_____ COURT, CITY OF
STATE OF COLORADO

MUNICIPAL COURT,	) Case:
Plaintiff,	)
	) MOTION TO DISMISS, Memorandum in support;
vs.	) personam jurisdiction, due process.
	)
,	)
Accused.	)

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I. INTRODUCTION.

1.1 COMES NOW, Accused/Defendant hereto, propounding this Memorandum in support of his Motion to Dismiss the complaint (traffic citation) against him. Defendant has supported his claims with prominent authorities and has presented questions that shall aid the Court in focusing on the issues at hand.

1.2 This Court will find that the Plaintiff has, in error, applied to the Defendant provisions applicable only to those engaged in commerce upon the highways. Defendant was not so engaged during the times complained of, and therefore, Plaintiff has failed to state a claim upon which relief may be granted.

1.3 Upon due consideration of the issues presented herein, this Court will find that legislative history, the Constitution for Colorado state, and existing legislation, all share in forming guidelines for the regulation of transportation companies only, and that said authorities do not provide for the jurisdiction asserted by the Plaintiff, the jurisdiction to regulate non-commercial use of the highways.

1.4 As used herein, "highways" shall include any and all surfaces upon which the operation of a motor vehicle is a privilege granted by the State of Colorado. ***Any and all emphasis*** employed herein may be construed to have been added.

II. ISSUES & AUTHORITIES.

A. Enforcement must be within statutory limitations of

authority when acting against the Accused/Defendant.

2.1 Defendant charges that statutory parameters are controlling, and that the Plaintiff has chosen to include in statutory application his act of private travel, while said provisions actually apply only to those engaged in commerce. The judicial and executive branches have no authority to read into the law that which is not manifest in its terms.

2.2 "Whether the legislature acted wisely by creating the challenged restriction is not a proper subject for judicial determination. *Sherar v. Cullen,* 481 F 945; *McKinney 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); *Collier v. Wallis, 180* US450 333US 426, 606 CL (1936) 56 P2d 602, *Wingfield v. fielder* (1972) 29 CA3d 213; *Boeing c 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." Similar limitations upon judicial authority are outlined by the United States Supreme Court.

"The particular need for making the judiciary independent was elaborately pointed out by Alexander Hamilton in the 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 be said to have*** neither force nor will, but ***merely judgment***."

2.3 "It is elementary that the meaning of a statute must, in the first instance, be sought in the language in which the act is 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. *Lake County v. Rollins*, 130 U.S. 662, 670, 671; *Bate Refrigerating Co. v. Sulzberger*, 157 U.S. 1, 33; *United States v. Lexington Mill and Elevator Co.*, 232 U.S. 399, 409; *United States v. Bank*, 234 U.S. 245, 258."

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

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

2.5 Where Congress or a State enjoys jurisdiction, said enjoyment is exclusive, and it is Congress that enjoys original jurisdiction over the use of the highways and instrumentalities of interstate commerce, and this includes all public easements, the use of such property being a right vested in the Public.

"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."

"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. (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 only from intrastate activities. (Cites omitted) ***Finally***, Congress' commerce authority includes the power to regulate those activities having a substantial relation to interstate commerce, (Cites omitted) those activities that substantially affect interstate commerce. (Cite omitted)"

"We do 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…***"

"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."***

"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."***

"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 the language just cited, 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 embarrassments upon interstate transportation, as an element of interstate commerce, might be too 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."***

"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."

"Commerce with foreign countries and among the 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 not be inaccurate, when it would be so applied to legislation upon subjects which are merely auxiliary to commerce."***

"And if it be a 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."***

"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)."

2.6 In *Guest*, *supra*, Defendants' activities, the private use of the highways, is said to be the fundamental and federally protected right of the Defendant, 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), this 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."

"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 of the United States … are only such as arise out of the ***nature and essential character of the National Government***, or are specifically granted or secured to all 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."

"…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***."

"…Thus it is plain that the right of free ingress and egress rises to a higher constitutional dignity than that afforded by state citizenship."

2.7 While it is clear that the Defendant's enjoyment of the highways for *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 Defendant's national citizenship, the State of Washington holds the same to be a 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."

CRS 42.2.101 Legislative intent. ***It is a privilege granted by the state to operate a motor vehicle upon the highways of this state***."

Black's Law Dictionary, Sixth Edition:
"Privilege. ***A particular and peculiar benefit*** or advantage enjoyed by a person, company, or class, ***beyond the common advantages of other citizens. An exceptional or extraordinary power or exemption. A peculiar right, advantage, exemption, power, franchise, or immunity held by a person or class, not generally possessed by others.***"

"License. ***A personal privilege to do some particular act*** or series of acts on land without possessing any estate or interest therein, and is ordinarily revocable at the will of the licensor and is not assignable. (Cite omitted) ***The permission by competent authority to do an act which, without such permission, would be illegal, a trespass, a tort, or otherwise not allowable.***"

"Easement. ***A right of use*** over the property of another."

"Private or public easements. A private easement is one in which the enjoyment is restricted to one or a few individuals, while a ***public easement is one the right to enjoyment of which is vested in the public generally*** or in an entire community; ***such as an easement of passage on the public streets and highways*** or of navigation on a stream."

2.8 The meaning of the terms "license" and "privilege" clearly contradict 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 Plaintiff, 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 is treated as a forbidden activity unless the Plaintiff's permission is first acquired. The Plaintiff's mode of enforcement clearly makes the Defendant'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.****"*

2.9 Congress' exclusive authority and original jurisdiction over the Defendant's use of the highways, and the Plaintiff's lack of original jurisdiction over the Defendant's private travel upon the highways now having been firmly established, Defendant will proceed.

C. Delegation of Authority from Congress to the State of Colorado.

2.10 Congress, with original and exclusive jurisdiction over the highways and instrumentalities 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, made from Congress to the States, is found in 49 USC Subtitle VI "MOTOR VEHICLE AND DRIVER PROGRAMS," and in no other place.

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

(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.

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

18 USC 31.- ***"Motor vehicle" means*** every description or other ***contrivance*** propelled or drawn by mechanical power and ***used for commercial purposes on the highways*** in the ***transportation of passengers***, or passengers and property.

2.14 It is clear that the legislative body with the exclusive authority to legislate for the use of the highways (Congress) has delegated to the State licensing authority pertinent and applicable only to one's *commercial* use of the highways, for the "*transportation*" of persons.
2.15 When one considers 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 its authority when enforcing upon the Defendant State law said to apply only to *"motor vehicles"*?
2.16 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 CRS Title 42 "Motor Vehicles" is inapplicable to Defendant's *private* travel upon the highways.

D. Legislative History of Colorado State's Motor Vehicle Code, as well as its construction, supports Defendant's claim is correct, that the term "motor vehicle" is a commercial term.

2.17 The Constitution for Colorado state does bestow *some* authority upon the legislature to regulate the activities upon the highways, and does so under Articles which reads as follows:

"***All railroad, canal and other transportation companies are declared to be common carriers and subject to legislative control.*** Any association or corporation organized for the purpose, under the laws of this state, shall have the right to connect at the state line with railroads of other states. Every railroad company shall have the right with its road, whether the same be now constructed or may hereafter be constructed, to intersect, cross or connect with any other railroad, and when such railroads are of the same or similar gauge they shall at all crossings and at all points, where a railroad shall begin or terminate at or near any other railroad, form proper connections so that the cars of any such railroad companies may be speedily transferred from one railroad to another. ***All railroad companies*** shall receive and ***transport each the other's passengers***, tonnage and cars without delay or discrimination.

2.18 Absent from said Constitution is any delegation of authority to the legislature to regulate private travel. Doubtless, if it were necessary that the authority to regulate transportation companies be expressly bestowed, the same is true of the authority to regulate those using the highways for purposes other than *transportation*.

2.19 The Plaintiff has exercised this grant of authority to regulate transportation companies, the applicable legislation being found in Colorado Revised statute (CRS) Title 42 Public Highways and Transportation. In this title we find no mention whatsoever of Defendant's private travel upon the highways, only an embrace of commercial use of the highways. CRS applies only to commercial use of the highways, *a fortiori*, the same is true of CRS42 Motor Vehicles.

CRS title42 Provisions to be construed in pari materia. The provisions of this title shall be construed in pari materia even though as a matter of prior legislative history they were not originally enacted in the same statute. ***The provisions of this title shall also be construed in pari materia with the provisions of Title 42 CRS, and with other laws relating to highways, roads, streets, bridges, ferries and vehicles***. This section shall not operate retroactively.

CRS 42,43 Provisions to be construed in pari materia. The provisions of this title shall be construed in pari materia even though as a matter of prior legislative history they were not originally enacted in the same statute. The provisions of this title ***shall also be construed in pari materia with the provisions of Title 42 CRS, and with other laws relating to highways, roads, streets, bridges, ferries and vehicles***. This section shall not operate retroactively.

"In para materia. Upon the ***same matter or subject. Statutes "in para materia" are those relating to the same person or thing or having a common purpose***. *Undercofler v. L.C. Robinson & Sons, Inc.*, 111 Ga.App. 411, 141 S.E.2d 847, 849. This rule of statutory construction, that statutes that relate to the same subject matter should be read, construed and applied together so that the legislature's intention can be gathered from the whole of the enactments, applies only when the particular statute is ambiguous. *Kimes v. Bechtold*, W.Va., 324 S.E.2d 147, 150."

2.20 With no mention in CRS of the private traveler and the fact that CRS 42 is to be construed *in para materia* with it, the only conclusion can be that CRS 42 applies only to the same subject matter, one that excludes the private traveler.
2.21 Colorado State Sessions Laws also 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. "***Statute law, as adopted by the legislature, prevails over any restatement thereof in the code***. CRS TITLE 42.2.101,42.2.105." (See *State ex rel. v. Mercer Island*, 58 Wn.2d 141, 144 (1961). See also *Parosa v. Tacoma*, 57 Wn.2d 409, 411-13, 415, 421 (1960); *Warner v. Goltra*, 293 U.S. 155, 161, 79 L.Ed. 254, 55 S.Ct. 46, at fn.4 (1934)).

Excerpts from *Parosa*, *id.*, at 412-13. Footnotes inserted as they occur: "The history of the Revised Code of Washington, so far as material, may be thus summarized:

The original code committee, created by Laws of 1941, chapter 149, p. 418, consisted of the State Law Librarian, the law librarian of the University of Washington, and the executive secretary of the judicial council. By 2 of that act, (fn.3)

Fn.3. Laws of 1941, chapter 149, 2. p. 419: "The said Committee shall, after collaboration with the publishers of the existing codes, determine upon and adopt a complete recompilation of the laws of this state in force of a general and permanent nature, and shall adopt a uniform and perpetual system for the numbering of the sections thereof."

the committee was directed to adopt a complete recompilation of the statute law of the state, but was not endowed with power to change the law.

Fn.4. The committee reported to the legislature January 21, 1947, that the work had not then been completed. 1947 House Jour. 440. The legislature of 1949, in substitute house bill No. 681, adopted the work `as a tentative Revised Code of the State of Washington," abolished the 1941 code committee, and created a new agency to continue the work. The bill was vetoed by the governor. 1949 House Jour. 1093.

But the legislature specifically disclaimed any intention to change the meaning of any statute. (fn.7)

Fn.7. ". . . In the compilation of the Code some of the provisions for the protection of seamen contained in the Act of 1872 were placed in Title 46, which relates to shipping, and particularly in Chapter 18 of that title, which relates to `Merchant Seamen.' They had previously been re-enacted, as parts of the Revised Statutes, along with 65. The Acts of 1915 and 1920 were placed in the same chapter and title, and were thus brought into contiguity with the sections carried over from the Act of 1872. Very clearly the change of location did not work a change of meaning. The rule of construction laid down in 713 must be confined to those sections of the chapter which were contained in the Act of 1872, or in the equivalent provisions of the Revised Statutes, before the Code had rearranged them. The compilers of the Code were not empowered by Congress to amend existing law, and doubtless had no thought of doing so. . . ." *Warner v. Goltra*, 293 U. S. 155, 161, 79 L. Ed. 254, 55 S. Ct. 46.

The text of 2 of the act (Laws of 1950, Ex. Ses., chapter 16, p. 33) is as follows:

"The contents of said code shall establish prima facie the laws of this state of a general and permanent nature in effect on January 1, 1949, but nothing herein shall be construed as changing the meaning of any such laws. In case of any omissions, or any inconsistency between any of the provisions of said code and the laws existing immediately preceding this enactment, the previously existing laws shall control."

Such is but a statement of the law relative to the standing of a compilation of statutes. In the event of a discrepancy between the law enacted by the legislature and a compilation, the legislative acts control.
The rule was stated by this court in *Spokane, Portland & Seattle R. Co. v. Franklin County*, 106 Wash. 21, 179 Pac. 113, as follows:

". . . But the compilation has no official sanction in the sense that it controls the construction the court must put upon the several acts. If it includes matter superseded, the matter must be rejected, and if there are matters not superseded and not contained therein, they must be searched out and given effect." (fn.8)

Fn.8. *Id.*"

***End excerpts** from *Parosa.*

"In construing a statute, it is safer always not to add to, or subtract from, the language of the statute unless imperatively required to make it . . .rationale . . ." *State v. Taylor*, 97 Wn.2d 724, 728, 649 P.2d 633 (1982); *McKay v. Department of Labor & Indus.*, 180 Wash. 191, 194, 39 P.2d 997, 98 A.L.R. 990 (1934)."

"***A well established general rule is that where a statute expressly provides for stated exceptions, no other exceptions will be implied***. *Insurance Co. of N. Am. Co. v. Sullivan*, 56 Wn.2d 251, 352 P.2d 193 (1960), and cases cited therein. See also, *In re Hoss' Estate*, 59 Wash. 360, 109 Pac. 1071 (1910), in which the function of a proviso was described as follows:

"The office of a proviso generally is either to except something from the enacting clause, or to qualify or restrain its generality, or to exclude some possible ground of misinterpretation of it, as extending to cases not intended by the legislature to be brought within its purview . . ."

" . . ***.It is the rule that in construing statutes the mention of one thing implies the exclusion of another*** thing under the maxim of *expressio unius est exclusio alterius*. *State ex rel. Port of Seattle v. Dept. P.S.*, 1 Wn.2d 102, 95 P.2d 1007 (1939); *State v. Thompson*, 38 Wn.2d 774, 232 P.2d 87 (1951); *Bradley v. Dept. Labor & Ind.,* 52 Wn.2d 780, 329 P.2d 196 (1958)." (Wash.) AGO 65-66 No. 69. . . .This conclusion is further supported by the ***well established rule of constitutional construction***, "expressio unius est exclusio alterius." ***The express mention of one thing implies the exclusion of the other***. *State ex rel. Banker v. Clausen*, 142 Wash. 450, 253 Pac. 805 (1927)."

2.22 And in controlling "statute law" or Sessions Laws we find these definitions of the terms "public highway" and "motor vehicle," intended to limit the application of CRS 42/43 to "transportation" and not to *travel or communication*.

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 public highways***;
(3) Upon penalties for the violation of any of the provisions of this act.

Section 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 highway, road rollers or road making machines, and motor vehicles that run upon fixed rails or tracks.
(7) ***"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. 1047."

49 USC § 31301. Definitions. In this chapter -
(2) *"commerce" means trade, traffic, and <u>transportation</u>* -
(A) in the jurisdiction of the 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 <u>affects</u> trade, traffic, and transportation* described in subclause (A) of this clause.

2.23 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*." Under the authorities cited, there is no room to deem the term "motor vehicle" as applicable to anything but "transportation"; commercial enterprise upon the public highways.

"A maxim of statutory interpretation meaning that the ***expression of one thing is the exclusion of another***. *Burgin v. Forbes*, 293 Ky. 456, 169 S.W.2d 321, 325; *Newblock v. Bowles*, 170 Okl. 487, 40 P.2d 1097, 1100. ***Mention of one thing implies the exclusion of another***. When certain persons or thing are specified are specified in law, contract, or will, ***an intention to exclude all others from its operation may be inferred***. Under this maxim, if statute specifies one exception to a general rule or assumes to specify the effects of a certain provision, ***other exceptions or effects are excluded***."

"***Definitions are integral to statutory scheme and of highest value in determining legislative intent***. . . . ***To ignore definition section is to refuse to give legal effect to part of statutory law of state***."

"When legislative body provides definition for statutory terms, ***it is that definition to which a person must conform his conduct***."

2.24 Of the three reasons the highways are said to exist, the term "motor vehicle" clearly applies to only one of said reasons, that being *transportation* of goods, commodities, or 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."

2.25 Defendant contends that Colorado Revised Statute Title 42 "Motor Vehicles," applied by the State of Colorado to the Defendant's *private travel* upon the highways, is not applicable to the *"public use"* of the highways of Colorado state. Defendant 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."*

2.26 The Right of the Defendant to arrange his affairs in any lawful way cannot be doubted. To arrange one's own affairs, naturally, one must know all about applicable provisions. Enough evidence exists to support the Defendant'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 Defendant to stay within the good graces of his servants on the State level.

2.27 It seems to the Defendant that, if the Plaintiff's authority over the highways is original State police power, Congress was wasting its time by enacting 49 USC Subtitle VI. If Congress can legislate for the use of the highways in such a fashion, where is its 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. Defendant contends that the safe *private travel* upon the highways is an activity not within the scope of CRS 42 "Motor Vehicles," and therefore the Plaintiff has failed to state a claim by citing the Defendant thereunder.

III. QUESTIONS PRESENTED FOR REVIEW.

3.1 Defendants hereby questions the State of Colorado's jurisdiction under statute (49 USC; scope of CRS Title 42, 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 Defendant 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 Defendant perceives no cause for apprehension when asking for a definition of powers as requested herein. Defendant 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 inquiries:

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. By which provision of the state Constitution is the state legislature granted the authority to regulate the individual's private travel upon the highways?

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?

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

Conflict of powers:
6. Is Defendant'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. Can an activity be a federally protected right and a privilege granted by the State at the same time?

8. Is the State's authority and jurisdiction to regulate the highways that being originally inherent and under exclusive jurisdiction of the State, or is it a cession of Federal commerce power reserved to Congress? If the latter, what are the limitations of this cession? (See 49 USC Subtitle VI)

Authorities and terms:
9. In this Court's opinion, and according to Colorado 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 Defendant? If so, please explain.

10. **Where has the term "motor vehicle" been redefined from its original meaning found in Washington Sessions Laws cited herein? If no such amended definition exists, how can that found in Sessions Laws be said to embrace "travel between different localities and communities"?**

11. Which Colorado state Constitutional provision provides the authority for the legislature to regulate an individual's private non-commercial travel upon the highways?

12. Petitioner sees 49 USC Subtitle VI as being congressional legislative cession of regulatory authority over interstate commerce to the States. Defendant 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 Defendant?

13. Is the term "motor vehicle" defined in 18 USC 31 the same "motor vehicle" to which CRS Title 42 "Motor Vehicles" applies? If not, why not?

14. The only Federal definitions of "driver's license" and "motor vehicle" are tied to *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?

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

16. Is the "driver's license" required of the Defendant by the State of Colorado (CRS Title 42.2.101) the same "driver's license" defined under 49 USC 31301(6)? If not, is there another place in Federal statute where Defendant might find a definition that *does* define the license required of the Defendant by the State?

17. 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?

18. Was CRS written pursuant to Colorado state Constitution?

3.4 Defendant 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 Defendant from said licensing authority.
3.5 Defendant perceives a contradiction of terms when State enforcement and congressional definitions are placed side by side. Defendant 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 alone there can be found a demand for clarification, one calling for a definition of these powers, as they relate to the Defendant.
3.6 Defendant 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 Defendant's conclusions, as derived from the language of the authorities cited herein. Defendant 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 Defendant in state courts.
4.2 Detailed below is the structure of the Defendant's perception of the definition 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 the Defendant'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 State Constitution, Article I, § 2, the Commerce clause.

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

(D): 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 within their boundaries. Title 49 USC Subtitle VI is the structure of State authority over the use and enjoyment of the highways within its boundaries.

(E): Within congressional cession of Federal commerce power to the State there is found no authority to license any 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, § 2 as an equal privilege. This right incident of every American's national citizenship is not that rightfully deemed a privilege, granted by the Federal government or by any State.

(J): The State possesses no Constitutional authority to license those using the highways for private travel. 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 Title CRS 42 "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.

(L): CRS Title 42 embraces only commercial use of the highways, *a fortiori*, CRS Title 42

embraces only commercial use of the highways, since said titles are to be construed *in para materia*.

4.3 Defendant 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.

V. CONCLUSION.

5.1 In the absence of logical answers to questions arising out of this obvious conflict between State police powers and exclusive Federal commerce power, to regulate the use of the highways and instrumentalities of interstate commerce, Defendant feels free to proceed as follows:

1) As if CRS 42 "Motor Vehicles" is not applicable to "travel or communication between different localities or communities" nor to "use of the public," and,

2) As if CRS 42 "Motor Vehicles" applies only to "transportation of persons or freight" via "motor vehicles" as is stated in CRS 42'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*, 6th, "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 Colorado 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 CRS Title 42 "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 CRS Title 42 imposes absolutely no requirement to carry identification (I.D.) of any nature when using the highways for *private travel*.

5.2 A reasonable individual would tend to believe as the Defendant believes, given the narrow language and definite structure of legislation applicable to the use of the highways. Defendant sees his conclusions as logical ones, drawn from a responsible assembly of pertinent authorities, and from an application of certain axioms.

5.3 If the Plaintiff cannot provide logical answers to the questions presented herein, the Plaintiff

cannot be held to have the law in its favor. If the law cannot be shown to be applicable to the Defendant, the Plaintiff's complaint must be dismissed with prejudice.

Dated: _____. _____, 2020 Presented by:_____
, Accused