

**Archuleta County Court
449 San Juan St.,
PO Box 148
Pagosa Springs, Colo 81147**

**NOTICE OF APPEARANCE FOR SUMMONS
&
MOTION TO DISMISS, WITH CAUSE**

Defendant NOTICES this court of his appearance (“on or before...”) via written correspondence because Defendant will NOT be in the State, and likely the Country, on the date specified in the alleged “Summons” due to scheduled business projects⁽¹⁾ requiring his attention, and thus cannot appear in person on said date or in that time frame, and appears and defends herein.

Defendants’ intent is to simply stand on his rights as provided in the Constitution and through Supreme Court precedent, since now those rights are being challenged. If this court lacks jurisdiction to dismiss or adjudicate these lawful and constitutional issues, please forward to the proper court for disposition. Defendant moves this court to dismiss this alleged violation of the “Peace and Dignity of the People of the State of Colorado” for the following lawful and constitutional reasons;

1. There is no such lawful entity called “The People of the State of Colorado” or “THE PEOPLE OF THE STATE OF COLORADO” registered with the Colorado Secretary of State’s office. (See Exhibits A, B, C, and D). The U.S. Court of Appeals, Tenth Circuit, did NOT recognize this alleged entity as having any suable value in a claim in court or was any kind of a “legal entity” (See Exhibit B, P.3 #8). Based on the evidence, this appears to be a fictitious entity until proven otherwise, and cannot move against Defendant.

2. Given that “The People of the State of Colorado” or “THE PEOPLE OF THE STATE OF COLORADO” has no standing (which is herein challenged) to move against Defendant, there must be another entity or group that represents this name on the alleged legal summons since it is being used in court documents in a legal and fiduciary capacity. If it truly represents the private People and citizens of the State of Colorado, as it purports to, there MUST be, by law, a complaining party whose “peace and dignity” was damaged in a cognitive and real way, with evidence of same.

There is no signed complaint from anyone representing the “People of the State of Colorado” or,

¹ Defendant has been engaged with national and international business projects involving government and banking officials, and can be called to travel at any given time at a moments notice, or pre-arranged meetings, to State or International destinations to meet with officials according to their schedules.

“THE PEOPLE OF THE STATE OF COLORADO” who has or had an “Injury in Fact”⁽²⁾ traceable to the alleged violation or by any actions, or lack thereof, of Defendant, and therefore, Standing is lacking in this instant case until proven on record,⁽³⁾ and the case should be dismissed.⁽⁴⁾ In what way would an expired “Drivers” license cause harm to the “peace and dignity” of ANY Colorado inhabitant? Evidence must be of record.

3. The Summons is facially void. Under “FRCP, Rule 4 - Summons,” the summons MUST, among other things... “(F) be signed by the clerk; and (G) bear the court's seal.” The Summons, signed by Defendant under UCC 1-308 Reservation of Rights, (further rights declared in Exhibit C, listed *infra*) lacks these two required features, and therefore, is invalid.

4. Defendant challenges any alleged “law” which requires him to apply for a “Drivers’ License” when he is NOT acting in any commercial capacity which would be a privilege which requires a “Drivers’ License” for carrying on with said “Driving” for commercial profit.

Defendant is acting in his private right to freely travel without interference or license which is upheld by the U.S. Supreme and other Courts in dozens of cases. (See Exhibit E, Brief).

5. If a “drivers’ license” were required lawfully and constitutionally for Defendant, said license ultimately belongs to the state, and is to be surrendered if demanded, thus the State is responsible to provide notice of expiration warnings. No reminder or mail notice of said expiration was provided by the state to Defendant. This appears to be an easy way to collect more revenue when someone does not know their “license” is expired, rarely having to use said license. Only law enforcement is the likely one to see this and, of course, ticket the individual, with the help of

² Injury in Fact: “...at an irreducible minimum,” the constitutional requisites under Article III for the existence of standing are that the party seeking to sue must personally have suffered some actual or threatened injury that can fairly be traced to the challenged action of defendant and that the injury is likely to be redressed by a favorable decision. *Valley Forge Christian College v. Americans United*, 454 U.S. 464, 472 (1982); *Allen v. Wright*, 468 U.S. 737, 751 (1984); *Lujan v. Defenders of Wildlife*, 112 Ct.2130,2136 (1992).

³ There are three requirements for Article III standing: (1) injury in fact, which means an invasion of a legally protected interest that is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical; (2) a causal relationship between the injury and the challenged conduct, which means that the injury fairly can be traced to the challenged action of the defendant, and has not resulted from the independent action of some third party not before the court; and (3) a likelihood that the injury will be redressed by a favorable decision, which means that the prospect of obtaining relief from the injury as a result of a favorable ruling is not too speculative. *Lujan v. Defenders of Wildlife*, 112 S. Ct. 2130, 2136 (1992).

⁴ “Constitutional requirements for standing, and hence, exercise of the judicial power of government, are set forth in the two-step Wimberly test, which is satisfied if: (1) the plaintiff was injured in fact, and (2) that injury was to a legal right protected by statutory provisions which allegedly have been violated.” *Wimberly v. Eitenberg*, 570 P.2d 535 Colo.,1977 “If a person suffers no injury in fact or suffers injury in fact but not from violation of legal right, no relief can be afforded and case should be dismissed for lack of standing.” *Romer v. Board of County Com’rs of Pueblo, Colo.*, 956 P.2d 566 Colo.,1998.

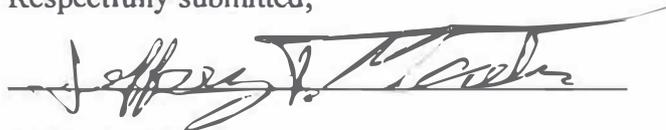
the State.

6. Lastly, the City of Pagosa Springs picked this fight, Defendant did not, but now must respond. We could have started this 10 years ago had we wanted to. Now that it has been initiated, if the City of Pagosa Springs, and related court/Magistrate/Judge, believe Defendant does NOT have the lawful, Constitutional rights as stated herein, or the Court precedent provided is wrong, and that the entity named in the summons is a legal entity, defendant demands "Finding of Facts and Conclusions of Law" on any and all rulings that counter Defendants' cites and evidence, or it will have to be escalated to the next level.

Defendant's Oath to uphold the Constitution⁵ has not stopped, thus he MUST stand where said Constitution and rights are clear. Any error that invalidates the evidence presented should be forthcoming. We are either a Constitutional nation of rights and common laws, or have moved from the Constitution and original intent of law into tyranny and oppression under the color of law.⁽⁵⁾

The Defendant/Accused therefore moves the court of proper jurisdiction to dismiss the charge against him, with prejudice.

Respectfully submitted,



Jeffrey T. Maehr

[REDACTED]
[REDACTED]

⁵ **Color of Law:** "...it's a federal crime for anyone acting under "color of law" willfully to deprive or conspire to deprive a person of a right protected by the Constitution or U.S. law. 'Color of law' simply means that the person is using authority given to him or her by a local, state, or federal government agency."
https://www.fbi.gov/about-us/investigate/civilrights/color_of_law

For the purpose of TITLE 18, U.S.C., SECTION 242, acts under "color of law" include acts not only done by federal, state, or local officials within their lawful authority, but also acts done beyond the bounds of that official's lawful authority, if the acts are done while the official is purporting to or pretending to act in the performance of his/her official duties. Persons acting under color of law within the meaning of this statute include police officers, prison guards and other law enforcement officials, as well as judges, care providers in public health facilities, and others who are acting as public officials. It is not necessary that the crime be motivated by animus toward the race, color, religion, sex, handicap, familial status or national origin of the victim. The offense is punishable by a range of imprisonment up to a life term, or the death penalty, depending upon the circumstances of the crime, and the resulting injury, if any. <http://www.justice.gov/crt/deprivation-rights-under-color-law> (Emphasis added)

NOTARY WITNESS

I declare under penalty of perjury that the foregoing 4 page document with Exhibits A, B, C, D, and E Brief, to the Archuleta County Court addressed above was presented before me by Jeffrey T. Maehr, known to me to be the person stated, and acknowledged this NOTICE OF APPEARANCE document, being sent Certified Mail # 7014-2120-0004-6670-5579, on this 15th day of December, 2015;

Leslie Shepard
Notary Printed Name


Notary Signature



SEAL

UNIFORM SUMMONS & COMPLAINT OR PENALTY ASSESSMENT

NO. 021359

STATE OF COLORADO			PAGOSA SPRINGS POLICE	
Date of Violation 11/05/15	Time of Violation 1845	Approximate Location of Violation, State of Colorado (*) On <u>Trinity</u>	County ARCHULETA	No. 48
<input checked="" type="checkbox"/> TRAFFIC <input type="checkbox"/> PENAL		() At Intersection With: <u>Highway 160</u>	Case Report No.	
Traffic Accident <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Injuries Involved <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Direction of Travel N <u>(S)</u> E W		

THE PEOPLE OF THE STATE OF COLORADO VS.

Defendant Last Name <u>Maehr</u>	First Name <u>Jeffrey</u>	M.I. <u>T</u>	Date of Birth <u>04/18/1953</u>	Age <u>52</u>	Contact Telephone No. <u>970731-9724</u>
Defendant Home Address <u>924 E. Stillmeadow Rd</u>		City <u>Pagosa Springs</u>	State <u>CO</u>	Zip <u>81147</u>	Contact Telephone No.
Driver's License No. <u>94 136 1955</u>	State <u>CO</u>	Race <u>W</u>	Sex <u>M</u>	Height <u>511</u>	Weight <u>170</u>
Vehicle License No. <u>840 YBS</u>	State <u>CO</u>	VIN <u>3B7KF137W6235251</u>	Vehicle Color (Top/Bottom) <u>White</u>		
Vehicle Year <u>1999</u>	Vehicle Make <u>Dodge</u>	Vehicle Model <u>PK</u>	Registered Owner Name/Address <input checked="" type="checkbox"/> Same as Defendant		

YOU ARE SUMMONED AND ORDERED TO APPEAR TO ANSWER CHARGES AS STATED BELOW IN:

MUNICIPAL COURT, 551 HOT SPRINGS BLVD, PAGOSA SPRINGS, COLORADO

On 11/13/2016 At 0900 AM

ARCHULETA COUNTY COURT, 449 SAN JUAN STREET, PAGOSA SPRINGS, COLORADO

On 11/14/2016 At 0830 AM

OFFENSE

Section	Code	Fine	Surcharge	Points
<u>CRS 42-2-101 Drove vehicle when</u>	<u>009</u>	<u>\$ 15.00</u>	<u>\$ 7.00</u>	<u>0</u>
<u>Driver License Expired one year or less</u>				
Section	Code	Fine	Surcharge	Points
Section	Code	Fine	Surcharge	Points
Section	Code	Fine	Surcharge	Points
Section	Code	Fine	Surcharge	Points
Section	Code	Fine	Surcharge	Points
Section	Code	Fine	Surcharge	Points

<input type="checkbox"/> Fingerprinted	<input type="checkbox"/> Custodial Arrest	<input type="checkbox"/> Placard MAZMAT	<input type="checkbox"/> CMV REQ. CDL	CMV USDOT #	DNA Surcharge \$2.50	Total Surcharge \$ 9.50	Total Fine + Surcharge \$ 24.50
----------------------------------------	-------------------------------------------	-----------------------------------------	---------------------------------------	-------------	--------------------------------	-----------------------------------	-------------------------------------------

SUMMONS <input type="checkbox"/> Traffic Infraction <input type="checkbox"/> Offense	PENALTY ASSESSMENT <input checked="" type="checkbox"/> Traffic Infraction <input type="checkbox"/> Offense
--------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------

I PROMISE TO APPEAR AT THE DATE, TIME, AND PLACE INDICATED ABOVE.

Defendant _____

NOTICE: SEE INSTRUCTIONS ON REVERSE SIDE

Juvenile Summons

Parent/Guardian Signature: _____

My signature is a promise to pay the Penalty Assessment within twenty days With payment, I acknowledge guilt of all charges listed and understand that the points indicated will be assessed against my driver's license. If I do not submit payment, my signature is a promise to appear in court at the date, time and place indicated herein.

Defendant Jeffrey Maehr

See "Penalty Assessment" Instructions on Reverse Side

THE UNDERSIGNED HAS PROBABLE CAUSE TO BELIEVE THAT THE DEFENDANT COMMITTED THE OFFENSE(S) AGAINST THE PEACE AND DIGNITY OF THE PEOPLE OF THE STATE OF COLORADO AND AFFIRMS THAT A COPY OF THIS SUMMONS AND COMPLAINT OR PENALTY ASSESSMENT WAS SERVED UPON THE DEFENDANT.

Date Issued <u>11/05/15</u>	Officer Signature <u>[Signature]</u>	Officer No. <u>241</u>	Officer - Print Last Name <u>Chadman</u>
--------------------------------	-----------------------------------------	---------------------------	---------------------------------------------

Exhibit A (p. 2)

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FEB 27 1997

TENTH CIRCUIT

PATRICK FISHER
Clerk

DERRAL SCHRODER, a De Jure People
for the Freely Associated Compact States
of our Union, a Non-citizen of the De
Facto Federal Government of D.C.,

Plaintiff-Appellant,

v.

PEOPLE OF THE STATE OF
COLORADO; REGISTERED VOTING
CITIZENS OF THE FEDERAL
GOVERNMENT OF THE DISTRICT OF
COLUMBIA; CITIZENS OF THE
CORPORATE FEDERAL
GOVERNMENT, that vote for their
rulers,

Defendants-Appellees.

No. 96-1320
(D.C. No. 96-K-1018)
(District of Colorado)

A true copy

Teste

Patrick Fisher
Clerk, U.S. Court of
Appeals, Tenth Circuit

By


Deputy Clerk

ORDER AND JUDGMENT

Before SEYMOUR, Chief Judge, PORFILIO, Circuit Judge, and MURPHY, Circuit
Judge.

* This order and judgment is not binding precedent, except under the doctrines of
law of the case, res judicata, and collateral estoppel. This court generally disfavors the
citation of orders and judgments; nevertheless, an order and judgment may be cited under
the terms and conditions of 10th Cir. R. 36.3.

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34(e) and 10th Cir. R. 34.1.9. The case is therefore ordered submitted without oral argument.

Claiming to be "a People for the Freely Associated Compact States of Our Union, that has pledged his Life, fortune and Sacred Honor to forcing the Government Employees to recognize and respect [his] true character as a People of the Almighty Creator," Darrel Schroder appeals the dismissal of his complaint by the district court. Mr. Schroder had brought an almost indecipherable action naming as defendants: "People of the State of Colorado, Registered Voting citizens of the Federal Government of the District of Columbia, Citizens of the Corporate Federal Government, [sic] that Vote for their Rulers." The district court, sua sponte, dismissed the action on the ground the complaint failed to name any viable entity. We agree and AFFIRM.

ENTERED FOR THE COURT

John C. Porfili
Circuit Judge

second count alleges the plaintiff was denied a speedy and public trial, was never informed of the true nature and cause of the accusation, was never confronted with witnesses that claimed to be damaged by him, was denied compulsory process for "obtaining" (sic) witnesses for his defence (sic) and was denied assistance of counsel for his defence (sic).

There is a considerable amount of surplusage in the complaint, but the claims are as stated above. Jurisdiction is alleged on the basis of diversity of citizenship though it is alleged that the defendant resides in Colorado. The complaint fails to plead any facts with particularity. As best can be determined, the plaintiff alleges violations of his constitutional rights by, one assumes, officials of the State of Colorado. If so, this court might have jurisdiction pursuant to 42 USC §1983, but it is not possible to make this determination given the inadequacies of the complaint.

Perhaps more to the point, the complaint fails to name as defendant any suable entity. Hence, there is no basis for service of process upon anyone, there is no duty or obligation upon anyone to appear, answer or defend and there is no person or entity against whom a judgment could enter. Therefore, the "REQUEST FOR ENTRY OF DEFAULT JUDGMENT" is denied and this complaint and civil action are dismissed as nullities.

Entered this 12 day of June, 1996.

BY THE COURT:
John L. Kane Jr.
John L. Kane Jr.

United States Senior District Judge

**ENTERED
ON THE DOCKET**

JUN 13 1996

**JAMES R. MANIS/LAKER
CLERK**

By *[Signature]*

EXHIBIT B

On the Fictitious Entity named "PEOPLE OF THE STATE OF COLORADO" or "People of the State of Colorado", & REAL PARTY OF INTEREST/INJURED PARTY

STATEMENT OF AFFIANT

The People are subject to criminal and civil actions of BAR attorneys that are usually commenced and prosecuted in the name of some "Imaginary Person" (Corporation), the corporate "STATE" or corporate "UNITED STATES". A "Foreign Agent", 22 USC 611, acting for a "Foreign State" (Corporation) are prohibited by the 11th Amendment of the Constitution for the "united States of America" to commence or prosecute any action without a real party of interest.

If the State of Colorado is entitled to all prosecutions in the name "People of the State of Colorado" within Article 6 section 30, for justice against an accused citizen, why not such citizen against the State when the same language equally comprehends both? The rights of the People and the justice due to them are as dear and precious as those of States. Indeed, the latter are founded upon the former, and the great end and object of them must be to secure and support the rights of the People, or else vain is government.

The United States District Court has stated and ruled in 1996-1997 that the Plaintiff Schroder "...failed to name any suable entity" as Defendant ... "People of the State of Colorado". (See Exhibit A). Absent a real party of interest, or injured party, the "People of the State of Colorado" and the "THE PEOPLE OF THE STATE OF COLORADO" are not a verified injured party in fact, thus revealing a fictitious Plaintiff moving against Defendant.

"Suability" and "suable" are words not in common use, but they concisely and correctly convey the idea annexed to them.

A rule is said to be a bad one, inconceivable and unconscionable, which does not work both ways; the citizens of Colorado are not content with a claimed right of the State to be a Plaintiff and Prosecutor under a pseudonym to sue/prosecute them without a real party of interest, and then also claim it is not a suable entity.

It would be strange indeed that the joint and equal sovereigns⁽¹⁾ of this country should, in the very Constitution by which they professed to establish justice, so far deviate from the plain path

¹"...at the Revolution, the sovereignty devolved on the people; and they are truly the sovereigns of the country, but they are sovereigns without subjects...with none to govern but themselves; the citizens of America are equal as fellow citizens, and as joint tenants in the sovereignty." *Chisholm V. Georgia* (US) 2 Dall 419, 454, 1 L Ed 440, 455 @DALL 1793 pp 471-472.

of equality, equal footing, and impartiality as to give to a State a right of suing individual citizens, and yet deny to those citizens a right of suing them.

“The court held that Plaintiff failed to show sufficient interest in proceeding anonymously under the Stegall test, yet Plaintiff was free to amend his complaint under Colorado procedural rules (CRCP 10) to state his true name and proceed with the suit” *Doe v. Heitler*, 26 P.3d 539 (Colorado Ct. App. 2001)

1. “The People of the State of Colorado”, and “THE PEOPLE OF THE STATE OF COLORADO” has not been identified as a registered legal fiction d/b/a “Plaintiff”. To file any cause of action with one of these as “Plaintiff”, without a real party of interest is “Fraud”, 18 USC 47, “Conspiracy against rights”, 18 USC 241, and “Statements or entries generally”, 18 U.S. Code § 1001, which states...

(a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully—

- (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;
- (2) makes any materially false, fictitious, or fraudulent statement or representation; or
- (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry;

2. The Colorado Secretary of State's office has confirmed twice:

In 2004, “NO RECORD EXISTS IN THIS OFFICE.....UNDER THE NAME OF, “THE PEOPLE OF THE STATE OF COLORADO” , and in 2014, “....we did not identify any records”...for “The People of the State of Colorado”. (See Exhibit A -Appeals Court, 10th Circuit Ruling, and Exhibits C and D).

3. Ratification of commencement requires presenting the “real party of interest”;

FRCP, Rule 17. Plaintiff and Defendant; Capacity; Public Officers

(a) Real Party in Interest.

(1) Designation in General. An action must be prosecuted in the name of the real party in interest.

Rule 3(a) in the Rules of Civil Procedure for County Courts, as well as Rule 7 for District Courts, require in every action “the name of the real party in interest” for “ratification of commencement of the action.”

C.R.C.P. 10(a) expressly provides that in the complaint the title of the action shall include the names of the parties.

4. The 6th Amendment of the Constitution (Section 16 of the Colorado Constitution) secures

the accused the right to face all witnesses against him. Therefore, this law requires the “Plaintiff” (injured party) to be a physical human being that can be cross examined. The court/prosecutor has no “jurisdiction” to proceed without validation of the real party of interest!

5. A Prosecutor... "An attorney for the plaintiff cannot admit evidence into the court. He is either a BAR attorney or a witness," and, "Statements of said BAR attorney in brief or in argument are not facts before the court." – *Trinsey v. Pagliaro* D.C. Pa. (1964), 229 F. Supp. 647.

“Attorneys can't testify; statements of counsel in brief or in oral argument are not facts before the court.” *United States v. Lovable* 431 U.S. 783, 97 S. 2004, 52 L. Ed. 2d 752 and *Gonzales v. Buist* 224 U.S. 126. 56 L.. 693. 32. Ct. 463.S.

In addition, the Officer issuing the summons is an executive branch officer, and cannot “prosecute” this alleged violation as a juridical officer of the court as well. To do so is a violation of the Constitutional Separation of Powers.

6. To establish a “crime” has been committed, there must be evidence present that the accused “injured” a named victim to be cross examined, or damaged a victims property. Prosecution of “victimless crimes”, is “Fraud” 18 USC 1001, and for any BAR attorney (or officer of the Court or Executive branch of government) to present these purported crimes, without an injured party, claiming authority to prosecute, is an aggressive assault upon the peace and dignity of the People.

“Conspiracy against rights” 18 USC 241 of the “Prosecutor” and “Judge” acting in “Prosecutorial Misconduct” in “Conspiracy to convict” must be reported to the proper authority. Failure of that authority to prosecute the “Attorney” and “Judge” is “Misprision of Felony” 18 USC 4.

7. The copyrighted Colorado Revised Statutes the foreign private corporations are operating under do not apply to the People, as stated in: 11 Am Jur. § 3 “Statutes are enactments and rules for the government of civil conduct.”

“... [W]hen a judge acts where he or she does not have jurisdiction to act, the judge is engaged in an act of treason”. *COHENS v VIRGINIA* 19 U.S. 264, 404, 5 L.Ed. 257, 6 Wheat. 264 (1821).

8. C.R.C.P. 4(c) mandates inclusion of the names or designation of the parties in the summons. *Ivanhoe Lodge v. Grand Lodge*, 126 Colo. 515, 251 P.2d 1085 (1952), ". . . Actions may be brought only by legal entities and against legal entities". There must be some ascertainable persons, *natural* or artificial, to whom judgments are awarded and against whom they may be enforced." *Barker v. District Court*, 609 P.2d 628, 199 Colo. 416 (Colo. 04/14/1980).

9. ALL CRIMES ARE COMMERCIAL, 27 CFR 72.11, which require a contract to be placed into evidence describing a violation of performance. AND, No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, - 5th Amendment.

This includes any "Failure to obey a summons," or "Warrant for your arrest," which will require a separate charge, and separate court hearing before a jury of Defendants' peers should either be initiated.

10. This Affiant demands every and all proceedings, matters, and suits commenced under the fictitious Plaintiff, "People of the State of Colorado" and/or the "THE PEOPLE OF THE STATE OF COLORADO" be void ab initio for all above violations. All current and past proceedings are halted and shall proceed to prosecute the individuals acting in their personal capacity for RICO, Fraud, and other charges to be listed formally, exposing the damages to the People's peace and dignity.

Affiant further sayeth naught.



Jeffrey T. Maehr

STATE OF COLORADO
Department of State
1700 Broadway
Suite 200
Denver, CO 80290



Scott Gessler
Secretary of State

Suzanne Staiert
Deputy Secretary of State

December 12, 2014

Exhibit C

Ms. [REDACTED]
[REDACTED]
Boulder, CO 80301

RE: Dec. 10, 2014 Open Records Request

Dear Ms. [REDACTED]

We received your open records request seeking all business filings for "The People of the State of Colorado."

After a comprehensive search, we did not identify any records responsive to your request.

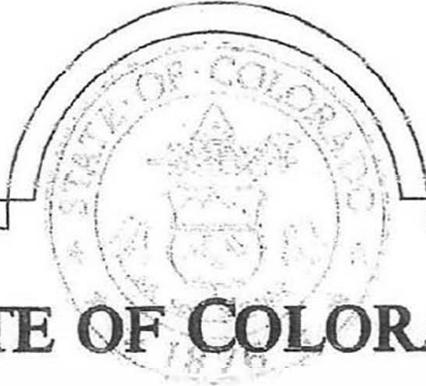
In the future you can also search our online business filing system through our web site at www.sos.state.co.us.

Thank you.

Sincerely,

Richard Coolidge
Dir. Of Communications
Colorado Secretary of State's Office

Exhibit D



STATE OF COLORADO

DEPARTMENT OF
STATE

CERTIFICATE

I, DONETTA DAVIDSON, SECRETARY OF STATE OF THE STATE OF COLORADO HEREBY CERTIFY THAT ACCORDING TO THE RECORDS OF THIS OFFICE, ON THIS DATE, NO RECORD EXISTS IN THIS OFFICE OF A CORPORATION, LIMITED PARTNERSHIP, LIMITED LIABILITY COMPANY, LIMITED LIABILITY PARTNERSHIP, LIMITED LIABILITY LIMITED PARTNERSHIP OR LIMITED PARTNERSHIP ASSOCIATION, FOREIGN OR DOMESTIC, UNDER THE NAME OF

THE PEOPLE OF THE STATE OF COLORADO

Dated: May 24, 2004

Donetta Davidson

SECRETARY OF STATE

BRIEF IN SUPPORT OF NOTICE FOR DISMISSAL FOR LACK OF JURISDICTION

NOW, comes the Defendant/Accused, appearing specially and not generally or voluntarily, but under threat of arrest if he failed to do so, with this "BRIEF IN SUPPORT OF NOTICE FOR DISMISSAL FOR LACK OF JURISDICTION," stating as follows:

ARGUMENT

If ever a judge understood the public's right to use the public roads, it was Justice Tolman of the Supreme Court of the State of Washington. Justice Tolman stated:

"Complete freedom of the highways is so old and well established a blessing that we have forgotten the days of the Robber Barons and toll roads, and yet, under an act like this, arbitrarily administered, the highways may be completely monopolized, if, through lack of interest, the people submit, then they may look to see the most sacred of their liberties taken from them one by one, by more or less rapid encroachment."

Robertson vs. Department of Public Works, 180 Wash 133, 147.

The words of Justice Tolman ring most prophetically in the ears of Citizens throughout the country today as the use of the public roads has been monopolized by the very entity which has been empowered to stand guard over our freedoms, i.e., that of state government.

RIGHTS

The "most sacred of liberties" of which Justice Tolman spoke was personal liberty. The definition of personal liberty is:

"Personal liberty, or the Right to enjoyment of life and liberty, is one of the fundamental or natural Rights, which has been protected by its inclusion as a guarantee in the various constitutions, which is not derived from, or dependent on, the U.S. Constitution, which may not be submitted to a vote and may not depend on the outcome of an election. It is one of the most sacred and valuable Rights, as sacred as the Right to private property ... and is regarded as inalienable."

16 C.J.S., Constitutional Law, Sect.202, p.987

This concept is further amplified by the definition of personal liberty:

"Personal liberty largely consists of the Right of locomotion -- to go where and when one pleases -- only so far restrained as the Rights of others may make it necessary for the welfare of

all other citizens. The Right of the Citizen to travel upon the public highways and to transport his property thereon, by horse drawn carriage, wagon, or automobile, is not a mere privilege which may be permitted or prohibited at will, but the common Right which he has under his Right to life, liberty, and the pursuit of happiness. Under this Constitutional guarantee one may, therefore, under normal conditions, travel at his inclination along the public highways or in public places, and while conducting himself in an orderly and decent manner, neither interfering with nor disturbing another's Rights, he will be protected, not only in his person, but in his safe conduct."

II Am.Jur. (1st) Constitutional Law, Sect.329, p.1135

and further ...

"Personal liberty -- consists of the power of locomotion, of changing situations, of removing one's person to whatever place one's inclination may direct, without imprisonment or restraint unless by due process of law."

Bouvier's Law Dictionary, 1914 ed., Black's Law Dictionary, 5th ed.;
Blackstone's Commentary 134;
Hare, Constitution, Pg. 777

Justice Tolman was concerned about the State prohibiting the Citizen from the "most sacred of his liberties," the Right of movement, the Right of moving one's self from place to place without threat of imprisonment, the Right to use the public roads in the ordinary course of life.

When the State allows the formation of a corporation it may control its creation by establishing guidelines (statutes) for its operation (charters). Corporations who use the roads in the course of business do not use the roads in the ordinary course of life. There is a difference between a corporation and an individual. The United States Supreme Court has stated:

"...We are of the opinion that there is a clear distinction in this particular between an individual and a corporation, and that the latter has no right to refuse to submit its books and papers for examination on the suit of the State. The individual may stand upon his Constitutional Rights as a Citizen. He is entitled to carry on his private business in his own way. His power to contract is unlimited. He owes no duty to the State or to his neighbors to divulge his business, or to open his doors to investigation, so far as it may tend to incriminate him. He owes no such duty to the State, since he receives nothing therefrom, beyond the protection of his life, liberty, and property. His Rights are such as the law of the land long antecedent to the organization of the state, and can only be taken from him by due process of law, and in accordance with the Constitution. Among his Rights are the refusal to incriminate himself, and the immunity of himself and his property from arrest or seizure except under warrant of law. He owes nothing to the public so long as he does not trespass upon their rights."

"Upon the other hand, the corporation is a creature of the state. It is presumed to be

incorporated for the benefit of the public. It receives certain special privileges and franchises, and holds them subject to the laws of the state and the limitations of its charter. Its rights to act as a corporation are only preserved to it so long as it obeys the laws of its creation. There is a reserved right in the legislature to investigate its contracts and find out whether it has exceeded its powers. It would be a strange anomaly to hold that the State, having chartered a corporation to make use of certain franchises, could not in exercise of its sovereignty inquire how those franchises had been employed, and whether they had been abused, and demand the production of corporate books and papers for that purpose."

Hale vs. Hinkel, 201 US 43, 74-75

Corporations engaged in mercantile equity fall under the purview of the State's admiralty jurisdiction, and the public at large must be protected from their activities, as they (the corporations) are engaged in business for profit.

"...Based upon the fundamental ground that the sovereign state has the plenary control of the streets and highways in the exercise of its police power (see police power, *infra.*), may absolutely prohibit the use of the streets as a place for the prosecution of a private business for gain. They all recognize the fundamental distinction between the ordinary Right of the Citizen to use the streets in the usual way and the use of the streets as a place of business or a main instrumentality of business for private gain. The former is a common Right, the latter is an extraordinary use. As to the former, the legislative power is confined to regulation, as to the latter, it is plenary and extends even to absolute prohibition. Since the use of the streets by a common carrier in the prosecution of its business as such is not a right but a mere license of privilege."

Hadfield vs. Lundin, 98 Wash 516

It will be necessary to review early cases and legal authority in order to reach a lawfully correct theory dealing with this Right or "privilege." We will attempt to reach a sound conclusion as to what is a "Right to use the road" and what is a "privilege to use the road". Once reaching this determination, we shall then apply those positions to modern case decision.

"Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them."

Miranda vs. Arizona, 384 US 436, 491

and ...

"The claim and exercise of a constitutional Right cannot be converted into a crime."

Miller vs. U.S., 230 F. 486, 489

and ...

"There can be no sanction or penalty imposed upon one because of this exercise of constitutional Rights."

Snerer vs. Cullen, 481 F. 946

Streets and highways are established and maintained for the purpose of travel and transportation by the public. Such travel may be for business or pleasure.

"The use of the highways for the purpose of travel and transportation is not a mere privilege, but a common and fundamental Right of which the public and the individual cannot be rightfully deprived."

Chicago Motor Coach vs. Chicago, 169 NE 2271;
Ligare vs. Chicago, 28 NE 934;
Boon vs. Clark, 214 SSW 607;
25 Am.Jur. (1st) Highways Sect.163

and ...

"The Right of the Citizen to travel upon the public highways and to transport his property thereon, either by horse drawn carriage or by automobile, is not a mere privilege which a city can prohibit or permit at will, but a common Right which he has under the right to life, liberty, and the pursuit of happiness."

Thompson vs. Smith, 154 SE 579

So we can see that a Citizen has a Right to travel upon the public highways by automobile and the Citizen cannot be rightfully deprived of his Liberty. So where does the misconception that the use of the public road is always and only a privilege come from?

"... For while a Citizen has the Right to travel upon the public highways and to transport his property thereon, that Right does not extend to the use of the highways, either in whole or in part, as a place for private gain. For the latter purpose, no person has a vested right to use the highways of the state, but is a privilege or a license which the legislature may grant or withhold at its discretion."

State vs. Johnson, 243 P. 1073;
Cummins vs. Homes, 155 P. 171;
Packard vs. Banton, 44 S.Ct. 256;
Hadfield vs. Lundin, 98 Wash 516

Here the court held that a Citizen has the Right to travel upon the public highways, but that he did not have the right to conduct business upon the highways. On this point of law all authorities are unanimous.

"Heretofore the court has held, and we think correctly, that while a Citizen has the Right to travel upon the public highways and to transport his property thereon, that Right does not extend to the use of the highways, either in whole or in part, as a place of business for private gain."

Willis vs. Buck, 263 P. 1 982;

Barney vs. Board of Railroad Commissioners, 17 P.2d 82

and ...

"The right of the citizen to travel upon the highway and to transport his property thereon, in the ordinary course of life and business, differs radically and obviously from that of one who makes the highway his place of business for private gain in the running of a stagecoach or omnibus."

State vs. City of Spokane, 186 P. 864

What is this Right of the Citizen which differs so "radically and obviously" from one who uses the highway as a place of business? Who better to enlighten us than Justice Tolman of the Supreme Court of Washington State? In *State vs. City of Spokane*, supra, the Court also noted a very "radical and obvious" difference, but went on to explain just what the difference is:

"The former is the usual and ordinary right of the Citizen, a common right to all, while the latter is special, unusual, and extraordinary."

and ...

"This distinction, elementary and fundamental in character, is recognized by all the authorities."

State vs. City of Spokane, supra.

This position does not hang precariously upon only a few cases, but has been proclaimed by an impressive array of cases ranging from the state courts to the federal courts.

"the right of the Citizen to travel upon the highway and to transport his property thereon in the ordinary course of life and business, differs radically and obviously from that of one who makes the highway his place of business and uses it for private gain in the running of a stagecoach or omnibus. The former is the usual and ordinary right of the Citizen, a right common to all, while the latter is special, unusual, and extraordinary."

and ...

"The right of the Citizen to travel upon the public highways and to transport his property thereon, in the ordinary course of life and business, is a common right which he has under the right to enjoy life and liberty, to acquire and possess property, and to pursue happiness and safety. It includes the right, in so doing, to use the ordinary and usual conveyances of the day, and under the existing modes of travel, includes the right to drive a horse drawn carriage or wagon thereon or to operate an automobile thereon, for the usual and ordinary purpose of life and business."

Thompson vs. Smith, supra.;
Teche Lines vs. Danforth, Miss., 12 S.2d 784

There is no dissent among various authorities as to this position. (See Am. Jur. [1st] Const. Law, 329 and corresponding Am. Jur. [2nd].)

"Personal liberty -- or the right to enjoyment of life and liberty -- is one of the fundamental or natural rights, which has been protected by its inclusion as a guarantee in the various constitutions, which is not derived from nor dependent on the U.S. Constitution. ... It is one of the most sacred and valuable rights [remember the words of Justice Tolman, supra.] as sacred as the right to private property ... and is regarded as inalienable."

16 C.J.S. Const. Law, Sect.202, Pg. 987

As we can see, the distinction between a "Right" to use the public roads and a "privilege" to use the public roads is drawn upon the line of "using the road as a place of business" and the various state courts have held so. But what have the U.S. Courts held on this point?

"First, it is well established law that the highways of the state are public property, and their primary and preferred use is for private purposes, and that their use for purposes of gain is special and extraordinary which, generally at least, the legislature may prohibit or condition as it sees fit."

Stephenson vs. Rinford, 287 US 251;
Pachard vs Banton, 264 US 140, and cases cited;
Frost and F. Trucking Co. vs. Railroad Commission, 271 US 592;
Railroad commission vs. Inter-City Forwarding Co., 57 SW.2d 290;
Parlett Cooperative vs. Tidewater Lines, 164 A. 313

So what is a privilege to use the roads? By now it should be apparent even to the "learned" that an attempt to use the road as a place of business is a privilege. The distinction must be drawn

between ...

Traveling upon and transporting one's property upon the public roads, which is our Right; and ...

Using the public roads as a place of business or a main instrumentality of business, which is a privilege.

"[The roads] ... are constructed and maintained at public expense, and no person therefore, can insist that he has, or may acquire, a vested right to their use in carrying on a commercial business."

Ex Parte Sterling, 53 SW.2d 294;
Barney vs. Railroad Commissioners, 17 P.2d 82;
Stephenson vs. Binford, supra.

"When the public highways are made the place of business the state has a right to regulate their use in the interest of safety and convenience of the public as well as the preservation of the highways."

Thompson vs. Smith, supra.

"[The state's] right to regulate such use is based upon the nature of the business and the use of the highways in connection therewith."

Ibid.

"We know of no inherent right in one to use the highways for commercial purposes. The highways are primarily for the use of the public, and in the interest of the public, the state may prohibit or regulate ... the use of the highways for gain."

Robertson vs. Dept. of Public Works, supra.

There should be considerable authority on a subject as important as this deprivation of the liberty of the individual "using the roads in the ordinary course of life and business." However, it should be noted that extensive research has not turned up one case or authority acknowledging the state's power to convert the individual's right to travel upon the public roads into a "privilege."

Therefore, it is concluded that the Citizen does have a "Right" to travel and transport his property upon the public highways and roads and the exercise of this Right is not a "privilege."

DEFINITIONS

In order to understand the correct application of the statute in question, we must first define the

terms used in connection with this point of law. As will be shown, many terms used today do not, in their legal context, mean what we assume they mean, thus resulting in the misapplication of statutes in the instant case.

AUTOMOBILE AND MOTOR VEHICLE

There is a clear distinction between an automobile and a motor vehicle. An automobile has been defined as:

"The word 'automobile' connotes a pleasure vehicle designed for the transportation of persons on highways."

American Mutual Liability Ins. Co., vs. Chaput, 60 A.2d 118, 120; 95 NH 200

While the distinction is made clear between the two as the courts have stated:

"A motor vehicle or automobile for hire is a motor vehicle, other than an automobile stage, used for the transportation of persons for which remuneration is received."

International Motor Transit Co. vs. Seattle, 251 P. 120

The term 'motor vehicle' is different and broader than the word 'automobile.'"

City of Dayton vs. DeBrosse, 23 NE.2d 647, 650; 62 Ohio App. 232

"Motor vehicle" means every description or other contrivance propelled or drawn by mechanical power and used for commercial purposes on the highways in the transportation of passengers, or passengers and property.

"Used for commercial purposes" means the carriage of persons or property for any fare, fee, rate, charge or other considerations, or directly or indirectly in connection with any business, or other undertaking intended for profit.

Title 18 USC 31 (6), (10)

Clearly, an automobile is private property in use for private purposes, while a motor vehicle is a machine which may be used upon the highways for trade, commerce, or hire.

TRAVEL

The term "travel" is a significant term and is defined as:

"The term 'travel' and 'traveler' are usually construed in their broad and general sense ... so as

to include all those who rightfully use the highways viatically (when being reimbursed for expenses) and who have occasion to pass over them for the purpose of business, convenience, or pleasure."

25 Am.Jur. (1st) Highways, Sect.427, Pg. 717

"Traveler -- One who passes from place to place, whether for pleasure, instruction, business, or health."

Locket vs. State, 47 Ala. 45;
Bovier's Law Dictionary, 1914 ed., Pg. 3309

"Travel -- To journey or to pass through or over; as a country district, road, etc. To go from one place to another, whether on foot, or horseback, or in any conveyance as a train, an automobile, carriage, ship, or aircraft; Make a journey."

Century Dictionary, Pg. 2034

Therefore, the term "travel" or "traveler" refers to one who uses a conveyance to go from one place to another, and included all those who use the highways as a matter of Right.

Notice that in all these definitions, the phrase "for hire" never occurs. This term "travel" or "traveler" implies, by definition, one who uses the road as a means to move from one place to another.

Therefore, one who uses the road in the ordinary course of life and business for the purpose of travel and transportation is a traveler.

DRIVER

The term "driver" in contradistinction to "traveler," is defined as:

"Driver -- One employed in conducting a coach, carriage, wagon, or other vehicle ..."

Bovier's Law Dictionary, 1914 ed., Pg. 940

Notice that this definition includes one who is "employed" in conducting a vehicle. It should be self-evident that this individual could not be "traveling" on a journey, but is using the road as a place of business.

OPERATOR

Today we assume that a "traveler" is a "driver," and a "driver" is an "operator." However, this is

not the case.

"It will be observed from the language of the ordinance that a distinction is to be drawn between the terms `operator' and `driver'; the `operator' of the service car being the person who is licensed to have the car on the streets in the business of carrying passengers for hire; while the `driver' is the one who actually drives the car. However, in the actual prosecution of business, it was possible for the same person to be both "operator" and "driver."

Newbill vs. Union Indemnity Co., 60 SE.2d 658

To further clarify the definition of an "operator" the court observed that this was a vehicle "for hire" and that it was in the business of carrying passengers.

This definition would seem to describe a person who is using the road as a place of business, or in other words, a person engaged in the "privilege" of using the road for gain.

This definition, then, is a further clarification of the distinction mentioned earlier, and therefore:

Traveling upon and transporting one's property upon the public roads as a matter of Right meets the definition of a traveler.

Using the road as a place of business as a matter of privilege meets the definition of a driver or an operator or both.

TRAFFIC

Having defined the terms "automobile," "motor vehicle," "traveler," "driver," and "operator," the next term to define is "traffic":

"... Traffic thereon is to some extent destructive, therefore, the prevention of unnecessary duplication of auto transportation service will lengthen the life of the highways or reduce the cost of maintenance, the revenue derived by the state ... will also tend toward the public welfare by producing at the expense of those operating for private gain, some small part of the cost of repairing the wear ..."

Northern Pacific R.R. Co. vs. Schoenfeldt, 213 P. 26

Note: In the above, Justice Tolman expounded upon the key of raising revenue by taxing the "privilege" to use the public roads "at the expense of those operating for gain."

In this case, the word "traffic" is used in conjunction with the unnecessary Auto Transportation Service, or in other words, "vehicles for hire." The word "traffic" is another word which is to be strictly construed to the conducting of business.

"Traffic -- Commerce, trade, sale or exchange of merchandise, bills, money, or the like. The passing of goods and commodities from one person to another for an equivalent in goods or money ..."

Bovier's Law Dictionary, 1914 ed., Pg. 3307

Here again, notice that this definition refers to one "conducting business." No mention is made of one who is traveling in his automobile. This definition is of one who is engaged in the passing of a commodity or goods in exchange for money, i.e .., vehicles for hire.

Furthermore, the words "traffic" and "travel" must have different meanings which the courts recognize. The difference is recognized in *Ex Parte Dickey*, supra:

"...in addition to this, cabs, hackney coaches, omnibuses, taxicabs, and hacks, when unnecessarily numerous, interfere with the ordinary traffic and travel and obstruct them."

The court, by using both terms, signified its recognition of a distinction between the two. But, what was the distinction? We have already defined both terms, but to clear up any doubt:

"The word 'traffic' is manifestly used here in secondary sense, and has reference to the business of transportation rather than to its primary meaning of interchange of commodities."

Allen vs. City of Bellingham, 163 P. 18

Here the Supreme Court of the State of Washington has defined the word "traffic" (in either its primary or secondary sense) in reference to business, and not to mere travel! So it is clear that the term "traffic" is business related and therefore, it is a "privilege." The net result being that "traffic" is brought under the (police) power of the legislature. The term has no application to one who is not using the roads as a place of business.

LICENSE

It seems only proper to define the word "license," as the definition of this word will be extremely important in understanding the statutes as they are properly applied:

"The permission, by competent authority to do an act which without permission, would be illegal, a trespass, or a tort."

People vs. Henderson, 218 NW.2d 2, 4

"Leave to do a thing which licensor could prevent."

Western Electric Co. vs. Pacent Reproducer Corp., 42 F.2d 116, 118

In order for these two definitions to apply in this case, the state would have to take up the position that the exercise of a Constitutional Right to use the public roads in the ordinary course of life and business is illegal, a trespass, or a tort, which the state could then regulate or prevent.

This position, however, would raise magnitudinous Constitutional questions as this position would be diametrically opposed to fundamental Constitutional Law. (See "Conversion of a Right to a Crime," *infra*.)

In the instant case, the proper definition of a "license" is:

"a permit, granted by an appropriate governmental body, generally for consideration, to a person, firm, or corporation, to pursue some occupation or to carry on some business which is subject to regulation under the police power."

Rosenblatt vs. California State Board of Pharmacy, 158 P.2d 199, 203

This definition would fall more in line with the "privilege" of carrying on business on the streets.

Most people tend to think that "licensing" is imposed by the state for the purpose of raising revenue, yet there may well be more subtle reasons contemplated; for when one seeks permission from someone to do something he invokes the jurisdiction of the licensor which, in this case, is the state. In essence, the licensee may well be seeking to be regulated by the licensor.

"A license fee is a charge made primarily for regulation, with the fee to cover costs and expenses of supervision or regulation."

State vs. Jackson, 60 Wisc.2d 700; 211 NW.2d 480, 487

The fee is the price; the regulation or control of the licensee is the real aim of the legislation.

Are these licenses really used to fund legitimate government, or are they nothing more than a subtle introduction of police power into every facet of our lives? Have our "enforcement agencies" been diverted from crime prevention, perhaps through no fault of their own, instead now busying themselves as they "check" our papers to see that all are properly endorsed by the state?

How much longer will it be before we are forced to get a license for our lawn mowers, or before our wives will need a license for her blender or mixer? They all have motors on them and the state can always use the revenue.

POLICE POWER

The confusion of the police power with the power of taxation usually arises in cases where the

police power has affixed a penalty to a certain act, or where it requires licenses to be obtained and a certain sum be paid for certain occupations. The power used in the instant case cannot, however, be the power of taxation since an attempt to levy a tax upon a Right would be open to Constitutional objection. (See "taxing power," *infra*.)

Each law relating to the use of police power must ask three questions:

"Is there threatened danger?
Does a regulation involve a Constitutional Right?
Is this regulation reasonable?"

People vs. Smith, 108 Am.St.Rep. 715;
Bovier's Law Dictionary, 1914 ed., under "Police Power"

When applying these three questions to the statute in question, some very important issues emerge.

First, "is there a threatened danger" in the individual using his automobile on the public highways, in the ordinary course of life and business?

The answer is No! There is nothing inherently dangerous in the use of an automobile when it is carefully managed. Their guidance, speed, and noise are subject to a quick and easy control, and under a competent and considerate manager, it is as harmless on the road as a horse and buggy.

It is the manner of managing the automobile, and that alone, which threatens the safety of the public. The ability to stop quickly and to respond quickly to guidance would seem to make the automobile one of the least dangerous conveyances. (See *Yale Law Journal*, December, 1905.)

"The automobile is not inherently dangerous."

Cohens vs. Meadow, 89 SE 876;
Blair vs. Broadmore, 93 SE 532

To deprive all persons of the Right to use the road in the ordinary course of life and business, because one might, in the future, become dangerous, would be a deprivation not only of the Right to travel, but also the Right to due process. (See "Due Process," *infra*.)

Next; does the regulation involve a Constitutional Right?

This question has already been addressed and answered in this brief, and need not be reinforced other than to remind this Court that this Citizen does have the Right to travel upon the public highway by automobile in the ordinary course of life and business. It can therefore be concluded that this regulation does involve a Constitutional Right. The third question is the most important

in this case.

"Is this regulation reasonable?"

The answer is No! It will be shown later in "Regulation," *infra.*, that this licensing statute is oppressive and could be effectively administered by less oppressive means.

Although the Fourteenth Amendment does not interfere with the proper exercise of the police power, in accordance with the general principle that the power must be exercised so as not to invade unreasonably the rights guaranteed by the United States Constitution, it is established beyond question that every state power, including the police power, is limited by the Fourteenth Amendment (and others) and by the inhibitions there imposed.

Moreover, the ultimate test of the propriety of police power regulations must be found in the Fourteenth Amendment, since it operates to limit the field of the police power to the extent of preventing the enforcement of statutes in denial of Rights that the Amendment protects. (See *Parks vs. State*, 64 NE 682.)

"With regard particularly to the U.S. Constitution, it is elementary that a Right secured or protected by that document cannot be overthrown or impaired by any state police authority."

Connolly vs. Union Sewer Pipe Co., 184 US 540;
Lafarier vs. Grand Trunk R.R. Co., 24 A. 848;
O'Neil vs. Providence Amusement Co., 108 A. 887

"The police power of the state must be exercised in subordination to the provisions of the U.S. Constitution."

Bacahanan vs. Wanley, 245 US 60;
Panhandle Eastern Pipeline Co. vs. State Highway Commission, 294 US 613

"It is well settled that the Constitutional Rights protected from invasion by the police power, include Rights safeguarded both by express and implied prohibitions in the Constitutions."

Tiche vs. Osborne, 131 A. 60

"As a rule, fundamental limitations of regulations under the police power are found in the spirit of the Constitutions, not in the letter, although they are just as efficient as if expressed in the clearest language."

Mehlos vs. Milwaukee, 146 NW 882

As it applies in the instant case, the language of the Fifth Amendment is clear:

"No person shall be ... deprived of Life, Liberty, or Property without due process of law."

As has been shown, the courts at all levels have firmly established an absolute Right to travel.

In the instant case, the state, by applying commercial statutes to all entities, natural and artificial persons alike, has deprived this free and natural person of the Right of Liberty, without cause and without due process of law.

DUE PROCESS

"The essential elements of due process of law are ... Notice and The Opportunity to defend."

Simon vs. Craft, 182 US 427

Yet, not one individual has been given notice of the loss of his/her Right, let alone before signing the license (contract). Nor was the Citizen given any opportunity to defend against the loss of his/her right to travel, by automobile, on the highways, in the ordinary course of life and business. This amounts to an arbitrary deprivation of Liberty.

"There should be no arbitrary deprivation of Life or Liberty ..."

Barbour vs. Connolly, 113 US 27, 31;

Yick Wo vs. Hopkins, 118 US 356

and ...

"The right to travel is part of the Liberty of which a citizen cannot be deprived without due process of law under the Fifth Amendment. This Right was emerging as early as the Magna Carta."

Kent vs. Dulles, 357 US 116 (1958)

The focal point of this question of police power and due process must balance upon the point of making the public highways a safe place for the public to travel. If a man travels in a manner that creates actual damage, an action would lie (civilly) for recovery of damages. The state could then also proceed against the individual to deprive him of his Right to use the public highways, for cause. This process would fulfill the due process requirements of the Fifth Amendment while at the same time insuring that Rights guaranteed by the U.S. Constitution and the state constitutions would be protected.

But unless or until harm or damage (a crime) is committed, there is no cause for interference in the private affairs or actions of a Citizen.

One of the most famous and perhaps the most quoted definitions of due process of law, is that of Daniel Webster in his Dartmouth College Case (4 Wheat 518), in which he declared that by due process is meant:

"a law which hears before it condemns, which proceeds upon inquiry, and renders judgment only after trial."

See also *State vs. Strasburg*, 110 P. 1020;
Dennis vs. Moses, 52 P. 333

Somewhat similar is the statement that is a rule as old as the law that:

"no one shall be personally bound (restricted) until he has had his day in court,"

by which is meant, until he has been duly cited to appear and has been afforded an opportunity to be heard. Judgment without such citation and opportunity lacks all the attributes of a judicial determination; it is judicial usurpation and it is oppressive and can never be upheld where it is fairly administered. (12 Am.Jur. [1st] Const. Law, Sect. 573, Pg. 269)

Note: This sounds like the process used to deprive one of the "privilege" of operating a motor vehicle "for hire." It should be kept in mind, however, that we are discussing the arbitrary deprivation of the Right to use the road that all citizens have "in common."

The futility of the state's position can be most easily observed in the 1959 Washington Attorney General's opinion on a similar issue:

"The distinction between the Right of the Citizen to use the public highways for private, rather than commercial purposes is recognized ..."

and ...

"Under its power to regulate private uses of our highways, our legislature has required that motor vehicle operators be licensed (I.C. 49-307). Undoubtedly, the primary purpose of this requirement is to insure, as far as possible, that all motor vehicle operators will be competent and qualified, thereby reducing the potential hazard or risk of harm, to which other users of the highways might otherwise be subject. But once having complied with this regulatory provision, by obtaining the required license, a motorist enjoys the privilege of traveling freely upon the highways ..."

Washington A.G.O. 59-60 No. 88, Pg. 11

This alarming opinion appears to be saying that every person using an automobile as a matter of Right, must give up the Right and convert the Right into a privilege. This is accomplished under

the guise of regulation. This statement is indicative of the insensitivity, even the ignorance, of the government to the limits placed upon governments by and through the several constitutions.

This legal theory may have been able to stand in 1959; however, as of 1966, in the United States Supreme Court decision in *Miranda*, even this weak defense of the state's actions must fall.

"Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them."

Miranda vs. Arizona, 384 US 436, 491

Thus the legislature does not have the power to abrogate the Citizen's Right to travel upon the public roads, by passing legislation forcing the citizen to waive his Right and convert that Right into a privilege. Furthermore, we have previously established that this "privilege" has been defined as applying only to those who are "conducting business in the streets" or "operating for-hire vehicles."

The legislature has attempted (by legislative fiat) to deprive the Citizen of his Right to use the roads in the ordinary course of life and business, without affording the Citizen the safeguard of due process of law. This has been accomplished under supposed powers of regulation.

REGULATION

"In addition to the requirement that regulations governing the use of the highways must not be violative of constitutional guarantees, the prime essentials of such regulation are reasonableness, impartiality, and definiteness or certainty."

25 Am.Jur. (1st) Highways, Sect. 260

and ...

"Moreover, a distinction must be observed between the regulation of an activity which may be engaged in as a matter of right and one carried on by government sufferance of permission."

Davis vs. Massachusetts, 167 US 43;
Pachard vs. Banton, supra.

One can say for certain that these regulations are impartial since they are being applied to all, even though they are clearly beyond the limits of the legislative powers. However, we must consider whether such regulations are reasonable and non-violative of constitutional guarantees.

First, let us consider the reasonableness of this statute requiring all persons to be licensed (presuming that we are applying this statute to all persons using the public roads). In determining

the reasonableness of the statute we need only ask two questions:

Does the statute accomplish its stated goal?

The answer is No!

The attempted explanation for this regulation "to insure the safety of the public by insuring, as much as possible, that all are competent and qualified."

However, one can keep his license without retesting, from the time he/she is first licensed until the day he/she dies, without regard to the competency of the person, by merely renewing said license before it expires. It is therefore possible to completely skirt the goal of this attempted regulation, thus proving that this regulation does not accomplish its goal.

Furthermore, by testing and licensing, the state gives the appearance of underwriting the competence of the licensees, and could therefore be held liable for failures, accidents, etc. caused by licensees.

Is the statute reasonable?

The answer is No!

This statute cannot be determined to be reasonable since it requires to the Citizen to give up his or her natural Right to travel unrestricted in order to accept the privilege. The purported goal of this statute could be met by much less oppressive regulations, i.e., competency tests and certificates of competency before using an automobile upon the public roads. (This is exactly the situation in the aviation sector.)

But isn't this what we have now?

The answer is No! The real purpose of this license is much more insidious. When one signs the license, he/she gives up his/her Constitutional Right to travel in order to accept and exercise a privilege. After signing the license, a quasi-contract, the Citizen has to give the state his/her consent to be prosecuted for constructive crimes and quasi-criminal actions where there is no harm done (no injured party) and no damaged property.

These prosecutions take place without affording the Citizen of their Constitutional Rights and guarantees such as the Right to a trial by jury of twelve persons and the Right to counsel, as well as the normal safeguards such as proof of intent and a corpus delicti and a grand jury indictment. These unconstitutional prosecutions take place because the Citizen is exercising a privilege and has given his/her "implied consent" to legislative enactments designed to control interstate commerce, a regulatable enterprise under the police power of the state.

We must now conclude that the Citizen is forced to give up Constitutional guarantees of "Right" in order to exercise his state "privilege" to travel upon the public highways in the ordinary course of life and business. In addition, said infringement of rights is at the expense of the private citizen in costs, fees, renewals, fines, etc., for which the State is benefitting, without full disclosure of the alleged contract between the private citizen and the State.

SURRENDER OF RIGHTS

A Citizen cannot be forced to give up his/her Rights in the name of regulation.

"... the only limitations found restricting the right of the state to condition the use of the public highways as a means of vehicular transportation for compensation are (1) that the state must not exact of those it permits to use the highways for hauling for gain that they surrender any of their inherent U.S. Constitutional Rights as a condition precedent to obtaining permission for such use ..."

Riley vs. Laeson, 142 So. 619;
Stephenson vs. Binford, supra.

If one cannot be placed in a position of being forced to surrender Rights in order to exercise a privilege, how much more must this maxim of law, then, apply when one is simply exercising (putting into use) a Right?

Hoke vs. Henderson, 15 NC 15

and ...

"We find it intolerable that one Constitutional Right should have to be surrendered in order to assert another."

Simons vs. United States, 390 US 389

Since the state requires that one give up Rights in order to exercise the privilege of traveling, the regulation cannot stand under the police power, due process, or regulation, but must be exposed as a statute which is oppressive and one which has been misapplied to deprive the Citizen of Rights guaranteed by the United States Constitution and the state constitutions.

TAXING POWER

"Any claim that this statute is a taxing statute would be immediately open to severe Constitutional objections. If it could be said that the state had the power to tax a Right, this would enable the state to destroy Rights guaranteed by the constitution through the use of oppressive taxation. The question herein is one of the state taxing the Right to travel by the

ordinary modes of the day, and whether this is a legislative object of the state taxation.

The views advanced herein are neither novel nor unsupported by authority. The question of taxing power of the states has been repeatedly considered by the Supreme Court. The Right of the state to impede or embarrass the Constitutional operation of the U.S. Government or the Rights which the Citizen holds under it, has been uniformly denied."

McCulloch vs. Maryland, 4 Wheat 316

The power to tax is the power to destroy, and if the state is given the power to destroy Rights through taxation, the framers of the Constitution wrote that document in vain.

"... It may be said that a tax of one dollar for passing through the state cannot sensibly affect any function of government or deprive a Citizen of any valuable Right. But if a state can tax ... a passenger of one dollar, it can tax him a thousand dollars."

Crandall vs. Nevada, 6 Wall 35, 46

and ...

"If the Right of passing through a state by a Citizen of the United States is one guaranteed by the Constitution, it must be sacred from state taxation."

Ibid., Pg. 47

Therefore, the Right of travel must be kept sacred from all forms of state taxation and if this argument is used by the state as a defense of the enforcement of this statute, then this argument also must fail.

CONVERSION OF A RIGHT TO A CRIME

As previously demonstrated, the Citizen has the Right to travel and to transport his property upon the public highways in the ordinary course of life and business. However, if one exercises this Right to travel (without first giving up the Right and converting that Right into a privilege) the Citizen is by statute, guilty of a crime. This amounts to converting the exercise of a Constitutional Right into a crime.

Recall the *Miller vs. U.S.* and *Snerer vs. Cullen* quotes from Pgs. 3+4, and:

"The state cannot diminish Rights of the people."

Hurtado vs. California, 110 US 516

and ...

"Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them."

Miranda, supra.

Indeed, the very purpose for creating the state under the limitations of the constitution was to protect the rights of the people from intrusion, particularly by the forces of government.

So we can see that any attempt by the legislature to make the act of using the public highways as a matter of Right into a crime, is void upon its face.

Any person who claims his Right to travel upon the highways, and so exercises that Right, cannot be tried for a crime of doing so. And yet, this Freeman stands before this court today to answer charges for the "crime" of exercising his Right to Liberty. As we have already shown, the term "drive" can only apply to those who are employed in the business of transportation for hire. It has been shown that freedom includes the Citizen's Right to use the public highways in the ordinary course of life and business without license or regulation by the police powers of the state.

CONCLUSION

It is the duty of the court to recognize the substance of things and not the mere form.

"The courts are not bound by mere form, nor are they to be misled by mere pretenses. They are at liberty -- indeed they are under a solemn duty -- to look at the substance of things, whenever they enter upon the inquiry whether the legislature has transcended the limits of its authority. If, therefore, a statute purported to have been enacted to protect ... the public safety, has no real or substantial relation to those objects or is a palpable invasion of Rights secured by the fundamental law, it is the duty of the courts to so adjudge, and thereby give effect to the Constitution."

Mulger vs. Kansas, 123 US 623, 661

and ...

"It is the duty of the courts to be watchful for the Constitutional rights of the citizen and against any stealthy encroachments thereon."

Boyd vs. United States, 116 US 616

The courts are duty bound to recognize and stop the stealthy encroachments which have been made upon the Citizen's Right to travel and to use the roads to transport his property in the

"ordinary course of life and business." (*Hadfield*, supra.)

Further, the court must recognize that the Right to travel is part of the Liberty of which a Citizen cannot be deprived without specific cause and without the due process of law guaranteed in the Fifth Amendment. (*Kent*, supra.)

The history of this invasion of the Citizen's Right to use the public highways shows clearly that the legislature simply found a heretofore untapped source of revenue, got greedy, and attempted to enforce a statute in an unconstitutional manner upon those free and natural individuals who have a Right to travel upon the highways. This was not attempted in an outright action, but in a slow, meticulous, calculated encroachment upon the Citizen's Right to travel.

This position must be accepted unless the prosecutor can show his authority for the position that the "use of the road in the ordinary course of life and business" is a privilege.

To rule in any other manner, without clear authority for an adverse ruling, will infringe upon fundamental and basic concepts of Constitutional law. This position, that a Right cannot be regulated under any guise, must be accepted without concern for the monetary loss of the state.

"Disobedience or evasion of a Constitutional Mandate cannot be tolerated, even though such disobedience may, at least temporarily, promote in some respects the best interests of the public."

Slote vs. Examination, 112 ALR 660

and ...

"Economic necessity cannot justify a disregard of Constitutional guarantee."

Riley vs. Carter, 79 ALR 1018;
16 Am.Jur. (2nd), Const. Law, Sect. 81

and ...

"Constitutional Rights cannot be denied simply because of hostility to their assertions and exercise; vindication of conceded Constitutional Rights cannot be made dependent upon any theory that it is less expensive to deny them than to afford them."

Watson vs. Memphis, 375 US 526

Therefore, the Court's decision in the instant case must be made without the issue of cost to the state being taken into consideration, as that issue is irrelevant. The state cannot lose money that it never had a right to demand from the Sovereign People.

Finally, we come to the issue of public policy. It could be argued that the licensing scheme of all persons is a matter of public policy. However, if this argument is used, it too must fail, as:

"No public policy of a state can be allowed to override the positive guarantees of the U.S. Constitution."

16 Am.Jur. (2nd), Const. Law, Sect. 70

So even public policy cannot abrogate this Citizen's Right to travel and to use the public highways in the ordinary course of life and business. Therefore, it must be concluded that:

"We have repeatedly held that the legislature may regulate the use of the highways for carrying on business for private gain and that such regulation is a valid exercise of the police power."

Northern Pacific R.R. Co., supra.

and ...

"The act in question is a valid regulation, and as such is binding upon all who use the highway for the purpose of private gain."

Ibid.

Since no notice is given to people applying for driver's (or other) licenses that they have a perfect right to use the roads without any permission, and that they surrender valuable rights by taking on the regulation system of licensure, the state has committed a massive construction fraud. This occurs when any person is told that they must have a license in order to use the public roads and highways.

The license, being a legal contract under which the state is empowered with policing powers, is only valid when the licensee takes on the burdens of the contract and bargains away his or her rights knowingly, intentionally, and voluntarily.

Few know that the driver's license is a contract without which the police are powerless to regulate the people's actions or activities.

Few (if any) licensees intentionally surrender valuable rights. They are told that they must have the license. As we have seen, this is not the case.

No one in their right mind voluntarily surrenders complete liberty and accepts in its place a set of regulations.

"The people never give up their liberties but under some delusion." Edmund Burke, (1784

Any other construction of this statute would render it unconstitutional as applied to this Citizen. The Defendant/Accused therefore moves this court to dismiss the charge against him, with prejudice.

CONSTRUCTIVE NOTICE - IGNORANCE OF THE LAW IS NOT AN EXCUSE



Jeffrey T. Maehr

First the wallet sized card:

I hereby invoke and refuse to waive all of the following rights and privileges afforded to me by the United States Constitution. I invoke and refuse to waive my 5th Amendment right to Remain Silent. I invoke and refuse to waive my 6th Amendment right to an attorney of my choice. I invoke and refuse to waive my 4th Amendment right to be free from unreasonable searches and seizures. If I am not presently under arrest, or under investigatory detention, please allow me to leave.

Officer, I Assert My Fifth Amendment Rights As Stated On This Card. Pursuant to the law, as established by the United States Supreme Court, my lawyer has advised me not to talk to anyone and not to answer questions about any pending criminal case or any other civil, administrative, judicial, investigatory or adjudicatory matter. Following his advice, I do not wish to talk to anyone about any criminal, civil, administrative, judicial, investigatory or adjudicatory matter, without my lawyer present. I waive no legal rights, nor give any consents, nor submit to any tests or other procedures, without my lawyer present. I ask that no one question or talk to me, without my lawyer here to advise me.

The second and larger full sheet to hand officer:

I am Traveling in my Private Automobile by Constitutional Guaranteed Right, these Cases and Statements recognized by the Supreme Court verify my right to Travel in my Private Automobile.

Americans' "freedom to travel throughout the United States has long been recognized as a basic right under the Constitution," according to multiple cases including Williams v. Fears, 179 U.S. 270, 274 (1900); Twining v. New Jersey, 211 U.S. 78, 97 (1908), as listed in the case of United States v. Guest, 383 U.S. 745, 758 (1966), a case involving criminally prosecuting people for obstructing the right (obstruction is a federal crime pursuant to federal criminal law 18 USC 241).

"The right to travel is a part of the "liberty" of which the citizen cannot be deprived without due process of law under the Fifth Amendment." Kent v. Dulles, 357 U.S. 116, 125 (1958). Reaffirmed in Zemel v. Rusk, 381 U.S. 1 (1965).

"Undoubtedly the right of locomotion, the right to remove from one place to another according to inclination, is an attribute of personal liberty, and the right, ordinarily, of free transit from or through the territory of any State is a right secured by the 14th Amendment and by other provisions of the Constitution." Schactman v. Dulles, 255 F.2d 938, 944 (1955).

"Even the legislature has no power to deny to a citizen the right to travel upon the highway and transport his property in the ordinary course of his business or pleasure, though this right may be regulated in accordance with the public interest and convenience." Chicago Motor Coach Co. v. City of Chicago, 337 Ill. 200, 206 (1929), 169 NE 22 ("Regulated" here means stop lights, signs, etc., NOT a privilege that requires permission).

"The right of a citizen to travel upon the public highways and to transport his property thereon in the ordinary course of life and business is a common right which he has under his right to enjoy life and liberty, to acquire and possess property, and to pursue happiness and safety. It includes the right in so doing to use the ordinary and usual conveyances of the day." Thompson v. Smith, 155 Va. 367 (1930).

"The right to make use of an automobile as a vehicle of travel along the highways of the state, is no longer an open question. The owners thereof have the same rights in the roads and streets as the drivers of horses or those riding a bicycle or traveling by some other vehicle." House v. Cramer, 134 Iowa 374 (1907), 112 N.W. 3.

Public roads belong to the people, since we pay for them. Every time we purchase gasoline we are charged a tax on the gasoline which pays for all public roads, therefore exercising one's liberty upon them is a natural right. The right to travel, or to locomotion, is upheld in the constitution, and actually predates the constitution.

"No one is bound to obey an unconstitutional law, and no courts are bound to enforce it." Bonnett v. Vallier, 136 Wis. 193 (1908), 116 N.W. 885; Norton v. Shelby County, 118 U.S. 425 (1886); 16A Am. Jur. 2d Constitutional Law Sec. 195.

The State cannot diminish the rights of the people. Hurtado v. California, 110 U.S. 516 (1884).

“This Constitution, and the Laws of the United States which shall be made in Pursuance thereof, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.” “The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution...” Article VI of the U.S. Constitution.

“The claim and exercise of a constitutional right cannot thus be converted into a crime.” Miller v. United States, 230 F.2d 486, 490 (1956).

With no injured party, a complaint is invalid on its face. Gibson v. Boyle, 139 Ariz. 512 (1983).

Courts have ruled that without Corpus delicti there can be no crime and, “In every prosecution for crime, it is necessary to establish the corpus delicti, i.e., the body or elements of the crime.” People v. Lopez, 254 Cal.App.2d 185, 188 (1967). “In every criminal trial, the prosecution must prove the corpus delicti, or the body of the crime itself – i.e., the fact of injury, loss or harm, and the existence of a criminal agency as its cause.” People v. Sapp, 2 Cal. Rptr. 3d 554, 595 (2003) [quoting People v. Alvarez, 46 P.3d 372 (2002)].

“As a general principle, standing to invoke the judicial process requires an actual justiciable controversy as to which the complainant has a real interest in the ultimate adjudication because he or she has either suffered or is about to suffer an injury.” People v. Superior Court, 126 Cal.Rptr.2d 793, 801 (2002).

There is no question that there is NO injured party involved here, and a citation/ticket issued by a police officer, or jail/incarceration for any cause including no valid driver’s license, registration or insurance, and save for criminal activities involving an injured party, is a penalty or sanction, and is indeed, “converting a Right into a crime.”¹

“The use of highways for purposes of travel and transportation is not a mere privilege, but a common and fundamental right, of which the public and individuals cannot rightfully be deprived.” Chicago Motor Coach Co. v. City of Chicago, 337 Ill. 200 (1929), 169 NE 22, 66 ALR 834. Ligare v. City of Chicago, 139 Ill. 46 (1891), 28 NE 934. Boone v. Clark, 214 S.W. 607 (1919); 25 American Jurisprudence, Highways, Sec. 163.

¹ Miller v. United States, 230 F.2d 486, 490 (1956)



STATE OF COLORADO

DEPARTMENT OF
STATE

CERTIFICATE

I, **DONETTA DAVIDSON**, SECRETARY OF STATE OF THE STATE OF
COLORADO HEREBY CERTIFY THAT ACCORDING TO THE RECORDS OF
THIS OFFICE, ON THIS DATE, NO RECORD EXISTS IN THIS OFFICE
OF A CORPORATION, LIMITED PARTNERSHIP, LIMITED LIABILITY
COMPANY, LIMITED LIABILITY PARTNERSHIP, LIMITED LIABILITY
LIMITED PARTNERSHIP OR LIMITED PARTNERSHIP ASSOCIATION,
FOREIGN OR DOMESTIC, UNDER THE NAME OF
THE PEOPLE OF THE STATE OF COLORADO

Dated: May 24, 2004

ROBERT C. "BOB" BALINK El Paso County, CO

12/22/2005 09:36:22 AM

Doc \$0.00 Page

Rec \$6.00 1 of 1



205201897

Office of County Clerk and Recorder
El Paso County, State of Colorado
Certified to be a full, true and Correct
Copy of record in my Office.

2005-05-24 Book Page
Date: 12/22/2005 Robert C. Balink

County Clerk & Recorder
El Paso County, Colorado
By: [Signature] Deputy



Donetta Davidson

SECRETARY OF STATE