

IN THE SUPREME COURT OF OHIO

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

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Appendix

I. INTRODUCTION

The Second District Court of Appeals' decision permits the Ohio General Assembly to legislate the Home Rule Amendment out of existence by burying unconstitutional statutes within larger bills. The specific question before the Court is whether provisions of Amended Substitute Senate Bill 342 ("SB 342"), whose sole stated purpose and effect is to restrict municipal police authority, are general laws.

Although three Ohio trial courts¹ found that several provisions of SB 342 were unconstitutional as a matter of law, the Second District held that these provisions were constitutional because the bill in which they were contained also included provisions that are not constitutionally invalid. Thus, the Second District allowed the State to circumvent this Court's decisions in *Mendenhall v. City of Akron*, 117 Ohio St.3d 33, 2008-Ohio-270, 881 N.E.2d 255 and *Walker v. City of Toledo*, 143 Ohio St.3d 420, 2014-Ohio-5461, 39 N.E.3d 474 ¶¶3, 29, both of which recognized Ohio municipalities' Home Rule authority to implement automated traffic enforcement systems.

If left to stand, the Court of Appeals' decision would eviscerate the Home Rule Amendment. It would allow the General Assembly to violate municipal Home Rule authority by burying the offending statutory provisions in a larger piece of legislation. The Second District's opinion ignores the Ohio Constitution and this Court's precedent requiring a reviewing court to analyze challenged provisions individually to ensure that they respect Home Rule and to sever those provisions that are unconstitutional. The Second District's ruling renders the protections afforded municipalities by the Home Rule Amendment meaningless.

¹ In *City of Akron v. State of Ohio*, C.P. No. CV-2015-02-0955 (Apr. 10, 2015) the Summit County Common Pleas Court found the Contested Provisions to be unconstitutional. The Summit County Court of Appeals remanded the case back to the Common Pleas Court for clarification. On remand, the Common Pleas Court reversed its decision without any discussion, and simply adopted the Second District Court of Appeals Decision.

II. STATEMENT OF FACTS

A. Dayton's Automated Photo Enforcement Program Was Enacted After The City Conducted a Traffic and Accident Study that Indicated a Need for the Program.

Dayton is an Ohio charter municipality established and governed pursuant to the Ohio Constitution, the Dayton Charter, and its ordinances and resolutions. (Affidavit of Det. Jason Ward "Ward Aff." at ¶ 3, Appx. pg. 48). Dayton enacted an automated traffic control photographic system (the "Program") pursuant to the authority granted to it by the Home Rule Amendment of the Ohio Constitution for the health, safety, and welfare of its residents. (Ward Aff. ¶ 4; Appx. pg. 48). The Program was established on June 12, 2002, and initially provided only for enforcement of red light violations. On February 17, 2010, the Program was modified to provide for enforcement of speed violations as well. (*Id.* at ¶¶ 4-5). The ordinances are codified in Dayton R.C.G.O. §70.121. (Appx. pgs. 51-66).

The purpose of the program was to use the new technology offered by automated photography to reduce the number of red light and speeding violations and accompanying accidents in the City of Dayton, and to conserve limited police resources. The preamble to the Dayton ordinance provides:

WHEREAS, The City seeks to reduce the frequency of vehicle operators running red traffic lights; and

WHEREAS, The frequency of running red lights creates a substantial risk to the safety of citizens on the roadway; and

WHEREAS, An automated traffic control photographic system will assist the Dayton Police Department by alleviating the necessity for conducting extensive conventional traffic enforcement at high accident intersections; and

WHEREAS, The adoption of an automated traffic control photographic system will result in a significant reduction in the number of red light violations and/or accidents within the City of Dayton;

(See Ward Aff., Exhs. 1, 2, Appx. pgs. 51-66).

Dayton conducted traffic and accident studies and located the traffic control cameras at intersections and locations that had high instances of violations related to traffic accidents. (*Id.* at ¶7, Appx. pg. 49). After installing the cameras, Dayton saw an immediate reduction in violation related accidents, including a 45% decrease in red light violation accidents at the intersections where the cameras were installed. (*Id.* at ¶9, Appx. pg. 49). Dayton now has over 36 speed and/or red light violation cameras throughout the City. (*Id.* at ¶11). Dayton does not have the police resources to station an officer at each of these cameras. (*Id.* at ¶15). The cameras compliment but do not supplant police officers. Indeed if a police officer is present and witnesses a violation, the officer is specifically authorized to issue a ticket to the offending driver who can be assessed points if convicted.

Dayton's Program is a civil program, not a criminal program, as this Court has authorized in *Mendenhall* and *Walker*. (*Id.* at ¶12). The Program provides for civil enforcement imposing monetary liability upon vehicle owners that do not comply with posted speed limits or run red lights. (*Id.* at ¶12). Offenses are not enforced by the Dayton Municipal Court, and points for violations are not assessed against vehicle owners' driving records. (*Id.*). Dayton has implemented an administrative hearing process for those who want to appeal a violation. (*Id.*). The fine for a violation is currently \$85. (*Id.* ¶6). The cameras provide video and still pictures of the cars showing the vehicle running a red light or speeding. (*Id.* at ¶13.) Before a citation is issued, a Dayton police officer must review the video and photographs and confirm that the vehicle captured by the cameras in fact ran the red light or was speeding. (*Id.*).

B. The Legislature Enacted Senate Bill 342, Effectively Ending Dayton's Automated Traffic Program.

The day after this Court issued its opinion in *Walker v. City of Toledo*, 2014-Ohio-5461

(Dec. 18, 2014), upholding municipal authority to enact automated traffic enforcement programs, Governor Kasich signed SB 342 into law (a copy of SB 342 is attached at Appendix pg. 38). SB 342 amended and enacted over a dozen sections of the Ohio Revised Code² for the sole purpose of restricting cities' authority to operate automated traffic monitoring programs. SB 342 was passed after the Legislature abandoned its attempt at an outright ban of photo enforcement in HB 69. HB 69 would have banned the use of photo enforcement cameras except in school zones. (See Am. H.B. No. 69 130th General Assembly). However, HB 69 was abandoned after the Legislative Service Commission indicated that an outright ban would infringe upon municipal Home Rule rights. (See Ohio Legislative Service Commission Memorandum of February 5, 2014, Appx. pgs. 70-73).

The motivation behind SB 342 was clearly stated by its sponsor, who bluntly disclosed that SB 342 would “force most cities to make hard choices about law enforcement priorities, and would likely reduce the number of operating cameras.”³ SB 342 includes three provisions that common pleas courts in Montgomery, Summit, and Lucas Counties held violated the Home Rule Amendment of the Ohio Constitution (the “Contested Provisions”):

(1) The Officer Present Requirement: New R.C. 4511.093(B)(1) provides that a municipality “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[.]” (Emphasis added.) The Officer Present Requirement dictates to local authorities how they may deploy law enforcement resources, without serving any legitimate public purpose. Indeed, the

² SB 342 amends R.C. §§ 1901.20, 1907.02, 4511.094, and 4511.204; amends for the purpose of adding a new section number as indicated in parenthesis, § 4511.093 (4511.043); enacts §§ 3937.411, 4511.095-4511.099 and §§ 4511.0910-4511.0914; enacts new sections 4511.092 and 4511.093; and repeals § 4511.092.

³ Sen. William Seitz, Sponsor Testimony, House Policy and Legislative Oversight Committee, Dec. 2, 2014.

Officer Present Requirement does not require that the officer be in a marked patrol car, look at the street, look at automobiles, look at the traffic signal, be awake, or even pay attention to anything in particular. The officer just has to be “present” in body at the location of a device. Moreover, the statute requires that the officer be a full-time officer in the jurisdiction, so even though Ohio law allows a part-time police officer to make felony arrests, a part-time officer is deemed unfit by SB 342 to be present at the location of a traffic camera.

The sole function of the Officer Present Requirement is to make it prohibitively expensive for cities to utilize automated photo enforcement programs. The Ohio Legislative Service Commission (LSC) determined that putting officers at each device around Ohio would cost cities \$73 million per year.⁴ Of course, the Legislature did not increase funding to pay for these officers it now requires.

(2) The Three-Year Study Requirement: New R.C. 4511.095(A) requires that cities “conduct a safety study of intersections or locations under consideration for placement of fixed traffic law photo-monitoring devices.” Under this provision, safety studies “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.” In addition, the Three-Year Study Requirement forces 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.” *Id.*

The Three Year Study Requirement restricts not only municipalities’ authority to deploy law enforcement resources as they see fit and imposes an arbitrary condition precedent for enacting automated traffic camera programs, but it also restricts municipal legislative decision

⁴ See <http://www.lsc.ohio.gov/fiscal/fiscalnotes/130ga/sb0342sp.pdf>. Appx. Pgs. 67-70.

making. Under the Three-Year Study Requirement, Ohio cities cannot use their powers to address immediate community safety needs. This is a real issue, as Akron, for example, enacted its automated photo traffic enforcement program pursuant to an emergency ordinance after the tragic death of a child in a school crosswalk. *See Akron Emergency Ordinance 461-2005* (Sept. 19, 2005). The Three-Year Study Requirement is, moreover, purposeless. The statute does not require the study to be referenced in a city’s decision as to whether to place a traffic camera at a new location, and a city is allowed to install a new traffic camera regardless of the outcome of the study.

(3) The Speeding Leeway Provision: New R.C. 4511.0912 provides that municipalities “shall not issue automated camera violation[s]” for speeding violations 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. The Speeding Leeway Provision effectively increases speed limits, and impedes municipalities’ ability to enforce speed limits within their borders—of particular concern in school and park zones where accidents are likely and the consequences of accidents are more tragic. Thus, while *Mendenhall* promoted uniform traffic enforcement by upholding municipal automated traffic programs that complement traffic statutes, R.C. 4511.0912 does just the opposite, and fragments speed limit enforcement.

In addition to the contested provisions, SB 342 contains the following additional provisions:

- R.C. 1901.20: Removes jurisdiction of municipal courts to hear photo enforcement violations; and grants municipal courts jurisdiction to hear appeals of photo enforcement violations;

- R.C. 1907.02: Grants a county court jurisdiction to hear appeals of photo enforcement violations;
- R.C. 3937.411: Prohibits insurers from considering photo enforcement violations in issuing policies and establishing rates;
- R.C. 4511.094: Modifies preexisting signage requirements for photo enforcement;
- R.C. 4511.096: Establishes review requirements for violations and establishes evidentiary presumptions for photo enforcement;
- R.C. 4511.097: Requires municipalities to include certain information on a notice of violation and limits allowable fine amounts; and
- R.C. 4511.098 and 4511.099: Lists method for obtaining a hearing and requirements for a hearing for photo enforcement violations.

C. Dayton's Lawsuit Challenging SB 342

Dayton sued the State on March 18, 2015, seeking a preliminary and permanent injunction to enjoin enforcement of SB 342 on the grounds that the new law violates the Home Rule Amendment of the Ohio Constitution. The Montgomery County Court of Common Pleas issued an expedited briefing schedule, and both Dayton and the State promptly completed summary judgment briefing. On April 2, 2015, the trial court issued an order granting Dayton's motion for summary judgment, and denied the summary judgment motion filed by the State. The trial court found that the Contested Provisions are not general laws because they serve only to limit municipal authority and do not prescribe a rule of conduct upon citizens generally. (Trial Court Decision at 9, Appx. pg. 34). The trial court also held that the Contested Provisions placed

“an onerous burden on local municipalities seeking to administratively enforce their own traffic control procedures . . . [u]nder the guise of a general police power.” (*Id.* at 10-11, Appx. pgs. 35-36). The trial court’s order permanently enjoined the State from enforcing the Contested Provisions.

Shortly after the Montgomery County Court of Common Pleas issued its summary judgment order enjoining the enforcement of the Contested Provisions, two other Ohio Common Pleas courts, in Summit County and Lucas County, followed suit. Those courts also held that the Contested Provisions of SB 342 violated municipal Home Rule Authority. *See City of Akron, v. State of Ohio*, Summit C.P. No. CV-2015-02-0955 (Apr. 10, 2015); *City of Toledo v. State of Ohio*, Lucas C.P. No. CI-12-1828 (Apr. 27, 2015).

D. The Second District Court of Appeals Reverses the Common Pleas Court

Ignoring important Home Rule case law, the Second District Court of Appeals reversed the Montgomery County Common Pleas Court’s order, and held that because the Contested Provisions were accompanied by other, non-objectionable provisions, the Contested Provisions were constitutional. The Court of Appeals never analyzed the constitutionality of the Contested Provisions individually and never engaged in the necessary “severance analysis” of these provisions. Specifically, the Second District held:

[The Contested Provisions] undoubtedly regulate the requirements and implementation procedures to which a municipality must adhere if it chooses to use traffic cameras to record red light/speeding violations. However, as is clear from the other provisions listed above, Am. Sub. S. B. No. 342 has extensive scope and does more than grant or limit state provisions.

(Appellate Decision at pg. 14, Appx. pg. 18).

III. ARGUMENT

Summary of Argument

The Second District's decision renders the Home Rule Amendment's protections of municipal authority illusory. Courts are required to interpret an amendment to the Ohio Constitution broadly in order to accomplish its manifest purpose. *State ex. rel. Swetland v. Kinney*, 69 Ohio St.2d 567, 433 N.E.2d 217, 220 (1982). The manifest purpose of the Home Rule Amendment is to reserve inherent constitutional power to municipal governments and place limits on the Legislature's interference with that power. *Village of Perrysburg v. Ridgway*, 108 Ohio St. 245, 254-257, 140 N.E. 595 (1923). Prior to the Home Rule amendment, there was no express delegation of power to municipalities in the Ohio Constitution, and all power was derived from the Legislature. *Id.* "Municipalities were, therefore, largely a political football for each succeeding Legislature, and there was neither stability of law touching municipal power nor sufficient elasticity of law to meet changed and changing municipal conditions." *Id.* Not only did the Home Rule Amendment change this situation by reserving power to municipalities involving matters of local self-government, but it prohibited State statutes from placing restrictions on municipal police power "without such statute serving an overriding statewide interest." *Canton*, at ¶ 32.

Both the Home Rule Amendment and this Court's decisions are clear that only general laws may take precedence over municipal ordinances. *City of Canton v. State of Ohio*, 95 Ohio St.3d 149, 2002-Ohio-2005, 766 N.E.2d 963; *Linndale v. State*, 85 Ohio St.3d 52, 706 N.E.2d 1227 (1998); *West Jefferson v. Robinson*, 1 Ohio St.2d 113, 205 N.E.2d 382 (1965). Likewise, this Court has repeatedly held that laws that purport to only grant or limit municipal legislative power or that do not prescribe rules of conduct upon citizens generally are not general laws. *Id.* Moreover, this Court has repeatedly held that reviewing courts must specifically analyze the

contested provisions of legislation and must sever those provisions if they violate the Home Rule Amendment. *Canton, supra* at ¶¶32-33, *Lindale, supra*; *Garcia v. Siffrin Residential Assn.*, 63 Ohio St.2d 259, 407 N.E.2d 1369 (1980).

With SB 342, the State is trying to insulate unconstitutional provisions within the framework of a larger legislative enactment – an attempt to end-run the Home Rule Amendment. The State is in essence asking this Court to ignore the constitutional impact of the Contested Provisions and look only at the larger legislative enactment. This is exactly the opposite of what this Court and the Home Rule Amendment require. Adopting the State’s approach would remove all limitations on the Legislature’s power, and render the Home Rule Amendment meaningless. Therefore, the Second District’s decision must be reversed.

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.

A. The Home Rule Amendment’s Grant of Authority to Municipalities.

The Home Rule Amendment, found in Article XVIII, Section 3 of the Ohio Constitution, provides:

Municipalities shall have authority to exercise all power of 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.

This provision 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. Just a few years after Home Rule was adopted, this Court held that “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. 212 (1919). The Home Rule Amendment not only reserves inherent power for municipalities, but it places limits on the Legislature’s interference with that power. *Village of Perrysburg v. Ridgway*, 108 Ohio St. 245, 254-257, 140 N.E. 595 (1923).

This Court has adopted a three-part test to determine whether a state statute takes precedence over a municipal ordinance. A state statute takes precedence over a local ordinance only when: (1) the ordinance is in conflict with the statute, (2) the ordinance is an exercise of the municipality’s police power, rather than of local self-government, and (3) the state statute is a “general law.” See *City of Canton v. State of Ohio*, 95 Ohio St.3d 149, 2002-Ohio-2005, 766 N.E.2d 963, citing *Ohio Assn. of Private Detective Agencies, Inc. v. N. Olmstead*, 65 Ohio St.3d 242, 244-45, 603 N.E.2d 1147 (1992).

It is this third element—whether SB 342 is a “general law”—that is at issue in this case. In *Canton v. State*, the Ohio Supreme Court set forth four requirements to determine whether a law is a general law. Under the *Canton* test, 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. 95 Ohio St.3d 149, at ¶ 21. As the Montgomery County Court of Common Pleas held, the Contested Provisions of SB 342 fail the third and fourth prongs of the *Canton* test.

B. The Contested Provisions are Unconstitutional Because They Purport Only to Limit Municipal Power.

This Court’s precedent is clear that “legislation that purports only to grant or limit the

legislative power of a municipal corporation to set forth police, sanitary, or similar regulations” is unconstitutional in violation of the Home Rule Amendment and the third prong of the *Canton* test. See *Linndale v. State*, 85 Ohio St.3d 52, 706 N.E.2d 1227 (1999); *West Jefferson v. Robinson*, 1 Ohio St.2d 113, 205 N.E.2d 382 (1965).

Here, even the State and the Second District concede that the Contested Provisions serve only to limit municipal power. (Appellate Decision at pg 14, Appx. pg. 18) (the Contested Provisions “undoubtedly regulate the requirements and implementation procedures to which a municipality must adhere if it chooses to use traffic cameras to record red light/speeding violations.”) The Contested Provisions specifically limit a municipality’s power to issue photo traffic enforcement violations unless: (1) a full-time police officer is present at the location of the traffic camera; (2) a three-year traffic safety study is performed at the location of the traffic camera; and (3) a vehicle is traveling more than ten mile per hour above the speed limit. The State argues that the Contested Provisions are general laws because they are included in a larger legislative enactment that includes provisions that ostensibly are constitutional.

However, joining unconstitutional provisions that restrict municipal powers with other provisions that are constitutional does not convert the unconstitutional provisions into constitutional ones. See *Canton, supra.*; *Lindale, supra.*; *Garcia, supra.* Indeed, this Court has rejected this very theory several times in the past.

Linndale is directly on point to the facts of this case. In *Linndale*, the State enacted a law that prohibited municipal law enforcement from issuing speeding citations on freeways if there was less than 880 yards of interstate freeway in the municipality’s jurisdiction. The State argued there, as here, that its restriction was simply “part of a comprehensive statewide regulatory scheme covering the interstate highway system.” *Id.* at 54. This Court disagreed: “The statute

before us is not a part of a system of uniform statewide regulation on the subject of traffic law enforcement. It is a statute that says, in effect, certain cities may not enforce local regulations[.]” 85 Ohio St.3d at 54.

In *Canton*, the Legislature passed a statute prohibiting local governments from passing zoning regulations that restricted manufactured housing. Canton challenged the legislation, arguing that it violated its Home Rule rights under the Ohio Constitution, and was merely a limitation on municipal legislative power. The State argued that the prohibition was part of a larger legislative enactment to “provide uniformity” and to “clarify the definition of a permanently sited manufactured home.” *Id.* at 19. The court of appeals held that the State statute was a general law because it was part of a larger legislative action, and did not analyze the contested provisions separately. This Court reversed the court of appeals and analyzed the contested provisions separately, holding that “a statute which prohibits the exercise by a municipality of its home rule power without such statute serving an overriding statewide interest would directly contravene the constitutional grant of municipal power.” *Id.* at ¶32. Thus, this Court found that the specific provisions did not serve any statewide interest, but only served to limit the legislative power of municipal governments.

Here, the Trial Court found that the Contested Provisions served no overriding statewide purpose, and have absolutely no relationship to the public health, safety, morals, or general welfare. Rather, the Trial Court found that the Contested Provisions served only to limit municipal power by creating onerous expense to the municipalities for maintaining a photo enforcement program. (Trial Court Decision at pgs. 4, 10, Appx. Pgs.28, 34).

Even a cursory glance at SB 342 renders these conclusions inescapable. While SB 342 requires an officer to be present when a traffic monitoring camera is in operation, it does not

require the officer to be looking at the intersection, at the vehicle in question, or anything in particular while there. It does not even require the officer to be awake! Likewise, requiring the municipality to conduct a three-year traffic study before installing a new photo-enforcement device and not permitting municipalities to issue violations for certain speeders serve no public safety purpose or statewide interest. Rather, these requirements exist solely to limit municipal legislative power, waste police resources, create an onerous burden for municipalities, and act as a de facto ban.⁵

The Second District made the same mistake in its decision that the Fifth District made in *Canton*: it did not analyze the constitutionality of the Contested Provisions or subject the Contested Provisions to the rigors of the *Canton* test. Rather, just as the Fifth District did in *Canton*, the Second District determined that the Contested Provisions were part of a larger legislative enactment and ended its analysis: “S.B. No. 342 provides for a uniform, comprehensive, statewide statutory scheme regulating the use and implementation of traffic law photo-monitoring devices in Ohio, and was clearly not enacted to limit municipal legislative powers.” (Decision at pg. 18.) The Second District did not reject—or even address—the findings of the trial court that the Contested Provisions serve no rational public safety purpose and are merely an attempt to make automated photo enforcement so onerous as to operate as a de facto ban. (Trial Court Decision at 10-11). The Court of Appeals’ decision essentially guides

⁵ These restrictions are not merely limitations on Dayton’s police powers, but interfere with Dayton’s powers of local self-government. They tell the City how to deploy its police force and mandate what information Dayton must collect before passing legislation. Even the dissent in the *Linndale* case would agree that this constitutes an unconstitutional infringement of Dayton’s Home Rule powers. The dissent in *Linndale* gave examples of what they believed would be blatantly unconstitutional conduct by the State. These included “trying to tell Linndale how many traffic lights it should have, how to enforce jaywalking laws, or how many police officers to hire.” *Id.* at 56 (Pfeifer, J. dissenting). This is precisely what the State is attempting to do in this case, and is a violation of Dayton’s Home Rule powers of local self-government.

the Legislature on how to insulate unconstitutional provisions from Home Rule scrutiny. Allowing such an analysis would provide no restriction on the Legislature, and render the Home Rule Amendment meaningless.

C. The Contested Provisions are Unconstitutional Because They Do Not Prescribe a Rule of Conduct Upon All Citizens Generally.

The Contested Provisions also violate the Home Rule Amendment because they do not prescribe a rule of conduct upon Ohio's citizens generally, but instead impermissibly constitute "a limitation upon lawmaking by municipal legislative bodies," in violation of the fourth prong of the *Canton* test. 95 Ohio St.3d at ¶ 34. The Contested Provisions apply only to municipalities, and limit their authority to enact and implement automated traffic enforcement programs. They do not promulgate a rule of conduct for Ohio's citizens generally. Statutes that deal with rules of conduct are easily identifiable: "no person shall" drive while intoxicated, above a posted speed, without a license, etc. This Court has repeatedly required reviewing courts to specifically analyze the challenged provisions to determine if they prescribe conduct upon citizens generally.

In *Linndale*, this Court found that legislation that limited municipal power to enforce the traffic code did not apply to citizens generally, despite the fact that the limitation was part of the larger traffic code. The State argued that while the specific provisions in the legislation limited municipal authority, the legislation was part of the traffic code as a whole, which provided restrictions on citizens. *Linndale*, 85 Ohio St.3d at 54. This Court rejected this argument, finding that contested provisions unconstitutionally limited the legislative powers of municipal corporations to adopt and enforce specified police regulations [and]...do not prescribe a rule of conduct upon citizens generally" and were thus unrelated to provisions that prescribed rules of conduct upon citizens generally. *Id.* at 55.

Likewise, in *Canton*, this Court found that legislation that applied to municipal legislative bodies rather than citizens generally was unconstitutional. 95 Ohio St.3d 149, at ¶ 36. The State had passed a provision as part of a larger bill governing manufactured housing that limited municipal authority to restrict manufactured housing. The legislation also contained provisions that established rules and requirements for the construction of manufactured housing. (*See* 122nd General Assembly, Am. Sub. S.B. 142.) The State in *Canton* argued that the prohibition was part of a larger legislative act that governed citizens generally. However, the Ohio Supreme Court rejected this argument and separately analyzed the contested provisions, holding that they did not prescribe a rule of conduct on citizens generally, and therefore were unconstitutional.

The Contested Provisions of SB 342 are analogous to the provisions at issue in *Linndale* and *Canton*. Not a single word of any of the offending sections begins, ends, or contains the phrase "no person shall." Even the speeding leeway provisions do not address how fast a person may drive, but rather at what speed a municipality may issue a notice of liability through the use of cameras and those provisions do not apply statewide, but only to municipalities using photo enforcement systems. They govern municipalities exclusively, not citizens generally. *Canton*, 95 Ohio St.3d at ¶ 36 (“we hold that R.C. 3781.184(C) does not prescribe a rule of conduct upon citizens generally, because just as in *Youngstown* and *Linndale*, the statute applies to municipal legislative bodies, not to citizens generally”). Just as in *Linndale* and *Canton*, the fact that SB 342 contains other provision that may apply to citizens does not establish that the Contested Provisions prescribe rules of conduct upon citizens generally. Tellingly, the preamble of SB 342 plainly states that the purpose of the Act is “to establish conditions for the use by local authorities of traffic law photo-monitoring devices to detect certain traffic law violations.”

In its decision, the Second District concedes that the three Contested Provisions all regulate municipalities and not citizens. (Appellate Court Decision at pg. 14, Appx. pg. 18). The Decision describes eight other provisions of the statute, none of which regulate citizens. *Id.* It mentions provisions that regulate insurers and system manufacturers, which are not classes that qualify as “citizens generally.” *Id.*

The only provisions of SB 342 that the Second District cites that refer to “motorists,” the general class of citizens purportedly being regulated, are the provisions “for motorists to follow if they are recorded by the traffic cameras committing a red light or speeding violation.” *Id.* A statute that sets out a hearing procedure can hardly be said to be regulating citizen conduct.

It appears as though the court missed the point of the *Canton* general law test. That test identifies the kinds of laws where municipal regulation must yield to statewide regulation because the two provide contrary directives to citizens. Citizens cannot follow one without running afoul of the other because one prohibits what the other permits.

SB 342 does not prohibit conduct by citizens generally that the Dayton Ordinance permits. Nor does it permit citizen conduct that the ordinance prohibits. The substantive regulation of citizen conduct lies in the speed limit statute itself, ORC 4511.21, or in the red light statute, 4511.13(C), not in SB 342. The purpose and effect of SB 342 is not to regulate citizens. It is to regulate and unconstitutionally limit the power of local governments.

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.

D. The Second District was Required to Sever the Unconstitutional Provisions.

Rather than ignore the unconstitutional provisions, the Second District was required to

sever them. This Court has repeatedly severed provisions that violated the Home Rule Amendment from larger legislative enactments. *Cleveland v. State*, 138 Ohio St.3d 232, 2014-Ohio-86; *Canton, supra*. Also see R.C. 1.50 ("If any provision of a section of the Revised Code . . . is held invalid, the invalidity does not affect other provisions which can be given effect without the invalid provision . . . and to this end are severable.")

Severance analysis does not permit the Court to accept the legislature's unconstitutional action, but requires the Court to always protect constitutional authority.

The severance test was first pronounced by this court in *Geiger v. Geiger*, 117 Ohio St. 451, 466, 5 Ohio Law Abs. 829, 160 N.E. 28 (1927). Three questions are to be answered in determining whether severance is appropriate:

- (1) Are the constitutional and the unconstitutional parts capable of separation so that each may be read and may stand by itself?
- (2) Is the unconstitutional part so connected with the general scope of the whole as to make it impossible to give effect to the apparent intention of the Legislature if the clause or part is stricken out?
- (3) Is the insertion of words or terms necessary in order to separate the constitutional part from the unconstitutional part, and to give effect to the former only?

Id. at 466-467, quoting *State v. Bickford*, 28 N.D. 36, 147 N.W. 407 (1913), paragraph nineteen of the syllabus.

Using the test, the answer with respect to the first question is "yes, yes, yes" as to all three of the offending provisions, and "no, no, no" to question 2 and 3.

The syllabus in *The City of Cleveland v. State of Ohio*, 138 Ohio St 3d 232 (2014) should have provided the Second District all the assistance needed.

1. The General Assembly may not by statute prohibit the municipal home-rule authority granted by Article XVIII, Section 3 of the Ohio Constitution.

2. R.C. 4921.25 is a general law that will prevail over conflicting municipal ordinances, but the second sentence of the statute purporting to limit municipal home-rule authority violates Article XVIII, Section 3 of the Ohio Constitution.

3. The second sentence of R.C. 4921.25 (The Offending Provision), which reads, "Such an entity is not subject to any ordinance, rule, or resolution of a municipal corporation, county, or township that provides for the licensing, registering, or regulation of entities that tow motor vehicles," is severed from the statute.

Syllabus at 232

Therefore, the Second District should have affirmed the Trial Court's Decision and severed the Contested Provisions.

IV. CONCLUSION

For the foregoing reasons, Appellant, City of Dayton, Ohio, respectfully requests that this Court reverse the Second District Court of Appeals, and reaffirm the decision of the Common Pleas Court, finding that the Contested Provisions of SB 342 are unconstitutional in violation of the Home Rule Amendment.

Respectfully submitted,

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The undersigned certifies that on April 11th, 2016, a copy of the foregoing Merit Brief was served via U.S. mail, postage pre-paid to the following:

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IN THE SUPREME COURT OF OHIO

CITY OF DAYTON,	:	Supreme Court Case No. _____
	:	
Plaintiff-Appellant,	:	On Appeal from the Montgomery
	:	County Court of Appeals,
v.	:	Second Appellate District
	:	(Case No. 26643)
STATE OF OHIO,	:	Trial Court No.: 2015 CV 1457
	:	
Defendant-Appellee.	:	

NOTICE OF APPEAL

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Appellant, City of Dayton, Ohio, hereby gives notice of its appeal to this Supreme Court of the Final Entry and Opinion of the Second District Court of Appeal in City of Dayton, Ohio v. State, Case No. CA 26643, T.C. No. 15CV1457, which were entered August 7, 2015. Copies of the Final Entry and Opinion are attached hereto as Exhibits 1 and 2, respectively. This case raises a substantial constitutional question and is one of great public and general interest.

Respectfully submitted,

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CRESBRY A. FROELICH
CLERK OF COURTS
MONTGOMERY CO. INT. 36

THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY

CITY OF DAYTON, OHIO

Plaintiff-Appellee

v.

STATE OF OHIO

Defendant-Appellant

C.A. CASE NO. 26643

T.C. NO. 15CV1457

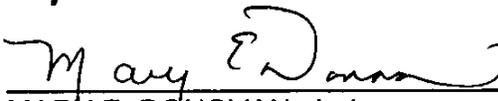
FINAL ENTRY

Pursuant to the opinion of this court rendered on the 7th day of August,
2015, the judgment of the trial court is reversed and the permanent injunction is vacated.

Costs to be paid as stated in App.R. 24.

Pursuant to Ohio App.R. 30(A), it is hereby ordered that the Clerk of the
Montgomery County Court of Appeals shall immediately serve notice of this judgment
upon all parties and make a note in the docket of the mailing.


JEFFREY E. FROELICH, Presiding Judge


MARY E. DONOVAN, Judge


MICHAEL T. HALL, Judge

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denying in part a motion for summary judgment filed by plaintiff-appellee City of Dayton (hereinafter "Dayton"). The State filed a timely notice of appeal with this Court on April 8, 2015.

{¶ 2} On March 18, 2015, Dayton filed a "Verified Complaint for Declaratory Judgment and Preliminary and Permanent Injunction," in which it challenged the constitutionality of Amended Substitute Senate Bill No. 342 (hereinafter "S.B. No. 342") on the grounds that it violates Article XVIII, Section 3 of the Ohio Constitution, otherwise known as the "Home Rule Amendment." Am.Sub.S.B. No. 342 served to amend and enact several statutory provisions governing traffic law photo-monitoring devices. See R.C. 4511.092 – R.C. 4511.0914. In its complaint, Dayton specifically challenged the requirement in R.C. 4511.093(B)(1) that a law enforcement officer be present at the location of any traffic law photo-monitoring device when it is being operated. Dayton also challenged R.C. 4511.095(A)(2), the provision which requires that a local authority must conduct a public information campaign and safety study of the location under consideration for the placement of a new device before any new photo-monitoring equipment can be deployed. We note that although Dayton's complaint only references two specific provisions which it finds objectionable, it sought a declaratory judgment that all of S.B. No. 342 violates the home rule, and is therefore unconstitutional.

{¶ 3} Thereafter, on March 23, 2015, both parties filed their respective motions for summary judgment. Dayton also requested a temporary restraining order and a preliminary injunction regarding enforcement of Am.Sub.S.B. No. 342. While the trial court did not grant any preliminary relief requested by Dayton, it ordered an expedited summary judgment briefing schedule upon agreement by the parties.

{¶ 4} In addition to arguing that R.C. 4511.093(B)(1) and 4511.095(A)(2) were unconstitutional as it had in its complaint, Dayton asserted that R.C. 4511.0912 violated the home rule because it prohibits municipal authorities from issuing speeding tickets for violations recorded by traffic law photo-monitoring devices unless the individual was driving more than six miles per hour above the speed limit in a school zone and/or park, or ten or more miles per hour above the speed limit in any other location. Accordingly, Dayton argued that it was entitled to summary judgment and sought a declaration that Am.Sub.S.B. No. 342 is unconstitutional, thus requiring an injunction prohibiting its enforcement. In its motion for summary judgment, the State argued that S.B. No. 342 is a general law, and therefore not subject to the home rule amendment to the Ohio Constitution. As such, the State asserted that S.B. No. 342 was constitutionally permissible.

{¶ 5} On April 2, 2015, the trial court issued a decision overruling the State's motion for summary judgment. In the same decision, the trial court granted Dayton's motion for summary judgment in part, concluding that while S.B. No. 342 was not unconstitutional in its entirety, certain provisions of the statute violated the home rule. Specifically, the trial court found that R.C. 4511.093(B)(1) and (3), 4511.095, and 4511.0912 were unconstitutional and permanently enjoined their enforcement.

{¶ 6} It is from this judgment that the State now appeals.

The Dayton Ordinance / R.C.G.O 70.21

{¶ 7} On June 12, 2002, Dayton enacted an ordinance authorizing an "automated traffic control photographic system" (ATCPS) for placement at intersections throughout the city. Initially, the system only provided for the enforcement of red light violations.

Subsequently, on February 17, 2010, the system was modified to provide for the enforcement of speed violations as well. The ordinances are codified in Dayton R.C.G.O. 70.21. Dayton states that the purpose of the traffic law photo-monitoring system is to reduce the number of red light and speeding violations and automobile accidents in the city. Dayton also asserts that the system helps to conserve limited police resources. According to Dayton, there are currently over thirty-six speed and/or red light cameras operating throughout the city.

{¶ 8} Dayton maintains that the ordinance creates a system which is civil in nature, not criminal. The ordinance provides for civil enforcement imposing monetary fines upon the owners of vehicles that do not comply with posted speed limits or commit red light violations. Offenders who are recorded by the ATCPS are not issued criminal traffic citations, and offenses are not adjudicated by Dayton municipal courts. Offenders are not assessed points on their driving records, and Dayton has created and implemented an administrative hearing process presided over by an independent third party not employed by the Dayton Police Department. The ordinance states, however, that the "Dayton Police Department or its designee shall administer the ATCPS program."

{¶ 9} Contained in the notice of liability sent to the offender are the following: 1) the images of the vehicle and its license plate; 2) the ownership records of the vehicle; 3) the nature of the violation (red light/speeding) and the date upon which the offense occurred; 4) the amount of the civil penalty imposed; and 5) a signed statement by a Dayton Police Officer stating that a violation had occurred based upon review of the recorded images and/or speed measurement readings. The recorded images and speed measurement readings taken from the ATCPS device are considered under the

ordinance to be prima facie evidence of a violation. The ordinance further provides a means by which the owner of a vehicle can dispute a violation if he or she was not driving the vehicle at the time that the ATCPS recorded a violation. Owners choosing to appeal must send a written request to the Dayton Police Department within fifteen days of receiving the notice of liability. If an administrative hearing is held, the standard of proof utilized by the hearing officer is preponderance of the evidence.

Amended Substitute Senate Bill No. 342

{¶ 10} Am.Sub.S.B. No. 342 was signed into law on December 19, 2014, and became effective shortly thereafter on March 23, 2015. The following Revised Code sections were enacted as a result of S.B. No. 342's passage: 4511.092; 4511.093; 4511.095; 4511.096; 4511.097; 4511.098; 4511.099; 4511.0910; 4511.0911; 4511.0912; 4511.0913; 4511.0914; and 4511.204(C)(2). Viewed collectively, the new sections provide a comprehensive definition section (R.C. 4511.092) and expand upon existing requirements for municipalities who employ the use of traffic photo-monitoring systems. We note that R.C. 4511.094 was already in existence prior to the passage of Am.Sub.S.B. No. 342, but parts of the section were updated by the new law including requirements for signs informing drivers that traffic law photo-monitoring devices are being operated in a particular area.

{¶ 11} As previously noted, the trial court found R.C. 4511.093(B)(1) and (3), 4511.095, and 4511.0912 to be unconstitutional and permanently enjoined their enforcement. R.C. 4511.093(A) begins by stating that "[a] local authority *may* utilize a traffic law photo-monitoring device for the purpose of detecting traffic law violations." Clearly, the initial decision whether to implement the use of traffic cameras is left to the

individual municipality. Once the decision is made to install traffic cameras, their continued use becomes subject to the statewide conditions enunciated in the remainder of Am.Sub.S.B. No. 342. Specifically, R.C. 4511.093(B)(1) provides that if a municipality implements the use of a traffic law photo-monitoring device, a law enforcement officer must be present at the location of the device while it is being operated. R.C. 4511.093(B)(2) simply states that a law enforcement officer who is present while the photo-monitoring device is operating can issue a ticket for any violation he or she personally witnesses. Alternatively, if the officer who is present did not issue a ticket for the observed violation, the municipality may issue a ticket for a civil violation if it was recorded by the photo-monitoring device. R.C. 4511.093(B)(3).

{¶ 12} R.C. 4511.095 requires municipalities to perform certain pre-implementation procedures before deploying a traffic law photo-monitoring device that was not in existence at the time that Am.Sub.S.B. No. 342 became effective. Specifically, R.C. 4511.095(A)(1) requires a municipality to conduct a safety study of intersections or locations under consideration for placement of a traffic camera. The municipality is also required to conduct a public information campaign to inform drivers about the use of traffic cameras at new system locations prior to their implementation at the new location. R.C. 4511.095(A)(2). Municipalities are also required to publish at least one notice in a local newspaper of general circulation regarding their intent to use traffic cameras at new locations, the locations of the traffic cameras, and the date on which the first traffic camera will become operational. R.C. 4511.095(A)(3). Additionally, when a new traffic camera is deployed, the municipality must "refrain from levying any civil fines" for violations detected by the device for at least thirty days after it becomes

operational. R.C. 4511.095(A)(4). During the thirty day interim after the traffic camera becomes operational, the municipality may send a warning notice to drivers who have committed recorded traffic violations. *Id.*

{¶ 13} The final section ruled unconstitutional by the trial court, R.C. 4511.0912, provides the circumstances when a ticket may be issued for speeding violations recorded by a traffic camera. R.C. 4511.0912(A) states that a civil ticket may not be issued for a violation recorded by a traffic camera located in a school zone or local park unless the vehicle in question is captured traveling at a speed that exceeds the posted speed limit by at least six miles per hour. In all other locations, the vehicle must be recorded by the traffic camera traveling at least ten miles over the posted speed limit for a civil ticket to issue. R.C. 4511.0912(B).

Standard of Review

{¶ 14} As this Court has previously noted:

When reviewing a summary judgment, an appellate court conducts a de novo review. *Village of Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105, 671 N.E.2d 241 (1996). "De Novo review means that this court uses the same standard that the trial court should have used, and we examine the evidence to determine whether as a matter of law no genuine issues exist for trial." *Harris v. Dayton Power & Light Co.*, 2d Dist. Montgomery No. 25636, 2013–Ohio–5234, ¶ 11 (quoting *Brewer v. Cleveland City Schools Bd. [o]f Edn.*, 122 Ohio App.3d 378, 383, 701 N.E.2d 1023 (8th Dist.1997) (citing *Dupler v. Mansfield Journal Co.*, 64 Ohio St.2d 116, 413 N.E.2d 1187 (1980)). Therefore, the trial court's decision is not granted any deference by

the reviewing appellate court. *Brown v. Scioto Cty. Bd. Of Commrs.*, 87 Ohio App.3d 704, 711, 622 N.E.2d 1153 (4th Dist.1993).

Civ. R. 56 defines the standard to be applied when determining whether a summary judgment should be granted. *Todd Dev. Co., Inc. v. Morgan*, 116 Ohio St.3d 461, 463, 880 N.E.2d 88 (2008). Summary judgment is proper when the trial court finds: "(1) that there is no genuine issue as to any material fact; (2) that the moving party is entitled to judgment as a matter of law; and (3) that reasonable minds can come to but one conclusion, and that conclusion is adverse to the party against whom the Motion for Summary Judgment is made, who is entitled to have the evidence construed most strongly in his favor." *Fortune v. Fortune*, 2d Dist. Greene No. 90-CA-96, 1991 WL 70721, *1 (May 3, 1991) (quoting *Harless v. Willis Day Warehous[ing] Co.*, 54 Ohio St.2d 64, 67, 375 N.E.2d 45 (1978)). The initial burden is on the moving party to show that there is no genuine issue of material fact. *Dresher v. Burt*, 75 Ohio St.3d 280, 292-93, 662 N.E.2d 264 (1996). Once a moving party satisfies its burden, the nonmoving party may not rest upon the mere allegations or denials of the party's pleadings. *Dotson v. Freight Rite, Inc.*, 2d Dist. Montgomery No. 25495, 2013-Ohio-3272, ¶ 41 (citation omitted).

Cincinnati Ins. Co. v. Greenmont Mut. Hous. Corp., 2d Dist. Montgomery No. 25830, 2014-Ohio-1973, ¶ 17-18.

{¶ 15} Because they are interrelated, the State's first and second assignments of error will be discussed together as follows:

{¶ 16} "THE TRIAL COURT ERRED IN HOLDING THAT AM.SUB.S.B. NO. 342 PURPORTS ONLY TO LIMIT MUNICIPAL POWERS AND IS NOT A GENERAL POLICE, SANITARY OR SIMILAR REGULATION."

{¶ 17} "THE TRIAL COURT ERRED IN HOLDING THAT PORTIONS OF AM.SUB.S.B. NO. 342 DO NOT PRESCRIBE A RULE OF CONDUCT ON CITIZENS GENERALLY."

{¶ 18} In its first assignment, the State contends that the trial court erred when it found that Am.Sub.S.B. No. 342 purports only to limit municipal powers and is not a general police, sanitary, or similar regulation. In its second assignment, the State argues that the trial court erred when it found that portions of Am.Sub.S.B. No. 342 do not prescribe a rule of conduct on citizens generally. Essentially, the State asserts that the trial court erred when it found that specific sections of Am.Sub.S.B. No. 342 did not satisfy the third and fourth prongs of the general law test enunciated in *Canton v. State*, 95 Ohio St.3d 149, 2002-Ohio-2005, 766 N.E.2d 963, thereby violating the home rule exception in the Ohio Constitution.

{¶ 19} Initially, we recognize the "fundamental principle that a court must 'presume the constitutionality of lawfully enacted legislation.'" *Cleveland v. State*, 128 Ohio St.3d 135, 2010-Ohio-6318, 942 N.E.2d 370, ¶ 6, citing *Arnold v. Cleveland*, 67 Ohio St.3d 35, 38, 616 N.E.2d 163 (1993). Therefore, we begin with the presumption that Am.Sub.S.B. No. 342 (specifically, R.C. 4511.093(B)(1) & (3), 4511.095, and 4511.0912) is constitutional. Accordingly, the statute "will not be invalidated unless the challenger establishes that it is unconstitutional beyond a reasonable doubt." *Id.* at ¶ 6.

{¶ 20} Under the Home Rule Amendment to the Ohio Constitution, “[m]unicipalities 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, Section 3. This amendment provides municipalities with the “broadest possible powers of self-government in connection with all matters which are strictly local and do not impinge upon matters which are of a state-wide nature or interest.” *State ex rel. Morrison v. Beck Energy Corporation*, Ohio Sup. Ct. Slip Opinion No. 2015-Ohio-485, ¶ 14, citing *State ex rel. Hackley v. Edmonds*, 150 Ohio St. 203, 212, 80 N.E.2d 769 (1948). Therefore, a municipal ordinance must yield to a state statute if 1) the ordinance is an exercise of police power, rather than of local self-government; 2) that statute is a general law; and 3) the ordinance is in conflict with the statute.

{¶ 21} Neither party disputes that Dayton ordinance R.C.G.O. 70.21, enacting an automated photo-enforcement program, was lawfully enacted pursuant to its constitutionally protected home rule powers. Recently, in *Walker v. Toledo*, Ohio Sup. Ct. Slip Opinion No. 2014-Ohio-5461, ¶ 3, the Ohio Supreme Court reaffirmed its holding in *Mendenhall v. Akron*, 117 Ohio St.3d 33, 2008-Ohio-270, 881 N.E.2d 255, that municipalities, such as Dayton, have home rule authority under Article XVIII of the Ohio Constitution to impose civil liability on traffic violators through the use of a photo enforcement system for speed and red light violations. Accordingly, the first and third parts of the analysis are not involved this case. Dayton acknowledges that its traffic camera ordinance is an exercise of police power. Additionally, Dayton acknowledges that R.C.G.O. 70.21 is in conflict with Am.Sub.S.B. No. 342.

{¶ 22} Indeed, the sole issue before this Court is whether Am.Sub.S.B. No. 342 qualifies as a general law. "A general law has been described as one which promotes statewide uniformity." *Ohio Assn. of Private Detective Agencies, Inc. v. N. Olmstead*, 65 Ohio St.3d 242, 244, 602 N.E.2d 1147 (1965). Furthermore, general laws are those "enact[ed] to safeguard the peace, health, morals, and safety, and to protect the property of the people of the state." *Schneiderman v. Sesanstein*, 121 Ohio St. 80, 83, 167 N.E. 158 (1929). "Once a matter has become of such general interest that it is necessary to make it subject to statewide control as to require uniform statewide regulation, the municipality can no longer legislate in the field so as to conflict with the state." *State ex rel. McElroy v. Akron*, 173 Ohio St.3d 189, 194, 181 N.E.2d 26 (1962).

{¶ 23} A statute qualifies as a general law if it satisfies four criteria. The 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 prescribe those regulations; and 4) prescribe a rule of conduct upon citizens generally. *Mendenhall*, at ¶ 20; *Canton v. State*, 95 Ohio St.3d 149, 2002-Ohio-2005, 766 N.E.2d 963, syllabus.

{¶ 24} The trial court found that Am.Sub.S.B. No. 342 satisfied the first two elements of the *Canton* general law test, namely that the statute is part of a statewide and comprehensive legislative enactment which applied to all parts of the state and operated uniformly therein. We agree with the trial court in this respect; therefore, the first two elements of the *Canton* test are not at issue in the instant appeal.

{¶ 25} The trial court, however, found that Am.Sub.S.B. No. 342 failed to satisfy the third and fourth elements of the *Canton* test. Specifically, the trial court found that R.C. 4511.093(B)(1) & (3), 4511.095, and 4511.0912 were unconstitutional because they failed to set forth police, sanitary, or similar regulations and acted only to limit municipal authority. Moreover, the trial court found that the same sections of the statute did not prescribe a rule of conduct upon citizens generally. For the reasons that follow, we disagree and find that Am.Sub.S.B. No. 342 is general law that falls outside the scope of the home rule.

Sets forth a police, sanitary, or similar regulation

{¶ 26} The third element of the *Canton* test requires that for a statute to be considered a general law, it must set forth police, sanitary, or similar regulations, instead of merely granting or limiting a municipality's power to create such regulations. Am.Sub.S.B. No. 342 regulates the statewide use of traffic cameras to record red light/speeding violations. The statute is a comprehensive legislative enactment which applies to all parts of the state and is operated uniformly throughout.

{¶ 27} As previously noted, Am.Sub.S.B. No. 342 contains several provisions, all of which establish various procedures and rules which regulate the use of traffic cameras and the enforcement of the subsequent civil citations. In addition to the provisions ruled unconstitutional by the trial court, Am.Sub.S.B. No. 342 enacted the following additional regulations:

R.C. 3937.411 – This section instructs insurers that they may not deny coverage and/or raise the insurance premium of any individual who receives a civil ticket based on a violation recorded by a traffic camera.

R.C. 4511.096(A) – This section contains a requirement that a law enforcement officer examine the evidence of an alleged violation recorded by a traffic camera in order to determine whether a violation has in fact occurred. If a violation is found to have occurred, the officer may use the vehicle's license plate number to identify the registered owner.

R.C. 4511.096(B) – This section states that the fact that a person is found to be the registered owner of the vehicle is prima facie evidence that the person was operating the vehicle at the time the traffic violation occurred.

R.C. 4511.096(C) and (D) – These sections contain updated requirements for the standards with respect to the issuance of civil tickets for violations recorded by traffic cameras.

R.C. 4511.097 – This section explains what information should be included in the civil ticket issued to an offender for a violation recorded by a traffic camera and states that the local authority is required to send the ticket no later than thirty days after the violation. Significantly, this section mandates that the officer, required to be present by R.C. 4511.093(B)(1) whenever traffic cameras are in use, must include his name and badge number in the ticket sent to the offender. R.C. 4511.097(B)(7).

R.C. 4511.098 – This section sets out the options for paying or challenging the civil ticket issued to a person for a violation recorded by a traffic camera.

R.C. 4511.099 – This section sets forth the procedure for a hearing, the standard of proof (preponderance of the evidence), and affirmative defenses that apply if an alleged offender chooses to challenge a ticket

issued based on the recorded image of a violation from a traffic camera.

R.C. 4511.0911 – This section contains requirements for the manufacturer of the traffic camera to provide to the local authority the maintenance record for each traffic camera used in the municipality, and an annual certificate of proper operation for each traffic camera.

{¶ 28} R.C. 4511.093, 4511.095, and 4511.0912 undoubtedly regulate the requirements and implementation procedures to which a municipality must adhere if it chooses to use traffic cameras to record red light/speeding violations. However, as is clear from the other provisions listed above, Am.Sub.S.B. No. 342 has “extensive scope and does more than grant or limit state powers.” *Mendenhall*, at ¶ 24. In addition to regulating municipal authority, the other provisions of Am.Sub.S.B. No. 342 also establish laws and procedures for motorists to follow if they are recorded by the traffic cameras committing a red light or speeding violation. Moreover, the statute establishes requirements for the manufacturer of the traffic camera regarding maintenance and annual upkeep of the device. Finally, Am.Sub.S.B. No. 342 addresses insurers and restricts them from raising premiums or denying insurance coverage based on a violation recorded by a traffic camera.

{¶ 29} In *Mendenhall*, the Ohio Supreme Court found that the speed limit statute enacted in portions of R.C. 4511.21 was a general law even though the statute contained language that clearly limits municipal authority. R.C. 4511.21(I) limits the ability of municipalities to establish their own speed limits. Pursuant to the statute, local authorities must follow specific procedures if they wish to deviate from the speed limits codified by the statute. *Id.* Additionally, R.C. 4511.21(J) specifically provides that “local

authorities shall not modify or alter the basic rule set forth in division (A) of this section or in any event authorize by ordinance a speed in excess of fifty miles per hour." Thus, if the State can constitutionally limit a municipality's ability to set its own speed limit in the interest of creating a comprehensive, statewide uniform statute regulating the speed of motor vehicles, it can also create a similar statewide uniform regulatory scheme governing traffic law photo-monitoring devices. While Am.Sub.S.B. No. 342 may contain provisions which limit municipal authority, the overriding statewide, uniform purpose of the statute clearly sets forth comprehensive "police, sanitary or similar regulations."

{¶ 30} Similarly, the Ohio Supreme Court has held that when considering whether a statute prohibiting regulation of properly licensed hazardous waste disposal facilities by a political subdivision was a valid general law, "[t]he section of law questioned *** should not be read and interpreted in isolation from the other sections [of the Revised Code Chapter] dealing with the state's control of the disposal of hazardous wastes. All such sections read in *pari materia* do not merely prohibit subdivisions of the state from regulation of these facilities. Conversely, the statutory scheme contained in this chapter is a comprehensive one enacted to insure that such facilities are designed, sited, and operated in the manner which best serves the statewide public interest." *Clermont Environmental Reclamation Co. v. Wiederhold*, 2 Ohio St.3d 44, 48, 442 N.E.2d 1278 (1982).

{¶ 31} Furthermore, in *Ohio Assn. of Private Detective Agencies, Inc. v. N. Olmstead*, 65 Ohio St.3d 242, the Ohio Supreme Court found that a state statute regulating security personnel was a general law which prohibited municipalities from imposing license and/or registration fees on private investigators and security guards.

The *N. Olmstead* court stated as follows:

Considered in isolation, such a provision may fail to qualify as a general law because it prohibits a municipality from exercising a local police power while not providing for uniform statewide regulation of the same subject matter. However, consideration of R.C. 4749.09 alone is not dispositive of the present controversy. R.C. Chapter 4749 in its entirety does provide for uniform statewide regulation of security personnel ***. Accordingly, R.C. 4749.09 must be considered a general law of statewide application.

Id. at 245.

{¶ 32} In *Cleveland v. State*, 128 Ohio St.3d 135, 2010-Ohio-6318, 942 N.E.2d 370, the Ohio Supreme Court upheld the state's regulation of firearms under R.C. 9.68 as a valid general law and struck down Cleveland ordinances seeking to impose stricter firearm regulations. The *Cleveland* court concluded that R.C. 9.68 was simply part of comprehensive legislative scheme regulating firearms, and "the court of appeals erred in considering 9.68 in isolation rather than as part of Ohio's comprehensive collection of firearm laws." *Id.* at ¶ 29.

{¶ 33} The Ohio Supreme Court has unequivocally held that "sections within a chapter will not be considered in isolation when determining whether a general law exists." *Mendenhall*, at ¶ 27. Read in pari material, Am.Sub.S.B. No. 342 creates a uniform, comprehensive, statewide statutory scheme regulating the use and implementation of traffic law photo-monitoring devices in Ohio. Similar to Ohio's speed statute, R.C. 4511.21, Am.Sub.S.B. No. 342 has "extensive scope and does more than grant or limit state powers." *Id.* at ¶ 24. Contrary to Dayton's assertion, Am.Sub.S.B. No.

342 was clearly not enacted to limit municipal legislative powers. In the instant case, the trial court erred when it considered R.C. 4511.093, 4511.095, and 4511.0912 in isolation from the remainder of the statutory provisions in Am.Sub.S.B. No. 342.

{¶ 34} We note that in support of its finding that Am.Sub.S.B. No. 342 merely acts to limit municipal power in derogation of the third element of the *Canton* test, the trial court relied on the Ohio Supreme Court's holding in *Linndale v. State*, 85 Ohio St.3d 52, 706 N.E.2d 1227 (1999). In *Linndale*, the Court addressed a state statute prohibiting local authorities from issuing speeding and excess weight citations when the municipality has less than 880 yards of the freeway within its jurisdiction. Ultimately, the Supreme Court held that the state statute was not a general law because it "impermissibly infringed on the right of affected municipalities to enact or enforce traffic regulations," in violation of the home rule.

{¶ 35} However, unlike the statute in question in *Linndale* which *prohibited* the local authorities from issuing certain traffic citations, Am.Sub.S.B. No. 342 *permits* a municipality to operate a traffic law photo-enforcement system. Am.Sub.S.B. No. 342 merely sets forth certain uniform statewide procedures and regulations to be followed if a municipality voluntarily decides to implement the use of traffic cameras. Moreover, the *Linndale* court stated that the statute in question was "not part of a uniform statewide regulation on the subject of traffic law enforcement." *Id.* at 55. The statute in *Linndale* was found to only specifically affect "certain" municipalities in Ohio; as a result, the statute had no uniform statewide application and was therefore unconstitutional. *Id.* Conversely, Am.Sub.S.B. No. 342 does not target the enforcement of traffic laws in only certain select municipalities. Simply put, Am.Sub.S.B. No. 342 uniformly applies to all municipalities

in Ohio who voluntarily choose to implement traffic cameras. Accordingly, *Linndale* is clearly distinguishable from the instant case.

{¶ 36} In light of the foregoing analysis, we find that Am.Sub.S.B. No. 342 provides for a uniform, comprehensive, statewide statutory scheme regulating the use and implementation of traffic law photo-monitoring devices in Ohio, and was clearly not enacted to limit municipal legislative powers.

Prescribes a rule of conduct on citizens generally

{¶ 37} The final issue we must address is whether Am.Sub.S.B. No. 342 “prescribe[s] a rule of conduct upon citizens generally.” *Canton*, 95 Ohio St.3d 149, syllabus. As we have emphasized, the statute in question cannot be analyzed in a vacuum. Upon review, we conclude and reiterate that the statutory scheme contained in Am.Sub.S.B. No. 342 is a comprehensive one enacted to insure that traffic law photo-enforcement is implemented and regulated in the manner which best serves the statewide public interest and its citizenry. See *Clermont Environmental Reclamation Co.*, 2 Ohio St.3d 44, at 48.

{¶ 38} R.C. 4511.093, 4511.095, and 4511.0912 undoubtedly regulate the requirements and implementation procedures to which a municipality must adhere if it chooses to utilize traffic cameras to record red light/speeding violations. However, as is clear from all of the other provisions in the statute, Am.Sub.S.B. No. 342 has “extensive scope and does more than grant or limit state powers.” *Mendenhall*, at ¶ 24. In its decision, the trial court acknowledged that “certain provisions of Am.Sub.S.B. No. 342 are directed at the conduct of citizens.” The trial court ignored those provisions which directly and uniformly applied to all motor vehicle operators in Ohio, and instead, narrowly

focused on R.C. 4511.093, 4511.095, and 4511.0912 in isolation. The fourth element of the *Canton* test does *not* require that the statute in question prescribe a rule of conduct upon citizens *specifically*, but rather upon citizens generally. Significantly, Am.Sub.S.B. No. 342 not only addresses the responsibilities of drivers and the municipalities in which they live, but also the responsibilities of motor vehicle insurers and the manufacturers of the traffic cameras. With respect to *all* operators of motor vehicles in Ohio, the statute outlines the procedures to be followed by a driver who is issued a ticket, how to pay or dispute the violation, and finally, the procedures and rules an individual is subject to if he or she chooses to challenge the violation before an administrative body. Sections within a chapter will not be considered in isolation when determining whether a general law exists. *Mendenhall*, 117 Ohio St.3d 33, at ¶ 27. When properly analyzed in its entirety, Am.Sub.S.B. No. 342 therefore constitutes a comprehensive, uniform, statewide regulatory scheme which clearly prescribes a rule of conduct upon citizens generally.

{¶ 39} Thus, having satisfied the *Canton* test, we find that Am.Sub.S.B. No. 342 constitutes a “general law” and does not violate the Home Rule Amendment of the Ohio Constitution. Dayton has failed to meet its burden of establishing beyond a reasonable doubt that Am.Sub.S.B. No. 342 in any way offends the Ohio Constitution.

{¶ 40} The State’s first and second assignments of error are sustained.

{¶ 41} Both of the State’s assignments of error having been sustained, the judgment of the trial court is reversed, and the permanent injunction is vacated.

.....

FROELICH, P.J. and HALL, J., concur.

Copies mailed to:

John C. Musto
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Nicole M. Koppitch
Hon. Barbara P. Gorman

IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY
CIVIL DIVISION

CITY OF DAYTON, OHIO,	:	CASE NO. 2015-CV-1457
	:	
Plaintiff,	:	
	:	
v.	:	
	:	(Judge Barbara P. Gorman)
STATE OF OHIO,	:	
	:	
Defendant.	:	DECISION, ORDER, AND ENTRY
	:	SUSTAINING IN PART THE MOTION
	:	FOR SUMMARY JUDGMENT OF
	:	PLAINTIFF CITY OF DAYTON, OHIO
	:	AND OVERRULING DEFENDANT
	:	STATE OF OHIO'S MOTION FOR
	:	SUMMARY JUDGMENT
	:	

On March 18, 2015, the City of Dayton filed *Plaintiff's Verified Complaint for Declaratory Judgment and Preliminary and Permanent Injunction*. In accordance with a telephone conference among the Court and the parties, the following simultaneous briefs for summary judgment were filed on March 23, 2015: (i) the *Motion for Summary Judgment of Plaintiff City of Dayton, Ohio*, and (ii) *Defendant State of Ohio's Motion for Summary Judgment*. The following reply briefs were filed on March 30, 2015: (i) *Plaintiff City of Dayton's Reply Brief in Support of Summary Judgment and Brief in Opposition to Defendant's Motion for Summary* and (ii) *Defendant State of Ohio's Memorandum in Opposition to Plaintiff's Motion for Summary Judgment*.

This matter is properly before the Court.

I. FACTS

Plaintiff, the City of Dayton (the “City”) seeks a declaration that Amended Substitute Senate Bill 342, effective March 23, 2015, is an unconstitutional use of state power that violates the Home Rule Amendment of the Ohio Constitution and an injunction prohibiting the State of Ohio from enforcing it. Am. Sub. S.B. No. 342 regulates automatic traffic camera enforcement systems established by local governments.

The City is a home rule jurisdiction under the home-rule amendment to Article XVIII, Sec. 3 of the Ohio Constitution. On June 12, 2002, the City enacted an Automatic Traffic Control Photographic System (the “Traffic Control System”) to identify and impose a civil sanction for red light traffic violations. The ordinance adopting the Traffic Control System stated its purpose as:

WHEREAS, The City seeks to reduce the frequency of vehicle operators running red traffic lights; and
WHEREAS, The frequency of running red lights creates a substantial risk to the safety of citizens on the roadway; and
WHEREAS, An automated traffic control photographic system will assist the Dayton Police Department by alleviating the necessity for conducting extensive conventional traffic enforcement at high accident intersections; and
WHEREAS, The adoption of an automated traffic control photographic system will result in a significant reduction in the number of red light violations and/or accidents within the City of Dayton;

On February 17, 2010, the City modified the Traffic Control System to include speed violations. The ordinances relating to both the red light and speed provisions of the Traffic Control System are codified at Dayton R.C.G.O. Section 70.121.

The Traffic Control System provides video and still photographs of vehicles that fail to obey posted speed limits or run red lights. Before a citation is issued, a Dayton police officer reviews the video footage and photos to confirm that a violation occurred. A civil monetary fine is then imposed on the owners of such vehicles. There is no criminal penalty for

violations captured by the Traffic Control System, and the fines are not enforced by a court. Rather, the City has an administrative appeal process.

In 2008, and again in 2014, the Ohio Supreme Court affirmed that “municipalities have Home Rule Authority under Article XVIII of the Ohio Constitution to impose civil liability on traffic violators through an administrative enforcement system.” *Walker v. City of Toledo*, 2014-Ohio-5461 (Slip Op. Dec. 18, 2014). See also, *Mendenhall v. City of Akron*, 117 Ohio St. 3d 33, 41 (2008). Since 2009, the State of Ohio has placed some regulations on photo monitoring devices like the Traffic Control System. For example, O.R.C. Section 4511.094(A)(1)-(2) requires specific signage when a photo monitoring system is used in a municipality. Likewise, O.R.C. Section 4511.094(C) requires that the yellow signal light must exceed the mandated time set by the Ohio Department of Transportation for the steady yellow light by at least one second.

On December 19, 2014, Amended Substitute Senate Bill 342 was signed into law. Effective March 23, 2015, Am.Sub.S.B. No. 342 mandates that municipalities may employ photo monitoring devices like the Traffic Control System “only if a law enforcement officer is present at the location of the device at all times during the operation of the device.” O.R.C. Section 4511.093(B)(1). Specifically, the new law requires:

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.
- (2) A law enforcement officer who is present at the location of any traffic law photo-monitoring device and who personally witnesses a traffic law violation may issue a ticket for the violation. Such a ticket shall be issued in accordance with section 2935.25 of the Revised Code and is not subject to sections 4511.096 to 4511.0910 and section 4511.912 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.

Notably, the officer needs only to be present at the device. Such an officer does not need to witness a violation or even be viewing the intersection for a fine to be imposed. Rather, newly enacted O.R.C. Section 4511.097(B)(9) requires that an officer must later review the footage and photographs to confirm that a violation occurred before a ticket is issued. As set forth above, the Traffic Control System has had such a procedure in place since the ordinance was enacted in 2002.

Another requirement implemented by Am.Sub.S.B. No. 342 mandates under O.R.C. Section 4511.095 that, prior to installing cameras at a location, the local government must conduct a study of traffic incidents at the intersection for the previous three years and make such study available to the public. The statute also requires local jurisdictions to conduct “a public relations campaign” and “observe a public awareness warning period of not less than thirty days” before issuing any tickets at any new automatic traffic camera location. R.C. 4511.095. Amended Senate Bill 342 also prohibits municipal authorities from issuing automatic traffic camera enforcement tickets to speeders unless they are driving more than six miles per hour above the speed limit in school zones and parks or ten miles per hour above the speed limit in other locations. R.C. §4511.0912.

Each of the City and the State of Ohio has moved for summary judgment on the City’s causes of action for declaratory judgment that Am.Sub.S.B. No. 342 is unconstitutional because it violated the Home Rule Amendment to the Ohio Constitution and injunctive relief enjoining enforcement of the new law by the State.

II. LAW & ANALYSIS

A. Standard of Review.

Ohio Rule of Civil Procedure 56(C) states:

Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. No evidence or stipulation may be considered except

as stated in this rule. A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party's favor.

Ohio Rule of Civil Procedure 56(E) provides in relevant part:

When a motion for Summary Judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the party's pleadings, but the party's response, by affidavit or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the party does not so respond, summary judgment, if appropriate shall be entered against the party.

Upon a motion for summary judgment, the moving party bears the initial burden of showing that no genuine issue of material fact exists for trial. See *Harless v. Willis Day Warehousing Co., Inc.* (1978), 54 Ohio St.2d 64, 66, 375 N.E.2d 46. Any inferences to be drawn from the underlying facts must be viewed in the light most favorable to the party opposing the motion. *Leibreich v. A.J. Refrigeration, Inc.* (1993), 67 Ohio St.3d 266, 269, 1993 Ohio 12, 617 N.E.2d 1068; *Williams v. First United Church of Christ* (1974), 37 Ohio St.2d 150, 152, 309 N.E.2d 924.

The burden then shifts to the non-moving party to set forth specific facts which show that there is a genuine issue of fact for trial. *Harless*, 54 Ohio St.2d at 65-66, 375 N.E.2d 46. The non-moving party has the burden "to produce evidence on any issue for which that party bears the burden of production at trial." *Leibreich*, 67 Ohio St.3d at 269, 1993 Ohio 12, 617 N.E.2d 1068; *Wing v. Anchor Media, Ltd.* (1991), 59 Ohio St.3d 108, 111, 570 N.E.2d 1095, citing *Celotex Corp. v. Catrett* (1986), 477 U.S. 317, 322-323. Therefore, the non-moving party may not rest upon unsworn or unsupported allegations in the pleadings. *Harless*, 54 Ohio St.2d at 66, 375 N.E.2d 46. The non-moving party must respond with affidavits or other appropriate evidence to controvert the facts established by the moving party. *Id.* Further, the non-moving party must do more than show there is some metaphysical doubt as to the

B. Portions of Am. Sub. S.B. 342 Violate the City’s Home Rule Authority.

In *Walker*, supra, the Ohio Supreme Court reaffirmed its holding in *Mendenhall v. City of Akron*, 117 Ohio St. 3d 33, 36-37 (2008) “that Ohio Constitution, Article XVIII, Sections 3 and 7 grant municipalities the authority to protect the safety and well-being of their citizens by establishing automated systems for imposing civil liability on traffic-law violators.” In *Walker*, the automated system employed by Toledo utilized a traffic camera and vehicle sensor similar to the Traffic Control System used by the City.

The question before the Court in the instant case is whether the requirements for operating such a system as imposed by Am. Sub. S.B. 342 violate the Home Rule Amendment of the Ohio Constitution. The Home Rule Amendment provides that municipalities are authorized “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.” Ohio Const. Art. XVIII, Sec. 3. The State of Ohio argues that Am. Sub. S.B. 342 is a general law that must be enforced over a conflicting local ordinance. The City argues, however, that Am. Sub. S.B. 342 fails to meet the four-part test to determine whether a state law is a general law as established by the Ohio Supreme Court in *Canton v. State of Ohio*, 95 Ohio St. 3d 149 (2002).

In *Canton*, the Ohio Supreme Court held that to be a valid general law, 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 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.* at 153. As set forth below, the Court finds that

Am. Sub. S.B. 342 does not meet all four prongs of the *Canton* test for a valid general state law.

1. Am. Sub. S.B. 342 is part of a statewide and comprehensive legislative enactment.

The State contends that Am. Sub. S.B. 342 is part of a comprehensive and statewide legislative enactment found in O.R.C. Chapter 4511 governing Traffic Laws-Operation of Motor Vehicles. The City argues that the statute merely targets municipal action and “varies widely” in the subjects that it regulates.¹ For example, the subjects regulated by O.R.C. Chapter 4511 include emergency vehicles, driving with animals, vehicle weighing and tourist information, as well as the newly enacted provisions governing automatic traffic cameras. In *Mendenhall v. City of Akron*, 117 Ohio St. 3d 33, 38 (2008), the Ohio Supreme Court stated, “the sections within a chapter will not be considered in isolation when determining whether a general law exists.” *Mendenhall*, at Para. 27. Rather, “all sections of a chapter must be read in *pari materia* to determine whether the statute in question is part of a statewide regulation and whether the chapter as a whole prescribes a rule of conduct upon citizens generally.” *Id.* The Court then determined that Ohio’s speed limit statute, O.R.C. Section 4511.21, is a statewide and comprehensive enactment despite being of the several traffic control subjects covered in O.R.C. Chapter 4511. Accordingly, this Court finds that the laws regarding traffic control photo monitoring devices in O.R.C. Chapter 4511 is also part of a comprehensive and statewide legislative enactment.

2. Am Sub. S.B. 342 applies uniformly throughout the state.

The City argues that the requirements of Am Sub. S.B. 342 do not apply uniformly throughout Ohio. Specifically, the City contends that the new law (i) provides exceptions to the some of its provisions for pre-existing traffic locations (ie., the requirement that a study be conducted of a new location for the previous three years), and (ii) “destroys uniformity in traffic

¹ The City cites to the *Canton* decision in which the Court struck down a state statute prohibiting a municipality from banning manufactured homes within its jurisdiction. The Court held that Chapter 3781 of the Ohio Revised Code related to building standards generally and covered varied subjects and did not represent a statewide “zoning plan” to which the contested law was part.

enforcement by prohibiting automatic traffic camera violations from being enforced if they are less than six miles per hour over the speed limit in school and park zones and less than ten miles per hour over the speed limit elsewhere.” *City of Dayton Motion for Summary Judgment* at 10. The Court does not find these arguments to be persuasive.

In *Canton*, the Court clarified that, “[t]he requirement of uniform operation throughout the state of laws of a general nature does not forbid different treatment of various classes or type of citizens,” but merely prohibits classifications that are “arbitrary, unreasonable or capricious.” *Canton* at para. 30. The examples cited by the City are not arbitrary, unreasonable or capricious. First of all, the exceptions for the pre-implementation study built into the statute in O.R.C. Section is a grandfathering provision that recognizes that conducting the study for pre-existing camera locations is simply not practical. Secondly, the prohibition on municipal authorities from issuing automatic traffic camera enforcement tickets to speeders unless they are driving more than six miles per hour above the speed limit in school zones and parks or ten miles per hour above the speed limit in other locations is not arbitrary or capricious because school and park zones are treated differently under Ohio’s speed laws in general. Based on the foregoing, the Court finds that Am. Sub.S.B. 342 applies uniformly throughout Ohio.

3. Am. Sub S.B. 342 limits municipal powers and is not a general police, sanitary or similar regulation.

The City argues that Am. Sub. S.B. 342 was enacted to limit municipal legislative powers. The State maintains that the new law implements police regulations that do more than simply limit municipal authority. For the following reasons, the Court agrees with the City that certain provisions of Am. Sub. S.B. 342 fail the third prong of the *Canton* test and are directed toward limiting municipal authority. Under *Canton*, general laws do not include those “which purport only to grant or limit the legislative power of a municipal corporation.”

In *Village of Linndale v. State of Ohio*, 85 Ohio St. 3d 52 (1999), a state statute prohibited municipalities from issuing citations on interstate highways under the following conditions: (i) the

city has less than 880 yards of interstate freeway in its jurisdiction, (ii) local law enforcement had to travel outside of its jurisdiction to enter the freeway, and (iii) local law enforcement entered the freeway for the primary purpose of issuing citations. The Court noted that “because a municipal corporation's authority to regulate traffic comes from the Ohio Constitution, *State v. Parker* (1994), 68 Ohio St. 3d 283, 285, 626 N.E.2d 106, 108; see, also, *Munn, supra*, a statute that, like R.C. 4549.17, purports only to limit this constitutionally granted power is not a "general law." *Linndale*, at 55. Rather, the law was “simply a limit on the legislative powers of municipal corporations to adopt and enforce specific police regulations.” *Id.*

Likewise, certain provisions of Am. Sub S.B. 342 simply limit the legislative powers of local jurisdictions. The first such provision is O.R.C. Section 4511.093(B), which prohibits a municipality from using a photo-monitoring device at a location unless a law enforcement officer “is present at the location of the device at all times during the operation of the device...” O.R.C. Section 4511.093(B)(1). The statute imposes no function for such officer other than to be present. The officer is not responsible for writing citations or even observing violations. The statute simply mandates to local jurisdictions how to allocate their law enforcement personnel. Such a requirement is nothing more than an impermissible limit on a municipality to enforce its civil administrative laws for traffic control.

Secondly, O.R.C. Section 4511.095 also impermissibly limits a municipality’s legislative powers by requiring that prior to deploying a photo monitoring device at any given location, the local authority must (i) conduct a study which shall include “an accounting of incidents that have occurred in the designated area over the previous three-year period...” O.R.C. Section 4511.095(A)(1), and (ii) conduct a public relations campaign to inform motorists of the camera locations and have a thirty-day warning period before citations are issued at a location. Again, such requirements merely limit a local municipal corporation’s power to enforce their traffic control laws and enforcement procedures.

Finally, although as set forth above, this Court found that O.R.C. section 4511.0912 relating to the prohibition on municipal authorities from issuing automatic traffic camera enforcement tickets to speeders unless they are driving more than six miles per hour above the speed limit in school zones and parks or ten miles per hour above the speed limit in other locations met the second prong of the *Canton* test, it does not meet the third prong because it limits the speeds at which violators can be issued citations. Here, the offensive provision is not the difference in speeds between different locations, but that the statute purports to set any such limits on the ability of a local jurisdiction to enforce its traffic laws.

Based on the foregoing, the Court finds that O.R.C. Sections 4511.093(B)(1) and (3), 4511.095, and 4511.0912 do not meet the third prong of the *Canton* test and thus are not general laws. Under the guise of a general police power, the State has placed an onerous burden on local municipalities seeking to administratively enforce their own traffic control procedures.

4. Portions of Am. Sub. S.B. 342 do not prescribe a rule of conduct on citizens generally.

A general law must “prescribe a rule of conduct upon citizens generally.” *American Financial Services Asso. v. City of Cleveland*, 112 Ohio St.3d 170. In *Linndale*, supra, the Court determined that “the statute in question, prohibiting local law enforcement officers from certain localities issuing speeding and excess weight citations on interstate freeways did not prescribe a rule of conduct upon citizens generally.” *Canton*, supra, at 156. While certain of the provisions of Am. Sub. S.B. 342 are directed at the conduct of citizens, O.R.C. Sections 4511.093(B)(1) and (3), 4511.095, and 4511.0912 are, like the statute in *Linndale*, directed at municipal legislative bodies. Having an officer present at the location of a traffic camera does not prescribe a rule of conduct on citizens. Likewise, the onerous requirements of O.R.C. 4511.095 and O.R.C 4511.0912 are aimed at the ability of a municipality to use devices such as the Traffic Control System. The Court notes that the even the preamble to Am. Sub. S.B. 342 indicates that the intended impact is on local

governments as the purpose of the Act is stated as “to establish conditions for the use by local authorities of traffic law photo-monitoring devices to detect certain traffic law violations.”

Because O.R.C. Sections 4511.093(B)(1) and (3), 4511.095, and 4511.0912 do not prescribe a rule of conduct on citizens generally, these provisions fail to meet the fourth prong of the test for a general law set forth in *Canton*.

C. Summary

As set forth above, O.R.C. Sections 4511.093(B)(1) and (3), 4511.095, and 4511.0912 are not general laws and, therefore, enforcement of such provisions against the City and its Traffic Control System violates the Home Rule Amendment of the Ohio Constitution.

As a result, the Court finds that the City is entitled to partial summary judgment as a matter of law on Count I of its Complaint and hereby DECLARES that O.R.C. Sections 4511.093(B)(1) and (3), 4511.095, and 4511.0912 are unconstitutional, in violation of the Home Rule Amendment of the Ohio Constitution. The Court further grants the City partial summary judgment in its favor as to Count II of its Complaint by hereby permanently enjoining enforcement of O.R.C. Sections 4511.093(B)(1) and (3), 4511.095, and 4511.0912 against the City. The State of Ohio’s motion for summary judgment is hereby OVERRULED.

III. CONCLUSION

Accordingly, the *Motion for Summary Judgment of Plaintiff City of Dayton, Ohio* is hereby SUSTAINED in part as to O.R.C. Sections 4511.093(B)(1) and (3), 4511.095, and 4511.0912. *Defendant State of Ohio’s Motion for Summary Judgment* is hereby OVERRULED.

This is a final appealable order, and there is not just cause for delay for purposes of Ohio Civ. R. 54. Therefore, the time for prosecution and appeal to the Second District Court of Appeals must be computed from the date upon which this decision and entry is filed.

The above captioned case is ordered terminated upon the records of the Common Pleas Court of Montgomery County, Ohio.

Plaintiff's costs are to be paid by Defendant.

SO ORDERED:

BARBARA P. GORMAN, JUDGE

The parties listed below were notified of this Decision, Order and Entry through the electronic notification system of the Clerk of Courts.

Halli Brownfield Watson
John C. Musto

Phyllis Treat, Bailiff 225-4392



General Division
Montgomery County Common Pleas Court
41 N. Perry Street, Dayton, Ohio 45422

Type: Decision
Case Number: 2015 CV 01457
Case Title: CITY OF DAYTON OHIO vs STATE OF OHIO

So Ordered

Barbara Pegler Gorman

Electronically signed by bgorman on 2015-04-02 16:49:05 page 13 of 13



Bill Text: OH SB342 | 2013-2014 | 130th General Assembly |
Enrolled
Ohio Senate Bill 342 (***Prior Session Legislation***)

Bill Title: 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.

Spectrum: Moderate Partisan Bill (Republican 24-7)

Status: (*Passed*) 2014-12-19 - Governor' Action [SB342 Detail]

Download: Ohio-2013-SB342-Enrolled.html

(130th General Assembly)
(Amended Substitute Senate Bill Number 342)

AN ACT

To amend sections 1901.20, 1907.02, 4511.094, and 4511.204; to amend, for the purpose of adopting a new section number as indicated in parentheses, section 4511.093 (4511.043); to enact sections 3937.411, 4511.095, 4511.096, 4511.097, 4511.098, 4511.099, 4511.0910, 4511.0911, 4511.0912, 4511.0913, and 4511.0914; to enact new sections 4511.092 and 4511.093; and to repeal section 4511.092 of the Revised Code 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.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 1901.20, 1907.02, 4511.094, and 4511.204 be amended, section 4511.093 (4511.043) be amended for the purpose of adopting a new section number as indicated in parentheses, and sections 3937.411, 4511.095, 4511.096, 4511.097, 4511.098, 4511.099, 4511.0910, 4511.0911, 4511.0912, 4511.0913, and 4511.0914 and new sections 4511.092 and 4511.093 of the Revised Code be enacted to read as follows:

Sec. 1901.20. (A)(1) The municipal court has jurisdiction of to hear misdemeanor cases committed within its territory and has jurisdiction over the violation of any ordinance of any municipal corporation within its territory, unless the violation is a civil violation based upon evidence recorded by a traffic law photo-monitoring device and issued pursuant to division (B)(3) of section 4511.093 of the Revised Code or the violation is required to be handled by a parking violations bureau or joint parking violations bureau pursuant to Chapter 4521. of the Revised Code, and of the violation of any misdemeanor committed within the limits of its territory. The. However, the municipal court has jurisdiction of over the violation of a vehicle parking or standing resolution or regulation if a local authority, as defined in division (D) of section 4521.01 of the Revised Code, has specified that it is not to be considered a criminal offense, if the violation is committed within the limits of the court's territory, and if the violation is not required to be handled by a parking violations bureau or joint parking violations bureau pursuant to Chapter 4521. of the Revised Code. The

The municipal court, if it has a housing or environmental division, has jurisdiction of over any criminal action over which the housing or environmental division is given jurisdiction by section 1901.181 of the Revised Code, provided that, except as specified in division (B) of that section, no judge of the court other than the judge of the division shall hear or determine any action over which the division has jurisdiction. In all such prosecutions and cases, the court shall proceed to a final determination of the prosecution or case.

(2) A judge of a municipal court does not have the authority to dismiss a criminal complaint, charge, information, or indictment solely at the request of the complaining witness and over the objection of the prosecuting attorney, village solicitor, city director of law, or other chief legal officer who is responsible for the prosecution of the case.

(B) The municipal court has jurisdiction to hear felony cases committed within its territory. In all felony cases, the court may conduct preliminary hearings and other necessary hearings prior to the indictment of the defendant or prior to the court's finding that there is probable and reasonable cause to hold or recognize the defendant to appear before a court of common pleas and may discharge, recognize, or commit the defendant.

(C)(1) A municipal court has jurisdiction of over an appeal from a judgment or default judgment entered pursuant to Chapter 4521. of the Revised Code, as authorized by division (D) of section 4521.08 of the Revised Code. The appeal shall be placed on the regular docket of the court and shall be determined by a judge of the court.

(2) A municipal court has jurisdiction over an appeal of a written decision rendered by a hearing officer under section 4511.099

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of the Revised Code if the hearing officer that rendered the decision was appointed by a local authority within the jurisdiction of the court.

Sec. 1907.02. (A)(1) In addition to other jurisdiction granted a county court in the Revised Code, a county court has jurisdiction of all misdemeanor cases. A county court has jurisdiction to conduct preliminary hearings in felony cases, to bind over alleged felons to the court of common pleas, and to take other action in felony cases as authorized by Criminal Rule 5.

(2) A judge of a county court does not have the authority to dismiss a criminal complaint, charge, information, or indictment solely at the request of the complaining witness and over the objection of the prosecuting attorney, village solicitor, city director of law, or other chief legal officer who is responsible for the prosecution of the case.

(B) A county court has jurisdiction of the violation of a vehicle parking or standing ordinance, resolution, or regulation if a local authority, as defined in division (D) of section 4521.01 of the Revised Code, has specified that it is not to be considered a criminal offense, if the violation is committed within the limits of the court's territory, and if the violation is not required to be handled by a parking violations bureau or joint parking violations bureau pursuant to Chapter 4521. of the Revised Code. A county court does not have jurisdiction over violations of ordinances, resolutions, or regulations that are required to be handled by a parking violations bureau or joint parking violations bureau pursuant to that chapter.

A county court also has jurisdiction of an appeal from a judgment or default judgment entered pursuant to Chapter 4521. of the Revised Code, as authorized by division (D) of section 4521.08 of the Revised Code. Any such appeal shall be placed on the regular docket of the court and shall be determined by a judge of the court.

(C) A county court has jurisdiction over an appeal of a written decision rendered by a hearing officer under section 4511.099 of the Revised Code if the hearing officer that rendered the decision was appointed by a local authority within the jurisdiction of the court.

Sec. 3937.411. No insurer shall consider the issuance of a ticket for a civil violation under section 4511.097 of the Revised Code to an applicant or policyholder, or an admission or finding of liability related to such a ticket, as a basis for doing either of the following:

(A) Refusing to issue or deliver a policy of insurance upon a private automobile or increasing the rate to be charged for such a policy;

(B) Increasing the premium rate, canceling, or failing to renew an existing policy of insurance upon a private automobile.

Sec. 4511.093 4511.043. (A)(1) No law enforcement officer who stops the operator of a motor vehicle in the course of an authorized sobriety or other motor vehicle checkpoint operation or a motor vehicle safety inspection shall issue a ticket, citation, or summons for a secondary traffic offense unless in the course of the checkpoint operation or safety inspection the officer first determines that an offense other than a secondary traffic offense has occurred and either places the operator or a vehicle occupant under arrest or issues a ticket, citation, or summons to the operator or a vehicle occupant for an offense other than a secondary offense.

(2) A law enforcement agency that operates a motor vehicle checkpoint for an express purpose related to a secondary traffic offense shall not issue a ticket, citation, or summons for any secondary traffic offense at such a checkpoint, but may use such a checkpoint operation to conduct a public awareness campaign and distribute information.

(B) As used in this section, "secondary traffic offense" means a violation of division (A) or (F)(2) of section 4507.05, division (B)(1)(a) or (b) or (E) of section 4507.071, division (A) of section 4511.204, division (C) or (D) of section 4511.81, division (A)(3) of section 4513.03, or division (B) of section 4513.263 of the Revised Code.

Sec. 4511.092. As used in sections 4511.092 to 4511.0914 of the Revised Code:

(A) "Designated party" means the person whom the registered owner of a motor vehicle, upon receipt of a ticket based upon images recorded by a traffic law photo-monitoring device that indicate a traffic law violation, identifies as the person who was operating the vehicle of the registered owner at the time of the violation.

(B) "Hearing officer" means any person appointed by the mayor, board of county commissioners, or board of township trustees of a local authority, as applicable, to conduct administrative hearings on violations recorded by traffic law photo-monitoring devices, other than a person who is employed by a law enforcement agency as defined in section 109.573 of the Revised Code.

(C) "Law enforcement officer" means a sheriff, deputy sheriff, marshal, deputy marshal, police officer of a police department of any municipal corporation, police constable of any township, or police officer of a township or joint police district, who is employed on a permanent, full-time basis by the law enforcement agency of a local authority that assigns such person to the location of a traffic law photo-monitoring device.

(D) "Local authority" means a municipal corporation, county, or township.

(E) "Motor vehicle leasing dealer" has the same meaning as in section 4517.01 of the Revised Code.

(F) "Motor vehicle renting dealer" has the same meaning as in section 4549.65 of the Revised Code.

(G) "Recorded images" means any of the following images recorded by a traffic law photo-monitoring device that show, on at least one image or on a portion of the videotape, the rear of a motor vehicle and the letters and numerals on the rear license plate of the vehicle:

(1) Two or more photographs, microphotographs, electronic images, or digital images;

(2) Videotape.

(H) "Registered owner" means all of the following:

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(1) Any person or entity identified by the bureau of motor vehicles or any other state motor vehicle registration bureau, department, or office as the owner of a motor vehicle;

(2) The lessee of a motor vehicle under a lease of six months or longer;

(3) The renter of a motor vehicle pursuant to a written rental agreement with a motor vehicle renting dealer.

(I) "System location" means the approach to an intersection or area of roadway toward which a traffic law photo-monitoring device is directed and is in operation.

(J) "Ticket" means any traffic ticket, citation, summons, or other ticket issued in response to an alleged traffic law violation detected by a traffic law photo-monitoring device, that represents a civil violation.

(K) "Traffic law photo-monitoring device" means an electronic system consisting of a photographic, video, or electronic camera and a means of sensing the presence of a motor vehicle that automatically produces recorded images.

(L) "Traffic law violation" means either of the following:

(1) A violation of section 4511.12 of the Revised Code based on the failure to comply with section 4511.13 of the Revised Code or a substantially equivalent municipal ordinance that occurs at an intersection due to failure to obey a traffic control signal;

(2) 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.

Sec. 4511.093. (A) A local authority may utilize a traffic law photo-monitoring device for the purpose of detecting traffic law violations. If the local authority is a county or township, the board of county commissioners or the board of township trustees may adopt such resolutions as may be necessary to enable the county or township to utilize traffic law photo-monitoring devices.

(B) 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.

(2) A law enforcement officer who is present at the location of any traffic law photo-monitoring device and who personally witnesses a traffic law violation may issue a ticket for the violation. Such a ticket shall be issued in accordance with section 2935.25 of the Revised Code and is not subject to sections 4511.096 to 4511.0910 and section 4511.912 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.

Sec. 4511.094. (A) As used in this section:

(1) "Local authority" means a municipal corporation, county, or township.

(2) "Traffic law photo-monitoring device" means an electronic system consisting of a photographic, video, or electronic camera and a means of sensing the presence of a motor vehicle that automatically produces photographs, videotape, or digital images of the vehicle or its license plate.

(B)(1) No local authority shall use traffic law photo-monitoring devices to detect or enforce any traffic law violation until after it has erected ~~done~~ both of the following:

(1) Erected signs on every highway that is not a freeway that is part of the state highway system and that enters that local authority. ~~The signs shall inform~~ informing inbound traffic that the local authority utilizes traffic law photo-monitoring devices to enforce traffic laws. ~~The;~~

(2) Beginning on the effective date of this amendment, erected signs at each fixed system location informing motorists that a traffic law photo-monitoring device is present at the location.

~~The local authority shall erect the signs shall be erected within the first three hundred feet of the boundary of the local authority or, if within three hundred feet of the fixed system location, as applicable. If the signs cannot be located within the first three hundred feet of the boundary of the local authority or within three hundred feet of the fixed system location, the local authority shall erect the signs as close to that distance as possible, provided that if~~ If a particular highway enters and exits the territory of a local authority multiple times, the local authority shall erect the signs as required by this division (A)(1) of this section at the locations in each direction of travel where inbound traffic on the highway first enters the territory of the local authority and is not required to erect additional signs along such highway each time the highway reenters the territory of the local authority. The local authority is responsible for all costs associated with the erection, maintenance, and replacement, if necessary, of the signs. ~~All~~ The local authority shall ensure that all signs erected under this division shall conform in size, color, location, and content to standards contained in the manual adopted by the department of transportation pursuant to section 4511.09 of the Revised Code and shall remain in place for as long as the local authority utilizes traffic law photo-monitoring devices to enforce any traffic law. ~~Any~~

(B) A ticket, citation, or summons issued by or on behalf of the local authority for any traffic law violation based upon evidence gathered recorded by a traffic law photo-monitoring device after the effective date of this section is invalid under the following circumstances:

(1) If the ticket was issued after March 12, 2009, but before the signs have been required under division (A)(1) of this section

were erected is invalid; provided that no ticket, citation, or summons is invalid if the:

(2) If the ticket was issued after the effective date of this amendment but before the signs required under division (A)(2) of this section were erected.

However, if a local authority is in substantial compliance with the requirement requirements of this division to erect the signs (A)(1) or (2) of this section, as applicable, a ticket issued by the local authority under sections 4511.096 to 4511.0912 of the Revised Code is valid.

(2)(C) A local authority is deemed to be in substantial compliance with the requirement of division (B)(A)(1) or (2) of this section, as applicable, to erect the advisory signs if the authority does both of the following:

(a)(1) First erects all signs as required by division (B)(1)(A)(1) or (2) of this section, as applicable, and subsequently maintains and replaces the signs as needed so that at all times at least ninety per cent of the required signs are in place and functional;

(b)(2) Annually documents and upon request certifies its compliance with division (B)(2)(a)(C)(1) of this section.

(C)(D) A local authority that uses traffic law photo-monitoring devices to detect or enforce any traffic law violation at an intersection where traffic is controlled by traffic control signals that exhibit different colored lights or colored lighted arrows shall time the operation of the yellow lights and yellow arrows of those traffic control signals so that the steady yellow indication exceeds by one second the minimum duration for yellow indicators at similar intersections as established by the provisions of the manual adopted by the department of transportation under section 4511.09 of the Revised Code.

Sec. 4511.095. (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.

Sec. 4511.096. (A) A law enforcement officer employed by a local authority utilizing a traffic law photo-monitoring device shall examine evidence of alleged traffic law violations recorded by the device to determine whether such a violation has occurred. If the image recorded by the traffic law photo-monitoring device shows such a violation, contains the date and time of the violation, and shows the letter and numerals on the license plate of the vehicle involved as well as the state that issued the license plate, the officer may use any lawful means to identify the registered owner.

(B) The fact that a person or entity is the registered owner of a motor vehicle is prima facie evidence that that person or entity is the person who was operating the vehicle at the time of the traffic law violation.

(C) Within thirty days of the traffic law violation, the local authority or its designee may issue and send by regular mail a ticket charging the registered owner with the violation. The ticket shall comply with section 4511.097 of the Revised Code.

(D) A certified copy of the ticket alleging a traffic law violation, sworn to or affirmed by a law enforcement officer employed by the local authority, including by electronic means, and the recorded images produced by the traffic law photo-monitoring device, is prima facie evidence of the facts contained therein and is admissible in a proceeding for review of the ticket issued under this section.

Sec. 4511.097. (A) A traffic law violation for which a ticket is issued by a local authority pursuant to division (B)(3) of section 4511.093 of the Revised Code is a civil violation. If a local authority issues a ticket for such a violation, the ticket shall comply with the

requirements of this section and the fine for such a ticket shall not exceed the amount of the fine that may be imposed for a substantially equivalent criminal traffic law violation.

(B) A local authority or its designee shall process such a ticket for a civil violation and shall send the ticket by ordinary mail to any registered owner of the motor vehicle that is the subject of the traffic law violation. The local authority or designee shall ensure that the ticket contains all of the following:

- (1) The name and address of the registered owner;
 - (2) The letters and numerals appearing on the license plate issued to the motor vehicle;
 - (3) The traffic law violation charged;
 - (4) The system location;
 - (5) The date and time of the violation;
 - (6) A copy of the recorded images;
 - (7) The name and badge number of the law enforcement officer who was present at the system location at the time of the violation;
 - (8) The amount of the civil penalty imposed, the date by which the civil penalty is required to be paid, and the address to which the payment is to be sent;
 - (9) A statement signed by a law enforcement officer employed by the local authority indicating that, based on an inspection of recorded images, the motor vehicle was involved in a traffic law violation, and a statement indicating that the recorded images are prima facie evidence of that traffic law violation both of which may be signed electronically;
 - (10) Information advising the person or entity alleged to be liable of the options prescribed in section 4511.098 of the Revised Code, specifically to include the time, place, and manner in which an administrative appeal may be initiated and the procedure for disclaiming liability by submitting an affidavit as prescribed in that section;
 - (11) A warning that failure to exercise one of the options prescribed in section 4511.098 of the Revised Code is deemed to be an admission of liability and waiver of the opportunity to contest the violation.
- (C) A local authority or its designee shall send a ticket not later than thirty days after the date of the alleged traffic law violation.
- (D) The local authority or its designee may elect to send by ordinary mail a warning notice in lieu of a ticket under this section.

Sec. 4511.098. (A) A person or entity who receives a ticket for a civil violation sent in compliance with section 4511.097 of the Revised Code shall elect to do one of the following:

- (1) In accordance with instructions on the ticket, pay the civil penalty, thereby failing to contest liability and waiving the opportunity to contest the violation;
- (2)(a) Within thirty days after receipt of the ticket, provide the law enforcement agency of the local authority with either of the following affidavits:
 - (i) An affidavit executed by the registered owner stating that another person was operating the vehicle of the registered owner at the time of the violation, identifying that person as a designated party who may be held liable for the violation, and containing at a minimum the name and address of the designated party;
 - (ii) An affidavit executed by the registered owner stating that at the time of the violation, the motor vehicle or the license plates issued to the motor vehicle were stolen and therefore were in the care, custody, or control of some person or entity to whom the registered owner did not grant permission to use the motor vehicle. In order to demonstrate that the motor vehicle or the license plates were stolen prior to the traffic law violation and therefore were not under the control or possession of the registered owner at the time of the violation, the registered owner shall submit proof that a report about the stolen motor vehicle or license plates was filed with the appropriate law enforcement agency prior to the violation or within forty-eight hours after the violation occurred.
- (b) A registered owner is not responsible for a traffic law violation if, within thirty days after the date of mailing of the ticket, the registered owner furnishes an affidavit specified in division (A)(2)(a)(i) or (ii) of this section to the local authority in a form established by the local authority and the following conditions are met:
 - (i) If the registered owner submits an affidavit as specified in division (A)(2)(a)(i) of this section, the designated party either accepts liability for the violation by paying the civil penalty or failing to request an administrative hearing within thirty days or is determined liable in an administrative hearing;
 - (ii) If the registered owner submits an affidavit as specified in division (A)(2)(a)(ii) of this section, the affidavit is supported by a stolen vehicle or stolen license plate report as required in that division.
- (3) If the registered owner is a motor vehicle leasing dealer or a motor vehicle renting dealer, notify the law enforcement agency of the local authority of the name and address of the lessee or renter of the motor vehicle at the time of the traffic law violation. A motor vehicle leasing dealer or motor vehicle renting dealer who receives a ticket for an alleged traffic law violation detected by a traffic law photo-monitoring device is not liable for a ticket issued for a motor vehicle that was in the care, custody, or control of a lessee or renter at the time of the alleged violation. The dealer shall not pay such a ticket and subsequently attempt to collect a fee or assess the lessee or renter a charge for any payment of such a ticket made on behalf of the lessee or renter.

(4) If the vehicle involved in the traffic law violation is a commercial motor vehicle and the ticket is issued to a corporate entity, provide to the law enforcement agency of the local authority an affidavit, sworn to or affirmed by an agent of the corporate entity, that provides the name and address of the employee who was operating the motor vehicle at the time of the alleged violation and who is the designated party.

(5) Contest the ticket by filing a written request for an administrative hearing to review the ticket. The person or entity shall file the written request not later than thirty days after receipt of the ticket. The failure to request a hearing within this time period constitutes a waiver of the right to contest the violation and ticket, and is deemed to constitute an admission of liability and waiver of the opportunity to contest the violation.

(B) A local authority that receives an affidavit described in division (A)(2)(a)(i) or (A)(4) of this section or a notification under division (A)(3) of this section from a registered owner may proceed to send a ticket that conforms with division (B) of section 4511.097 of the Revised Code to the designated party. The local authority shall send the ticket to the designated party by ordinary mail not later than twenty-one days after receipt of the affidavit or notification.

Sec. 4511.099. (A) When a person or entity named in a ticket for a civil violation under division (A) of section 4511.097 of the Revised Code elects to contest the ticket and completes the requirements prescribed in division (A)(5) of section 4511.098 of the Revised Code in a timely manner, all of the following apply:

(1) A hearing officer appointed by the local authority shall hear the case. The hearing officer shall conduct a hearing not sooner than twenty-one but not later than forty-five days after the filing of a written request for the hearing. The hearing officer may extend the time period by which a hearing must be conducted upon a request for additional time by the person or entity who requested the hearing.

(2) The hearing officer shall ensure that the hearing is open to the public. The hearing officer shall post a docket in a conspicuous place near the entrance to the hearing room. The hearing officer shall identify on the docket, by respondent, the hearings scheduled for that day and the time of each hearing. The hearing officer may schedule multiple hearings for the same time to allow for occurrences such as nonappearances or admissions of liability.

(3) The person who requested the administrative hearing or a representative of the entity that requested the hearing shall appear for the hearing and may present evidence at the hearing.

(4) The hearing officer shall determine whether a preponderance of the evidence establishes that the violation alleged in the ticket did in fact occur and that the person or entity requesting the review is the person who was operating the vehicle at the time of the violation.

(B)(1) If the hearing officer finds by a preponderance of the evidence that the alleged traffic law violation did in fact occur and that the person or entity named in the ticket is the person who was operating the vehicle at the time of the violation, the hearing officer shall issue a written decision imposing liability for the violation upon the individual or entity and submit it to the local authority or its designee and the person or entity named in the ticket.

(2) If the hearing officer finds by a preponderance of the evidence that the alleged traffic law violation did not occur or did in fact occur but the person or entity named in the ticket is not the person who was operating the vehicle at the time of the violation, the hearing officer shall issue a written decision finding that the individual or entity is not liable for the violation and submit it to the local authority or its designee and the person or entity named in the ticket.

(3) If the person who requested the administrative hearing or a representative of the entity that requested the hearing fails to appear at the hearing, the hearing officer shall determine that the person or entity is liable for the violation. In such a case, the hearing officer shall issue a written decision imposing liability for the violation upon the individual or entity and submit it to the local authority or its designee and the person or entity named in the ticket.

(4) The hearing officer shall render a decision on the day a hearing takes place.

(C)(1) In determining whether the person or entity named in the ticket is liable, the hearing officer may consider any of the following as an affirmative defense to a traffic law violation:

(a) That the vehicle passed through the intersection in order to yield the right-of-way to either of the following:

(i) A public safety vehicle or coroner's vehicle in accordance with section 4511.45 of the Revised Code or a substantially equivalent municipal ordinance;

(ii) A funeral procession in accordance with section 4511.451 of the Revised Code or a substantially equivalent municipal ordinance.

(b) That the motor vehicle or license plates of the motor vehicle were stolen prior to the occurrence of the violation and were not under the control or possession of the registered owner at the time of the violation. In order to demonstrate that the motor vehicle or license plates were stolen prior to the occurrence of the violation and were not under the control or possession of the registered owner at the time of the violation, the registered owner shall submit proof that a report about the stolen motor vehicle or license plates was filed with the appropriate law enforcement agency prior to the traffic law violation or within forty-eight hours after the traffic law violation occurred.

(c) At the time and place of the alleged traffic law violation, the traffic control signal was not operating properly or the traffic law photo-monitoring device was not in proper position and the recorded image is not of sufficient legibility to enable an accurate determination of the information necessary to impose liability.

(d) That the registered owner or person or entity named in the ticket was not the person operating the motor vehicle at the time

of the violation. In order to meet the evidentiary burden imposed under division (C)(1)(d) of this section, the registered owner or person or entity named in the ticket shall provide to the hearing officer the identity of the designated party, that person's name and current address, and any other evidence that the hearing officer determines to be pertinent.

(2) A hearing officer also may consider the totality of the circumstances when determining whether to impose liability upon the person or entity named in the ticket.

(D)(1) If the hearing officer finds that the person or entity named in the ticket was not the person who was operating the vehicle at the time of the violation or receives evidence identifying the designated party, the hearing officer shall provide to the local authority or its designee, within five days of the hearing, a copy of any evidence substantiating the identity of the designated party.

(2) Upon receipt of evidence of the identity of the designated party, the local authority or its designee may issue a ticket to the designated party.

A local authority shall ensure that a ticket issued under division (D)(2) of this section conforms with division (B) of section 4511.097 of the Revised Code. The local authority shall send the ticket by ordinary mail not later than twenty-one days after receipt of the evidence from the hearing officer or the registered owner of the identity of the designated party.

(E) If a designated party who is issued a ticket under division (D)(2) of this section or division (B) of section 4511.098 of the Revised Code contests the ticket by filing a written request for an administrative hearing to review the ticket not later than thirty days after receipt of the ticket, the local authority shall require the registered owner of the motor vehicle also to attend the hearing. If at the hearing involving the designated party the hearing officer cannot determine the identity of the operator of the vehicle at the time of the violation, the registered owner is liable for the violation. The hearing officer then shall issue a written decision imposing liability for the violation on the registered owner and submit it to the local authority or its designee and to the registered owner. If the designated party also is a registered owner of the vehicle, liability for the violation shall follow the order of registered owners as listed on the title to the vehicle.

(F) A person who is named in a ticket for a civil violation may assert a testimonial privilege in accordance with division (D) of section 2317.02 of the Revised Code.

(G) A person or entity may appeal a written decision rendered by a hearing officer under this section to the municipal court or county court with jurisdiction over the location where the violation occurred.

(H) No decision rendered under this section, and no admission of liability under this section or section 4511.098 of the Revised Code, is admissible as evidence in any other judicial proceeding in this state.

Sec. 4511.0910. A traffic law violation for which a civil penalty is imposed under sections 4511.097 to 4511.099 of the Revised Code is not a moving violation and points shall not be assessed against a person's driver's license under section 4510.036 of the Revised Code. In no case shall such a violation be reported to the bureau of motor vehicles or motor vehicle registration bureau, department, or office of any other state, nor shall such a violation be recorded on the driving record of the owner or operator of the vehicle involved in the violation.

Sec. 4511.0911. (A) Upon request, each manufacturer of a traffic law photo-monitoring device shall provide to a local authority utilizing its devices the maintenance record of any such device used in that local authority.

(B)(1) Commencing January 2015, not later than the last day of January of each year, the manufacturer of a traffic law photo-monitoring device shall provide to the applicable local authority a certificate of proper operation that attests to the accuracy of the device in recording a traffic law violation.

(2) In addition to the requirement prescribed in division (B)(1) of this section, for every such device that is considered mobile, meaning it is attached to a trailer, vehicle, or other wheeled apparatus so that it is easily moved to different system locations, both of the following apply:

(a) Each local authority shall test the accuracy of each such device with an independent, certified speed measuring device or some other commonly accepted method prior to its use at each system location.

(b) Each local authority shall clearly and conspicuously mark on the outside of the trailer, vehicle, or wheeled apparatus that contains the traffic law photo-monitoring device that the device is contained therein and that the trailer, vehicle, or wheeled apparatus is the property of the local authority.

(C) In the case of a traffic law photo-monitoring device that is used at an intersection to detect violations of section 4511.12 of the Revised Code based on the failure to comply with section 4511.13 of the Revised Code or a substantially equivalent municipal ordinance, the local authority shall not issue a ticket for a violation based upon evidence recorded by a traffic law photo-monitoring device when a vehicle makes a legal right or left turn-on-red-signal if all of the following apply:

(1) The vehicle can make the turn safely.

(2) The vehicle comes to a complete stop at any point prior to completing the turn.

(3) No pedestrians are in the crosswalk, or are about to enter the crosswalk, of any approach to the intersection the vehicle occupies while commencing or making the turn.

Sec. 4511.0912. 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.

Sec. 4511.0913. Sections 4511.092 to 4511.0912 of the Revised Code do not apply to the use of a traffic law photo-monitoring device that is placed on a school bus for the purpose of detecting violations of section 4511.75 of the Revised Code or a substantially equivalent municipal ordinance.

Sec. 4511.0914. Sections 4511.092 to 4511.0912 of the Revised Code do not affect in any manner either of the following:

(A) Any ban on the use by a local authority of traffic law photo-monitoring devices to detect traffic law violations that is in effect on the effective date of this section, irrespective of the method or means by which such a ban took effect;

(B) Any ban on the use by a local authority of traffic law photo-monitoring devices to detect traffic law violations that takes effect after the effective date of this section, irrespective of the method or means by which such a ban takes effect.

Sec. 4511.204. (A) No person shall drive a motor vehicle, trackless trolley, or streetcar on any street, highway, or property open to the public for vehicular traffic while using a handheld electronic wireless communications device to write, send, or read a text-based communication.

(B) Division (A) of this section does not apply to any of the following:

(1) A person using a handheld electronic wireless communications device in that manner for emergency purposes, including an emergency contact with a law enforcement agency, hospital or health care provider, fire department, or other similar emergency agency or entity;

(2) A person driving a public safety vehicle who uses a handheld electronic wireless communications device in that manner in the course of the person's duties;

(3) A person using a handheld electronic wireless communications device in that manner whose motor vehicle is in a stationary position and who is outside a lane of travel;

(4) A person reading, selecting, or entering a name or telephone number in a handheld electronic wireless communications device for the purpose of making or receiving a telephone call;

(5) A person receiving wireless messages on a device regarding the operation or navigation of a motor vehicle; safety-related information, including emergency, traffic, or weather alerts; or data used primarily by the motor vehicle;

(6) A person receiving wireless messages via radio waves;

(7) A person using a device for navigation purposes;

(8) A person conducting wireless interpersonal communication with a device that does not require manually entering letters, numbers, or symbols or reading text messages, except to activate, deactivate, or initiate the device or a feature or function of the device;

(9) A person operating a commercial truck while using a mobile data terminal that transmits and receives data;

(10) A person using a handheld electronic wireless communications device in conjunction with a voice-operated or hands-free device feature or function of the vehicle.

(C)(1) Notwithstanding any provision of law to the contrary, no law enforcement officer shall cause an operator of an automobile being operated on any street or highway to stop the automobile for the sole purpose of determining whether a violation of division (A) of this section has been or is being committed or for the sole purpose of issuing a ticket, citation, or summons for a violation of that nature or causing the arrest of or commencing a prosecution of a person for a violation of that nature, and no law enforcement officer shall view the interior or visually inspect any automobile being operated on any street or highway for the sole purpose of determining whether a violation of that nature has been or is being committed.

(2) On January 31 of each year, the department of public safety shall issue a report to the general assembly that specifies the number of citations issued for violations of this section during the previous calendar year.

(D) Whoever violates division (A) of this section is guilty of a minor misdemeanor.

(E) This section shall not be construed as invalidating, preempting, or superseding a substantially equivalent municipal ordinance that prescribes penalties for violations of that ordinance that are greater than the penalties prescribed in this section for violations of this section.

(F) A prosecution for a violation of this section does not preclude a prosecution for a violation of a substantially equivalent municipal ordinance based on the same conduct. However, if an offender is convicted of or pleads guilty to a violation of this section and is also convicted of or pleads guilty to a violation of a substantially equivalent municipal ordinance based on the same conduct, the two offenses are allied offenses of similar import under section 2941.25 of the Revised Code.

(G) As used in this section:

(1) "Electronic wireless communications device" includes any of the following:

Appendix Pg. 045

- (a) A wireless telephone;
- (b) A text-messaging device;
- (c) A personal digital assistant;
- (d) A computer, including a laptop computer and a computer tablet;
- (e) Any other substantially similar wireless device that is designed or used to communicate text.

(2) "Voice-operated or hands-free device" means a device that allows the user to vocally compose or send, or to listen to a text-based communication without the use of either hand except to activate or deactivate a feature or function.

(3) "Write, send, or read a text-based communication" means to manually write or send, or read a text-based communication using an electronic wireless communications device, including manually writing or sending, or reading communications referred to as text messages, instant messages, or electronic mail.

SECTION 2. That existing sections 1901.20, 1907.02, 4511.093, 4511.094, and 4511.204 and section 4511.092 of the Revised Code are hereby repealed.

Baldwin's Ohio Revised Code Annotated
Constitution of the State of Ohio
Article XVIII. Municipal Corporations (Refs & Annos)

OH Const. Art. XVIII, § 3

O Const XVIII Sec. 3 Municipal powers of local self-government

[Currentness](#)

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.

CREDIT(S)

(1912 constitutional convention, adopted eff. 11-15-12)

[Notes of Decisions \(1406\)](#)

Const. Art. XVIII, § 3, OH CONST Art. XVIII, § 3

Current through Files 1 to 52 of the 131st General Assembly (2015-2016) and 2015 State Issues 1 and 2.

End of Document

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Exhibit C

IN THE MONTGOMERY COUNTY COMMON PLEAS COURT CIVIL DIVISION

CITY OF DAYTON, OHIO, : CASE NO. 2015 CV 01457

Plaintiff, : Judge Barbara P. Gorman

v. :

STATE OF OHIO, : AFFIDAVIT OF DET.
 : JASON WARD

Defendant. :

STATE OF OHIO)

COUNTY OF MONTGOMERY)

ss:

Det. Jason Ward, after being duly cautioned and sworn, states the following:

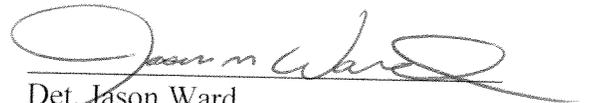
1. I have personal knowledge of all information contained in this affidavit and I am competent to testify to all of the facts contained in this affidavit and to testify to all matters stated herein.
2. I have been employed as a Dayton Police Officer since 2002. As part of my duties, I oversee the City of Dayton's Automated Traffic Control Photographic System ("Program").
3. Dayton is an Ohio charter municipality established and governed pursuant to the Ohio Constitution, the Dayton Charter, and its ordinances and resolutions.
4. Dayton enacted the Program by ordinance on June 12, 2002. The initial ordinance only provided for red light violation cameras. A true and accurate copy of the Ordinance is attached hereto as Exhibit 1.
5. Thereafter, on February 17, 2010, the Program was modified to provide for speed violations as well. The ordinances are codified at Dayton R.C.G.O.

Section 70.121. The most recent version of the Ordinance is attached hereto as Exhibit 2.

6. The purpose of the Program was to reduce the number of red light and speeding violations and related accidents, as well as to conserve limited Dayton Police resources by using an automated system. See preambles in Exhibits 1 and 2.
7. Dayton conducted traffic and accident studies and located the traffic control cameras at intersections and locations that had high instances of violations and violation related accidents.
8. Dayton's Program has reduced the number of accidents at intersections and locations where the traffic control cameras have been placed, and have made Dayton's streets safer to drive upon.
9. After installing the red light cameras, Dayton noticed a 45% decrease in red light violation related accidents at the intersections where the cameras were installed.
10. Likewise, there has been an approximately 30% decrease in accidents for all of the intersections and locations having either a red light or speeding camera.
11. The City of Dayton now has over 36 speed and/or red light violation traffic cameras in place.
12. The Program provides for civil enforcement imposing monetary liability upon the owners of vehicles that do not comply with the posted speed limits or red light signals. Offenders are not issued criminal traffic citations. Offenses are not enforced by the criminal courts. Points for violations are not assessed against a vehicle owner's driving records. Dayton has implemented an administrative hearing process for those who want to appeal a ticket, the fine is \$85.
13. The traffic cameras take both video and still pictures of the violations. Before any citation is issued, a Dayton police officer reviews the video and pictures to confirm that the vehicle exceeded the speed limit or ran a red light.
14. Likewise, the video and pictures are provided to the vehicle's owner.
15. The Dayton Police Department uses its police force to enforce the criminal laws and protect its citizens. Police officers are deployed to maximize the deterrent effect and in response to community needs, as determined by local law enforcement most familiar with local situations. The Dayton Police

Department does not have a sufficient number of police officers to permit Dayton to deploy an officer at the location of each of the traffic photo enforcement cameras in accordance with Amended Senate Bill 342's requirement that an officer be "present," but not necessarily involved in any activity. In addition, it would cost the Dayton Police Department millions of dollars to staff each of the cameras with an officer. The Legislative Service Commission has determined that putting officers at each device around Ohio would cost cities \$73 million dollars per year statewide. A true and accurate copy of the Legislative Service Commission Report is attached hereto as Exhibit 3. This requirement serves no rational public safety purpose and bears no relationship to the safety, health, or welfare of Ohio citizens. Not only is there nothing for that officer to do because it is an automated system, but a Dayton police officer already reviews the video and pictures for each citation and approves them before any citation is issued.

16. If Senate Bill 342 is upheld, the Dayton Police Department's ability to deploy its forces as it deems necessary will be restricted. The Program has alleviated the need for the Dayton Police Department to conduct extensive conventional traffic enforcement, and allowed Dayton to deploy its officers more efficiently and better protect its citizens. Senate Bill 342's requiring an officer's presence at each camera location as would defeat that purpose.
17. Moreover, based upon my knowledge, experience, and training, the elimination or reduction of the Program would result in dramatic increases in traffic violations and violation related accidents. Research and numerous studies have shown that removal of photo enforcement results in increases in violations and violation related accidents.
18. On March 22, 2015, the Lucas County Common Pleas Court issued a preliminary injunction, enjoining portions of S.B. 342 from going into effect. A true and accurate copy of the Decision in that case is attached hereto as Exhibit 4.
19. Further affiant sayeth naught,


Det. Jason Ward

Sworn to before me, a Notary Public in and for the State of Ohio, and subscribed in the presence by the said Det. Jason Ward this 23rd day of March 2015.

JOHN C. MURTS, Attorney at Law
Notary Public, State of Ohio
My Commission Expires on expiration date.
Expires 1/27/16 C. O. C.

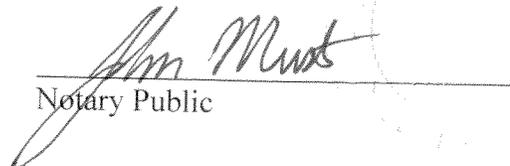

Notary Public

Exhibit 1

By MR. ZIMMER

No 30114-02

AN ORDINANCE

Supplementing and Amending the Revised Code of General Ordinances by the Enactment of Section 70.121 and the Amendment of Section 70.99, Regarding an Automated Traffic Control Photographic System.

WHEREAS, The City seeks to reduce the frequency of vehicle operators running red traffic lights; and

WHEREAS, The frequency of running red lights creates a substantial risk to the safety of citizens on the roadway; and

WHEREAS, An automated traffic control photographic system will assist the Dayton Police Department by alleviating the necessity for conducting extensive conventional traffic enforcement at high accident intersections; and

WHEREAS, The adoption of an automated traffic control photographic system will result in a significant reduction in the number of red light violations and/or accidents within the City of Dayton; now, therefore,

BE IT ORDAINED BY THE COMMISSION OF THE CITY OF DAYTON:

Section 1. That Section 70.121 of the Revised Code of General Ordinances is be enacted to read as follows:

70.121 CIVIL PENALTIES FOR AUTOMATED TRAFFIC CONTROL PHOTOGRAPHIC SYSTEM.

(A) Applicability.

(1) Notwithstanding any other provision of the traffic code, the City of Dayton hereby adopts a civil enforcement system for red light camera system violations as outlined in this ordinance. The automated traffic control photographic system (ATCPS) imposes monetary liability on the owner of a vehicle, for failure of an operator thereof to comply with traffic control indications in the City of Dayton in accordance with the provisions of this Ordinance.

(2) The City of Dayton shall be responsible for administering the ATCPS. Specifically, the Dayton Police Department or its designee shall be empowered to install and operate an automated traffic control signal photographic system within the City of Dayton.

(3) This ordinance applies whenever traffic is controlled by traffic control signals exhibiting different colored lights, or colored lighted arrows, successively one at a time or in combination. Only the colors green, red and yellow shall be used, except for special pedestrian signals carrying a word legend, and said lights shall indicate and apply to drivers of vehicles and trackless trolleys, as follows:

(a) Green indication means the same as defined in Section 70.13(b)(1)(a), (b), and (c).

(b) Steady yellow indication means the same as defined in Section 70.13(b)(2)(a), (b).

(c) Steady red indication means the same as defined in Section 70.13(b)(3)(a), (b), (c), and (d).

(4) Intersections in which an ATCPS is installed shall have visible postings upon approach of the intersection that the intersection is equipped with an automated traffic control signal monitoring system.

(5) The City of Dayton Police Department or its designee shall administer the ATCPS program and shall maintain a list at each Police District of system locations within the city limits where traffic-control photographic systems are installed.

(6) Whenever a Dayton Police Officer witnesses a violation of Section 70.13(b)(3) or Ohio Revised Code Section 4511.13, and has issued a citation pursuant to those sections, this ordinance does not apply. However the recorded image may be used as evidence for a violation of Section 70.13(b)(3) or Ohio Revised Code Section 4511.13. Any citation for a violation of Section 70.13(b)(3) or Ohio Revised Code Section 4511.13 issued personally by an officer of the City of Dayton Police Department at an ATCPS location shall not be issued in the manner described under this ordinance. The citation shall be treated in the same manner as prescribed by Dayton Police Department policy 3.03-4 IV.

(7) This ordinance shall not apply to violations involving vehicle or pedestrian collisions.

(B) Definitions.

For purposes of this ordinance, the following words and phrases shall have the meanings indicated.

(1) "Owner" means the registered owner of a motor vehicle as identified by the Bureau of Motor Vehicles for the state registered or a lessee of a motor vehicle under a lease of 6 months or more.

(2) "Recorded Images" means images recorded by an automated traffic control signal photographic system on any of the following:

(a) Two or more photographs; or

(b) Two or more microphotographs; or

(c) Two or more electronic images; or

(d) Two of more Digital images; or

(e) Videotape; or

(f) Any other medium; and

(g) Showing the front or rear of a motor vehicle and on at least one image or portion of tape, clearly identifying the license plate number of the motor vehicle.

(3) "Automated Traffic Control Signal Photographic System" means a device with one or more motor vehicle sensors, installed to work in conjunction with a traffic control signal, to produce recorded images of motor vehicles entering an intersection against a red signal indication.

(4) "In Operation" means operating in good working condition.

(5) "Hearing Officer" means an independent third party, not employed by the City of Dayton Police Department or its designee.

(6) "System Location" is the approach to an intersection toward which a photographic, microphotographic, electronic image, digital image, videotape, or any other medium is directed and is in operation. It is the location where the automated traffic control photographic system is installed to monitor offenses under this ordinance.

(7) "Responsible Party" is the person who was operating the vehicle at the time of the violation or the person who had care, custody, and control of the vehicle at the time of the violation.

(C) Violation.

(1) It shall be unlawful for a vehicle to cross the stop line at a system location when the traffic controls signal for that vehicle's direction of travel is emitting a steady red light. The owner of the vehicle shall be responsible for a violation under this section, except when the owner can provide evidence that the vehicle was in the care, custody, and control of another person at the time of the violation, as described in subsection (C)(2).

(2) The owner of the vehicle shall not be responsible for the violation if, within fifteen (15) calendar days after notification of liability, the owner furnishes the City of Dayton Police Department or its designee with:

(a) The name and address of the person who leased, rented, or otherwise had the care, custody, and control of the vehicle at the time of the violation; or

(b) An affidavit by the owner stating that at the time of the violation, the vehicle or the license plates of the vehicle involved were stolen or were in the care, custody, or control of some person who did not have the owner's permission to use the vehicle, or that the motor vehicle or registration plates of vehicle were stolen before the violation occurred and were not under the control or possession of the owner at the time of the violation. In order to demonstrate that the vehicle or the license plates were stolen before the violation occurred and were not under the control or possession of the owner at the time of the violation, the owner must submit proof that a police report about the stolen motor vehicle or license plates was filed prior to the violation or within 48 hours after the violation occurred.

(3) A certified copy of the notice of liability alleging the violation of this ordinance occurred, sworn to or affirmed by a duly authorized Police Officer of the City of Dayton, with the recorded images produced by an automated traffic control signal photographic system shall be prima facie evidence of the facts contained therein and shall be admissible in a proceeding alleging a violation under this ordinance.

(4) If the vehicle involved in the violation is a commercial vehicle and the notice of liability is issued to a corporate entity, the corporate entity must provide to the Dayton Police Department or its designee an affidavit, sworn to or affirmed by the statutory agent of the corporate entity, that:

(a) States that the person/entity named in the notice of liability was not in operation of the vehicle at the time of the violation; and

(b) Provides the name, address, and driver's license identification number of the person who was in operation of the vehicle at the time of the violation.

(D) Notice of Liability.

(1) The notice of liability shall be processed by the City of Dayton Police Department or its designee, and shall be served by ordinary mail to the owner's address as given on the motor vehicle registration from the Bureau of Motor Vehicles of the state registered. The notice of liability shall include:

- (a) The name and address of the registered owner of the vehicle;
- (b) The license plate number of the motor vehicle involved in the violation;
- (c) The violation charged;
- (d) The location of the intersection;
- (e) The date and time of the violation;
- (f) A copy of the recorded image(s);
- (g) The amount of the civil penalty imposed and the date by which the civil penalty should be paid and where the payment should be made;
- (h) A signed statement by a Dayton Police Officer that based on inspection of recorded images, the motor vehicle was being operated in violation of subsection (C)(1) of this ordinance, and a statement that the recorded images are prima facie evidence of a violation of subsection (C)(1) of this ordinance;
- (i) Information advising the person alleged to be liable of the options as provided in subsection (E)(1) of this ordinance;
- (j) The time, place, and manner in which an administrative appeal can be initiated and a warning that failure to exercise the options provided under subsection (E)(1) of this ordinance in a timely manner is an admission of liability.

(2) The City of Dayton or its designee may mail, by ordinary mail, a warning notice in lieu of notice of liability under this ordinance.

(3) Except as provided in subsection (E)(3)(b), a notice of liability issued under this ordinance shall be mailed no later than fifteen (15) calendar days after the alleged violation.

(4) Except as provided under subsections (E)(3)(a) of this ordinance, the Dayton Police Department or its designee may not mail a notice of liability to a person who is not the owner of the vehicle.

(E) Administrative Appeal.

(1) An owner or responsible party who receives a "notice of liability", under this ordinance may do one of the following:

(a) Pay the civil penalty, in accordance with instructions on the notice of liability; or

(b) Within fifteen (15) calendar days provide the Dayton Police Department or its designee information as to the driver of the vehicle, at the time of the violation; or

(c) Contest the notice of liability by filing a written request for review of the notice of liability with payment in the amount equal to the amount of the civil penalty to the City of Dayton Police Department or its designee. An individual desiring a hearing must post payment equal to the amount of the civil penalty before an appeal hearing will be scheduled. A written notice of request for review must be filed within fifteen (15) days after receipt of the notification of liability. The failure to give notice of request for review within this time period shall constitute a waiver of the right to contest the notice of liability. A Hearing Officer shall hear reviews. A hearing shall be held within ten (10) business days of the receipt of the request for review; this time may be extended upon a written request for additional time.

(i) The Hearing Officer shall determine whether a preponderance of evidence establishes that a violation of this ordinance occurred and the person requesting the review is liable. A certified copy of the notice of liability alleging the violation of this ordinance occurred, sworn to or affirmed by a duly authorized Police Officer of the City of Dayton, with the recorded images produced by a traffic control photographic system shall be prima facie evidence of the facts contained therein and shall be admissible in a proceeding alleging a violation under this ordinance. Adjudication of liability shall be based on a preponderance of the evidence.

(ii) If the Hearing Officer finds sufficient evidence of a violation, but the owner or the responsible party is not liable, the Hearing Officer shall, in writing, issue a decision finding the individual not liable and submit it to the City of Dayton Police Department or its designee.

(2) If the owner or responsible party chooses to contest the notice of liability, the Hearing Officer may consider any of the following as an affirmative defense of a violation:

(a) That the driver of the vehicle passed through the intersection in order to yield the right-of-way to an emergency vehicle in accordance with Ohio Revised Code Section 4511.45, or to a funeral procession in accordance with Section 71.13.

(b) That the motor vehicle or registration plates of the motor vehicle were stolen before the violation occurred and were not under the control or possession of the owner at the time of the violation. In order to demonstrate that the motor vehicle or the registration plates were stolen before the violation occurred and were not under the control or possession of the owner at the time of the violation, the owner must submit proof that a police report about the stolen motor vehicle or registration plates was filed prior to the violation or within 48 hours after the violation occurred.

(c) That this section is unenforceable because at the time and place of the alleged violation, the traffic control signal was not operating properly or the traffic control signal monitoring system was not in proper position and the recorded image is not legible enough to determine the information needed.

(d) Evidence, other than that adduced pursuant to subsection (E)(2)(b) of this ordinance, that the owner or person named in the notice of liability was not operating the vehicle at the time of the violation. To satisfy the evidentiary burden under this subsection, the owner or person named in the notice of liability shall provide to the Hearing Officer evidence showing the identity of the person who was operating the vehicle at the time of the violation, including, at a minimum, the operator's name and current address, and any other evidence that the Hearing Officer deems pertinent.

(3) If the Hearing Officer finds that the person or entity named in the notice of liability was not operating the vehicle at the time of the violation or receives evidence under subsection (E)(2)(d) identifying the person driving the vehicle at the time of the violation, the Hearing Officer shall provide to the City of Dayton Police Department or its designee within five (5) calendar days, a copy of any evidence substantiating who was operating the vehicle at the time of the violation.

(a) Upon the receipt of evidence of the responsible party pursuant to this subsection or pursuant to subsection (C)(2)(a), the City of Dayton Police Department or its designee may issue a notice of liability, with the name and address of the responsible party and the information required by subsection

(D)(1)(b),(c),(d),(e),(f),(g),(h),(i), and (j) of this ordinance, to the person that the evidence indicates was operating the vehicle at the time of the violation.

(b) A notice of liability issued under this subsection (E)(3) shall be sent by ordinary mail no later than five (5) business days after receipt of the evidence from the Hearing Officer or the owner.

(F) Civil Penalties.

(1) Unless the driver of the motor vehicle received a citation from a police officer at the time of the violation, the owner or responsible party for the motor vehicle is subject to a civil penalty if the motor vehicle is recorded by an automated traffic control photographic system while being operated in violation of this ordinance.

(2) A civil penalty under this ordinance may not exceed \$250.00. Persons who choose to pay the civil penalty without appearing before a Hearing Officer may do so in the manner indicated on the notice of liability.

(3) A violation for which a civil penalty is imposed under this ordinance is not a moving violation for the purpose of assessing points under Ohio Revised Code Section 4507.021(16) for minor misdemeanor moving traffic offenses and may not be recorded on the driving record of the owner or operator of the vehicle and shall not be reported to the Bureau of Motor Vehicles;

(G) Collection of Civil Penalty.

If the civil penalty is not paid, the civil penalty imposed under the provisions of this ordinance shall be collectible, together with any interest and penalties thereon, by civil suit.

Section 2. That Section 70.99(A) of the Revised Code of General Ordinances is

hereby amended to read as follows:

70.99 GENERAL PENALTY FOR TITLE VII.

(A) Whoever violates any provision of this title, for which no penalty is otherwise provided, is guilty of a minor misdemeanor on a first offense; on a second offense within one year after the first offense, such person is guilty of a misdemeanor of the fourth degree; on each subsequent offense within one year after the first offense, such person is guilty of a misdemeanor of the third degree. When any person is found guilty of a first offense for a violation of Section 71.50 upon a finding that he operated a motor vehicle faster than 35 miles an hour in a business district, or faster than 50 miles an hour in other portions, or faster than 35 miles an hour while passing through a school zone during recess or while children are going to or leaving school during the opening or closing hours, such person is guilty of a misdemeanor of the fourth degree.

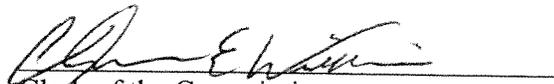
Section 3. That Section 70.99(A) of the Revised Code of General Ordinances, as heretofore enacted by the Commission, is hereby repealed.

PASSED BY THE COMMISSION **JUNE 12** 2002

SIGNED BY THE MAYOR **JUNE 12** 2002


~~MAYOR OF THE CITY OF DAYTON, OHIO~~

ATTEST:


Clerk of the Commission

APPROVED AS TO FORM:


City Attorney

Exhibit 2

BY Mr. Williams

NO. 31352-14

AN ORDINANCE

Amending Section 70.121 of the Revised Code of General Ordinances of the City of Dayton Relating to Civil Penalties for Automated Traffic Control Photographic System, and Declaring an Emergency.

WHEREAS, The City seeks to reduce the frequency of vehicle operators exceeding posted speed limits; and

WHEREAS, The frequency of exceeding posted speed limits creates a substantial risk to the safety of citizens on the roadway; and

WHEREAS, Adding speed enforcement to the automated traffic control photographic system will assist the Dayton Police Department by alleviating the necessity for conducting extensive conventional traffic enforcement at high accident locations; and

WHEREAS, The adoption of an automated traffic control photographic system with speed enforcement capabilities will result in a significant reduction in the number of speeding violations and/or accidents within the City of Dayton; and

WHEREAS, For the immediate preservation of the public peace, property, health and safety and the usual daily operation of the various City departments, it is necessary that this Ordinance take effect at the earliest possible date; now, therefore,

BE IT ORDAINED BY THE COMMISSION OF THE CITY OF DAYTON:

Section 1. That Section 70.121 of the Revised Code of General Ordinances be, and hereby is, amended to read as follows:

Section 70.121. Civil Penalties For Automated Traffic Control Photographic System.

(A) Applicability.

(1) Notwithstanding any other provision of the traffic code, the city hereby adopts a civil enforcement system for red light and speeding violations as outlined in this section. The automated traffic control photographic system (ATCPS) imposes monetary liability on the owner of a vehicle, for failure of an operator thereof to comply with traffic control indications and/or posted speed limits in the city in accordance with the provisions of this section.

(2) The city shall be responsible for administering the ATCPS. Specifically, the Dayton Police Department or its designee shall be empowered to install and operate ATCPS for enforcement of red light and speed violations within the city of Dayton.

(3) This section applies whenever traffic is controlled by traffic control signals exhibiting different colored lights, or colored lighted arrows, successively one at a time or in combination. Only the colors green, red and yellow shall be used, except for special

pedestrian signals carrying a word legend, and said lights shall indicate and apply to drivers of vehicles and trackless trolleys, as follows:

- (i) Green indication means the same as defined in §§ 70.13(b)(1)(a), (b), and (c).
 - (ii) Steady yellow indication means the same as defined in §§ 70.13(b)(2)(a), (b).
 - (iii) Steady red indication means the same as defined in §§ 70.13(b)(3)(a), (b), (c), and (d).
- (4) This section applies whenever a motor vehicle, motorized bicycle, or trackless trolley is operated at a speed greater than the posted speed limit or as established.

(5) This section applies to all persons operating a motor vehicle, motorized bicycle, or trackless trolley on a street or highway within city limits.

(6) Locations with an ATCPS shall have visible postings upon approach that the location is equipped with an automated traffic control signal monitoring system.

(7) The City of Dayton Police Department or its designee shall administer the ATCPS program and shall maintain a list at each Police District of system locations within the city limits where ATCPS are located.

(8) Whenever a Dayton Police Officer witnesses a violation of § 70.13(b)(3), § 71.50, or Ohio Revised Code Sections 4511.13 and 4511.21 and has issued a citation pursuant to those sections, this section does not apply. However the recorded image and/or radar reading may be used as evidence for a violation of Section § 70.13(b)(3), § 71.50, or Ohio Revised Code Sections 4511.13 and 4511.21. Any citation for a violation of Section § 70.13(b)(3), § 71.50, or Ohio Revised Code Sections 4511.13 and 4511.21 issued personally by an officer of the City of Dayton Police Department at an ATCPS location shall not be issued in the manner described under this section. The citation shall be treated in the same manner as prescribed by Dayton Police Department Policy 3.03-4 IV.

(9) This section shall not apply to violations involving vehicle or pedestrian collisions.

(B) *Definitions.* For purposes of this section, the following words and phrases shall have the meanings indicated:

Owner. The registered owner of a motor vehicle as identified by the Bureau of Motor Vehicles for the state registered or a lessee of a motor vehicle under a lease of six months or more.

Recorded images. Images recorded by an automated traffic control photographic system on any of the following:

- (a) Two or more photographs; or
- (b) Two or more microphotographs; or
- (c) Two or more electronic images; or
- (d) Two or more digital images; or
- (e) Videotape; or
- (f) Any other medium; and
- (g) Showing the front or rear of a motor vehicle and on at least one image or portion of tape, clearly identifying the license plate number of the motor vehicle.

Automated Traffic Control Photographic System. A device with one or more motor vehicle sensors that produces recorded images of motor vehicles violating a red signal indication and/or capture recordings of vehicle speed measurements.

In operation. Operating in good working condition.

Hearing officer. An independent third party, not employed by the City of Dayton Police Department or its designee.

System location. A location toward which a photographic, microphotographic, electronic image, digital image, videotape, radar, speed measurement or any other medium is directed and is in operation. It is the location where the automated traffic control photographic system is set-up or located to monitor offenses under this section.

Responsible party. The person who was operating the vehicle at the time of the violation or the person who had care, custody, and control of the vehicle at the time of the violation.

(C) Violation.

(1) It shall be unlawful for a vehicle to cross the stop line at a system location when the traffic controls signal for that vehicle's direction of travel is emitting a steady red light or emitting a flashing red light. The owner of the vehicle shall be responsible for a violation under this section, except when the owner can provide evidence that the vehicle was in the care, custody, and control of another person at the time of the violation, as described in subsection (C)(3).

(2) It shall be unlawful to operate a motor vehicle, motorized bicycle, or trackless trolley at a speed greater than posted or is established pursuant to the provisions of § 71.50 and R.C. § 4511.21. The owner of the vehicle shall be responsible for a violation under this section, except when the owner can provide evidence that the vehicle was in the care, custody, and control of another person at the time of the violation, as described in subsection (C)(3).

(3) The owner of the vehicle shall not be responsible for the civil violation if, within thirty (30) calendar days after notification of liability, the owner furnishes the City of Dayton Police Department or its designee with:

- (a) The name and address of the person who leased, rented, or otherwise had the care, custody, and control of the vehicle at the time of the violation; or
- (b) An affidavit by the owner stating that at the time of the violation, the vehicle or the license plates of the vehicle involved were stolen or were in the care, custody, or control of some person who did not have the owner's permission to use the vehicle, or that the motor vehicle or registration plates of vehicle were stolen before the violation occurred and were not under the control or possession of the owner at the time of the violation. In order to demonstrate that the vehicle or the license plates were stolen before the violation occurred and were not under the control or possession of the owner at the time of the violation, the owner must submit proof that a police report about the stolen motor vehicle or license plates was filed prior to the violation or within forty-eight (48) hours after the violation occurred.

(4) A certified copy of the notice of liability alleging the violation of this section occurred, sworn to or affirmed by a duly authorized police officer of the City of Dayton,

with the recorded images produced by an automated traffic control photographic system shall be prima facie evidence of the facts contained therein and shall be admissible in a proceeding alleging a violation under this section.

(5) If the vehicle involved in the violation is a commercial vehicle and the notice of liability is issued to a corporate entity, the corporate entity must provide to the Dayton Police Department or its designee an affidavit, sworn to or affirmed by the statutory agent of the corporate entity, that:

- (a) States that the person/entity named in the notice of liability was not in operation of the vehicle at the time of the violation; and
- (b) Provides the name, address, and driver's license identification number of the person who was in operation of the vehicle at the time of the violation.

(D) Notice of Liability.

(1) The notice of liability shall be processed by the City of Dayton Police Department or its designee, and shall be served by ordinary mail to the owner's address as given on the motor vehicle registration from the Bureau of Motor Vehicles of the state registered. The notice of liability shall include:

- (a) The name and address of the registered owner of the vehicle;
- (b) The license plate number of the motor vehicle involved in the violation;
- (c) The violation charged, if the violation is for speed, by the vehicles speed at the time of the violation and the posted speed must be stated;
- (d) The location of the violation;
- (e) The date and time of the violation;
- (f) A copy of the recorded image(s);
- (g) The amount of the civil penalty imposed and the date by which the civil penalty should be paid and where the payment should be made;
- (h) A signed statement by a Dayton Police Officer that based on inspection of recorded images and/or speed measurement readings, the motor vehicle was being operated in violation of subsection (C)(1) or (C)(2) of this section, and a statement that the recorded images and/or speed measurement readings are prima facie evidence of a violation of subsection (C)(1) or (C)(2) of this section;
- (i) Information advising the person alleged to be liable of the options as provided in subsection (E)(1) of this section;
- (j) The time, place, and manner in which an administrative appeal can be initiated and a warning that failure to exercise the options provided under subsection (E)(1) of this section in a timely manner is an admission of liability.

(2) The City of Dayton or its designee may mail, by ordinary mail, a warning notice in lieu of notice of liability under this section.

(3) Except as provided in subsection (E)(3)(b), a notice of liability issued under this section shall be mailed no later than twenty (20) calendar days after the alleged violation.

(4) Except as provided under subsection (E)(3)(a) of this section, the Dayton Police Department or its designee may not mail a notice of liability to a person who is not the owner of the vehicle.

(E) *Options to Resolve Notice of Liability.*

(1) An owner or responsible party who receives a "notice of liability", under this section may do one of the following:

- (a) Pay the civil penalty, in accordance with instructions on the notice of liability; or
- (b) Within thirty (30) calendar days provide the Dayton Police Department or its designee information as to the driver of the vehicle, at the time of the violation; or
- (c) Contest the notice of liability by filing a written request for review of the notice of liability with payment in the amount equal to the amount of the civil penalty to the City of Dayton Police Department or its designee. An individual desiring a hearing must post payment equal to the amount of the civil penalty before an appeal hearing will be scheduled. A written notice of request for review must be filed within thirty (30) days after receipt of the notification of liability. The failure to give notice of request for review within this time period shall constitute a waiver of the right to contest the notice of liability. A Hearing Officer shall hear the request for review. A hearing shall be held within thirty (30) business days of the receipt of the request for review; this time may be extended upon a written request for additional time.

- (i) The Hearing Officer shall determine whether a preponderance of evidence establishes that a violation of this section occurred and the person requesting the review is liable. A certified copy of the notice of liability alleging the violation of this section occurred, sworn to or affirmed by a duly authorized Police Officer of the City of Dayton, with the recorded images produced by a traffic control photographic system shall be prima facie evidence of the facts contained therein and shall be admissible in a proceeding alleging a violation under this section. Adjudication of liability shall be based on a preponderance of the evidence.
- (ii) If the Hearing Officer finds sufficient evidence of a violation, but the owner or the responsible party is not liable, the Hearing Officer shall, in writing, issue a decision finding the individual not liable and submit it to the City of Dayton Police Department or its designee.
- (iii) All hearings are open to the public.

(2) If the owner or responsible party chooses to contest the notice of liability, the Hearing Officer may consider any of the following as an affirmative defense of a violation:

- (a) That the driver of the vehicle passed through the intersection in order to yield the right-of-way to an emergency vehicle in accordance with Ohio Revised Code Section 4511.45, or to a funeral procession in accordance with § 71.13.
- (b) That the motor vehicle or registration plates of the motor vehicle were stolen before the violation occurred and were not under the control or possession of the owner at the time of the violation. In order to demonstrate that the motor vehicle or the registration plates were stolen before the violation occurred and were not under the control or possession of the owner at the time of the violation, the owner must submit proof that a police report about the stolen motor vehicle or

registration plates was filed prior to the violation or within forty-eight (48) hours after the violation occurred.

(c) That this section is unenforceable because at the time and place of the alleged violation, the traffic control signal or speed sensor were not operating properly, or the ATCPS recorded image is not legible enough to determine the information required by subsection d of this section.

(d) Evidence, other than that adduced pursuant to subsection (E)(2)(b) of this section, that the owner or person named in the notice of liability was not operating the vehicle at the time of the violation. To satisfy the evidentiary burden under this subsection, the owner or person named in the notice of liability shall provide to the Hearing Officer evidence showing the identity of the person who was operating the vehicle at the time of the violation, including, at a minimum, the operator's name and current address, and any other evidence that the Hearing Officer deems pertinent.

(3) If the Hearing Officer finds that the person or entity named in the notice of liability was not operating the vehicle at the time of the violation or receives evidence under subsection (E)(2)(d) identifying the person driving the vehicle at the time of the violation, the Hearing Officer shall provide to the City of Dayton Police Department or its designee within five (5) calendar days, a copy of any evidence substantiating who was operating the vehicle at the time of the violation.

(a) Upon the receipt of evidence of the responsible party pursuant to this subsection or pursuant to subsection (C)(3)(a), the City of Dayton Police Department or its designee may issue a notice of liability, with the name and address of the responsible party and the information required by subsection (D)(1)(b), (c), (d), (e), (f), (g), (h), (i), and (j) of this section, to the person that the evidence indicates was operating the vehicle at the time of the violation.

(b) A notice of liability issued under this subsection (E)(3) shall be sent by ordinary mail no later than five (5) business days after receipt of the evidence from the Hearing Officer or the owner.

(F) Civil Penalties.

(1) Unless the driver of the motor vehicle received a citation from a police officer at the time of the violation, the owner or responsible party for the motor vehicle is subject to a civil penalty if the motor vehicle is recorded by ATCPS while being operated in violation of this section.

(2) A civil penalty under this section may not exceed Two Hundred Fifty Dollars (\$250) per violation. Persons who choose to pay the civil penalty without appearing before a Hearing Officer may do so in the manner indicated on the notice of liability.

(3) A violation for which a civil penalty is imposed under this section is not a moving violation for the purpose of assessing points under Ohio Revised Code Section 4510.036(C)(13) for minor misdemeanor moving traffic offenses and may not be recorded on the driving record of the owner or operator of the vehicle and shall not be reported to the Bureau of Motor Vehicles.

(4) If the civil penalty assessed under this subsection is not paid within thirty (30) days of issuance, the offender will be assessed a Twenty-Five Dollar (\$25) late fee in addition to the original civil penalty.

(G) *Collection of Civil Penalty.*

If the civil penalty is not paid, the civil penalty imposed under the provisions of this section shall be collectible, together with any interest and penalties thereon, by civil suit.

Section 2. That existing Section 70.121 of the Revised Code of General Ordinances is repealed.

Section 3. That for the reasons stated in the preamble hereof, this Ordinance is declared to be an emergency measure and shall take effect immediately upon its passage.

PASSED BY THE COMMISSION December 10, 2014

SIGNED BY THE MAYOR December 10, 2014

Yuan Whaley
Mayor of the City of Dayton, Ohio

ATTEST:

[Signature]
Clerk of the Commission

APPROVED AS TO FORM:

[Signature]
City Attorney



Exhibit 3

Ohio Legislative Service Commission

Garrett Crane

Fiscal Note & Local Impact Statement

Bill: Sub. S.B. 342 of the 130th G.A. **Date:** December 1, 2014
Status: As Passed by the Senate **Sponsor:** Sen. Seitz

Local Impact Statement Procedure Required: Yes

Contents: Traffic law photo-monitoring devices

State Fiscal Highlights

- No direct fiscal effect on the state.

Local Fiscal Highlights

- If new officers are hired and posted at each of the approximately 250 traffic law photo-monitoring devices currently in use, then staffing these devices 24/7 will cost about \$73.0 million statewide per year. Given this cost, municipalities may decrease their use of the devices to a level supported by existing resources.
- If municipalities choose to decrease or eliminate their use of the devices, they will see a reduction in fine revenue generated. Approximately \$12.0 million to \$15.0 million per year in fine revenue is currently being generated statewide.

Detailed Fiscal Analysis

Stationing an officer at each device

The bill establishes several conditions for the use of traffic law photo-monitoring devices by local authorities to detect certain traffic law violations.¹ Most significantly, the bill requires a law enforcement officer to be present at the site of the device at all times during its operation.

According to the Insurance Institute for Highway Safety and various media reports, as of December 2014 there are approximately 250 traffic law photo-monitoring devices being used by 15 municipalities in Ohio. The table below summarizes the municipalities using photo-monitoring devices and whether their purpose is to enforce red light and/or speed violations.

Ohio Communities Using Red Light and/or Speed Cameras		
Municipality	County	Type of Enforcement
Akron	Summit	Speed
Ashtabula	Ashtabula	Red Light, Speed
Columbus	Franklin	Red Light, Speed
Dayton	Montgomery	Red Light, Speed
East Cleveland	Cuyahoga	Red Light, Speed
Hamilton	Butler	Speed
Middletown	Butler/Warren	Red Light
Newburgh Heights	Cuyahoga	Speed
Northwood	Wood	Red Light, Speed
Parma	Cuyahoga	Speed
Springfield	Clark	Red Light
Toledo	Lucas	Red Light, Speed
Trotwood	Montgomery	Red Light, Speed
Village of Lucas	Richland	Speed
West Carrollton	Montgomery	Red Light, Speed

The bill's requirement that a law enforcement officer be present at the site of a device may have a significant fiscal impact on these municipalities. Operating the devices for 24 hours per day and seven days per week will require at least four officers for each device – a total of approximately 1,000 officers for all 250 devices statewide. If these jurisdictions hire 1,000 new officers to be posted at each device location, and the average annual salary and benefits of a police patrol officer in Ohio is about \$73,000, then the maximum annual cost of stationing an officer at each device is approximately \$73.0 million (1,000 officers x \$73,000 per officer).

¹ Currently, the devices are used to detect instances of running a red light or violating the speed limit.

In Ohio, red-light violations range in fines from roughly \$100 to \$200 per offense. Since municipalities tend to utilize private vendors to provide the equipment used to enforce the violations, the vendors receive a percentage of the fine revenue, ranging from 30% to 60% of the ticket value. Factoring in the \$73,000 per year an officer receives, between one and four citations will need to be issued per camera location in order to off-set cost of stationing an officer at a given traffic camera location per shift. If a camera location is to be staffed for a 24-hour period, between four and 16 citations will need to be issued to completely off-set the cost of stationing an officer at any given location.²

It is also possible that municipalities will find that hiring the number of new officers necessary to continuously operate the current number of devices is cost prohibitive, and, instead, will decrease the use of the devices to a level at which they can utilize existing resources. For example, a municipality may operate fewer devices or only operate them at peak traffic times at locations yielding the greatest revenue.

Alternatively, municipalities may completely eliminate the use of the devices. A reduction in the use of the devices will result in a reduction in fine revenue. In the last few years, annual fine revenue has ranged from tens of thousands of dollars to more than \$5.0 million per municipality, depending on the number of devices in that municipality. Statewide, annual fine revenue may be from \$12.0 million to \$15.0 million.³

Other conditions for use of devices

The other conditions for use of the devices that are imposed by the bill include requiring local authorities to (1) conduct a safety study of each location that is being considered for a device, (2) conduct a public information campaign, (3) publish notice of the intent to use the devices (including where the devices will be used and the date on which the devices will become operational), (4) refrain from imposing fines for violations detected by a device for at least 30 days after deployment of the device, and (5) erect signs leading up to each intersection where a device is located. These requirements may also increase costs for municipalities choosing to use the devices. It is probable, however, that many of the 14 municipalities who currently use the devices already meet many of these requirements.

State fiscal effects

As violations detected by traffic law photo-monitoring devices are not criminal convictions and do not go on a person's driving record, the bill will have no direct fiscal effect on the state.

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² These figures were calculated by dividing \$73,000 by the amount of a ticket fine, then accounting for the cost of a vendor's percentage. Actual figures ranged between 1.3 tickets and 3.2 tickets per shift.

³ There is no official record of fine revenues statewide. This estimate is based on media reports and contacts with municipalities currently using the devices.



Mark Flanders
Director

Ohio Legislative Service Commission

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Memorandum

R-130-3032

To: The Honorable Kevin Bacon
Ohio Senate

From: Amanda M. Ferguson, Staff Attorney

Date: February 5, 2014

Subject: Home rule issues in Am. H.B. 69

You recently asked for an analysis of the home rule provisions of the Ohio Constitution and how those provisions might affect Am. H.B. 69. That bill generally prohibits the use of traffic law photo-monitoring devices by local authorities and the state highway patrol, except in a school zone during specific hours. Home rule analysis is very fact specific and it is difficult to predict how a court might rule on any given issue. However, given the current state of the law as outlined by the Ohio Supreme Court, it appears that this bill could potentially be ineffective as applied to municipal corporations due to the municipal home rule provisions of the Ohio Constitution.

Background on constitutional home rule authority

In Ohio, municipal corporations (cities and villages) have certain powers, commonly referred to as "home rule" authority, that are granted to them in Article XVIII of the Ohio Constitution. Specifically, Article XVIII, section 3 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.

A statute enacted by the General Assembly that interferes with a municipal corporation's home rule authority may be invalid as applied to the municipal corporation unless the statute is sanctioned by another provision of the Ohio Constitution.

The Ohio Supreme Court uses a three-step test to determine if a state statute takes precedence over a municipal ordinance. First, the court determines whether the municipal ordinance at issue involves an exercise of local self-government or an exercise of local police power. Second, the court determines if the state statute that

relates to the same issue as the municipal ordinance constitutes a "general law" for purposes of home rule analysis. Third, the court determines if the municipal ordinance conflicts with the general law.¹

Exercise of local self-government or police power

In a home rule analysis, the court first determines whether the municipal ordinance at issue involves an exercise of local self-government or an exercise of police power. Generally, if the ordinance relates solely to the exercise of local self-government, then the ordinance prevails over a conflicting state statute because a municipal corporation is constitutionally authorized to exercise all powers of local self-government.² However, if the ordinance relates to an exercise of police power, rather than local self-government, the court must determine if the municipal ordinance conflicts with a general law.³

Existence of a general law

The second step in the home rule analysis is to determine if the state statute is a general law. In order to constitute a general law for purpose of home rule analysis, 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 legislative power of a municipal corporation to set forth police, sanitary, or similar regulations, and (4) prescribe a rule of conduct upon citizens generally. This is commonly referred to as the *Canton* test. If the court determines that the state statute is not a general law, then the statute does not prevail over the municipal ordinance. If the state statute is a general law, then the court proceeds to conduct a conflict analysis.⁴

Conflict between the general law and the municipal ordinance

In order to determine if a general law and a municipal ordinance conflict, the court generally determines whether the ordinance permits or licenses that which the general law forbids or prohibits, and vice versa. However, the court may conduct a

¹ *Canton v. State*, 95 Ohio St.3d 149, 151 (2002).

² Where the court determines that the municipal ordinance conflicts with a state statute on a matter of statewide concern, the state statute prevails. *Am. Fin. Servs. Assn. v. Cleveland*, 112 Ohio St.3d 170 (2006). Also, please note that in order for a nonchartered municipal corporation to enact an ordinance pursuant to its authority to regulate local self-government, the municipal corporation is required to follow procedural statutes set out in the Revised Code. *Northern Ohio Patrolmen's Benevolent Assn. v. Parma*, 61 Ohio St.2d 375 (1980).

³ *Ohioans for Concealed Carry, Inc. v. Clyde*, 120 Ohio St.3d 96, 99-100 (2008).

⁴ *Canton v. State* at 153.

more nuanced analysis if necessary. The general law will only prevail over the municipal ordinance if the court determines that there is a conflict.⁵

Home rule issues with regard to Am. H.B. 69

Am. H.B. 69, which generally prohibits the use of traffic law photo-monitoring devices by local authorities, could potentially be found invalid as applied to municipal corporations. The analysis of this bill is complex because the bill expressly states that the prohibition on the use of traffic law photo-monitoring devices is in furtherance of the ends provided in Article II, Section 34 of the Ohio Constitution. Article II, Section 34 of the Ohio Constitution provides as follows:

Laws may be passed fixing and regulating the hours of labor, establishing a minimum wage, and providing for the comfort, health, safety and general welfare of all employes [sic]; and no other provision of the constitution shall impair or limit this power.

Generally, a state statute that is enacted pursuant to the authority of the General Assembly to regulate the welfare of employees under Article II, Section 34 prevails over a home rule challenge because Article II, Section 34 expressly provides that no other constitutional provision may impair the power of the General Assembly to adopt such laws.⁶ The authority of the General Assembly to enact laws under Article II, Section 34 has generally been broadly interpreted; however, the courts do consider whether the substance of a statute actually relates to hours of labor, minimum wage, or the general welfare of employees.⁷ It is not apparent that a court would find a sufficiently significant connection between the general welfare of employees and the use of traffic law photo-monitoring devices by local authorities.

If the court determined that the prohibition in Am. H.B. 69 is not in furtherance of Article II, Section 34, the bill's provisions would be subject to challenge under the home rule provision of the Ohio Constitution. The Ohio Supreme Court has previously held that the regulation of traffic using a traffic law photo-monitoring device is a valid exercise of municipal police power.⁸ Accordingly, if subject to a home rule challenge, Am. H.B. 69 would only prevail over a conflicting municipal ordinance if the bill's provisions were construed to be a general law under the *Canton* four-part test outlined above.

⁵ See, e.g., *Mendenhall v. Akron*, 117 Ohio St.3d 33, 40 (2008).

⁶ *Lima v. State*, 122 Ohio St.3d 155, 159 (2009); *Rocky River v. State Employment Relations Board*, 43 Ohio St.3d 1 (1989).

⁷ See *Dayton v. State*, 892 N.E. 2d 506, 510-18 (2008).

⁸ *Mendenhall* at 37.

It is unclear if Am. H.B. 69 would meet the second two requirements of the *Canton* test: (1) that the statute 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, and (2) that the statute must prescribe a rule of conduct upon citizens generally. A municipal corporation likely would argue that the bill's provisions restrict the manner in which a municipal corporation may enforce its traffic laws rather than prescribe a rule of conduct on citizens generally. The Ohio Supreme Court previously has struck down an outright prohibition on the enforcement of certain traffic laws by a municipal corporation on similar grounds.⁹ In *Linndale v. State*, the Ohio Supreme Court determined that a law which prohibited law enforcement officers, including those employed by municipal corporations, from enforcing certain traffic violations within specified areas was not a general law because it purported only to infringe on a municipal corporation's authority to regulate traffic, it was not a uniform statewide regulation, and it did not prescribe a rule of conduct upon citizens generally.¹⁰

The Court used a similar analysis recently to strike down a provision of state law governing the regulation of towing companies. In *Cleveland v. State* the court addressed R.C. 4921.25, which provides, in part, that entities engaged in the towing of motor vehicles are not subject to any ordinance of a municipal corporation that provides for the licensing, registering, or regulation of entities that tow motor vehicles.¹¹ The court determined that the provision was not a "general law" for purposes of the *Canton* test. Specifically, the court found that the provision failed the third prong of the *Canton* test by purporting to the limit legislative power of a municipal corporation to set forth police, sanitary, or similar regulations.

Similar to the state laws addressed in *Linndale* and *Cleveland*, the outright prohibition against the use of traffic law photo-monitoring devices by municipal corporations in Am. H.B. 69 appears likely to fail the second two requirements of the *Canton* test. Specifically, the bill appears to limit the power of a municipal corporation to set forth police, sanitary, or similar regulations and also appears not to prescribe a rule of conduct on citizens generally. If the court applied the same rationale as it applied in the aforementioned cases, the bill's provisions would not be construed as a general law and therefore would not prevail over a contrary municipal ordinance.

Please do not hesitate to contact me if you have any additional questions.

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⁹ *Linndale v. State*, 85 Ohio St.3d 52 (1999).

¹⁰ *Id.*

¹¹ Slip Opinion No. 2014-Ohio-86.