

IN THE SUPREME COURT OF OHIO

KELLY MENDENHALL, et al.,

Petitioners

- vs -

NESTOR TRAFFIC SYSTEMS,  
INC.

Respondents.

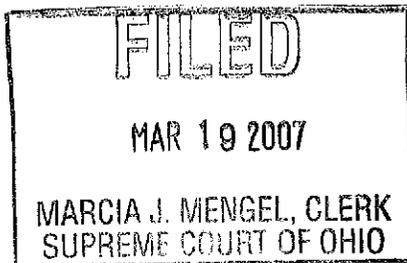
\*  
\* Case No. 06-2265  
\*  
\* On Question Certified by the  
\* United States District Court  
\* for the Northern District of Ohio,  
\*  
\* Case Nos. 5:06 CV 0139 and  
\* 5:06 CV 0154  
\*  
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*Brief of Amici Curiae*

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on behalf of themselves and all those similarly situated,  
and in support of the Petitioners

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## STATEMENT OF INTEREST OF *AMICI CURIAE*

*Amici Curiae*, Ann Lewicki, Raymond G. Tobin, and Robert Nash, Jr., are citizens of Ohio who are plaintiffs in a class-action proceeding pending the Court of Common Pleas for Lucas County, Ohio.<sup>1</sup> In that action, on behalf of themselves, and a class of those similarly situated, *amici* challenge a section of the Toledo Municipal Code that establishes a system of automated enforcement for supposed red-light and speeding violations.<sup>2</sup> The Amended Complaint alleges that the Toledo ordinance violates Article XVIII, Section 3 of the Constitution of the State of Ohio by being in conflict with the general laws of the State governing traffic, as set forth in Title 45 of the Ohio Revised Code.<sup>3</sup>

As do the petitioners in this action – indeed, as do all citizens of Ohio – *amici* have a strong interest in governmental compliance with the principles embodied in the Ohio Constitution. This interest extends to the constitutional system of Ohio government, which clearly contemplates the exercise by the state government of certain powers, to the exclusion of local powers.<sup>4</sup> In particular, *amici*, by their civil action and by their advocacy in this Court in support of Petitioners, seek to ensure that general laws adopted by the General Assembly for application and enforcement throughout the state are not altered, undermined, or otherwise gerrymandered by localities. This is all the more important where, as the

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<sup>1</sup> *Ann Lewicki, et al., v The City of Toledo, et al.*, Case No. CI 2006-4524.

<sup>2</sup> Toledo Municipal Code, Section 313.12.

<sup>3</sup> Amended Complaint, ¶ 59.

<sup>4</sup> Section 3, Article XVIII, Ohio Constitution.

arrogating local legislation is motivated not by vigilant regard for safety, but by a crude scurry for revenue.

*Amici* urge that the Court answer the certified question in the negative.

## Statement of Facts

The Ohio General Assembly regulates motor vehicles through a series of laws codified in Title 45. Among other things, these statutes establish uniform general laws regarding speed limits and signal lights.<sup>5</sup>

The City of Akron has enacted ordinances that seek to establish rules for speeding and signal lights that differ from those established by the general laws adopted by the General Assembly.<sup>6</sup>

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<sup>5</sup> See R.C. 4511.21 (speed limits), 4511.13 (signal lights)

<sup>6</sup> Akron Ordinance 481-2005, codified at Akron Municipal Code §79.01. Likewise, as noted above, the City of Toledo, a defendant in the case in which *amici* brought, seeks to regulate speeding and signal lights at certain locations.

## ARGUMENT

### Proposition of Law

**A municipality does not have the power to enact traffic ordinances that conflict with provisions of the Ohio Revised Code (*Schneiderman v. Sesanstein* (1929), 121 Ohio St. 80, reaffirmed and applied).**

The constitutional scheme of Ohio government distributes power between state and local governments. Central to this distribution is the constitutional principle, akin to the principle embodied in the supremacy clause of the United States Constitution, that general laws adopted by the Ohio General Assembly take precedence over and preclude municipal ordinances that conflict with the general laws.<sup>7</sup> This Court has repeatedly and clearly expressed the principle:

Once a matter has become of such general interest that it is necessary to make it subject to statewide control so as to require uniform statewide regulation, the municipality can no longer legislate in the field so as to conflict with the state.<sup>8</sup>

This constitutional principle is rooted in crucial ideas of governmental relations and it is rooted as well in sound policy considerations. In the articulation quoted above, this Court recognizes that in certain areas of legislative concern, the interests that animate legislation are general – that is, statewide – and therefore require a response that is general, statewide, and uniform. Thus, for instance, this Court recently ruled that predatory-lending laws are

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<sup>7</sup> Section 3, Article XVIII, Ohio Constitution. (“Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws.”)

<sup>8</sup> *Village of Limedale v State* (1999), 83 Ohio Ast. 3d 52, 54, quoting *Ohio Assn. of Private Detective Agencies, Inc. v N. Olmsted* (1992), 65 Ohio St.3d 242, 244, in turn quoting *State ex rel. McElroy v Akron* (1962), 173 Ohio St. 189, 194.

“general laws” that are part of a statewide and comprehensive legislative enactment, which is applicable to all parts of the state alike, operates uniformly throughout the state, and prescribes a rule of conduct upon citizens generally.<sup>9</sup> Thus, this Court ruled that municipal ordinances seeking to regulate predatory lending were precluded, applying the “fundamental principle of Ohio law that, pursuant to the statewide concern doctrine, a municipality may not, in the regulation of local matters, infringe on matters of general and statewide concern.”<sup>10</sup>

To be sure, illicit banking practices are a matter of statewide concern, and no sound theory of governmental regulation would hold that these practices should be subject to varying local regulations once the Assembly has spoken. Likewise, the regulation of motor vehicles can be done sensibly only statewide. Such regulation inherently involves the idea of movement, of transit throughout Ohio, of vehicles moving from one municipality to another. Given this unavoidable fact, it is not surprising that the General Assembly concluded that the interests of public safety required a statewide approach to traffic laws that would operate uniformly throughout the state, prescribing a rule of conduct upon citizens generally.

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<sup>9</sup> *American Financial Services Association v City of Cleveland* (2006), 112 Ohio St. 3d 170, 176, citing *Canton v State* (2002), 95 Ohio St.3d 149.

<sup>10</sup> *Id.*, 112 Ohio St. 3d at 174, quoting *Reading v Pub. Util. Comm.* (2006), 109 Ohio St.3d 193, quoting *State ex rel. Evans v Moore* (1982), 69 Ohio St.2d 88, 89-90.

This conclusion is evident in Chapter 4511 in two ways. First, the statutes that govern speed limits and signal lights are on their face general, written in terms that connote statewide application.<sup>11</sup>

Nothing in these statutes even hints that the General Assembly thought it was leaving speed limits or signal lights, or any other area that the General Assembly expressly addressed in the statutes, for municipal tinkering. But just in case, the General Assembly eliminated any doubt by stating in clear statutory language the areas that municipalities could regulate. Thus, in section 4511.06, the General Assembly addressed the exact question of what powers, if any, did municipalities retain in the aftermath of the enactment of Chapter 4511:

No local authority shall enact or enforce any rule in conflict with such sections, except that this section does not prevent local authorities from exercising the rights granted them by Chapter 4521 of the Revised Code and does not limit the effect or application of the provisions of that chapter.

The General Assembly in effect answered the question in this case by saying, If you want to know what a municipality can do to regulate motor vehicles, check Chapter 4521. The answer is clear: a local authority can regulate the “standing or parking” of vehicles and may create a parking-violations bureau to handle parking infractions.<sup>12</sup> Similarly, the General Assembly authorized local governments to “establish[ ] a program for the placement of

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<sup>11</sup> See, e.g., R.C. 4511.13 (“Whenever traffic is controlled by traffic control signals exhibiting different colored lights, . . .”); R.C. 4511.21(A) (“No person shall operate a motor vehicle, trackless trolley, or streetcar at a speed greater or less than is reasonable or proper, having due regard to the traffic, surface, and width of the street or highway and any other conditions, and no person shall drive any motor vehicle, trackless trolley, or streetcar in and upon any street or highway at a greater speed than will permit the person to bring it to a stop within the assured clear distance ahead.”)

<sup>12</sup> R.C. 4521.02(A), 4521.04(A)(1)

tourist-oriented directional signs and trailblazer markers within the rights-of-way of streets and highways under its jurisdiction.”<sup>13</sup>

The General Assembly knew what it was doing, and it did its work clearly and cleanly. It enacted comprehensive statewide legislation that is applicable to all parts of the state alike, operates uniformly throughout the state, and prescribes a rule of conduct upon citizens generally. And it clearly and sensibly directed municipalities to those areas in which, in the General Assembly’s considered judgment, local action would be appropriate and would not detract from the uniform statewide scheme.

The Akron ordinances at issue in this case, like the Toledo ordinances in *amici’s* case, are not limited to those areas in which local autonomy was preserved. Rather, they go to the heart of the statewide scheme. And they conflict with that scheme. Thus, under this Court’s settled rules of analysis, the local enactments must be ruled void.<sup>14</sup>

The ordinances conflict with the state statute, which defines speeding as the operation of a motor vehicle at a speed greater . . . than is reasonable or proper,” under the circumstances.<sup>15</sup> The Akron ordinance replaces this statutory definition with a stark, numerical definition of speeding. Such a definition may have some appeal for its supposed precision, but it is contrary to the General Assembly’s conclusive decision on the matter.

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<sup>13</sup> R.C. 4511.106

<sup>14</sup> *American Financial Services, supra*, 112 Ohio St. 3d 170, holding that first question is whether state statutes are “general laws,” and second question is whether there is a conflict between the state statute and the municipal ordinance.

<sup>15</sup> R.C. 4511.21(A), quoted in its entirety in n. 11, above.

This Court reached a nearly identical conclusion nearly eighty years ago, announcing in two paragraphs of the syllabus the rule of law that has since remained controlling:

1. An ordinance of a municipality which prescribes a manner of driving or a rate of speed of automobiles in conflict with the provisions of the statute is invalid.
- 2 The provision of an ordinance of a municipality which makes unlawful a rate of speed exceeding 15 miles per hour, regardless of whether such speed is greater than reasonable and proper, considering the width, traffic, use, and the general and usual rules of such road or highway, is in conflict with section 12603, General Code, and therefore invalid.<sup>16</sup>

Nothing of substance has changed in the intervening years. The Ohio Revised Code still expresses the principle that driving at an unlawful rate of speed entails a consideration of the prevailing circumstances, as it did in 1929 when this Court ruled. And the local ordinances at issue seek to define an unlawful rate of speed in a manner that conflicts with state law.

The automated enforcement of signal-light violations likewise conflicts with state law by defining signal violations differently and by adding a penalty for such violations beyond that prescribed by state law. This a municipality may not do.<sup>17</sup>

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<sup>16</sup> *Schneiderman v Sesanstein* (1929), 121 Ohio St. 80, paragraphs one and two of the syllabus.

<sup>17</sup> *State v Burnett* (2001), 93 Ohio St. 3d 419

Chapter 4511 is a set of general laws, uniformly applicable throughout the State. The Akron ordinances in question, like the Toledo ordinances that *amici* challenged, conflict with those laws, and they therefore must be ruled void.



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CERTIFICATE OF SERVICE

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