

MEMORANDUM

TO:

FROM:

DATE:

SUBJECT: Unconstitutionality of Total Bicycle/E-bike Bans under Substantive Due Process

I. PURPOSE

This memorandum addresses the constitutional invalidity of any state or local government attempt to enact a total ban on bicycles—including those with electric assist—from public roads. It is assumed *arguendo* that the government would offer a defense to any challenge that they are exercising their plenary jurisdiction to ensure safe roads under their access and/or use authorities.

Under [15 U.S.C. § 2085](#) an electric bicycle is classified as a bicycle and the state must treat them alike. There was no problem to be fixed, because all states already had laws governing access and use of bicycles. Rather than the far more rational course of simply noting in state law that the definition of a bicycle was modified to include the definition at 15 U.S.C. § 2085, the states embarked on various ways to find solutions to a problem that did not exist by redefining the electric bicycle product more stringently than § 2085. Because many consumers are upset at the substantial adoption of the market-impairing 3 class system, some fear that if “well enough” is not left alone, the states will simply ban bicycles and electric bicycles altogether, the complainers having “ruined it for everyone.”

Such a measure, even if enacted under the guise of “treating them alike” to mitigate e-bike and e-moto safety concerns, constitutes an arbitrary and capricious exercise of state power that violates the Due Process Clause of the Fourteenth Amendment.

II. FACTUAL CONTEXT AND POLITICAL REALITY

The bicycle is a foundational component of American personal mobility, with a history and tradition of road access as deeply ingrained as the automobile itself. Any legislative attempt to “take the ball home so no one can play”—banning all bicycles and e-bikes from public roads to solve specific e-bike management issues—would face immediate and overwhelming public opposition.

Beyond the legal challenges, such a measure is effectively **political suicide**. Politicians would recognize the poison pill and would not want to lose voter approval. The public has a deeply rooted expectation of access to public thoroughfares. Attempts to curtail this access will be viewed as an affront to the American sense of fair play; the public will reject the notion that they must be deprived of a traditional, sustainable, and culturally vital mode of transit simply because of a would-be state regulator’s frustration at an inability to manage newer, related technology because it is expressly preempted and leaving the state nothing to regulate.

III. LEGAL FRAMEWORK: SUBSTANTIVE DUE PROCESS

Substantive due process protects citizens from government actions that are arbitrary, lack a rational basis, or infringe upon liberties "deeply rooted in this Nation's history and tradition" (*Washington v. Glucksberg*, 521 U.S. 702 (1997)).

- 1. Ingrained History and Tradition:** The use of bicycles on public roads is a long-standing, protected practice in American life. It reflects the even more well founded traditional American values of self-reliance and the deeply embedded right to travel. The bicycle's ascent began in the late 19th century with the "Safety Bicycle"—epitomized by the 1885 Rover—which revolutionized personal mobility. Throughout the 20th century, the bicycle remained a staple of American autonomy, from the widespread adoption of the Schwinn models in the mid-1900s to the modern era, where industry records show millions of units sold annually. This culture of pedal-powered freedom seamlessly evolved into the electric bicycle, which utilizes modern motor technology to extend the range and utility of the traditional platform and is a lynchpin to green traffic alternatives.

While e-bikes are often marketed through the lens of contemporary "green energy" initiatives, the legal foundation for their protection does not rely solely on modern environmental trends. Instead, it rests upon the American mandate for Energy Independence. Just as the transition from coal to domestic oil to nuclear or solar and wind power has been framed as a strategic national imperative to reduce reliance on foreign entities and eventually fossil fuels, the e-bicycle represents a localized, autonomous form of energy security. The history of American mobility is one of decreasing dependence on state-controlled logistics and foreign fuel. By fostering individual self-sufficiency, bicycles and e-bikes are modern vehicles for an aspiration as old as the American republic: the ability to move freely without reliance on centralized energy grids or international markets. Because this access is so deeply embedded in our culture and history, a total ban is not a "neutral" regulation of traffic; it is an excise of a fundamental aspect of American mobility that cannot survive judicial scrutiny.

- 2. The "Treatment Alike" Fallacy:** While the state may argue that treating bicycles and e-bikes "alike" is a neutral, non-discriminatory approach, it fails the **Rational Basis Test**. An arbitrary classification that bans a long-standing, benign activity (bicycling) solely to prevent the perceived "problem" of a related technology (e-bikes) lacks a rational relationship to any legitimate government interest. It is the very definition of "arbitrary and capricious" to restrict or ban an entire class of proven, safe transportation to achieve a regulatory outcome. Courts have consistently held that the government cannot justify an irrational or overbroad restriction by tethering it to a more controversial technology. See *Sony Corp. of America v. Universal City Studios, Inc.*, 464 U.S. 417 (1984) (rejecting the notion that a product with substantial non-infringing uses could be banned simply because it might be used to facilitate infringement). In this instance, the "solution" of banning all bicycles to avoid the difficulty of distinguishing them from e-bikes is legally irrational, even without the added

complication that the desire to distinguish them as a class is rooted in a compulsion to treat them the same.

IV. LEGISLATIVE ANIMUS AND STIGMA

A total ban on bicycles and e-bikes also signals a form of **irrational legislative animus**. When a government seeks to punish the public for the perceived misdeeds of a minority (or the regulator's own inability to enforce existing traffic laws), it moves from governance to stigma. As the Court noted in *City of Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432 (1985), mere negative attitudes or fears—unsupported by factors properly cognizable in a zoning or regulatory context—do not constitute a legitimate government interest. By stigmatizing the bicycle as a "public nuisance" to force a regulatory outcome, the legislature engages in the type of "bare... desire to harm a politically unpopular group" that fails even the most deferential rational basis review (*Department of Agriculture v. Moreno*, 413 U.S. 528 (1973)).

V. CONCLUSION

The middle school classroom rule that *Kevin threw a juice box, so no-one gets recess* cannot prevail here. Any attempt to ban bicycles alongside e-bikes to "treat them alike" is a constitutional nullity. Because bicycle access is a traditional, culturally ingrained liberty, the state cannot strip the public of this right under the pretense of administrative convenience or the fear of managing e-bike usage. Such a ban would be struck down as an unconstitutional abuse of the police power, representing a clear departure from the fundamental due process protections afforded to the American public.