



Written by [Bob Adelman](#) on January 13, 2014

## Pushback Against Federal Roadside Checkpoints Increasing

With some 60 cities participating in federal checkpoints, pushback from citizens and local police and sheriff's departments is increasing. In its defense, the National Highway Traffic Safety Administration (NHTSA) [said in an e-mail](#):



Each year, close to 10,000 people die in drunk driving crashes: 27 people a day, or one person every 53 minutes, according to [our] data.

To better understand the issue, the agency has regularly conducted its National Roadside Survey of Alcohol and Drugged Driving in communities across the country for over 40 years. The survey provides useful data about alcohol and drug use by drivers, and participation is completely voluntary and anonymous. More than 60 communities across the country will participate this year, many of which participated in the previous survey in 2007.

NHTSA always works closely with state and local safety officials and local law enforcement to conduct these surveys as we work to better inform our efforts to reduce drunk and drugged driving.

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This disclaimer neatly avoids any discussion of privacy or unreasonable searches and seizures prohibited under the Fourth Amendment to the Constitution. It also raises the question of what is "voluntary" and "anonymous." The NHTSA has contracted out the operation of these checkpoints to the Pacific Institute for Research and Evaluation (PIRE), which in turn invites off-duty police officers and sheriffs and sheriff's deputies to help with the stops. According to *USA Today*, the officers flag down drivers who then are directed to park beside the road where they are questioned by PIRE employees about their driving habits. The drivers are then offered to give up cheek swabs and blood samples for cash ranging from \$10 to \$50.

But this is hardly "voluntary," noted Mary Catherine Roper, a senior staff attorney with the American Civil Liberties Union (ACLU) in Pennsylvania:

It looks like an exercise of official authority when a cop pulls you over. People assume it's mandatory, and of course you're going to stop. That's a constitutional problem right there.

Normally, police cannot pull you over unless they have a good reason for thinking you've done something wrong.

There's no exemption in the Constitution for conducting a survey.

The Constitutional "problem" Roper is referring to is the 1990 Supreme Court case *Michigan Department of State Police v. Sitz*, where a majority decided that such checkpoints and roadblocks were allowed under the Fourth Amendment, as a result of "balancing" interests in public safety by the police with concerns about individual protections against unreasonable searches and seizures. Chief Justice William Rehnquist explained that there are three parts to the balancing act: 1) the state's interest in



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preventing accidents caused by drunk drivers; 2) the effectiveness of sobriety checkpoints in achieving that goal; and 3) the level of intrusion into a citizen's privacy caused by the checkpoints.

At no time did Rehnquist even raise the issue of the Fourth Amendment, but based his, and the court's, decision on practical matters of expediency and public safety. It took Justice William Brennan, writing for the three dissenters on the court to bring that up:

Once the Court establishes that the [stop] is "slight," it asserts without explanation that the balance "weighs" in favor of the state....

The [majority] ignores the fact that ... we have generally required the Government to prove that it had reasonable suspicion for a minimally intrusive [stop] to be considered reasonable.

Some level of individualized suspicion is a core component of the protection the Fourth Amendment provides against arbitrary government action....

By holding that no level of suspicion is necessary before the police may stop a car for the purpose of preventing drunken driving, the Court potentially subjects the general public to arbitrary or harassing conduct by the police.

I would have hoped that before taking such a step, the Court would carefully explain how such a plan fits within our Constitutional framework.

The closer one looks at what the NHTSA has been doing all these years, the more troubling it appears. The NHTSA has no police power of its own. It has to "borrow" that from local police and sheriff "volunteers" who are approached with the offer of some off-duty pay to help with the surveys. Little did they know they would be the "cover" for the illegal roadside stops. Tom Neer is the sheriff of St. Charles County, Missouri, who authorized such off-duty opportunities for six of his employees. Explained Neer:

Our department coordinator got information from the contractor (PIRE), and came to me. I approve all overtime compliance with private entities. They wanted to know if we'd provide a couple of deputies *just for security*. [Emphasis added.]

[Neer added:](#)

We will not cooperate with one of these federal checkpoints again. We would not have contracted with the subcontractor on this one if we had known in advance that our officers would be asked to flag down motorists.

In essence, we got duped...

Neer isn't the only one. Fort Worth, Texas, Police Chief Jeffrey Halstead, who bought the line from PIRE and later regretted it, wrote on his Facebook page:

Any future Federal survey of this nature, which jeopardizes the public's trust, will not be approved for the use of Fort Worth police.

Another point: Why would it be necessary to involve the uniformed officers at all, just to conduct a survey? And why would it be necessary to stop the flow of traffic, just to ask a few questions? If this were truly voluntary why couldn't this be done, say, at a rest stop or offered at a toll booth? Kim Cope, writing at [PoliceStateUSA.com](#), thinks there's another reason:

The program has the passive effect of conditioning the public to accept government agents setting



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up roadblocks in their communities for any reason imaginable.

If Americans wish to live in a society that does not accept police checkpoints as a routine part of their daily lives, it is important to push back against these programs at every opportunity.

[This video](#) shows how well-informed drivers can minimize any risk of letting just such a stop get out of hand and possibly leading to much more serious problems. When the officer asks:

What's going on, guys? You guys legal US citizens still? Haven't given it up yet?

Driver: Are we free to go?

Officer: Yes. You know what? You guys are awesome for exercising your constitutional rights. I totally respect that.

A lot of guys come here and they're jerks to us and we don't appreciate that, but I totally appreciate you guys who are respectful, who don't want to talk. We really can't force you to....

You guys have a good day.

The driver has obviously taken to heart the training offered by the ACLU through its videos [offered at FlexYourRights.com](#), one of which — “10 Rules for Dealing with Police” — recommends that precise phrase: “Officer, am I free to go?” The video is also available for purchase for \$15.00 on the website. Says Judge Andrew Napolitano:

I watched [10 Rules]. I loved it. It's right on the law, and everybody should see it.

Norm Stamper, former Seattle Police Chief, called it:

Legally accurate, realistic and entertaining. 10 Rules will prepare you for how policing is done in America. Only those officers who disregard the law have something to fear from its message.

As an ex-cop, I thank Flex Your Rights for all you've done.

A summary of those rights, responsibilities, and responses is also available in print form at [online-paralegal-programs.com](#) and entitled “You have the right to remain out of prison.”

Pushback against the extra-legal, unconstitutional checkpoints being instituted around the country by the NHTSA is increasing, not only in the form of police and sheriff's departments backing off, but [11 states have passed legislation](#) outlawing them as well. The best pushback, however, is from informed citizens, asking: “Am I being detained, or am I free to go?”

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