IN THE SUPREME COURT OF OHIO

KELLY MENDENHALL, et al.,	:	CASE NO. 06-2265
	:	
Petitioners	:	On Question Certified by
	:	the United States District
v.	:	Court for the Northern
	:	District of Ohio, Case
THE CITY OF AKRON	:	Numbers 5:06 CV 0139
	:	and 5:06 CV 0154
Respondent	:	

BRIEF OF AMICI CURIAE THE OHIO MUNICIPAL LEAGUE AND THE CITY OF DAYTON ON BEHALF OF THE RESPONDENT THE CITY OF AKRON

STEPHEN L. BYRON (0055657)(COUNSEL OF RECORD)
Interstate Square Bldg. I
4230 State Route 306
Willoughby, Ohio 44094
(440) 951-2303
Fax No. (440) 953-1427
sbyronlaw@aol.com

JOHN E. GOTHERMAN (0000504)
Ohio Municipal League
175 S. Third Street, #510
Columbus, Ohio 43215-7100
(614) 221-4349
Fax: (614) 221-4390
jgotherman@columbus.rr.com

COUNSEL FOR AMICUS CURIAE
THE OHIO MUNICIPAL LEAGUE

PATRICK J. BONFIELD #0015796
Director of Law
JOHN C. MUSTO #0071512
Assistant City Attorney
101 West Third Street
Dayton, Ohio 45402
(937) 333-4100
Fax: (937) 333-3628

ATTORNEYS FOR AMICUS CURIAE
THE CITY OF DAYTON

STEPHEN A. FALLIS, #0021568
MICHAEL J. DEFIBAUGH, #0072683
City of Akron, Department of Law
161 S. High Street
202 Ocasek Building
Akron, OH 44308
(330) 375-2030
Fax No. (330) 375-2041
fallist@ci.akron.oh.us
defibmi@ci.akron.oh.us

COUNSEL FOR RESPONDENT
THE CITY OF AKRON

RICHARD S. GURBST, #0017672
HEATHER L. TONSING, #0069606
DONALD W. HERBE, #0076505
Squire, Sanders, and Dempsey
4900 Key Tower
127 Public Square
Cleveland, OH 44114
(216) 479-8500
Fax (216) 479-8777
rgurbst@ssd.com
htonsing@ssd.com
dherbe@ssd.com

COUNSEL FOR RESPONDENT
NESTOR TRAFFIC SYSTEMS

JACQUENETTE S. CORGAN, #0072778
WARNER MENDENHALL, #0070165
Law Offices of Warner Mendenhall, Inc.
190 N. Union St., Ste. 201
Akron, OH 44304
(330) 535-9160
Fax No. (330) 762-9743
j.corgan@justice.com
warnermendenhall@hotmail.com

COUNSEL FOR PETITIONER
KELLY MENDENHALL

ANTONI DALAYANIS, #0068595
Attorney at Law
12 East Exchange St.
Exchange Building, 5th Floor
Akron, OH 44308
(330) 315-1060
Fax (800) 787-4089
lawyer@bright.net

COUNSEL FOR PETITIONERS
JANICE SIPE, JOANNE L. LATTUR
AND WAYNE H. BURGER

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INTRODUCTION

Amici curiae the Ohio Municipal League and the City of Dayton respectfully ask this court to answer the certified question in the affirmative: "*** a municipality **has** the power under home rule to enact civil penalties for the offense of violating a traffic signal light or for the offense of speeding, both of which are criminal offenses." Certified Question, *Order of Certification* entered by Judge David D. Dowd, Jr. of the United States District Court, Northern District of Ohio, Eastern Division, in *Mendenhall v. City of Akron*, Case No. 5:06 CV 0139 and *Sipe v. Nestor Traffic Systems, Inc*, Case No. 5:06 CV 0154 ("Appendix i," at page 5). The exercise of such a power does not conflict with any state law, and is authorized pursuant to Article XVIII, Section 3 of the Ohio Constitution.

In Akron, the death of a child who was hit and killed by a speeding car in a school zone provided the impetus for the city to utilize speed cameras and civil penalties for owners of vehicles, to enhance the laws which make speeding in a school zone a crime. Municipal police departments simply cannot put officers at every school zone, cross walk or other high traffic area where a speeding vehicle may literally be a matter of life and death. If an automated traffic enforcement system works to reduce accidents when properly implemented, school children and other pedestrians, drivers and passengers will all be safer.

These amici believe that concerns related to the implementation of a civil penalty system for traffic enforcement are not properly presented by this case, which is before this court only upon a certified question of law.

STATEMENT OF AMICUS INTEREST

The Ohio Municipal League (the "League") is a non-profit Ohio Corporation composed of a membership of more than 750 Ohio cities and villages. The League was formed in 1952 by city and village officials who saw the need for a statewide association to serve the interests of Ohio municipal government. The purpose of this organization is the improvement of municipal government and administration and the promotion of the general welfare of the residents of the cities and villages of Ohio.

The City of Dayton is a member of the League and seeks to continue to utilize the available technology, which has provided a greater measure of safety to the users of its municipal streets and highways. When Dayton chose to implement an automated traffic control photographic system, it selected intersections for enforcement based on the number of red light violation accidents. The City started with cameras at 6 intersections and eventually increased to eight intersections. In the 22 months prior to installing the red light cameras at the first six intersections, there were 47 accidents involving red light violations at those intersections. In the 22 months following the camera installation at those six

intersections, the number dropped by 45% to 26 accidents involving red light violations. The program has worked exactly as planned.

To the extent speed or running a red light plays a factor in traffic accidents in Ohio, Ohio's municipalities have an incontestable interest in taking steps which are proven to help reduce such occurrences, to advance the health, safety and welfare of the community. Municipal safety forces are first responders to traffic accidents. Having to witness violations, investigate and file reports regarding traffic accidents, and prosecute traffic offenders in criminal proceedings directly impacts the availability of police officers for other law enforcement activities.

Anyone who has been delayed by a traffic accident during rush hour knows of the economic and non-economic impacts such events can have on persons who were not even directly involved in the accident. Those who chose to travel at a speed which is unsafe for conditions, or run red lights, frequently export the consequences of their risk-taking to others. Fatal traffic accidents too frequently deprive friends and families of innocent loved ones. All too often, such a tragedy occurs because a driver chose to travel at a speed which was unsafe for conditions and exported the consequences of such behavior on other motorists and their passengers.

If the proper use of a speed camera or a red light camera, and the attendant civil penalty on the owner of the car, can help to reduce the number of automobile accidents which occur in this state, municipalities should have the ability to utilize such a tool to

accomplish the legitimate goal of preserving the health, safety and welfare of the community and its people.

STATEMENT OF THE CASE

The Ohio Municipal League hereby adopts the statement of the case as stipulated by the parties and contained in the *Order of Certification* entered by Judge David D. Dowd, Jr. of the United States District Court, Northern District of Ohio, Eastern Division, in *Mendenhall v. City of Akron*, Case No. 5:06 CV 0139 and *Sipe v. Nestor Traffic Systems, Inc*, Case No. 5:06 CV 0154 ("Appendix i").

LAW AND ARGUMENT

Proposition of Law: Ohio municipalities, pursuant to Article XVIII, Section 3 of the Ohio Constitution, have the authority to enact civil penalties to be imposed upon an owner of a vehicle which has been used in violation of a traffic law.

Constitutional Authority

All parties agree that the genesis of municipal authority in Ohio is found at Article XVIII, Section 3 of the Ohio Constitution, which states: "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."

Pursuant to this provision, the local police power of a municipality is self executing; municipalities acquire their power from the constitution directly and no statutory

authorization is required. *Perrysburg v. Ridgeway* (1923), 108 Ohio St. 245, 140 N.E. 595, paragraphs 1 and 3 of the syllabus. Conversely, municipal legislative authority which is granted by the constitution cannot be extinguished by an act of the legislature. *American Financial Services Association v. Cleveland.* 112 Ohio St.3d 170, 2006-Ohio-6043, 858 N.E.2d 776, at ¶31 ("As discussed in *Fondessy Ents., Inc. v. Oregon* (1986), 23 Ohio St.3d 213, 216, 23 OBR 372, 492 N.E.2d 797, the constitutional authority of municipalities to enact local police regulations emanates from the Constitution and 'cannot be extinguished by a legislative provision.'")

The well established legal test for determining whether a local police power impermissibly conflicts with a general law of the state was established in paragraph 2 of the syllabus of *Village of Struthers v. Sokol* (1923), 108 Ohio St. 263, 140 N.E. 519: "In determining whether an ordinance is in 'conflict' with general laws, the test is whether the ordinance permits or licenses that which the statute forbids and prohibits, and vice versa."

The test of "conflict," as opposed to "preemption," has been the proper test under Article XVIII, Section 3, of the Ohio Constitution for 90 years. *City of Cincinnati v. Baskin*, 112 Ohio St.3d 279, 2006-Ohio-6422, 859 N.E.2d 514; *American Financial Services Association v. City of Cleveland* , 112 Ohio St.3d 170, 2006-Ohio-6043, 858 N.E.2d 776; *City of Canton v. State*, 95 Ohio St.3d 149, 2002-Ohio-2005, 766 N.E.2d 693; *Linndale v. State*, 85 Ohio St.3d 52, 1999-Ohio-434, 706 N.E.2d 1227; *Middleburg Heights v. Ohio Bd. of Bldg. Standards* (1992), 65 Ohio St.3d 510, 1992 Ohio 11; 605

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When courts review a municipal ordinance to determine if it conflicts with state law, the analysis is done in three steps: 1) Does the ordinance address a matter of local self government, or does it exercise a police power; 2) Is the statute a "general law"; and, 3) Does the ordinance conflict with the state statute?

Language which would have expressly authorized the General Assembly to preempt municipal legislative authority was **rejected** by the Ohio Constitutional Convention. The first draft of Article XVIII, Section 3 provided:

> Municipalities shall have the power to enact and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws, affecting the welfare of the state, as a whole, and no such regulations shall by reason of requirements therein, in addition to those fixed by law, be deemed in conflict therewith **unless the general assembly, by general law, affecting the welfare of the state as a whole, shall specifically deny all municipalities the right to act thereon.**
>
> *Journal of the Constitutional Convention*, at page 482 (Emphasis added.).

The language authorizing express preemption by the legislature was introduced at the beginning of the debate, and did not survive to the end. In the end, the supporters of municipal home rule prevailed and the convention voted **against** allowing the state to retain

the express power of preemption. *Journal of the Constitutional Convention*, at page 533. The language allowing the legislature to expressly preempt municipal legislative authority was **removed**, and municipalities were ultimately granted " **All** powers of local self government***" and "local police" power, subject only to the prohibition that local law not "conflict" with "general laws" of the state. This constitutional history makes Ohio unique in the realm of state/municipal relations, and Ohio jurisprudence is not well served by surveying other state's laws to determine whether that state's law can preempt local legislation.

It must also be noted, for the purposes of this case, a municipal ordinance is entitled to "a strong presumption" that it is constitutional:

> [¶16] The ability to invalidate legislation is a power to be exercised only with great caution and in the clearest of cases. That power, therefore, is circumscribed by the rule that laws are entitled to a strong presumption of constitutionality and that a party challenging the constitutionality of a law bears the burden of proving that the law is unconstitutional **beyond a reasonable doubt**. *State ex rel. Dickman v. Defenbacher*(1955), 164 Ohio St. 142, 57 O.O. 134, 128 N.E.2d 59, paragraph one of the syllabus.

Yajnik v. Akron, 101 Ohio St.3d 106, 2004 Ohio 357, 802 N.E.2d 632 at paragraph 16. (Emphasis added.)

Stated differently, if the validity of the legislation is "fairly debatable," the legislative judgment exercised in its enactment must be sustained. *Hudson v. Albrecht, Inc.* (1984), 9 Ohio St.3d 69, 71, 9 OBR 273, 458 N.E.2d 852.

Petitioners' Flawed Arguments

Both petitioners start with false premises, then argue from their premises to erroneous conclusions. No petitioner or amicus identifies an actual "conflict," as that term is defined in *Struthers*, *supra*, whereby something which is expressly permitted under state law is being prohibited by the municipal regulation, or vice versa. Municipalities have the authority to supplement the criminal law with civil penalties intended to achieve the goal of safer driving, and operating a vehicle in violation of state law serves as the predicate for owner civil liability. Akron only imposes a civil penalty upon the owner if the vehicle has been operated in violation of the limits Akron Municipal Code §79.01(C)(1). An owner of the vehicle is free to argue that no violation of law occurred at a civil hearing, authorized pursuant to §79.01(F) of the Akron Codified Ordinances, and ultimately seek review by the courts pursuant to R.C. Chapter 2506 .

The parties and their amici all rely on *Cleveland v. Betts* (1958), 168 Ohio 386, 154 N.E.2d 917, in support of their argument that the municipal ordinance conflicts with state law. The *Betts* case is easily distinguishable, however, as the person who allegedly committed the offense of carrying a concealed weapon was charged with a misdemeanor rather than a felony. As felony charges afforded certain procedural protections to the accused (e.g. an indictment prior to trial), this court concluded that a municipality lacked the ability to convert a felony (as determined by the state legislature) into a misdemeanor. By contrast, the person subjected to civil liability by the City of Akron is not being charged

with any crime at all. Rather, the owner of the vehicle is being held responsible for the safe operation of the vehicle and the criminal liability of the driver is in no way affected by the civil enforcement process.

Petitioner Mendenhall has argued that the City of Akron has "decriminalized" speeding, and has thereby conflicted with state law. See, *Brief of Petitioner Kelly Mendenhall* at page 6 ("*** Akron *** and other cities unconstitutionally exceed their home rule power when they seek to convert traffic offenses that the General Assembly has designated as criminal offenses into civil offenses.") This is simply not an accurate description of what Akron and the other municipalities are doing.

Section 73.20 of the Akron Codified Ordinances provides language which is nearly identical to R.C. 4511.21, and which establishes a criminal penalty for a driver of a vehicle who operates the vehicle at a speed unreasonable for conditions or in excess of certain posted speed limits. ("Appendix ii") It is a moving violation if a driver of a vehicle fails to comply with R.C. 4511.21, or Section 73.20 of the Akron Codified Ordinances, and the driver is subject to being fined, jailed and having his or her license suspended.

This is an entirely separate concept from the civil liability of an owner of a vehicle which is operated at a speed in excess of the posted speed limit. No criminal penalty is imposed, no jail time is possible as a punishment and no points are assessed to anyone's drivers license. Rather, a civil penalty is imposed (with certain exceptions) on the

registered owner of the vehicle. Such a program imposes an obligation upon the owner of a vehicle to ensure that the vehicle is operated in a manner which complies with posted speed limits and, in the case of red light cameras, in conformance with traffic control devices.

Petitioners Sipe, et al., argue that Ohio law permits speeds in excess of the posted prima facie lawful speed limit. This is not an entirely accurate description of the law, as a speed in excess of the posted limit is prima facie evidence of a violation of law, and the driver of the vehicle would bear the burden of proving that the speed was reasonable for the conditions in order to avoid a conviction under R.C. 4511.21(C). As noted above, however, a violation of traffic law serves as a predicate for civil liability. If an owner wishes to argue that no violation of the law occurred, and therefore no civil penalty should be assessed, the municipal ordinance has a procedure for the owner to raise such an issue which can be reviewed by a court of law.

Amici curiae Michael McNamara, et al., in addition to making similar flawed legal arguments as the petitioners, argue that the cities lack the authority to create a civil penalty system under Article XVIII, Section 3 of the Ohio Constitution and are dependent upon the legislature to confer such authority. *Brief of Amicus Curiae of Michael McNamara* (etc.) at page 7 ("If the General Assembly wished to bestow this power to decriminalize speeders upon Respondent and other municipalities, it would have set this forth via statutory language akin to that used as to parking violations.") As noted above, no

"decriminalization" has occurred, but the assertion that a municipality receives any of its police power from the Ohio Legislature reflects a profound misunderstanding of the history of Article XVIII, Section 3 and the case law interpreting it. Such an argument is contrary to the holding *Perrysburg v. Ridgeway*, *supra*, at paragraph 3 of the syllabus, which has been established law since 1923. ("The above constitutional grant of power to municipalities is 'self-executing,' in the sense that no legislative action is necessary in order to make it available to the municipality.")

The McNamara amici also assert that municipalities are interfering with the drivers license laws of the state and that "The removal of moving violations from the Akron Municipal Court and the vesting of jurisdiction over these matters before a Hearing Officer of the Mayor's designation is a matter of the usurpation of the general law." *Brief of Amicus Curiae of Michael McNamara* (etc.) at page 10. Both of these assertions are without merit, for the reason mentioned above: the criminal behavior of the driver is not affected by the civil liability legislation.

In sum: neither the petitioners nor their amici have borne their burden of proving beyond a reasonable doubt or beyond fair debate that Akron's law conflicts with a general law of the state.

Due Process

Although not properly a part of this case (which is before this court on a certified question) petitioners seem to raise certain due process concerns. Under Akron's

ordinance, criminal traffic law enforcement is proposed to be supplemented with a civil penalty system. By imposing a civil penalty on the owner of a vehicle which has been operated at a speed in excess of the posted speed limit of a school zone, the City of Akron seeks to increase the safety of drivers, passengers and (most importantly in a school zone) little pedestrians.

Owners of vehicles have the legal right to direct those who would operate their vehicles to do so in a safe manner. The regulation is rationally related to the intended objective, which is to reduce speeding in school zones. This objective is consistent with the United States Department of Transportation's *Speed Management Strategic Initiative* ("Appendix iii"). As noted above, municipal ordinances are entitled to a strong presumption of constitutionality and the petitioners have failed to meet their burden to invalidate the Akron ordinance.

There is a rational basis for the Akron ordinance, which comports with due process requirements. If a vehicle travels at a speed in excess of the posted limit, or (in the case of a red light camera) enters an intersection on a red light, the owner of the vehicle is given a notice and opportunity to be heard before the civil penalty is imposed - and may argue that no traffic law was broken. This system is rationally calculated to encourage safer driving either by the owner of the vehicle or persons authorized by the owner to drive the vehicle. If the owner is responsible for the unsafe driving, the civil penalty directly punishes the unsafe driving. If a driver of the vehicle who is not the owner subjects the

owner to civil liability, two results can be reasonably anticipated: 1) the owner will be advised of the behavior of the driver; and 2) the owner is in a position to make an informed decision whether or not the driver should continue to be permitted to operate the vehicle, under what conditions that should be allowed, etc. Another possible result is that an owner can seek restitution from the driver of the vehicle, which would punish unsafe driving. In either event, whether the owner of the vehicle is driving or not, the imposition of a civil penalty upon the owner of the vehicle for the vehicle traveling at a speed in excess of a posted limit or driving into an intersection against a red light is rationally related to promoting safer driving on municipal roadways.

The Specter of Improper Revenue Generation

The Ohio Municipal League and the City of Dayton (collectively: the "amici") commend to this court's attention the U.S. Department of Transportation's *Speed Management Strategic Initiative*, (U.S. DOT Speed Management Team, June, 2005), appended hereto as "Appendix iii,"which briefly describes the relationship between speeds and accidents, provides scientific support for its conclusions and makes recommendations related thereto.

If this court accepts that speeds in excess of posted speed limits can increase both the likelihood and severity of traffic accidents, it should also recognize that the mechanical enforcement of speed limits, combined with a civil penalty procedure, is one part of a broader effort to increase the public's awareness of the importance of adhering to speed

limits, and providing an economic incentive to do so. *Id.*, at page 6 ("Enforcement is crucial to achieving compliance with speed limits. Even if most drivers believe that the speed limits are appropriate and reasonable, and they comply within a small tolerance, enforcement is still necessary to ensure the conformity of drivers who will obey laws only if they perceive a credible threat of apprehension and punishment for noncompliance.") The U.S. Department of Transportation's *Speed Management Strategic Initiative* also has as an objective to "Identify and promote effective speed enforcement activities" and one of the strategies listed is to "Promote the appropriate use of automated speed enforcement." *Id.*, at page 11 ("Automated enforcement has been shown to be effective in high crash locations, particularly on high-volume roadways and locations where it is unsafe to conduct traditional enforcement operations. Public support of automated speed enforcement programs is dependent on it being used where there is a crash problem, perceived as fair and not used as a revenue raising strategy.")

Thus, the federal authorities who have studied the issue have concluded that automated enforcement can be an appropriate tool to assist a community in making its traffic safer. The courts ought not deprive local government of an effective safety tool, based upon the preferred policy choices of certain litigants.

Some of the parties and amici challenging the Akron regulations argue that municipalities will initiate civil penalty systems merely to raise revenues. (See, e.g. *Amicus Brief of Dan Moadus*, at page 3.) The U.S. Department of Transportation, in its

Speed Management Strategic Initiative, also identifies the need for automated speed enforcement systems be implemented to "prohibit revenue generation beyond reasonable operational cost" so that such system not be used "as a revenue raising strategy." *Speed Management Strategic Initiative, supra*, at page 11.

While these amici recognize that "revenue generation" is a poor motivation to implement automated traffic enforcement, it is respectfully suggested that this case does not present the appropriate legal vehicle to address this concern. Automated traffic enforcement, if properly implemented, can advance the health safety and welfare of motorists and pedestrians. *Id.* To the extent a community does not properly implement such a program, or does so in a manner which does not actually advance the health, safety and welfare of the community, such a program should be challenged as it is applied.

This case, however, should not be used to prevent what is recognized by the United States Department of Transportation as a legitimate tool to control speeds of vehicles, and thereby protect people. *Id.* The possibility of a system being misused ought not result in this court making the policy choice that automatic traffic enforcement can never be used, particularly since the Ohio Constitution does not mandate such a policy choice.

This court should also take note that some communities have been reputed to utilize traditional traffic enforcement, via the issuance of a citation by a police officer, as a method of generating revenue. The fact that a community may use law enforcement for the purpose of raising revenues for its general fund, does not eliminate the need for traffic

laws, nor does it give the Ohio legislature the right to pass unconstitutional laws to curb such abuse. *Linndale v. State*, 85 Ohio St.3d 52, 1999-Ohio-434, 706 N.E.2d 1227. The risk of abuse should be addressed on a case by case basis; it ought not prevent the use of a legitimate tool for traffic control which advances the health, safety and welfare of a community, as proven in both Akron and Dayton.

CONCLUSION

For the foregoing reasons the amici respectfully urge this court to answer the certified question in the affirmative. The Ohio Constitution permits municipalities to protect the health, safety and welfare by enacting regulations to impose civil penalties upon the owner of a vehicle for what could be, if a vehicle's driver were cited and prosecuted under a criminal code section, a violation of state traffic law. Such a system rationally advances a legitimate governmental interest by providing an incentive to the vehicle's owner to ensure the vehicle is operated safely. In no way does such a system conflict with state traffic laws, but it supplements an existing set of regulations and (if implemented properly) can help to save lives and otherwise reduce the costs which result from traffic accidents.

Respectfully submitted,

STEPHEN L. BYRON (0055657)
Counsel for Amicus Curiae
The Ohio Municipal League

CERTIFICATE OF SERVICE

A copy of the within Brief of Amici Curiae the Ohio Municipal League and the City of Dayton On Behalf of the Respondent the City of Akron, has been mailed regular U.S. mail on the 17th day of April, 2007 to:

Stephen A. Fallis
Michael J. Defibaugh
City of Akron, Department of Law
161 S. High Street
202 Ocasek Building
Akron, OH 44308

Richard S. Gurbst
Heather L. Tonsing
Donald W. Herbe
Squire, Sanders, and Dempsey
4900 Key Tower
127 Public Square
Cleveland, OH 44114

Jacquenette S. Corgan
Warner Mendenhall
Law Offices of Warner Mendenhall, Inc.
190 N. Union St., Ste. 201
Akron, OH 44304

Antoni Dalayanis
Attorney at Law
12 East Exchange St.
Exchange Building, 5th Floor
Akron, OH 44308

STEPHEN L. BYRON (0055657)
Counsel for Amicus Curiae
Ohio Municipal League

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

06-2265

Kelly Mendenhall, Plaintiff, v. The City of Akron, et al., Defendants.	CASE NO. 5:06 CV 0139 (Case 1)
Janice A. Sipe, et al., Plaintiffs, v. Nestor Traffic Systems, Inc., et al., Defendant(s).	CASE NO. 5:06 CV 0154 (Case 2)

ORDER OF CERTIFICATION

Pursuant to Ohio Supreme Court Rule of Practice XVIII, the undersigned District Judge of the United States District Court for the Northern District of Ohio, Eastern Division, hereby certifies a question of state law to the Ohio Supreme Court.

No controlling precedent of the Ohio Supreme Court answers this question, which is potentially dispositive of the two above-captioned cases.

Pursuant to Rule XVIII, § 2(A), the names of the cases are stated in the caption above.

Pursuant to Rule XVIII, § 2(B), the nature of the cases, the circumstances from which the question of law arises, the question of law to be answered, and any other information the certifying court considers relevant to the question of law to be answered are:

(5:06 CV 0139; 5:06 CV 0154)

Nature of the Cases

These two cases are attacks by the plaintiffs on Akron Ordinance 481-2005, codified at Akron Municipal Code § 79.01, which authorizes implementation of an automated mobile speed enforcement system (using cameras in mobile units to identify violators) and assesses civil penalties for speeding violations in school zones.

Both suits are against the City of Akron and Nestor Traffic Systems, Inc. (a Rhode Island Corporation which has contracted to provide equipment, personnel, and services in connection with the installation, operation and maintenance of the system) by individuals on behalf of themselves and purported classes of similarly situated individuals who have all been assessed civil penalties under this system because vehicles registered in their names have allegedly exceeded the speed limit in school zones, as detected by the cameras. Plaintiffs assert that the City Ordinance converts speeding from a criminal to a civil violation akin to a parking ticket, thereby depriving citizens of the protections afforded in criminal proceedings.

Circumstances From Which the Question of Law Arises

In a Memorandum Opinion filed on May 17, 2006, the undersigned ruled in these two cases that the City of Akron has the power under Home Rule to adopt legislation calling for civil penalties for speeding violations detected by the Automated Mobile Speed Enforcement System because the challenged ordinance "neither permits or licenses that which the laws of the Ohio General Assembly either forbid or prohibit and vice versa." The undersigned concluded that

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"Akron City Ordinance 461-2005 is a proper exercise of the powers bestowed on the City of Akron by Article XVIII, Section 3 of the Ohio Constitution." [1]

The undersigned has now been made aware of a contrary opinion by at least one Ohio court which has held that a similar municipal ordinance violates the Ohio Constitution. In Daniel Moadus, Jr., et al. v. City of Girard, et al., Case No. 05-CV-1927, the Court of Common Pleas of Trumbull County held that Girard Ordinance No. 7404-05, which created a civil enforcement system for speeding violations within the City utilizing a camera and radar device, violated Article XVIII, Section 3 of the Ohio Constitution because it "transform[ed] what the State has defined as criminal conduct into merely a civil wrong." In so ruling, the Court of Common Pleas expressly rejected the undersigned's prior ruling, which relied on Gardner v. City of Columbus, 841 F.2d 1272 (6th Cir. 1988) (a case involving civil penalties for parking violations), that there was no Ohio Constitutional violation. The Common Pleas Judge concluded that the statutory scheme in O.R.C. Chapter 4521, upon which Gardner relied, has never been extended from parking tickets to speeding. The Court of Common Pleas ordered the City of Girard to "cease and desist in using cameras for enforcement of speeding laws unless done so under the general criminal laws of Ohio" and further ordered the City "to not attempt collection of any fines claimed by said city under the 'civil' ordinance drafted by said city."

The undersigned believes that a related original action in mandamus has been filed. See State of Ohio ex rel. Michael A. Bernard, Girard Municipal Court Judge v. James J. Melfi,

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[1] This May 17 ruling was interlocutory and, as such, was not a final appealable order. The undersigned has now, by separate order, vacated that ruling believing it may have been in error. See Case 1, Doc. No. 58; Case 2, Doc. No. 44.

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Mayor of Girard, City of Girard City Council, Sam Zirafi, Girard Auditor, and John Moliterno, Girard Treasurer, Case No. 2006-2157 (filed November 21, 2006).

The undersigned does not have access to the documents filed in the mandamus action; however, since it is highly probable that the question raised herein for certification may be addressed in the mandamus action, the undersigned is of the view that it should defer to the action of the Ohio Supreme Court.

The undersigned also takes note of the fact that there are similar lawsuits in different cities which have challenged automated traffic enforcement systems and which are in various stages of their respective proceedings. See, e.g., Michael McNamara v. City of Cleveland, et al., No. 06-582364 (Cuyahoga County, filed Jan. 20, 2006); Ann Lewicki v. City of Toledo, et al., No. G-4801-CI-200604524 (Lucas County, filed July 13, 2006); April Stern v. City of Steubenville, et al., No. 05CV524 (Jefferson County, filed Nov. 23, 2005). In the Stern case, Common Pleas Judge David Henderson invalidated all speeding tickets issued under Steubenville's ordinance because the defendants had failed to comply with the mandatory notice requirements in the ordinance. The judge declined to rule on the constitutionality of the ordinance.[2]

[2] It does not appear that this ruling was ever appealed. However, a second lawsuit has been filed by the Steubenville Bakery and Louis Tripodi against the City of Steubenville challenging the constitutionality of the ordinance and claiming loss of business. See http://www.wtov9.com/ news/9418939/detail.html.

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Finally, the undersigned notes that a bill has been introduced in the Ohio legislature which would establish conditions for the use of photo-monitoring devices such as the one at issue in these two cases. See Sub. H.B. 56 (2005).

In view of all of the above, the undersigned believes that the question certified below is a matter peculiarly within the province of the State courts.

Question of Law to be Answered

Question:

Whether a municipality has the power under home rule to enact civil penalties for the offense of violating a traffic signal light or for the offense of speeding, both of which are criminal offenses under the Ohio Revised Code.

Other Information Relevant to the Question of Law to be Answered

The parties to these two actions have filed two sets of jointly stipulated facts. Since these fact stipulations shed some light on the issues, they are incorporated herein in their entirety to assist the Ohio Supreme Court.

The first twenty fact stipulations, set forth below, apply to both cases:

1. After a hit and run accident resulting in the death of a child in a school cross walk, the Akron City Council passed Ordinance 461-2005 enacting Chapter 79 "Automated Mobile Speed Enforcement System" and Section 79.01 entitled "Civil Penalties for Automated Mobile Speed Enforcement System Violations" on September 12, 2005. Said ordinance having been approved and signed by the Mayor of the City of Akron on September 19, 2005.

2. The stated purpose of the legislation was that "it is desirable to reduce the danger from vehicle operators speeding in and around school zones;" and because "frequent incidents of speeding create a substantial risk to the safety of children in

school zones and crosswalks;" and "an automated mobile speed enforcement system will assist the Akron Police Department by alleviating the need for conducting extensive conventional traffic enforcement in and around school zones."

3. The City of Akron and Nestor Traffic Systems, Inc. entered into a contract on October 6, 2005, wherein Nestor Traffic Systems, Inc. would install and assist the municipality in the administration and operation of a mobile speed violation detection system within the City of Akron.

4. The Akron ordinance provides for civil enforcement imposing monetary liability upon the owner of a vehicle for the vehicle's failure to comply with the posted speed limits in school zones and streets or highways within the City of Akron including crosswalks used by children going to or leaving school during recess and opening and closing hours.

5. The criminal justice system is not involved, the offender is not issued a criminal traffic citation by a police officer, the offender is not summoned to the traffic court in the Akron Municipal Court, nor are points assessed against the driver or owner's driving record by the Bureau of Motor Vehicles.

6. The Akron Ordinance, Section 79.01 entitled "Civil Penalties for Automated Mobile Speed Enforcement System Violations" did not change the speed limits set by the State of Ohio.

7. If a vehicle's rate of speed exceeds the posted speed limit, the owner of the vehicle is issued a "notice of liability." The notice includes photographs of the vehicle, the vehicle's license plate, the date, time, and location of the violation, the posted speed, the vehicle speed, and the amount of the civil penalty.

8. The violation is assigned a civil violation number and a notice of liability is issued to the owner of the vehicle via regular U.S. Mail. Also included is a remittance form stating the amount of the civil penalty and the address where the check or money order is to be mailed. The form also explains that the owner has three options: 1) to pay the amount due; 2) to sign an affidavit that the cited vehicle is leased or stolen; or 3) to exercise the right to an administrative appeal.

9. If the owner of the vehicle wishes to have an administrative appeal pursuant to Section 79.01(F) of the Code of Ordinances of the City of Akron, the owner is instructed to complete and mail the notice of appeal section of the violation form within 21 days of the date listed on the civil citation.

10. The photographs of the vehicle and license plate are reviewed by technicians of Nestor Traffic Systems, Inc. for purposes of clarity and to make certain the automobile in the photograph is the same as the automobile registered to that license plate.

11. The photographs of the civil violation are also reviewed by a member of the Akron Police Department for clarity and to make certain that the automobile is the same as the automobile registered to that license plate.

12. If the vehicle and the license plate do not match, the civil violation is dismissed.

13. The ordinance provides that the Mayor of the City of Akron shall appoint a hearing officer as an independent third party to hear administrative appeals through an administrative process established by the City of Akron. On December 7, 2005, the Mayor appointed Pam Williams to hear the administrative appeals.

14. Pursuant to the ordinance, failure to give notice of appeal or failure to pay the civil penalty within 21 days constitutes a waiver of the right to contest the citation and is considered an admission of a violation of the ordinance.

15. If the civil penalty is not paid, the City must institute a separate civil action to collect the debt.

16. he vehicle owner is the person or entity identified by the Ohio Bureau of Motor Vehicles as the registered owner of the vehicle and is civilly liable for the penalty imposed for excessive speed. By the terms of the Ordinance, the owner of a vehicle shall not be responsible for the civil penalty if within 21 days from the date listed on the notice of liability the owner signs an affidavit stating the name and address of the person or entity who leased the vehicle in a lease of 6 months or more, or if the owner produces a law enforcement incident report from a state or local law enforcement agency or record bureau stating that the vehicle involved was reported stolen before the time of the violation.

17. If the vehicle owner requests an administrative appeal by mailing in the request for an administrative hearing, they are notified of a hearing date before the administrative hearing officer.

18. The following explains the administrative hearing process:

- the independent hearing officer tape records the entire proceeding to preserve the record;

• an Akron Police officer is present to verify the information provided;

• the hearing officer explains the appeal process, indicating that the hearing is civil not a criminal or traffic trial and explains that there will be no traffic record or points on the driver's license, that the hearing officer's responsibility is to determine whether she can clearly identify the vehicle, license plate and to whom the license plate is issued, that she will determine whether a preponderance of the evidence establishes if a violation of Section 79.01 of the Codified Ordinances of City of Akron occurred and if the owner is liable;

• the computer generated recorded images of the vehicles, license plates of the vehicles, ownership of the vehicles, the date and speed of the vehicles are admissible in the administrative appeal process, are available for review by the appealing party, and are considered prima facie proof of the civil violation;

• any witness wishing to testify is sworn in by the hearing officer.

19. If the independent hearing officer sustains the appeal, the civil citation is dismissed and no civil penalty is assessed.

20. If the independent hearing officer denies the appeal, the civil fine is assessed.

The following agreed stipulations, Nos. 21 through 49, apply only to Case 1:

21. On November 2005, Plaintiff Kelly Mendenhall, resident of the City of Akron, Ohio, received an automated mobile speed enforcement citation for going 39 mph in a 25 mph speed zone on Copley Road in the City of Akron, Ohio near Erie Island Elementary School.

22. Plaintiff Mendenhall exercised her right to request an administrative hearing and appeared before the independent hearing officer with counsel, her husband, Attorney Warner Mendenhall.

23. Plaintiff Mendenhall's administrative appeal was sustained by the independent hearing officer based upon facts that in early November 2005, and on the date she received the civil speeding citation, the 25 mph speed sign was either vandalized or missing for east bound traffic and her civil speeding citation was dismissed. No civil penalty was assessed and the citation was dismissed.

24. On December 13, 2005, Plaintiff Mendenhall filed a complaint and class action for declaratory judgment, injunctive relieve and for a money judgment against City of Akron and all of its City Council Members in their official capacity and Nestor Traffic Systems, Inc. of Providence, Rhode Island.

25. Defendant City of Akron and Nestor Traffic Systems, Inc. removed the case to the United States District Court for the Northern District of Ohio, Eastern Division.

26. Plaintiff subsequently dismissed the City Council Members.

27. Plaintiff Mendenhall claims the Akron ordinance is invalid. She claims it is in violation of her due process rights guaranteed by the Ohio and United States Constitutions; that the Akron ordinance violates Article XVIII Section 3 of the Ohio Constitution commonly referred to as the Home Rule Amendment in that she alleges Ohio Revised Code Section 4511.07 is a general law of the laws of the State of Ohio and that the Akron ordinance is in conflict therewith; that the Akron ordinance violates public policy of the State of Ohio regarding due process by implication of a conflict with Revised Code Sections 4521.02 through 4532.08; and that the Akron ordinance forces individuals challenging citations to waive their rights under the Fifth Amendment to the United States Constitution in order to defend themselves.

28. The City of Akron is a Charter municipality pursuant to Section 7 of Article XVIII of the Ohio Constitution.

29. Nestor contracts nationwide with government entities, referred to as "customers," to provide Automatic Traffic Enforcement Services ("Services"). These Services are intended to document speeding vehicles.

30. Nestor sets up its technology in areas designated by the customer and collects data, identifying potential cars speeding. Within Nestor, the potential speeding violation is referred to as an "event."

31. Nestor has its own internal coding and computer terminology which it uses to organize its data. Though necessary to organize data for a customer, the actual terminology is not necessarily customer driven.

32. Some of Nestor's other customers, however, specifically indicate that Nestor should not process certain categories of vehicles. For instance, some customers do not want Nestor to process emergency vehicles, funeral processions, or vehicles photographed where an officer is directing traffic. Nestor's computer

language refers to these vehicles as "exempt." Thus, when an "exempt" vehicle is documented as an event, it is categorized in Nestor's computer system as a "discretionary discard" and Nestor does not process the event.

33. On October 6, 2005, Nestor and the City entered into a pilot program, a fixed term contract for the provision of Services designed to detect mobile speed violations within the City. The pilot program remained in effect through June 8, 2005.

34. Under the pilot program contract, Nestor "processed" events for the City by submitting the vehicle license plate information to the Bureau of Motor Vehicles ("BMV").

35. Some events, however, cannot be submitted to the BMV because of technical issues, for instance, the vehicle image is obstructed or blurry, the scene image is insufficiently illuminated or otherwise unclear, or there are multiple vehicles in one image. These events are "discarded."

36. After receiving the vehicle registration information from the BMV, Nestor verifies that the information is accurate by comparing the registration information against the actual photograph. If the information does not match, for instance, the event photograph depicts a 2002 Subaru Forester yet the registration information indicates that the registered vehicle is a 2003 Audi A4, Nestor will make sure that the vehicle plate information was correctly typed and will resubmit the request for information to the BMV.

37. The vehicle registration information received from the BMV is forwarded to the Akron Police Department where a police officer reviews the information and issues the citation by directing Nestor to mail the civil violation notice.

38. During the pilot program, Nestor documented 17,163 events. Some of these events were "discarded" because there was no violation, i.e. the vehicle was not speeding, Nestor was testing its system, or Nestor was unable to determine whether an actual violation occurred. The remaining 15,766 events were submitted to the BMV. Of those events, 11,740 citations were issued by the City.

39. There were 4,035 violations that were not issued citations. Nestor's internal software categorized the non-issued citations into the following three categories:

a. The first category, is termed "discretionary" by Nestor's computer system. Nestor discarded events under this category in instances where the vehicle registration information was "not in

file" with the BMV and the BMV did not return vehicle registration information to Nestor. This category was also used when Nestor was unable to obtain registration information for out-of-state vehicles. Although some states release vehicle registration information to Nestor, other states do not. There were a total of 72 "discretionary" discards: 59 were out-of-state vehicles; 11 were "not in file," which were either vehicles with a government plate, or an ambulance, fire/rescue or police cruiser; and 2 resulted from system testing. The BMV did, however, return information on one school bus, and other vehicles registered to public entities such as the University of Akron, the Akron Metropolitan Housing Authority, and the Akron Zoo. All of these public vehicles were issued citations and paid the civil violations.

b. The second category, termed "uncontrollable" by Nestor's computer system, totaled 2,288. Citations were not issued for these vehicles because of an obstruction in the photograph of the vehicle or license plate.

c. The third category, termed "controllable" by Nestor's computer system, totaled 1,666. Citations were not issued for these vehicles because of technical problems with the Nestor software, for instance, the Nestor camera was out of focus, the lighting was insufficient to secure an image, or the vehicle framing was improper, i.e. there was only a portion of the vehicle in the image.

40. The "discretionary discards" were not the result of any direction by the City of Akron. To the contrary, Lieutenant Hanley and Sergeant Garro, of the Akron Police Department, instructed Nestor to process all events without exception. The box "Current Status" uses the term "Discarded" to mean a citation was not issued. The box "Disposition Reason" uses the computer term "Exempt Vehicle." An exempt vehicle does not mean the City of Akron instructed Nestor to exclude any class of vehicle. The City's instruction was that all vehicles are to be treated the same and there were to be no exceptions. The use of the term "exempt vehicle" to describe the reason for a discretionary discard is Nestor's computer language that is used when the event was not forwarded by Nestor to the City because the Ohio BMV reported to Nestor that the vehicle was "not in file," or vehicle registration information was not available from another state, or an event was the result of system testing, or if it was a discretionary discard by the reviewing police officer as described in the example in paragraph #42 below.

41. There were no exceptions for Nestor to process all events and forward whatever information they received from the BMV to the Akron Police Department. After the first review by Nestor, the Akron Police review the BMV registration information prior to authorizing the issuance of the citation. The police review requires the exercise of discretion in certain cases. For example, see NTS 0066 – "Citation Discarded by dgarro REASON: Exempt Vehicle – 21 March 2006." In that instance, the event was processed by Nestor and the registration information was sent by the BMV indicating that the van was registered to American Medical Response, a private non-government ambulance service. Sergeant Garro, in reviewing the information and photo, could not discern whether or not the ambulance was on an emergency call and used his discretion not to issue the citation. This would be similar to a police officer in a cruiser stopping a motorist, and for good reason, using his or her discretion to issue a warning and not a citation. Although Nestor's computer language refers to the status as "Discarded" and the reason as "Exempt Vehicle" (as is done with "not in file" government vehicles) this was actually a discretionary non-citation by the reviewing police sergeant.

42. As indicated in Agreed Stipulation [39(a)], in some instances, "discretionary discards" occurred because Nestor was unable to obtain the registration information from the BMV. In fact, the BMV is prohibited by the federal Driver's Privacy Protection Act from disclosing information about certain government and police vehicles. Nestor only receives vehicle registration information from the BMV that the BMV is permitted to disclose. When Nestor submitted a request for information to the BMV for government vehicles, the BMV would return the requested information to Nestor with a notation that the vehicle registration information was "not in file." These violations were therefore termed "discretionary discards" by Nestor in the "Current Status" box and as "Exempt Vehicle" in the "Disposition Reason" box. They were discarded by Nestor and not forwarded to the Akron Police Department for review. When Nestor was told by the BMV that a vehicle was "not in file," Nestor had no registration information to forward to the City. The City was unaware of the "discretionary discards" until discovery commenced in this lawsuit.

43. Nestor processed and the City of Akron issued citations for all vehicles that were owned by rental car companies provided there was a clear picture of the vehicle and license plate, and provided the registration information was returned by the BMV. For instance, citations were issued and violations were paid by the following companies: a rental car company, "U Save It Auto Rental," located at 449 West Avenue, Tallmadge, Ohio; a car leasing company, "Car Lease, Inc.," located at 650 Holmes Ave., Akron, Ohio; a truck leasing company "Penske Truck Leasing, Co.," located at 3000 Fortuna Drive, Akron, Ohio; Enterprise

Capital (which may be Enterprise rental company); and a Ford dealership (which also may be a rental car). There were certainly other citations issued for rental vehicles but each of the 11,740 citations have not been reviewed for this disclosure. Other paid citations include the Boy Scouts of America, towing companies that contract with the City of Akron, United Disability, Waikem Motors (likely a lease), several Yellow Cabs, and the Visiting Nurse Service.

44. On August 16, 2006, Nestor and the City agreed to a letter of intent to enter into a new contract for the provision of Services. The Services will continue to focus on school zone speeding violations; Services under the new agreement began on August 30, 2006, coinciding with the commencement of the City of Akron's 2006-2007 school year.

45. Nestor and the City are in the process of finalizing the new contract, the written Policies and Procedures ("P&P"), and implementing the Services for the new contract. Under the new agreement, there are no exempt vehicles.

46. Under the pilot program contract, from October 28, 2005 through December 12, 2005, the amount of the civil violation was originally $150.00 for vehicles exceeding the posted speed within 15 miles per hour, and $250.00 for vehicles exceeding the posted speed by 15 or more miles per hour. On December 12, 2005, the civil violation for the pilot program was changed to $35.00. The vehicle owners that were cited and paid prior to December 12, 2005 at the higher amounts each received a refund of all amounts paid in excess of $35.00.

47. Under the pilot program contract, the City deposited $418,960.02 in civil violations (having subtracted $1,860 in NSF checks). From that amount, the City refunded $122,872 to violators, and paid Nestor $188,399. The balance remaining with the City was $107,689.02. (These figures include all pilot program payments with the exception of one Nestor invoice for August not yet received and paid in the approximate amount of $1,300.)

48. Under the new agreement, during the first two weeks of the school year (August 30, 2006 through September 12, 2006), the civil violation remained at the lower level of $35.00 as a warning period. Civil violations occurring on or after September 13, 2006 are $100.00 from which Nestor will be paid $19 per paid citation.

49. The City has not yet instituted collection proceedings to recover any of the unpaid civil violations.

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The following agreed stipulations, Nos. 21a through 49a and 50 through 56, apply only to Case 2:

21a. It is the position of the Defendants that the right to appeal the decision of the independent hearing officer's decision to the Court of Common Pleas is governed by Chapter 2506 of the Ohio Revised Code. It is the position of the Plaintiffs that the right to appeal the decision of the independent hearing officer's decision to the Court of Common Pleas is not governed by Chapter 2506 of the Ohio Revised Code.

22a. Ohio Revised Code Chapter 2506: "Appeals From Orders Of Administrative Officers and Agencies" is the chapter of the Ohio Revised Code establishing the right to appeal every final order, adjudication, or decision of any officer, tribunal, authority, board, bureau, commission, department or other decision of any political subdivision of the state to be reviewed by the Court of Common Pleas of the county in which the principal office of political subdivision is located.

23a. [Not used]

24a. On November 18, 2005, Plaintiff Janice A. Sipe was issued a civil speeding violation for going 45 mph in a 35 mph zone on Newton Street.

25a. On November 4, 2005, Plaintiff Joanne L. Lattur was issued a civil speeding violation for going 30 mph in a 20 mph school zone on Fouse Street in the City of Akron, Ohio.

26a. On October 31, 2005, Plaintiff Wayne H. Burger was issued two civil speeding violations twenty minutes apart for going 29 mph in a 20 mph school zone and for going 31 mph in the same 20 mph school zone on Fouse Street in the City of Akron, Ohio.

27a. Plaintiff Janice A. Sipe did not exercise her right to request an administrative hearing within 21 days nor has she requested an administrative hearing at any time from the date of her civil citation to present nor has she paid the assessed civil fine.

28a. Plaintiff Joanne L. Lattur did not exercise her right to request an administrative hearing within 21 days nor has she requested an administrative hearing at any time from the date of her civil citation to present nor has she paid the assessed civil fine.

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29a. Plaintiff Wayne H. Burger exercised his right to request an administrative hearing on one of his violations. An administrative hearing was scheduled on December 29, 2005, and Plaintiff Wayne H. Burger was notified of the administrative hearing date, however, he failed to appear at the administrative hearing. Plaintiff Wayne H. Burger made no contact with the City of Akron, the Akron Police Department, or Nestor Traffic Systems, Inc. before or after the December 29, 2005 hearing date to reschedule the matter or request a new hearing date. The independent hearing officer denied the appeal based on his failure to appear at the hearing. Plaintiff Burger has not paid his assessed civil penalty for that violation. The City of Akron dismissed Burger's second violation as it did others who received two tickets in the same day at the beginning of the program.

30a. On December 9, 2005, Plaintiffs Sipe, Lattur and Burger filed an action in Summit County Common Pleas Court entitled "Class Action Complaint Verified For Injunctive Relief" naming as Defendants Nestor Traffic Systems, Inc. of Providence, Rhode Island, four officers of Nestor Traffic Systems, Inc. named individually, the City of Akron, Ohio and ten unnamed John Does. Plaintiffs requested that the Clerk of Courts withhold service on the Complaint.

31a. On December 12, 2005, Plaintiffs Sipe, Lattur, and Burger filed their First Amended Complaint. Said Complaint was served on the City of Akron on December 30, 2005, and served on Nestor Traffic Systems, Inc. on January 3, 2006. On December 13, 2005, Plaintiffs Sipe, Lattur, and Burger filed a Motion for Temporary Restraining Order and a Motion for Preliminary Injunction but they have not attempted service on any of the Defendants nor have the Defendants ever been served with these Motions. Defendants obtained a copy of the Motions from the Summit County Common Pleas Court website.

32a. On December 16, 2005, Plaintiffs Sipe, Lattur, and Burger filed a Second Amended Complaint, which has never been served upon any of the Defendants. Defendants obtained a copy of the Second Amended Complaint from the Summit County Common Pleas Court website.

33a. Defendants City of Akron and Nestor Traffic Systems, Inc. removed the case to the United States District Court for the Northern District of Ohio Eastern Division. The case was originally assigned to Judge James S. Gwinn [sic] and subsequently transferred to the docket of Judge David D. Dowd, Jr. pursuant to Local Rule 3.1(b)(3).

34a. Plaintiffs Sipe, Lattur, and Burger filed an eleven count, 121 paragraph Complaint alleging as follows: Count I – Fraud, Count II – Civil Conspiracy, Count III Common Plan/Design to Commit Fraud, Count IV – Negligence, Count

V – Negligence Per Se, Count VI – Consumer Sales Practices Act, Count VII – Negligence/Nuisance, Count VIII – Conversion, Count IX – Invasion of Privacy, Count X – Injunctive Relief, Count XI – 42 U.S.C. Sections 1983 and 1988, and the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution/Abuse of Process.

35a. The City of Akron is a Charter municipality pursuant to Section 7 of Article XVIII of the Ohio Constitution in that Akron having established a Charter form of government may adopt an amended a Charter for its government and subject to the provisions of Section 3 of Article XVIII of the Ohio Constitution may exercise under the Charter all powers of local self government.

36a. Nestor contracts nationwide with government entities, referred to as "customers," to provide Automatic Traffic Enforcement Services ("Services"). These Services are intended to document speeding vehicles.

37a. Nestor sets up its technology in areas designated by the customer and collects data, identifying potential cars speeding. Within Nestor, the potential speeding violation is referred to as an "event."

38a. Nestor has its own internal coding and computer terminology which it uses to organize its data. Though necessary to organize data for a customer, the actual terminology is not necessarily customer driven.

39a. Some of Nestor's other customers, however, specifically indicate that Nestor should not process certain categories of vehicles. For instance, some customers do not want Nestor to process emergency vehicles, funeral processions, or vehicles photographed where an officer is directing traffic. Nestor's computer language refers to these vehicles as "exempt." Thus, when an "exempt" vehicle is documented as an event, it is categorized in Nestor's computer system as a "discretionary discard" and Nestor does not process the event.

40a. On October 6, 2005, Nestor and the City entered into a pilot program, a fixed term contract for the provision of Services designed to detect mobile speed violations within the City. The pilot program remained in effect through June 8, 2005.

41a. Under the pilot program contract, Nestor "processed" events for the City by submitting the vehicle license plate information to the Bureau of Motor Vehicles ("BMV").

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42a. Some events, however, cannot be submitted to the BMV because of technical issues, for instance, the vehicle image is obstructed or blurry, the scene image is insufficiently illuminated or otherwise unclear, or there are multiple vehicles in one image. These events are "discarded."

43a. After receiving the vehicle registration information from the BMV, Nestor verifies that the information is accurate by comparing the registration information against the actual photograph. If the information does not match, for instance, the event photograph depicts a 2002 Subaru Forester yet the registration information indicates that the registered vehicle is a 2003 Audi A4, Nestor will make sure that the vehicle plate information was correctly typed and will resubmit the request for information to the BMV.

44a. The vehicle registration information received from the BMV is forwarded to the Akron Police Department where a police officer reviews the information and issues the citation by directing Nestor to mail the civil violation notice.

45a. During the pilot program, Nestor documented 17,163 events. Some of these events were "discarded" because there was no violation, i.e. the vehicle was not speeding, Nestor was testing its system, or Nestor was unable to determine whether an actual violation occurred. The remaining 15,766 events were submitted to the BMV. Of those events, 11,740 citations were issued by the City.

46a. There were 4,035 violations that were not issued citations. Nestor's internal software categorized the non-issued citations into the following three categories:

a. The first category, is termed "discretionary" by Nestor's computer system. Nestor discarded events under this category in instances where the vehicle registration information was "not in file" with the BMV and the BMV did not return vehicle registration information to Nestor. This category was also used when Nestor was unable to obtain registration information for out-of-state vehicles. Although some states release vehicle registration information to Nestor, other states do not. There were a total of 72 "discretionary" discards: 59 were out-of-state vehicles; 11 were "not in file," which were either vehicles with a government plate, or an ambulance, fire/rescue or police cruiser; and 2 resulted from system testing. The BMV did, however, return information on one school bus, and other vehicles registered to public entities such as the University of Akron, the Akron Metropolitan Housing Authority, and the Akron Zoo. All of these public vehicles were issued citations and paid the civil violations.

b. The second category, termed "uncontrollable" by Nestor's computer system, totaled 2,288. Citations were not issued for these vehicles because of an obstruction in the photograph of the vehicle or license plate.

c. The third category, termed "controllable" by Nestor's computer system, totaled 1,666. Citations were not issued for these vehicles because of technical problems with the Nestor software, for instance, the Nestor camera was out of focus, the lighting was insufficient to secure an image, or the vehicle framing was improper, i.e. there was only a portion of the vehicle in the image.

47a. The "discretionary discards" were not the result of any direction by the City of Akron. To the contrary, Lieutenant Hanley and Sergeant Garro, of the Akron Police Department, instructed Nestor to process all events without exception. The box "Current Status" uses the term "Discarded" to mean a citation was not issued. The box "Disposition Reason" uses the computer term "Exempt Vehicle." An exempt vehicle does not mean the City of Akron instructed Nestor to exclude any class of vehicle. The City's instruction was that all vehicles are to be treated the same and there were to be no exceptions. The use of the term "exempt vehicle" to describe the reason for a discretionary discard is Nestor's computer language that is used when the event was not forwarded by Nestor to the City because the Ohio BMV reported to Nestor that the vehicle was "not in file," or vehicle registration information was not available from another state, or an event was the result of system testing, or if it was a discretionary discard by the reviewing police officer as described in the example in paragraph #[49a] below.

48a. There were no exceptions for Nestor to process all events and forward whatever information they received from the BMV to the Akron Police Department. After the first review by Nestor, the Akron Police review the BMV registration information prior to authorizing the issuance of the citation. The police review requires the exercise of discretion in certain cases. For example, see NTS 0066 – "Citation Discarded by dgarro REASON: Exempt Vehicle – 21 March 2006." In that instance, the event was processed by Nestor and the registration information was sent by the BMV indicating that the van was registered to American Medical Response, a private non-government ambulance service. Sergeant Garro, in reviewing the information and photo, could not discern whether or not the ambulance was on an emergency call and used his discretion not to issue the citation. This would be similar to a police officer in a cruiser stopping a motorist, and for good reason, using his or her discretion to issue a warning and not a citation. Although Nestor's computer language refers to the status as "Discarded" and the reason as "Exempt Vehicle" (as is done with "not in

file" government vehicles) this was actually a discretionary non-citation by the reviewing police sergeant.

49a. As indicated in Agreed Stipulation [46a(a)], in some instances, "discretionary discards" occurred because Nestor was unable to obtain the registration information from the BMV. In fact, the BMV is prohibited by the federal Driver's Privacy Protection Act from disclosing information about certain government and police vehicles. Nestor only receives vehicle registration information from the BMV that the BMV is permitted to disclose. When Nestor submitted a request for information to the BMV for government vehicles, the BMV would return the requested information to Nestor with a notation that the vehicle registration information was "not in file." These violations were therefore termed "discretionary discards" by Nestor in the "Current Status" box and as "Exempt Vehicle" in the "Disposition Reason" box. They were discarded by Nestor and not forwarded to the Akron Police Department for review. When Nestor was told by the BMV that a vehicle was "not in file," Nestor had no registration information to forward to the City. The City was unaware of the "discretionary discards" until discovery commenced in this lawsuit.

50. Nestor processed and the City of Akron issued citations for all vehicles that were owned by rental car companies provided there was a clear picture of the vehicle and license plate, and provided the registration information was returned by the BMV. For instance, citations were issued and violations were paid by the following companies: a rental car company, "U Save It Auto Rental," located at 449 West Avenue, Tallmadge, Ohio; a car leasing company, "Car Lease, Inc.," located at 650 Holmes Ave., Akron, Ohio; a truck leasing company "Penske Truck Leasing, Co.," located at 3000 Fortuna Drive, Akron, Ohio; Enterprise Capital (which may be Enterprise rental company); and a Ford dealership (which also may be a rental car). There were certainly other citations issued for rental vehicles but each of the 11,740 citations have not been reviewed for this disclosure. Other paid citations include the Boy Scouts of America, towing companies that contract with the City of Akron, United Disability, Waikem Motors (likely a lease), several Yellow Cabs, and the Visiting Nurse Service.

51. On August 16, 2006, Nestor and the City agreed to a letter of intent to enter into a new contract for the provision of Services. The Services will continue to focus on school zone speeding violations; Services under the new agreement began on August 30, 2006, coinciding with the commencement of the City of Akron's 2006-2007 school year.

(5:06 CV 0139; 5:06 CV 0154)

52. Nestor and the City are in the process of finalizing the new contract, the written Policies and Procedures ("P&P"), and implementing the Services for the new contract. Under the new agreement, there are no exempt vehicles.

53. Under the pilot program contract, from October 28, 2005 through December 12, 2005, the amount of the civil violation was originally $150.00 for vehicles exceeding the posted speed within 15 miles per hour, and $250.00 for vehicles exceeding the posted speed by 15 or more miles per hour. On December 12, 2005, the civil violation for the pilot program was changed to $35.00. The vehicle owners that were cited and paid prior to December 12, 2005 at the higher amounts each received a refund of all amounts paid in excess of $35.00.

54. Under the pilot program contract, the City deposited $418,960.02 in civil violations (having subtracted $1,860 in NSF checks). From that amount, the City refunded $122,872 to violators, and paid Nestor $188,399. The balance remaining with the City was $107,689.02. (These figures include all pilot program payments with the exception of one Nestor invoice for August not yet received and paid in the approximate amount of $1,300.)

55. Under the new agreement, during the first two weeks of the school year (August 30, 2006 through September 12, 2006), the civil violation remained at the lower level of $35.00 as a warning period. Civil violations occurring on or after September 13, 2006 are $100.00 from which Nestor will be paid $19 per paid citation.

56. The City has not yet instituted collection proceedings to recover any of the unpaid civil violations.

Pursuant to Rule XVIII, § 2(C), the names of the parties are:

In Case 1:		**In Case 2:**	
Plaintiff:	Kelly Mendenhall	Plaintiffs:	Janice A. Sipe Joanne L. Lattur Wayne H. Burger

In Both Cases:

Defendants: City of Akron, Ohio
Nestor Traffic Systems, Inc.

(5:06 CV 0139; 5:06 CV 0154)

Pursuant to Rule XVIII, § 2(D), the names, addresses, and telephone numbers of counsel for each party are:

COUNSEL FOR KELLY MENDENHALL:
Jacquenette S. Corgan 72778
Ste. 201
190 North Union Street
Akron, OH 44304
330-535-9160
Fax: 330-762-9743
Email: j.corgan@justice.com

and

Warner Mendenhall 70165
Ste. 201
190 North Union Street
Akron, OH 44304
330-535-9160
Fax: 330-762-9743
Email: warnermendenhall@hotmail.com

COUNSEL FOR THE CITY OF AKRON:
Stephen A. Fallis 21568
City of Akron Law Department
161 South High Street, Ste. 202
Akron, OH 44308
330-375-2030
Fax: 330-375-2041
Email: fallist@ci.akron.oh.us

and

Richard Gurbst 17672
Squire, Sanders & Dempsey - Cleveland
4900 Key Tower
127 Public Square
Cleveland, OH 44114
216-479-8607
Fax: 216-479-8777
Email: rgurbst@ssd.com

(5:06 CV 0139; 5:06 CV 0154)

COUNSEL FOR JANICE A. SIPE, JOANNE L. LATTUR AND WAYNE H. BURGER
Antoni Dalayanis 68595
5th Floor
12 East Exchange Street
Akron, OH 44308
330-315-1060
Fax: 800-787-4089
Email: lawyer@bright.net

COUNSEL FOR NESTOR TRAFFIC SYSTEMS, INC
Donald W. Herbe 76500
Squire, Sanders & Dempsey - Cleveland
4900 Key Tower
127 Public Square
Cleveland, OH 44114
216-479-8312
Fax: 216-479-8777
Email: dherbe@ssd.com

Heather L. Tonsing 69606
Squire, Sanders & Dempsey - Cleveland
4900 Key Tower
127 Public Square
Cleveland, OH 44114
216-479-8500
Fax: 216-479-8780
Email: htonsing@ssd.com

Richard Gurbst 17672
Squire, Sanders & Dempsey - Cleveland
4900 Key Tower
127 Public Square
Cleveland, OH 44114
216-479-8607
Fax: 216-479-8777
Email: rgurbst@ssd.com

Pursuant to Rule XVIII, § 2(E), the party designated at the "moving party" is Kelly Mendenhall.

Respectfully submitted,

November 29, 2006
Date

s/ David D. Dowd, Jr.
David D. Dowd, Jr.
U.S. District Judge

73.20 Speed limits.

A. No person shall operate a motor vehicle 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 him to bring it to a stop within the assured clear distance ahead.
B. It is prima facie lawful, in the absence of a lower limit declared pursuant to this section by the Director of Transportation or the municipality, for the operator of a motor vehicle to operate the same at a speed not exceeding the following:
1. Fifteen miles per hour on all alleys;
2. a. Twenty miles per hour in school zones during school recess and while children are going to or leaving school during the opening or closing hours, and when a sign giving notice of the existence of the school is erected as provided in this section; except, that on controlled-access streets or highways and expressways, if the right-of-way line fence has been erected without pedestrian opening, this subsection shall not apply. The end of every school zone may be marked by a sign indicating the end of the zone. Nothing in this section or in the manual and specifications for a uniform system of traffic-control devices shall be construed to require school zones to be indicated by signs equipped with flashing or other lights, or giving other special notice of the hours in which the school zone speed limit is in effect.
b. For the purpose of this section, "school" means any school chartered under R.C. §3301.16 and any non-chartered school that during the preceding year filed with the department of education in compliance with Rule 3301-35-08 of the Ohio Administrative Code, a copy of the school's report for the parents of the school's pupils certifying that the school meets Ohio minimum standards for non-chartered, non-tax supported schools and presents evidence of this filing to the jurisdiction from which it is requesting the establishment of a school zone.
c. For the purpose of this section, "school zone" means that portion of a street or highway passing a school fronting upon the street or highway that is encompassed by projecting the school property lines to the fronting street or highway, and also includes that portion of a state highway. Upon request from local authorities for streets and highways under their jurisdiction and that portion of a state highway under the jurisdiction of the Director of Transportation, the Director may extend the traditional school zone boundaries. The distances in subsections (B)(2)(c)(i) through (iii) of this section shall not exceed three hundred feet per approach per direction and are bounded by whichever of the following distances or combinations thereof the Director approves as most appropriate:
i. The distance encompassed by projecting the school building lines normal to the fronting street or highway and extending a distance of three hundred feet on each approach direction;
ii. The distance encompassed by projecting the school property lines intersecting the fronting street or highway and extending a distance of three hundred feet on each approach direction;
iii. The distance encompassed by the special marking of the pavement for a principal school pupil crosswalk plus a distance of three hundred feet on each approach direction of the street or highway;
iv. A distance of six hundred feet using any combination or part thereof of the reference points described in subsections (B)(2)(c)(i) through (iii) of this section.
v. Nothing in this section shall be construed to invalidate the Director's initial action on August 9, 1976, establishing all school zones at the traditional school zone boundaries defined by projecting school property lines, except when those boundaries are extended as provided in subsections (B)(2)(a) and (c) of this section.
d. As used in this subsection, "crosswalk" has the meaning given that term in subsection (LL) (2) of R.C. §4511.01.
3. Twenty-five miles per hour in all other portions of the municipal corporation, except on state routes outside business districts, through street or highways outside business districts, and alleys;
4. Thirty-five miles per hour on all state routes or through streets or highways within the municipal corporation outside business districts, except as provided in subsections (B)(5) and (6) of this section;
5. Fifty miles per hour on controlled-access street or highways and expressways within the municipality;
6. Fifty miles per hour on state routes within the municipality outside urban districts unless a lower prima facie speed is established as further provided in this section;

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Introduction

Speeding – the driver-behavior of exceeding the posted speed limit or driving too fast for conditions – has consistently been estimated to be a contributing factor in approximately one third of all fatal crashes.[1] The cost of speeding-related crashes is estimated to be $40.4 billion annually, representing approximately 18 percent of the total cost of crashes.[2] The role of speeding in crashes is difficult to ascertain. The definition of speeding is broad and the determination of whether speeding was involved in a fatal crash is often based on the judgment of the investigating law enforcement officer. Even if speeding is listed as a contributing factor in a crash, it may not have been the causative factor.

Speeding is a complex problem, involving the interaction of many factors including public attitudes, road user behavior, vehicle performance, roadway design and characteristics, posted speed limits and enforcement strategies. Accordingly, an interdisciplinary approach involving engineering, enforcement, and education is needed to reduce speeding-related crashes, fatalities and injuries. This comprehensive approach is speed management. Speed management involves a balanced effort: defining the relationship between speed, speeding and safety; applying road design and engineering measures to obtain appropriate speeds; setting speed limits that are safe and reasonable; applying enforcement efforts and appropriate technology that effectively targets crash producing speeders and deters speeding; effectively marketing communication and educational messages that focus on high-risk drivers; and, soliciting the cooperation, support and leadership of traffic safety stakeholders.

While speeding can be considered a national problem, it is clear that effective solutions must be applied locally. In 2003, 86 percent of speeding-related fatalities occurred on roads that were not Interstate highways. The speeding-related fatality rate per vehicle mile traveled is highest on local and collector roads where the lowest speed limits are posted, presenting additional problems. Speed limits for motorists represent trade-offs between risk and travel times for a road class or specific highway section. Decision makers often attempt to achieve an appropriate balance between the societal goals of safety and mobility. The process of setting speed limits is often viewed as a technical exercise, but the decision involves value judgments and trade-offs that are frequently handled through the political process in state legislatures and city councils. Road conditions vary too widely to justify a "one-size-fits-all" approach. There is no single "right" answer in setting appropriate speed limits or conducting enforcement activities because policy makers in different communities may legitimately disagree on the priority given to the factors – safety, travel time, enforcement expenditures, community concerns – that affect decisions about speed limits. The primary focus of speed management must remain on safety.

Federal Policy on Speed Management

The goal of the speed management strategic initiative is to reduce speeding-related fatalities, injuries and crashes. The purpose of this strategic initiative is to galvanize the Federal effort and identify specific actions to be taken by the U.S. Department of Transportation Speed Management Team designed to effectively address managing speed and reducing speeding-related crash risk.

The Department of Transportation's policy is to provide guidance for State and local governments in designing and applying a balanced and effective speed management program to reduce speeding-related crashes.

Federal Role in Speed Management

State and local government are principally responsible for speed regulation. The Federal role has traditionally been to compile speed trend and safety statistics, conduct and coordinate research, fund national highways and safety programs, and regulate new vehicle standards. There are two notable exceptions.

From 1942 to 1945, the War Department ordered a nationwide speed limit of 35 miles per hour (mph) to conserve rubber and gasoline for the war effort.

In 1973 during the oil embargo, Congress enacted the National Maximum Speed Limit (NMSL), set at 55 mph, to conserve fuel. In addition to conserving fuel, the annual traffic fatality toll declined from 54,052 in 1973 to 45,196 in 1974, a drop of over 16 percent. As a result of the reduction in traffic fatalities, the Congress enacted Public Law 93-643 making the NMSL permanent.

In 1995, Congress repealed the NMSL, ending the Federal sanctions for noncompliance and the requirement for States to submit speed compliance data. In the years following the repeal, States and communities have shown renewed interest in finding better ways to effectively manage speeds and reduce speeding-related crashes.

Since repeal of the NMSL, the Federal role shifted from monitoring compliance and enforcement of the NMSL to one of conducting research and providing science-based countermeasures and technical guidance for managing speed. An interagency task force was formed to study the speed management issue and develop a U.S. Department of Transportation (DOT) policy on speeding and speed management.[3] This led to the creation of a U.S. DOT Speed Management Team with representatives from the National Highway Traffic Safety Administration (NHTSA), Federal Highway Administration (FHWA), and the Federal Motor Carrier Safety Administration (FMCSA), reflecting the importance of both engineering and behavioral countermeasures to reduce the number of speeding-related fatalities and injuries occurring on our highways.

Speed Management Rationale

The primary reason for regulating individual speed choices is the significant risks drivers can impose on others. For example, a driver may decide to drive faster, accepting a higher probability of a crash, injury, or even death in exchange for a shorter trip time. This driver's decision may not adequately take into consideration the risk this choice imposes on other road users. This imposition of risk on others, and the desire to protect public safety, are the primary reasons for the government's role in setting speed limits.

Another reason for regulating speed derives from the inability of some drivers to correctly judge the capabilities of their vehicles (e.g., braking, steering) and to anticipate roadway geometry and roadside conditions sufficiently to determine appropriate driving speeds. This reason may not be as relevant for experienced motorists driving under familiar circumstances. However, inexperienced drivers or experienced drivers operating in unfamiliar surroundings may underestimate risk and make inappropriate speed choices. Even drivers familiar with a particular road can make inappropriate decisions because of fatigue or other factors.

A final reason for regulating speed is the tendency of some drivers to underestimate or misjudge the effects of speed on crash probability and severity. This problem is often manifested by young and inexperienced drivers and may be a problem for other drivers. The risks imposed on others and the adequacy of information about appropriate driving speeds vary by road class. For example, the risks imposed on others by individual driver speed choices are likely to be relatively small on rural Interstate highways where free-flowing traffic creates fewer opportunities for conflict with other road users or roadside obstacles. Moreover, under normal conditions, drivers typically have adequate information to determine appropriate driving speeds because these highways are usually built to the highest design standards, access is limited, and roadside activity is minimal. In contrast, the risks imposed on others by individual driver speed choices may be large on urban arterials where roadside activities are numerous and traffic volumes are high for extended periods of the day, increasing the probability of conflict with other road users. These differences are important factors for consideration in setting appropriate speed limits on different types of roads.

Setting Speed Limits

Speed limits are the most common method for managing speed. The current framework for setting speed limits was developed in the 1920s and 1930s. Each state has a basic rule that requires drivers to operate vehicles at a speed that is reasonable and prudent for existing environmental conditions. State statutes specify speed limits that generally apply to different road types or geographic areas. However, State and most local governments have the authority to set speed limits on the basis of an engineering study by establishing speed zones for highway sections where statutory limits do not fit specific road or traffic conditions.

Speed limits in speed zones are established for favorable conditions -- good weather, free-flowing traffic, and good visibility. Drivers are expected to reduce speeds as conditions deteriorate. The most common approach sets the limit on the basis of an engineering study,

which takes into consideration such factors as operating speeds of free-flowing vehicles, crash experience, roadside development, roadway geometry, and parking and pedestrian activity levels to make a judgment about the speed at which the posted limit should be set. However, pressure from the public or elected officials to lower speed limits is common and hard to resist when procedures for setting speed limits are seen as subjective and not well understood.

Driver Risk and Perception

Drivers' speed choices impose risks that affect both the probability and severity of crashes. Speed is directly related to injury severity in a crash. The probability of severe injury increases sharply with the impact speed of a vehicle in a collision, reflecting the laws of physics. The risk is even greater when a vehicle strikes a pedestrian, the most vulnerable of road users. Although injury to vehicle occupants in a crash can be mitigated by safety belt use and airbags, the strength of the relationship between speed and crash severity alone is sufficient reason for managing speed.

Speed is also linked to the probability of being in a crash, although the evidence is not as compelling because crashes are complex events that seldom can be attributed to a single factor. Crash involvement on interstate highways and nonlimited-access rural roads has been associated with the deviation of the speed of crash-involved vehicles from the average speed of traffic. Crash involvement has also been associated with the speed of travel, at least on certain road types. For example, single-vehicle crash involvement rates on nonlimited-access rural roads have been shown to rise with travel speed.

Speeding is a pervasive behavior with about three-quarters of drivers reporting in a recent national survey they drove over the speed limit on all types of roads within the past month, and one-quarter reported speeding over the limit on the day of interview.[4] Speed data collected by FHWA indicate that on average 70 percent of motorists are exceeding the posted speed limits.[5]

According to the National Survey of Distracted and Drowsy Driving Attitudes and Behaviors: 2002,[6] drivers believe they can travel between 7-8 mph over the posted speed limit, on average, before police would normally give them a ticket. However, they believe the tolerances should be 2-3 mph higher suggesting that speed limits are about 10 mph below what motorists believe to be appropriate. However when questioned directly, 83 percent of the drivers say speeds limits are about right on city and neighborhood streets and 61 percent say the same for interstate freeways.

Many of the drivers surveyed believe that the speed limits on interstates should generally be higher, that they would drive faster than the speed limit even if the limits were raised, and that they themselves speed at least sometimes. However, 68 percent of drivers feel that *other drivers'* speeding is a major threat to their own personal safety. More than three-quarters of drivers feel that it is at least somewhat important that something be done to reduce speeding on all road types. This suggests a strong "it's not me, it's the other guy who is a problem" mentality among many drivers.

Speeding is not only a problem in the United States, but has been identified by many countries as a key risk factor in road traffic injuries. In industrialized countries, speed is a factor in around 30 percent of highway deaths, which is similar to the United States.

Internationally, the World Health Organization has identified a number of interventions synthesized from international practice that are effective in the management and control of vehicle speed[7]:

- Setting and enforcing speed limits are two of the most effective measures in reducing road traffic injuries.
- Posted speed limits will only have a minimal effect on reducing travel speeds unless accompanied by sustained, visible enforcement of these limits.
- Speed cameras are a highly cost-effective means of reducing road crashes.
- Variable speed limits are responsive to local conditions and traffic circumstances, and are therefore more likely to be obeyed.
- Speed levels can also be affected by developing a safer infrastructure.
- Traffic calming measures can be particularly useful where enforcement of speed control laws may be ineffective.
- Design features used to mark transition zones on busy roads approaching towns and villages can influence drivers' speed. Slower-speed zones and modern roundabouts are examples of features that are useful in reducing the speed of vehicles.
- Appropriate speed can be achieved through design features that limit the speed of the vehicle itself. This is already being done in many countries with heavy load vehicles and coaches.

The issue of what constitutes appropriate driving speeds will persist as long as there are individual drivers making choices about risk and time efficiency. Ultimately, decisions about appropriate speed limits depend on judgments about society's tolerance for risk, valuation of time, and willingness to police itself.

Technological advances may offer additional techniques for controlling driving speeds on all types of roads. For example, technology could help establish limits that are more sensitive to actual changes in road conditions and thus provide drivers with better information. With modern vehicles becoming quieter and more comfortable at higher speeds, technology installed on the roadside or onboard vehicles could alert drivers and control vehicle speeds that are approaching the design limits of the road. Finally, technology could help improve the efficiency, effectiveness and safety of enforcement efforts. Further development, demonstration, and evaluation are needed for many technologies to realize their potential.

Strategic Initiatives

The Department of Transportation safety goal is to reduce the highway fatality rate to 1.0 per 100 million vehicle miles by 2008. This strategic plan is a "One-DOT" effort, developed jointly by the FHWA, NHTSA and FMCSA to address speeding as a contributor to highway crashes and fatalities. The strategies contained in this initiative incorporate recommendations of the Transportation Research Board contained in *Special Report 254, Managing Speed: Review of Current Practice for Setting and Enforcing Speed Limits.*[8]

The goal of the Speed Management Strategic Initiative is to reduce speeding-related fatalities, injuries and crashes. The strategies and actions of this initiative are grouped under five main objectives:

1. Better define the relationship between speed and safety. Understanding speed as a highway safety issue necessitates accurately defining the relationships between speed limits, travel speeds and safety. Additional data is needed to identify and develop effective countermeasures and awareness campaigns to modify driver speeding behavior.

2. Identify and promote engineering measures to better manage speed. Establishing speed limits that achieve public support is a prerequisite to developing any effective speed management program. Greater use of speed management techniques and technology that can be built into the existing highway system or incorporated in the Intelligent Transportation System has the potential to improve voluntary compliance with speed limits and prevent traveling at inappropriate speeds.

3. Increase awareness of the dangers of speeding. If the public is not aware or does not understand the potential consequences of speeding to themselves and others, they are less likely to adjust speeds for traffic and weather conditions, or to comply with posted speed limits. Public information and education contribute to public support for speed management by increasing awareness of the possible consequences of speeding.

4. Identify and promote effective speed enforcement activities. Enforcement is crucial to achieving compliance with speed limits. Even if most drivers believe that the speed limits are appropriate and reasonable, and they comply within a small tolerance, enforcement is still necessary to ensure the conformity of drivers who will obey laws only if they perceive a credible threat of apprehension and punishment for noncompliance.

5. Obtain cooperation and support of stakeholders. Traffic court judges, prosecutors, safety organizations, health professionals and policy makers have a stake in establishing the legitimacy of speed limits and effectively managing speed to reduce fatalities. Safety goals can only be achieved through the leadership of State and local authorities who are responsible for implementing most speed management measures.

These strategies are designed for implementation across various jurisdictions and on different types of roadways. They incorporate a balanced, 3E approach -- engineering, enforcement and education -- based on scientific research and when appropriate, include technologies designed to aid in mitigating a specific problem.

The status of each key action is indicated as in progress or planned. Planned actions may not be included in agency budgets at this time. Depending on funding availability, the timeframes indicate when the key action is to be initiated.

OBJECTIVE 1: Define the relationship between travel speed and traffic safety.

Strategy 1: Determine the effects of travel speed on crash risk.

While there is consensus that crash severity increases with speed, the precise relation between travel speed and crash probability is less clear with various studies coming to different conclusions. One of the main deficiencies in studies to date is the lack of accurate knowledge of the travel speed before crashing. Scientific evidence of the relation between speed and safety will be needed to mount convincing and effective speed management campaigns.

Key Actions:

Research the relationship between travel speed and crash risk on various road types. (Planned, 2 years)

Develop a typology for speeding-related crashes. (Planned, 1 year)

Strategy 2: Identify trends in travel speeds, crash probability and injury severity.

Good speed and crash data are critical to better understand the speeding problem and make wiser decisions on where best to concentrate resources in order to have the most effect in reducing speeding related injuries and fatalities.

Key Actions:

Compile and report annually in the Traffic Safety Facts series information on the scope and nature of speeding involvement in traffic fatalities. (In progress)

Working with the States, and local agencies as necessary, monitor and report travel speed trends across the entire road network. (Planned, 2 years)

Identify States and road types where excessive and inappropriate vehicle speeds are a safety problem. (Planned, 1 year)

Work with States to ensure they identify jurisdictions and road types where excessive vehicle speeds are a safety problem. (Planned, 2 years)

Strategy 3: Evaluate the safety benefits of appropriate speed limits.

Additional research is needed on the spillover and net safety effects associated with speed limit changes for both limited- and nonlimited-access roads.

Key Actions:

Monitor changes in State speed limit laws and posted speed limits. (In progress)

Evaluate the long-term effects of raising and lowering speed limits on speed and crash risk. (In progress)

Evaluate the effects of differential limits for cars and trucks. (In progress)

Evaluate the effects of minimum speed limits. (Planned, 3 years)

OBJECTIVE 2: Identify and promote engineering measures to better manage speed.

Strategy 1: Develop criteria for setting appropriate speed limits.

Speed limits should promote safe travel and be perceived by the public as safe and reasonable. Providing appropriate speed limits is the first step towards voluntary compliance and the cornerstone for effective speed management.

Key Actions:

Develop a computer-based expert speed zone advisor for setting credible, safe, and consistent speed limits. (In progress)

Determine the frequency -- the distance between signs -- at which to post speed limits signs. (Planned, 1 year)

Develop guidance for conducting engineering studies used to set speed limits. (Planned, 3 years)

Strategy 2: Facilitate design of self-enforcing roads.

The road design process often results in speeds higher than intended, which creates undue risks for non-motorists and frustrates motorists who perceive posted speed limits as artificially low. Identifying methods to achieve desired speeds in the design process will ensure safer operating speeds compatible with road function and reduce the demands on law enforcement.

Key Actions:

Research roadway design factors that influence driver speed selection and speed prediction models that can be used in the design process to achieve appropriate travel speeds. (In progress)

Research and demonstrate methods to achieve appropriate traffic speeds on main roads through towns and other areas not suitable for traditional traffic calming techniques. (Planned, 1 year)

Identify traffic calming techniques for reducing speed in pedestrian activity areas. (Planned, 1 year)

Develop guidelines for designing new roads and retrofitting existing roads to achieve appropriate travel speeds. (Planned, 3 years)

Strategy 3: Research engineering solutions for achieving appropriate speeds on curves.

Run-off-road crashes at curves are primarily due to speed. Consistently relaying appropriate curve speeds to motorists will reduce the frequency of run-off-road curve crashes.

Key Actions:

Research and evaluate low-cost driver perceptual countermeasures to reduce speeds. (In progress)

Test and evaluate speed activated roadside displays that warn drivers that are exceeding safe speeds based on curve geometry, pavement friction, and vehicle characteristics. (Planned, 3 years)

Develop and evaluate cooperative infrastructure-vehicle systems that alert drivers or adapt speed when traveling too fast for conditions. (Planned, 3 years)

Strategy 4: Test and evaluate variable speed limits (VSL).

Variable speed limits are speed limits that change relative to road, traffic, and environmental conditions. Over 450,000 injury crashes and nearly 6,500 fatal crashes occur annually during adverse road conditions. Speeding is estimated to be a factor in over 50 percent of these crashes.

Key Actions:

Promote the use of VSL in work zones to increase motorists' compliance and improve worker safety. (Planned, 1 year)

Test and evaluate the effectiveness of VSL from a safety and traffic efficiency perspective on busy urban freeways and rural interstate corridors with adverse weather conditions. (Planned, 3 years)

Evaluate VSL applications in combination with automated speed enforcement systems. (Planned, 3 years)

Strategy 5: Test, evaluate, and promote onboard vehicle technologies such as adaptive cruise control, vehicle speed limit sensing and feedback, driver control speed limitors, wireless roadside beacons, vehicle infrastructure integrated safety systems and stability control systems to achieve safe and appropriate travel speeds.

Vehicle safety systems and communications technologies, such as adaptive cruise control, vehicle speed limit sensing and feedback, driver control speed limitors, wireless roadside beacons, vehicle infrastructure integrated safety systems and stability control systems are rapidly evolving and provide opportunities to alert or prevent drivers from exceeding safe speeds.

Key Actions:

Evaluate the effectiveness of onboard vehicle technologies for controlling unsafe speeds for conditions. (In progress)

Promote the use of effective onboard vehicle technologies to achieve safe travel speeds. (Planned, 1 year)

Research appropriate techniques such as adaptive cruise control, vehicle speed limit sensing and feedback, driver control speed limitors, wireless roadside beacons, vehicle infrastructure integrated safety systems and stability control systems for adapting vehicle speed to the posted speed limit. (Planned, 3 years)

Field test and evaluate adaptive speed control in combination with variable speed limits. (Planned, 3 years)

OBJECTIVE 3: Increase awareness of the dangers of speeding.

Strategy 1: Develop and implement public outreach campaigns to encourage compliance with speed limits.

The introduction of revised speed limits and strict enforcement needs to be accompanied by communication and education programs to ensure motorists acceptance and enhance compliance. It will be particularly difficult to change attitudes to speeding through education and publicity unless speed limits are perceived to be realistic.

Key Actions:

Develop and evaluate awareness campaigns to educate drivers on the importance of obeying speed limits and the potential consequences of speeding. (In progress)

Educate the public about why and how speed limits are set. (Planned, 1 year)

Strategy 2: Develop national communication campaigns targeting high-risk drivers.

Years of highway safety program research have shown that communication and public education, accompanied by enforcement can modify driver behavior.

Key Actions:

Use market research to create driver profiles to clearly understand how, when and where to reach speeders. (In progress)

Develop a communications strategy to educate the public and target at risk drivers. (In progress)

Work with highway safety partners to include appropriate material on the dangers of speeding in their training curriculum. (In progress)

Strategy 3: Encourage vehicle manufacturers to promote responsible driver behavior and speed compliance in advertising.

Much of vehicle advertising appears focused on vehicle performance and fails to appropriately promote safe and responsible driving.

Key Actions:

Communicate with vehicle manufacturers, including motorcycle manufacturers, expressing concern about a focus on speed, power and performance in advertising and the need to incorporate responsible safe driving messages. (Planned, 1 year)

OBJECTIVE 4: Identify and promote effective speed enforcement activities.

Strategy 1: Provide enforcement guidelines that promote driver compliance with appropriately set speed limits.

Effective enforcement works primarily through the principle of general deterrence. The fundamental concept is that credible threats of apprehension and punishment deter unwanted driving behaviors. Enforcement activities should focus on areas where speeding is overrepresented in crash occurrence.

Key Actions:

Develop best practices guidelines for speed enforcement programs in combination with education and media activities. (Planned, 2 years)

Strategy 2: Support speed enforcement operations.

Most contacts between citizens and law enforcement officers occur during traffic stops. More than half of all traffic stops result from speeding violations. Public support for speed enforcement activities depends on the confidence of the public that speed enforcement is motivated by safety concerns, fair and rational.

Key Actions:

Provide model-speed measuring device operator training programs. (In progress)

Provide performance specifications and testing protocols for speed-measuring device technologies. (In progress)

Provide independent testing laboratories for ensuring the accuracy and reliability of speed-measuring device technologies. (In progress)

Strategy 3: Promote the appropriate use of automated speed enforcement.

Automated enforcement has been shown to be effective in high crash locations, particularly on high-volume roadways and locations where it is unsafe to conduct traditional enforcement operations. Public support of automated speed enforcement programs is dependent on it being used where there is a crash problem, perceived as fair and not used as a revenue raising strategy.

Key Actions:

Identify appropriate applications for automated speed enforcement technology and evaluate its safety effectiveness. (In progress)

Provide implementation guidelines for automated speed enforcement systems. (Planned, 1 year)

Provide a model automated speed-measuring device operator training program. (Planned, 1 year)

Promote the application of automated speed enforcement systems that employ a combination of fines and licensing penalties designed to effectively deter speeding and prohibit revenue generation beyond reasonable operational cost. (Planned, 1 year)

Strategy 4: Promote enforcement activities that effectively target driver behaviors resulting in speeding-related crashes.

Enforcement operations should establish enforcement thresholds that focus on egregious and crash producing speeders. This strategy will not overwhelm law enforcement or the courts. The overall goal of the enforcement efforts is motorist compliance.

Key Actions:

Support speed enforcement activities that complement a comprehensive speed management program including traffic engineering, law enforcement, and the judiciary. (In progress)

Support high visibility enforcement efforts that strategically address speeders, locations, and conditions most common, or most hazardous, in speeding-related crashes. (In progress)

Promote speed enforcement as part of the National Commercial Motor Vehicle Safety Enforcement Program. (Planned, 1 year)

OBJECTIVE 5: Solicit cooperation, support, and leadership of traffic safety stakeholders.

Strategy 1: Provide information and training for traffic court judges and prosecutors.

Support and leadership of traffic court judges and prosecutors is essential to ensure that speeding violations are treated seriously and consistently. Consistent treatment of speeding violations by the courts is crucial to defuse any public perception that speed limits are arbitrary or capricious.

Key Actions:

Provide speed management program training opportunities for judges and prosecutors through the American Bar Association, National Traffic Law Center, National Association of Prosecutor Coordinators, and National Judicial College. (In progress)

Educate judges and prosecutors on the negative effects of speeding on the quality of life in their communities. (In progress)

Develop sentencing guidelines and training for judges and prosecutors who handle speeding violations to ensure and promote consistent treatment of violators. (Planned, 1 year)

Strategy 2: Promote speed management as a public policy priority.

Working cooperatively with traffic safety organizations and groups can make more effective use of limited resources and win support for reducing speeding-related crashes.

Key Actions:

Create a network of key partners and health professionals to carry the speed management message and leverage their resources to extend the reach and frequency of the speed management communication campaign. (Planned, 1 year)

Target speed management initiatives at States and road types with the greatest opportunity for making a significant improvement. (Planned, 1 year)

Strategy 3: Promote a balanced and integrated speed management program.
Engineering, education and enforcement all have a role to play in combating excessive speed. Reductions in speeding-related fatalities and injuries must be achieved by working with the state and local authorities who are responsible for implementing measures to manage speed.
Key Actions:
Conduct a series of speed limit setting and enforcement demonstration projects that integrate engineering, education, and enforcement. (In progress)
Develop and pilot test a Speed Management Program Implementation Guide, based on the best practices identified through the speed limit setting and enforcement demonstration projects, to aid States and local communities in implementing a holistic, balanced and effective program. (Planned, 1 year)
Provide a Speed Management Workshop Guide to enhance communications and cooperation among the engineering, enforcement, judicial and public policy partners. (In progress)
Train facilitators to conduct speed management workshops for States and local communities. (In progress)
Promote speed management workshops through the FHWA and FMCSA Divisions, Resources Centers, NHTSA Regional Offices, State DOT Engineering Offices, State Highway Safety Offices, and Local Technical Assistance Program centers. (In progress)

Making Speed Management Work

The success of any speed management program is enhanced by coordination and cooperation among the engineering, enforcement, and educational disciplines. An additional key component in a successful speed management program is for consistent, effective public outreach programs to support traffic safety strategies and countermeasures. The likelihood of success is increased when Federal, State, local, and private sector partners work together to reduce speeding-related fatalities and injuries. However, with over 35,000 owners and operators of roadways and nearly 20,000 police agencies, this is not an easy task.

As a first step, we plan to facilitate the formation of speed management working groups in State and local communities across the Nation to create localized action plans that identify specific speeding problems and the actions necessary to address them and restore the credibility of posted speed limits. If the problem of speeding and speed management is to be addressed successfully, the working group needs to address these issues:

- How to effectively overcome institutional and jurisdictional barriers to setting appropriate speed limits and enforcement practices.
- How to effectively coordinate with stakeholders across organizational and jurisdictional concerns to improve support needed for establishing effective speed management.
- How to effectively communicate and exchange information between the transportation disciplines and the public to reinforce the importance of setting and enforcing appropriate speed limits.

In addition, we are supporting a national forum with highway safety leaders that addresses how States, local communities and the private sector can collaboratively work to: 1) identify effective strategies for reducing speeding-related fatalities and injuries; 2) coordinate Federal, State, local and private sector speeding-related policies and programs; and 3) identify additional research, data and programs to be undertaken. The focus of the discussion will include all types of vehicles – automobiles, motorcycles, and commercial motor vehicles. The outcome of the meeting will be an action agenda developed by all the participants.

This strategic initiative is intended to provide the guidance and tools that will enable State and local authorities to more effectively manage speed and reduce speeding-related fatalities. It involves a holistic approach that addresses public attitudes, road user behavior, vehicle performance, roadway design and characteristics, speed zoning practice, and enforcement strategies.

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GLOSSARY

Causative factor	The combination of simultaneous and sequential factors without any one of which the result could not have occurred.
Contributing factor	Any circumstance contributing to a result without which the result could not have occurred.
Roundabout	A one-way circular intersection in which entering traffic yields to traffic already in the circle and specifically designed to slow the speed of traffic by using deflection and small radius circles.
Speed	Rate of progress, or change in position, usually without regard to direction; distance divided by time (if speed is constant); a scalar quantity which refers to how fast an object is moving; generally referred to in miles or kilometers per hours (mph or km per hr [km/h]).
Speed Limit, Absolute	A specified numerical value, the exceeding of which is always in violation of the law, regardless of the conditions or hazards involved.
Speed Limit, Differential	Speed limits that differ by vehicle type or time of day (e.g., day and night)
Speed Limit, Variable	Speed limits that change based on road and traffic conditions
Speed Management	Application of various methods to achieve safe and appropriate travel speeds
Speed zone	A speed limit posted on a section of road on the basis of a traffic engineering investigation that determined that the statutory limit which would otherwise apply is too high or too low
Speeding	The act of exceeding the legal speed limit or driving too fast for conditions
Speeding-related	A crash in which a driver is charged with a speeding-related offense or if the reporting officer indicated that racing, driving too fast for conditions, or exceeding the posted speed limit is a contributing factor in the crash.
Traffic calming	Combination of mainly physical measures intended to reduce traffic speed and enhance the street environment for non-motorists

APPENDIX A - Scope of the Problem

Overall trends in speeding-related fatalities (Figures 1 and 2):

- The number of speeding-related fatalities decreased continuously from 16,947 in 1986 to 12,592 in 1993. The number remained relatively constant until 2001 when the number of speeding-related fatalities started to increase again.
- The relative proportion of speeding-related fatalities to the total fatalities shows an overall downward trend from the highest level of 37 percent in 1986 to the lowest level at 30 percent in 2000.
- The upward trend since 2000 in total fatalities and the proportion of those that were speeding-related was reversed in 2003.

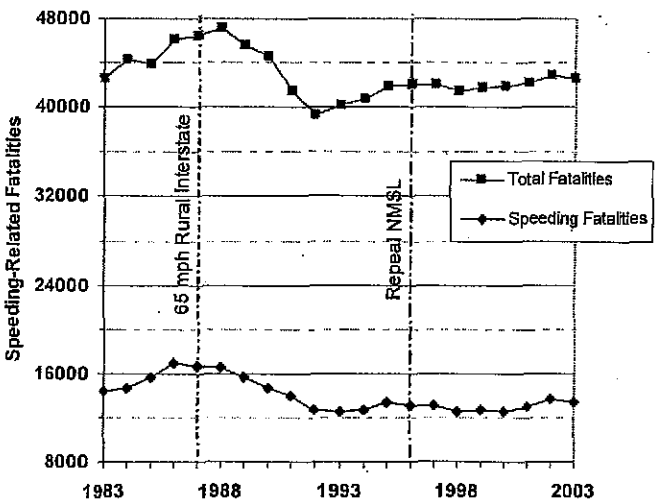


Figure 1: Trends in Speeding-Related Fatalities (Source: FARS 1983-2003)

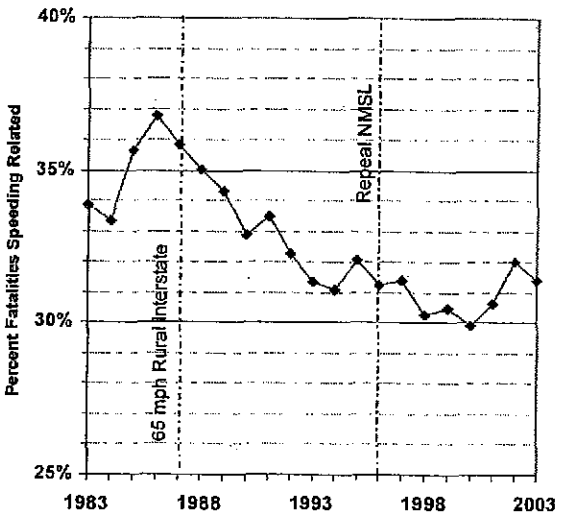
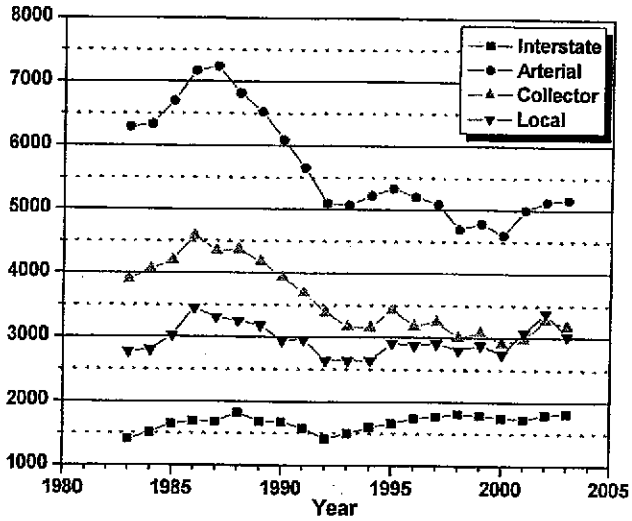


Figure 2: Percent of Fatalities That Are Speeding-Related (Source: FARS 1982-2003)

By Road Type (Figures 3 and 4):

- The number of speeding-related fatalities on local, collector, and arterial roads follows a trend similar to that of the overall speeding-related fatalities. The only exception is the trend of speeding-related fatalities on interstate freeways that peaked in 1998 and remained relatively constant since then.
- In comparison, since 2000, there is a larger increase in speeding-related fatalities on local roads than on other types of roadways until 2003 when the trend was reversed.
- The speeding-related fatality rate *per mile of travel* is more than three times higher on local roads than on interstate freeways.
- The speeding-related fatality rate *per mile of highway* is highest on interstates.



Source: FARS 1983-2003

Figure 3: Speeding-Related Fatalities by Roadway Function Class, 1983-2003

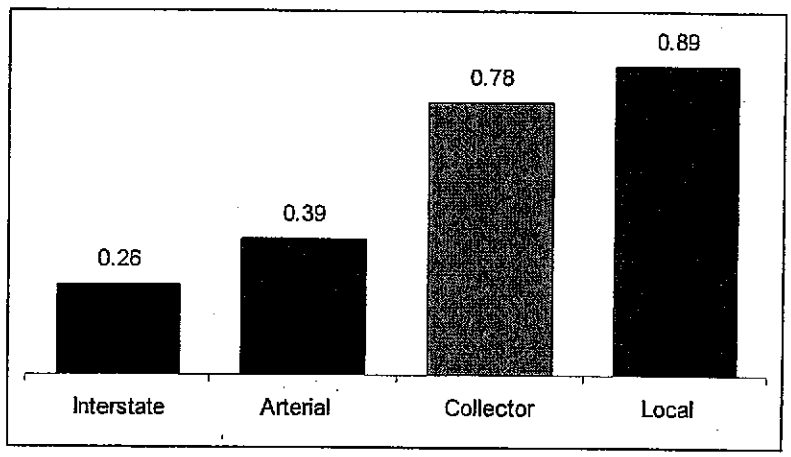


Figure 4: Speeding-Related Fatalities Per 100 Million Vehicle Miles Traveled (Source: FARS 2002, Highway Statistics 2002)

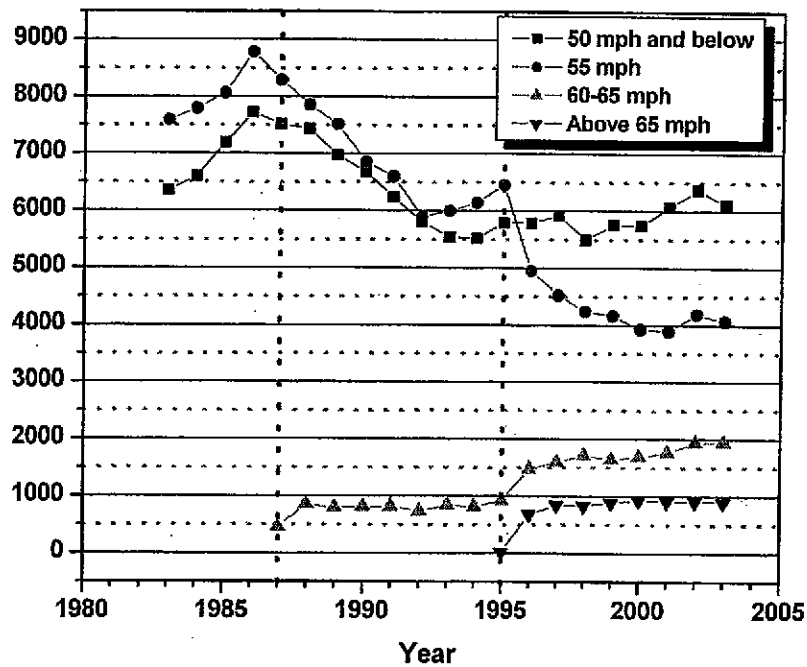
Table 1. Speeding-Related Fatalities and Fatality Rates By Road Type

(Source: FARS 2002, Highway Statistics 2002)

Road Type	Speeding Fatalities	Percent Speeding	Per 100 Million Miles Traveled	Per 100 Road Miles
Interstate	1799	31%	0.26	3.9
Arterials	4600	26%	0.39	1.2
Collector	3272	36%	0.78	0.4
Local	3385	40%	0.89	0.1

By speed limits (Figure 5):

- In 1987, Congress allowed 65 mph speed limits on rural interstates. Since that time, the number of speeding-related fatalities was relatively constant on roads with 65 mph speed limits while there was a downward trend on roads with speed limits of 55 mph and under.
- In 1995, Congress abolished the NMSL. Since that time, speeding-related fatalities have been gradually increasing on roads with speed limits of 65 mph and above while the fatalities on the road with speed limits under 50 mph have been relatively stable. The large decrease on roads with a speed limit of 55 mph is partially due to a decrease in the miles of roads posted at 55 mph because of the change to the higher speed limits after eliminating the NMSL.

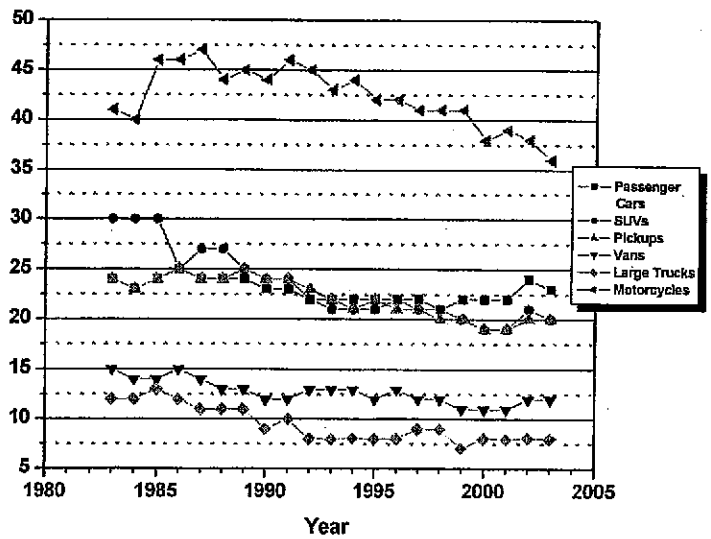


Source: FARS 1983-2003

Figure 5: Speeding-Related Fatalities by Speed Limit, 1983-2003. Note that the Congress Allowed States to Raise Speed Limits on Rural Interstates to 65 mph in 1987 and Abolished the NMSL in December 1995.

By vehicle type (Figure 6):

- The percentage of fatal crashes that were speeding-related is highest among motorcycle operators at 36 percent in 2003. This represents a decrease from the 1987 level high of 47 percent.
- The percentage of speeding involvement in fatal crashes is similar for passenger cars and light trucks. While the percentage for passenger cars is relatively constant between 1992 and 2001, the percentage for light trucks has been decreasing gradually. In 2002, all passenger vehicle types experienced an increase in the percentage of speeding involvement in fatal crashes.
- There was a steady decrease of the percentage of speeding involvement among SUVs involved in fatal crashes, from a high of 30 percent in 1983 to 19 percent in 2001.
- Drivers of large trucks involved in fatal crashes are least likely to be speeding.



Source: FARS 1983-2003

Figure 6: The Relative Proportion of Speeding Drivers in Fatal Crashes by Vehicle Type, 1983-2003

By driver characteristics:

- Male drivers are more likely to be involved in speeding-related crashes than females.
- The proportion of fatal crashes involving speeding decreases with driver age.
- Young males less than 25 years of age are overrepresented in speeding-related fatal crashes; however the proportion involving speeding was trending downward until 2001 when it increased
- On an average, about 41 percent of intoxicated drivers (blood alcohol concentration = 0.08+) involved in fatal crashes were speeding, compared to only about 14 percent of sober drivers.
- While the percentage of speeding drivers has decreased slightly for intoxicated drivers, the percentage has been relatively constant for sober drivers.

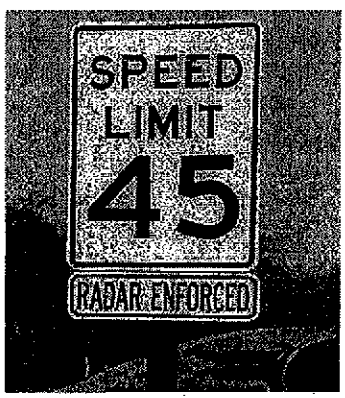
U.S. DEPARTMENT OF TRANSPORTATION

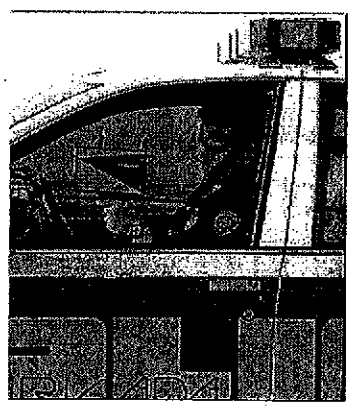
Speed Management Strategic Initiative

June 2005

U.S. DOT Speed Management Team

Federal Highway Administration
Federal Motor Carrier Safety Administration
National Highway Traffic Safety Administration





7. Fifty-five miles per hour at all times on freeways with paved shoulders inside the municipal corporation.

C. It is prima facie unlawful for any person to exceed any of the speed limitations in subsections (B)(1), (B)(2)(a), (B)(3), (4), (5), and (6) of this section or any declared pursuant to this section by the Director or the municipality, and it is unlawful for any person to exceed either of the speed limitations in subsection D of this section. No person shall be convicted of more than one violation of this section for the same conduct, although violations of more than one provision of this section may be charged in the alternative in a single affidavit.

D. No person shall operate a motor vehicle upon a street or highway as follows:

1. At a speed exceeding fifty-five miles per hour, except upon a freeway as provided in R.C. §4511.21(B)(10);

2. At a speed exceeding sixty-five miles per hour upon a freeway as provided in R.C. §4511.21 (B)(10) except as otherwise provided in subsection (D)(3) of this section;

3. If a motor vehicle weighing in excess of 8,000 pounds empty weight or a noncommercial bus as prescribed in R.C. §4511.21(B)(10), at a speed exceeding fifty-five miles per hour upon a freeway as provided in that section.

E. In every charge of violation of this section the affidavit and warrant shall specify the time, place, and speed at which the defendant is alleged to have driven, and, in charges made in reliance upon subsection C of this section also the speed which subsection (B)(1), (2)(a), (3), (4), (5), or (6) of, or a limit declared pursuant to, this section declares is prima facie lawful at the time and place of such alleged violation, except that in affidavits where a person is alleged to have driven at a greater speed than will permit him to bring the vehicle to a stop within the assured clear distance ahead, the affidavit and warrant need not specify the speed at which the defendant is alleged to have driven.

F. When a speed in excess of both a prima facie limitation and a limitation in subsection (D)(1) or (2) of this section is alleged, the defendant shall be charged in a single affidavit, alleging a single act, with a violation indicated of both subsection (B)(1), (B)(2)(a), (B)(3), (4), (5), or (6), or of a limit declared pursuant to this section by the Director or local authorities, and of the limitation in subsection (D)(1) or (2) of this section. If the court finds a violation of subsection (B)(1), (B)(2)(a), (B)(3), (4), (5), or (6) of, or a limit declared pursuant to this section has occurred, it shall enter a judgment of conviction under such subsection and dismiss the charge under subsection (D)(1) or (2) of this section. If it finds no violation of subsection (B)(1), (B)(2)(a), (B)(3), (4), (5), or (6) of, or a limit declared pursuant to this section, it shall then consider whether the evidence supports a conviction under subsection (D)(1) or (2) of this section.

G. 1. Notwithstanding penalties as provided in §70.99 of this code, whoever violates subsection A of this section under circumstances detailed in subsection (B)(2)(a) of this section, shall be guilty of an unclassified misdemeanor. If the person involved in such an offense was operating a motor vehicle at less than thirty-five m.p.h., that person shall be subject to a minimum mandatory fine of ninety dollars and may be fined up to one hundred eighty dollars for the violation. If the person involved in such an offense was operating a motor vehicle at more than thirty-five m.p.h. that person shall be subject to a minimum mandatory fine of one hundred forty dollars and may be fined up to two hundred eighty dollars for the violation.

2. All fines collected pursuant to subsection (G)(1) of this section shall benefit child safety programs, including the purchase and distribution of child safety helmets, educational programs, police payroll, and warning signage.

These child safety program funds shall be administered by the Deputy Mayor of Public Safety, with the spending of funds subject to Council approval.

H. Points shall be assessed for violation of a limitation under subsection D of this section only when the court finds the violation involved a speed of five miles per hour or more in excess of the posted speed limit.

I. Whenever the Traffic Engineer determines upon the basis of an engineering and traffic investigation that the speed permitted by subsection B of this section, on any part of a street or highway under its jurisdiction, is greater than is reasonable and safe under the conditions found to exist at the location, the Traffic Engineer may request the Director to determine and declare a reasonable and safe lower prima facie speed limit. The declared speed limit shall become effective only when appropriate signs giving notice thereof are erected at the location by the municipality. Upon withdrawal, the declared prima facie speed shall become ineffective and the signs relating thereto shall be immediately removed by the municipality.

J. Whenever the Traffic Engineer determines on the basis of an engineering and traffic investigation that the prima facie speed limit permitted in this chapter on any through street or highway, or upon streets or highways or portions thereof where there are no intersections or

between widely spaced intersections, provided that such street or highway is not part of the state street or highway system is less than is reasonable or safe under the conditions found to exist at such location, the Traffic Engineer may designate and declare a higher, reasonable, and safe prima facie speed limit but he shall not modify or alter the basic rule set forth in subsection A of this section or in any event authorize by ordinance a speed in excess of fifty miles per hour. Alteration of prima facie limits on state routes by the Traffic Engineer shall not be effective until the alteration has been approved by the Director. Penalty, see §70.99. (R.C. §4511.21) (Ord. 368-1998; Ord. 648-1986)