

Was LaHood's Decree Banning Driving and Texting Illegal?



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We are still a nation of laws, which seems to be a concept lost on the USDOT. LaHood's texting ban decree lacked the statutory requirements of a federal regulation therefore it was illegal. While the intention of the law may have been noble, at the end of the day he is a political appointee and as a member of the Executive Branch his actions, as with the entire regulatory authority of the USDOT, is governed by a statutory process, and a decree by LaHood doesn't change that. He is an administrator and his opinion or decree does not make law.

Included in this texting ban is an in any manner prohibition, even when it is safe to do so; reading the text of a traffic update or routing communication or when stopped in traffic.

To be law here are some of the basic requirements that were bypassed:

- 1. It must be vetted to ferret out its true effect in order to expose potential unintended consequences regarding safety, commerce and to assure the exercise of police powers thereof is constitutional;**
- 2. The regulation must be narrowly related to the action taken and have an expectation of accomplishing its desired effect;**
- 3. The prescribed penalty must be reasonable;**
- 4. it must be published in the federal register for a public comment period;**
- 5. When its finally promulgated after the public input has been considered; and**
- 6. it cannot 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; or**
 - (D) without observance of procedure required by law;**

Not a single aspect of this LaHood decree can survive such a tests, in particular "observing the procedures required by law". This non-compliance with our laws in the promulgation of federal regulations has become emblematic of the USDOT actions, including allowing others under the color of federal law to deny due process.

Motorists' Rights Matter!

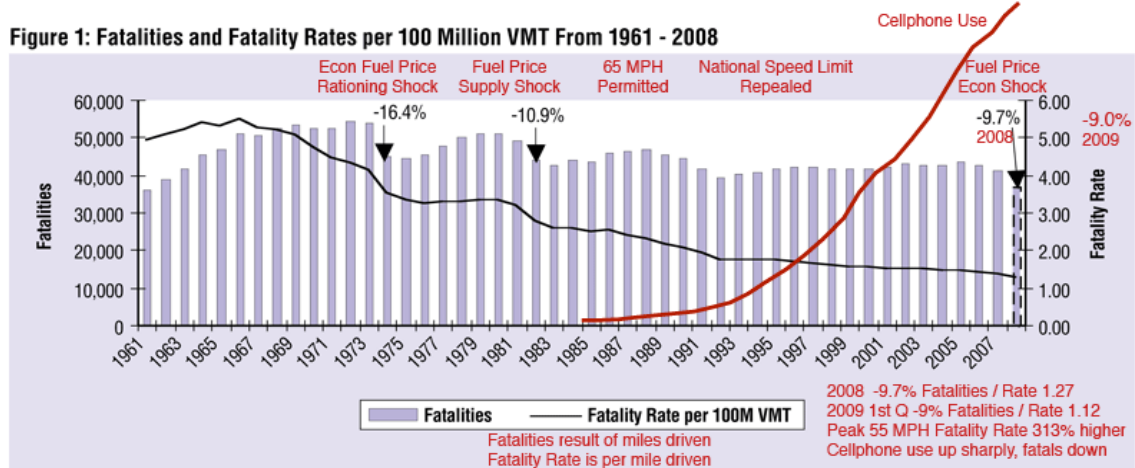
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The USDOT and the ilk of the GHSA, NSC, IACP, and IIHS et al as a matter of practice now manipulate or invent data and research to support their mutual interest agendas, thereby misleading the Nation and Congress too. The Distracted Driving Summit was a Summit of Special Interest; the only interest not represented there was the ‘We the People’. None of the related campaign PR by the USDOT et al is true despite the fact that their statements have been widely reported.

Texting and driving inferred by the data “causes the following” – NOT TRUE.

National Highway Traffic Safety Administration (NHTSA) research shows that nearly 6,000 people died in 2008 in crashes involving a distracted or inattentive driver, and more than half a million were injured. On any given day in 2008, more than 800,000 vehicles were driven by someone using a hand-held cell phone.

Here is a chart with cell phone use overlaid and onto the USDOT fatality statistics. While accidents do occur there is no statistically significant correlation between the use of mobile devices and a crisis in accidents, or is there in fact any meaningful accident rate increase; the evidence shows they have reduced trips and overall accident rates in the face of exponential use growth.



1961-1974: National Center for Health Statistics, HEW, and State Accident Summaries (Adjusted to 30-Day Traffic Deaths by NHTSA); FARS 1975-2007 (Final), 2008 Annual Report File (ARF); Vehicle Miles Traveled (VMT): Federal Highway Administration. <http://www-nrd.nhtsa.dot.gov/Pubs/811172.pdf> source: www.bhspl.org

USDOT invented hazard theme number two – NOT TRUE:

Drivers who text while driving are more than 20 times more likely to get in an accident than non-distracted drivers.

What counts is the actual affect interactive in vehicle telemetry has had on overall safety. Vehicle telemetry, satellites and ever advancing smart communication and driver safety systems are improving our commercial fleet efficiencies and safety, BOTH. Keeping trucks on dedicated routes, eliminating trips and smart telemetry in some studies have shown to reduce travel times 4 days a year, and actual field results have shown vehicles so equipped have better safety records.

LaHood’s actions here were not properly vetted, this was pure POLITICS; look what we are doing for the People! A DECREE from on high, without forethought, subject matter expertise or an understanding of its consequences, or apparently the nature of our governing laws in this field.

These presumptive laws in our view are unconstitutional because they are designed to advance police power abuse, which has been a hallmark of USDOT policies for more than a decade now; the systematic removal of due process vis-à-vis USDOT regulatory oversight authorities.

“ARBITRARY” LAWS ARE UNCONSTITUTIONAL

The government turns every contingency into an excuse for enhancing power in itself. -- John Adams

In a “We the People” government any Decree from On High from a political appointee is of grave concern, especially when it purports to have the force of law for an entire nation.

A traffic stop must have probable cause of an actual unsafe act because it constitutes a seizure under the 4th Amendment. Due Process requires that such laws be “narrowly tailored”, defined as, “being only as broad as is reasonably necessary to promote a substantial government interest that would be achieved less effectively without the restriction; no broader than absolutely necessary.”

This decree is popular and it makes sense on the surface; but let’s not forget this is the opening salvo in establishing federal police authority over mothers talking to their children, drinking water, changing the station on a radio or any other human activity while driving as a probable cause gateway for unfettered per se cause for traffic stops; fines, fees and roadside searches etc.

Human beings will generally exercise power when they can get it; and they will exercise it most undoubtedly, in popular governments, under pretense of public safety. – Daniel Webster

Before we adopt laws that have such far reaching implications maybe we should study them looking forward, in context, while assuring Constitutional protections, fact based beyond a reasonable doubt probable cause, reasonable fines and due process for starters.

If a commercial driver receives a citation, it’s unlawful and LaHood should rescind his illegal act immediately.

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