

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Richard Glen Colter

DEFENDANTS

Ray LaHood, Brian Sandoval, State of Nevada;
United States of America(b) County of Residence of First Listed Plaintiff Alameda
(EXCEPT IN U.S. PLAINTIFF CASES)County of Residence of First Listed Washington
(IN U.S. PLAINTIFF CASES ONLY)NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for and One Box for Defendant)

- Citizen of This State ☐ 1 ☒ 1 DEF Incorporated or Principal Place of Business In This State ☐ 4 ☐ 4 PTF
- Citizen of Another State ☒ 2 ☐ 2 DEF Incorporated and Principal of Business In Another State ☐ 5 ☐ 5 PTF
- Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 DEF Foreign Nation ☐ 6 ☐ 6 PTF

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input checked="" type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input checked="" type="checkbox"/> 950 Constitutionality of State Statutes <input checked="" type="checkbox"/> 890 Other Statutory Actions
			LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

V. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

US Constitution and P.L. 89-564, 80 Stat. 731 - There are several conflicts of law cited in complaint.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION DEMAND UNDER F.R.C.P. 23

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY (See instructions):

JUDGE _____

DOCKET
NUMBER _____

DATE

April 20, 2011

SIGNATURE OF ATTORNEY OF RECORD _____

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

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

UNITED STATES DISTRICT COURT
District of Nevada - Reno

RICHARD GLEN COLTER,
Petitioner/Plaintiff;

v.

Ray LaHood; Brian Sandoval; State of Nevada;
United States of America

Respondents/Defendants

) **Federal Complaint:**

)

) **Cause of Action #1: Writ of Mandamus**

) **– Petition for Removal: 28 U.S.C. 1331,**

) **1332; 1367(a), 1441(a), 1443, 1355(a),**

) **2201 & FRCP 57;**

) **Cause of Action #2: Violation of Civil**

) **Rights under Color of State Law (1983);**

) **Cause of Action #3: Constitutionality**

) **Challenge on Nevada NRS 484.361 et al;**

) **Cause of Action #4: Writ of Mandamus**

) **- Demand for Specific Performance: 5**

) **U.S.C. § 706**

) **Cause of Action #5: (Under Seal of**

) **Court)**

)

) **Request for Injunctive and Declaratory**

) **Relief;**

)

)

JURISDICTION

1. Petitioner swears and affirms to be a natural born citizen of the United States of America, and entitled to the rights, privileges, and guarantees afforded all citizens by the laws of the United States of America.
2. The Respondent's "State of Nevada" and "Governor Sandoval" have no *jurisdiction* or *standing* in this case. Petitioner admits jurisdiction for this matter only to THIS Federal District Court, as per the following Points and Authorities:
3. Pursuant to 28 U.S.C. 1332, this court has original and exclusive jurisdiction because the Petitioner and Respondent's reside in different states (diversity of citizenship), and one such Respondent is a Federal Official (Ray LaHood).
4. This Federal Court has original jurisdiction under 28 USC 1355(a):

(a) The district courts shall have original jurisdiction, exclusive of the courts of the States, of any action or proceeding for the recovery or enforcement of any fine, penalty, or forfeiture, pecuniary or otherwise, incurred under any Act of Congress, except matters within the jurisdiction of the Court of International Trade under section 1582 of this title.

Because the fine incurred (sic) was under an Act of Congress, i.e. the Highway safety Act of 1966¹, 28 USC 1355(a) provides this Federal District Court with original jurisdiction.

5. Exclusive Federal Court jurisdiction exists under the Pre-Emption Doctrine, given that Congress occupied this entire field when they invoked the following plenary powers: US Constitution Article 1 Section 8 (1) tax (spending), national defense and general welfare; (3) commerce; (7) ... post roads. (transportation); and (18) ... necessary and proper, which are powers not enumerated to the States in the 10th Amendment; such authority exercised and enacted as the Highway Safety Act of 1966². USDOT Secretary Ray LaHood is the

¹ P.L. 89-564, 80 Stat. 731

² P.L. 89-564, 80 Stat. 731

1 Administrator of the Highway Safety Act of 1966. Because this is a wholly Federal field
2 under the Pre-Emption Doctrine, Petitioner demands review of Nevada's conduct as to
3 several conflicts between Nevada law and Federal Law (see paragraph #96 - #100); and
4 conflicts between the US Constitution and both Nevada Law and Federal Law (see
5 paragraph #102 - #104). Without question, this US District Court has both *original and*
6 *exclusive* jurisdiction over this matter.

7
8 6. This District Court has original jurisdiction for the Writ of Mandamus under authority of 5
9 U.S.C. § 706; and pursuant to 28 U.S.C. § 1331, this District Court must exercise its
10 original jurisdiction to compel said agencies to adopt standards that comply with the US
11 Constitution, The Highway Safety Act of 1966³, federal safety regulations, prescriptive
12 engineering standards and protocols, etc.

13
14 7. This Court has original jurisdiction wherefore Nevada State Statute NRS 484.361 {SIC
15 NRS 484B.600 (2011)} violates Petitioner's 1st, 4th, 5th, 6th, 8th, and 14th Amendment US
16 Constitutional Rights; and Petitioner states his claim to relief under said US Constitutional
17 Amendments, by demanding that NRS 484.361(1)(c) and 484.361(1)(d) be declared
18 *unconstitutional*.

19
20 8. This court has original jurisdiction under 28 U.S.C. section 1343(a)(3), given the charge of
21 US Constitutional Rights (civil rights) violations under the color of State and Federal Law.

22 9. Pursuant to this Court's jurisdiction to enforce Petitioners' rights under the US
23 Constitution, and pursuant to this Court's jurisdiction cited in foregoing points 1 - 8,
24 Petitioner claims that removal from the Esmeralda County Court to this Federal Court is
25 necessary and proper to preserve and protect said Federal jurisdiction: And uphold
26
27

28 ³ P.L. 89-564, 80 Stat. 731
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Petitioner's Constitutional rights under the US Constitution, while answering the many Federal questions of first impression to follow.

VENUE

10. Venue is proper under 18 U.S.C. section 1965(a) and 28 U.S.C. § 1391(b), as the violations occurred within the state of Nevada, and a primary respondent (Governor Brian Sandoval) works within 100 miles of Reno Nevada. **"Intra-District Assignment"** to the Reno Division is appropriate, because Respondent Governor Brian Sandoval's official domicile is geographically closest to Reno, Nevada.

PARTIES

11. Petitioner Richard Glen Colter is a natural born Citizen of the United States of America, born in Anderson, Indiana 8/16/1968; and is currently a private citizen of the state of California, living in the San Francisco area since 2004.
12. Defendant Ray LaHood (LaHood) is believed to be a resident of Washington D.C., and is the current Secretary of the US Department of Transportation. He is being sued personally, professionally as an Officer and Representative of the United States, and for specific performance in his official capacity.
13. Defendant Governor Brian Sandoval (Sandoval) is believed to be a resident of Nevada, and is the current Governor for the State of Nevada. He is being sued personally, as a Representative for the State of Nevada, and in his official capacity as Governor.
14. The 36th State of the Union, Nevada is sued for its unconstitutional law NRS 484.361.

STATEMENT OF FACTS

15. While engaged in an act of Interstate Commerce on November 22, 2010 at approximately 8:30 p.m., Petitioner was arrested by Nevada Highway Patrolman M. Biehl, for an alleged

1 safety violation, to wit: Nevada NRS 484.361. Officer M. Biehl cited Petitioner for a
2 violation of NRS 484.361(1)(c). Officer M. Biehl issued a citation to Petitioner based on
3 evidence acquired with a radar device, and Petitioner was released without bail.

4 16. Congress repealed the National Maximum Speed Limit (NMSL) in 1995 by way of The
5 National Highway System Designation Act of 1995⁴ (NHSDA), and this was signed into
6 law by President Bill Clinton on November 28, 1995. Thus, highway and interstate speed
7 limits were subject to extant Federal Law, i.e. MUTCD section 2B-10 (but also the US
8 Constitution, Congress' intent in context of the Highway Safety Act 19665, US 23,
9 Uniform Vehicle Code 11-801, the scientific precepts governing the field of traffic
10 engineering, etc.)

11
12 17. At no time did Nevada meet its responsibilities related to R2-1 safety devices affected by
13 the NHSDA, i.e. Nevada has never performed engineering surveys for its highways and
14 interstates in regards to the proper application and use of R2-1 safety devices.

15
16 18. Absent any authority given by Congress, Nevada has continued the enforcement of the
17 "repealed by Congress" fuel saving absolute enforcement thresholds by enacting Nevada
18 statutes 484.361(1)(c) and 484.361(1)(d); notwithstanding that invented statutory authority
19 for R2-1 safety devices (UVC § 11-802) was repealed by Congress in 1995.

20 21 **PETITIONER'S CLAIMS**

22 19. Petitioner claims that this is a case of first impression, as there are no cases on record that
23 have weighed and adjudicated the arguments presented herein. These arguments of first
24 impression are succinctly described in paragraphs #96 - #104, and more generally in the
25 causes of action that follow herein. Because these conflicts of Law have not been settled,
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28 ⁴ Pub.L. 104-59, 109 Stat. 568

29 ⁵ P.L. 89-564, 80 Stat. 731

1 Petitioner has suffered irreparable harm and injury, and Petitioner has no other remedy
2 available outside the bounds of this US District Court: Because the conflicts of Law
3 involve "diversity of citizenship", Federal Questions, a Federal Officer of the United
4 States, incongruities between the laws of the US Government and the State of Nevada, and
5 the US Constitutional rights of Petitioner. For these reasons, Petitioner brings this
6 complaint in good faith to settle these important conflicts of Law, to preserve his
7 Constitutional rights.
8

9 20. Petitioner claims that his 4th Amendment Constitutional right to privacy was violated by
10 Officer M. Biehl and the State of Nevada on November 22, 2010 at approximately 8:30
11 p.m., when Petitioner was arrested in the absence of probable cause:
12

13 The Fourth Amendment guarantees "[t]he right of the people to
14 be secure in their persons, houses, papers, and effects, against
15 unreasonable searches and seizures." Temporary detention of
16 individuals during the stop of an automobile by the police, even
17 if only for a brief period and for a limited purpose, constitutes a
18 "seizure" of "persons" within the meaning of this provision. See
19 *Delaware v. Prouse*, 440 U.S. 648, 653 (1979); *United States v.*
20 *Martinez Fuerte*, 428 U.S. 543, 556 (1976); *United States v.*
21 *Brignoni Ponce*, 422 U.S. 873, 878 (1975). An automobile stop
22 is thus subject to the constitutional imperative that it not be
23 "unreasonable" under the circumstances. As a general matter, the
24 decision to stop an automobile is reasonable where the police
25 have probable cause to believe that a traffic violation has
26 occurred. See *Prouse*, *supra*, at 659; *Pennsylvania v. Mimms*,
27 434 U.S. 106, 109 (1977) (*per curiam*)⁶
28

23 Petitioner claims that Respondent's substituted "probable cause" with an Artifice, and
24 now claims injunctive, declaratory, and removal relief under the 4th Amendment of the
25 US Constitution, by challenging the Constitutionality of the Nevada Vehicle Code that
26 was used against him, to wit: NRS 484.361 et al.
27

28 ⁶ Whren vs United States, 517 U.S. 806, (1996)
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21. Petitioner claims that the Pre-Emption Doctrine applies to this case:

"The Supremacy Clause of Art VI of the Constitution provides Congress with the power to pre-empt state law. Preemption occurs when Congress, in enacting a federal statute, expresses a clear intent to pre-empt state law, * * * when there is outright or actual conflict between federal and state law, * * * where compliance with both federal and state law is in effect physically impossible, * * * where there is implicit in federal law a barrier to state regulation, * * * where Congress has legislated comprehensively, thus occupying an entire field of regulation and leaving no room for the States to supplement federal law, * * * or where the state law stands as an obstacle to the accomplishment and execution of the full objectives of Congress."⁷

22. Petitioner claims that the applicability of the Pre-Emption Doctrine for R2-1 safety devices has already been decided by the 9th Circuit Federal District Court of Appeals in the case of Skinner vs. Nevada⁸:

/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

⁷ Louisiana Public Service Comm. v. FCC, 476 U.S. 355, 368-69, 106 S Ct 1890, 90 L Ed 2d 369 (1986)

⁸ NEVADA v. SKINNER 884 F.2d 445(1989)

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

23. Petitioner claims that the U.S. Department of Transportation (USDOT), in violation of its duties under 5 U.S.C. 706, is complicit to the violation of Petitioners' 4th Amendment rights: Because the USDOT has allowed each and every state to adopt unconstitutional standards for the use of R2-1 Federal safety devices, vehicle codes, and laws; which is clearly outside their administrative authority under the Highway Safety Act of 1966⁹, 5 USC 706, and the US Constitution itself. Petitioner claims removal is necessary and proper to address the foregoing, and seeks redress by Writ of Mandamus, both for REMOVAL and a 5 USC 706 cause of action to compel the USDOT to adopt constitutional standards.

24. Petitioner claims that his 1st, 4th, 5th, 6th, 8th, and 14th Amendment Constitutional rights have been and/or will be violated by Respondent's unconstitutional activities under NRS 484.361: Petitioner claims relief under said US Constitutional Amendments, 18 USC 1983, and other authorities as plead herein.

25. Because the use of R2-1 safety devices is subject to the Pre-Emption Doctrine, and because the USDOT and Nevada DOT have not adopted constitutional standards for R2-1 safety devices, Petitioner claims that Nevada does not have *standing* or *jurisdiction* to bring any prosecution for R2-1 safety devices under NRS 484.361: Petitioner claims Federal District Court review and intervention is required.

26. **Damages:** Petitioner claims irreparable damages, including lost wages, economic opportunity costs as a technical book writer, defense costs (travel, postage, copying, etc); and stands to suffer higher insurance rates, fines, and abridgement of his liberty to travel

⁹⁹ P.L. 89-564, 80 Stat. 731

freely (a 1st amendment right). Petitioner claims the asserted rights, damages, and penalties for this case exceed \$1,000, exclusive of costs.

27. Based on the foregoing, Petitioner claims entitlement to declaratory, injunctive, and REMOVAL relief under the 1st, 4th, 5th, 6th, 8th, and 14th Amendments of the US Constitution; AND, 28 U.S.C. 1331, 1367(a), 1441(a), 1443, 2201, 1355(a), and FRCP 57. And Petitioner is entitled to it, because this is an appropriate pleading in Federal Court.

PETITIONER'S COMPLAINT

28. Petitioner's "Notice of Intent to Remove" was timely served to Esmeralda County Officials in January 2011 pursuant to 28 USC 1446 "Judiciary and Judicial Procedure".

CAUSE OF ACTION #1: WRIT FOR REMOVAL

29. Petitioner asserts 28 U.S.C. § 1443 as lawful authority for this court to exercise its jurisdiction in this case as stated in Petitioner's original Notice of Removal.

30. Federal statutes should say what they mean, and mean what they say: 28 U.S.C. § 1443 (2004) clearly states:

§ 1443. Civil rights cases

Any of the following civil actions or criminal prosecutions, commenced in a State court may be removed by the defendant to the district court of the United States for the district and division embracing the place wherein it is pending:

(1) Against any person who is denied or cannot enforce in the courts of such State a right under any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction thereof;

(2) For any act under color of authority derived from any law providing for equal rights, or for refusing to do any act on the ground that it would be inconsistent with such law.

1 31. Petitioner claims that violations of his basic civil rights, as against his well established
2 Liberty Interests, are plainly actionable under 28 U.S.C. § 1443.

3 32. Petitioner relied upon numerous decisions of the Supreme Court of the United States¹⁰
4 which have explicitly and unambiguously classified Petitioner's rights at stake as
5 protected by the 4th Amendment (and 1st, 5th, 6th, 8th, 14th), as complained in the causes
6 of action to follow herein.

7 33. All citizens of the United States of America have the **same and equal right** to exercise 28
8 U.S.C. § 1443 and protect their "basic civil rights", or the law fails for a contrary result
9 that creates unequal classes of citizens in the exercise of "basic civil rights."

10 34. This court should afford Petitioner the equal protection of 28 U.S.C. § 1443 and retain its
11 original jurisdiction over basic federal questions of Liberty Interests, so that his basic civil
12 rights be upheld fair and square.

13 35. Petitioner further moves for declaratory relief pursuant to FRCP 57 and 28 U.S.C. § 2201
14 to remove the instant case from Esmeralda County Court, and establish the right of all
15 litigants to have the State of Nevada comply with Congress' Highway Safety Act of
16 1966¹¹ (sic traffic control, vehicle codes and laws), Federal Regulation 1988 MUTCD 2B-
17 10, Uniform Vehicle Code (UVC) 11-801 and 17-101(a)(b), the 4th – 5th – 6th – 8th – and
18 14th Amendments of the US Constitution and their progeny (see **Whren vs. US**), and the
19 incumbent field of science as it relates to traffic engineering: With all the attached basic
20 rights to due process, equal protection, freedom of expression, and right to privacy (etc)
21 thus afforded. Therefore, Federal Question Jurisdiction exists pursuant to 28 U.S.C. §
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28 ¹⁰ **Whren vs United States**: 517 U.S. 806, (1996)

29 ¹¹ P.L. 89-564, 80 Stat. 731

1331 and § 1367(a), with proper removal under 28 U.S.C. § 1441(a) and the Federal Declaratory Relief Act codified in 28 U.S.C. § 2201.

36. Removal of the instant case is necessary and proper, because this Federal District Court has already decided the applicability of the Pre-Emption Doctrine for issues related to the use of an R2-1 safety device in Nevada v. Skinner¹².

37. Because the Doctrine of Sovereign Authority, the 10th Amendment of the US Constitution, or any argument regarding State' Rights have been displaced by the Pre-Emption Doctrine¹³: The State of Nevada has neither *standing* nor *jurisdiction* for the case at bar (the alleged safety violation occurring on November 22, 2010).

38. Therefore, jurisdiction is incumbent upon this Federal District Court under 28 U.S.C. § 1331 et. Al., wherein this Federal Court must settle the conflicts of Law presented herein. Petitioner claims that this Federal Court will find in his favor on the conflicts of Law presented herein, and will declare NRS 484.361 and Federal Regulation 2003-2009 MUTCD 2B-13 et al *unconstitutional*. And where Constitutional rights violations are in progress, Petitioner claims his right to have THIS Federal Court order the REMOVAL and STAY of proceedings from Esmeralda County Court, to prevent those particular rights violations (emphasis).

CONCLUSION

39. Petitioner raises many Federal Questions of first impression in this complaint, and said Federal Questions support federal court jurisdiction under 28 U.S.C. § 1331, 1355(a),

¹² NEVADA v. SKINNER 884 F.2d 445(1989)

¹³ Louisiana Public Service Comm. v. FCC, 476 U.S. 355, 368-69, 106 S Ct 1890, 90 L Ed 2d 369 (1986)

1367(a), 1441(b), and 1443; and, independently, federal court declaratory relief under FRCP 57 and 28 U.S.C. § 2201 and 1332.

40. In view of the declaratory relief requested to address the substantial US Constitutional issues embodied in all causes of action appearing herein, and in consideration of the implicit Federal Questions for this case, removal from state court to federal court is necessary and proper; and jurisdiction in the federal court should be retained under 28 U.S.C. § 1331, 1332, 1355(a), 1441(b), 1443, and 2201.

GENERAL POINTS

41. Petitioner acknowledges that Respondents are protected by the Doctrine of Sovereign Immunity: However, sovereign immunity does not make NRS 484.361 Constitutional. Furthermore, this Federal District Court has already ruled that the *Doctrine of Pre-Emption*, especially for cases involving R2-1 safety devices, supersedes any argument of state' rights or sovereignty.
42. The *Artifice* described in this complaint appears as the numerical values of 70 and 75 under NRS 484.361(1)(c) and NRS 484.361(1)(d). Petitioner will prove at trial that these numerical values have no basis in safety, do not conform to Federal Safety Regulation MUTCD 2B-10, and serve no legitimate government interest.
43. **NRS 484.361(1)(c) and NRS 484.361(1)(d) have made the act of "safe driving" a criminal offence in the State of Nevada, punishable by: Abrogation and suspension of your constitutional rights, arrest, excessive fines, points on your license, and/or license suspension, and/or higher insurance rates, and/or incarceration!**

1 44. Petitioner will prove that Respondent's have exercised ***SUPER-CONSTITUTIONAL***
2 powers by their use of ***Artifices*** as a matter of exercising day-to-day police powers on
3 public roadways.

4 45. Respondents Sandoval and LaHood are complicit to the creation, maintenance,
5 enforcement, adjudication, and ***unconstitutional*** results of the ***Artifices***, i.e. the ***Artifices***
6 violate Due Process, both substantive and procedural; equal protection, privacy, and basic
7 liberties such as freedom of expression.
8

9 46. **When the Artifice is measured against the US Constitution, the Highway Safety Act,**
10 **UVC § 11-801 & 17-101(a)(b), 1988 MUTCD 2B-10, and the incumbent field of**
11 **science as it relates to engineering R2-1 safety devices: The Artifice fails every**
12 **probative legal test.**
13

14 **FACTUAL ALLEGATIONS**

15 47. **Factual Misrepresentation:** Whereas Respondent's pretend to be operating a legitimate
16 government safety program, they are making a grave misrepresentation, by substituting
17 the genuine safety value that must be posted on an R2-1 safety device with an arbitrary
18 and capricious ***Artifice*** randomly chosen to meet their subjective agenda.
19

20 48. **Arrest Warrants:** Since the repeal of the National Maximum Speed Limit in 1995,
21 Nevada has exercised ***super constitutional powers*** by issuing arrest warrants based on an
22 ***Artifice***. (It is important to note that prior to the National Maximum Speed Limit,
23 Nevada had no speed limit on its interstates and rural highways, i.e. Nevada did not have
24 a practice of posting and enforcing Artifices on R2-1 safety devices for its highways and
25 interstates).
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1 49. The *Artifice* created by Respondents violates all known engineering standards and
2 protocols.

3 50. The *Artifice* violates many aspects of superior federal law (Highway Safety Act of 1966),
4 such as the “uniformity” requirement - which requires that all *traffic control, vehicle*
5 *codes, and laws* be *substantially uniform* in their application, expectation, jurisprudence,
6 and exercise of police powers: Regardless of jurisdiction or state lines.

7 51. The *exercise of police powers* to enforce an *Artifice* is *unconstitutional* under the 1st, 4th,
8 5th, 6th, 8th, and 14th Amendments.

9 52. Whereas an *Artifice* is elsewhere specifically prohibited in Nevada under NRS § 484.369
10 and NRS § 484.781, the Nevada legislature chose to deny due process on interstates and
11 highways, by denying the protections of NRS § 484.361(1)(2) to motorists by their
12 implementation of an *Artifice* promulgated as NRS 484.361(3)(4) (circa 1995) et al.
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15 **Prayer for Relief**
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17 Petitioner has no adequate and sufficient post-deprivation remedy available at law with
18 which to address the wrongs alleged herein, and will continue to suffer irreparable injury
19 from the *unconstitutional* conduct of Respondents, unless he is granted equitable relief
20 prayed for herein.
21

22 WHEREFORE, Petitioner requests judgment against Respondents, and each of them for joint
23 and several liability, for:
24

- 25 1. Compensatory and punitive damages as proven at trial; to be paid in U.S. Dollars.
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2. Pursuant to 42 U.S.C. section 1988, Plaintiff is entitled to a reasonable allowance for attorney fees as part of his costs if applicable, for any fees incurred for advisory counsel.
3. Costs of suit; and
4. That Respondents clear Petitioner' driving record; and
5. That Respondents be enjoined from any further activities concerning Petitioner' driving record; and
6. That Respondents be enjoined from any further activities related to their participation in the *Artifice* alleged herein; including the enforcement and adjudication of the *Artifice* under NRS § 484.361(1)(c)(d), and related statutes containing *Artifices*, for the instant case and all others. And,
7. That this matter be REMOVED from Esmeralda County Court to Federal District Court; and,
8. Such other and further relief as the court deems just and proper.

Cause of Action #2: Civil Rights Violations

COUNT I: 1ST AMENDMENT – CONSPIRACY TO DEPRIVE FREEDOM OF EXPRESSION UNDER THE COLOR OF FEDERAL LAW:

53. Petitioner hereby reiterates, re-alleges, and fully incorporates by reference items 1 thru 52 as though fully set forth herein.
54. The 1st Amendment of the US Constitution is well established law. The 1st Amendment of the US Constitution guarantees the freedom of expression; and one mode of personal expression is in our location, which is determined by our travel activities. Travel is an inextricable part of expression and an inalienable right, as well is the right to petition an

abridgement of these rights, because one cannot freely express anything without freedom to travel.

55. Officer M. Biehl acted to enforce an Artifice against Petitioner, which caused an abridgement of Petitioner's freedom of expression by mandating that (potential) points be placed on his driver's license, possible license suspension, and cruel and unusual punishment including excessive fines and incarceration: All of which affect Petitioner's ability to travel i.e. his freedom of expression.

56. LaHood is complicit to the wrongful prosecution of Petitioner, by way of his failure to properly enforce the Highway Safety Act of 1966¹⁴, Federal Regulation MUTCD 2B-10, UVC § 11-801 & 17-101(a)(b), and other regulations and protocols affecting Nevada's proper use of R2-1 safety devices: Thus causing an abridgement of Petitioner's freedom of expression by mandating that (potential) points be placed on his driver's license, possible license suspension, and cruel and unusual punishment; all of which affect Petitioner's ability to travel i.e. his freedom of expression.

COUNT II: 4TH AMENDMENT – ARREST MADE IN THE ABSENCE OF PROBABLE CAUSE – ILLEGAL SEIZURE AND DEPRIVATION OF RIGHT TO PRIVACY:

57. Petitioner hereby reiterates, re-alleges, and fully incorporates by reference items 1 thru 56 as though fully set forth herein.

58. The 4th amendment is well established law, and states: "...no warrant shall issue, but on probable cause, supported by oath and affirmation".

59. A traffic stop constitutes an arrest, within the meaning of the 4th Amendment, as held by the U.S. Supreme Court decision of Whren vs. United States¹⁵.

¹⁴ P.L. 89-564, 80 Stat. 731

¹⁵ Whren vs United States, 517 U.S. 806, (1996)

60. Thus, a traffic stop for speeding requires probable cause, i.e. evidence that a crime was committed.

61. The legal test for establishing *probable cause* to arrest a motorist for a “speeding violation” turns on the documentation of a Licensed Traffic Engineer, substantial proof that the motorist is exceeding the safe speed range that has been properly posted in “good faith”, AND evidence that an unsafe act has taken place; thus requiring the following: 1) That the speed limit was determined necessary by a comprehensive engineering study, and was curative for an unsafe condition particular to the circumstances existing at the time of the arrest; 2) That the numerical value posted was established by sound engineering principles, applying nationally vetted standards by a Licensed Traffic Engineer, with adequate documentation for cross-examination; 3) That the motorist was exceeding the safe speed range for the section of roadway in question; 4) An unsafe act by the motorist collateral to speed per UVC § 11-801 {and subordinate state statutes such as NRS § 484.361(1)(a)(b)}.

62. NRS 484.361 substitutes the 4th Amendment requirement of a Warrant based on *probable cause*, with a Warrant based on the *Artifice* values in said statute, thereby circumventing the purchase of proper **Arrest Warrants** (emphasis).

63. LaHood was complicit to the unlawful substitution of the genuine safety value displayed on the R2-1 safety devices, with the *Artifices* appearing in NRS 484.361, by his failure to properly supervise and compel Nevada to use the proper standards i.e. Highway Safety Act¹⁶, 1988 MUTCD 2B-10, UVC § 11-801 & 17-101(a)(b), et.al. Therefore, LaHood is complicit to violation of Petitioner’ 4th Amendment rights etc.

¹⁶ P.L. 89-564, 80 Stat. 731

64. Because arrests made under NRS 484.361 are based solely on the *Artifices* appearing in said statute, i.e. “70 MPH” and “75 MPH”, all *arrests* made under NRS 484.361 are made by *Artifice*: It follows that if the *probable cause* for an arrest is based on an *Artifice*, then the *Warrant* for that arrest is also an *Artifice*.

65. Using an *Artifice* as an arrest Warrant constitutes a blatant violation of Petitioner’ 4th Amendment right to privacy, where “...no warrant shall issue, but on probable cause, supported by oath and affirmation”.

66. The 4th Amendment violations alleged herein against Officer Biehl, Governor Sandoval, and Secretary LaHood required them to act severally and individually to deny Petitioner’ 4th Amendment rights.

COUNT III: FIFTH & FOURTEENTH AMENDMENT – CONSPIRACY TO USE AN ARTIFICE FOR THE ILLEGAL SEIZURE OF PROPERTY WITHOUT DUE PROCESS OF LAW:

67. Petitioner hereby reiterates, re-alleges, and fully incorporates by reference items 1 thru 66 as though fully set forth herein.

68. The 5th Amendment is well established law, which mandates that no person “...be deprived of life, liberty, or property, without due process of law...”

69. The 14th Amendment is well established law, and also requires that every citizen receive due process of law: “nor shall any State deprive any person of life, liberty, or property, without due process of law”.

70. Where an *Artifice* is substituted in place of a genuine numerical value determined in the context of safety, engineering, and statistical analysis, there can be no due process of law.

1 71. Officer M. Biehl, Governor Sandoval, and Secretary LaHood acted severally, individually,
2 and jointly to use an *Artifice* for the explicit purpose of denying due process of law to
3 Petitioner.

4 **COUNT IV: 6TH AMENDMENT – CONSPIRACY TO USE AN ARTIFICE FOR THE**
5 **ILLEGAL SEIZURE OF PROPERTY WITHOUT OPPORTUNITY TO CONFRONT**
6 **THE ACCUSER:**

7 72. Petitioner hereby reiterates, re-alleges, and fully incorporates by reference items 1 thru 71
8 as though fully set forth herein.

9 73. The 6th Amendment is well established law, and mandates that any accused citizen has the
10 right to be "...confronted with the witnesses against him...". For a violation of an R2-1
11 safety device (speed limit), the accuser would be the traffic engineer who set the speed
12 limit, and the traffic officer who observed a safety violation.

13 74. NRS 484.361 substitutes the genuine safety value determined by a Licensed Traffic
14 Engineer, with an *Artifice*, thereby setting in motion a cascade of constitutional violations
15 which includes depriving Petitioner of his right to confront his accuser i.e. the Licensed
16 Traffic Engineer who determined the "safe speed range" and "speed limit".

17 75. Governor Sandoval and Secretary LaHood are ultimately responsible for the *Artifice* used
18 to arrest Petitioner, where NRS 484.361 gives no opportunity to confront his accuser i.e.
19 the Licensed Traffic Engineer.

20 76. NRS 484.361 denies Petitioner' Constitutional right to present exculpatory evidence that
21 he was driving safely. And more importantly, it does not honor the legal doctrine of
22 "proof beyond a reasonable doubt", with all the incumbent rights to due process, equal
23 protection, and the right to confront his accuser.
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27 **COUNT V: 8TH AMENDMENT – CRUEL AND UNUSUAL PUNISHMENT BASED ON**
28 **AN ARTIFICE:**

1 77. Petitioner hereby reiterates, re-alleges, and fully incorporates by reference items 1 thru 76
2 as though fully set forth herein.

3 78. The penalty schedule under NRS 484.361 specifies that a combination of 6 months
4 incarceration and a \$1,000 fine can be imposed; whereas, Congress has prescribed a
5 penalty in this instance under UVC 17-101(a) "no incarceration"; and (b) "fine not to
6 exceed \$200". Petitioner asserts that the penalties prescribed under NRS 484.361,
7 whether exacted or not, constitute "cruel and unusual punishment" under the 8th
8 Amendment of the US Constitution; and Petitioner hereby claims entitlement to relief
9 under said authority.
10

11 **COUNT VI: 14TH AMENDMENT – CONSPIRACY TO USE AN ARTIFICE FOR THE**
12 **ILLEGAL SEIZURE OF PROPERTY WITHOUT EQUAL PROTECTION UNDER THE**
13 **LAW:**

14 79. Petitioner hereby reiterates, re-alleges, and fully incorporates by reference items 1 thru 78
15 as though fully set forth herein.

16 80. The 14th Amendment is well established law, and requires states to provide equal
17 protection to all citizens within its jurisdiction.
18

19 81. In the context of speed limits, equal protection requires uniformity, and that adjudication
20 standards be in compliance with superior federal laws such as the Highway Safety Act of
21 1966¹⁷, federal safety regulations such as the 1988 MUTCD 2B-10, UVC § 11-801, etc.

22 82. Contrary to the 14th Amendment requirement that laws be applied equally, and in
23 consideration that Nevada's 10th Amendment powers were displaced in this field pursuant
24 to the Pre-Emption Doctrine, Nevada's disparate treatment of motorists violates the Void
25 for Vagueness Doctrine, the 1st Amendment to Petition (rebut the alleged safety
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28 ¹⁷¹⁷ P.L. 89-564, 80 Stat. 731
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violation), 5th Amendment Due Process, 6th Amendment to confront their accuser, and the Equal Protection Clause of the 14th Amendment.

83. Governor Sandoval is now responsible for prosecutions under NRS 484.361 based on the *Artifice* placed on otherwise official appearing R2-1 safety devices throughout the state of Nevada, absent any regard to due process or the confrontation clause, thus depriving Petitioner of equal protection under the law.

84. In his failure to provide proper oversight, and ensure that each State' use of R2-1 safety devices was in compliance with the US Constitution, LaHood was complicit to the arrest of Petitioner: Based on a violation of the *Artifice*, absent any regard to due process or the confrontation clause, thereby depriving Petitioner of equal protection under the law.

85. Biehl, Sandoval, and LaHood are responsible for the use of an *Artifice*, absent any regard to Petitioner' 14th Amendment protections et al, thus violating Petitioner' 14th Amendment rights.

Prayer for Relief

Petitioner hereby reiterates his Prayer for Relief appearing above.

Cause of Action #3: Constitutional Challenge to – NRS § 484.361(1)(c)(d) et al

COUNT I: CONSTITUTIONAL CHALLENGE – NRS § 484.361(1)(C)(D)

86. Petitioner hereby reiterates, re-alleges, and fully incorporates by reference items 1 thru 85 as though fully set forth herein.

87. **Locus standi - Injury:** Petitioner has already suffered irreparable harm in lost wages, increased insurance rates, opportunity costs as a book writer, fines, court costs, travel expenses, and other related defense costs. Not to mention his right to privacy (4th), to

travel freely and petition (1st), to confront his accusers (6th), receive due process (5th & 14th), and equal protection under the law (14th). Because Petitioner must continue to travel, it is guaranteed that additional injuries will be imposed, including license suspension/revocation in addition to all the aforementioned injuries.

88. **Locus Standi - Causation:** Respondents charged and intend to convict Petitioner solely on the basis of – NRS § 484.361(1)(c)(d); so it is unquestionable that NRS § 484.361(1)(c)(d), was the direct cause of Petitioner injuries.

89. **Locus Standi - Redressability:** A favorable Court decision will allow Petitioner to return to his vocation of book writing, and prevent his suffering additional constitutional violations as well as economic harm.

90. NRS § 484.361(1)(c)(d), has companion laws that operate in the same manner i.e. as an *Artifice*. ON THE BASIS OF redressability, Petitioner has *standing* to challenge the constitutionality of the companion Nevada Statutes, even absent his conviction under those particular codes.

91. NRS § 484.361(1)(c)(d), is unconstitutional on its face because it violates the constitutional protections guaranteed under the 1st, 4th, 5th, 6th, 8th, and 14th amendments, for the reasons complained of herein.

92. The Federal Courts are the “Guardians of the US Constitution”, and the Federal District Court of Reno has a duty to ensure that all government employees who are engaged in activities that affect interstate commerce are in compliance with the US Constitution, the Highway Safety Act¹⁸, federal regulations, UVC § 11-801/17-101(a)(b), etc; and this court has a duty to adjudicate in matters where violations thereof occur.

¹⁸ P.L. 89-564, 80 Stat. 731

Prayer for Relief

93. Petitioner requests this Court to declare NRS § 484.361[3][4] {SIC NRS 484B.600(1)(c)(d) (2011)} et al *unconstitutional*; and

94. To enjoin the State of Nevada from any further enforcement under NRS § 484.361(1)(c)(d); and

1. To command the USDOT to end the *anarchic* use of R2-1 Federal Safety Devices, so that R2-1 devices are only used for safety, and said use does not violate rights secured and protected by the US Constitution, Federal Laws, Federal Safety Regulations, Congress' intent with the Highway Safety Act, UVC § 11-801 {or conforming state statutes such as NRS 484.361(1)(a)(b)}, nationally vetted engineering practices, etc.; thus, requiring the following:
2. Performance of an engineering study on all highways and interstates where an R2-1 safety device is under consideration, in accordance with the extant regulations promulgated as the 1988 MUTCD 2B-10 (and the conforming NRS § 484.369 and NRS § 484.781), to determine if a speed limit is WARRANTED for each segment of highway and interstate throughout the jurisdiction of the USDOT. AND,
3. IF a speed limit is determined to be WARRANTED in accordance with the prerequisite engineering study, Petitioner asks this court to command the USDOT and the State of Nevada to comply with extant Federal Safety Regulation 1988 MUTCD 2B-10 and the Highway Safety Act of 1966, which requires: A) That R2-1 safety devices be used on public roads only for the purpose of safety; B) That R2-1 safety devices have a factual foundation conforming to MUTCD § 1A.02 i.e. the numeric value posted cannot be

1 based on an *Artifice*; C) the safety value posted be in substantial conformance with
2 nationally vetted engineering practices, and documented in an engineering report D)
3 Since 1941, and as described in Federal Regulation 1988 MUTCD 2B-10, an
4 engineering survey report that documents the safe operating speeds; based on a
5 statistically valid sample of the motorist public's consensus for each particular section of
6 roadway, delineated by time of day, day of week, direction of travel, lane, etc. E) The
7 1988 MUTCD 2B-10 required (sic prerequisite comprehensive study; FHWA
8 guidelines) the speed limit to be posted based on the 85th percentile speed of traffic; F)
9 According to the Federal Highway Administration (FHWA) and American Association
10 of State Highway Transportation Officials (AASHTO), the lowest point on the
11 parabolic risk curve is the 90th percentile in cases where the 85th percentile exceeds 50
12 MPH, and the 95th percentile for interstate highways. In all instances, the standard to
13 be adopted must meet the same test: i.e. the speed limit should not be set less than the
14 safest speed for the corresponding parabolic risk curve. G) That Nevada use valid
15 samples for the purpose of its statistical calculations, and make proper statistical
16 inferences from those samples, because the "probable cause threshold" is based on said
17 statistical calculus (emphasis). H) That samples be taken by a licensed Traffic
18 Engineer, or someone under their direct supervision, using standard protocols which do
19 not interfere with the sample data (the collection of data is clandestine, controls for
20 cosine angles, using calibrated equipment, etc.).

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25 4. And to command the USDOT and the State of Nevada to bring its speed limit use,
26 enforcement, and adjudication within compliance of the US Constitution, which
27 requires all of the following: A) Due Process and Equal protection requires a uniform
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1 standard of enforcement and adjudication be adopted. Because the basic speed rule
2 (UVC § 11-801 "No person shall drive a vehicle greater than is reasonable and prudent
3 under the conditions, and having regard to the actual and potential hazards then
4 existing.") has been the law of the land since 1926, Nevada must bring the relevant
5 parts of its vehicle code into compliance with that standard; B) That an arrest for
6 speeding be based on probable cause, as required by the US Supreme Court, and as
7 specified herein; C) That Nevada maintain records for all engineering studies where
8 there is enforcement activity, to preserve and protect a motorists 6th Amendment right
9 to cross examine the foundations (engineer) of any allegation(s) against him; D) That
10 speed limits meet the Constitutional test of Due Process, substantive and procedural, for
11 all speed limit prosecutions. Requiring that the USDOT ensure all states (including
12 Nevada) are in substantial conformance with all safety regulations, laws, the US
13 Constitution, and the field of science as it relates to speed limit engineering.
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17 Petitioner prays for the above relief, so that he and similarly situated safe driving motorists can
18 freely enjoy their life, liberties, and travel pursuits.
19

20 **CAUSE OF ACTION #4: 5 U.S.C. § 706:**

21 **ACTION TO COMPEL THE USDOT AND NEVADA:**

22 95. Petitioner hereby reiterates, re-alleges, and fully incorporates by reference items 1 thru 94
23 as though fully set forth herein. This Cause of Action is necessary to rectify the following
24 conflicts of Law:
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1 96. Ray LaHood (LaHood) and his predecessors failed their duty to enforce federal safety
2 regulations, and Congress' intent pursuant to the *Highway Safety Act of 1966*¹⁹ (sic traffic
3 control, vehicle codes and laws), given the 23 U.S.C. condition precedents certification by
4 *Nevada*²⁰ (sic States, U.S. Territories et al).

5
6 **CONFLICTS BETWEEN FEDERAL LAW AND US CONSTITUTION, ETC**

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8 97. NRS 484.361 carries a maximum fine of \$1,000 and 6 months incarceration, whereas
9 Federal Law under the Uniform Vehicle Code 17-101(a)/(b) prescribes no incarceration
10 and a \$200 fine for the first offense.

11 98. The *Artifice* enforced under NRS 484.361(1)(c) conflicts with Federal Law UVC 11-801.

12 99. The *Artifice* enforced under NRS 484.361(1)(d) conflicts with Federal Law UVC 11-801.

13 100. Federal Regulation MUTCD 2B-10 requires an engineering study for the use of an R2-1
14 safety device, and NRS 484.361(1)(d) gives no accounting to this pre-emptive Federal
15 Safety Regulation, nor has Nevada ever complied with this pre-emptive Federal Safety
16 Regulation on its highways and interstates (emphasis).

17 101. Federal Regulation (R2-1 Speed Limit Sign) 1988 MUTCD 2B-10 and 2000 Millennium
18 Edition MUTCD 2B-11 conflict with the 2003 MUTCD 2B-13 and the 2009 MUTCD 2B-
19 13.

20 102. The 4th Amendment of the US Constitution requires probable cause as a basis for arresting
21 and citing a motorist (see Whren vs. United States), whereas NRS 484.361(1)(c)
22 prescribes an **ARBITRARY AND CAPRICIOUS** threshold of 70 MPH posted (sic) on a
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26 ¹⁹ P.L. 89-564, 80 Stat. 731

27 ²⁰ {And conversely, the USDOT certifies Nevada's compliance in exchange for federal highway
28 fund disbursement; and is charged with fiduciary oversight compliance for the federal laws
29 displacing Nevada's conflicting 10th Amendment powers, prior legal precedent, traffic control,
30 vehicle codes, laws and practices in this entire field.}

federally regulated traffic control device in substitution of the probable cause standard required by the 4th Amendment of the US Constitution.

103. The 4th Amendment of the US Constitution requires probable cause as a basis for arresting and citing a motorist, whereas NRS 484.361(1)(d) prescribes an **ARBITRARY AND CAPRICIOUS** threshold of 75 MPH in substitution of the probable cause standard required by the 4th Amendment of the US Constitution.

104. The 2009 MUTCD 2B-13 fails every probative legal test, especially when measured against the probable cause requirement of the 4th Amendment of the US Constitution, the 1st-5th-6th-8th-14th Amendments, the Highway Safety Act of 1966, 5 USC 706, et al.

REDRESS FOR CONFLICTS OF LAW

105. This 706 action is necessary, because without intervention by this District Court, Petitioner will not enjoy full relief, indemnity, equity, and protection of his constitutional rights. Petitioner hereby reiterates and requests the aforementioned demand for relief under cause of action #3. And that this Federal Court settle and adjudicate the foregoing conflicts of Law. But more importantly, Petitioner demands that the USDOT be compelled to adopt and enforce standards upon all states, such that the use of police powers to enforce R2-1 safety devices by any State does not infringe on the constitutionally protected rights of motorists. Regardless of the standard adopted, Respondents must not be allowed to adopt a standard which circumvents UVC § 11-801, which provides that motorists must operate vehicles in a manner which is “reasonable and prudent” for existing conditions.

106. And in accord with its Congressional charter, the USDOT must ensure that US 23 CFR 655(F) is recognized by each state as the national standard for traffic control devices on all

public roads open to public travel in accordance with 23 U.S.C. 109(d) and 402(a) et al.
Further, US 23 CFR 655.603(b) mandates that any changes in the MUTCD (sic traffic control, vehicle codes and laws) be implemented within two years from their adoption.

107. Petitioner demands that the USDOT be commanded to compel all states to comply with the standards and relief sought in this 5 U.S.C. § 706 cause of action.

Petitioner prays for the above relief, for him and similarly situated safe driving motorists, so that ALL might enjoy their life, liberties, and vocational pursuits.

DEMAND FOR INJUNCTIVE & DECLARATORY RELIEF

108. Petitioner reiterates his prayers for relief in the five causes of action, and hereby demands injunctive and declaratory relief, based on the wrongdoing complained of herein; and,

109. That Respondents pay all reasonable attorneys fees required to bring this case to trial, with just and necessary apportionment to any and all legal counsel involved; and,

Petitioner complains of the arbitrary and capricious abuse of power, which has resulted in the prostitution of police powers against the people, under the false pretenses of a legitimate government safety program. This case is unprecedented in gravity and scope, notwithstanding the denial of constitutional rights of so many people, causing greater economic harm, and presenting legal arguments of first impression. As a Pro Se Litigant, Petitioner prays this court will liberally construe this complaint, and provide Petitioner reasonable allowance to cure or mend any defects in this presentation, before and during trial proceedings.

Petitioner prays for the above relief, for him and similarly situated safe driving motorists, so that ALL might enjoy their life, liberties, and vocational pursuits.

Declaration

I, Richard Glen Colter, am the Petitioner in this action, and I hereby attest and solemnly affirm that the facts stated within this complaint are based partly upon information and belief, and partly based on personal knowledge; and those facts are true, correct, and accurate, to the best of my knowledge and ability at this time.

Dated this 19th day of April 2010,



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UNITED STATES DISTRICT COURT
District of Nevada - Reno

RICHARD GLEN COLTER,	,) Cause No.
Petitioner/Plaintiff;)
)
v.)
) Petition for Removal; Motion to Stay
Ray LaHood; Brian Sandoval; State of Nevada;) Proceedings;
United States of America)
)
Respondents/Defendants)

PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION AND DECLARATORY
RELIEF: PETITION FOR REMOVAL AND STAY OF PROCEEDINGS IN
ESMERALDA COUNTY COURT

Plaintiffs respectfully moves, pursuant to Rule 65 of the Federal Rules of Civil Procedure, for a preliminary injunction enjoining the defendants, their agents and employees, and all persons acting in concert or participation with them, from continuing the enforcement of the following traffic citations described herein against the plaintiff named:

Esmeralda County Court Case #11-307939, P.O. Box 370, Goldfield, NV 89013

1 Because same enforcement violated Petitioner's 4th Amendment constitutional right to privacy,
2 and the pending prosecution will now violate Petitioner' 1st, 5th, 6th, 8th, and 14th Amendment
3 protections under the US Constitution.

4
5 In support of Petitioner' Petition to Remove and grant a Preliminary Injunction and
6 Declaratory Relief, Petitioner reiterates and adds the following to his Original Complaint:

- 7
8 1. While engaged in an act of Interstate Commerce (driving) on November 22, 2010 at
9 approximately 8:30 p.m., Petitioner was arrested by Nevada Highway Patrolman M.
10 Biehl, for an alleged safety violation, to wit: Nevada NRS 484.361. Officer M. Biehl
11 cited Petitioner for a violation of NRS 484.361(1)(c). Officer M. Biehl issued a citation
12 to Petitioner based on evidence acquired with a radar device, and Petitioner was
13 released without bail.
14

15 **PETITIONER'S CLAIM**

- 16 2. Petitioner claims that his 4th Amendment Constitutional right to privacy was violated by
17 Officer M. Biehl and the State of Nevada on November 22, 2010 at approximately 8:30
18 p.m., when Petitioner was arrested in the absence of probable cause.
19

20
21 **SUMMARY OF PRECEEDINGS**

- 22 3. On March 30th, 2011 at 1:15 p.m., a hearing was conducted in the Esmeralda County
23 Court on the constitutionality of NRS 484.361. At the hearing on March 30th, 2011,
24 Petitioner cited the U.S. Supreme Court Case of **Whren vs. United States**, where the
25 US Supreme Court determined that a police stop of a motorist constitutes an ARREST
26 within the meaning of the 4th Amendment of the US Constitution:
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1 The Fourth Amendment guarantees "[t]he right of the people to
2 be secure in their persons, houses, papers, and effects, against
3 unreasonable searches and seizures." Temporary detention of
4 individuals during the stop of an automobile by the police, even
5 if only for a brief period and for a limited purpose, constitutes a
6 "seizure" of "persons" within the meaning of this provision. See
7 *Delaware v. Prouse*, 440 U.S. 648, 653 (1979); *United States v.*
8 *Martinez Fuerte*, 428 U.S. 543, 556 (1976); *United States v.*
9 *Brignoni Ponce*, 422 U.S. 873, 878 (1975). An automobile stop
10 is thus subject to the constitutional imperative that it not be
11 "unreasonable" under the circumstances. As a general matter, the
12 decision to stop an automobile is reasonable where the police
13 have probable cause to believe that a traffic violation has
14 occurred. See *Prouse, supra*, at 659; *Pennsylvania v. Mimms*,
15 434 U.S. 106, 109 (1977) (*per curiam*)²¹

- 16 4. **Whren vs United States**, HELD: probable cause is required to stop a motorist because
17 the stop itself constitutes an arrest within the meaning of the 4th Amendment. At the
18 hearing on March 30th, 2011, Petitioner requested the citation be dismissed, absent a
19 showing of how the maximum speed limit of 70 MPH enforced under NRS 484.361
20 met the probable cause requirement under the 4th Amendment of the US Constitution.
21 A review of the Esmeralda County court transcription will reveal the following: That
22 the prosecution failed to give any substantive answer on the probable cause question.
23 Even more incredible, the hearing Judge refuted the authority of the US Supreme Court
24 by saying that Petitioner was never arrested! Petitioner maintains his claim that his 4th
25 Amendment right to privacy was violated by Nevada, and because Nevada has refuted
26 the authority of the US Supreme Court and the *Doctrine of Pre-Emption/Federal*
27 *Supremacy*, Petitioner now claims that his due process rights, equal protection rights,
28 and first amendment rights have been violated by the proceedings conducted on March
29 30th, 2011.

30 ²¹ **Whren vs United States**, 517 U.S. 806, (1996)

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5. Petitioner further claims that an Injunction/Stay of Proceedings must be issued, to prevent further violations of Petitioner' US Constitutional rights, and until such time that there is an adjudicative ruling on the Constitutionality of NRS 484.361 by this Federal Court.

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6. In support of this Motion to Stay Proceedings with Injunctive and Declaratory Relief, Petitioner' Original Complaint demonstrates the following:

A) A substantial likelihood of success on the merits;

B) A substantial threat of immediate and irreparable harm for which there is no adequate remedy at law;

C) That greater injury will result from not granting the REMOVAL/Stay of Proceedings than from its being granted; and,

D) That a REMOVAL/Stay of Proceedings will not disserve the public interest.

Clark v. Prichard, 812 F.2d 991, 993 (5th Cir. 1987); *Canal Authority v. Callaway*, 489 F.2d 567, 572 (5th Cir. 1974) (en banc).

7. This REMOVAL/Injunction is sought in compliance with the Supreme Courts guidelines concerning Federal injunctions against state criminal prosecutions threatening constitutionally protected rights; furthermore, it is in compliance with 28 U.S.C 2283, because of its necessity to aid and protect Federal Court jurisdiction, and to protect and effectuate the United States Supreme Courts judgments.

8. Petitioner asserts that Nevada has no *jurisdiction* or *standing* upon which to prosecute Petitioner under NRS 484.361, and there are no additional remedies for the violation of the US Constitutional rights complained of in this case; therefore, the Younger doctrine is inappropriate.

1 9. The Constitutionality of the Nevada Statute' (NRS 484.361) prescribed penalty is also
2 challenged by Petitioner, and this Court must issue an Injunction against proceedings,
3 so that Petitioner does not suffer irreparable harm from said *unconstitutional* penalties.

4 The prescribed penalties of incarceration and a \$1,000 fine are *unconstitutional*,
5 because said penalties violate the penalty schedule outlined by Congress in the Uniform
6 Vehicle Code (UVC 17-101(a)(b)), and are therefore cruel and unusual: A violation of
7 the 8th Amendment of the US Constitution.
8

9 10. Petitioner seeks declaratory relief pursuant to 28 U.S.C. 2201, and is entitled to it
10 because this is a case of actual controversy within this Federal Court's jurisdiction, and
11 this is an appropriate pleading filed in a Federal Court.
12

13 11. Petitioner has never posed a safety threat to anyone. Petitioner has never been involved
14 in a vehicle accident, nor caused any harm to any human being at any time, past or
15 present. Petitioner has no felony criminal record.
16

17 12. This Motion is based upon Plaintiffs' Complaint, and if a hearing is required,
18 exhibits and expert testimony will be offered at said hearing. Petitioner therefore asks
19 this Court to grant a REMOVAL, and Stay/Enjoin Respondent's from continuing their
20 *unconstitutional* acts against Petitioner.
21

22
23 WHEREFORE, Petitioner prays that this court will grant declaratory relief, as requested in the
24 Writ of Mandamus, by issuing an ORDER FOR REMOVAL and STAY of PROCEEDINGS.
25
26

27 4-19-11 Richard Carter
28 DATE PRINTED NAME SIGNATURE
29
30
31


Richard Glen Colter – Pro Se
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Pleasanton, CA 94588
925.202.7776 – rgcolter@yahoo.com

UNITED STATES DISTRICT COURT
District of Nevada - Reno

RICHARD GLEN COLTER, Petitioner/Plaintiff;) Cause No.
)
v.)
) Petitioner's Declaration Supporting Writ of
Ray LaHood; Brian Sandoval; State of Nevada;) Mandamus and Petition to Remove and Stay
United States of America) Proceedings
)
Respondents/Defendants)
)

DECLARATION IN SUPPORT OF PETITION TO REMOVE; STAY OF PROCEEDINGS

I, Richard Glen Colter, do solemnly swear and attest that the facts and statements presented in the
Petition for Removal and Stay of Proceedings are true and correct to the best of my abilities. If
required, I am willing to appear for hearing in support of the Petition to Remove and Stay of
Proceedings, and to bring evidence and/or witnesses in my favor.

4-19-11	Richard Colter	
DATE	PRINTED NAME	SIGNATURE

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UNITED STATES DISTRICT COURT
District of Nevada - Reno

RICHARD GLEN COLTER, Petitioner/Plaintiff;) Cause No.
)
v.)
) Judge's Order: Petition to Remove and Stay of
Ray LaHood; Brian Sandoval; State of Nevada;) Proceedings
United States of America)
)
Respondents/Defendants)

Removal to District Court; Injunction to Stay Proceedings is DENIED/GRANTED.

Matter is set for hearing on: _____

Other: _____

DATED

SIGNED

UNITED STATES DISTRICT COURT

for the

RICHARD GLEN COLTER

Plaintiff

v.

RAY LAHOOD; BRIAN SANDOVAL; STATE OF
NEVADA; UNITED STATES OF AMERICA

Defendant

)
)
)
)
)
)
)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* RAY LAHOOD; BRIAN SANDOVAL; STATE OF NEVADA; UNITED STATES OF AMERICA

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: