

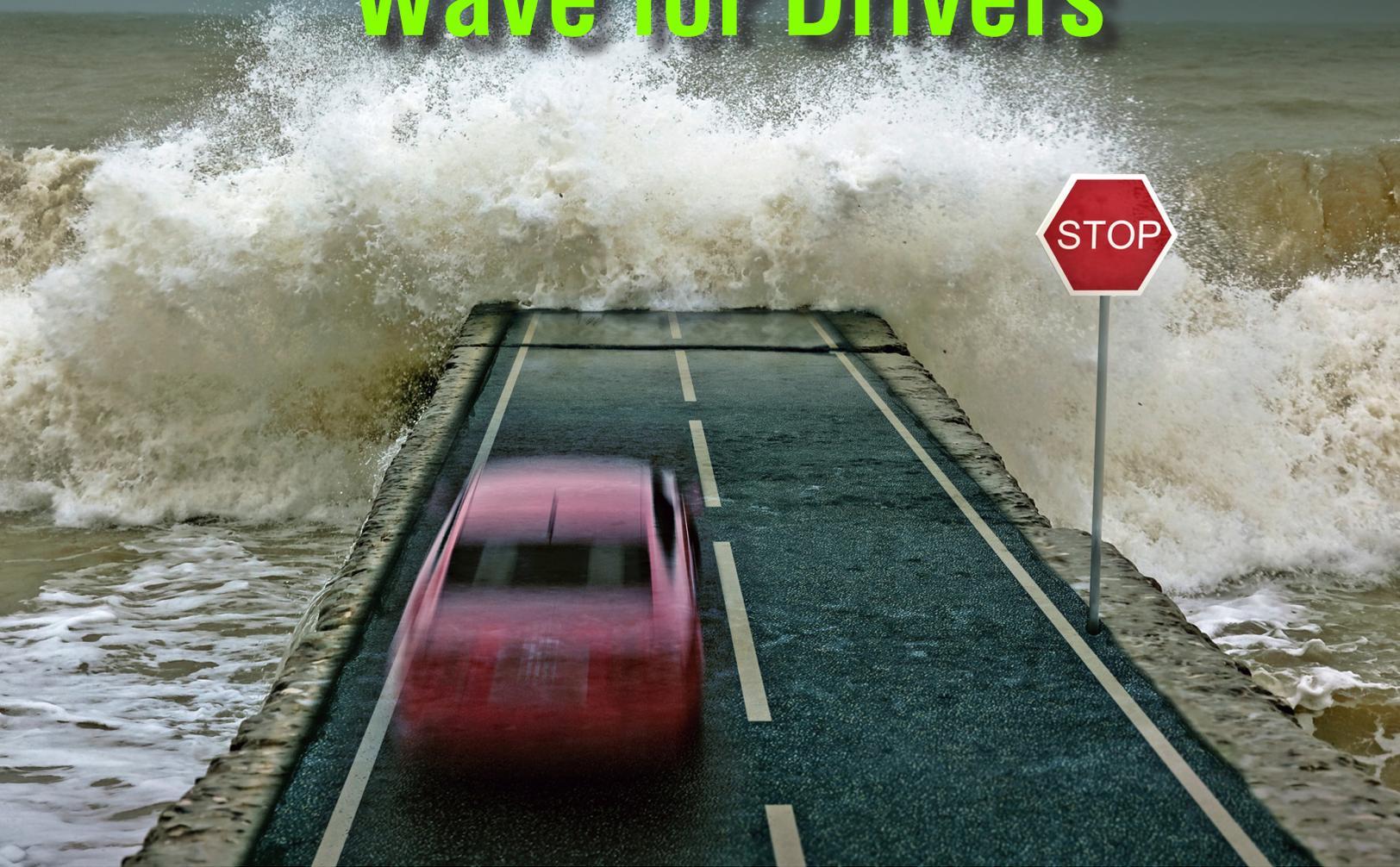


Driving Freedom

National Motorists Association

Vol. 32 • Issue 3 • Summer 2021

Harnessing the Coming Wave for Drivers



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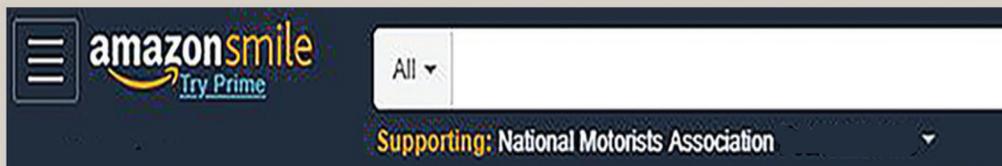
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Thank you

Driving Freedoms

Vol. 32 Issue 3



DOUBLING DOWN ON ZERO EQUALS NOTHING AT ALL

BY GARY BILLER, PRESIDENT, NMA

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Today's driving landscape is littered with minefields, none more dangerous than the Federal Highway Administration's (FHWA) proposed rule to amend the *Manual on Uniform Traffic Control Devices*. The agency's recommendations include relaxing requirements for posting speed limits—translating to more arbitrarily low speed limits and, undoubtedly, more ticketing—while also setting the stage for an exponential increase in stop signs.

NMA members have been excellent in posting comments to the federal docket in opposition to those changes. We have included an abridged version of NMA Board Member John Carr's incisive comments on the speed limit issue on pages 6 - 9 of this magazine. Several transportation officials praised John's analysis of how the weakening of the 85th percentile speed-limit rule would adversely affect drivers and traffic safety.

(To see John's unabridged remarks on speed limits, as well as the NMA's complete response to the FHWA's proposed rule and additional material, please go to <https://www.motorists.org/issues/mutcd/>.)

Another present-day obstacle for drivers is the blind devotion to the immutable Vision Zero goal of eliminating all road-user fatalities. Vision Zero has the support of agencies like the National Transportation Board, which endorses lower speed limits and more automated enforcement to keep drivers in line. Even in this era of disinformation, it is impressive how Vision Zero maintains broad institutional support despite the ever-growing list of failed efforts.

We dare anyone to counter the Vision Zero performance of the following major cities. Each has run up an impressive record of spending—often in the tens, if not hundreds, of millions of dollars—with either worsening safety statistics or no improvement over several years. Yes, minimizing

accidents and fatalities should be the goal of every traffic safety program. But who is more likely to be declared insane for doing the same thing over and over while expecting different results? Is it the elected officials who continue funding Vision Zero initiatives or the voting drivers and taxpayers that enable them?

Austin, TX

SmartCitiesDive.com reported in February 2020 that Austin saw traffic fatalities triple early in the year compared to the same period the previous year. It also noted that the city saw an increase in total traffic fatalities in 2019, four years after implementing Vision Zero measures.

Chicago, IL

Chicago adopted Vision Zero principles in 2012, one of the first major metropolitan areas to do so. Its stated goal was to eliminate traffic fatalities and injuries within ten years. In 2018, the traffic death rate of approximately 4.7 per 100,000 residents was virtually the same as in 2012.

Los Angeles, CA

L.A. announced its Vision Zero initiative in 2015 with strategies to slow car traffic to speeds less likely to cause death and severe injury to pedestrians and bicyclists, including widening sidewalks, reducing or narrowing car lanes, and adding bike lanes. By early 2020, traffic fatalities had increased by nearly 30 percent.

New York, NY

The October 2020 headline from *Gothamist.com* screamed, "*Vision Zero Sputters As NYC Traffic Deaths Reach Highest Level Of De Blasio Era.*" The opening line of the article was even more explicit: "Six years into the de Blasio administration's Vision Zero campaign, New York City is on track to see the highest number of fatalities in a single year since the mayor took office."

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Fourth Amendment on Trial in Two State Supreme Courts

The Kentucky and Wisconsin Supreme Courts recently ruled on cases involving warrantless blood draws for DUI suspects.

The Kentucky ruling prohibits the refusal of a person accused of drunk driving to submit to a warrantless blood test from being used as evidence to help prove guilt. Prosecutors are also now not allowed to introduce such refusals at trial to help explain the lack of evidence concerning the suspect's blood-alcohol content or BAC.

The case stems from the 2014 DUI arrest of Owensboro motorist Jared McCarthy. The trial judge decided that McCarthy's refusal to be subjected to a blood test could not be used as evidence of guilt nor enhance his sentence. According to the state Supreme Court judges, though, the trial judge erred in allowing prosecutors to introduce the refusal as the reason for the lack of proof of impairment.

Deputy Chief Justice Lisabeth Hughes wrote that the trial-level decision "eviscerated" McCarthy's Fourth Amendment protections against unreasonable searches and seizures. She added that the absence of "scientific evidence" was primarily the result of the state's "own actions or rather inactions."

Police officers did not ask McCarthy to submit to a breath test, and if he had, the Commonwealth would have had some BAC evidence to present at trial. In Kentucky, motorists also have the right to refuse a breathalyzer test. The arresting officer had testified that he never requested a search warrant for a blood test in a DUI case because he was uncertain of the protocol.

McCarthy was originally convicted of operating a motor



vehicle while under the influence, and as a repeat offender, he was sentenced to two years in prison.

Judge Hughes wrote that a "reasonable possibility exists" that McCarthy's refusal to take the blood draw "tainted the jury's viewpoint" and contributed to the conviction. As a result, the case has been sent back to the Daviess County Circuit Court.

In Wisconsin, state Supreme Court justices recently ruled that police may no longer draw blood from unconscious motorists. Prior state law found that by applying for a driver's license, motorists automatically provided consent to take their blood, even when unresponsive. The court ruled that clause to be unconstitutional. So now, officers will be required to receive a warrant to draw blood from unresponsive motorists.

The case that triggered the decision in Wisconsin also occurred in 2014. Dawn Prado was involved in a fatal collision in Fitchburg. When police arrived on the scene, they found Prado lying unconscious in a ditch, smelling of alcohol. An officer read Prado her rights under the implied consent statute in the hospital, explaining that refusal would result in losing her driver's license. She was unable to hear those rights since she was unconscious. The officer then ordered a nurse to take a blood sample, which tested just over the legal limit of 0.08. Prado was a repeat DUI offender and was not allowed to

have a limit over 0.02. She faced a DUI-related homicide charge.

Prado's lawyer moved to suppress the blood test results at trial, arguing that police must obtain a warrant before taking blood from unconscious drivers.

In the high court ruling, the state justices referred to two US Supreme Court cases (2016's *Birchfield v. North Dakota* and 2013's *Missouri v. McNeely*) that curtailed the use of forced blood draws from conscious motorists.

Justice Ann Walsh Bradley wrote in the majority opinion for the Wisconsin court, "We agree with Prado that the incapacitated driver provision cannot be constitutionally enforced under any circumstances and is unconstitutional beyond a reasonable doubt." She added, "In the context of warrantless blood draws, consent 'deemed' by statute is not the same as actual consent, and in the case of an incapacitated driver, the former is incompatible with the Fourth Amendment...The constitution requires actual consent, not 'deemed' consent. Indeed, consent for purposes of the Fourth Amendment search must be unequivocal and specific."

While the decision favored Prado, she did not win her freedom. The court noted that the officers followed the law in good faith, and the blood evidence collected against her could be used. 



NMA WASHINGTON REPORT

BY ROBERT TALLEY, NMA LOBBYIST

As we enter the peak driving season this summer, Congress debates a massive injection of capital into our “hard” infrastructure system. Unfortunately, House Democrats support policy proposals that will slow drivers down and direct federal funds to pay for automated traffic enforcement.

As we have seen in the national news, congressional debate continues over how to respond to President Biden’s infrastructure plan called *The American Jobs Plan*, a \$2 trillion spending proposal over eight years. Unfortunately for motorists, only about six percent of that proposed funding (\$135 billion) has been set aside for roads and bridges. Of course, infrastructure is more than just roads and bridges. Also included in the proposal is a major commitment to building infrastructure for electric vehicles, which is a significant step toward electrifying the transportation sector in dealing with global warming.

Separately, the reauthorization of existing transportation programs is also underway in the House and Senate. To be clear, these legislative packages fund our ongoing highway and transportation programs and are different from the added funding proposed in President Biden’s proposal. Democrats in the House are working on a \$547 billion package, the *INVEST in America Act*, an increase

of \$242 billion over the prior five-year funding. Disturbingly for motorists, the heavy emphasis on promoting mass transit and bike lanes over fixing highways continues to be a theme. Although rail and transit accounted for just one percent of passenger miles before the pandemic, the two categories together receive 37 percent of federal funds.

Previously, we have seen congressional efforts to fund programs like Complete Streets and Vision Zero, which prioritized bicyclists and pedestrians over motorists. Unfortunately, this year the House transportation bill would add another insult to motorists by revoking a longstanding prohibition on federal funding for photo enforcement. Lawmakers want to replace the moratorium with an authorization to use automated traffic systems paid for by the federal government. The principal beneficiaries will be photo enforcement companies like Redflex, Verra Mobility, and Xerox, as well as revenue-hungry state and local governments.

Under current market conditions, photo enforcement companies typically install and operate camera systems at their expense for free in exchange for a percentage of the ticket revenues. Under the new proposal, federal funds would pay for installation. Thus, these companies would be paid for their installations,

which otherwise they would have borne. Also, they can be expected to benefit from the operation and maintenance of the systems.

Red-light and speed cameras are universally unpopular and seen as a regressive form of taxation by the ACLU, the NAACP, and others. Due to strong community opposition to photo enforcement programs, eighteen states and thirty-six cities have prohibited the use of automated camera enforcement.

The House proposal also directs the Federal Highway Administration (FHWA) to revoke the 85th percentile speed limit traffic engineering standard and replace it with a system that prioritizes “equity” over science and safety. The FHWA is currently reviewing its regulations on speed and other safety measures, but make no mistake, lower speed limits are coming should this proposed change become law.

All of these proposals are still working through the legislative process. However, significant changes are possible, and effective communication to legislators could impact the outcome. The National Motorists Association will continue to be an active voice in opposition to these schemes. You can be a part of our advocacy by contacting your legislators and expressing your concerns. 

Doubling Down on Zero Equals Nothing at All

(continued from Page 1)

Philadelphia, PA

Philly adopted a Vision Zero plan in 2017, intending to eliminate all traffic fatalities by 2030. Toward the end of 2020, road deaths had increased 60 percent from the previous year. The city also reported a 65 percent spike in serious injuries between 2018 and 2019.

Portland, OR

Earlier this year, Portland dissolved its Vision Zero task force. It, too, had pledged in 2015 to reduce traffic fatalities to zero, but the numbers kept moving in the wrong direction, jumping from 28 deaths in 2014 to 58 in 2020.

The list goes on. If I had more space, cities with similar Vision Zero experiences like San Francisco, San Jose, Seattle, Toronto and Washington D.C. would be included. Not surprisingly, Vision Zero supporters continue to double down, claiming the lack of success is due to a shortage of imagination and commitment by the cities to go far enough in restricting car use. Until we match their passion, drivers will continue to lose ground, figuratively and literally. 

Harnessing the Coming Wave for Drivers

Unlike any time in recent memory, motorists are faced with a daunting series of issues. How we respond collectively will shape the driving environment for generations to come.

Front and center is the wrangling going on in Congress with the funding, and indeed, even the definition, of infrastructure. While politicians fiddle, our roads, bridges, tunnels, and waterways are deteriorating past the point of being safe. You can throw in efforts by some federal agencies to arbitrarily lower speed limits while Congress wants to fund automated enforcement to catch offenders. Also, on the agenda are Vision Zero and Complete Streets programs that marginalize drivers in favor of cyclists and pedestrians. Battening down the hatches won't get it done. We need to remain on the offensive.

The effort to get people out of vehicles has manifestly increased since the beginning of the pandemic in 2020. But, unfortunately, much of the media appears supportive of the anti-car and radical-cyclist agenda to take away the rights of motorists.

For example, San Francisco will soon designate high-occupancy vehicle lanes on many streets. In Cleveland, officials are discussing ways to go car-free. Atlanta, Nashville, and numerous other smaller communities are lowering default speed limits. The most striking changes, however, could occur at the federal level.

National Level

As we go to press with this issue of *Driving Freedoms*, Congress is debating how to spend taxpayer dollars on several transportation bills. The House and the Senate are pushing separate surface transportation reauthorization bills. Neither legislation represents new federal infrastructure spending. Instead, it reauthorizes funding Congress typically sends to states, which must be approved by the September 30th expiration date for federal infrastructure spending. The *Highway Trust Fund*, supported primarily by the federal gas tax, supplies this funding.

The *INVEST in America Act*, a five-year, \$547 billion package,

was recently passed by the House Transportation and Infrastructure Committee. Much of the appropriation would be used for transit, cycling, and pedestrian infrastructure. A provision also guts the current federal ban on taxpayer funding of speed cameras. The Senate's *Surface Transportation Reauthorization Act of 2021* sets a baseline funding level of \$303.5 billion (a 34 percent increase from the *FAST Act of 2015*) for the Department of Transportation programs for bridges, and roadways.

Two other disturbing bills assume motorists are universally irresponsible. In several years, you may not be able to buy a new vehicle or drive a fleet vehicle without a breathalyzer tied to the electronic ignition. Ultimately, this means you will have to blow before you go because you are impaired until proven innocent. Mothers Against Drunk Driving (MADD) and the Insurance Institute of Highway Safety are big proponents. If passed, the Senate's *Reduce Impaired Driving for Everyone Act*

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of 2021 (RIDE Act, SB 1131) and the House's *Honoring Abbas Family Legacy to Terminate Drunk Driving Act of 2021* (HALT Act, HB 2138) would be a MADD version of Vision Zero.

In April, *The Fifth Amendment Integrity Restoration Act* or FAIR Act HR 2857 was introduced in the House. Similar bills have failed in the past. The measure would raise the level of proof necessary for the federal government to seize property from citizens. The FAIR Act's intent, which the NMA supports, is to reform civil asset forfeiture.

State Level

According to *Politico*, governors in nearly every state have collectively signed 243 police reform bills in the past year. Many states, such as Virginia, are addressing minimum police training standards and the banning of no-knock warrants. Others have tackled qualified immunity for police, prohibited chokeholds, and mandated that individual officers have a duty to intercede when fellow officers use excessive force. Police reform at the state level will likely continue.

Civil asset forfeiture reform has been on the agenda of many states in their respective 2021 legislative sessions. Alabama, Arizona, North Dakota, and Utah passed reform bills. However, Arkansas, Hawaii, Maine, Missouri, Nevada, New Hampshire, North Carolina, and Rhode Island did not.

Speed limits are often on legislative agendas. California has been the most active. Three years ago, lawmakers

convened a task force, which recommended changes in how the state sets speed limits to provide local governments with more flexibility to set their own standards. As a result, AB43 does not do away with the 85th percentile rule but instead allows local authorities more choices when posting limits. The bill passed the California Assembly and is currently in the state's senate transportation committee.

Local Level

City and town councils across the country have reduced default speed limits. All traffic is a local issue, and this is one of the biggest.

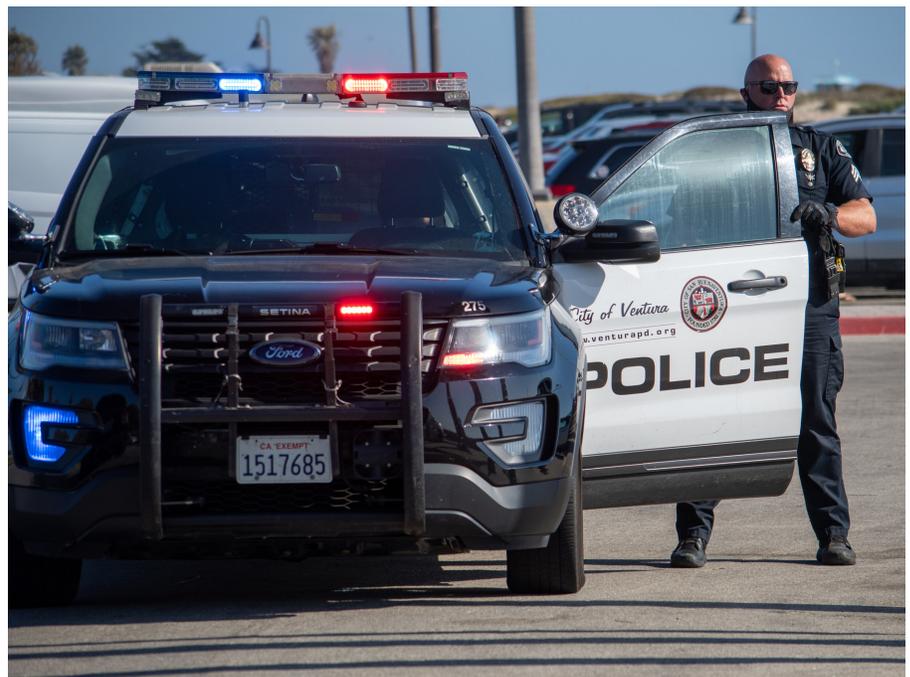
Public transit has also been on the mind of local authorities. During the pandemic, transit participation has hit historic lows, and many cities cut service. Now that the stricter health safety measures are nearing an end, transit authorities have had to rethink how to lure riders back. Before the pandemic, many who used public transit options have now switched to driving, carpooling, or telecommuting for work.

One aspect of the pandemic that the anti-car, pro-bicyclist media have

been pursuing is shutting down vehicle access by eliminating street parking for outdoor restaurants and creating in-street parks in neighborhoods with no through traffic. In addition, many city councils have either banned or have begun discussing the elimination of parking minimums for new development. These measures are designed to make driving inconvenient. Unfortunately, the plans to get people out of cars continue to spread.

Then you have places like Chicago, a city with budget concerns before the pandemic. On March 1st, 2021, the city dropped the threshold for speed camera tickets from 10 mph over often underposted speed limits to just six mph. Ticket totals were 35,784 in the five weeks before the new rule change went into effect. Five weeks after the rule change, total tickets closed in on 398,000, which translated into \$871,035 in fines. The taxation by citation for speed cameras continues in the Windy City and 16 other states. Police reform discussions sometimes include automated traffic enforcement devices unless or until equity enters the discussion.

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Abridged MUTCD Response from NMA Board Member John Carr

Editor's Note: John Carr prepared the following condensed version of his comments about proposed speed limit changes specifically for Driving Freedoms. The full version of John's observations—which can be found at <https://www.motorists.org/issues/mutcd/>—on the Federal Highway Administration's (FHWA) plan to update the Manual on Uniform Traffic Control Devices (MUTCD) prompted responses from other posters, including this from C&S Engineering, a Boston civil engineering firm: “Please review the studies cited by commenter John Carr related to the safety benefits of using the 85th percentile speed in setting speed limits. I fully concur with his comments, and the research data supports this comment. Speed differentials are what lead to crashes, and if we remove the science and data from engineering studies then we are only left with emotions and politics to determine arbitrary speed limits. It should also be noted that arbitrarily low-speed limits will lead to increased negative police encounters with historically disparaged communities of color. The non-engineer advocates of the removal of this time tested principle of the 85th percentile speed need to consider this consequence when they advocate for the arbitrary removal of the 85th percentile speed from the MUTCD.” Based on the volume of comments received, including hundreds from the NMA and its members, the FHWA will likely take months to respond officially.

The MUTCD currently requires speed zoning to consider operating speed and recommends use of the 85th percentile rule on all roads. *The Notice of Proposed Rulemaking* asks whether the 85th percentile rule for speed zoning should be only for rural roads only or banned everywhere. Either option would be a remarkable, unjustified, and inadequately explained change overturning decades of evidence-based rulemaking. Either would be detrimental to safety, uniformity, and equity, while encouraging unjustified speed traps.

Introduction and History

Essentially, FHWA proposes to abolish the 80 year old 85th percentile rule. The requirement to measure traffic speed would be removed for all roads and the 85th percentile speed (if known) given no particular importance outside of rural areas. This change does not follow FHWA's own process. The proponent of a change should include:

- A detailed research and evaluation plan that provides for close monitoring of the experimentation, throughout all stages of its field implementation.
- The evaluation plan shall include before and after studies as well as quantitative data describing the performance of the experimental device.

The current MUTCD is based on such a study. Parker (1997) showed that speed limit reductions below the 85th percentile were not justified. Speed limit signs had negligible effect on traffic speed and reducing speed limits below the 85th percentile speed did not improve safety. In the Millennium MUTCD, FHWA made the 85th percentile rule the primary method of speed zoning.

The 2003 MUTCD followed the demonstration program in *Setting and Enforcing Rational Speed Limits*. Participating jurisdictions set speed limits based on the 85th percentile rule. FHWA did not find any reason to substantially change speed zoning standards.

The 2009 MUTCD had the further benefit of the literature survey done for *USLIMITS2*. The report on *USLIMITS2*

notes “There is consensus that operating speed is a critical factor in determining an appropriate speed limit for a speed zone.” Parker (1997) was acknowledged as the leading study on the effects of speed zoning.

Some authors reported that raising speed limits could slightly increase travel speed on freeways (Parker had examined conventional roads), although Lave and Elias pointed out there was an overall increase in safety due to traffic diversion. There was no strong evidence to contradict the older reports by Solomon and Cirillo which found that driving with the flow of traffic was safest, only some doubt about exactly which percentile was safest. And so FHWA added the unconditional requirement to measure

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the speed distribution of free-flowing vehicles.

FHWA states that its proposed new rule is in response to the NTSB's report on speed. There is nothing new in the NTSB report except the observation that slogans like 'Vision Zero' are replacing evidence-based policies. It is the job of FHWA and the engineering profession to follow the evidence. The last three editions of the MUTCD follow the evidence. The proposed 11th edition follows the slogans.

The NTSB Report

Dubious Statistics

The NTSB leads off by noting that many motor vehicle crashes are blamed on one or the other of two distinct factors, 'exceeding a speed limit' and 'driving too fast for conditions.' Combining these makes it more difficult to improve road safety. The offense of making the number on a radar gun exceed the number on a roadside sign is much different from the offense of driving beyond the critical speed of a curve on wet pavement. The countermeasures are different.

If the goal is simply to eliminate the 'exceeding a speed limit' category the most reliable method is to abolish speed limits. Then the statistic would be zero percent. If one doubts that abolishing speed limits is a desirable solution one should also doubt the validity of the 'exceeding speed limit' factor altogether. Unlike 'too fast for conditions' this category is mostly worthless.

Mostly worthless, but not entirely uninformative. The fraction of crashes involving speeding vehicles appears to

be much less than the fraction of vehicles that is speeding, which is typically 50 percent or more. Apparently you are less likely to crash if you are speeding. This is what we expect from the Solomon curve. When speed limits are very low you are safer above the speed limit.

'Speeding-related' is better described in the negative: If speed is not listed as a contributing factor, the investigators did not think anybody should have been driving more slowly. A large majority of accidents could not be prevented with speed limit or speed enforcement changes.

Confounding Factors

The evidence also fails to distinguish cause and effect.

Zhao et al. (2013) found that forcing habitual cell phone users to hang up and drive did not make them safe drivers. Being a bad driver makes one more likely to talk on the phone, not the reverse. There is some evidence for such an effect with speed. Fildes et al. (1991) observed that those who drove faster in one place had more accidents in other places. It may not be realistic to expect young male drivers to develop good judgment as a result of being slowed down.

If a driver has a few beers and crashes while speeding, that is both 'speeding-related' and 'alcohol-related.' About half of all 'speeding-related' crashes involve alcohol. It is hard to see how drunk drivers would be rendered safe by changing numbers on signs, which is all the Federal Highway Administration proposes to do.

The Mythical Speed Cycle

In section 3.1.3 the NTSB repeats a myth: "Using the 85th percentile speed to set speed limits on road segments may have unintended consequences. Raising the speed limit to match the 85th percentile speed may lead to higher operating speeds, and hence a higher 85th percentile speed. This generates an undesirable cycle of speed escalation and reduced safety (Donnell and others 2009)."

NTSB misrepresents the reference. Donnell et al. write: "There is a concern that raising the speed limit, as shown in figure 17, will lead to even higher operating speeds and thus contribute to a cycle of speed escalation and reduced levels of safety." Contrary to the NTSB's confident statement "this generates an undesirable cycle," no evidence is offered that this cycle exists. The authors do not express an opinion that it exists. They note that unidentified people have expressed concern.

Parker (1997) showed definitively in a controlled study that the cycle does not exist on urban, suburban, and rural conventional roads. The NTSB chose to ignore this important and well-known study on exactly the point in question. This study also shows why FHWA is mistaken in thinking that the 85th percentile rule is better for rural roads and freeways than for urban roads. Parker studied urban roads too. The freeway system did not even exist when the 85th percentile rule started to be used.

The 85th percentile rule is supposed

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to be based on free-flowing traffic. Using speed traps to artificially depress measured speeds should be condemned, not tacitly approved.

Expert System

NTSB report section 3.1.4 supports using an expert system such as *USLIMITS2*. It is puzzling that the NTSB mentioned *USLIMITS2* because that tool does not follow the recommendation that speed limits be decoupled from operating speed.

While there is nothing inherently wrong with using computer assistance, *USLIMITS2* is not a good candidate. It was developed to produce politically palatable speed limits.

The creators of *USLIMITS2* asked a panel of ‘persons engaged in setting, enforcing, or adjudicating speed limits’ to review the program’s output. Suppose the computer said the speed limit on a street should be 40 mph. They asked a police officer, “would you be willing to write tickets in a 40 zone?” They asked a traffic court judge, “would you convict somebody of speeding in a 40 zone?” They asked a city councilor, “would 40 mph be acceptable to you?” They

added common excuses for lowering speed limits until those representatives of the ticketing industry were happy. The experts then pushed back by saying a speed limit shouldn’t be more than 10 mph below what road safety would require. In many cases that is low enough to be politically acceptable.

And then there are the arbitrary limits, which seemed to have been pulled out of a hat: 75 mph on freeways (which would make Idaho, South Dakota, Texas, Utah, and Wyoming noncompliant), 65 mph on other roads (Nebraska, North Dakota, and Oregon), and 50 mph on roads with roadside development (violated from California to Massachusetts).

All this was public relations, not science. There is no evidence that the low speed limit recommendations of *USLIMITS2* improve safety. They certainly breed disrespect for the law.

Vulnerable Road Users

Who is hurt?

While many describe an epidemic of ‘speeders’ mowing down pedestrians, table 2 on page 8 of the NTSB report shows this is wrong. So-called ‘vulnerable’ road users are much less likely to be harmed in speeding-related

accidents.

‘Speeding-related’ crashes affect mostly the drivers who were speeding. 63.9 percent of deaths and 62.3 percent of serious injuries involve the speeding driver.

Pedestrians and bicyclists combined make up less than 4 percent of speeding-related fatalities and less than 2 percent of speeding-related serious injuries. But pedestrians and bicyclists make up 15 percent of all traffic fatalities. About 6 percent of pedestrian deaths are speeding-related compared to about 32 percent of motor vehicle occupant deaths.

In other words, the people most affected by speeding are the people who are speeding. The people least affected by speeding are pedestrians and bicyclists.

The Need for Uniformity

According to the NTSB getting hit at higher speed hurts more so we should slow down. How much? They don’t say. One can not demand a speed limit which would render vehicles incapable of causing injury or death because there is no such speed. On June 16, 2016 in Lincoln, Massachusetts a bicyclist fell under the wheels of a stationary truck and was crushed when the truck started moving.

A speed zoning policy must be able to answer two questions: why is the speed limit not higher, and why is the speed limit not lower?

When the mayor tells the DPW that the speed limit on a road should be 30, how is an engineer supposed to judge that statement? The 85th percentile rule is simple and provides an answer. For all its flaws, *USLIMITS2* can at least approximate an answer.

The 11th edition MUTCD offers no useful advice. The city need not measure traffic speed. What is left is a bunch of statistics and opinions with no way to put them together. What does it mean if the street is 32 feet wide and parking, pedestrians, and bicycles are

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all allowed? What if I told you it was a major collector? A minor arterial? With or without sidewalks? What is the coefficient of proportionality relating shoulder width to speed limit?

In Montana, the engineer could reply “leave the 70 mile per hour statutory speed limit.” In Massachusetts, the engineer could reply “I think 5 miles per hour would be better because you can’t have too much safety.” Neither is more or less correct. In all states the safe answer would be, “Yes, Mr/Ms Mayor, of course your recommendation is absolutely perfect.”

If FHWA believes the NTSB’s statement that speed was a factor in 31 percent of fatalities, doesn’t that make rationality and uniformity in speed limit signs even more important? But FHWA proposes to make speed limit signs less rational and less uniform.

Speed Traps

A speed limit sign should ‘fulfill a need’ and ‘command respect from road users.’ Allowing cities to abandon the 85th percentile rule does not fulfill a need and the resulting speed limit signs will not be respected.

Almost everybody in America knows the term ‘speed trap.’ That refers to aggressive enforcement of a speed limit that is judged by the public to be too low. The 85th percentile rule, faithfully followed, creates speed limits that the public considers reasonable.

That does not mean everybody likes them. It means the public as a whole likes them. There will be complainers, but people sitting at a keyboard complaining about traffic speed have worse judgment than people sitting behind a wheel. Police will be encouraged to focus on the fastest drivers instead of looking for dark skin or out of state plates.

The incentives of city politics favor speed traps over safety. This is a decades-old problem but is especially problematic in Vision Zero cities.

Est. November 7, 1935

Manual on Uniform Traffic Control Devices for Streets and Highways

Eleventh Edition

*Coming
Soon!*



U.S. Department of Transportation
Federal Highway Administration

Portland’s Vision Zero program doubled the number of traffic deaths. Yet it continues. When pedestrian fatalities in Los Angeles increased after Vision Zero was declared, a councilor said, “We need to be doing more Vision Zero.” In Boston, pedestrian deaths went up. In Somerville, MA, pedestrian deaths went up. Bliss and Montgomery (2019) wrote,

“Three of the [Vision Zero] cities, Chicago, Los Angeles, and Washington, D.C., have seen fatalities rise or remain relatively flat. Two others, San Francisco and New York City, have made headway towards zero, but are seeing pedestrian and cyclist fatalities creep up more recently.”

Where deaths have dropped, changing road design is a more likely cause than speed limit sign changes.

Los Angeles’ 2017 speed limit review claimed 75 of 76 streets surveyed were more dangerous than average.

The job of a typical municipal traffic engineer is to resolve complaints from

residents and elected officials. Most of them are not safety researchers, have not read the safety literature, and do not investigate later to see if a new sign made traffic safer. They need clear guidance from the MUTCD when the boss asks them to do something wrong.

The MassDOT policy on speed zoning begins:

“Speed regulation is, and always has been, a subject of both interest and controversy to almost everyone.”

People who wouldn’t imagine dictating the placement and form of an advance warning sign feel free to offer uninformed opinions on speed limits. Yet FHWA proposes to have detailed rules for warning sign placement and none for setting speed limits in developed areas.

If FHWA believes either that speed limits are important or that maintaining respect for signs is important, the MUTCD should keep the fundamental principle of speed zoning, the 85th percentile rule. 🍓

What's Next?

Motorist rights advocacy is not an easy road. As you have read, the pressure is being ratcheted up to discourage driving with no signs of abatement. The most effective way to reverse this trend is for motorists, who tend to treat their rights apathetically, to get angry and engaged—particularly at the local level where policy affecting everyday driving is often established. Advocating for your driving rights could be as simple as attending your local city council meetings and speaking up whenever something is not quite right.

NMA Member Steve Carrellas did this recently in New Providence, NJ. He testified

that the city should not change its speed limit because there was no traffic engineering study to support the proposal. The city had no choice but to postpone the decision until a study is completed. Unless New Providence is different than just about every other city in the country, a study might show its statutory speed limit should increase rather than go down.

Sometimes, city council members do the heavy lifting themselves. For example, Buffalo, NY Councilmember Rasheed Wyatt recently spearheaded an effort to remove speed cameras in 20 school zones. He pushed the idea that the city could improve school zone safety without cameras and won.

Even when the odds are stacked against them, people persevere. Several legislative sessions ago,

Florida Governor Ron DeSantis pushed through M-CORES—three new toll roads to be built through pristine northern Florida land. But, with pressure from voters and the media during this year's session, the M-CORES program is now dead after the governor signed the bill (without comment).

NMA members must go beyond educating themselves on the issues and begin speaking out, writing emails, letters-to-the-editor, and encourage all their friends to do the same. If we don't, we might lose the privilege to drive our vehicles when and where we want. Otherwise, the tsunami image from this cover of *Driving Freedoms*, along with many of the instances cited here, illustrates the direness of the situation if more drivers don't get involved. ❤️

SEPTEMBER 2021

DRIVER COURTESY MONTH



Take the Quiz:

Are you a Courteous Driver?
during this year's
NMA Driver Courtesy Month.



Check out the www.motorists.org website beginning September 1st.

Encourage family and friends to do the same.

You might win a prize!

For more information, contact us at nma@motorists.org.



DRIVING NEWS

This information is current at time of printing. Get daily driving news updates from across the country through the “*NMA Driving News*” area of our website www.motorists.org/news/. For even more in-depth coverage of motorists’ issues from some of the country’s leading commentators, visit the *NMA Blog* at www.motorists.org/blog/.

Arkansas

A veteran state DOT employee whose team missed the fracture (not once, but twice) in the load-bearing beam on I-40 Mississippi River Bridge in the Memphis, TN area has been fired. His team inspected the structure in both 2019 and 2020. A review of a drone video from May 2019 indicated the fracture was present. The issue has now been referred to federal authorities for potential criminal charges. No word yet on how long it will take to fix the bridge that handles 80,000 vehicles per day.

Arizona

Governor Doug Ducey signed the landmark House bill 2810 that will no longer permit police to permanently seize people’s property without a conviction for a crime. Law enforcement can still seize property for future forfeiture or if it’s evidence of a crime. The new law gives innocent people greater ability to recover property.

California

The California Highway Patrol has revised its traffic accident report form to include information on the automation level for any vehicle involved in a traffic accident. The CHP has also updated its list of inattention codes that include reading, eating, radio/CD, or ‘other.’

Colorado

Off-roading groups recently submitted a letter to the US Forest Service to ask that a former 1890’s toll road be reopened again over the Continental Divide. The opening of the Boulder Wagon Road

would allow motorists to travel between Rollinsville and Winter Park over the Corona Pass and enjoy one of the most popular scenic auto tours in Colorado.

District of Columbia

DC Mayor Muriel Bowser recently held a press conference to dedicate an additional \$10 million to add more speed cameras. The Mayor has invested a great deal of money into the city’s Vision Zero program, which has not made a dent in curbing traffic fatalities. She kicked the VZ campaign off in 2015, and every year since traffic fatalities have gotten worse than the previous year. The city already has 120 cameras and makes millions every year, especially since the city lowered neighborhood speed limits to 20 mph.

Florida

In late May, the Jacksonville City Council voted to double the local gas tax to 12 cents a gallon for 30 years starting later in 2021. The money raised will fund the “Jobs for Jax” package of infrastructure needs, including the transit Skyway system, downtown hiking, biking paths, and other funds earmarked for small and emerging businesses. No funds would go directly to road projects.

Georgia

A year ago, the Atlanta City Council unanimously approved a 25 mph speed limit within the city limits as part of its Vision Zero program. In February, the city began replacing 1,000 speed limit signs on more than 300 city streets—nearly 75 percent of all streets.

Illinois

The Illinois Supreme Court will soon hear arguments on whether a state constitutional amendment decided by voters can force Cook County (Chicago area) and other local home rule governments to spend transportation gas tax money on actual transportation improvement projects instead of something else. *The Safe Roads Amendment* was added to the state constitution in 2016 and placed money raised for transportation (gas tax, fees) into a “lockbox.”

Last year, the Chicago Police Department started a secret drone program using off-budget cash called 1505 funds garnered from civil asset forfeiture proceeds. Apparently, the use of the funds operates within the parameters of current laws. The CAF funds are not included in the department’s official budget and have been used in the past to buy Stingrays—a cell phone surveillance device. In July 2018, a state law went into effect that requires law enforcement agencies to report seizure and forfeiture information to the state police.

Indiana

Recently, judges from the Seventh Circuit Court unanimously ruled against the Owner-Operator Independent Driver Association (OOIDA) in its fight against Indiana toll increases, specifically targeting heavy vehicles. OOIDA filed the suit in 2019, claiming that the 35 percent increase in tolls on heavy trucks discriminates against interstate commerce because the rate increase was excessive. The sole Indiana toll road is a public-private partnership. The court ruled that the idea that transportation necessarily is a state function is untenable. The state could use the \$1 billion profits received from the 2018 toll increase for any purpose unrelated to the maintenance of the toll road. OOIDA President Todd Spencer stated after the ruling, “According to the Seventh Circuit, states are free to plug

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budget shortfalls and fund unrelated pet projects from the pockets of interstate truckers.”

Massachusetts

In April, Governor Charlie Baker surprised everyone when he held a press conference to champion his new traffic safety bill H3706 titled, *An Act Relative to Improving Safety on the Roads of the Commonwealth*. One of the provisions would allow municipalities to install red-light cameras at intersections and fine the registered owners of vehicles caught running the red light. Some civil rights advocates urge caution on H3706 because it could exacerbate racial profiling of drivers. The bill is still in committee.

Missouri

Drivers will pay more at the pump beginning in October. For the first time in two decades, lawmakers voted for SB262 to raise the gas tax by 2.5 cents onto the current 17 cent-per-gallon tax. The gas tax would then rise over the next five years to an overall 12.5 cent-per-gallon hike. One caveat is that the new law allows drivers to opt-out of the tax by applying for refunds supported by receipts. Within two weeks, Americans for Prosperity in MO filed a referendum with the Secretary of State’s office in hopes of giving voters a say. Missourians voted down two separate increases in both 2014 and 2018. Missouri (with the second-lowest gas tax behind Alaska) has an \$825 million annual transportation shortfall.

New Mexico

Governor Michelle Lujan Grisham signed HB4 or the *New Mexico Civil Rights Act* into law in April. Qualified immunity will no longer be allowed as a defense in state civil court for any public official who violates someone’s rights under the state’s constitution. New Mexico follows Colorado and New York

in ending qualified immunity for police officers.

New York

According to the Federal Highway Administration, NYC’s Metropolitan Transportation Authority (MTA) can now move forward on a less rigorous environmental assessment with its plan to toll drivers entering Manhattan below 60th Street. The MTA will begin to analyze traffic volumes and air quality impacts of the proposed congestion pricing plan. The projected \$1 billion a year taken from the backs of drivers will be used to repair the city’s aging subway system. A group of New Jersey lawmakers has threatened to strike back by charging a toll on NY drivers and use the money to reimburse NJ drivers who drive into the city.

NYC Mayor Bill De Blasio recently said he supports a new state Senate bill 131 that would lower the legal blood alcohol limit from 0.08 to 0.05. SB131 is part of a group of eight bills called the *Crash Victim Rights and Safety Act*. If SB131 passes, NY would be the second state to lower the BAC level to 0.05. Utah did the same in 2018.

Pennsylvania

According to a new study, the Pennsylvania Turnpike is the most expensive toll road to traverse from start to finish in the world. To travel the 360 miles across the state, it costs \$112.91, which is \$67.48 more than the second most expensive toll road (Australia’s Grossglockner High Alpine Road). Apparently, the state wants to toll even more. Recently, PennDOT received significant pushback from state lawmakers, the media, and motorists after putting forward a proposal to toll nine already-built bridges in the state.

Tennessee

The city of Nashville has started replacing 30 mph signs with 25 mph signs throughout the city. Lowering the

neighborhood speed limits is the first step in Mayor John Cooper’s Vision Zero plan. The Metro Council passed the speed limit bill in February 2021 after the city recorded a record-breaking number of pedestrian deaths in 2020.

Utah

Governor Spencer Cox recently signed three different motorist-related bills. SB98 reforms the state’s asset forfeiture laws, opting out of the federal program. SB34 codifies the Department of Public Safety’s practices in using facial recognition technology primarily by police. HB243 creates a process to review state and local surveillance technology and institute a “state privacy officer” within the state auditor’s office. A Privacy Oversight Committee will also be established to develop surveillance technology standards and government privacy policy.

Washington State

Governor Jay Inslee partially vetoed state legislation that would have banned the sale and purchase of gas-powered vehicles in 2030. Even though he was expected to sign the *Clean Cars 2030 Act*, he objected to a provision that tied the ban to a requirement that 75 percent of vehicles in the state be subject to a road user fee. Inslee stated, “We cannot afford to link an important goal like getting to 100 percent zero-emission vehicles to a separate policy that will take time to design and implement.” His statement after the veto indicated his support of a national goal of zero-emissions vehicles by 2035.

Wyoming

Seven Wyoming legislators sponsored HB223 that would require variable speed limit signs to be installed along I-80. The bill died in committee after members learned that designing and installing the 40 variable speed limit signs and additional equipment would cost around \$16.65 million—plus an additional \$560,000 for ongoing yearly costs. 