



Driving Freedom

NMA Foundation

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Fall 2011

The NMA Foundation is a non-profit organization dedicated to finding innovative ways to improve and protect the interests of North American motorists.



Adding Insult

to Injury

If your NMA membership expiration date is on (or before) 10/1/11, this is your last issue of

Driving Freedom

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**Driving
Freedoms**

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Cover
“Adding Insult to Injury”



MUTCD – Unknown and Toothless

by James J. Baxter, President, NMA

Unlike NMA members, the general public is clueless when it comes to the Manual on Uniform Traffic Control Devices (MUTCD). Included in this clueless majority are most members of the law enforcement community, judiciary, all legislative bodies, and the media.

Believe me, I speak from experience. Virtually no one, other than an occasional traffic engineer, knows what the MUTCD is, or what its role is, when it comes to regulating and guiding traffic.

Here’s a simple, but not uncommon example of the disconnect between theory and reality, or the law and its actual implementation.

A few months back, I saw a new 35 mph speed limit sign, planted jauntily at a 20 degree angle in the roadside embankment. The same three-foot-tall post was festooned with a “school bus stop ahead” sign. Normal speeds on this section of rural road are 45 mph to 55 mph. To say a 35 mph limit on this road is absurd would be an understatement.

I wrote a letter of protest to the local government – all people who I am acquainted with – and pointed out that the sign did not meet MUTCD design standards, that its installation was not preceded by a traffic engineering study, and that it would be universally ignored.

I also explained that such a sign (and others like it) cause motorists to disregard all such signs, even those that are legitimately installed. Finally, I stated that this sign and almost every other sign within this

jurisdiction was not in compliance with the MUTCD and therefore was illegal and unenforceable.

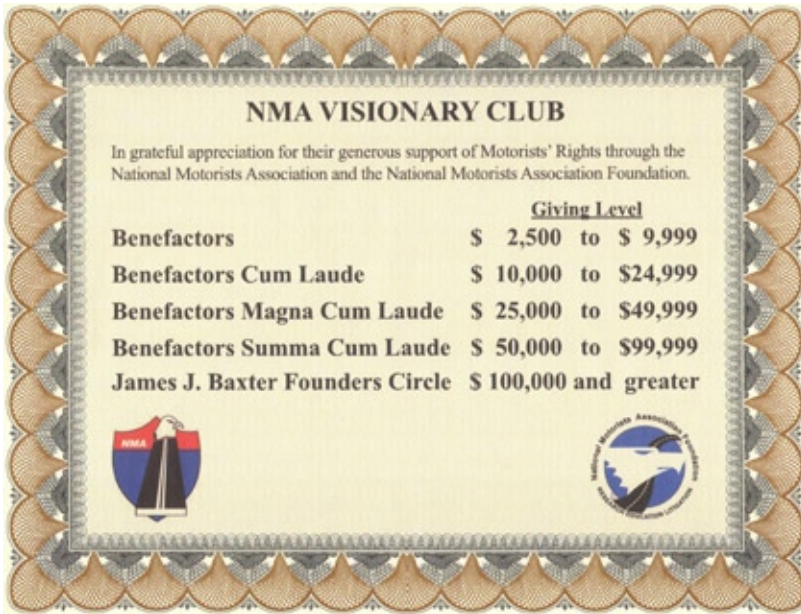
Subsequently, I was invited to a public meeting to discuss my complaint and concerns. When the meeting was publicized, to the surprise of the town officials, several other residents wanted to discuss traffic regulation grievances of their own.

I went to the meeting loaded for bear. I made copies of relevant MUTCD design standards, the language mandating traffic engineering studies for speed limit changes, and the state laws requiring compliance with the MUTCD standards.

Unfortunately, my citizen cohorts were there to demand *more* enforcement of under-posted speed limits and stop signs that should never have been put up in the first place. The deputy county sheriff also put in a cameo appearance and explained the difficulty of enforcing traffic laws on such sparsely traveled roads.

Two months later the irritating 35 mph speed limit sign was still in place, just listing a little more toward the road. One afternoon, on my way home from work, what did I come across but that same deputy county sheriff setting up a “speed wagon” (one of those trailer-mounted display signs connected to a radar gun with a sign that says “your speed” above the display screen). The sign on top of the wagon said “Speed Limit 35 mph.”

(Continued on Page 4)



Members of the **Visionary Club** have demonstrated a commitment to furthering the rights of motorists through their gifts to the NMA and the NMA Foundation.

We are very pleased to recognize their contributions.

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MUTCD – Unknown and Toothless

(Continued from Page 2)

That cut it! I pulled over to the side of the road, walked up to the deputy, and pointed to the non-compliant speed limit sign on the roadside. I said, “That’s an illegal sign, it doesn’t meet the design standards of the Manual on Uniform Traffic Control Devices, and the town never conducted a traffic engineering study before changing the speed limit.” As you might suspect, he looked at me like I had just descended from a flying saucer.

I politely continued with my lecture, which probably could have been in Chinese for all the good it did, but I did have him flummoxed enough that he removed the 35 mph speed limit sign from the speed wagon. Even he found the actual cockeyed speed limit sign on too short a post a little less than “official” looking.

The speed wagon sat out there for a couple weeks, mostly as a distraction and general waste of public funds, and then it was gone. A couple weeks after that the 35 mph speed limit sign also disappeared – honest, it wasn’t me.

But not much else has changed. Random and unjustified speed limit signs are nailed to utility poles, covered by vegetation, and goobered up with spray paint. “Caution, School Bus Stop Ahead” signs are located where

the last child left high school ten years ago, but dead-end roads don’t have “Dead End” signs, and functional “Yield” signs have all been replaced with



stop signs at which no one stops.

One simple change in state (and perhaps federal) law could correct the worst of these deficiencies: granting the right of private action to enforce MUTCD standards.

Setting aside opinions about the Environmental Protection Agency (EPA), many of that agency’s regulations would have long ago been assigned to the dustbin of forgotten and ignored rules were it not for the “right of private action.”

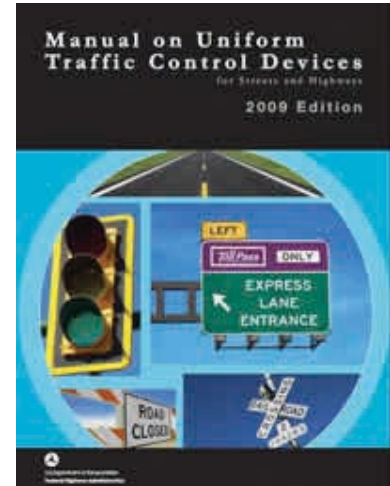
As administrations change from Democratic to Republican, and back, certain regulations are de-emphasized, or they become “lower priority,” euphemisms for “we’re not going to enforce them because we don’t like them, and it would be too hard politically to get rid of them.” But, the interests that do value these regulations have the right to private action and they can, and have, used the courts to force the EPA to enforce its own rules, like them or not.

Currently, private citizens or organizations are not allowed to use the court system to force state and local governments to follow their own rules regarding traffic regulations and related traffic control devices. The MUTCD has specific standards for the use, design, and installation of traffic control devices. Not following these standards makes these devices illegal.

Still, local and state governments ignore these standards without consequence. If private citizens and groups had the power to use the courts to force compliance with these standards, the MUTCD would cease being a blob of red tape whose function is to be either ignored or circumvented.

However, don’t look for any support from the traffic engineering community. The most likely reaction from the people most involved in developing and administering the MUTCD would be impassioned oppo-

sition! This would be followed by an accelerated campaign to water down the MUTCD standards to the point that the only standards left would be the color and shape of the signs.



This goes directly to the issue of accountability. The right of private action would add an element of accountability to the development, administration, and enforcement of MUTCD standards.

The use of so-called “professional judgment” to bypass these standards could be subjected to severe scrutiny, especially in a courtroom. As noted above, the more likely bureaucratic reaction would be to dilute and obfuscate the MUTCD to the point that any political whim, exception, or concern would be accommodated by the manual. This, unfortunately, is a trend already well advanced.

Our choices should be better than a MUTCD with legitimate standards, but no enforcement of those standards, versus a MUTCD that is enforceable, but has no legitimate standards.

I know it’s crazy and unrealistic, but what’s wrong with legitimate standards that are enforced by citizen action if necessary? ■

Rob Talley’s “NMA Washington Report” will resume its usual place in the next issue of Driving Freedoms.

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Stick to Your Guns

by Wilson Velasquez, NMA Maine Member

I was pulled over in 2009 in southern Maine for allegedly speeding (79 in a 65 mph zone). The officer claimed he used laser as the speed measuring device. After the briefest encounter I ever had with an officer, I was issued a ticket.

Over a year later – unfortunately our 6th Amendment right to a speedy trial doesn't apply in this state! – a trial date was set.

I made a formal “motion for discovery” for seven items, addressed it to the District Court, and sent the package by certified mail.

At my first hearing, I arrived wearing a dark suit and carrying two law books – the Maine Statutes and the Civil Rules of Court. (Each volume was liberally marked with reference tabs.) These were my fatigues and weapons as I was prepared for battle.

During roll call, both the assistant district attorney (ADA) and judge explained the “rules of the court.” They solemnly noted the difficulty of winning

a case since the ADA only has to prove his case by “preponderance of the evidence.” They also all but said that the officer’s testimony would be considered infallible.

Out of more than thirty cases, only two (including mine) were tried that day. However, before the trial, I opted for negotiation. Guess who I was negotiating with? The officer who pulled me over!

I cannot begin to explain how wrong this is. After our “negotiation,” which was more like an interrogation and “scared straight” talk, I told the officer I was going to take my chances at trial since there was nothing he could do about reducing the points that would be applied against my driving record.

The officer replied that he had never lost a case in his career, and that he had my admission of guilt on the day of the incident (an utter lie), and that WHEN I was found guilty, the fines and points would increase and my license might be suspended.

Officer Intimidator also stated that I ought to read the law books I had under my arm because he did not have to give me anything for discovery. (This was partially true; discovery could be granted by agreement of all parties and the court.)

I left the negotiation room and was called by the ADA for yet another attempt to convince me not to go to trial. The ADA and ticketing officer offered once again to lower the fine, but without point reduction. They also discussed some of the finer points of laser versus radar and how accurate laser is, etc. I said once again that I would take my chances in court.

At the trial, the judge again went over the “rules of court” and asked if I had any questions. I immediately replied, “I’d like to make a motion to dismiss, your honor.”

He asked on what grounds; I stated



that my motion for discovery had not been granted. The judge then continued (postponed) my case, and told me to meet with the ADA before I left to go over exactly what I needed.

Two months later, I had still not received discovery, but I did receive a new Notice to Appear. So again I appeared in court with my uniform and law books, and sat through another roll call and the same explanation of the “rules of court.” I made another formal motion to dismiss and this time the judge agreed because “we did not give you the items requested in discovery.”

MORAL OF THE STORY: Even in a state that has statutory provisions for laser speed measurement, you can fight speeding charges with the numerous strategies provided by the NMA. However, be prepared for intimidation tactics by the prosecuting attorney, the arresting officer, and even the judge.

If you believe in your defense, have done your homework, and have the confidence to stand up in a courtroom setting, you too can beat a speeding ticket. ■

Supporting members can download a free copy of “Fight That Ticket!,” the popular NMA ebook designed to help defendants successfully navigate traffic court. Much of what Mr. Velasquez put into practice to earn the dismissal of his case is detailed in the ebook. Log in to the Members Area at www.motorists.org for download instructions. Others may purchase “Fight That Ticket!” for only \$9.95.

Fight That Ticket!

WINNING STRATEGIES
FOR FIGHTING
TRAFFIC TICKETS



Adding Insult to Injury

In a well-publicized survey taken ten years ago, an auto insurance company polled several thousand policyholders involved in accidents the previous year. Almost 70 percent indicated that the accident occurred within ten miles of home, while only 17 percent experienced their fender-benders (or worse) more than 20 miles away.

The usual rationale for those results is that a driver's attention for detail ratchets down a few notches when entering a "familiarity zone" around home base. The same theory indicates that longer trips in lesser known environs sharpen the focus of most motorists. In reality, more accidents occur close to home because that is where most driving is done.

In recent years, several cities have adopted policies that make it even more important for out-of-town drivers to avoid accidents.

That policy is called a "crash tax" or *accident response fee*. A crash tax is a fine imposed against a motorist – often a non-resident motorist – who is involved in an accident that triggers a response from a local police or fire department.

The crash tax is one of the very few issues that has the NMA and the insurance industry aligned on the same side. Of course, the insurance companies do so to avoid costs that lower their profit margins while the NMA opposes the crash tax because it is used to produce revenue to help localities fill budget gaps. We also object because often times the tax is levied against motorists who are not at fault.

Communities with crash tax ordinances initially bill the insurance companies of the parties involved in the accident. Insurance policies rarely have provisions to pay such fees, so the insurers ignore the payment notice. Third party collection agencies are then unleashed on easier prey – the insured drivers.

Take the case of Cary Feldman. As he was riding his motor scooter in Chicago Heights, Illinois two summers ago, he was bumped from behind by another vehicle. He was uninjured, and there was no appreciable damage to the scooter or the car that struck him.

Nevertheless, a bystander called 911 and a city fire truck was

dispatched. In Feldman's words, "There was no fire, there was no explosion, there was no debris. From what I saw, they [the firemen] came, they saw, and they left." Feldman was billed \$200 by the Chicago Heights fire department.

Our criticism of the crash tax is not meant to denigrate the dedicated work of emergency care first responders. Rather, we deplore the opportunistic approach by some cities to charge non-residents for police, fire, and other emergency services that traditionally are paid by citizens in their home districts. The crash tax is a form of double taxation.

Not that we should be surprised. Municipalities continually find creative ways to generate income in order to bolster their budgets. The crash tax fits the bill, figuratively and literally.

Motorists, through various excise taxes and traffic tickets, have always been a steady source of that stop-gap revenue. ("Always" is a bit of an exaggeration, but not to the degree you might think. The first speeding ticket issued in the United States occurred on May 20, 1899. Taxi driver Jacob German was pulled over in New York City for exceeding the 8 mph speed limit by a whopping 50 percent in his electric car.)

Speed traps, for example, have become common practice based on the growing dependence of local governments on traffic ticket revenue. Two researchers, Thomas Garrett and Gary Wagner, found a direct correlation between cities and counties having difficult fiscal years and a corresponding increase in ticket revenue after analyzing 13

(Continued top of next page)



years worth of ticket data. (Details of their study, “*Are Traffic Tickets Countercyclical?*” can be found on the NMA’s website, www.motorists.org.)

Alabama, Arkansas, Florida, Georgia, Indiana, Louisiana, Missouri, Oklahoma, Pennsylvania, and Tennessee have passed laws that ban the imposition of a crash tax. But at last count, cities in 37 states charge, or are proposing ordinances that would permit, a fee for responding to a roadside accident.

Earlier this year, Sacramento, California began billing fees starting at \$435 to non-resident drivers involved in accidents that required help from emergency personnel – regardless of fault. It is no coincidence that these fees are being imposed at a time the capital city is facing a \$35 million deficit.

Sam Sorich, president of the Association of California Insurance Companies notes, “It’s bad public policy. This is a fundamental government service. Anyone who comes to Sacramento expects that the government will be there to come to the scene of an accident.”

Other prominent cities that have enacted their own versions of a crash tax include Bridgeport and New Haven, CT; Buffalo, NY; Dallas, TX; Quincy, MA; and Toledo, OH.

Jay Middleton of Mount Laurel, NJ was incensed when he was billed almost \$300 by Radnor Township, Pennsylvania for a minor accident while helping his daughter move from college. He said, “You’re not welcome here, outsiders not welcome. That’s what it says to me.”

There has been some backlash. Radnor Township subsequently repealed its crash tax ordinance. Several cities in California have also dropped accident response fee programs.

Petroskey, Michigan, which depends on tourism for a large portion of its revenue, considered instituting a fee for police or fire department responses, but ultimately decided against it. Said Petroskey Chamber of Commerce president Carlin Smith, “. . . it’s not something you do to people. They’ve just had an unfortunate situation. You don’t make it more of a misfortune.”

That isn’t stopping New York City from charging \$365 to \$490 any time its fire department is called to the scene of an accident. In typical New York fashion, the fee applies to residents and non-residents alike. But then, Mayor Michael Bloomberg’s recent statement that he wants to see a red-light camera on every corner of the city makes it clear that motorists are shakedown targets for the city.

There is another aspect to the crash tax that deserves special mention. As Jill Ingrassia, AAA Managing Director for Government Relations and Traffic Safety Advocacy, notes, “We really don’t want to discourage any motorist involved in a crash from calling for police or rescue services if they fear they are going to be billed for it.”



California’s Speed Trap Law Passes Muster in Court



California Vehicle Code Sections 40801 and 40802 form the crux of the state’s so-called speed trap law.

These laws require a recent traffic engineering survey to justify the posted speed limit on a highway (excluding local streets, roads, or school zones). Without that survey, police are not permitted to use radar or any other electronic device to measure the speed of passing vehicles.

A Redding, CA lawyer tested the speed trap law recently. Jeffrey Stotter was ticketed after being clocked going 48 mph in a 35 mph zone by radar. Stotter discovered that the latest traffic engineering survey was completed in 2004.

There was a dispute between the city and Stotter about when that survey was set to expire. Stotter said five years while the city’s traffic operations manager claimed the survey was valid for ten years.

Ultimately, it didn’t matter. The original certification date of the 2004 survey was unclear. Without a valid traffic study, the judge ruled in accordance with 40801 and 40802 that the ticketing officer’s testimony regarding his radar reading was inadmissible.

Case dismissed. ■

One Way to Beat an Out-of-State Photo Ticket

by John Heraty, NMA Illinois Member

I live in a suburb of Chicago, where commuters unfortunately know a thing or two about ticket cameras. Yet on a visit to our nation's capital, I was flashed by a camera and was dubbed a speeder by Washington DC's Metro Police Department's (MPD) photo enforcement program.

After getting the ticket in the mail, I paused, reflected and thought, "Not so fast!" I am a safe, prudent driver who respects traffic laws, fellow drivers and pedestrians.

The more I thought about the photo ticket from the MPD, the more I got stoked. I knew I would be restless unless I stood up for my civil rights and vigorously contested the citation.

This story begins as I was driving westbound on a six-lane highway near the 100 block of Michigan Avenue NE in the District of Columbia this past February. My rental car, supposedly traveling 36 mph in a posted 25 mph zone, was recorded by a Gatso camera. The corresponding Violation Code cited on the photo ticket was T119, "speed in excess of 11-15 mph," which constituted a fine of \$125.

I received a Notice of Infraction in the mail in late March. My first victory was requesting and receiving a sixty day continuance of my trial. This delay provided much-needed time to mount my defense. The process of defending oneself becomes much less intimidating when one has adequate preparation time.

As part of my defense, I mailed two separate requests to the MPD for specific evidence. The information I sought included documents and reports related to radar equipment maintenance, calibration and certification, traffic engineering studies, and the District's contract with Gatso.

The second victory was connecting with Washington DC writer, Gene Wein-

garten, who had his own personal experience with automated traffic enforcement. I was thrilled when he told me about his availability to accompany me at my scheduled hearing. Gene is a two-time Pulitzer-Prize winning journalist, and he writes a weekly column ("Below the Beltway") for the *Washington Post Magazine*.

The third victory came when the hearing officer, after consultation with counsel, granted Gene permission to remain in the hearing room.

The fourth victory was triggered by a request for dismissal that I filed via letter to the District's Traffic Adjudication agency. The hearing officer called my name and asked me to identify myself. She then stated the following: "Given the fact that this was a rental vehicle and respondent did subpoena records from the MPD, and he was not issued the same, this matter will be dismissed."

Pleased and undaunted, I asked the hearing officer permission to speak "on the record" for a few minutes. I noted that the way automated traffic enforcement programs are operated, they create the impression that necessary "checks and balances" are not in place. I also observed that there doesn't appear to be an independent accrediting organization that oversees photo enforcement systems. The hearing officer assured me that there is a certification process in place, although she didn't provide specifics.

Prior to the hearing date, I had an opportunity to return to the scene of the alleged infraction. It was sad to see overly-cautious motorists slowing down to a speed of 15 mph on a six-lane highway to ensure they wouldn't be clocked at 26 mph. Anything slightly over 25 mph would be considered speeding per Violation Code T118,



Heraty (r) and Weingarten a bit disheveled, but victorious over the DC bureaucracy.

"speed in excess of 1 - 10 mph," with a corresponding fine of \$75. Little did they know that in ultra slow-down mode, motorists could be subject to Violation Code T124, which relates to "Driving too Slow," and a fine of \$50.

I learned much about the law and defending myself. I owe a debt of gratitude to the National Motorists Association and particularly to Barnet Fagel, the NMA's Illinois State Activist (aka TheTicketDoctor.net) who mentored and guided me through much of this process. I also am very grateful for Mr. Weingarten's involvement in this issue and for his personal support and advocacy.

I believe strongly that this nearly five month process has made me a better person and social worker.

Here are a few takeaways from my experience. If you get a photo-speeding ticket, request a hearing, consider requesting a continuance, and send a subpoena or a "motion" to the applicable police department requesting pertinent evidence. If they don't respond, you may find your ticket dismissed as I did.

Let's continue to remain in solidarity as we confidently assert our driving rights. Salute! ■

Editor's Note: Weingarten's account of Heraty's victory can be found at <http://tinyurl.com/wein-heraty>

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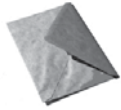
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Tavern League of Wisconsin
Madison, WI

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Cincinnati, OH
(513) 984-8900



Members Write

I read with interest the article on vehicle accident reconstruction in the Spring 2011 issue of **Driving Freedoms**. The event data recorder (EDR), or black box, is a double-edged sword that can help or hurt the driver. If a California driver is the vehicle owner, he owns the black box data. But that same information can be subpoenaed, effectively negating that ownership.

It is one thing if the data were to be released voluntarily by the vehicle owner, but another if the courts are used to force the release of the black box contents.

The bottom line for me is that a vehicle owner should not be put in a position of providing evidence against himself.

*Joe Schuessler
Aptos, CA*

I don't know why you wasted space in the Summer 2011 issue with the letter questioning whether seat belts save lives.

The story of the cop telling the accident victim he would have died had

he been wearing a seat belt, and then citing the driver anyway is undocumented and very likely apocryphal (although I can imagine such a thing might happen).

The fact is that seat belts save lives far more often than they cause fatalities. That is a statistical fact. If it weren't true, race car drivers wouldn't wear seat belts.

I do agree with the writer's point about the police looking for the wrong thing, but that wrong thing is people going over speed limits which have been set too low. They should be looking for drivers texting, and otherwise behaving in dangerous ways.

On the plus side, my compliments to your work on rotaries. I found other peoples' comments fascinating, and the traffic ticket overhead article was very informative.

*David Holzman
Lexington, MA*

I read Robert Talley's *NMA Washington Report* (Summer 2011) on mileage-based user fees and other plans to require better fuel mileage. It appears that the government is making its goals too expensive and complicated.

The mileage requirements would impose huge taxes on the owners of German and British-made luxury cars, which may well put those automakers out of business in the U.S. market.

I think there is a better way to respond to the need to raise funds for the roads, reduce fuel usage, and reduce emissions.

My suggestion would be to increase the gasoline tax by \$0.25 per gallon each year until the tax reaches \$2.00 per gallon. But taxes on diesel and other liquid fuels should remain where they are now to encourage their use over gasoline.

Regarding electric-powered cars, I would urge an annual registration tax – \$150 should be appropriate – to support road maintenance and construction.

*James R. Campbell
Arlington, VA*

Your letters are welcomed and should not exceed 300 words. They may be edited for length or clarity. Full-length articles will also be considered for publication and should not exceed 600 words. Submissions may be emailed to nma@motorists.org or mailed to 402 W 2nd St., Waunakee, WI 53597



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News From Around The Country

Now featured, with daily updates,
as "NMA Driving News" at www.motorists.org

United States

If your nearest stop sign is looking a little worse for the wear, you should reach out and let your local government know. Up until recently, that sign was one of the hundreds of thousands that were set to be replaced by 2018, but the feds have nixed that program because of cost considerations.

Alberta

Edmonton resident Robert Tyndale was one of the first Albertans to be ticketed under the distracted-driving law that took effect September 1st.

Arizona

Drivers in Tucson got an unexpected break this summer when the city extended the length of yellow lights for left turns at photo-enforcement intersections.

California

Assembly Bill 529, allowing cities to lower speed limits, was approved by the State House and is under consideration in the Senate.

Redflex Traffic Systems announced last week that it continues to adjust contract language, boosting the penalties for cities that terminate their red-light camera programs with the Australian company.

Florida

Erich Campbell thought he was just being helpful the night he flashed his

headlights on a busy Tampa highway to warn drivers of a police speed trap ahead. The Florida Highway Patrol didn't appreciate the help; officers pulled Campbell over and ticketed him. Now Campbell has filed a lawsuit on behalf of every other driver in Florida ticketed for the same violation over the past six years.

Massachusetts

Remember the police officer who arrested a bystander for recording a public crime scene? That was a violation of the First Amendment, according to the US Court of Appeals for the First Circuit in Boston.

New York

NYC Mayor Bloomberg wants to blanket the city with red-light cameras and maybe even publish the names of the drivers who receive photo tickets.

North Dakota

Just because police can search an automobile does not mean they can search its driver, according to an August 15th ruling by the North Dakota Supreme Court.

Tennessee

Figures show that Knoxville traffic citations fell 73 percent from June to July as a result of a new state law regulating red-light camera use. Beginning July 1, when the law took effect, the Knoxville Police Department stopped issuing \$50 violations for improper right turns recorded by cameras at 15 city intersections.

Texas

On September 1, Texas eliminated a years-long practice of posting different daytime and nighttime speed limits. This change has been a long time coming, according to Henry B. Stowe, an activist for the National Motorists Association.

The Houston City Council dealt red-light cameras a double death blow, first ordering their immediate shutdown and then outlawing their use to catch red-light runners.

Washington

The distinction between employees for a private photo enforcement firm and taxpayer-funded public servants blurred in the city of Lynnwood, Washington. Emails between city officials and American Traffic Solutions (ATS) suggest a cozy relationship developed where both sides were willing to perform the duties of the other in terms of marketing and public relations. ■

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Check out these daily updates:

Monday

Syndicated columnist Eric Peters on issues of interest to motorists

Tuesday

A timely article or editorial from the NMA Staff

Wednesday

A roundup of recent stories from *theNewspaper.com*

Thursday

A detailed car review

Friday

A roundup of NMA Driving News items for the week

This information is current at time of printing. For more information on this and other motorist news, visit www.motorists.org