

IN THE SUPREME COURT OF OHIO

Kelly Mendenhall,

Plaintiff-Appellant,

v.

The City of Akron, et al.,

Defendants-Appellees.

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: Case No. 2006-2265  
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: On Question Certified by the  
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: United States District Court for the  
: Northern District of Ohio  
: Eastern Division  
: Case No. 5:06 CV 0139  
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BRIEF *AMICUS CURIAE* OF ACS STATE AND LOCAL SOLUTIONS, INC. IN SUPPORT  
OF DEFENDANT-RESPONDENTS

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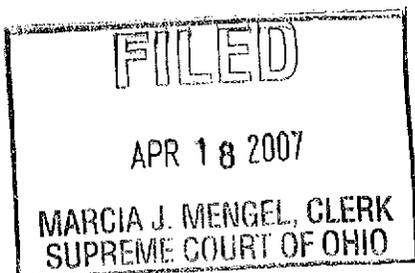
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# TABLE OF CONTENTS

|   | Page |
|---|------|
| I. INTRODUCTION .....   | 1    |
| II. SUMMARY OF ARGUMENT .....   | 1    |
| III. ARGUMENT .....   | 1    |
| A. A Growing Epidemic: Red Light Running and Speeding .....   | 1    |
| B. Photo Enforcement Technology Is Designed To Promote Compliance<br>With Traffic Laws .....  | 3    |
| C. Photo Enforcement Has Gained Wide-Spread Usage and Acceptance<br>Throughout the United States, Canada, Europe, and Australia .....   | 4    |
| D. Photo Enforcement Promotes Safety, Deters Traffic Infractions, and<br>Increases Municipal Efficiency While Decreasing Costs .....  | 5    |
| 1. Worldwide Studies Have Consistently Shown Photo Enforcement<br>To Increase Public Safety And Decrease Traffic Collisions .....   | 5    |
| 2. Photo Enforcement Has Been Shown To Have A Deterrent Effect<br>On Traffic Infractions In Unmonitored Intersections As Well As In<br>Intersections Using Photo Enforcement..... | 8    |
| 3. Photo Enforcement Increases Municipal Efficiency While<br>Decreasing Costs.....  | 10   |
| 4. Photo Enforcement Helps Conserve Scarce Police And Safety<br>Resources .....   | 10   |
| 5. Photo Enforcement Eliminates Any Claim Of Inconsistency Or<br>Racial Prejudice .....   | 11   |
| E. Photo Enforcement Is Constitutional.....   | 11   |
| 1. A City's Exercise Of Its Home Rule Powers Is Valid So Long As<br>It Does Not Conflict With A State General Law .....   | 12   |
| 2. Photo Enforcement Does Not Decriminalize Any Traffic Laws .....  | 13   |
| 3. There Is No Conflict .....   | 14   |
| IV. CONCLUSION.....   | 16   |
| CERTIFICATE OF SERVICE .....  | 18   |
| APPENDIX.....   | 20   |

## TABLE OF AUTHORITIES

Page

### Cases

|  |            |
|--|------------|
| <i>Canton v. State</i> (2005), 95 Ohio St. 3d 149, 151, 2002-Ohio-2005 .....                                   | 12         |
| <i>Cincinnati v. Shannon</i> (1979), 64 Ohio App. 2d 58 .....  | 15         |
| <i>Cleveland Heights v. Wood</i> (8th Dist. 1995), 107 Ohio App.3d 616 .....                                   | 12, 14, 15 |
| <i>Columbus v. Molt</i> (1973), 36 Ohio St. 2d 94 .....  | 7, 13      |
| <i>Dayton v. Miller</i> (1951), 154 Ohio St. 500 .....   | 13         |
| <i>Geauga County Board of Commissioners v. Munn Road Sand &amp; Gravel</i> (1993), 67 Ohio<br>St. 3d 579 ..... | 12         |
| <i>Greenburg v. City of Cleveland</i> (1918), 98 Ohio St. 282 .....  | 13         |
| <i>Niles v. Howard</i> (1984), 12 Ohio St. 3d 162 .....  | 12         |
| <i>Struthers v. Sokol</i> (1923), 108 Ohio St. 263 .....   | 13         |
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### Statutes

|                                   |    |
|-----------------------------------|----|
| Akron Ordinance 481-2005 .....    | 14 |
| Cleveland Ordinance 413.031 ..... | 14 |

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**TABLE OF AUTHORITIES**

|   | <b>Page</b> |
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| OJI § 225.01 .....  | 15          |
| OJI § 225.50 .....  | 15          |
| OJI § 227.03 .....  | 15          |
| OJI §§ 227.02 .....   | 15          |
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Page

|  |   |
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|--|---|

## **I. INTRODUCTION**

ACS State and Local Solutions, Inc. (“ACS”) provides technical assistance to municipalities across the United States in the installation and operation of equipment used to photograph motor vehicles while speeding or failing to comply with posted traffic signs. ACS has installed and maintains 80 percent of the red-light cameras operating in the United States and Canada, including cities such as Cleveland, Ohio and San Francisco, California. Currently, ACS is a defendant in litigation in the Cuyahoga County Court of Common Pleas, *McNamara v. City of Cleveland*, Case No. CV 06 582364, where, with the City of Cleveland, ACS is supporting the legality of photo enforcement as part of an ordinance that complements Ohio’s enforcement scheme. ACS files this amicus brief in an effort to relate to the Court its knowledge of the efficiency and benefits of photo enforcement.

## **II. SUMMARY OF ARGUMENT**

Photo enforcement is a proven and effective means of promoting the welfare and safety of a community. It is cost-effective, efficient, and thorough. The system enforces and upholds the laws already in effect in the community and saves the community money by funding itself. Photo enforcement is a valuable complement, and does not supplant or conflict with Ohio’s criminal traffic laws.

## **III. ARGUMENT**

### **A. A Growing Epidemic: Red Light Running and Speeding.**

Enforcement of red light and speeding laws has become increasingly difficult with conventional means alone. From 1992 to 2000, the number of fatal crashes at intersections with signals jumped 19 percent nationally. (The National Campaign to Stop Red Light Running, *A Guide to Red Light Camera Programs: Stop On Red = Safe on Green*, 2002, available at

<http://www.stopredlightrunning.com/pdfs/StopOnRedSafeOnGreen.pdf>, hereinafter “Guide to Red Light Camera Programs”). A nationwide study of 9,951 vehicles involved in fatal crashes at traffic signals in 1999 and 2000 conducted by the Insurance Institute for Highway Safety estimated that 20 percent of the vehicles failed to obey the signals. (Richard A. Retting, Susan A. Ferguson, Charles M. Farmer, Insurance Institute for Highway Safety, Reducing Red Light Running Through Longer Yellow Signal Timing and Red Light Camera Enforcement: Results of a Field Investigation, Jan. 2007, available at [http://www.iihs.org/research/topics/pdf/penn\\_rlc.pdf](http://www.iihs.org/research/topics/pdf/penn_rlc.pdf), hereinafter “Reducing Red Light Running”). Red light running causes about 800 crash deaths per year, and about half of the people who are killed are pedestrians and people in vehicles that are struck by the violators. (Insurance Institute for Highway Safety, Status Report, Vol. 42, No. 1, Jan. 27, 2007, available at <http://www.iihs.org/sr/pdfs/sr4201.pdf>). 165,000 people are estimated to be injured in red light running crashes each year. *Id.*

Speeding is a factor in nearly one-third of all fatal crashes. (Advocates for Highway and Auto Safety, 2005, available at <http://www.saferoads.org/issues/fs-speed.htm>). An estimated 13,000 people are killed each year in speed-related crashes on U.S. roads. (Insurance Institute for Highway Safety, Status Report, Vol. 40, No. 8, Sept. 29, 2005, available at <http://www.iihs.org/sr/pdfs/sr4008.pdf>, hereinafter “Status Report, Vol. 40”).

With these numbers, it should come as no surprise that 96 percent of Americans are afraid of being hit by a red light runner. (Guide to Red Light Camera Programs). However, one in five admit to running a red light in the last 10 intersections. *Id.* According to a survey conducted by the U.S. Department of Transportation and the American Trauma Society, 63

percent of Americans see someone running a red light at least a few times a week and one in three Americans know someone who has been injured or killed in a red light running crash. *Id.*

**B. Photo Enforcement Technology Is Designed To Promote Compliance With Traffic Laws.**

Photo enforcement technology, known more familiarly as “speed cameras” or “red light cameras,” is a system used to detect and identify vehicles disobeying a speed limit or other road legal requirement. The two most common photo enforcement systems are red light cameras, designed to detect motorists who enter an intersection after the light has turned red, and speed cameras, designed to detect motorists going a certain amount over the posted speed limit. In many cases, these two systems are combined at one intersection.

Red light cameras detect a motor vehicle that passes over sensors in the pavement after a traffic signal has turned red. The sensors are connected to computers in high-speed cameras, which take two photographs of the violation. Law enforcement officials review the photographs and a citation is mailed to the registered owner of the vehicle. (U.S. Department of Transportation, Federal Highway Administration, Intersection Safety Brief, Sept. 10, 2004, available at <http://safety.fhwa.dot.gov/intersections/interbriefing/08came.htm>).

Speed cameras, also known as photo radar, consist of a radar unit to monitor the speeds of passing vehicles and are programmed to photograph vehicles traveling a set amount above the speed limit. (Insurance Institute for Highway Safety, Q&A: Speed—Law Enforcement, Jan. 2007, available at [http://www.iihs.org/research/qanda/speed\\_lawenf.html#13](http://www.iihs.org/research/qanda/speed_lawenf.html#13), hereinafter “Q&A: Speed – Law Enforcement”). With both red light cameras and speed cameras, the time, date, location, and, for speed cameras, speed of the vehicle are recorded on the film. In addition, photo enforcement locations are clearly marked with prominent signage, and locations are widely disclosed in the community before operation commences.

C. **Photo Enforcement Has Gained Wide-Spread Usage and Acceptance Throughout the United States, Canada, Europe, and Australia.**

Photo enforcement is not a new or experimental technology, nor is it a new, untested means of increasing a community's safety. It is a common and respected method for monitoring and enforcing traffic laws, not only in the United States, but internationally.

Red light cameras have proven themselves in countries around the world for more than 30 years. Australia, Canada, the United Kingdom, Austria, Germany, Italy, Spain, the Netherlands, Greece, Israel, Singapore, South Africa, and Taiwan, among others, have all successfully employed photo enforcement. (Q&A: Speed – Law Enforcement). In the United States, red light cameras are used in more than 200 communities, including Atlanta, Georgia, Chicago, Illinois, New York, New York, Philadelphia, Pennsylvania, Dallas, Texas, and the District of Columbia. (Insurance Institute for Highway Safety, Communities With Red Light Cameras, Apr. 2007, available at [http://www.iihs.org/research/topics/rlc\\_cities.html](http://www.iihs.org/research/topics/rlc_cities.html)). These communities have found photo enforcement an effective part of their traffic law enforcement.

Speed cameras are, in fact, the most widely used form of automated enforcement in the world. They are used in Australia, Austria, Israel, the Netherlands, Norway, and the United Kingdom, among other places. (Insurance Institute for Highway Safety, Status Report, Vol. 37, No. 5, May 4, 2002, available at <http://www.iihs.org/sr/pdfs/sr3705.pdf>). In the United States, speed cameras are used in over 30 communities, including Denver, Colorado, Tempe, Arizona, Charlotte, North Carolina, and the District of Columbia. (Insurance Institute for Highway Safety, Communities With Speed Cameras, Mar. 2007, available at [http://www.iihs.org/research/topics/sc\\_cities.html](http://www.iihs.org/research/topics/sc_cities.html)).

The National Campaign to Stop Red Light Running is an independent advocacy initiative. It is guided by a voluntary national advisory board comprised of leaders from the

fields of traffic safety, law enforcement, transportation engineering, healthcare and emergency medicine. The campaign provides the public and elected officials with a better understanding of the seriousness of red light running problem and law enforcement practices and tools to make roadways safer, and strongly promotes the use of photo enforcement. Most recently, it has found that photo enforcement has been endorsed by agencies as diverse as the American Association of State Highway and Transportation Officials, The World Health Organization, The World Bank, The Insurance Institute for Highway Safety, The National Safety Council, The Governors Highway Safety Association, and The International Association of Chiefs of Police. (National Campaign to Stop Red Light Running, Red Light Camera Effectiveness, available at <http://www.stopredlightrunning.com/pdfs/RLC%20effectiveness%20fact%20sheet.pdf>, hereinafter “Red Light Camera Effectiveness”).

**D. Photo Enforcement Promotes Safety, Deters Traffic Infractions, and Increases Municipal Efficiency While Decreasing Costs.**

Photo enforcement is a proven deterrent that can bring about a behavior change that results in motorists obeying traffic signals, respecting fellow drivers, and avoiding the crashes, injuries and loss of life caused by red light running. Photo enforcement leads to a 25 to 30 percent reduction in intersection injury crashes. (Guide to Red Light Camera Programs). Beyond the critical benefit of safety, photo enforcement deters illegal and unsafe behavior throughout the community, is cost-effective, thorough, and frees up a community’s valuable resources.

**1. Worldwide Studies Have Consistently Shown Photo Enforcement To Increase Public Safety And Decrease Traffic Collisions**

Studies, conducted both in the United States and internationally, have concluded that photo enforcement prevents fatalities and injuries to both pedestrians and motorists. Photo

enforcement has been shown to reduce crashes overall, as well as reducing the number and severity of injury-causing crashes.

The benefit of red light cameras is most frequently measured by the number of right-angle crashes, injury right-angle crashes, and front-into-side collisions (the crash type most commonly associated with red light running). The Federal Highway Administration has conducted one of the most comprehensive studies to date, Safety Evaluation of Red-Light Cameras (U.S. Dep't of Transp., Fed. Highway Admin., Safety Evaluation of Red-Light Cameras, Pub. No. FHWA-HRT-05-048, Apr. 2005, available at <http://www.tfhrc.gov/safety/pubs/05048/05048.pdf>). In that study, it found that at intersections using photo enforcement technology, overall right-angle crashes decreased 25% and injury right angle crashes decreased 16%. *Id.* In Oxnard, California, injury crashes at intersections with traffic signals were reduced by 29 percent following the introduction of red light cameras. (Reducing Red Light Running). Front-into-side collisions also were reduced by 32 percent overall, and front-into-side crashes involving injuries were reduced by 68 percent. *Id.*

Analyses of police reported crashes in seven U.S. cities found that, overall, right-angle crashes decreased by 25 percent following the introduction of red light cameras. (Reducing Red Light Running). Reviews of international red light camera studies concluded that red light cameras reduce right-angle crashes by 24 percent and reduce injury crashes by 25-30 percent. *Id.*

Specific studies across the United States have unanimously concluded that the use of photo enforcement increases the safety in the community. In Washington, D.C., red light running fatalities were reduced from 16 to 2 in the first two years of red light cameras. (National Campaign to Stop Red Light Running, Red Light Cameras: A Proven Method to Save Lives,

available at <http://stopredlightrunning.com/html/redlight.htm>). In Fairfax, Virginia, there was a 44% reduction in red light running crashes after cameras were installed. *Id.* In New York City, there was a 34% reduction in red light violations. *Id.*

Ohio citizens have also reaped the benefits of photo enforcement. Columbus, Ohio saw violations at its first two red light camera intersections drop in 2006 from 1,684 in March to 477 in August. (Red Light Camera Effectiveness). There has only been one crash at the two intersections, which each recorded between 5 and 14 crashes per year before the cameras were installed. *Id.* Photo enforcement saves Ohio lives.

It has also proven highly effective wherever else it has been employed. A 2005 Orange County, California government report found that one year after red light camera installation, accidents dropped by 46.7 percent in Garden Grove, 28.2 percent in Costa Mesa, 16.2 percent in Santa Ana, 12.1 percent in San Juan Capistrano and 5.7 percent in Fullerton. (Red Light Camera Effectiveness). Savannah, Georgia has seen a 20 percent reduction in crashes and a 60 percent reduction in violations at intersections with red light cameras since October 2003. *Id.*

The use of photo enforcement as a deterrent to speeding has also proven to positively benefit the community. A 2002 study reported that within 6 months of the implementation of speed cameras in the District of Columbia in 2001, average speeds declined 14 percent and the proportion of vehicles exceeding the speed limit by more than 10 mph declined 82 percent. (Q&A: Speed—Law Enforcement). In Garland, Utah, a speed camera system plus extensive media coverage and strong support by city officials successfully reduced average speeds in a 20 mph school zone from 36 to 22 mph. *Id.* Crashes and injuries had been high in the school zone, but 8 months after camera installation there were fewer crashes and not a single injury collision. *Id.*

Internationally, the results are also overwhelming. In Victoria, Australia, speed cameras were introduced in late 1989, and police reported that within 3 months the number of offenders triggering photo radar decreased 50 percent. (Q&A: Speed – Law Enforcement). The percentage of vehicles significantly exceeding the speed limit decreased from about 20 percent in 1990 to fewer than 4 percent in 1994. *Id.* A Norwegian study found that injury crashes were reduced by 20 percent on sections of rural roads with cameras. *Id.*

Research from British Columbia, Canada, showed a 7 percent decline in crashes and 20 percent fewer deaths the first year cameras were used. (Q&A: Speed – Law Enforcement). The proportion of speeding vehicles declined from 66 percent to fewer than 40 percent, and researchers attributed a 10 percent decline in daytime injuries to photo radar. *Id.* The Winnipeg, Manitoba photo enforcement program saw a 15% reduction in crashes of all types at the first 12 camera intersections in its first year. (Red Light Camera Effectiveness). A detailed analysis of speed camera enforcement in Cambridgeshire, United Kingdom, reported that injury crashes in the immediate vicinity of camera sites were reduced 46 percent. (Q&A: Speed – Law Enforcement). British researchers report that benefits of speed cameras exceed costs by 4 to 1. (Status Report, Vol. 40).

2. Photo Enforcement Has Been Shown To Have A Deterrent Effect On Traffic Infractions In Unmonitored Intersections As Well As In Intersections Using Photo Enforcement

One of the most positive results to arise out of the implementation of photo enforcement is its deterrence effect. Studies have shown that the use of photo enforcement in a community not only decreases the number of crashes at the intersections where the photo enforcement is used, but that it actually decreases the number of crashes throughout the community. Researchers refer to this as the “spillover effect.” (Guide to Red Light Camera Programs).

This spillover effect results from a number of factors, but is mainly attributed to an increase in overall public awareness. (Becky Ham, Health Behavior News Service, Red Light Cameras Can Reduce Crash Related Injuries, Apr. 19, 2005, available at <http://www.hbns.org/getDocument.cfm?documentID=1037>). When photo enforcement cameras are installed in a community, a great deal of media attention centers around the cameras. The city or community itself usually runs a number of public spots on television or on the radio, and also publicizes the cameras in local newspapers.

Even after the cameras have been installed and are in operation, signs are posted around the site warning and reminding motorists that photo enforcement is in effect. This media attention does three major things: (1) it calls attention to the risks of red light running and speeding; (2) it reminds people of local traffic laws and area speed limits; and (3) it reinforces the idea that consequences, mainly monetary, are likely to occur by ignoring local traffic laws and speed limits. One speed camera study noted that “[t]o slow motorists down, especially the fastest ones who pose the greatest risk, there has to be enough speed limit enforcement to foster the perception that a penalty is likely.” (Status Report, Vol. 40).

In studies conducted in Oxnard, California and Fairfax, Virginia, reductions in violations were observed at intersections not equipped with red light cameras, and the reductions were comparable in magnitude to those at camera-equipped sites. (Guide to Red Light Camera Programs). International studies in Brisbane, Australia, Melbourne, Australia, and British, Columbia, Canada have documented spillover effects of red light camera enforcement. *Id.* And, in a recent international review of red light camera studies, Aeron-Thomas and Hess (2005) state the following: “As red light camera programs involve publicity campaigns and warning signs,

behavior in general may be influenced, with drivers inclined to obey red lights at all signalized junctions thus reducing the risk of collisions at noncamera sites.” *Id.*

3. Photo Enforcement Increases Municipal Efficiency While Decreasing Costs

The obvious cost benefit to the use of a photo enforcement system has proven to be the prevention of accidents, injuries, and deaths. The Federal Highway Administration estimates that total societal cost reductions from red light cameras to be over \$14 million per year, or \$38,000 for each U.S. red light camera location. (Red Light Camera Effectiveness). In addition, the economic costs of crashes that involved speeding were \$40.4 billion in 2004, representing 18% of total crash costs. This is equivalent to an average cost of \$144 for every person in the United States. (Advocates for Highway and Auto Safety, Fact Sheet, Sept. 2005, available at <http://www.saferoads.org/issues/fs-speed.htm>).

However, the cost savings that photo enforcement provides a community go well beyond the obvious. It is well-documented that photo enforcement systems save lives and prevent accidents. However, for every accident prevented, a community saves the cost of responding to that accident including police officers, emergency medical technicians, ambulances, and clean up crews. Moreover, it saves costs associated with traffic tie-ups and delays. And, photo enforcement programs are typically violator funded. (Guide to Red Light Camera Programs).

4. Photo Enforcement Helps Conserve Scarce Police And Safety Resources.

In comparison to regular enforcement of traffic laws, photo enforcement again is more beneficial to the community. Photo enforcement provides around-the-clock enforcement without the attendant costs of police personnel. Communities just do not have the financial capability to patrol intersections as often as would be needed to ticket all motorists who run red lights or break the speed limit. Beyond this, it saves the cost of requiring a police officer to appear in court

every time a traffic ticket is contested. Generally, less than one percent of all tickets issued in by photo enforcement have been appealed. (Red Light Camera Effectiveness).

Photo enforcement is a police force multiplier. (National Campaign to Stop Red Light Running, Red Light Running and Photo Enforcement – Myth vs. Fact, available at [http://www.stopredlightrunning.com/html/newsrelease\\_mythreality\\_011904.htm](http://www.stopredlightrunning.com/html/newsrelease_mythreality_011904.htm)). It leverages the manpower of the department to get more done. *Id.* Instead of sitting at traffic lights and trying to chase down offenders or, worse, responding to crashes, officers on patrol are able to focus on other crimes that technological tools cannot effectively reduce. *Id.* It frees up general police resources.

5. Photo Enforcement Eliminates Any Claim Of Inconsistency Or Racial Prejudice.

Moreover, photo enforcement is consistent and efficient. A speed camera or red light camera will catch **every offender** at that intersection. Even if a police officer were stationed at that intersection twenty-four hours a day, the officer would be unable to apprehend every violator due to the time associated in stopping a motorist and writing a ticket, as well as due to simple human fallacy. Because photo enforcement is consistent, it carries none of the attendant risks of alleged racial profiling or inconsistent enforcement that are associated with routine traffic stops by police officers.

E. Photo Enforcement Is Constitutional.

The use of photo enforcement is constitutional under Ohio law. The use of photo enforcement is a valid exercise of a municipality's Home Rule powers, as the Home Rule Amendment gives cities broad enforcement powers so long as it does not conflict with a state general law. The use of photo enforcement does not conflict with any Ohio general law. Photo enforcement encourages safety and compliance with traffic laws. It does not conflict with any

state scheme of safety or public welfare, but, instead, is an effective complement to and multiplier of public enforcement efforts.

1. A City's Exercise Of Its Home Rule Powers Is Valid So Long As It Does Not Conflict With A State General Law.

When Ohio first became a state, municipalities like the City of Cleveland could only exercise those powers provided to them by statute. *Geauga County Board of Commissioners v. Munn Road Sand & Gravel* (1993), 67 Ohio St. 3d 579, 582. In 1912, Ohio adopted Section 3, Article XVIII of the Constitution, which gave municipalities expansive powers to govern matters within their borders. Section 3, Article XVIII, the so-called "Home Rule Amendment," affords municipalities broad powers to adopt local police, sanitary, and safety laws:

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 regulations, as are not in conflict with general laws.

Ohio Const., § 3, Art. XVIII.

Thus, it has been the law in Ohio for nearly 100 years that a municipality may adopt police and safety laws so long as they do not conflict state general laws. *See, e.g., Canton v. State* (2005), 95 Ohio St. 3d 149, 151, 2002-Ohio-2005. The power to adapt local police laws specifically includes the power to regulate traffic and traffic violations. *Geauga Co. Comm'rs*, 67 Ohio St. 3d at 583-84. No conflict with any state general law exists here.

That power has been, as this Court has urged, broadly applied to a wide variety of matters, including virtually every aspect of traffic control as well as a host of other laws. *See, e.g., Canton* 95 Ohio St. 3d 149 (motor home regulation); *Cleveland Heights v. Wood* (8th Dist. 1995), 107 Ohio App.3d 616 (speeding); *Niles v. Howard* (1984), 12 Ohio St. 3d 162 (possession of marijuana); *Geauga Co. Comm'rs*, 67 Ohio St. 3d at 583-84 (recognizing municipalities'

inherent power to regulate traffic and traffic violations) *Columbus v. Molt* (1973), 36 Ohio St. 2d 94 (reckless motor vehicle regulation); *West Jefferson v. Robinson* (1965), 1 Ohio St. 2d 113 (uninvited solicitation of orders); *Toledo v. Best* (1961), 172 Ohio St. 371 (driving under the influence); *Dayton v. Miller* (1951), 154 Ohio St. 500 (assault and battery); *Youngstown v. Evans* (1929), 121 Ohio St. 342 (transportation of intoxicating beverages); *Struthers v. Sokol* (1923), 108 Ohio St. 263 (manufacture and sale of intoxicating beverage); *Greenburg v. City of Cleveland* (1918), 98 Ohio St. 282 (theft by force).

2. Photo Enforcement Does Not Decriminalize Any Traffic Laws.

There is nothing about photo enforcement that prohibits the criminal prosecution of those who speed or fail to stop at red lights. As the Akron Ordinance (and Cleveland's own Ordinance) both expressly provide, the city, or state, are free to pursue criminal charges against any driver who has sped or run a red light. (Akron Ordinance 481-2005, codified at Akron Municipal Code § 79.01 attached hereto as Appendix 1; Cleveland Ordinance 413.031 attached hereto as Appendix 2). Both ordinances expressly preserve all rights to criminal relief. The civil enforcement is no more nor less than a complement to the traffic scheme of criminal enforcement.

There is no conflict in finding civil liability in connection with an alleged criminal violation of traffic laws. Courts, and specifically municipal courts, find civil liability based upon violation of traffic laws virtually every day. Indeed, the Ohio Jury Instructions, which are routinely given in civil lawsuits arising out of traffic accidents, specifically advise jurors that violations of various state traffic laws constitute negligence. *See, e.g.*, OJI §§ 227.02 (instructing juries that a violation of RC 4513.021 – 4513.034 “is negligence”), 225.50 (negligence under RC 4511.13 and 4511.46 for pedestrians walking along highways), 227.03 (a failure to display lights

[in violation of RC 4513.03] as described is “negligence.”), 225.01 (violation of a traffic law is negligence per se). In each of these instances, civil liability is predicated upon a violation of a state traffic statute, irrespective of any criminal adjudication.

Even while using photo enforcement, there is no question that a municipality could criminally cite speeders and those who run red lights and add a civil penalty to any criminal charges. *City of Cleveland Heights v. Wood* (8th Dist. 1995), 107 Ohio App. 3d 616, 669 N.E. 2d 281. There is nothing unconstitutional about adding the potential for a civil fine to the list of available criminal penalties for a violation.

In reality, of course, the choice is not one of a civil penalty versus a criminal one, but, rather, one of a civil penalty or none at all. If municipalities cannot rely upon photo enforcement, thousands of violators will escape each month without consequence as no city has the resources for effective, round-the-clock traffic enforcement at every dangerous intersection. Given the decades of proven effectiveness and deterrence by photo enforcement, a routine system of traffic enforcement is far more consistent with the state scheme than none at all. The argument that photo enforcement somehow “decriminalizes” the speeding laws or would prevent the state from enforcing the state or speeding laws is a fiction.

### 3. There Is No Conflict.

Ohio State law and laws enacting photo enforcement share a common goal, the promotion of safety by encouraging drivers to observe posted speed limits and to stop at red lights at intersections. Nothing about the use of photo enforcement permits speeding, encourages red light violations, or relieves any offender of applicable criminal penalties. The worst that can be said about photo enforcement systems and the use of cameras is that they *complement* state remedies through regular enforcement and an efficient system of assessing civil penalties.

Even beyond this obvious consistent purpose, which by itself demonstrates the legality of photo enforcement, there is no conflict with any cog in the state enforcement scheme. Indeed, Ohio courts have repeatedly recognized that municipalities are free to set different and greater penalties for violations of traffic and other state laws within their own jurisdictions.

In *Cincinnati v. Shannon* (1979), 64 Ohio App. 2d 58, for example, the court recognized that a municipality can have higher penalties than the state. In *City of Cleveland Heights*, 107 Ohio App. 3d 616 a driver convicted of speeding in the City of Cleveland Heights sought to challenge the city ordinance under which he was charged. More specifically, he was cited for speeding under an ordinance that made such a violation a first degree misdemeanor rather than a minor misdemeanor under state law. The Eighth District Court of Appeals held that there was no conflict despite the different penalties between state and local law. Thus, the use of photo enforcement is not unconstitutional simply because its complementary enforcement scheme is not identical to that of state law.

Common sense also supports the conclusion that the use of photo enforcement is not in conflict with Ohio's traffic laws. Both state law and photo enforcement have the same purpose – to deter traffic violations and to promote the safety of public roads. As can be seen above, both promote that purpose.

Further, cameras provide excellent photographic evidence that a person has engaged in a violation, minimizing needless disputes over whether a light was red or not when an officer issued a citation. Nothing in the efficiency, relative low cost, or accuracy of speed cameras conflicts with any state law. Indeed, A.O. 481-2005 *promotes* the purposes of state law by insuring that larger numbers of traffic violators receive notices of violation and are more likely to

drive more safely in the future. It also promotes regular compliance with traffic laws, even when no ticket, civil or criminal, is being issued.

There is no serious argument that a system of regular, consistent, and accurate enforcement of the state's traffic laws is more in conflict with the state scheme of traffic law enforcement than one of sporadic and limited monitoring that consumes highly finite police resources. As there is no conflict, legal or otherwise, between the use of civil penalties through photo enforcement and criminal penalties, it is only reasonable to allow municipalities to further the public safety and welfare through the use of photo enforcement.

#### **IV. CONCLUSION**

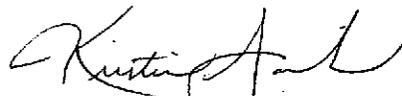
Traffic violations are dangerous – often deadly – hazards that Ohio citizens must face every time they enter a vehicle. Photo enforcement can aid Ohio in protecting its citizens by promoting safety and decreasing traffic injuries and fatalities. As can be seen by studies conducted worldwide, photo enforcement *will* reduce traffic crashes, injuries and fatalities, thus promoting the goals of Ohio's traffic laws: public welfare and safety.

Photo enforcement not only complements, but works hand-in-hand with the criminal penalties assessed for traffic violations. Not only does it help to promote safety at Ohio intersections, but it helps to free up valuable municipal resources – police officers and emergency response teams – and allows those resources to spend additional time protecting the welfare of Ohio's citizens in other critical areas. Photo enforcement helps to add a cost effective and efficient means of spreading Ohio's municipalities' resources.

There is no conflict between photo enforcement and criminal enforcement of traffic violations as both work towards the same end goal – the safety of Ohio's citizens. Photo enforcement does not detract from criminal enforcement; officers are still free to ticket

dangerous drivers irrespective of the photo enforcement. It does, however, help to free those officers to monitor and patrol a broader area, thus expanding the protection of Ohio's citizens.

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the foregoing Merit Brief of ACS State and Local Solutions, Inc. As Amicus Curiae was served by ordinary mail, postage prepaid, on this 17th day of April 2007, upon the following:

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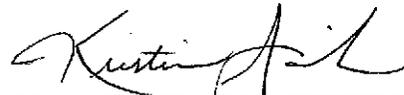
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**APPENDIX**

Appendix 1.....App. pg. 1

Appendix 2.....App. pg. 3

**CHAPTER 79 AUTOMATED MOBILE SPEED ENFORCEMENT SYSTEM**

79.01 Civil penalties for automated mobile speed enforcement system violations.

**79.01 Civil penalties for automated mobile speed enforcement system violations.**

**A. General.**

1. Notwithstanding any other provision of this traffic code, the City of Akron hereby adopts a civil enforcement system for automated mobile speed enforcement system violations as outlined in this section. Said system imposes monetary liability on the owner of a vehicle for failure of an operator thereof to strictly comply with the posted speed limit in school zones or streets or highways within the City of Akron that include crosswalks used by children going to or leaving a school during recess and opening and closing hours.
2. The Akron Police Department shall be responsible for administering the automated mobile speed enforcement system. Specifically, the Akron Police Department shall be empowered to install and operate the automated mobile speed enforcement system within the City of Akron using trained technicians who may be police officers, Police Department employees, or other trained technicians who are not employees of the Akron Police Department.
3. Any citation for an automated mobile speed system violation pursuant to this section, known as a "notice of liability" shall:
  - a. Be processed by officials or agents of the City of Akron; and
  - b. Be forwarded by first-class mail or personal service to the vehicle's registered owner's address as given on the state's motor vehicle registration; and
  - c. Clearly state the manner in which the violation may be appealed.

**B. Definitions.**

1. Automated mobile speed enforcement system is a system with one or more sensors working in conjunction with a speed measuring device to produce recorded images of motor vehicles traveling at a prohibited rate of speed.
2. "Hearing Officer" is the independent third party appointed by the Mayor.
3. "Vehicle owner" is the person or entity identified by the Ohio Bureau of Motor Vehicles, or registered with any other state vehicle registration office, as the registered owner of a vehicle or a lessee of a motor vehicle under a lease of six months or more.

**C. Offense.**

1. The owner of a vehicle shall be liable for a penalty imposed pursuant to this section if such vehicle is operated at a speed in excess of those set forth in Section 73.20.
2. It is prima facie evidence that the person registered as the owner of the vehicle with the Ohio Bureau of Motor Vehicles (or with any other state vehicle registration office) was operating the vehicle at the time of the offense set out in subsection (C)(1).
3. Notwithstanding subsection (C)(2) above, the owner of the vehicle shall not be responsible for the violation if, within twenty-one days from the date listed on the "notice of liability," as set forth in subsection (D)(2) below, he furnishes the Hearing Officer:
  - a. An affidavit by the vehicle owner, stating the name and address of the person or entity who leased the vehicle in a lease of six months or more at the time of the violation; or
  - b. A law enforcement incident report/general offense report from any state or local law enforcement agency/record bureau stating that the vehicle involved was reported as stolen before the time of the violation.
4. Nothing in this section shall be construed to limit the liability of an owner of a vehicle for any violation of subsection (C)(1) or (C)(2) herein.

**D. Civil Penalties.**

1. Unless the operator of the motor vehicle received a citation from a police officer at the time of the violation, the owner of the motor vehicle is subject to a civil penalty if the motor vehicle is recorded by an automated mobile speed enforcement system while being operated in violation of this ordinance.

2. Any violation of this section shall be deemed a noncriminal violation for which a civil penalty of one hundred fifty dollars shall be assessed to the owner for speed in excess of twenty miles per hour and less than thirty-five miles per hour in a school zone during restricted hours and a civil penalty of two hundred fifty dollars shall be assessed for speeds of thirty-five miles per hour or greater in a school zone during restricted hours. A civil penalty of one hundred fifty dollars shall be assessed for speeds in excess of the posted limits, but less than fifteen miles per hour over the posted limit, on streets and highways not in school zones that include crosswalks used by children going to or leaving school. A civil penalty of two hundred fifty dollars shall be assessed for speeds that exceed the posted speed limit by fifteen miles per hour or greater on streets and highways not in school zones that include crosswalks used by children going to or leaving school.

3. A violation for which a civil penalty is imposed under this ordinance is not a moving violation for the purpose of assessing points under Ohio Revised Code Section 4507.021 for moving traffic offenses and may not be recorded on the driving record of the owner of the vehicle and shall not be reported to the Bureau of Motor Vehicles.

E. Collection of Civil Penalty. If the civil penalty is not paid, the civil penalty imposed under the provisions of this ordinance shall be collectible, together with any interest and penalties thereon, by civil suit pursuant to procedures established by the City of Akron for the collection of debts.

F. Administrative Appeal. A notice of appeal shall be filed within twenty-one days from the date listed on the "notice of liability" with the Hearing Officer appointed by the Mayor of the City of Akron. The failure to give notice of appeal or pay the civil penalty within this time period shall constitute a waiver of the right to contest the citation and will be considered an admission of a violation of this section. Administrative appeals shall be heard through an administrative process established by the City of Akron. A decision in favor of the City of Akron may be enforced by means of a civil action or any other means provided by the Ohio Revised Code. (Ord. 461-2005)

[<< previous](#) | [next >>](#)

# PART FOUR — TRAFFIC CODE

## Title III — Streets And Traffic Control Devices

### Chapter 413 — Traffic Control Devices

Complete to June 30, 2006

#### **413.031 Use of Automated Cameras to Impose Civil Penalties upon Red Light and Speeding Violators**

(a) *Civil enforcement system established.* The City of Cleveland hereby adopts a civil enforcement system for red light and speeding offenders photographed by means of an “automated traffic enforcement camera system” as defined in division (m). This civil enforcement system imposes monetary liability on the owner of a vehicle for failure of an operator to stop at a traffic signal displaying a steady red light indication or for the failure of an operator to comply with a speed limitation.

(b) *Red light offense – liability imposed.* The owner of a vehicle shall be liable for the penalty imposed under this section if the vehicle crosses a marked stop line or the intersection plane at a system location when the traffic signal for that vehicle's direction is emitting a steady red light.

(c) *Speeding offense – liability imposed.* The owner of a vehicle shall be liable for the penalty imposed under this section if the vehicle is operated at a speed in excess of the limitations set forth in Section 433.03.

(d) *Liability does not constitute a conviction.* The imposition of liability under this section shall not be deemed a conviction for any purpose and shall not be made part of the operating record of any person on whom the liability is imposed.

(e) *Other offenses and penalties not abrogated.* Nothing in this section shall be construed as altering or limiting Sections 433.03 or 413.03 of these Codified Ordinances, the criminal penalties imposed by those sections, or the ability of a police officer to enforce those sections against any offender observed by the officer violating either of those sections. Nothing in this section shall be construed to limit the liability of an operator of a vehicle for any violation of division (b) or (c) of this section.

(f) *Selection of camera sites.* The selection of the sites where automated cameras are placed and the enforcement of this ordinance shall be made on the basis of sound professional traffic engineering and law enforcement judgments. Automated cameras shall not be placed at any site where the speed restrictions or the timing of the traffic signal fail to conform to sound professional traffic engineering principles.

(g) *Locations.* The following are the locations for the Automated Traffic Enforcement Camera System:

Locations

Shaker Boulevard at Shaker Square

Chester Avenue at Euclid Avenue

West Boulevard at North Marginal Road

Shaker Boulevard at East 116th Street

West Boulevard at I-90 Ramp

Chester Avenue at East 71st Street

East 55th Street at Carnegie Avenue

East 131st Street at Harvard Avenue

Carnegie Avenue at East 30th Street

Cedar Avenue at Murray Hill Road

Grayton Road at I-480 Ramp

Euclid Avenue at Mayfield Road

Warren Road at I-90 Ramp

Prospect Avenue at East 40th Street

East 116th Street at Union Avenue

Pearl Road at Biddulph Road

Carnegie Avenue at East 100th Street

Carnegie Avenue at Martin Luther King Jr. Drive

Memphis Avenue at Fulton Road

Lakeshore Boulevard at East 159th Street

St. Clair Avenue at London Road

Clifton Boulevard between West 110th Street and West 104th Street

Chester Avenue between East 55th Street and East 40th Street

Woodland Avenue between East 66th Street and East 71st Street

West Boulevard between I-90 Ramp and Madison Avenue

Broadway between Harvard Avenue and Miles Avenue

Lee Road between Tarkington Avenue and I-480 Ramp

I-90 and West 41st Street

I-90 and West 44th Street

The Director of Public Safety shall cause the general public to be notified by means of a press release issued at least thirty days before any given camera is made fully-operational and is used to issue tickets to offenders. Before a given camera issues actual tickets, there shall be a period of at least two weeks, which may run concurrently with the 30-day public-notice period, during which only "warning" notices shall be issued.

At each site of a red light or fixed speed camera, the Director of Public Service shall cause signs to be posted to apprise ordinarily observant motorists that they are approaching an area where an automated camera is monitoring for red light or speed violators. Mobile speed units shall be plainly marked vehicles.

(h) *Notices of liability.* Any ticket for an automated red light or speeding system violation under this section shall:

- (1) Be reviewed by a Cleveland police officer;
- (2) Be forwarded by first-class mail or personal service to the vehicle's registered owner's address as given on the state's motor vehicle registration, and
- (3) Clearly state the manner in which the violation may be appealed.

(1) *Penalties.* Any violation of division (b) or division (c) of this section shall be deemed a noncriminal violation for which a civil penalty shall be assessed and for which no points authorized by Section 4507.021 of the Revised Code ("Point system for license suspension") shall be assigned to the owner or driver of the vehicle.

(j) *Ticket evaluation, public service, and appeals.* The program shall include a fair and sound ticket-evaluation process that includes review by the vendor and a police officer, a strong customer-service commitment, and an appeals process that accords due process to the ticket respondent and that conforms to the requirements of the Ohio Revised Code.

(k) *Appeals.* A notice of appeal shall be filed with the Hearing Officer within twenty-one (21) days from the date listed on the ticket. The failure to give notice of appeal or pay the civil penalty within this time period shall constitute a waiver of the right to contest the ticket and shall be considered an admission.

Appeals shall be heard by the Parking Violations Bureau through an administrative process established by the Clerk of the Cleveland Municipal Court. At hearings, the strict rules of evidence applicable to courts of law shall not apply. The contents of the ticket shall constitute a prima facie evidence of the facts it contains. Liability may be found by the hearing examiner based upon a preponderance of the evidence. If a finding of liability is appealed, the record of the case shall include the order of the Parking Violations Bureau, the Ticket, other evidence submitted by the respondent or the City of Cleveland, and a transcript or record of the hearing, in a written or electronic form acceptable to the court to which the case is appealed.

Liability shall not be found where the evidence shows that the automated camera captured an event is not an offense, including each of the following events and such others as may be established by rules and regulations issued by the Director of Public Safety under the authority of division (n) of this section:

- 1) The motorist stops in time to avoid violating a red light indication;
- 2) The motorist proceeds through a red light indication as part of funeral procession;
- 3) The motorist is operating a City-owned emergency vehicle with its emergency lights activated and proceeds through a red light indication or exceeds the posted speed limitation;
- 4) The motorist is directed by a police officer on the scene contrary to the traffic signal indication.

Liability shall also be excused if a vehicle is observed committing an offense where the vehicle was stolen prior to the offense and the owner has filed a police report;

The Director of Public Safety, in coordination with the Parking Violations Bureau, shall establish a process by which a vehicle owner who was not the driver at the time of the alleged offense may, by affidavit, name the person who the owner believes was driving the vehicle at the time. Upon receipt of such an affidavit timely submitted to the Parking Violations Bureau, the Bureau shall suspend further action against the owner of the vehicle and instead direct notices and collection efforts to the person identified in the affidavit. If the person named in the affidavit, when notified, denies being the driver or denies liability, then the Parking Violations Bureau shall resume the notice and collection process against the vehicle owner, the same as if no affidavit had been submitted, and if the violation is found to have been committed by a preponderance of evidence, the owner shall be liable for any penalties imposed for the offense.

A decision in favor of the City of Cleveland may be enforced by means of a civil action or any other means provided by the Revised Code.

(1) *Evidence of ownership.* It is prima facie evidence that the person registered as the owner of the vehicle with the Ohio Bureau of Motor Vehicles, or with any other State vehicle registration office, was operating the vehicle at the time of the offenses set out in divisions (b) and (c) of this section.

(m) *Program oversight.* The Director of Public Safety shall oversee the program authorized by this Section. The Director of Public Service shall oversee the installation and maintenance of all automated cameras. An encroachment permit shall be authorized in the legislation in which locations are selected.

(n) *Rules and Regulations.* The Director of Public Safety may issue rules and regulations to carry out the provisions of these sections, which shall be effective thirty (30) days after publication in the City Record.

(o) *Establishment of Penalty.* The penalty imposed for a violation of division (b) or (c) of this section shall be follows:

413.031(b) All violations \$100.00 413.031(c) Up to 24 mph over  
the speed limit \$100.00 25 mph or more over  
the speed limit \$200.00 Any violation of a school  
or construction zone  
speed limit \$200.00

#### *Late penalties*

For both offenses, if the penalty is not paid within 20 days from the date of mailing of the ticket to the offender, an additional \$20.00 shall be imposed, and if not paid with 40 days from that date, another \$40.00 shall be imposed, for a total additional penalty in such a case of \$60.00.

(p) *Definitions.* As used in this section:

(1) "Automated traffic enforcement camera system" means an electronic system consisting of a photographic, video, or electronic camera and a vehicle sensor installed to work alone or in conjunction with an official traffic controller and to automatically produce photographs, video, or digital images of each vehicle violating divisions (b) or (c).

(2) "System location" is the approach to an intersection or a street toward which a photographic, video or electronic camera is directed and is in operation. It is the location where the automated camera system is installed to monitor offenses under this section.

(3) "Vehicle owner" is the person or entity identified by the Ohio Bureau of Motor Vehicles, or registered with any other State vehicle registration office, as the registered owner of a vehicle.  
(Ord. No. 1284-05. Passed 7-13-05, eff. 7-20-05)