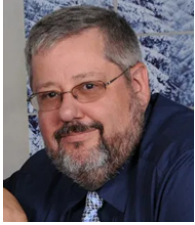


Advanced Managing of the American People



By Paul Engel

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- Does Congress have the legitimate power to enact any legislation they think is necessary?
- Can Congress legitimately pass a law that requires car manufacturers to search your person without probable cause?
- What happened to holding the guilty responsible for their actions rather than the innocent?

Article I, Section 8, Clause 18 of the Constitution is the Necessary and Proper Clause.

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

U.S. Constitution, Article I, Section 8, Clause 18

Does that mean Congress can pass any law which they think is necessary and proper? Enter the new law, H.R.3684 – Infrastructure Investment and Jobs Act. In Section 24220. Congress “finds” it necessary to require new cars to include drunk and impaired driving technology. The question we should all ask: Is that a power vested in the government of the United States?

I’m sure there are plenty of Americans out there who think

requiring technology be put in cars to prevent drunk driving is necessary. Let me remind you of what William Pitt (the Younger) said:

Necessity is the plea for every infringement of human freedom. It is the argument of tyrants; it is the creed of slaves."

William Pitt (the Younger), Speech in the House of Commons, November 18, 1783

Like most Americans, I think operating a two-ton machine while impaired is dangerous and irresponsible. Does that mean it's within the power of the federal government to impose their opinion of how best to deal with this problem on the the American people? It's not a question of whether the technology is good or bad or even if this is a viable method of reducing drunk driving. Instead, it's a question whether the federal government has the legitimate power to do so.

Congress' Reasoning

Congress found several reasons why they should pass such legislation.

(a) Findings.—Congress finds that—

(1) alcohol-impaired driving fatalities represent approximately

\1/3\ of all highway fatalities in the United States each year;

(2) in 2019, there were 10,142 alcohol-impaired driving fatalities in the United States involving drivers with a blood alcohol concentration level of .08 or higher, and 68 percent of the

crashes that resulted in those fatalities involved a driver with a

blood alcohol concentration level of .15 or higher;

(3) the estimated economic cost for alcohol-impaired driving in

2010 was \$44,000,000,000;

(4) according to the Insurance Institute for Highway Safety, advanced drunk and impaired driving prevention technology can prevent more than 9,400 alcohol-impaired driving fatalities annually; and

(5) to ensure the prevention of alcohol-impaired driving fatalities, advanced drunk and impaired driving prevention technology must be standard equipment in all new passenger motor vehicles.

H.R. 3684 §24220

Let's assume that the first four statements are true. Does that mean Congress has the legal authority to tell car manufacturers that certain technology must be included in their products? Does Congress have the legal authority to tell the American people they must have and pay for this technology in their property, whether they want it or not? Where do property rights, liberty, and responsibility come into play?

Property and Liberty

No person shall ... be deprived of life, liberty, or property, without due process of law;

U.S. Constitution, Amendment V

In H.R. 3684 Congress once again is taking control of your property. When you purchase a vehicle, it's your property. This legislation claims to allow the United States to further take control of that property by defining what technology must be in it. Furthermore, it claims the power to restrain your ability to purchase a vehicle without this technology. In his 1828 dictionary, Noah Webster defined liberty this way:

- 1. Freedom from restraint, in a general sense, and applicable to the body, or to the will or mind. ...*
- 2. Civilliberty is the liberty of men in a state of society, or natural liberty so far only abridged and*

restrained, as is necessary and expedient for the safety and interest of the society, state or nation. A restraint of natural liberty not necessary or expedient for the public, is tyranny or oppression.

LIBERTY – Webster's 1828 Dictionary

You may be asking yourself what this has to do with drunk driving laws? If civil liberty is the state of society where you can live free, where the only restraints allowed are those necessary to the safety and interest of society, then we need to ask if section 24220 of the H.R. 3684 necessary for the safety of society?

Driving while impaired is not only a danger to the driver, but to anyone else around them. Therefore, a law punishing the act is necessary to the safety and interests of society and not a violation of one's liberty. Does that, however, extend to the new vehicle requirements in H.R. 3684?

The primary purpose of the *advanced drunk and impaired driving technology* described in H.R. 3684 is to prevent the driver from driving while impaired. In other words, it's an attempt to save the driver from him or herself, which then, by extension, makes society safer. Like any technology, it will not be 100% effective. Meaning there will be times when an impaired driver will not be stopped by this technology and other times when it will prevent a non-impaired driver from using their property. Not to mention the likelihood that there will be people who will find ways to defeat the new technology or simply purchase older cars that do not include it. It imposes a restraint on all citizens as a punishment for the actions of a few. If drunk, impaired driving is as dangerous as Congress says though, why not require this type of technology? Put another way, if you have nothing to hide, why oppose this legislation?

The answer is simple: Although I have nothing to hide, I have

everything to protect. Impaired driving prevention technology has been available for years, and has been required as a punishment for those convicted of a crime. On the other hand, this legislation treats everyone as guilty, requiring they prove that they are not drunk without any probable cause. It deprives them of the liberty to not have to deal with or pay for technology without due process of law. It also deprives them of control of their property without due process of law. In the end, this makes it a violation of the Fifth Amendment to the U.S. Constitution.

Commerce Clause

Congress claims the power to legislate motor vehicle safety standards under the Commerce Clause.

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

U.S. Constitution, Article I, Section 8, Clause 3 – Commerce Clause

Since most vehicles sold in the United States are manufactured either outside of the country, or within a handful of states, the car you drive was most likely sold over state lines. Hence, Congress claims the authority to “regulate” any aspect of motor vehicles. Was that what the Framers of the Constitution meant by regulating commerce?

To subject to rules or restrictions; as, to regulate trade; to regulate diet.

[REGULATE – Webster’s 1828 Dictionary](#)

This legislation, and indeed most of Title 49, regulate the product, not the commerce of the product. Can the regulation of commerce legally be used to violate the civil liberty of the American people?

Conclusion

I have to admit, this law posed a conundrum for me. My first instinct is to oppose it simply because, once again, we see Congress telling the American people how to live their lives. There are parallels between Section 24220 in H.R. 3684 and legislation such as fuel mileage, helmet, and seat belt laws that, while well intentioned, violate the rights of motor vehicle operators everywhere. On the other hand, drunk and impaired driving is a danger to others in society, which brings into question if it is a violation of civil liberty. I believe those who drive while intoxicated or impaired should be held accountable for the damage they do. I'm also in favor of sentences for drunk or impaired driving that require some sort of prevention system for the guilty. However, is the just response to treat everyone as a drunk driver until they prove otherwise?

Did our Founding Fathers imagine the Commerce Clause to be used not to simply to regulate commerce across state and national borders, but as an excuse to regulate anything that goes across these borders? Regulation of transportation is not a power delegated to the United States, so it remains with the states or the people. Yet Congress claims the power to regulate motor vehicle safety simply because the majority of those vehicles were, at some point, sold across state lines.

With all of the reports about stricter laws and harsher penalties regarding drunk or impaired driving, is Congress meddling in something that's already being dealt with at the state level? And what about innovation? H.R. 3684 looks to passively monitor the performance of the driver. There are already technologies available to do so and more in development, from lane diversion and obstacle alerts, to monitoring the drivers eyes for attentiveness. While some of these technologies are available in modern cars, some are not ready yet. So if the Secretary of Transportation is allowed to pick which systems will be approved, we'll have no idea how many other technologies will not see the light of day. All

because Congress thinks they know better than the states and the American people. If history is any guide, the people who wish to drink and drive will outsmart any ideas Congress can come up with.

Which brings me back to William Pitt (the Younger)

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William Pitt (the Younger), Speech in the House of Commons, November 18, 1783

The argument of Congress that this must be done to keep people safe, is just another tyrannical attempt to punishing the innocent for the crimes of the guilty. And while I believe the drunk driver should be punished for the harm they do, I am not willing to enslave myself to government simply because they say so.

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