



# *Driving Freedom*

NMA Foundation

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## WANTED

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

# The Fourth Amendment Under Attack

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# Driving Freedoms

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

**Renew your NMA membership now to avoid any lapse.**

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## WHISTLEBLOWERS

BY GARY BILLER, PRESIDENT, NMA

Each year or two the NMA is contacted by a potential whistleblower looking for an outlet to report his grievance. It may be an employee of a red-light camera company who is concerned about being forced to authorize tickets for non-violations, or even a police officer who is tired of performance evaluations based on how many speeding tickets he wrote.

These are delicate matters that become even trickier if the whistleblower appears to have an ax to grind. Our first reaction is to play devil's advocate, probing with questions designed to test the veracity of the story. More often than not, the facts and/or the motives don't pass the smell test.

It was immediately apparent that the whistleblower call we received this past July was different. The person had been a manager within the Philadelphia Parking Authority's (PPA) red-light camera program. During phone interviews with the NMA, "John" began citing instances of mismanagement and possible fraud, and said he had names and dates to back up his accusations—enough to pursue corroborating PPA documents through public records requests or even subpoenas.

Among John's charges:

### Rigged vendor selection

The PPA team evaluating red-light camera vendors Redflex, incumbent American Traffic Solutions (ATS), and Xerox four years ago were free to ask the first two vendors challenging questions about their programs but were told by management to stand down in the evaluation of Xerox and its bid. Even though Xerox had not submitted

all the necessary qualifying documents for the bid process, it was handed the PPA contract. (As TheNewspaper.com reported in June 2014, the selection "spawned multiple lawsuits in state and federal courts.")

### Fraud

Two PPA employees delegated with evaluating photo ticket evidence often approved the issuance of tickets that clearly weren't violations. When a PPA administrator was asked why these employees weren't trained better, the response was essentially, "Continue to have them issue the tickets. If a citizen questions us about the validity of the ticket, tell him he can have a hearing and challenge it in court." When pressed further, the administrator noted that, "There is a 50/50 chance the citizen would rather just pay the fine than lose a day of work to fight it so it's a win/win for the PPA."

### Misappropriation of Funds

The settlement paid to ATS by the PPA allegedly came from the ticket profits of Xerox red-light cameras, money that was supposed to be earmarked for Philadelphia schools.

In John's situation, it was clear that the pursuit of the truth would require serious investigative resources and a firm journalistic understanding of libel laws. I offered to reach out to some Philadelphia investigative reporters, keeping John's identity confidential until an agreement was struck. The first two reporters did not return my calls. Whether they thought it was a prank or

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# How Members can Push a Legislative Agenda

## Words of Wisdom from NMA Founder James Baxter

This is a starting point for putting together a more detailed plan of action:

### **STEP ONE**

Gather and organize studies and articles that support your objective. The NMA's Motorists.org website is a good place to start, along with the archives of [www.TheNewspaper.com](http://www.TheNewspaper.com).

Now comes the hard part; compose a one-page letter that draws upon the most compelling information you have gathered. This letter will be your introduction to the elected officials you will contact.

Next, build a larger portfolio that you can use as a handout that briefly describes each article and study that supports your argument. This can be used in personal meetings with legislative staff and members of the press. (Always include references to the original documents for people who want to verify your sources.)

Lastly, copy articles and studies, in their entirety, or official abstracts that best make your argument and keep them handy for references or to distribute at meetings with legislators or their staffs.

### **STEP TWO**

Get some help. Find others to work with you. Just one more person will double your capabilities. Helpers don't have to be on the front lines; maybe they have a copy machine, or editing skills. Others might be friends of a legislator or staffer. The National Office can send out an e-mail to other NMA members in your state asking them to contact you if they are interested in helping with your project.

### **STEP THREE**

Contact your state senator's and representative's local office staff and ask to meet with them to discuss your issue. It doesn't matter how your senator or representative come down on this subject; the idea is to get some practice presenting arguments to legislators and staffs. Because you are a voting constituent they are more or less compelled to meet with you and give you time. You can ask if they would consider:

1. Introducing the bill,
2. Sponsoring the bill if someone else introduces it, or
3. Supporting the bill.

### **STEP FOUR**

Determine all the lawmakers who are likely to sit on the committees that would consider this legislation (probably transportation or highway committees). Again, if you are not sure, ask the staffs that work for your legislators. The committee members should receive your one-page letter with a request to meet with them to discuss the issue. Those who respond favorably to a meeting will probably be sympathetic to your cause.

### **STEP FIVE**

Meet with the state officials or their staffs. Here's where you leave all your preconceived notions about liberals, conservatives, Republicans, and Democrats back home. You also should avoid opinions on any other political issues. You are there to talk about one thing, your issue.

Do not deviate from that subject, even if the person you're talking with tries to switch subjects. With luck, you will find one or more of these committee members willing to sponsor and support your bill. They will most likely authorize the writing of the legislation and give you a chance to review it, to make sure it does what you intend to do.

With a written bill in hand you can start finding co-sponsors for the bill. The more the better. 

## **Whistleblowers**

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were not willing to take on the powerful PPA is anybody's guess. I then asked Noah Pransky, the award-winning Florida reporter whose investigations into red-light camera improprieties triggered improved yellow-light timing standards in the state, if he had a Philadelphia colleague who would be interested in digging into the story. He did and thus began conversations between John and the local reporter. In the intervening months as the reporter requested documents from the PPA to substantiate John's claims, a funny thing happened. The FBI became involved.

In November, three former employees of the PPA were contacted by federal agents who were interested in the Authority's finances, management, and red-light camera program. All John could tell me about his possible involvement was, "FBI agents don't all wear dark sunglasses."

It bears noting that for many years Philadelphia was the only city in Pennsylvania that operated red-light cameras. Its program was held out as the shining (flashing?) example of the value of the ticket cameras not only to other Pennsylvania cities but to communities in other states. The Insurance Institute for Highway Safety even touted the PPA program in a glowing report titled, "Red Light Cameras in Philadelphia All But Eliminate Violations." Apparently not well enough; for

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# NMA WASHINGTON REPORT

BY ROBERT TALLEY, NMA LOBBYIST

Congress ended 2017 with both a major legislative victory, tax reform, and a long list of unfinished business. Remaining on the agenda for 2018 are federal funding solutions, addressing health care and a major infrastructure package. This last item is of note as Administration and Capitol Hill leaders hope to craft an infrastructure bill that can garner bipartisan support and be sent to the President even as the approaching November 2018 elections accentuate partisan sniping and discord.

Tax reform may not seem like it is directly linked to transportation policy since the bill did not address the gas tax or make major changes to infrastructure policies but in an important way the tax bill does impact the outlook for a major transportation bill. The tax bill ultimately passed by Congress adds roughly \$1.5 trillion dollars in deficit spending over the next 10 years, a sum that is almost staggering in scope. Many conservative and deficit-conscious lawmakers were highly opposed to deficit spending and, as of now, are highly skeptical of an infrastructure bill

which is intended to spark another \$1 trillion in spending over 10 years.


The Administration has backed off its early interest in financing new infrastructure investment through privatization leaving limited opportunities for revenue enhancement. One area that is surely going to see significant debate is the gas tax. Untouched for years, the tax has fallen short of providing sufficient revenues to pay for highway spending for a variety of reasons. While no legislator wants to face a pending election with a vote to raise taxes, the possibility exists for a change to our highway tax laws that could have a meaningful impact on drivers.

So where does this leave NMA's advocacy efforts? Our focus has been to seek to protect motorists' rights as Congress pursues new legislative initiatives. We are not only seeking to limit the abuse of federal law enforcement spending but also attempting to realign spending priorities with the substantive needs of our aging infrastructure.

First among our initiatives is working to get the Senate to adopt House-passed legislation which would prevent law enforcement from seizing assets of

private citizens who have not been charged with a crime. Pending before the Senate Appropriations Committee, our meetings on the hill suggest there is support within the Senate to defund current federal policies that support civil asset seizures without due process.

At the same time, we are working to support a stand-alone legislative proposal offered by Sen. Rand Paul (R-KY) that would favorably reform civil asset forfeiture standards. The bill is not without opponents. Notably, the Administration supports broad local law enforcement seizure authority and has expanded its use.

We are also working to encourage legislators to reassess the excessive annual spending on public service advertising, speed trap funding and support for initiatives that intrude on personal privacy. Federal funds that safety advocates spend on research for better "metrics on enforcement priorities" and "quantitate evidence of enforcement" (code words for ticket quotas) could be better spent on fixing our highways and improving traffic flow. 

## Whistleblowers


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the year ending March 2017, the PPA's ticket camera program raked in \$21.2 million from roughly 200,000 violations.

It's too early to know what the FBI investigation will turn up. But the whistleblower accounts are now complemented by a recently released report by the Pennsylvania auditor general that blasts PPA mismanagement of proceeds from tolls, red-light camera violations, and parking tickets.

Scandals and federal criminal charges have a habit of materializing around ticket camera programs. The most prominent example to date, the City of Chicago's Redflex corruption case, sent three people to federal prison and resulted in tens of millions of dollars in settlements and fines. It shouldn't come as a surprise that turning local traffic enforcement into a lucrative for-profit operation can create a corrupting influence. The PPA may learn that lesson soon enough.

Philadelphia leaders have completely bought into the no-traffic-fatalities, anti-car mentality of Vision Zero. One wonders if that belief will be shaken by the federal investigation. The city's red-light camera program, as a central component of the Vision Zero plan, has been so profitable that there has been talk of adding speed cameras to the mix. As John wryly noted to me, "If this is how badly the PPA runs its red-light camera program, how do you think it will handle speed cameras?"

For now, the answer to that question lies in the hands of the FBI and the whistleblowers. 

## How We Beat Three Traffic Tickets from 6,000 Miles Away

By Bruce Seidel, California State Activist

Heading to our pre-dawn workout spot in the beautiful Santa Clarita valley, my wife had just cleared a hill when we spied the California motorcycle officer positioned on a side street. Given the nearly empty road, he didn't even activate his siren. He simply waved his hand to instruct us to pull over, along with the car ahead of us.

Things started badly when my wife explained she had left her driver's license at home, perhaps because her Spandex workout outfit had no pockets. She recited her driver's license number to the officer, who seemed unimpressed. After verifying her information, he returned to issue my wife a trifecta of citations: 1) speeding, 2) following too closely and 3) failing to provide a driver's license.

My wife's first instinct was to pay the nearly \$700 in fines and plead for traffic school (at a cost of hundreds more), since losing at trial could mean four points on her license and dramatically higher insurance rates. However, my years of National Motorists Association membership made me realize fighting the ticket could be our best option.

Thanks to NMA's educational resources and helpful insights from its staff, I realized we had a legitimate case for dismissal. We ultimately were able to beat what were unwarranted traffic tickets. And we ended up doing so from 6,000 miles away using California's trial by declaration process to get the case dismissed. Here's how we did it.

The key was in the type of citations the officer issued. Once I looked up the traffic violations in California's Vehicle Code, I discovered the officer had not cited prima facie violations, where the mere violation (say traveling 50 mph in a 40 mph zone) would be sufficient to prove guilt. Instead, the officer cited



moving violations that were phrased as to require proof of endangering persons or property. Even if my wife was clocked at above the posted speed limit or shown to be following more closely than California law specifies, the prosecution still had the burden to show she represented a danger.

We made a discovery request to the Sheriff's office to get the officer's copy of the ticket, including any notes he may have made. In our jurisdiction, the officer serves a prosecutorial role in the courtroom, so discovery would be warranted to see what evidence the state had against us. Despite that, the office denied our request, which we understand is too often the case.

Our next strategy was to delay the case to have more time to plan our defense and increase the chance that the officer would not attend our trial. We were successful in securing two extensions. However, a surprise opportunity to work in Europe meant that we would no longer be available for the trial. Upon explaining our circumstances in writing to the court, they agreed to allow us a trial by declaration – a process in which you contest a ticket in writing.

Prior to our move, my wife and I had begun developing our courtroom strategy. Our plan had been to ask the officer a series of questions about road conditions, visibility, traffic, road width and wind on the day of the ticket. If we could establish that driving conditions were ideal, we could argue that driving at a speed above the posted limit would not pose a specific hazard. We also planned to establish that my wife maintained control of the vehicle despite that the car in front of us (which she was supposedly following too closely) slowed abruptly upon seeing the officer. The officer also stopped and presumably cited that vehicle, pulling us both over by sliding his motorcycle between us, a maneuver that would have been unsafe had we truly been following too closely.

As we were no longer going to have the chance to face the officer in court, we revised our strategy by stating our observations as testimony in our written declaration to support that my wife's speed and following distance were 'reasonable and prudent' given the conditions. During our preliminary research into the case, we searched the city's most recent Speed Zone Survey Engineering and Traffic Surveys and hit

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## Three Traffic Tickets

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pay dirt. A speed-zone study, released two months after the citation, categorized this particular stretch of road as underposted. In fact, the speed limit had since been increased by 5 mph, furthering our case that my wife's speed was not dangerous.

In our declaration, we reminded the court that the burden was on the prosecution to prove its case or dismiss based on lack of evidence. To support this, we cited two recent court rulings, [People v. Huffman (88 Cal.App.4th Supp. 1, 106 Cal. Rptr.2d 820) and People v. Behjat (84 Cal.App.4th Supp. 1)], which have held that no conviction can be sustained unless the record contains substantial evidence supporting each element of the charged offense.

Around a month after mailing our appeal and supporting documents, the court's website changed my wife's status from 'pending' to 'dismissed'. We had won our case! Our only disappointment was not knowing which elements were decisive, or whether the officer simply didn't provide a timely response.

With both moving violations dismissed, the failure to show license was easily negated by proving my wife possessed a valid license on the date of the citation. (In California, the court is required to dismiss the failure-to-produce charge with the presentation of a valid license unless it is the third or subsequent charge for that offense. In that case, a judge may, but is not required to, dismiss the charge.)

Too often, citizens feel powerless to challenge traffic citations. Armed with the right information and the confidence to fight, my wife kept her driving record pristine, and we shared the satisfaction of beating a set of unwarranted tickets. 🍷

## Two Bills to Watch in 2018

### New Hampshire

Five lawmakers have prefiled a bill that would ban sobriety checkpoints in the state. HB 1283 would supersede the current law that allows law enforcement to set up sobriety checkpoints with a court authorization.

Representative Brian Stone says that even though these checkpoints have been deemed constitutional by the courts, they violate the plain reading of Article 19 of the New Hampshire Constitution which guarantees the right to be secure from all unreasonable searches and as seizures of a person's body, a person's houses, papers, and possessions and stipulates warrant requirements for any searches.

The proposed law would prevent New Hampshire from seeking financial assistance from the U.S. Department of Transportation's Impaired Driving Countermeasures Incentive Grants program, which funds state-run DUI checkpoints. While this would afford the state a degree of independence from federal requirements on how to manage certain traffic laws, it remains to be seen if New Hampshire legislators and the governor are willing to bypass federal funding based on principles, laudable as those principles are.

The next regular session of the New Hampshire General Court begins January 3 in which HB1283 will be referred to the House Criminal Justice and Public Safety Committee.

### Wyoming

Lawmakers from the Joint Judiciary Interim Committee are pushing a bill that could simplify speeding statute categories and fines. The proposed legislation would reduce violation categories from nine to three: school, urban and construction, and all other zones including highways

The bill would also simplify fines based on vehicle speed over the posted limit.

State Legislative Counsel Torey Racines said one of the goals of the committee is to make the law simpler so that anyone reading the rules and procedures page of the Wyoming motor vehicle code would be able to easily understand and follow them.

Wyoming Highway Patrol Captain James Thomas agreed, "As far as the Highway Patrol is concerned regarding the proposed bill, I think reducing the number of categories for speeding violations would simplify the schedule so there is better understanding and uniformity." He added that any modifications would not change how the state patrol enforces speeding statutes.

Traffic fines in the state of Wyoming pay for court costs, automation and legal service fees with the remainder going to the public schools.

The new bill was voted unanimously out of the interim committee and is now on its way to the legislature. 🍷



### NMA Legislative Alert

Do you have information about a bill from your state that we should monitor? Let us know at [nma@motorists.org](mailto:nma@motorists.org).

## The Fourth Amendment Under Attack

Few NMA members believe otherwise but for the holdouts who think all highway searches and seizures are justified and lawful, consider the story of Phil Parhamovich. His story is not unique—we can point to several more on the Motorists.org daily newsfeed – but it is useful because it contains many elements that illustrate how Fourth Amendment protections have been compromised.

Parhamovich was traveling cross country in a minivan in early 2017. Wyoming state police stopped him on Interstate 80 for improper seat belt use and a lane warning. The \$25 ticket for the seat belt charge became the pretext for a government seizure of over \$90,000 in cash. The money represented much of Parhamovich's life savings and what he had set aside to fulfill his dream of buying a recording studio in Madison, Wisconsin.

The state trooper had Parhamovich step out of the van and began grilling him on whether he was carrying drugs, firearms, or large amounts of cash. Spurred on by the driver's apparent nervousness, the trooper called in a

drug-sniffing dog that Parhamovich alleges was prompted by the cop to give a positive signal. Parhamovich wasn't carrying drugs but did have the stash of cash which, for security reasons, he didn't want to leave at home while traveling. Why exactly he felt carting around that much currency was more secure than, say, a safety deposit box, is difficult to say. But to the point of his story, possessing large amounts of cash is not illegal.

Parhamovich wasn't sure about that last point and ultimately let events overtake him. The Wyoming police turned up the heat by saying he could leave free and clear if he signed a roadside waiver that confirmed his "desire to give this property or currency, along with any and all interests and ownership that I may have in it, to the State of Wyoming, Division of Criminal Investigation, to be used for narcotics law enforcement purposes . . . or be disposed of as the Wyoming Division of Criminal Investigation sees fit..."

We can point to all sorts of serious mistakes that Parhamovich made, the most damaging of course being the

signing of the waiver without fully understanding and exercising his legal rights. But he is far from alone in becoming a target of government-sanctioned theft. The Washington Post reported that between 2001 and 2014, nearly 62,000 seizures of cash of more than \$2.5 billion were taken from American motorists under the innocuous-sounding but predatory United States Equitable Sharing Program. Few have had the resources to take on the federal, state, and local governments involved in the seizures. They ultimately paid by walking away from their property.

Parhamovich's story actually is one of the few that has a satisfactory ending. The media exposure and efforts by the Institute for Justice resulted in a ruling by a Wyoming judge to give the Wisconsin man back all of his cash. The fight for strengthening the Fourth Amendment continues, something that James Madison surely would never have thought necessary when he wrote those powerful 54 words.

The NMA has been involved in two important Fourth Amendment cases heard before the Supreme Court of the United States. One of those cases, *Terrence Byrd v. United States*, is being argued before the court as this issue of Driving Freedoms goes to press. More on that in just a bit.

The first case, in which the NMA teamed up with The Rutherford Institute to submit an amicus curiae ("friend of the court") brief, was 2012's *United States v. Antoine Jones*. The FBI and Washington DC law enforcement were given a limited warrant to place a GPS tracker on Antoine Jones wife's Jeep to track his movements since it served as his primary vehicle. The tracker was left in place far longer and across a wider area of travel than the warrant allowed. The resulting evidence gathered was used to convict Antoine Jones of drug possession and

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## Byrd v. United States

### U.S. Supreme Court Docket No. 16-1371

Date	Proceedings and Orders
May 11 2017	<a href="#">Petition for a writ of certiorari filed. (Response due June 15, 2017)</a>
Jun 08 2017	Order extending time to file response to petition to and including July 17, 2017.
Jun 12 2017	<a href="#">Brief amicus curiae of National Association fro Public Defense filed.</a>
Jul 17 2017	<a href="#">Brief of respondent United States in opposition filed.</a>
Aug 01 2017	<a href="#">Reply of petitioner Terrence Byrd filed. (Distributed)</a>
Aug 02 2017	DISTRIBUTED for Conference of 9/25/2017.
Sep 28 2017	Petition GRANTED.
Nov 13 2017	<a href="#">Brief of petitioner Terrence Byrd filed.</a>
Nov 13 2017	<a href="#">Joint appendix filed.</a>
Nov 15 2017	<a href="#">Brief amicus curiae of Southwestern Law Student Lindsey N. Ursua, et al. filed.</a>
Nov 16 2017	<a href="#">Brief amicus curiae of Restore the Fourth, Inc. filed.</a>
Nov 17 2017	SET FOR ARGUMENT ON Tuesday, January 9, 2018
Nov 20 2017	<a href="#">Brief amici curiae of The American Civil Liberties Union and The National Association of Criminal Defense Lawyers filed.</a>
Nov 20 2017	<a href="#">Brief amicus curiae of National Motorists Association filed.</a>
Nov 20 2017	<a href="#">Brief amici curiae of National Ass'n for Public Defense and the National Ass'n of Federal Defenders filed.</a>
Nov 20 2017	<a href="#">Brief amici curiae of Electronic Privacy Information Center (EPIC), et al. filed.</a>
Nov 20 2017	<a href="#">Brief amicus curiae of Morgan A. Cloud filed. (Distributed)</a>
Nov 20 2017	<a href="#">Amicus brief of Fourth Amendment Scholars submitted.</a>
Nov 22 2017	CIRCULATED.

*NMA note: Each of the filed amicus curiae briefs were in support of petitioner Byrd's case*

trafficking. His wife wasn't charged, at least not based on that particular warrant.

The Government argued that there is no reasonable expectation of privacy for a person moving around on public streets. The court saw it otherwise. Justice Scalia wrote, in a rare unanimous opinion, "The Fourth Amendment protects 'the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures.' The Jeep is certainly an effect, as that term is used in the Amendment. We hold that the Government's physical intrusion on the Jeep, for the purpose of obtaining information, constitutes a search."

We are hopeful for a similar outcome in *Byrd vs. U.S.* an upcoming Supreme Court review of a Third Circuit Court of Appeals decision that went against Byrd. Terrence Byrd borrowed his girlfriend's rental car and was stopped by a state trooper near Harrisburg, Pennsylvania. The cop was suspicious of the angle that Byrd had reclined the driver's seat. He noticed the rental car sticker and asked to see a copy of the agreement. When he discovered that Byrd's name was not on it, the trooper decided that Byrd had no authority to stop an unwarranted search and proceeded to look through the vehicle over Byrd's objections. Illegal drugs were found in the locked trunk.

The primary legal question as the

case made its way up the appellate ladder has been whether a driver has a reasonable expectation of privacy in a rental car when the driver has the renter's permission to drive the car but is not listed as an authorized driver on the rental agreement.

When the Supreme Court agreed in September to hear the case, petitioner Byrd's legal team from the Washington law firm of Orrick, Herrington & Sutcliffe, LLP asked the NMA if it would provide an amicus brief in support of Byrd. We agreed and were fortunate enough to be matched with Kellogg, Hansen, Todd, Figel & Frederick, PLLC, an experienced Washington firm that previously has argued Fourth Amendment cases before the Supreme Court. Kellogg Hansen agreed to produce the NMA brief pro bono, something that we could not have otherwise accomplished.

The NMA produced an outline for the brief that centered on two points:

1) With the current growth of ride sharing services and the likely broad acceptance of driverless rides on demand in the future, a ruling upholding the U.S. case could leave a large segment of the traveling public without adequate Fourth Amendment protection

2) The NMA and its members have become increasingly concerned about the abuse of civil asset forfeiture. A decision for the government would extend forfeiture by declaring rental car drivers exempt from Fourth Amendment rights.

From there, the Kellogg Hansen team led by Counsel of Record Aaron M. Panner and Thomas B. Bennett did the heavy lifting by developing a brief that is built on solid legal reasoning and impressively supported by authorities. The first NMA point was narrowed to a discussion of differences among rental car and ride share agreements that

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## Fourth Amendment


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make problematic a one-size-fits-all application of “reasonable expectation of privacy” by law enforcement to persons using contracted rides.

Excerpts from the National Motorists Association Amicus Curiae Brief for *Byrd v. United States* are provided in the sidebar on this page. A full reading of the NMA brief can be found at <http://www.motorists.org/nma-scotus-amicus-byrd/>.

Whether or not SCOTUS reverses the lower court’s judgment against Byrd, constant vigilance is needed to defend fundamental Fourth Amendment rights. In July, the U.S. Department of Justice (DOJ) under Attorney General Jeff Sessions announced a relaxing of civil asset forfeiture policy that would allow law enforcement to seize property from those suspected of a crime; suspected, not necessarily convicted or even charged. This despite a 2017 finding by the DOJ’s Inspector General that, “Department investigative components do not require their state and local task force officers to receive training on federal asset seizure and forfeiture laws, and component seizure policies prior to conducting federal seizures.” In other words, knowledge of the law is optional for those tasked with seizing civilian property.

The abuses sanctioned under the federal Equitable Sharing Program will grow as law enforcement and other agencies directly benefit from the seizure of civilian property. Trickle-up economics, government style, where the trickle is better characterized as a stream.

The NMA will fight those who are trying to dismantle the rights afforded motorists by the Fourth Amendment, whether through the boldness of coerced seizures during questionable traffic stops or by efforts to set disturbing legal precedents by the highest court in the land. 

### Excerpts from the Brief of National Motorists Association as Amicus Curiae In Support of Petitioner Byrd (*Byrd v. United States of America*) U.S. Supreme Court Docket No. 16-1371

**The purpose of this brief is to bring to the Court’s attention two considerations that counsel against the rule applied by the Third Circuit in the decision on review. The first is the rise of car- and ride-sharing services. By departing from the standard-form contracts governing rental-car agreements, the rise of car- and ride-sharing services underscores the unadministrability of any Fourth Amendment rule premised on contractual restrictions rather than individuals’ reasonable expectation of privacy. Second, NMA is concerned that the Third Circuit’s rule abets and exacerbates the abuse of civil asset forfeiture laws by law-enforcement officers.**

**Because the Third Circuit’s rule guarantees that a significant number of drivers of rental cars will be without Fourth Amendment protection, that rule creates “sitting ducks” for potentially abusive law-enforcement activity. As this case illustrates, law enforcement often can spot rental cars, which, under the Third Circuit’s rule, may be subject to search even without reasonable suspicion of any crime.**

**. . . in a world of car- and ride-sharing, the suggestion that an individual’s reasonable expectation of privacy turns on the degree of “authorization” to operate a particular vehicle implicates administrative complexity that would take the governing standard ever further from the reasonable expectation of privacy that is the touchstone of the Fourth Amendment.**

**Boston Consulting Group estimates that, by 2021, 6 million people in North America will be registered users of a vehicle-sharing service . . . Peer-to-peer service Getaround allows renters to let any person who meets its eligibility requirements (which relate to age, criminal history, and license status) drive cars rented from other users, with no obligation to identify such third-party drivers in advance.**

**By creating a category of motorists that law-enforcement officers can identify as subject to lesser Fourth Amendment protection, the rule applied below encourages officers to conduct highway interdictions designed to seize assets.**

**In most cases, state or federal law allows law-enforcement agencies to share in the proceeds of asset forfeiture and to use that revenue for unrelated purposes, providing an incentive for increasing use of the practice.**

**. . . this case nevertheless illustrates how a combination of (1) standard rental agreements with strict authorized-driver policies; (2) a rule that restricts the Fourth Amendment rights of unauthorized drivers of rental cars; and (3) financial incentives for law-enforcement agencies to maximize the value of assets they seize and forfeit creates dangerous incentive for law enforcement to detect, stop, and search rental cars once they have determined that the driver is unauthorized.**

## Auto Insurance Equity

ProPublica and Consumer Reports released in 2017 a first-of-its-kind analysis of auto insurance premiums and payouts in California, Illinois, Texas and Missouri. They found that many of the disparities in auto insurance prices between minority and white neighborhoods are wider than differences in risk can explain. In some instances, the big insurers such as Allstate, Geico and Liberty Mutual, were charging 30 percent more in zip codes with a majority of minority residents.

Despite laws in every state banning discriminatory rate-setting, this disparity amounts to a subtler form of redlining, which is a term that refers to denial of services or products in minority areas.

American Civil Liberties staff attorney Rachel Goodman said the findings were distressing. “We already know that zip code matters far too much in our segregated society.” Goodman added, “It is dispiriting to see that, in addition to limiting economic opportunity, living in the wrong zip code can mean that you pay more for car insurance regardless of whether or not your neighbors are safe drivers.”

The trade group representing insurers, the Insurance Information Institute, contests ProPublica’s findings. Chief Actuary James Lynch said, “Insurance companies do not collect any information regarding race or ethnicity of the people they sell policies to. They do not discriminate on the basis of race.”

The U.S. Treasury Department defines auto insurance as affordable if it costs two percent or less of household income. In a different part of the study, ProPublica found households in minority-dominant zip codes spent 11 percent of their household income on auto insurance compared with five



percent of their household income in majority-white zip codes.

Zip code is not the only factor, however, that auto insurance companies use when giving a quote.


In August, the Coalition Protecting Auto No-Fault (CPAN) released a Michigan study conducted by Los Angeles-based insurance researcher Douglas Heller. CPAN is a powerful group of medical providers and attorneys which are currently battling insurers over Michigan’s auto insurance rates which are some of the highest in the country. With the study, CPAN wanted to prove that Michigan’s rates were not just due to the state’s provision of unlimited medical coverage for auto accident victims.

The Heller study compared online quotes from six national insurance carriers using a 30-year-old unmarried woman with a perfect driving record and a 2007 car that was driven 10,000 miles annually. He obtained the quotes using the same person with the same address in each of eight Michigan cities: Detroit, Flint, Grand Rapids, Howell, Iron Mountain, Ludington, Owosso, and Warren. He examined the impact on auto insurance quotes that insurers give Michigan motorists based on factors that have nothing to do with whether or not the motorist is a safe driver. These factors include job title, level of education and whether they rent or own their home. Heller did not take into

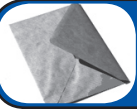
account credit scores which could also be used to calculate a higher premium due to a poor borrowing history.

In each of the eight Michigan cities, Heller uncovered that drivers at the bottom of the income ladder were quoted the highest rate. A factory worker that rented a home was quoted an average of \$233 more per year than a lawyer who owned a home even though both were listed at the same address and drove the same ten-year-old car. Detroit had the widest gap: the lawyer was quoted \$643 less annually than the factory worker.

Detroit Mayor Mike Duggan and MI House Speaker Tom Leonard released a plan in 2017 to drastically cut auto insurance rates statewide, something especially relevant in Detroit. Unclear yet if the plan will help solve the auto insurance equity issues plaguing the entire state.

Auto insurance is required by law in most states. If a motorist cannot pay for insurance and is caught driving without coverage, then penalties ranging from fines to license suspensions can be imposed. This is the start of a black hole spiral for many motorists who need to drive so they can provide for their families. Auto insurance for safe drivers should be equitable across the board so that everyone who needs insurance can be assured that he or she can afford it and keep it. 





## MEMBERS WRITE

The views expressed below do not necessarily represent those of the NMA. Letters are welcomed and should not exceed 300 words. They may be edited for length or clarity. Full-length articles will also be considered and should not exceed 600 words.

Send to [nma@motorists.org](mailto:nma@motorists.org) or mail to NMA, 402 W 2<sup>nd</sup> St., Waunakee, WI 53597

Dear NMA,

I read the fall issue of *Driving Freedoms*, very good as always, but I do have one comment. I think the biggest obstacle to any meaningful driving rights program is that for the last several years people have been indoctrinated into believing that “Cars are Evil.”

As time goes on, if these same people find themselves in politics or on planning boards, they might bring that attitude with them.

Thank you.

Tom Schneider  
Florida Member

Dear NMA,

I was reading the fall issue of *Driving Freedoms* and thinking about traffic dangers when I look out the window.

School buses have become one major danger here. Traffic is often almost standing still with school buses blocking area driveways.

In recent years, large schools were built big and the neighborhood school consolidated or closed. Children spend hours suffering in buses doing anything but lessons.

I used to think my long-

gone father, a school principal, had old fashioned ideas. He went to meetings and opposed new schools as too big and not local—and we laughed.

Now, I am old and I look out the window and regret the loss of our neighborhood schools, grades one to twelve.

Tom Fuscaldo  
New Jersey Member

Greetings,

First, as a lifetime member, let me say how much I appreciate your efforts, and YES, I need to do more to help our cause.

My reason for contacting you today is to ask if past issues of *Driving Freedoms* are available electronically? Second, I noticed a weekly e-newsletter option, but NOT an e-version for *Driving Freedoms*; is there a way to receive a digital version rather than the hard copy?

Dean Glossop  
South Carolina Member

Editor

*Thank you for the kind words and your support for more than*

*25 years as a member. It is the core of our membership, like you, that keeps the NMA fighting.*

*You can find electronic versions of past issues of *Driving Freedoms*, those dating back to 2001, at <https://www.motorists.org/newsletter/>. We don't post the most recent issue until the following quarter when the next issue is published. It's our way of giving members a little extra benefit.*

*We have looked into sending out a digital version of *Driving Freedoms* in the past but decided against it for a few reasons. One is that with many of our members, the magazine is the primary connection they have with the NMA. We want to make sure they receive it and have the opportunity to read it whereas it is difficult to know if a digital copy gets through to everyone.*

*Another reason is that we encourage members to leave copies of *Driving Freedoms* in public waiting rooms—a doctor's office, hair salon, local car club, car dealerships, etc.—to make more people aware of who we are and what we accomplish.*

*Something we don't publicize enough is that there are extra copies of each magazine that we can send out for free to members requesting them for just that purpose. 🍷*



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## DRIVING NEWS

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

### California

Motorists have prevailed against road diets in the Playa del Ray section of Los Angeles. In October, the city was forced to restore two boulevards to their original configuration after they had been repurposed in May in an attempt to slow down traffic and to build protected bike lanes. Commute times in the area then doubled or tripled after the fix. Motorists didn’t just get mad, they pushed back at public meetings, filed two lawsuits against the city and have worked to recall City Councilman, Mike Bonin, an outspoken bike commuter who is responsible for pushing the road diet in the first place.

### Colorado

In October, the State Court of Appeals denied the activist group Ban It Sheridan the right to reinstate its petition for a public vote on red-light cameras. In 2016, the group had gathered enough signatures to force a general election ballot. The city of Sheridan then disqualified enough signatures to keep the question off the ballot. The group had 28 days to challenge the city clerk in court but did not complete the challenge until day 35.

The group asked the court for leniency since they were ordinary citizen volunteers. Both a lower court and now the Appeals court have denied any special privilege for the legal technicality. Whether the group will continue with its ballot efforts is unclear.

In the meantime, nearby Colorado Springs is considering installing red-light cameras beginning this spring.

### Iowa

By November, six months had passed since Cedar Rapids was forced by a court to turn off its automated speed cameras on I-380, which has a prominent S-curve inside city limits. Even though most drivers admit to driving faster now than when the cameras were on, they noted feeling safer because other drivers are no longer slamming on their brakes to avoid a camera ticket. Driver Cody Mason said, “The flow is a lot smoother and less congested.” The interstate speed limit going through Cedar Rapids is currently 55 mph.

### Illinois

The Chicago Tribune came out with a scathing report in September criticizing the placement of red-light cameras at already-safe intersections along state routes, which are typically the busiest roads. The Illinois Department of Transportation must approve all cameras along state routes and in the past 10 years has done so for nearly 200 intersections in the Chicago suburbs. The Tribune reported that more than half the intersections with cameras had scored among the safest, and one-fourth were granted in spots where no red-light-related crashes had occurred in the three years before camera placement. The Tribune also found that placement of the vast majority of red-light cameras in the Chicago suburbs have followed inconsistent standards. Chicago and its suburbs have more red-light cameras than any extended community in the country.

### Kansas

In early November, the Wichita Police Department announced it would begin using surveillance cameras to monitor and improve traffic safety in the Old Town entertainment district. If an officer monitoring up to six cameras at a time sees a violation, he or she could then have patrol officers stop the motorist. Wichita police sergeant Kelly O’Brien said, “I hope people don’t perceive this as ‘Big Brother.’” There are 97 surveillance cameras monitoring the area.

### Louisiana

Since 2008, New Orleans has installed a total of 121 red-light cameras. A judge has now ruled that the city must return \$28 million collected from an estimated 250,000 motorists between January 1, 2008 and November 3, 2011. Attorney for the plaintiffs, Joseph McMahon, had been fighting for 10 years to get the money returned due to a technicality of the Home Rule Charter which had been ruled on by another judge in November 2011. Mayor Mitch Landrieu has admitted in the past that the automated ticket program in the city was a way to close the budget gap. In November, Landrieu was defeated in a reelection bid by Latoya Cantrell, who campaigned against the automated traffic program and plans to suspend the program when she comes into office early next year.

### Massachusetts

Electronic tolling has hit the one-year mark and now lawmakers are debating whether tolls should be imposed on more highways. Senate Bill 1959 would create a comprehensive system of tolling in the eastern part of the state, turning large sections of I-93, I-95, Route 1 and Route 2 into cash cows.

*(Continued on Page 12)*



*(Continued from Page 11)*

Some lawmakers have said that the state transportation budget is underfunded by at least \$1 billion and if all the state's major roads are tolled then it becomes fair and equitable to everyone living in the state. Citizens for Limited Taxation plans to fight against S1959 since motorists already pay a 26.5 cents per gallon gas tax that totaled \$766 million in 2016.

## Missouri

Speed-trap-city Palmyra on U.S. 61 has been caught red-handed. According to a St. Louis TV station investigation, St. Louis driver Janine Hofer was stopped for speeding in Palmyra in the spring. To have points taken off the violation, she was asked to give a 'voluntary' donation of \$100 to the law enforcement fund. When she received her amended ticket in June, which was now for an equipment violation instead of a moving violation, she refused to pay for the donation when paying for the violation itself. The city then rejected her payment. Hofer's attorney said that amending the ticket with the donation was extortion. After the TV report aired, city officials found that 13 other people had also been offered this deal since January 2017 and would now receive a refund for the 'voluntary' donation. Mayor Loren Graham has put into place new procedures for tickets and the city will no longer ask motorists who are ticketed for a donation.

## Montana

Grass Range, population 108, resisted the building of a \$3.2 million roundabout that had been in the works since 2014. The town sits on the primary route between the eastern half of the Hi-Line and the city of Billings. The federally funded project had been tabled in February 2017 after a contentious meeting with area residents. In October, the Montana Department of

Transportation (MDT) announced in a press release that the project would again move forward. Local protestors joined by the area's state lawmakers quickly gathered more than 500 signatures to persuade the MDT to kill the roundabout. In mid-November under intense pressure, MDT Director Mike Tooley announced the roundabout project was scrapped. The group, led by the Highway 2 Association, which advocates for economic development along the Hi-Line, calculated that the intersection could safely be improved for \$250,000 using enhanced rumble strips, better signage and reduced speed limits. It endorsed using the rest of the federal funds for improving visibility on narrow two-lane roads in the area.

## Ohio

The Cuyahoga County Council announced in mid-November that Cleveland and 18 suburbs would install automated license plate readers at chosen intersections. The ALPRs would be part of a countywide information-sharing system that was recently developed. The county plans to have the system share data between various law enforcement agencies. Ohio currently does not have limits set for ALPR use and data retention. Fairview Park Police Chief Erich Upperman said that participating cities will not be required to post signs notifying drivers of the camera locations. The Ohio State Highway Patrol and the various county police departments have used ALPRs mounted on police cars for several years.

## Oregon

In 2017, lawmakers passed a tough distracted driving law making it illegal to hold a phone while driving. State troopers, though, are struggling to enforce the new law due to the considerable shortage of manpower.

Captain Bill Fugate says that even though the state's population has grown, the Oregon Highway Patrol has half the numbers it had in 1980. In Portland, for example, the Oregon State Patrol had nearly 70 sworn troopers in 1980. In 2017, there were only 26. Oregon has the second lowest number of state troopers per capita in the country, employing 330 troopers for a population of four million.

## Texas

Governor Greg Abbott said in mid-November 2017, that no more toll roads would be approved even though the Texas DOT had just revealed plans to add toll lanes to 15 of the state's most congested highways. In 2014 and 2015, voters overwhelmingly approved Propositions 1 and 7 in which the state could reroute existing sales, oil and gas taxes to infrastructure funding but could not add toll roads. DOT officials have tried to sidestep the issue by proposing to fund managed lanes with federal loans backed by toll revenues, while adding non-tolled main lanes with state tax dollars.

## Utah

After the dramatic arrest of a hospital nurse in July, lawmakers have drafted a bill that clarifies when police may or may not draw blood without a driver's consent. Nurse Alex Wubbels was arrested for interfering with an investigation when she was asked to draw blood from an unconscious driver who had been involved in a car accident. She refused based on hospital policy. Since the incident, the detective who arrested Wubbels has been fired and Wubbels received a \$500,000 settlement. She plans to use part of the settlement to help people obtain police body camera footage, provide legal aid for open records requests and raise awareness about workplace violence against nurses. 