways based on the arbitrary personal opinion of a political body, as Caltrans did in this instance, a state of anarchy would exist; constitutionally void of equal protection, due process and for vagueness. Therefore the number on the sign is unenforceable as a matter of law, and void.

18. Nor under 5 U.S.C. § 706 can the FHWA or the State of California through administrative acts or statues usurp Congress' mandate intent of uniformity, based in fact practices and law, or the panoply of Constitutional protections that are invoked regarding the exercise of police powers enforcing our nations traffic laws.

The test is simple, does the purported act, practice or regulation meet the fact based one nation, standard, appearance, application, expectation and exercise of police powers thereof mandated by the U.S. Constitution et al.

Thus even if a state claims the FHWA purportedly permitting a practice to exist by any means or regulation, it's irrelevant because the FHWA cannot authorize an act that is not consistent with the U.S. Constitution or Congress' intent in this field, and any such purported authority is void.

19. Absent a finding of fact by Caltrans (engineering study), as to what the safe for conditions speed is for a particular section of roadway, an officer is incompetent to testify as to what speed is safe, or unsafe.

20. In addition, absolute speed limits were repealed with the adoption of the 1988 MUTCD except those adopted under the National Maximum Speed Limit that was repealed in 1995. The national standards and practices is based on prima facie limits, which recognize that the risk of being involved in an accident is a bell curve that is based on the conditions then present for the particular location, not an invented absolute not to exceed condition or number.

21. Regardless of the remedies or constricts in law to cause compliance, it does not abrogate the defendant's due process.

22. Unconstitutional laws are unenforceable as a matter of law, and for all of the above affirmative defenses the state's prosecution in this instance is founded in the State of California's own wrongdoing, therefore any evidence as to the speed of the Defendant's vehicle violates due process and is inadmissible.

Legal milestone of note that regarding the posted limit per VC § 22349(b) as adopted by the Legislature in 1995.

1. Since 1990 VC § 22349(b) lacked foundation per federal law because California was given 2 years to conform in 1988 and it failed to act, and 22349 in its entirety (invented numerics and absolute clauses) has been in direct conflict with federal law since 1997, void, 2 years after the repeal of the NMSL in 1995. To wit: The safety value posted shall be determined by a prerequisite engineering study based on nationally accepted practices: Per exhibit one, no study exist to support the safety value posted, therefore it lacks legal foundation.

   1988 MUTCD 2B-10:
   2B-10 Speed Limit Sign (R2-1)
   The Speed Limit sign shall display the limit established by law, or by regulation, after an engineering and traffic investigation has been made in accordance with established traffic engineering practices. The speed limits shown shall be in multiples of 5 miles per hour.

   1996 FHWA Speed Limit Workshop Observation, absolute limits, a practice not based on safety where even if the driver could prove they were driving safe for conditions, it's irrelevant:

   Absolute Speed Limit
   - *Illegal to exceed*
   - *Reasonable and safe speed not relevant*
   - *Not fair unless speed limit set for optimal conditions*

   Conversely – Recommended practice:

   Prima Facie Limit
   - *Exceeding limit is evidence of traveling at unsafe speed*
   - *Recognizes no one speed is safe for all conditions*
   - *Post for prevailing conditions*

This brief's breadth is necessary to clarify the history and legal foundations of our laws governing traffic control on our roadways, as they relate in this instance, applying constructive knowledge of the facts. (1) The domain of roadways and the regulation thereof was delegated to Congress in Article 1(8)6 (2) The U.S. Constitution demands uniformity, face based laws, equal protection, substantive and procedural due process; (3) The Highway Safety Act of 1966 encompassed the entire field of traffic control on our Nation's roadways; (4) The Commerce Clause requires fact based laws when those laws affect the field of its domain; (5) The U.S. Supreme Court has found arbitrary, capricious and vague laws to be unconstitutional; (6) and the Supremacy Clause nullifies conflicting subordinate acts, statutes and practices.

Items I – VII, severally and individually, constitute grounds for dismissal in the cause of action against the Defendant based on the extant law when VC § 22349 was adopted by California:

I. **Safety:** A speed limit sign (R2-1) is a federally regulated traffic control device, which has no lawful application apart from safety[1]. In the context of safety, the law requires the posted value on an R2-1 be quantified "after" the prerequisite traffic "engineering and traffic investigation" has determined the R2-1 safety device is warranted for that particular segment of roadway, as mandated by the 1988 MUTCD 2B-10:

> *2B-10 Speed Limit Sign (R2-1)*
>
> *The Speed Limit sign shall display the limit established by law, or by regulation, after an engineering and traffic investigation has been made in accordance with established traffic engineering practices. The speed limits shown shall be in multiples of 5 miles per hour.*
>
> *In order to determine the proper numerical value for a speed zone on the basis of an engineering and traffic investigation the following factors should be considered:*
>
> *1. Road surface characteristics, shoulder condition, grade, alignment and sight distance.*
> *2.* ***The 85-percentile speed and pace speed.***
> *3. Roadside development and culture, and roadside friction.*
> *4. Safe speed for curves or hazardous locations within the zone.*
> *5. Parking practices and pedestrian activity.*
> *6. Reported accident experience for a recent 12-month period.*[2]
>
> *{Keynote: Documentation standards appear, and are incorporated herein by reference}*

Because prior research[3] and law[4] has shown that the upper region of acceptable risk is in the vicinity of the 85th percentile speed; and when speed limit safety values are posted less than the **85th percentile**, safety research indicates that accident frequency

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[1] 1988 MUTCD – section 1A-1
[2] 1988 MUTCD – Section 2B-10
[3] http://www.ibiblio.org/rdu/sl-irrel.html
Cirillo, J. 1968. Interstate System Accident Research: Study II. Public Roads 35:71–75.;
Solomon, D. 1964. Accidents on Main Rural Highways Related to Speed, Driver and Vehicle. Washington, DC: Bureau of Public Roads.
[4] California Traffic Manual – Section 8, B: "Engineering and Traffic Surveys"

increases.[5] The core tenet of reasonable traffic laws, safety and due process is that the super majority of people act in a safe and responsible manner, and they do drive safely for the conditions present. The engineering study quantifies the "super majority's" reasonable and prudent consensus for that particular section of roadway, rather than relying on the judgment of one or a few. The only exception to these safety laws was the National Maximum Speed Limit 1974 – 1995 (NMSL), a.k.a. "Emergency Highway Energy Conservation Act". **Although the NMSL was repealed in 1995, Federal regulatory authority governing how each state determined safety values for R2-1 devices was not repealed**.

The Defendant's discovery explicitly requested any safety and/or engineering documentation that provided lawful support for the posted 55 MPH R2-1 device the Defendant was cited for violating. The Respondent cannot claim compliance with Federal or state laws or an interest in safety, because the Respondent failed to show any factual basis notwithstanding the mandated safety documentation, for posting and enforcing the R2-1 device in this case. The absence of safety documentation leaves the Respondent with a direct violation of Federal and state safety laws.

II. Absolute Speed Limits: When Congress repealed the NMSL in 1995, California's Legislator's wrongly assumed they had carte blanche to substitute its own *invented numeric* "safety" absolute maximum speed limit(s), a prior legal practice that the Law of the Land had either superseded and or repealed.

III. Constitutional Violations: The genesis of California's Constitutional malpractice was the repeal of the NMSL, wherein CALIFORNIA invented vague[6] pseudo-safety values and posted them contrary to Federal law. The California Legislatures' substitution of the 85th percentile engineering calculus. with an imaginary *invented numeric*[7] safety value set in motion a cascade of Constitutional violations:

1) The Interstate Commerce Clause was violated when California exceeded its authority by *inventing* regulations, which affect interstate commerce.[8]

[5] http://www.ibiblio.org/rdu/sl-irrel.html Figure 41 – Summary of Accident Effects of Altering Posted Speed Limits

[6] Void for Vagueness Doctrine: http://law.onecle.com/constitution/amendment-14/54-void-for-vagueness-doctrine.html

[7] *INVENTED NUMERIC in this context* means in law the phrase *ARBITRARY AND CAPRICIOUS*.

[8] Kassel v. Consolidated Freightways Corp., 450 U.S. 662, No. 79-1320

2) The Defendant's 4th Amendment protection from illegal seizure was violated when a traffic stop was initiated without probable cause.

3) The Defendant's 5th and 14th Amendment guarantees to Due Process and Equal Protection were violated with the enforcement of invented and repealed by Congress arbitrary and capricious enforcement conditions.

4) The Defendant's 6th Amendment right to cross exam his accuser was denied, because there is no entity that can be cross examined when an *invented numeric* is substituted for a comprehensive ETS.

California's *arbitrary and capricious* practices violate protections guaranteed by the 4th, 5th, 6th, and 14th Amendments and the Commerce Clause. Yet, U.S. Constitutional protections are intended to annihilate *arbitrary and capricious* practices.[9]

IV. Motion In Limine: The Defendant motions to suppress evidence and testimony by and through a Motion in Limine, absent a showing that all Due Process requirements were met.

V. Interstate Commerce: The Respondent failed to show the speed limit was based in fact: The 55 MPH value posted is an *invented numeric.* The U.S. Supreme Court, citing the Commerce Clause, found that a state cannot adopt regulations affecting interstate commerce without a compelling factual foundation supporting that regulation.[10] The *invented numeric s*afety value, and subsequent actions by the State of California to enforce it, violates the U.S. Supreme Court's ruling as to conditions and authorities under the Commerce Clause; therefore, it is unenforceable as a matter of law.

VI. Racketeering/RICO Violations: State and local authorities facing fiduciary destitution are often tempted to manipulate traffic control devices as a means for raising revenue. These corrupt practices persist, despite the Law of the Land, anti-racketeering laws, and Interstate Commerce protections, which is designed to prevent it. The Defendant has shown that the instant case violates some of our social values and core philosophies of law. For example, the California Legislature has enacted a vehicle code statute which violates Federal Law, and any enforcement

[9] Miranda v Arizona, 384 US 436, 491; 86 S Ct 1602; 16 L Ed 2d 694 (1966).
[10] Kassel v. Consolidated Freightways Corp., 450 U.S. 662, No. 79-1320

of illegal statutes will constitute an abuse of police powers which will abrogate constitutional protections, Interstate Commerce Protections, etc. Most interesting is how all three branches of government, Executive (police), Legislative, and Judicial, are acting in concert to enforce an illegally enacted vehicle code statute no matter the sacrifice of constitutional protections, motorist safety, and compliance with Federal Law. Regardless if there is an actual conspiracy between the California Legislature, law enforcement, and the courts, these activities constitute an illegal business practice (racket) that is explicitly barred under Federal Anti-Racketeering statutes. Any conviction under these circumstances is an *egregious* miscarriage of justice.

VII. Unreasonable Seizure: In Illinois vs Caballes,[11] Mr. Caballes was stopped for exceeding the speed limit by a mere 6 MPH. The U.S. Supreme Court made special mention of the magnitude of the infraction, that even though Mr. Caballes received only a warning ticket, the traffic stop was "concededly lawful" because Mr. Cabballes did not argue otherwise: As such, the U.S. Supreme Court applied the 4th Amendment protections to the search instigated subsequent to the stop, but stopped short of addressing the stop itself (emphasis). The instant case stands in contradistinction, as the Appellant argues the absence of probable cause to initiate a traffic stop: That the traffic stop constitutes an illegal "seizure" within the meaning of the 4th Amendment.

Probable cause to initiate a traffic stop for speeding requires that a safety violation has occurred, because an R2-1 safety device has no lawful application apart from safety. There is only one process to determine the safe speeds for a given section of road, and that is by a comprehensive "ETS" which incorporates the **85th percentile** as the basis for setting the upper limit. After repeal of the NMSL, Federal Regulation 1988 MUTCD 2B-10 required a comprehensive "ETS" as a condition precedent for **all** roadways using an R2-1 device.[12]

Ipso facto, California State Senator Quentin Kopp (Chairman of the Senate Transportation Committee) took action without regard to extant law by introducing SB-848 {VC22349(a)} to his committee as an urgency bill in 1995; and it became

[11] Illinois v. Caballes, 543 U.S. 405 (2005)
[12] Prior to repeal of the NMSL, the 55 MPH maximum speed limit was the only exception to the requirements of MUTCD 2B-10.

law in 1996. SB848's clear intent was to continue the NMSL repealed language of "no speed greater than" enforcement condition using the arbitrary *invented* values of VC22349(a) on California's roadways, with a stated goal of not allowing California to return to its prior practices of former higher speed limits. From the Senate Third Reading:

> "This bill contains an urgency clause in order to avoid the March 31, 1996 date upon which the speed limit for two-lane undivided highways will be automatically raised to 65 mph."
>
> "ARGUMENTS IN SUPPORT: The enactment of this measure will ensure public safety by maintaining 55 mph as the safest maximum speed limit for largely rural two-lane undivided highways upon which the increased 65-mph speed would not be safe for motorists."
>
> California Vehicle Code
> Maximum Speed Limit
> 22349. (a) Except as provided in Section 22356, no person may drive a vehicle upon a highway at a speed greater than 65 miles per hour.
>
> *Amended and Repealed Sec. 22, Ch. 766, Stats. 1995. Effective January 1, 1996.*
> *Repeal operative March 31, 1996.*
> *Added Sec. 23, Ch. 766, Stats. 1995. Effective January 1, 1996. Operative March*
> *31, 1996.*
> *Amended Sec. 1, Ch. 20, Stats. 1996. Effective March 29, 1996.*
> *Amended Sec. 41, Ch. 724, Stats. 1999. Effective January 1, 2000.*

Although SB-848 claims an interest in safety, it is merely Senator Kopp' opinion as to what constitutes "safety". Substituting the federally-mandated **85th percentile** engineering calculus with one man's *opinion*, i.e. an *invented numeric*, sets in motion a cascade of Constitutional violations starting with probable cause for the traffic stop.

The U.S. 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 thU.S. 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)*[13]

The legal test for probable cause, as pretext to a stop for an alleged speeding violation, simply requires comparison of the observed speed against the precedent determinations found in the ETS, i.e. the **85th percentile** based safety value: 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 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 value enforced in this case is an *INVENTED NUMERIC.* Therefore, the traffic stop in this case comes from a prostitution of authority[14] under VC § 22349 which violates the 4th Amendment protections guaranteed by the U.S. Constitution.

As to any argument that the wholesale violation of 4th Amendment protections from illegal seizure should continue in the interest of stare decisis, we 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 U.S. 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.[15]

[13] Whren vs United States, 517 U.S. 806, (1996)
[14] *Mincey* v. *Arizona*, 437 U. S. 385, 393 (1978) ("[T]he mere fact that law enforcement may be made more efficient can never by itself justify disregard of the Fourth Amendment").
[15] Arizona v Gant, 556 U.S. (2009)

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.[16] Whereas Federal Regulations require an R2-1 be based on safety, California's 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. Both are illegal and unconstitutional.

The police practice of illegal seizures based on arbitrary and capricious *invented numerics* is not easily remedied. Attempts to limit the practice, such as California's anti-speed trap laws, have not reduced the number of illegal seizures. And dilution of California's anti-speed trap protections continues (sic). Comes now the Appellant, who registers a formal objection to his illegal seizure based on an *invented numeric,* invoking the 4th Amendment protection against such a practice. And that justice was expressly denied by this unlawful practice.

POINTS AND AUTHORITIES

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

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

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

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

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

[16] According to the FHWA, only 1 in 10 speed limit signs have greater than 50% compliance.

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

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

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

> Article 1:
>
> Section 8. The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States;
> (6) To establish post offices and post roads;

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

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

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

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

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

> 2003 MUTCD: (Standards are in Bold, they are a shall)
>
> **Introduction**
> **Standard: Traffic control devices shall be defined as all signs, signals, markings, and other devices used to regulate, warn, or guide traffic, placed on, over, or adjacent to a street, highway, pedestrian facility, or bikeway by authority of a public agency having jurisdiction.**
>
> **The Manual on Uniform Traffic Control Devices (MUTCD) is incorporated by reference in 23 Code of Federal Regulations (CFR), Part 655, Subpart F and shall be recognized as the national standard for all traffic control devices installed on any street, highway, or bicycle trail open to public travel in accordance with 23 U.S.C. 109(d) and 402(a). The policies and procedures of the Federal Highway Administration (FHWA) to obtain basic uniformity of traffic control devices shall be as described in 23 CFR 655, Subpart F.**
>
> Support: The need for uniform standards was recognized long ago. The American Association of State Highway Officials (AASHO), now known as the American Association of State Highway and Transportation Officials (AASHTO), published a manual for rural highways in 1927, and the National Conference on Street and Highway Safety (NCSHS) published a manual for urban streets in 1930. In the early years, the necessity for unification of the standards applicable to the different classes of road and street systems was obvious. To meet this need, a joint committee of AASHO and NCSHS developed and published the original edition of this Manual on Uniform Traffic Control Devices (MUTCD) in 1935. That committee, now called the National Committee on Uniform Traffic Control Devices (NCUTCD), though changed from time to time in name, organization, and personnel, has been in continuous existence and has contributed to periodic revisions of this Manual. The

FHWA has administered the MUTCD since the 1971 edition. The FHWA and its predecessor organizations have participated in the development and publishing of the previous editions. There were eight previous editions of the MUTCD, and several of those editions were revised one or more times. Table I-1 traces the evolution of the MUTCD, including the two manuals developed by AASHO and NCSHS.

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

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

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

2003 MUTCD: Introduction
Standard: When used in this Manual, the text headings shall be defined as follows:

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

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

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

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

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

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

c) In 1988, this Act required all practices, applications and expectations to be based in fact, and to be uniformly applied. Here is the Clause that caused all devices hence to conform citing both the Highway Safety Act of 1966 and the Uniform Vehicle Code (UVC).

1988 MUTCD: Part 1, General Provision
1A-3 Responsibility for Traffic Control Devices
The responsibility for the design, placement, operation and maintenance of traffic control devices rests with the governmental body or official having jurisdiction. In virtually all States, traffic control devices placed and maintained by State and local officials are required by statute to conform to a State Manual, which shall be in substantial conformance with this Manual. Many Federal agencies have regulations requiring standards in conformance with the Manual for their control device applications.

The Uniform Vehicle Code has the following provision in Section 15-104 for the adoption of a uniform Manual:

"The (State Highway Agency) shall adopt a manual and specification for a uniform system of traffic-control devices consistent with the provisions of this act for use upon highways with this State. Such uniform system shall correlate with and so far as possible conform to the system set forth in the most recent edition of the Manual on Uniform Traffic Control Devices for Streets and Highways, and other standards issued or endorsed by the Federal Highway Administrator."

Under authority granted by Congress in 1966, the Secretary of Transportation has decreed that traffic control devices on all-streets and highways in each State shall be in substantial conformance with standards issued or endorsed by the Federal Highway Administrator.

Prior to 1988 federal practice and expectations mandates only applied during construction of federally funded projects, and when completed it was turned over to the states for maintenance and operation. With this 1988 change all practices shall be in substantial conformance on public and private roadways open to the public. Irrespective of how an individual state or territory accomplished it, all jurisdictions "shall" comply within two years and bring all nonconforming devices into conformity, U.S. 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.

Substantial conformance to Uniform Vehicle Code also became the Law of the Land because without, The Constitution's and Congress' Uniformity mandate of application and expectation was unattainable, therefore any act or regulation that would purport to authorize otherwise was in clear conflict with equal protect et al and these mandates, are void.

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

1988 MUTCD

Part 1. GENERAL PROVISIONS

lA-1 Purpose of Traffic Control Devices

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

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

1A-2 Requirements of Traffic Control Devices

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

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

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

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

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

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

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

e) Incredible as it may be, the California Legislature has yet to make the connection that the Law of the Land as referenced in VC § 21400 is superior in this entire field, or its federal MUTCD et al applies to them; to wit, all new or prior acts including VC § 22349 et al are subordinate regarding the domain of laws affecting interstate commerce, as well as its police powers or statues affecting roadways, pedestrian facilities or bikeways open to the public.

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

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

> II
>
> The pre-emption doctrine, which has its roots in the Supremacy Clause, U.S. Const., Art. VI, cl. 2, requires U.S. to examine congressional intent. Pre-emption may be either [458 U.S. 141, 153] express or implied, and "is compelled whether Congress' command is explicitly stated in the statute's language or implicitly contained in its structure and purpose." Jones v. Rath Packing Co., 430 U.S. 519, 525 (1977). Absent explicit pre-emptive language, Congress' intent to supersede state law altogether may be inferred because "[t]he scheme of federal regulation may be so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it," because "the Act of Congress may touch a field in which the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject," or because "the object sought to be obtained by the federal law and the character of obligations imposed by it may reveal the same purpose." Rice v. Santa Fe Elevator Corp., 331 U.S. 218, 230 (1947).
>
> Even where Congress has not completely displaced state regulation in a specific area, state law is nullified to the extent that it actually conflicts with federal law. Such a conflict arises when "compliance with both federal and state regulations is a physical impossibility," Florida Lime & Avocado Growers, Inc. v. Paul, 373 U.S. 132, 142 -143 (1963), or when state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress," Hines v. Davidowitz, 312 U.S. 52, 67 (1941). See also Jones v. Rath Packing Co., 430 U.S., at 526 ; Bethlehem Steel Co. v. New York Labor Relations Bd., 330 U.S. 767, 773 (1947). These principles are not inapplicable here simply because real property law is a matter of special concern to the States: "The relative importance to the State of its own law is not material when there is a conflict with a valid federal law, for the Framers of our Constitution provided that the federal law must prevail." Free v. Bland, 369 U.S. 663, 666 (1962); see also Ridgway v. Ridgway, 454 U.S. 46, 54 -55 (1981).

> Federal regulations have no less pre-emptive effect than federal statutes. Where Congress has directed an administrator to exercise his discretion, his judgments are subject to [458 U.S. 141, 154] judicial review only to determine whether he has exceeded his statutory authority or acted arbitrarily. United States v. Shimer, 367 U.S. 374, 381 -382 (1961). When the administrator promulgates regulations intended to pre-empt state law, the court's inquiry is similarly limited:
>
> "If [h]is choice represents a reasonable accommodation of conflicting policies that were committed to the agency's care by the statute, we should not disturb it unless it appears from the statute or its legislative history that the accommodation is not one that Congress would have sanctioned." Id., at 383. See also Blum v. Bacon, 457 U.S. 132, 145 -146 (1982); Ridgway v. Ridgway, 454 U.S., at 57 (regulations must not be "unreasonable, unauthorized, or inconsistent with" the underlying statute); Free v. Bland, 369 U.S., at 668 .
>
> A pre-emptive regulation's force does not depend on express congressional authorization to displace state law; moreover, whether the administrator failed to exercise an option to promulgate regulations which did not disturb state law is not dispositive. See United States v. Shimer, 367 U.S., at 381 - 383. Thus, the Court of Appeal's narrow focus on Congress' intent to supersede state law was misdirected.

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

> /9/ Petitioner cites two sources in support of its contention that regulation of highways is a "traditional State function." Its reliance on both is misplaced. Far from recognizing an exclusive state power over maximum rates of speed, the statute petitioner cites -- 23 U.S.C. 145 -- simply expresses Congress's decision to permit the States to determine which highway projects shall be federally funded. The statute thus emphasizes precisely the cooperative federal and state control over the highways on which the court of appeals relied; it is entirely consistent with Congress's determination in 23 U.S.C. 154 that federal funding would be available to a State only if it conformed to the 55/65 mph speed limits. See Pet. 11-12. Nor do the cases cited by petitioner (Pet. 12-13) that have adverted to the power of the States to regulate their own highways support petitioner's contention that States have exclusive constitutional power over their highways. Both cases cited by petitioner, Bibb v. Navajo Freight Lines, Inc., 359 U.S. 520, 523 (1959), and Raymond Motor Transp., Inc. v. Rice, 434 U.S. 429, 444 (1978), struck down state highway regulations under the dormant Commerce Clause. They thus necessarily establish that there is a

> substantial federal interest – exercisable by Congress if it chooses to do so—in regulation of the nation's highways. See Pet. App. 24a.

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

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

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

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

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

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

u·ni·form

adj

1. always the same in quality, degree, character, or manner
2. conforming to one standard or rule
3. being the same as another or others

vt

2. to make something homogeneous, unvarying, or consistent

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

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

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

> Sec. 630.112 Agreement provisions
> (a) The State, through its transportation department, accepts and agrees to comply with the applicable terms and conditions set forth in title 23,

> U.S.C., the regulations issued pursuant thereto, the policies and procedures promulgated by the FHWA relative to the designated project covered by the agreement, and all other applicable Federal laws and regulations.

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

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

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

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

II. THE RULE OF LAW [THE U.S. CONSTITUTION, ACTS OF CONGRESS, COMMERCE, SUPREMACY AND EQUAL PROTECTION CLAUSE(S) ET AL OR THE CONSTITUTIONALITY OF A SUBSERVIENT STATE STATUE, OR PRACTICE.

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

1. It's an inalienable right per the 5th, 6th and 14th Amendments to the U.S. Constitution et al to cross-examine all witness, including the foundation of the law the prosecution is based on. Absent a study as in this instance there is no foundation, if there had been a study done, then the engineer and foundations of the study could be crossed examined as to conformance. Just because an act has the form of a law, doesn't make it law. To be a law, an enactment must be constitutional, i.e., within the actual de jure authority of the Legislature. California's trial courts of record have the scales of justice fixed at one end; and due process is unattainable. Our courts are an independent adjudicator of "all" fact, between the state and a defendant. The unanimity of the Constitution on the right to due process is unambiguous;

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

2. The 14th Amendment states it best "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any

person within its jurisdiction the equal protection of the laws." Whereas in fact, California's statutes and practices include a labyrinth of arbitrary, capricious and nonconforming unilateral acts that have the form of law, that are not within the de jure authority of the Legislature, including if due process applies, or not.

How can due process be served when defendants are denied Constitutional remedies, 5th, 6th and 14th amendments rights, exculpatory cites from Law of the Land vis-à-vis Acts of Congress, the Commerce and Supremacy Clause et al and compelling evidence that California had not complied with the conditions precedent of governing law in the implementation of its police powers, practices or acts that they shall be predicated on; or separately, unconstitutional acts per the state's Constitution?

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

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

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

> **Nebraska Department of Road, NDOR**
> **University of Nebraska Lincoln,**
> **Department of Civil Engineering College of Engineering and Technology:**
> **Research Report No. TRP-02-26-92**
> **Evaluation of Lower Speed Limits on Urban Highways:**
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> *"SAFETY EFFECTS*
> *The results of the analysis of the accident experience in speed zones indicate that zones with posted speed limits equal to the reasonable speed limits proposed by the NDOT method of speed zoning are safer than zones posted*

with limits that are 5 and 10 mph below the reasonable speed limits. Speed zones with speed limits 5 mph below the reasonable speed limits were found to have 5 percent more accidents than zones with reasonable speed limits. Speed zones with speed limits 10 mph below the reasonable speed limits were found to have 10 percent more accidents than zones with reasonable speed limits. Therefore, the speed zones on state highways in urban areas should be posted with reasonable speed limits proposed by NDOR method in order to minimize the numbers of accidents in the speed zones. Speed limits lower than the reasonable speed limits should not be posted."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Chapter 8, California State Traffic Manual:

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

Chapter 8, California State Traffic Manual: (continued)

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

Washington State DOT website:

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

Primary Engineering Tenets and Rationales in regards to Speed Limits:

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

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

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

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

1. Driving behavior is an extension of our social attitude, and the majority of drivers respond in a safe and reasonable manner, as demonstrated by their good driving records.
2. The careful and competent actions of a reasonable person should be considered legal.
3. Laws are established for the protection of the public and the regulation of unreasonable behavior of an individual.
4. Laws cannot be effectively enforced without the consent and voluntary compliance of the public majority."

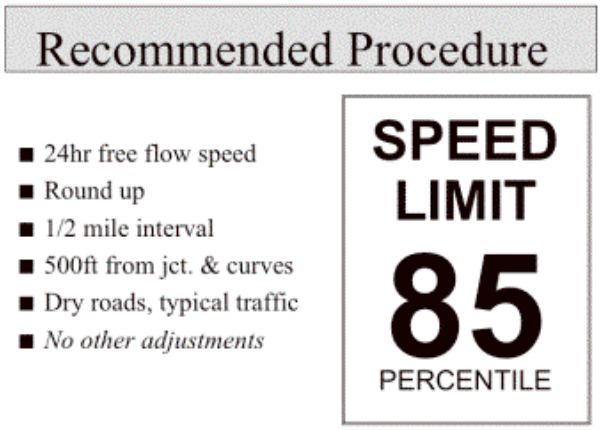
"Our profession also recognizes that an emotionally aroused public will reject these fundamentals and will rely on more comfortable and widely held misconceptions, such as:

1. Speed limit signs will slow the speed of traffic.
2. Speed limit signs will decrease accidents and increase safety.
3. Raising a posted speed limit will cause an increase in the speed of traffic.

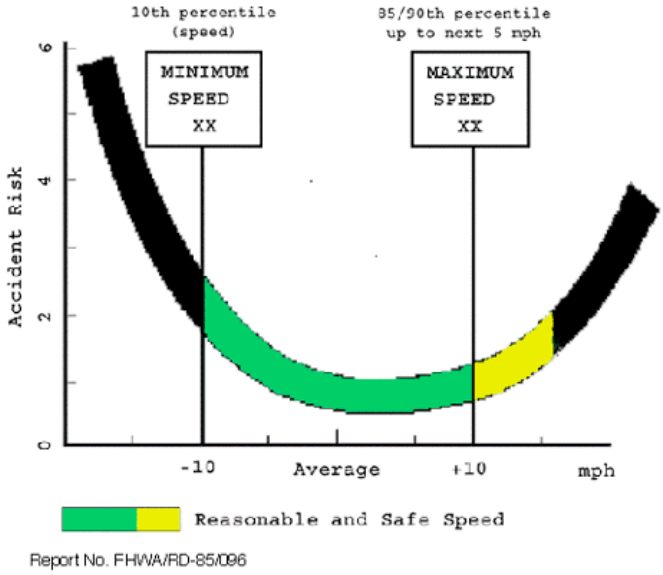
4. Any posted speed limit must be safer than an unposted speed limit, regardless of the prevailing traffic and roadway conditions.

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

Here is a slide from FHWA PowerPoint presentation by Davey Warren – 1996, Speed Limit Workshop offered federal funds to increase speed limits to show that, in fact, properly posted limits actually can reduce accident rates.



The FHWA chart below clearly illustrates that speeds in excess of the posted limits are known to be safe per the FHWA's own documents.



CONCLUSION

Regardless of the prescribed remedies within the law to compel compliance by the State of California or the FHWA, if either the federal or state authorities violated the tenets of the Law of the Land in enacting or enforcing a statute, regulation or in the exercise of its police powers et al, these acts does not prevent the defendant from asserting his due process rights and protection under the law in state and or federal court.

Unconstitutional Acts are not Law. We must distinguish form and substance. Not just anything passed by legislators that have the form of a law, is in fact, a law. To be a law, an enactment must be constitutional, i.e., within the actual de jure authority of the Legislature. This is res judicata. "All laws which are repugnant to the Constitution are null and void." Marbury v Madison, 5 U.S. (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 U.S. 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 U.S. 425, 442; 6 S Ct 1121; 30 L Ed 178 (1886).

Clearly there is no debate that in addition to the U.S. Constitution's delegation of the nation's vital transportation infrastructure (Post Roads) regulation to Congress, under the Commerce Clause et al Congress intent in the Highway Safety Act of 1966 et al was to preempt the regulation of all traffic control devices to achieve "roadway safety" and "uniformity" within the United States and its territories; which therein, includes the criteria to first determine if a device (speed limit sign: R2-1) or special "absolute" condition is warranted; if so, then the condition precedents to determine the safety value or conditions to be posted; and codified into local law.

In this instance, the purported 55 mph safety value is illegally posted, absent prescribed condition precedent of the governing federal and state safety laws to determine it et al, therefore the citation is a product of the State of California's own wrongdoing under both state and federal law and is unenforceable as a matter of law.

The failure of our elected and appointed leaders and or responsible agencies to comply with the governing laws in its promulgation of VC § 22349 leaves this Court with just one option. Whereas, unless the State of California can produce an engineering study as prescribed by

law whose finding specifically supports the Legislatures decreed 55 mph number posted on this particular section of roadway, and separately the shall not exceed absolute special condition, any prosecution would violate equal protection and due process because it would be founded on the enforcement of an illegal traffic control device and practice, which is a result of the State of California's own wrong doing, void. The case must be dismissed with prejudice.

DATED:_____ _____

THOMAS RANDAL COOPER