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**IN THE SUPREME COURT OF OHIO**

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| CITY OF DAYTON, | : | Supreme Court Case No. 2015-1549 |
| | : | |
| Plaintiff-Appellant, | : | On Appeal from the Montgomery County Court of Appeals, Second Appellate District (Case No. 26643) |
| | : | |
| v. | : | |
| | : | |
| STATE OF OHIO, | : | |
| | : | |
| Defendant-Appellee. | : | |

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# MEMORANDUM IN SUPPORT OF JURISDICTIONAL APPEAL BY AMICUS CURIE CITY OF AKRON

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## I. STATEMENT OF SUBSTANTIAL CONSTITUTIONAL QUESTION AND GREAT PUBLIC AND GENERAL INTEREST.

The City of Akron joins as *amicus curie* and urges this Court to accept jurisdiction over the City of Dayton's appeal of the Second District's decision in *City of Dayton v. State of Ohio*, Case No. 26643, because this case involves a substantial constitutional question that impacts many Ohio municipalities that will likely soon be the subject of different Appellate District decisions. In addition, Dayton's appeal involves questions about how local law enforcement may police traffic on streets – a subject of great public and general interest.

On August 7, 2015, the Second District reversed an order of the Montgomery County Court of Common Pleas that invalidated certain portions of Amended Substitute Senate Bill 342 ("SB 342") as unconstitutional under the Home Rule Amendment to the Ohio Constitution. SB 342 imposed restrictions on cities' authority to implement automated traffic enforcement programs – speed and red light cameras – with the intention of making them prohibitively expensive. Namely, the contested provisions of SB 342 require municipalities to station law enforcement officers at all automated camera locations in order to be able to issue tickets, require a three year study period and public campaign before implementing automated traffic cameras at new locations, and prohibit municipalities from enforcing speed violations using automated traffic programs for violations less than six miles per hour over the speed limit in park and school zones and 10 miles per hour over the speed limit elsewhere.

The Montgomery County Court of Common Pleas examined each of the contested provisions of SB 342 and correctly determined that they were directed solely at limiting the legislative powers of municipalities and did not prescribe rules of conduct upon citizens generally, thus violating the third and fourth prongs of the test this Court adopted for home rule analysis in *City of Canton v. State of Ohio*, 95 Ohio St.3d 149, 2002-Ohio-2005, 766 N.E.2d 963.

The Second District's opinion reversing the trial court eviscerates the Home Rule Amendment. Unlike the trial court, the Second District did not examine the contested provisions of SB 342 individually to determine whether or not they met the requirements of the *Canton* test. To the contrary, the Second District held that because the contested provisions were coupled with provisions that were ostensibly unobjectionable under the Ohio Constitution, the contested provisions should be reinstated. This is not good jurisprudence, and cannot be what this Court intended when it adopted the *Canton* test.

After the State adopted SB 342, Akron and other municipalities challenged the contested provisions in courts of common pleas – and prevailed, as the City of Dayton's Jurisdictional Memorandum describes. Common pleas courts in Montgomery, Summit, and Lucas Counties struck down the contested provisions of SB 342 on the grounds that they imposed invalid restrictions on municipalities' authority to police their roadways under the Home Rule Amendment. In reliance on these orders, Akron continued to operate its automated traffic enforcement program.

The State responded to the trial courts' orders by attempting to legislate around them. Rather than accepting municipal authority to police their roads in the way municipalities saw fit, the General Assembly inserted an eleventh-hour provision into the 2016-2017 budget bill, Amended House Bill 64 ("HB 64"), withholding municipalities' local government fund allocations by the amount a municipality billed to vehicle drivers in automated traffic program citations that were not issued in compliance with the now-invalidated SB 342. Akron challenged these provisions of HB 64 in the Summit County Court of Common Pleas, and obtained a preliminary injunction order on July 31, 2015, enjoining the State from enforcing these provisions of HB 64 as also violating the Home Rule Amendment. Not to be deterred, the State

Auditor has been sending notices to municipalities around the state, demanding to know whether the municipalities were in compliance with SB 342 and the amounts billed from June to September 2015 to drivers to enable the State to reduce municipalities' local government fund allocations.

This climate of legal uncertainty is very difficult for municipalities to operate in. It is clear that the State will not stop its efforts to eradicate automated traffic enforcement programs even though this Court has previously and unambiguously ruled that such local traffic photo enforcement ordinances are within the Home Rule Amendment. While the Second District is the only appellate district that has issued an opinion on the constitutionality of SB 342 to date (reversing the Montgomery County Court of Common Pleas), it is in conflict with two other common pleas court orders (from Summit and Lucas Counties), and the status of automated traffic enforcement programs is mired in uncertainty. Municipalities, including Akron, would like to operate automated traffic programs, but until they know whether they can do so without risking penalties that would substantially reduce their local government funds from the State, it is very hard to make operational decisions or allocate law enforcement resources.

If the Second District Court of Appeals' decision is allowed to stand, cities in Ohio would have to wait for a three year study to complete before it could act in some instances. Moreover, SB 342 and the Second District's decision make it financially punitive for cities to implement these sensible programs and allows the State to limit the legislative powers of municipalities. In addition, the true meaning of the Second District's opinion is that the Legislature can ignore the Home Rule Amendment and municipal authority anytime it wants by simply coupling unconstitutional legislation with unoffending provisions. Finally, until this issue is resolved,

cities are in considerable budgetary and legal uncertainty about how and whether to operate automated traffic enforcement programs.

## II. STATEMENT OF THE CASE AND FACTS

The City of Akron accepts and adopts the City of Dayton's statement of the case and facts as it relates to Dayton's program and the legislative history of the contested provisions of SB 342. Akron would like to submit additional facts about its program that the Summit County Court of Common Pleas recognized in its Final Order, discussed by the City of Dayton in its Jurisdictional Memorandum.

As this Court knows from its decision in in *Mendenhall v. City of Akron*, 117 Ohio St. 3d 33, 2008-Ohio-270, Akron's use of speed detection cameras in school zones came about after the tragic death of a ten year old schoolchild who, while pushing his younger sister to safety, was killed in a crosswalk by a speeding driver. As the Summit County Court found,

> On September 19, 2005, the Akron Emergency Ordinance [authorizing the automated traffic enforcement program] was signed into law to reduce the danger from vehicle operators speeding in and around school zones. The ordinance established an automatic mobile speed enforcement system to assist the police department by alleviating the need for extensive conventional traffic enforcement in school zone areas. Six traffic cameras are rotated among 68 schools and are administered by a private company, American Traffic Solutions. The enforcement program is a civil program, and imposes monetary liability upon owners of vehicles not in compliance with school zone speed limits. Proceeds from the program are placed into a Safety Fund.

(Summit County Opinion at A-1-2.)

Thus, Akron's program is a modest one, tailored to fit the particular law enforcement needs and circumstances in Akron, and has public support in Akron.

The provisions of SB 342 that the Montgomery County Court of Common Pleas struck down are as follows:

- *The Officer Present Requirement*: New R.C. 4511.093(B)(1)provided that a local authority "may utilize a traffic law photo-monitoring device ... only if a law enforcement officer is present at the location of the device at all times during the operation of the device[.]"
- *The Three-Year Study Requirement:* New R.C. 4511.095(A) provided that cities must "conduct a safety study of intersections or locations under consideration for placement of fixed traffic law photo-monitoring devices." In addition, this provision requires cities to conduct "a public information campaign to inform motor vehicle operators about the use of traffic law photo-monitoring devices at system locations prior to establishing any of those locations."
- *The Speeding Leeway Provision:* New R.C. 4511.0912 provided that municipalities "shall not issue a ticket for a violation" of local speed limits unless "the vehicle involved in the violation is traveling at a speed that exceeds the posted speed limit by not less than" six miles per hour in a school or park zone, or ten miles per hour elsewhere.

As this Court likely knows, the Legislature adopted SB 342 on the heels of this Court's decision in *Walker v. City of Toledo*, 2014-Ohio-5461 (Slip Op. Dec. 18, 2014), at ¶¶ 3, 29, holding that Ohio municipalities have the authority under the Ohio Constitution to impose civil liability on traffic violations through automated traffic enforcement systems. The *Walker* decision affirms this Court's 2008 holding in *Mendenhall v. City of Akron*, 117 Ohio St. 3d 33, 2008-Ohio-270. Ohio municipalities have fought long and hard for the right to implement automated traffic enforcement programs. The technology of automated traffic cameras has made the task of law enforcement in keeping municipal streets safer without monopolizing scarce

police resources, and Akron and other municipalities would like to avail themselves of these sensible programs. But the State, which apparently holds a contrary view of automated traffic enforcement programs, cannot let the issue go. Thus, Akron and other Ohio municipalities have had to endure instance after instance of State interference in how municipalities police their streets. It was precisely to prevent this type of State interference that the Home Rule Amendment was adopted.

After the State adopted SB 342 Akron and other municipalities challenged the contested provisions in courts of common pleas – and prevailed. The Summit County Court of Common Pleas issued a Final Order upon Akron's motion for summary judgment, correctly finding that

> Amended Senate Bill 342, at its essence, acts merely to limit the legislative power of a municipal corporation, and therefore cannot be considered a general law. Specifically, the Bill limits this power by requiring municipalities to conduct pre-implementation safety studies and public relations campaigns before installing automatic enforcement devices at any new location. R.C. 4511.095(A). This requirement directly limits the legislative power of a municipality with respect to automatic traffic camera enforcement programs. Likewise, the Bill requires a law enforcement officer to be present at the location of the device at all times during the operation of the device. R.C. 4511.093(B). No duties are associated with this requirement other than the physical presence of the officer, and as such, the Bill acts as a mandate to a municipality as to the allocation of law enforcement officers. This requirement appears to have no impact on the operation of automatic enforcement devices other than to place a prohibitive cost on their operation, and essentially defeats the benefits, and indeed the very premise, of such automatic devices by requiring the presence of law enforcement. Furthermore, the Bill prohibits municipalities from issuing automatic traffic camera enforcement tickets unless a driver is going more than six miles per hour over a school zone speed limit, or over ten miles an hour in other locations. R.C. 4511.092. This is a limitation not found in the Akron ordinance.

(Summit Cty. Final Order, Apr. 10, 2015, at A-8-9.)

## III. PROPOSITIONS OF LAW

The City of Akron adopts, incorporates, and supports the propositions of law set forth in Dayton's Jurisdictional Memorandum, as follows:

> Proposition of Law No. 1: Provisions in a state statute that are arbitrary and serve no purpose except to limit municipal police power are not general laws, and violate the Home Rule Amendment of the Ohio Constitution.
>
> Proposition of Law No. 2: Including provisions that violate the Home Rule Amendment into larger legislative enactments does not convert the offending provisions into general laws. While under home rule analysis, courts are required to analyze the legislation as a whole, they are also required to specifically analyze the challenged provisions to determine if they unconstitutionally limit cities' Home Rule authority.

The Home Rule Amendment of the Ohio Constitution provides municipalities with "the exclusive power to govern themselves, as well as the power to enact local health and safety measures not in conflict with the general law...." *Am. Fin. Servs. Assn. v. City of Cleveland*, 112 Ohio St. 3d 170, 2006-Ohio-6043, 858, N.E.2d 776, ¶26. As this Court has acknowledged, "the object of the home rule amendment was to permit municipalities to use [their] intimate knowledge and determine for themselves in the exercise of all powers of self-government how ... local affairs should be conducted." *Froelich v. City of Cleveland*, 99 Ohio St. 376, 385, 124 N.E.2d 212 (1919).

In this Court's opinion in *Canton v. Ohio*, 95 Ohio St. 3d 149, 2002-Ohio-2005, 766 N.E.2d 963, this Court set forth a three-part test to determine whether a state statute should take precedence over a local ordinance, and held that this was proper only when: (1) the ordinance conflicts with the state statute, (2) the ordinance is an exercise of police powers, rather than that of local self-government, and (3) the state statute is a general law. 95 Ohio St. 3d 149. As the

City of Dayton's Jurisdictional Memorandum points out, it is this third element – whether the contested provisions of SB 342 constitute a general law – that is at issue in this case.

In *Canton*, this Court also set forth four requirements for determining whether a state statute is a permissible general law. Under the *Canton* test, to survive a Home Rule Amendment challenge, a state statute must: (1) be part of a statewide and comprehensive legislative enactment; (2) apply to all parts of the state alike and operate uniformly throughout the state; (3) set forth police, sanitary, or similar regulations, rather than purport only to grant or limit the legislative power of municipalities to set forth police, sanitary, or similar regulations; and (4) prescribe a rule of conduct upon citizens generally. 95 Ohio St. 3d 149, at ¶21. The contested provisions of SB 342 are unconstitutional under the third and fourth prongs of the *Canton* test.

### A. The Contested Provisions of SB 342 Impermissibly Limit Municipal Powers And Do Not Set Forth General Police, Sanitary, or Similar Regulations in Violation of the Third Prong of the Ohio Supreme Court's *Canton* Test.

The Common Pleas Courts that reviewed the constitutionality of SB 342 properly found that the three contested provisions of SB 342 are not general laws because they serve no purpose other than to limit municipal power in violation of the Ohio Constitution. Under the Home Rule Amendment of the Ohio Constitution, "municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws." Article XVIII, Sec. 3. As the Summit County Court determined in the case involving Akron, "Amended Senate Bill 342, at its essence, acts merely to limit the legislative power of a municipal corporation, and therefore cannot be considered a general law." (App. A-8.)

The third prong of the *Canton* test is at the heart of the Home Rule Authority provided to political subdivisions under the Ohio Constitution. As the three trial courts found, however, the sole effect and purpose of SB 342 is to limit what municipalities are permitted to do with respect

to automated traffic enforcement programs. In the *Canton* decision itself, the Ohio Supreme Court determined that a state statute that prohibited municipalities from banning manufactured homes within their borders was an impermissible limit on municipal legislative powers, because it was expressly directed at limiting municipal powers. SB 342 follows precisely this unconstitutional blueprint.

Similarly, the Ohio Supreme Court decision in *Village of Linndale v. State*, 85 Ohio St. 3d 52, 706 N.E.2d 1227 (1999), the Ohio Supreme Court struck down a state statute that prohibited municipalities from issuing citations on interstate highways if a municipality had fewer than 880 yards of interstate freeway in its jurisdiction, if local law enforcement had to leave the jurisdiction to enter the freeway, and if local law enforcement entered the freeway with the primary purpose of issuing citations. Approximately 25 municipalities in Ohio met these criteria and were therefore foreclosed from enforcing speed and other motor vehicle laws on highways in their jurisdictions. The Ohio Supreme Court held that the state statute at issue was unconstitutional and not a general law because it was "simply a limit on the legislative powers of municipal corporations to adopt and enforce specific police regulations." *Id.* at 55. Like the law in *Linndale*, the provisions of SB 342 that the trial courts in Montgomery, Summit, and Lucas Counties struck down were aimed solely and exclusively at limiting and circumscribing traditional municipal traffic enforcement powers.

Likewise, in *City of Cleveland v. Ohio*, 138 Ohio 3d 232, 2014-Ohio-86, the Ohio Supreme Court struck down a state statute that prohibited municipalities from enacting laws governing the licensing, registering, or regulation of tow vehicles, which the Supreme Court held unconstitutionally limited the power of municipalities. SB 342 is a law precisely of this kind and therefore violates the third prong of the *Canton* test.

### B. The Contested Provisions of SB 342 Impermissibly Fail to Prescribe a Rule of Conduct on Citizens Generally, in Violation of the Fourth Prong of the Ohio Supreme Court's *Canton* Test.

Just as the contested provisions of SB 342 do not satisfy the third prong of the *Canton* test, they also fail under the fourth prong of the *Canton* test because they target municipal authority, and do not prescribe a rule of conduct upon citizens generally. As the trial court in Summit County ruled, "the bill is directed at municipalities, and not at the general citizenry." (App. A-10.)

Even though not a single provision of SB 342 is directed towards "citizens" – all of SB 342 are directed solely and expressly to municipalities, including those struck down by the trial courts – the State has argued that SB 342 prescribes a rule of conduct on citizens generally because it is part of a larger legislative scheme governing motor vehicle operation that does govern citizens generally. However, this Court has rejected this argument in the past, and has consistently held that provisions in legislation that target municipal power are not general laws, regardless if they are placed in a larger legislative scheme that does involve citizens generally. *See Canton, supra*; *City of Cleveland*, *supra.* This Court has always examined the actual effect of challenged provisions. They may not rely on the State's characterization of its challenged legislation when determining constitutionality.

In *Linndale*, this Court held that legislation that limited the municipality's power to enforce traffic laws did not apply to citizens generally, even though it was part of the broader traffic code. The State argued that while the specific provision in the state statute limited municipal power, the legislation was part of the traffic code as a whole, which governed citizens generally. *Linndale*, 85 Ohio St. 3d at 54. This Court rejected the State's argument, finding that the actual effect of the contested provisions was to place a limit "on the legislative power of municipal corporations to adopt and enforce specified police regulations [and] ... do not

prescribe a rule of conduct upon citizens generally." *Id.* at 55. Even the dissenters in *Linndale* most likely would agree that the contested provisions of SB 342 are unconstitutional. In disagreeing with the majority, the dissenters gave examples of situations that would be blatantly unconstitutional conduct by the state. Their list included "trying to tell Linndale how many traffic lights it should have, how to enforce its jaywalking laws, or how many police officers to hire." *Id.* at 56 (Pfeifer, J., dissenting). However, this is precisely what the state is attempting to do by way of SB 342 – tell cities how to enforce their traffic laws and that they must hire more police officers to do so.

Likewise, in *Canton* this Court found that legislation that applied to municipal bodies and not to citizens generally was not a general law. 95 Ohio St. 3d at ¶36. The State passed the contested provision banning municipalities from regulating manufactured homes as part of a larger bill governing manufactured housing that also, for instance, established rules and requirements for manufactured housing construction. The State in *Canton* likewise argued that the prohibition as part of a larger legislative act that placed restrictions on citizens generally. However, this Court rejected the State's argument and examined the actual effect of the provisions that were directed at municipalities. The Court held that the specific provisions in question did not prescribe a rule of conduct on citizens generally, targeted municipalities, and therefore violated the Home Rule Amendment, even reading the legislation as a whole. *Id.*

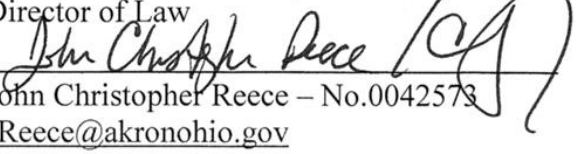
## IV. CONCLUSION

For the foregoing reasons, the City of Akron respectfully urges this Court to accept the City of Dayton's jurisdictional appeal.

Dated: September 21, 2015

Respectfully submitted,

Patricia Ambrose Rubright – No. 0009435
Director of Law



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## CERTIFICATE OF SERVICE

I hereby certify that on September 21, 2015 a copy of the foregoing Memorandum In Support of Jurisdictional Appeal by Amicus Curie City of Akron was filed and served via regular U.S. Mail, postage pre-paid, to the following:

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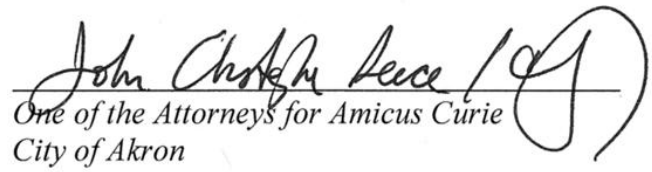

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IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

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| CITY OF AKRON, et al., Plaintiffs, | ) | CASE NO. CV 2015-02-0955 |
| -vs- | ) | JUDGE THOMAS A. TEODOSIO |
| STATE OF OHIO, et al., Defendants. | ) | **FINAL ORDER** Summary Judgment |

This matter is before the Court on Plaintiffs' Motion for Summary Judgment, Defendants' Motion for Summary Judgment and Memorandum Contra Plaintiffs' Motion for Summary Judgment, Plaintiffs' Reply Brief in Support of Motion for Summary Judgment and Brief in Opposition to Defendants' Motion for Summary Judgment, and Defendants' Reply in Support of Motion for Summary Judgment.

This matter arises from Plaintiffs' Complaint for Declaratory Judgment to invalidate all or part of Amended Senate Bill 342 for violation of the Ohio Constitution Home Rule Amendment. The Bill was signed into law on December 19, 2014, and the provisions that are challenged by the Plaintiff deal with the issue of municipal automatic traffic camera enforcement programs.

On September 19, 2005, the Akron Emergency Ordinance was signed into law to reduce the danger from vehicle operators speeding in and around school zones. The ordinance established an automatic mobile speed enforcement system to assist the police department by alleviating the need for extensive conventional traffic enforcement in school zone areas. Six traffic cameras are rotated among 68 school zones and are administered by a private company, American Traffic Solutions. The enforcement program is a civil program, and

imposes monetary liability upon owners of vehicles not in compliance with school zone speed limits. Proceeds from the program are placed into a Safety Fund.

Amended Senate Bill 342 places certain restrictions and requirements on traffic law photo-monitoring devices and programs such as Akron's Emergency Ordinance. The Plaintiffs' ask this Court to find these restrictions and requirements unconstitutional as violations of the Ohio Constitution Home Rule Amendment.

The provisions of Amended Senate Bill 342 have been codified in the Ohio Revised Code. Specifically, R.C. 4511.093(B)(1) and (3) provide: "The use of a traffic law photo-monitoring device is subject to the following conditions:

> (1) A local authority shall use a traffic law photo-monitoring device to detect and enforce traffic law violations only if a law enforcement officer is present at the location of the device at all times during the operation of the device and if the local authority complies with sections 4511.094 and 4511.095 of the Revised Code.
>
> . . .
>
> (3) If a traffic law photo-monitoring device records a traffic law violation and the law enforcement officer who was present at the location of the traffic law photo-monitoring device does not issue a ticket as provided under division (B)(2) of this section, the local authority may only issue a ticket in accordance with sections 4511.096 to 4511.0912 of the Revised Code."

R.C. 4511.095 provides: "(A) Prior to deploying any traffic law photo-monitoring device, a local authority shall do all of the following:

(1) Conduct a safety study of intersections or locations under consideration for placement of fixed traffic law photo-monitoring devices. The study shall include an accounting of incidents that have occurred in the designated area over the previous three-year period and shall be made available to the public upon request.

(2) Conduct a public information campaign to inform motor vehicle operators about the use of traffic law photo-monitoring devices at system locations prior to establishing any of those locations;

(3) Publish at least one notice in a local newspaper of general circulation that announces the local authority's intent to utilize traffic law photo-monitoring devices, the locations of those devices, if known, and the date on which the first traffic law photo-monitoring device will be operational;

(4) Refrain from levying any civil fines on any person found to have committed a traffic law violation based upon evidence gathered by a fixed location traffic law photo-monitoring device until the local authority observes a public awareness warning period of not less than thirty days prior to the first issuance of any ticket based upon images recorded by the device. During the warning period, the local authority shall take reasonable measures to inform the public of the location of the device and the date on which tickets will be issued for traffic law violations based

upon evidence gathered by the device. A warning notice may be sent to violators during the public awareness warning period.

(B)

(1) A local authority that deploys its first traffic law photo-monitoring device after the effective date of this section shall do so only after complying with division (A) of this section. If such a local authority thereafter wishes to deploy an additional traffic law photo-monitoring device, the local authority shall comply with that division prior to deploying the additional device.

A local authority that is operating or has operated on its behalf a traffic law photo-monitoring device on the effective date of this section may continue to operate the device after that date without the need to comply with division (A) of this section. However, if such a local authority wishes to deploy an additional traffic law photo-monitoring device after the effective date of this section, the local authority shall comply with division (A) of this section prior to deploying the additional device.

(2) All tickets that result from evidence recorded by a traffic law photo-monitoring device and that are issued prior to the effective date of this section by or on behalf of a local authority may be processed and adjudicated in accordance with the rules and procedures that were in effect for such tickets prior to the effective date of this section. On and after the effective date of this section, no ticket for a traffic law violation that is based upon evidence recorded by a traffic law photo-monitoring

device shall be processed and adjudicated in any manner other than in accordance with sections 4511.096 to 4511.0912 of the Revised Code."

R.C. 4511.0912 provides: "A local authority shall not issue a ticket for a violation of section 4511.21 or 4511.211 of the Revised Code or a substantially equivalent municipal ordinance due to failure to observe the applicable speed limit based upon evidence recorded by a traffic law photo-monitoring device unless one of the following applies:

(A) For a system location that is located within a school zone or within the boundaries of a state or local park or recreation area, the vehicle involved in the violation is traveling at a speed that exceeds the posted speed limit by not less than six miles per hour.

(B) For a system location that is located at any other location, the vehicle involved in the violation is traveling at a speed that exceeds the posted speed limit by not less than ten miles per hour."

Pursuant to Civ. R. 56(C), summary judgment is proper if: (1) No genuine issue as to any material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) it appears from the evidence that reasonable minds can come to but one conclusion, and viewing such evidence most strongly in favor of the party against whom the motion for summary judgment is made, that conclusion is adverse to that party. *Temple v. Wean United, Inc.* (1977), 50 Ohio St. 2d 317, 327. The party seeking summary judgment

initially bears the burden of informing the trial court of the basis for the motion and identifying portions of the record demonstrating an absence of genuine issues of material fact as to the essential elements of the nonmoving party's claims. *Dresher v. Burt* (1996), 75 Ohio St. 3d 280, 293. The movant must point to some evidence in the record of the type listed in Civ. R. 56(C) in support of his motion. *Id.* Once this burden is satisfied, the nonmoving party has the burden, as set forth in Civ. R. 56(E), to offer specific facts showing a genuine issue for trial. *Id.*

Plaintiffs' theory for summary judgment is that Amended Senate Bill 342 is not a general law because it cannot meet the prongs of the *Canton* test, which provides the framework for a Home Rule authority analysis.

"Municipalities derive their powers of self-government directly from Section 3, Article XVIII of the Ohio Constitution, which provides:

> '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.'

The court of appeals correctly set forth the three-part test to determine whether a provision of a state statute takes precedence over a municipal ordinance. A state statute takes precedence over a local ordinance when (1) the ordinance is in conflict with the statute, (2) the ordinance is an exercise of the police power, rather than of local self-government, and (3) the statute is a general law." *Canton v. State of Ohio*, 95 Ohio St. 3d 149 (2002).

"To constitute a general law for purposes of home-rule analysis, a statute must (1) be part of a statewide and comprehensive legislative enactment, (2) apply to all parts of the state

alike and operate uniformly throughout the state, (3) set forth police, sanitary, or similar regulations, rather than purport only to grant or limit legislative power of a municipal corporation to set forth police, sanitary, or similar regulations, and (4) prescribe a rule of conduct upon citizens generally." *Id.*

The first and second prongs of the *Canton* test requires that a general law be part of a statewide and comprehensive legislative enactment and apply to all parts of the state alike and operate uniformly throughout the state. Amended Senate Bill 342 acts to both amend and enact new sections under chapter 4511 of the Ohio Revised Code. In approaching an analysis of the first prong of the *Canton* test, the Ohio Supreme Court has stated that "sections within a chapter will not be considered in isolation when determining whether a general law exists. All sections of a chapter must be read in pari material to determine whether the statute in question is part of a statewide regulation . . . ." *Mendenall v. Akron*, 117 Ohio St. 3d 33 (2008). The Ohio Supreme Court, in its consideration of whether R.C. 4511.21 was a general law, went on to find: "As a part of Chapter 4511 of the Revised Code, which as a whole regulates traffic laws and the operation of motor vehicles in the state of Ohio, R.C. 4511.21 is part of a statewide and comprehensive legislative enactment. No part of the state is exempt from speed enforcement. The statue thus satisfies the first and second elements of the general-law test established in *Canton* by being 'part of a statewide and comprehensive legislative enactment' and by 'apply[ing] to all parts of the state alike and operat[ing] uniformly throughout the state." *Id.*

This Court finds the rationale behind the Ohio Supreme Court's analysis of R.C. 4511.21 applies equally to Amended Senate Bill 342. The amended sections and newly enacted sections of Chapter 4511, read in conjunction with the rest of the Chapter, are part of a

statewide and comprehensive legislative enactment and apply to all parts of the state alike and operate uniformly throughout the state. Therefore, Amended Senate Bill 342 meets the first two prongs of the *Canton* test.

The third prong of the *Canton* test requires that a general law must set forth police, sanitary, or similar regulations, rather than purport only to grant or limit the legislative power of a municipal corporation to set forth police, sanitary, or similar regulations. "[T]he meaning of this . . . principle of law is that a statute which prohibits the exercise by a municipality of its home rule powers without such statute serving an overriding statewide interest would directly contravene the constitutional grant of municipal power." *Canton v. State of Ohio*, 95 Ohio St. 3d 149 (2002). This Court finds that Amended Senate Bill 342, at its essence, acts merely to limit the legislative power of a municipal corporation, and therefore cannot be considered a general law. Specifically, the Bill limits this power by requiring municipalities to conduct pre-implementation safety studies and public relations campaigns before installing automatic enforcement devices at any new location. R.C. 4511.095(A). This requirement directly limits the legislative power of a municipality with respect to automatic traffic camera enforcement programs. Likewise, the Bill requires a law enforcement officer to be present at the location of the device at all times during the operation of the device. R.C. 4511.093(B). No duties are associated with this requirement other than the physical presence of the officer, and as such, the Bill acts as a mandate to a municipality as to the allocation of law enforcement officers. This requirement appears to have no impact on the operation of automatic enforcement devices other than to place a prohibitive cost on their operation, and essentially defeats the benefits, and indeed the very premise, of such automatic devices by requiring the presence of law enforcement.

Furthermore, the Bill prohibits municipalities from issuing automatic traffic camera enforcement tickets unless a driver is going more than six miles per hour over a school zone speed limit, or over ten miles an hour in other locations. R.C. 4511.092. This is a limitation not found in the Akron ordinance.

The fourth prong of the *Canton* test requires that a general law prescribe a rule of conduct on citizens generally. In *Canton v. State of Ohio*, 95 Ohio St. 3d 149 (2002), the Court contrasted "a general law . . . prescribing a rule of conduct upon citizens generally as opposed to "a limitation upon law making by municipal legislative bodies." The Court held that the statute in question did "not prescribe a rule of conduct upon citizens generally, because . . . the statute applies to municipal legislative bodies, not to citizens generally."

The preamble to Amended Senate Bill 342 states its purpose "to establish conditions for the use by local authorities of traffic law photo-monitoring devices to detect certain traffic law violations and to require the Department of Public Safety to issue a report on texting while driving citations." The statement indicates that the bill is directed at municipalities, and not at the general citizenry. Taken in conjunction with the requirements examined above, Amended Senate Bill 342 does not prescribe a rule of conduct on citizens generally, but rather is a limitation upon law making by municipal legislative bodies. Therefore, Amended Senate Bill 342 does not pass the fourth prong of the *Canton* test.

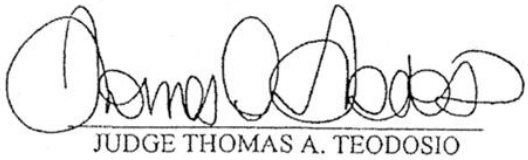
In conducting this analysis as set forth in *Canton*, this Court is cognizant that a certain balance must be struck between looking at the individual amendments at issue and the larger statutory framework of which they are a part. Although Amended Senate Bill 342 is not to be viewed in a vacuum, if this Court were to give complete deference to a broad-based perspective that only considered the issue from the context of an entire Revised Code

chapter, it would have the effect of eviscerating any remnants of Home Rule authority. The Court is wary of endorsing an analysis whereby any State legislation, no matter how restrictive to municipalities' powers, would always trump Home Rule authority as long as the legislation was couched within an existing legislative framework.

This Court finds that certain provisions of Amended Senate Bill 342, as discussed above, do not qualify as a general law under the *Canton* test. Specifically, R.C. 4511.093(B)(1) and (3), R.C. 4511.095, and R.C. 4511.0912 violate the Ohio Constitution Home Rule Amendment. With regard to these sections, no genuine issue as to any material fact remains to be litigated and the Plaintiffs are entitled to judgment as a matter of law. Therefore Plaintiffs Motion for Summary Judgment is GRANTED as to R.C. 4511.093(B)(1) and (3), R.C. 4511.095, and R.C. 4511.0912, and Defendants' Motion for Summary Judgment is DENIED. This is a final appealable order and there is no just cause for delay.

**Pursuant to Civ.R. 58(B), the Clerk of Courts shall serve upon all parties not in default for failure to appear notice of this judgment and its date of entry upon the journal.**

IT IS SO ORDERED.



JUDGE THOMAS A. TEODOSIO