

RIGHT TO TRAVEL BREIF

I INTRODUCTION, JURISDICTION & VENUE.

COMES NOW, Respondent hereto, seeking a determination of a Federal question and Opinion defining the limitations of certain federal powers, and how said powers relate to police powers of the States. Issues raised herein are those based upon congressional mandate, and decisions of the U.S. Supreme Court over the past century pertaining to interstate commerce, and upon the legislative history of the State of Washington's Motor Vehicle Code (RCW Title 46) which is perceived by the Appellant to be born of congressional cession of federal commerce power. Appellant lives in King County, Washington State, jurisdiction and venue are proper.

1.2 Respondent is proceeding hearing de novo because the questions posed herein require only interpretation of 49 USC Subtitle VI as it relates to Federal commerce power, the boundries of which are outlined in U.S Supreme Court decisions relied upon herein. Appellant knows of no party in a posture adverse to his finding out the true definition of the powers examined herein.

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NOTE: All emphasis employed herein and throughout may be construed to have been added

1.3 A 1995 U.S. Supreme Court decision went to great lengths to define federal commerce power, and others from 1886 to 1966 serve to fortify this decision as one based upon long standing recognition of the boundrys of such power. **Appendix A** hereto is certain Supreme Court decisions that are drawn upon in support of Respondent jurisdictional questions and proposed findings. Included are U.S v. Bevans (1818) (opinion only); U.S. v. Guest (1966); U.S. v.

lopez (1995); and excerpts from Edwards v. California (1941), all infra. Through these decisions, Respondent contends that congress has original and exclusive jurisdiction over the highways and instrumentality's of interstate commerce (hereinafter “highways”).

1.4 Respondent perceives 49 USC Subtitle VI to be the only outline for delegation from Congress to the State of Washington (hereinafter “State”) of federal commerce power to legislate for the regulation of activities conducted upon the highways, and legislation regarding licensing there is focused solely upon *commercial* use of the highways. See 49 USC Chapter 313 “**COMMERCIAL MOTOR VEHICLE OPERATORS.**”

1.5 Understanding his enjoyment of the highways to be a right secured to him by virtue of his national citizenship, Respondent perceives a conflict when he is told by the state that said enjoyment is actually a privilege granted by the State, that said enjoyment would, without the states permission, be unlawful, tort, or otherwise prohibited.

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1.6 Appendix **B** hereto are Washington State Senate Bill #220 from February 26, 1921, and Washington State House Bill #121 from February 8, 1915, which are the legislative foundation for RCW Title 46 “Motor Vehicles.” Definitions there are perceived by the Appellant as those that differentiate between “*public use of the highways and travel between different localities and communitites*” and “*transportation of persons and freight,*” and the term “*motor vehicle*” is said there to apply only to the latter. This would indicate intent identical to that manifest in Federal legislation relating to the use of highways, that licensing authority ceded to

the State by congress is limited to *commercial* use of the streets, and is not granted with regards to *private travel of individuals* upon highways.

1.7 Appellant perceives a conflict between Federal commerce power and State police power. In Federal statute, State police power is recognized to certain degrees, but having certain limitations. Throughout the language of Federal statute and decisions, terms commonly used by the state to denote *private travelers* upon highways are those deemed by the Federal government to denote only *commercial activities, i.e., transportation of persons, goods, frieght or commodities by carrier, for commercial gain.*

1.8 while decisions of the Supreme Court are quite clear, that original and exclusive jurisdiction over all activities that substantially affect interstate commerce is that enjoyed by Congress, and that said jurisdiction extends to any and all channels, highways and instrumentalities of interstate commerce, the state maintains that its authority over the same highways and instrumentalities is an exercise of original and inherent State police Superior Court

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power, and that the state need not get cession of authority from congress to regulate the use of the highways. The Appellant's Questions Presented for Review will follow his Memorandum on the issue which follows.

1.9 The issue herin raised was raised by the respondent in Municipal Court traffic pleadings and hearings over the course of the first six months of 2012.

II ISSUES & AUTHORITIES.

A. Enforcement must be within statutory limitations of Authority when acting against the respondent

2.0 the authority of a governmental agency extends only as far as statute permits. It is elementary that the meaning of a statute must, in the first instance, be sought in language in which the act was framed. And if that is plain, and if the law is within the constitutional authority of the law-making body which passed it, the sole function of the court is to enforce it according to its terms. See

Carminetti v. U.S., 242 U.S. 470, 485, 489-493 (1916), citing (on 485) *Lake County v. Rollins*, 130 U.S. 662, 670, 671; *Bate Refrigerating Co. v. Sulzberger*, 157 U.S. 1, 33; *U.S. v. Lexington Mill and Elevator Co.*, 232 U.S. 399, 409; *U.S. v. Bank*, 234 U.S. 245, 258. See also *Security Bank of Minnesota v. C.I.R.*, 994 F.2d 432, 436 (CA8 1993).

2.2 All agency action, therefore, must find itself within the confines of legislative mandate, and those acts committed without statutory grace are unlawful.

2.3 State Supreme Courts share in this prescription for interpretation of legislative intent. The following is an excerpt from *Cook v. State*, 83 Wash.2d 725, 521 P.2d 725 (1974).

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“Whether the legislature acted wisely by creating the challenged restriction is not a proper subject for judicial determination.

McKimmy v. Estate of McDonald, 71 Wash.2d 262, 264, 427 P.2d 974 (1967); *Port of Tacoma v. Parosa*, 52 Wash. 2d 181, 192, 324 P.2d 438 (1958). The fact that the legislature made no exception for minors does not give rise to some latent judicial power to do so by means of a volunteered additional proviso. This is true even if it could be said the legislative omission was inadvertent. *State v. Roth*, 78 Wash. 2D 711, 715 479 P.2d 55 (1971); *Boeing v. King county*, 75 Wash. 2D 160, 166, 449 P.2d 404 (1969); *State ex rel. Hagan v. Chinook Hotel*, 65 Wash. 2d 573, 578, 399 P.2d 8 (1965); *Vannoy v. Pacific Power and light Company*, 59 Wash. 2d 623, 629, 369 P.2d 848 (1962). If there is a need for such an exception, it must be initiated by the legislature, not by the courts. *Boeing v. King County*, supra; *State ex rel. Hagan v. Chinook Hotel*, supra.” *Id.*, at 735.

2.4 Similar limitations upon judicial authority are outlined by the U.S. Supreme Court in *Evans v. Gore*, 253 U.S 245, 40 S.Ct. 550, 551 (1920)

“The particular need for making the judiciary independent was elaborately pointed out by Alexander Hamilton in Federalist, No.78, from which we excerpt the following: “The executive not only dispenses the honors, but holds the sword of the community .The Legislature not only commands the purse, but prescribes the rules by which the duties and rights of every citizen are to be regulated. The judiciary, on the contrary, has no influence over either the sword or the purse; no direction either of the strength or of the wealth of the society; and can take no active resolution whatever. It may truly to have neither force nor will, but merely judgment.”*Id.*, at 249.

2.5 The authorities above make clear that the state must be within it's statutory limitations of authority at all times. It is Respondent's contention that statute, as applied the State, is misenforced, such perception being the basis for this action.

B. Jurisdiction over interstate commerce is reserved to Congress, and must be delegated to the State.

2.6 Where Congress or a State enjoys jurisdiction, said enjoyment is exclusive (See *U.S v. Bevans*, 16 U.S. (3 Wheat) 336, 388-389 (1818), Superior Court Appellant Brief page 5 of 24 opinion in **Appendix A**), and it is Congress that enjoys original jurisdiction over the use of the highways and instrumentalities of interstate commerce, and this includes all public easments (See *U.S. v. Guest*, 383 U.S 745 (1966); *U.S. v. Lopez*, 115 S.Ct. 1624, 1629, 514 U.S.(1995), syllabus also; the use of such property being right vested in the Public. See *Black's*, 9th Edition, “Easements” and “Private or public easments,” infra. **All emphasis below may be construed to have been added.**

U.S. v. Bevans, supra, at 388: “It is in the 8th section of the second article, we are to look for cessions of territory and of exclusive jurisdiction.”

“Congress may pass all laws which are necessary and proper for giving the most complete effect to this power. Still, the general jurisdiction over the place, subject to this grant of power, adheres to the territory, as a portion of sovereignty not yet given away.” *Id.*, at 389

“Consistent with this structure, **we have identified three broad categories** of activity that congress may regulate under its commerce power. (Cites omitted) **First**, Congress may regulate the use of the channels of interstate commerce power. (Cites omitted) (“[T]he authority of congress to keep the channels of interstate commerce free from immoral and injurious uses has been frequently sustained, and is no longer open to question.” (quoting *Carminetti v. United States*, 242 U.S 470, 491, 37 S.Ct. 192, 197, 61 L.Ed. 442 (1917)) **Second**, Congress is empowered to regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come from intrastate activities. (Cites omitted) **Finally**, Congress' commerce authority includes the power to regulate those activities having a substantial relation to interstate commerce. (cite omitted)” from *U.S. v. Lopez*, supra, at pg. 1629. (emphasis added) (Copy attached hereto, See **Appendix A**).

Wabash, &c., Railway Co. v. Illinois, 118 U.S. 557 (1886): “We not say that a case may not arise in which it will be found that a State, under the form of regulating its own affairs, has encroached upon **the exclusive domain of Congress in respect to interstate commerce... Id.**, at 567.

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“But we think it may safely be said that State legislation which seeks to impose a direct burden upon interstate commerce, or **to interfere directly with its freedom, does encroach upon the exclusive power of Congress.**” *Id.*, at 571.

“It is impossible to see any distinction in its effect upon commerce of either class, between a statute which regulates the charges for *transportation*, and **a statute which levies a tax for the benefit of the State upon the same transportation**; and, in fact, the judgment of the court in the *State Freight Tax Case*, 15 Wall. 232, rested upon the ground that the tax was always added to the cost of transportation, and thus **was a tax upon the privilege of carrying the goods through the state.**” *Id.*, 570.

It is not the railroads themselves that are regulated by this act of the Illinois Legislature so much as **the charge for transportation**, and, in language just cited, of each, of each one of the States

through whose territories these goods are *transported* can fix its own rules for prices, for modes of transit, for times and modes of delivery, and all the other incidents of *transportation* to which the word “regulation” can be applied, ***it is readily seen that the embarrassment upon interstate transportation, as an element of interstate commerce might be to oppressive to be submitted to. “It was,” in the language of the court cited above, “to meet just such a case that the commerce clause of the Constitution was adopted.”*** *Id.*, at 572.

“As such, so far as it operates on private messages sent out of the State, it is a regulation of foreign and interstate commerce and beyond the power of the State. That is fully established by the cases already cited. *“Id.*, at 574, quoting State Freight Tax Case 15 Wall 232.

“Commerce with foreign countries and among States, strictly considered, consists in intercourse and traffic, including in these terms navigation and the transportation and transit of persons and property, as well as the purchase, sale, and exchange of commodities. For the regulation of commerce as thus ***defined there can be only one system of rules***, applicable alike to the whole country; ***and the authority that can act for the whole country can alone adopt such a system. Action upon it by separate States is not, therefore, permissible. Language confirming the exclusiveness of the grant of power over commerce as thus defined may no be inaccurate, when it would be so applied to legislation upon subjects which are merely auxiliary to commerce.*** *Id.*, at 575-76,

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quoting *County of Mobile v. Kimball*, 102 U.S. 691, 702.

“And if it be regulation of commerce, ...it must be of that national character, and the regulation can only appropriately exist by general rules and principles, ***which demand that it should be done by the Congress of the United States under the commerce Clause of the Constitution.*** *Id.*, at 577.

“The commercial Motor Vehicle Safety Act of 1986 requires all states to meet the same minimum standards for testing and licensing commercial drivers. ***All commercial drivers throughout the United States are required to have a Commercial Driver's license (CDL).***” *Washington State Commercial Driver's Guide*, pg. 1-1, par. 1, August 1994.

2.7 In *Guest*, *supra*, Petitioners activities, the private use of the highways, is said to be the fundamental and federally protected right of the

Petitioner (*Id.* At footnote 17), with accompanying criminal sanctions for any interference or impedance of one's enjoyment or exercise of such. In *Lopez* and *Wabash*, exclusive jurisdiction of Congress over the channels of interstate commerce is proclaimed. In *Edwards v. California*, 314 U.S. 160 (1941), the power is likewise reserved to Congress as Federal commerce power.

“...the grant [the commerce clause] established the immunity of interstate commerce from the control of the States respecting all those subjects embraced within the grant which are of such a nature as to demand that, if regulated at all, their regulation must be prescribed by a single authority.” *Milk Control Board v. Eisenberg Farm Products*, 306 U.S. 346, 351.” *Id.*, at 176

“The right to move freely from State to State is an **incident of national citizenship** protected by the privileges and immunities clause of the Fourteenth Amendment against state interference. Mr. Justice Moody in *Twining v. New Jersey*, 211 U.S. 78, 97, Stated, “Privileges and immunities of citizens or persons by the Constitution of the United States.” And went on to state that one of those rights of **national citizenship** was “the right to pass freely from State to State.” *Id.* p.97.” *Id.*, at 178.

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“...But [Mr. Justice Miller in *Crandall v. Nevada*, 6 Wall. 35 (1867)]'s failure to classify that right as one of state citizenship underscores his view that the **free movement of persons throughout this nation was a right of national citizenship.**” *Id.*, at 181.

2.18 while it is clear that the Respondent's enjoyment of the highways or *Private Travel* is held by the Supreme Court to be a fundamental right, Secured under the Constitution for the United States as an incident of Respondent's national citizenship, the State of Washington holds the same privilege granted by the State, an activity that is within the licensing authority of the State, but attaches such authority only to the

operation of “motor vehicles.”

RCW “46.30.010 Legislative intent. *It is a privilege granted by the state to operate a motor vehicle upon the highways of this state.*”

Blacks Law Dictionary, Ninth Edition:

“Privilege. A special legal right, exemption or immunity granted to a person or class person of persons; an exception to a duty. A privilege grants someone the legal freedom to do or not to do a given act. It immunizes conduct that, under ordinary circumstances, would subject the actor to liability.

“License. A permission, usu. revocable, to commit some act that would otherwise be unlawful; an agreement (not amounting to a lease or profit a prendre) that it is lawful for the licensee to enter the licensor's land to do some act that would otherwise be illegal, such as hunting game.

“Easement. An interest in land owned by another person, consisting in the right to use or control the land, or an area above or below it, for specific limited purpose (such as to cross it for access to a public road). The land benefiting from an easement is called the dominant estate; the land burdened by an easement is called the servient estate. Unlike a lease or license, an easement may last forever, but it does not give the holder the right to possess, take from, improve, or sell the land. The primary recognized easements are right-of-way, a right of entry for any purpose relating to the dominant estate, a right to the support of land and buildings, a right of light and air, a right to water, a right to do some act that would otherwise amount to a nuisance, and a right to place or

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keep something on the servient estate.

2.9 The meaning of the terms “license” and “privilege” clearly complement the language of the Supreme Court, that an individual's use of the highways for private travel is a fundamental and federally protected right. Under the posture of the State, this fundamental right born of national citizenship is regulated as if it were the State's original domain, that the State is in control of one's access to federally protected rights. Under this mode of enforcement, a mode of travel often necessary to secure a livelihood (See *Bell v. Burson*, 402 U.S. 535 (1971); *Frost v Rail*

Road Commission, 271 U.S. 583, 46 S.Ct. 605 (1925) is treated as a forbidden activity unless the State's permission is first acquired. The State's mode of enforcement clearly makes the Respondent's pursuit of a livelihood dependent upon a privilege granted by the State.

“Having regard to form alone, the act here is an offer to the private carrier of a privilege, which the state may grant or deny, upon a condition which the carrier is free to accept or reject. ***In reality, the carrier is given no choice, except a choice between the rock and the whirlpool—an option to forgo a privilege which may be vital to his livelihood or submit to a requirement which may constitute an intolerable burden.***” *Frost, Id.*, at 593.

2.10 Congress's exclusive authority and original jurisdiction over the Appellant's use of the use of the highways, and the State of Washington's lack or original jurisdiction over the Appellant's private travel upon the highways now having been firmly established, Appellant will proceed.

C. Delegation of authority from Congress to the State of Washington.

2.11 Congress, with original and exclusive jurisdiction over the Superior Court
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highways and instrumentality's of interstate commerce reserved exclusively to it, has chosen to delegate degrees of regulatory authority to State legislatures, upon approval of proposed State regulations by the Secretary of Transportation. This delegation of authority to regulate the use of the highways, developed from Congress to the States, is found in 49 USC Subtitle VI “MOTOR VEHICLE AND DRIVER PROGRAMS,” and in no other place.

2.12 Congressional cession of authority to license the use of the highways (make prohibited without requisite documents, to proclaim and

deem such use a *privilege*) can be found in 49 USC chapter 313, and in no other place. Said chapter reads, in pertinent part:

SUBTITLE VI - MOTOR VEHICLE AND DRIVER PROGRAMS
PART B - COMMERCIAL
CHAPTER 313 – COMMERCIAL MOTOR VEHICLE OPERATORS

-31301. Definitions.

In this chapter -

(3) "*commercial driver's license*" means a license issued by State to an individual authorizing the individual to operate a class of commercial motor vehicles.

(6) "*driver's license*" means a license issued by a state to an individual authorizing the individual to operate a motor vehicle on highways.

(11) "*motor vehicle*" means a vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used on public streets, roads, or highways, but does not include a vehicle, machine, tractor, trailer, or semitrailer operated only on a rail line or custom harvesting farm machinery.

-31308. Commercial driver's license.

After consulting with the States, *the Secretary of Transportation shall prescribe regulations on minimum uniform standards for the issuance of commercial driver's licenses by the States and for information to be contained on each on each of the licenses*. The standards shall require at a minimum that -

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(1) an individual issued a commercial driver's license pass written and driving tests for the operation of a commercial motor vehicle that comply with the minimum standards prescribed by the secretary under section **31305(a)** of this title;

(2) the license be tamperproof to the maximum extent practicable; and

(3) the license contain -

(A) the name and address of the individual issued the license and a physical description of the individual;

(B) the social security account number or other number or information the Secretary decides is appropriate to identify the individual;

(C) the class or type of commercial motor vehicle the individual is authorized to operate under the license;

(D) the name of the state that issued the license; and

(E) the dates between which the license is valid.

2.13 It is clear that the definition of the term “*driver's license*” enacted by Congress varies widely from the mode of enforcement undertaken by the State of Washington.

2.14 While the State deems the term “*motor vehicle*” to be that which implies *private* use of the highways, Congress sees the term as one described only *commercial* use of the highways. The definitions above are found in Chapter 313 of 49 USC called “**COMMERCIAL MOTOR VEHICLE OPERATORS.**”

“Motor vehicle” means every description of carriage or other *contrivance* propelled or drawn by mechanical power and *used for commercial purposes on the highways* in the transportation of passengers, passengers and property, or property and cargo,... “**Used for commercial purposes**” means the carriage of *persons or property for any fare, fee, rate, charge or other directly or indirectly in connection with any business*, or other *undertakings consideration, or intended for profit*[.] “**18 U.S.C. 31.**

2.15 It is clear that the legislature body with the exclusive authority to legislate for the of the highways (**Congress**) has delegated to the State licensing authority pertinent and applicable only to one's *commercial* use of

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the highways, for the “*transportation*” of persons.

2.16 When one consider's the terminology used in definitions enacted by Congress, a *strong indication that only commercial activities* are the object of this legislation is manifest. If the Court cannot provide and cite to other and contrary authorities to those relied upon herein, can the State be said to be within it's authority when enforcing upon the Appellant. State law said to apply only to “motor vehicles”?

2.17 In two places (49 USC; 18 USC 31) Congress has defined the term “*motor vehicle*” in commercial terms, and therefore, the proper

reflection of this superior intent is that RCW Title 46 “ Motor Vehicles ” is inapplicable to Appellant's *private travel* upon the highways.

D. Legislative History of Washington State's Motor Vehicle Code support's Appellant's claim is correct, that the term “motor vehicle” is a commercial term.

2.18 Washington State Sessions Laws clearly contemplate the same vein of application, *the same categorization, that the term “motor vehicle”* and licensing of the use of the highways be applicable only to commercial activities. (See **Appendix B hereto**).

From Washington Senate Bill No.220, Seventeenth Regular Session, February 26, 1921, and from Washington House Bill No.121, Fourteenth Regular Session, **February 8, 1915:**

Section 1. Except as otherwise provided by law this act shall be controlling:

- (1) Upon the numbering and registration of **motor vehicles**;
- (2) Upon the **use of motor vehicles upon the Upon highways**;
- (3) Upon penalties for violation of any of the provisions of this act.

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2. The words and phrases herein used, unless same be clearly contrary to or inconsistent with the context of the act or section in which used, shall be construed as follows:

(1)“Motor vehicle” shall include all vehicles or machines propelled by any power other than muscular, **Used** upon the public highways **for the transportation of persons**, freight, produce or any commodity, except traction engines temporarily upon the public highways, road rollers or road making machines, and motor vehicles that run upon fixed rails or tracks.

(2)“Public highway” or “public highways” shall include any highway, state road, county road, public street, avenue, alley, driveway, boulevard or other place built, supported, maintained,

controlled or used by the public or by the state, county, district or municipal officers for the use of the public as a highway, or for the transportation of persons or freight, or as a place of travel or communication between different localities or communities;

That was:

(1)“place built, supported, maintained, controlled or *used by the public* or by the state, county,” **or**

(2)“*for the transportation of persons* or freight,” **or**

(3)“*as a place of travel or communication between different localities or communities.*”

“*Transportation.*” *The movement of goods or persons* from one place to another, *by a carrier.* *Interstate Commerce Commission v. Brimson*, 154 U.S 447, 14 S.Ct.1125, 38 L. Ed.1037.

49 USC 31301. Definitions.

In this chapter -

(2) “*commerce*” means *trade, traffic, and transportation-*

(A) in the jurisdiction of United States between a place in a State and a place outside that State (including a place outside the United States); or

(B) *in the United States that affects trade, traffic, and transportation* described in subclause (A) of this clause.

Hendrick v. Maryland. 235 U.S. 610, 35 S.Ct 140, 59 L.Ed. 385 (1915), same year as Wa.St. House Bill #121, supra: “*A state may*

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rightfully *prescribe* uniform *regulations* necessary for public safety and order *in respect to the operation* on its highways *of all motor vehicles. ...those moving in interstate commerce as well as others. And to this end, it may require the registration of vehicles* and the licensing of drivers, charging therefore reasonable fees...This is but an exercise of the police power uniformly recognized as belonging to the states and essential to the preservation of the health, safety, and the comfort of their citizens; and it does not constitute a direct and material burden on interstate commerce.” *Id.*, at 622.

2.19 Highways “*used by the public,*” as mentioned above, is not the “*transportation of persons,*” and such is set apart as “*used by the public.*”

Also, the term “*motor vehicle*” is assigned and reserved to *commercial* use

of the highways, and it is only “*to that end*” to which State regulatory authority extends. Also separated from “*transportation of persons*” is the phrase “*as a place of travel or communication between different localities or communities,*” the State legislature clearly intending to distinguish such from “*transportation of persons.*” This echo of the obvious limitations placed upon the State's licensing authority found in 49 USC Subtitle VI, and the intent and language of 18 USC 31, cannot be ignored; direct and fluent correlation is starkly manifest.

“An examination of the statutory context, the text of the relevant provisions, **and the legislative history convinces us that the construction that is “most harmonious with** its scheme and with the general purposes that Congress manifested.” (Cite omitted) Moreover, because the application of [the provision] to these loans is ambiguous, we follow the venerable rule that “[i]n the interpretation of statutes levying taxes ...[courts must not] enlarge their operation so as to embrace matters not specifically pointed out.” *Security bank of Minnesota*, supra, at 441.

2.20 Appellant contends that Revised Code of Washington Title 46

“Motor Vehicles,” applied by the State of Washington to the Appellant's

private travel upon the highways, is not applicable to the “*public use*” of Superior Court

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the highways of Washington state. Respondent contends that the State's

“**motor vehicle**” code is applicable only to the *commercial* use of the highways or “*transportation of persons,*” as the term “*motor vehicle*” is defined in 18 USC 31, and that said term is different from “*use of the public.*”

2.21 The Right of the Appellant to arrange his affairs in any lawful way cannot be doubted. See *Gregory v. Helvering*, 293 U.S. 465, 469, 55 S.Ct. 266, 267, 79 L.Ed. 596 (1935); *Boccardo v. C.I.R.*, 56 F.3d 1016 at

[1,2] (9th Cir. 1995). To arrange one's own affairs, naturally, one must know all about applicable provisions not understood. This is the Federal question, the interpretation of Article I, sec 8, the commerce clause, and 49 USC Subtitle VI. Enough evidence exists to support the Appellant's conclusions, and if he is mistaken, a contrary explanation of the law is property to which he is entitled, and it is the only remedy that will cure this controversy, thereby permitting Appellant to stay within the good graces of his public servants on the State level.

2.22 It seems to the Appellant that, if the State's authority over the highways is original State Police, Congress was wasting it's time be enacting 49 USC Subtitle VI. If Congress can legislate for the use of the highways in such a fashion, where is it's cession of authority to the State of Washington? If Congress can legislate in such a way, does the State of Washington have original jurisdiction? The issue in question is clear. Appellant contends that the safe *private travel* upon the highways is an activity not within the scope of RCW 46 "Motor Vehicles."

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III. QUESTIONS PRESENTED FOR REVIEW.

3.1 Respondent hereby questions the State of Washington's jurisdiction under statute (49) USC; scope of RCW Title 46, as it relates to Federal commerce power), and requests that this Court answer with interpretive Memorandum the definition of powers as shown herein to be at odds with one another, those being Federal commerce power and State police power.

3.2 For Respondent to arrange his own affairs according to law, he must receive curative instruction in the form of a Memorandum that duly

disposes of the questions below.

3.3 Having relied strictly upon statute and decisions of high authority,

the Respondent perceives no cause for apprehension when asking for a definition of powers as requested herein. Respondent perceives any decision stating that the State is exercising original police power when licensing the private use of the highways to be one that renders 49 USC moot, a mere nullity, and he therefore propounds the following inquires:

Jurisdiction:

1. When Congress enjoys jurisdiction over a certain activity or territory, is its jurisdiction exclusive, is it retained in full until waived or ceded to another authority?
2. Must a State receive legislative grant of regulatory authority from Congress when seeking to enact and enforce laws to be applied to activities or territories over which Congress has jurisdiction?
3. Does Congress enjoy exclusive jurisdiction over the highways and instrumentalities of interstate commerce, or are said highways and instrumentalities under State jurisdiction?
4. Is the public's use of the highways for private travel an activity that substantially affects interstate commerce?

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5. Does the State have original jurisdiction over activities that substantially affect interstate commerce, or must the State's authority be obtained by cession of such from congress?

Conflict of powers:

6. Is Repondent's private travel upon the highways the enjoyment of a federally protected right, or is it the exercise of a privilege granted by the State?

7. authorities cited herein prove plainly that Congress enjoys jurisdiction over the highways. Nowhere in Federal legislation is it found that Congress has authorized the licensing of those using the highways for private travel. Must the State get Congress' permission,

or can it act on its own, as if enjoying original jurisdiction over the highways?

8. In 1966, the Guest Court held that the enjoyment of the highways was a fundamental and Federally protected right, and at the same time, the State of Washington deems such enjoyment to be a State granted privilege. Can an activity be a federally protected right and a privilege granted by the State at the same time?

9. The State claims that inherent police power authorizes its licensing of private travel upon the highways. Is the State's authority and jurisdiction to regulate the highways that being original inherent and under exclusive jurisdiction of the State, or is it a cession of federal commerce power reserved to Congress under Article I, sec 8? If the latter, what are the limitations of this cession? (see 49 USC Subtitle VI)

Authorities and terms:

10. Respondent sees 49 USC Subtitle VI as being congressional legislative cession regulatory authority over interstate commerce to the States. Respondent knows of no other place where the same is manifest, and sees 49 USC as moot, if Congress indeed has no original jurisdiction over *private travel* upon the highways of the State. What is the source of the State's authority to license the *private travel* of the Petitioner?

11. Is the term "*motor vehicle*" defined in 18 USC 31 the same "*motor vehicle*" to which RCW Title 46 "Motor vehicles" applies? If not, why not?

12. The only Federal definitions of "*motor vehicle*" are tried to

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commercial activities, under 18 USC 31, and 49 USC 31301. Can the State redefine terms used by Congress applied to activities over which Congress enjoys regulatory and legislative authority? Can the State redefine Federal terms after receiving a cession of authority from Congress?

13. Is the term "*motor vehicle*" one that implies *commercial* use of the highways?

14. Is the "driver's license" required of the Respondent by the State (RCW Title 46.20.021) the same "*driver's license*" defined under 49 USC 31301(6)? If not, is there another place in Federal statute where respondent might find a definition that *does* define the license required of the Respondent by the State?

15. In 49 USC 31301(2), Congress states unequivocally that “*commerce*” means *trade traffic*, and *transportation*.” For the purposes of American jurisprudence, does the term “*transportation*” apply to *private use* of the highways? Is it a term that implies specifically *commercial* use of the highways?

16. In this Court's opinion, and according to Washington Sessions Laws cited herein, is the “*transportation of persons*” the same as “*use of the public*,” or “*travel between localities or communities*,” as said terms apply to Respondent? If so, please explain.

3.4 Respondent sees controlling law to be that which limits the State's licensing authority to *commercial* use of the highways, that Congress has not extended its cession of authority to the States for the licensing of the use of the highways to subjects other than *commercial* activities, thus excluding *private travel* of the Respondent from said licensing authority.

3.5 Respondent perceives a contradiction of terms when State enforcement and congressional definitions are placed side by side. Respondent perceives a struggle between State police power and Federal commerce power when he sees a fundamental and federally protected right proclaimed by the State to be a privilege granted by the State, an activity that, without the State's permission, would not be permitted. Within this point Superior Court

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alone there can be found a demand for clarification, one calling for a definition of these powers, as they relate to the Respondent.

3.6 Appellant perceives the State's Licensing of *private travel* to be that which encroaches on Federal commerce power, and as that not rightfully born of congressional cession of authority.

IV . PROPOSED FINDINGS & RELIEF REQUESTED.

4.1 The proposed findings listed below will serve to clarify the petitioner's conclusions, derived from the language of the authorities cited

herein. Respondent believes that his conclusions are sound and reasonable, and would act upon them as lawful were he to arrange his affairs according to written law. Such conduct would be deemed locally as a violation of the law, but clarification has been denied the Respondent on some accounts in state courts.

4.2 Detailed below is the structure of the Respondent's perception of

the definitions of Federal commerce power, as it relates to the State's involvement in regulating the use of the highways for *private travel*. Also detailed is Respondent's perception that certain terminology further stipulates to his contention that, in certain statutory schemes, certain terms signify only *commercial* enterprise or activity, and that they are controlling in the application of said schemes.

(A): The public's use of the highway for *private travel* is an activity that substantially affects interstate commerce, and therefore, it is an activity that falls within the exclusive and original jurisdiction of congress, as provided for under United States Constitution, Article I sec 2, the Commerce clause.

(B): As it pertains to the movement of people, goods, or

frieght, Congress, has original and exclusive jurisdiction over city, county, and state streets, highways and freeways, retaining any and all authority thereover from the States which is not expressly ceded or delegated to the State.

(C): Congress has delegated to the State regulatory authority over the highways within its boundaries, to degrees, and has done so in title 49 of the United States Code, In Subtitle VI Motor Vehicle and Driver Programs, and in no other place.

(E): Outside 49 USC Subtitle VI, there exists no express grant from Congress to the State of any degree of Federal commerce power to regulate the use of the highways other than for *commercial activity*. Obvious congressional intent is that *Private travel* not be included in its prescription for licensing those using the highways. Because licensing the use of the highways is found only in 49 USC Chapter 313 COMMERCIAL MOTOR VEHICLE OPERATORS, and because such licensing is mentioned in no other place, *private travel* is clearly not within the scope of the cession of authority found in 49 USC Subtitle VI.

(F): When certain restrictions are placed upon the application of certain terms by Congress, under cession of authority the State may not broaden or displace the meaning of said terms as contemplated by Congress. Any attempt to broaden congressional intent and to misapply such a mandate is unlawful.

(G): When found in legislation, the terms “*motor vehicle*” and “*transportation*” are applicable only to *commercial activities*. The use of these terms is intended to exclude from application any activity not *commercial* in its nature and intent.

(H): The State's authority to enact and enforce Revised Code of Washington Title 46 “Motor Vehicles” is 49 USC Chapter 313, and said RCW Title applies only to *commercial* activity conducted on the highways of within the boundaries of the State.

(I): The use of the highways for *private travel* is a fundamental one, finding its protections from invasion under U.S Constitution, Article IV, sec 2 as an equal privilege. This right incident of every American's national citizenship is not that rightfully deemed a privilege. This right incident of every American's national citizenship is not that rightfully deemed a privilege, granted by the Federal government or by that of any State.

(J): The State possesses no authority to license one's exercise of his or her federally protected right to *private travel* upon the Superior Court

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highways. By declaring *private travel* a licensable activity, the State has encroached upon Federal commerce power, assuming propriety over activities within jurisdiction that Congress has chosen to retain for itself.

(K): The language of RCW Title 46 “Motor Vehicles” does not dispose of the intent of Congress as found in 49 USC Subtitle VI, as it is actually called “Motor Vehicles,” a *Commercial* term. If said RCW Title is applied to activities not *commercial* in their nature, it is being mis-applied.

(L): It is under Congress' guidance alone that the State writes and enacts legislation and promulgates regulations pertaining to any individual's use of the highways within it's boundaries. The enforcement of any such legislation or regulation is authorized by congressional cession of Federal commerce power only.

4.3 Respondent feels that the validity of his conclusions will be well weighed by his Questions Presented for Review, and sees the answering of such to be the cure for his situation, that of not knowing the basis or source of authority presently in use against him.

4.4 **Respondent requests a declaratory judgement** in accordance with Proposed Findings (A) through (L) that expressly defines the boundries of State police power over *private travel*.

V. CONCLUSION.

5.1 In the absence of logical answers to question arising out of this

obvious conflict between State police powers and exclusive Federal commerce power, to regulate the use of the highways and instrumentality's of interstate commerce, Respondent feels free to proceed as follows:

1) **As if RCW 46 “*Motor Vehicles*”** is not applicable to “*travel*

communication between different localities or communities” nor to “*use of the public,*” and,

- 2) As if RCW 46 “*Motor Vehicles*” applies only to “*transportation*” of persons or *frighth*” Via “motor vehicles” as is stated in RCW 46's legislative history, and,
- 3) As if the terms “*motor vehicle*” and “transportation” when found in state or Federal statute always imply only *commercial activity*, always having that meaning and application manifest in 18 USC 31, 49 USC 31301(2) “commerce,” and *Black's*, 9th, “Transportation,” and as if said terms always expressly exclude *private travel* upon the highways, and,
- 4) As if Congress has limited the State's licensing authority for use of the highways to *commercial* use, and that the State of Washington is bound by said limitation as it applies to licensing the use of the highways outlined in 49 USC Chapter 313 “**COMMERCIAL MOTOR VEHICLE OPERATORS**,” and,
- 5) As if safe equipment, rules of the road, and speed limit statutes are still binding upon *private travelers* using the highways.
- 6) As if RCW Title 46 “Motor Vehicles” imposes no requirements upon the *private travelers* upon the highways to obtain a driver's license, registration, license plates, license tabs, or auto insurance.
- 7) As if RCW Title 46 imposes absolutely no requirement to carry identification (I.D.)

5.2 A reasonable individual would tend to believe as the Respondent believes, given the narrow language and definite structure of legislation applied to the use of the highways. Respondent sees his conclusions as logical ones. Drawn from a responsible assembly of pertinent authorities, and from an application of certain axioms. Having tried to receive a answer to this issue in State courts, and with success in Issaquah District Court in 2004. This issue, now, is raised as a Federal question, and Respondent has approached this Court for this much-needed definition of the boundries of Federal commerce power, as it relates to State police power.

VI. VERIFICATION.

6.1 I, _____, do hereby swear under penalties of perjury (28 USC 1746) that the forgoing statement and legal claims are true and correct, and constitute a valid Federal question within which the Respondent now finds himself. Executed this _____, 2010

