Supreme Court of Ohio Clerk of Court - Filed April 11, 2016 - Case No. 2016-0461

IN THE SUPREME COURT OF OHIO

CITY OF SPRINGFIELD, OHIO	:	Supreme Court Case No. 2016-0461
	:	
Plaintiff-Appellant,	:	On Appeal from the Clark
	:	County Court of Appeals,
v.	:	Second Appellate District
	:	(Case No. 15CA0077)
STATE OF OHIO,	:	
	:	
Defendant-Appellee.	:	

MEMORANDUM IN SUPPORT OF JURISDICTION OF AMICUS CURIAE, CITY OF TOLEDO, OHIO

Adam W. Loukx, Law Director (0062158)
Joseph V. McNamara (0076829) (Counsel of Record)
City of Toledo, Law Department
One Government Center, Suite 2250
Toledo, Ohio 43604
Telephone: (419) 245 - 1020
Facsimile: (419) 245 – 1090
adam.loukx@toledo.oh.gov
joe.mcnamara@toledo.oh.gov

Counsel for Amicus Curiae
City of Toledo, Ohio

Jerome M. Strozdas, Esq. (0003263)
Law Director
The City of Springfield, Ohio
76 East High Street
Springfield, Ohio 45502
Telephone: (937) 324 - 7351
Facsimile: (937) 328 – 3919
jstrozdas@springfieldohio.gov

Counsel for Appellant,
The City of Springfield, Ohio

Mike DeWine
Ohio Attorney General
Halli Brownfield Watson (0082466)
Nicole Koppitch (0082129)
Assistant Attorneys General
Ohio Attorney General's Office
30 East Broad Street, 16th Floor
Columbus, Ohio 43215
Telephone:(614) 466 – 2872
Facsimile: (614) 728 – 7592
Halli.watson@ohioattorneygeneral.gov
Nicole.koppitch@ohioattorneygeneral.gov

Counsel for Appellee
State of Ohio

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THIS CASE INVOVLES SUBSTANTIAL CONSTITUTIONAL QUESTIONS

Amicus Curiae, City of Toledo, like the Plaintiff-Appellant is a chartered municipal corporation in the State of Ohio that has availed itself of the great public safety benefits derived from automated traffic-law-enforcement technology. On its face, this case is about whether the Ohio General Assembly can effectively ban all Ohio municipalities from utilizing an automated traffic-law-enforcement system by requiring the physical presence of a law enforcement officer, thus removing any semblance of "automation." At its heart, this case is about whether the local self-government provisions of the Home Rule Amendment to the Ohio Constitution provide any protection from a legislature that is willfully attempting to eviscerate the power of local self-government.

The General Assembly may not, through a statute, prohibit municipal home-rule authority. *Cleveland v. State*, 138 Ohio St.3d 232, 2014-Ohio-86, 5 N.E.3d 644, paragraph one of the syllabus. This Court has twice held that municipal home rule authority grants municipalities the ability to implement automated traffic-law enforcement systems. *Mendenhall v. City of Akron*, 117 Ohio St.3d 33, 2008-Ohio-270, 881 N.E.2d 255; *Walker v. City of Toledo*, 143 Ohio St.3d 420, 2014-Ohio-5461, 39 N.E.3d 474. Nevertheless, the 130th General Assembly passed 2014 Am.Sub.S.B. No. 342 ("S.B. 342"), which requires a law enforcement officer to be present at the location of the automated system before a civil traffic ticket may be issued. This law further dictates the procedural requirements for new automated traffic photo-monitoring devices and the administrative processes involving issuing a ticket from an automated device.

The General Assembly greatly overreached in attempting to regulate, in such minute detail, an already Constitutionally-approved use of municipal home rule power. Article XVIII Section 3 of the Ohio Constitution states:

> Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws.

This Court held that this Article grants Ohio municipalities the ability to create automated traffic-law-enforcement systems. *Mendenhall* at syllabus. Furthermore, Ohio municipalities have constitutional authority to self-govern in the creation of the administrative proceedings necessary to further these systems. *Walker* at ¶ 19. In analyzing this issue, there are two distinct sources of authorization emanating from this Article: local self-government power and police power.

The legal analyses and justifications for a local automated traffic-law-enforcement system based on these two powers are completely different. On the one hand, the police power analysis occurs when the ordinance and the state statute conflict, the ordinance is an exercise of police power (rather than self-government) and the statute is a general law. *City of Canton v. State of Ohio*, 95 Ohio St.3d 149, 2002-Ohio-2005, 766 N.E.2d 96. If a state statute does not meet the four-part test to determine if it is a general law, the offending parts are struck down as unconstitutional. *Id.* On the other hand, if the ordinance relates solely to matters of self-government, the home-rule analysis stops and there is no need to determine if there is a conflict nor if the state statute is a general law. *See Gesler v. City of Worthington Income Tax Bd. of Appeals*, 138 Ohio St. 3d 76, 2013-Ohio-4986, 3 N.E.3d 1177 at ¶ 18.

The local self-government analysis focuses on the ordinance; the police power analysis focuses on the statute. Municipal ordinances, which create automated traffic-law-enforcement systems, invoke both powers. This Court has already accepted jurisdiction in *Dayton v. State* Case No. 2015-1549, which also involves an appeal from the Second District's decision upholding the constitutionality of S.B. 342 on grounds that it is a general law. The Second District, however, admitted that the self-government analysis of the conflicting local ordinance

was not a part of that case. *Springfield v. State*, 2nd Dist. Clark No. 2015-CA-77, 2016-Ohio-725 at ¶ 25. The *Dayton v. State* decision will only provide an incomplete analysis of municipal home rule and the enactment of these types of ordinances.

By accepting this appeal, the Court can analyze the scope of self-government as it relates to automated traffic-law enforcement systems. This case will provide great guidance to the legislature and Ohio's municipalities regarding the breadth and depth of home-rule authority as well as avoid the costs incurred in the potential piecemeal litigation over local self-government power. Considering the General Assembly's extreme constitutional overreach in this matter, the very fate of local self-government power is at stake.

STATEMENT OF THE CASE AND FACTS

Springfield is an Ohio charter municipal corporation with home rule powers granted by the Ohio Constitution. Springfield's Charter was originally adopted in 1913 and most recently adopted on November 2, 1965. The Charter preamble states that "the people of the City of Springfield, Ohio, in order to obtain the benefits of local self-government… do adopt the following Charter of our City." Section 3 of the Charter states that the "municipality shall have all the powers, general or special, governmental or proprietary, that may now or hereafter lawfully be possessed or exercised by municipal corporations under the constitution and laws of the State of Ohio."

Springfield has a 2% municipal income tax. Codified Ordinances of Springfield 195.20. But Springfield, like many Ohio Cities, has found the need to raise additional revenue to meet public safety needs. Through a series of Charter amendments, the people of Springfield have decided to enact a special assessment for twenty-four (24) additional police officers with a

minimum-manning requirement of one hundred and twenty-four (124) total officers. Sections 95, 96, & 97.

On February 21, 2005, the City Commission, which is Springfield's elected legislative body, enacted Ordinance 41 authorizing an automated traffic-law-enforcement system. In deciding that this system was in the interest of the citizens of Springfield, the Commission specifically found that:

> …an automated traffic control photographic system will assist the Springfield Police Division by alleviating the necessity for conducting extensive conventional traffic enforcement at high accident intersections; and
>
> ….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 Springfield, Ohio….

Springfield Ordinance 2005-41. This Ordinance, codified as 303.09, provided a means of adopting an alternative enforcement method that would not require over-taxing limited police services on heightened traffic enforcement. The Commission agreed with the findings of many municipalities, that automated traffic-law enforcement systems significantly lower the number of traffic infractions and accidents.

The Ordinance requires intersections that have automated cameras to have visible sign postings. Springfield Codified Ordinances 303.09(a)(4). The Ordinance does not require a police officer to be physically present. The Ordinance creates a civil penalty for when a motorist runs a red light. Springfield Codified Ordinances 303.09(c). The owner of a vehicle that runs a red light on camera is mailed a notice of liability containing all of the information concerning the violation including: the date and time, the location, a copy of the images recorded and the amount of the civil penalty. Springfield Codified Ordinances 303.09(d).

The Ordinance also creates an administrative appeal process whereby anyone who receives a notice of liability may contest it. Springfield Codified Ordinances 303.09(e). This person has the right to appear before a "Hearing Officer" who is an independent party, not employed by the City of Springfield. Springfield Codified Ordinances 303.09(b)(5). The Ordinance establishes a $100.00 civil penalty that is not considered a moving violation for the purpose of assessing points under R.C. 4507.012(16).

On December 19, 2014, the Governor signed S.B. 342 into law. In its preamble, the bill stated that its purpose was "to establish conditions for the use by local authorities of traffic law photo-monitoring devices to detect certain traffic law violations…." S.B. 342 created a series of prerequisites before a new photo-monitoring device can be deployed. R.C. 4511.095. These requirements included conducting a three-year traffic study, a public information campaign, publishing notice and a 30-day grace period on each installed device before civil fines can be levied. *Id*. S.B. 342 also created exhaustive requirements for how administrative hearings are to be conducted, what types of evidence can be considered at those hearings, how the notice is delivered and other minutiae associated with the hearing process. R.C. 4511.099.

However, the most egregious provision of S.B. 342 was the limitation that a local authority can only use a photo-monitoring device to enforce traffic laws "if a law enforcement officer is present at the location of the device at all times during the operation…." R.C. 4511.093. The General Assembly created a legislative poison pill. While it is still theoretically possible for a municipality to utilize an automated traffic-law-enforcement system, it is no longer "automated" nor affordable. Municipalities, like Springfield, do not have the resources to staff a law enforcement officer next to every camera at every intersection at all times the device would be on.

In fact, the Ohio Legislative Service Commission determined that the cost of staffing each device in Ohio with a full-time officer would cost cities $73 million per year.[1] This new cost is more than quadruple the current amount of fine revenue generated state-wide from current devices. *Id.* In other words, the cost of an "automated" traffic-law-enforcement system is greater than the revenue it would generate by the order of multiple magnitudes. S.B. 342 creates a ban on automated traffic-law-enforcement system through "Orwellian" language that purportedly permits them.[2]

On March 18, 2015, Springfield filed a Complaint with the Clark County Court of Common Pleas challenging the Constitutionality of S.B. 342 for violating Article XVIII, Section 3 of the Ohio Constitution. Both parties filed for summary judgment and the trial Court granted the State of Ohio's motion while denying Springfield's motion.

Springfield timely appealed the judgment to the Second District Court of Appeals. The Court of Appeals noted its recent decision in *Dayton v. State*, 2015-Ohio-3160, 26 N.E.3d 235 (2d Dist.), which this Court has accepted as a jurisdictional appeal as Case No. 2015-1549. The Second District explained that its *Dayton* decision held that S.B. 342 did not unconstitutionally violate the home rule powers of the City of Dayton that had enacted a similar automated traffic-law-enforcement system. The Court did note, however, that the "only issue before this Court was whether Am.Sub.S.B. No. 342 was a general law." *Springfield v. State*, 2nd Dist. Clark No. 2015-CA-77, 2016-Ohio-725 at ¶ 25. The Second District stated that Springfield's ordinance regulated traffic and, therefore, was an exercise of police power instead of local self-government power. *Id.* at ¶¶ 26-29. The Court then quoted 13 paragraphs directly from its decision in *Dayton* and held that the same arguments applied to Springfield's ordinance.

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[1] *See* http://www.lsc.ohio.gov/fiscal/fiscalnotes/130ga/sb0342sp.pdf.

[2] The fact that the statute explicitly upholds any local bans on these systems (R.C. 4511.0914) is further evidence that the statutory intent is not to "permit."

The Second District did not analyze how the varied sections of S.B. 342 unconstitutionally eviscerate local self-government powers. The Second District merely jerry-rigged a constitutional analysis of the Springfield ordinance from its previous decision on the Dayton ordinance. It is this decision of the Second District of Appeals that the City of Toledo urges this Court to review. So that the scope of local self-government power may be analyzed and considered against an offensive and overreaching statute, Amicus Curiae, respectfully asks this Court to accept jurisdiction of this appeal.

ARGUMENT

Proposition of Law No. 1

A municipal ordinance that creates an automated traffic-law-enforcement system, which does not require the presence of a law enforcement officer, is a constitutionally protected exercise of self-government

While at first blush, it is tempting to categorize the Springfield ordinance as an exercise of police power, the ordinance actually invokes both police and local self-government powers. When this Court first examined a local ordinance creating an automated-traffic-law system, it assumed that the ordinance was an exercise of police power. *Mendenhall v. City of Akron*, 117 Ohio St.3d 33, 2008-Ohio-270, 881 N.E.2d 255 at ¶ 19. However, in its more recent analysis of these systems, the Court noted that "the fact that the General Assembly enacted R.C. 2506.01, which provides for appeals from local administrative decisions, supports appellants' claim that charter cities have constitutional and legislative authority to self-govern in these ways under their home-rule authority." *Walker v. City of Toledo*, 143 Ohio St. 3d 420, 2014-Ohio-5461, 39 N.E.3d 474 at ¶ 19. At the very least, the creation of an administrative review process, which allows a municipality's citizens to contest a notice of civil liability, is such an act of self-government described in the *Walker* decision.

But there is something much deeper and insidious about the interplay between S.B. 342 and the municipality's exercise of local self-government. While S.B. 342 requires a law enforcement officer to be present at the location of the device while it is in operation, the statute does not actually require the officer to be doing anything. The officer does not need to be looking at the intersection, at the vehicle in question, or anything in particular while there. The statute does not even require the officer to be awake! While the statute requires "[a]" law enforcement officer to examine the evidence recorded by the device, it does not require "the" officer who was physically present at the infraction to be the one to do this review. R.C. 4511.096(A). Ironically, the statute requires the officer who stands at the intersection, doing absolutely nothing useful to advance public safety, to be "full-time." R.C. 4511.092(C). The "full-time" requirement is of course related to ensuring that staffing the devices is prohibitively expensive.

Put simply, S.B. 342 requires a law enforcement officer to be present for the sole purpose of ruining automated-traffic-law systems. "Automated" systems, by their very definition, do not need anyone to be present. The hypothetical officer present is not doing any law enforcing. There can be no exercise of police power if all the officer is doing is standing (or sitting, or sleeping) at an intersection while an automated device collects all of the evidence of a civil infraction. It is not possible to characterize the officer present requirement as a shared police power when no actual policing is occurring.

This Court has held that:

> [t]he mere fact that the exercise of a power of local self-government may happen to relate to the police department does not make it a police regulation within the meaning of the words "police-regulations" found in Section 3 of Article XVIII of the Constitution."

State ex rel. Canada v. Phillips, 168 Ohio St. 191; 151 N.E. 2d 722 at syllabus ¶ 5. Furthermore, a local home-rule Charter can give the power of "exclusive control of the stationing" of police officers to local officials such as the chief of police. *State ex rel. Lynch v. Cleveland*, 164 Ohio St. 437, 132 N.E.2d 118 (1956) at p. 439. There is little more localized within the powers of a municipality than the decision of where to physically deploy its workforce. From the location of police and fire stations, to the routes of code enforcement inspectors, the physical location of a municipal workforce within the city limits is about as local as local self-government can get.

The dissent in a seminal home rule case emphasized this fact when it wrote:

> [t]he power of local self-government granted by the Constitution relates to the government and administration of internal affairs. In enacting R.C. 4549.17, the state is not trying to tell Linndale how many traffic lights it should have, how to enforce its jaywalking laws, or how many police officers to hire.

Linndale v. State, 85 Ohio St.3d 52, 706 N.E.2d 1227 (1999) at p. 56 (J. Pfeifer dissenting). In this case, the state is literally telling municiaplities how many automated traffic devices to have (none), how to enforce traffic laws (not through automated traffic devices) and how many police officers are needed to use automated traffic devices (one per device). The statute dictates to the municipalities where their workers should be located. None of the municipalities that have enacted automated-traffic-law systems require law enforcement officers to be present when the devices are used –that presence would defeat the purpose of having an automated system.

The officer present edict might have enjoyed the ruse of being part of a shared police power if the law enforcement officer was doing any actual policing. But all the statute requires of these officers is to be the proverbial bump on the log. This ridiculous requirement cannot, and should not, be characterized as a police power.

Because S.B. 342 dictates to charter municipalities where to physically deploy their employees, the statute is an unconstitutional infringement on the power of local self-government.

Proposition of Law No. 2

A municipal ordinance that establishes processes and administrative proceedings necessary to further an automated traffic-law-enforcement system is a constitutionally protected exercise of self government

Along the same lines, virtually all of the other parts of S.B. 342 also unconstitutionally interfere with the power of local self-government. An ordinance is found to be an exercise in self-government when the subject matter is local in character and relates to the municipal affairs of the particular municipality. *Billings v. Cleveland R. Co.*, 92 Ohio St. 478, 111 N.E. 155 (1915) at p. 484. "If an allegedly conflicting city ordinance relates solely to self-government, the analysis stops, because the Constitution authorizes a municipality to exercise all powers of local self-government within its jurisdiction." *Am. Financial Servs. Assn. v. Cleveland*, 112 Ohio St.3d 170, 2006-Ohio-6043, 858 N.E.2d 776 at ¶ 23. S.B. 342 also violates self-government powers in a myriad of ways including: creating prerequisites for adding new locations, mandating the method for administrative reviews, and dictating the contractual terms between a municipality and a vendor.

a. The Prerequisites For Deploying Automated Devices Violate Local Self-Government Power

The critical fact to remember when analyzing S.B. 342 is that this Court previously held that automated traffic-law-enforcement systems were legal uses of home rule power before the statute took effect. *Walker v. City of Toledo*, 143 Ohio St. 3d 420, 2014-Ohio-5461, 39 N.E.3d 474. The various prerequisites, required by R.C. 4511.095, impermissibly interfere with local self-government.

For example, the statute requires a "three-year" study to be conducted before a new automatic device is deployed at a particular location. Why does the statute require a "three-year" study? What does the study even need to show? There is no requirement that the study meet any particular threshold, only that it be conducted. Perhaps an automated device is warranted based on local conditions that have changed within the past year, such as the opening of a new school. The statute presumes to know the best method of determining where an automated device should be located. This reach, once again, delves deep into the decisions of self-government.

The statute also requires a "public information" campaign, the publication of the proposed location of the new device in a local newspaper, and a thirty-day waiting period before the devices can be used to issue tickets. R.C. 4511.095. These are all issues that attempt to supersede the decisions of the local authority as to what is in its own best interest. If a particular intersection is extremely dangerous, known to be extremely dangerous, and an automated device will make it safer, then the quick installment of that device at that location is a rational use of local self-government power.

b. The Administrative Review Process Established by S.B. 342 Violates Local Self-Government Power

The subject Ordinance already creates an administrative process contesting and resolving a ticket issued by an automated device. S.B. 342 seeks to rewrite all of the local administrative processes with one standard system. These administrative processes are matters of purely local concern that "relate[] solely to the government and administration of the internal affairs of the municipality***." *Vill. of Beachwood v. Bd. of Elections of Cuyahoga Cnty.*, 167 Ohio St. 369, 371, 148 N.E.2d 921 (1958) at paragraph one of the syllabus. Not only that, but the statute actually dictates very specific decisions that clearly violate a municipality's local self-government power.

The statute requires the hearing officer to issue a written decision on the day of the hearing. R.C. 4511.099(B). This level of minutia, in addition to being unreasonable, clearly violates a municipality's right to self-govern. Additionally, the statute requires the hearing officer to be appointed by the Mayor. R.C. 4511.092(B). However, the Constitution reserves to municipalities the power to select their own officials and elected officers. *State ex rel. Lynch v. Cleveland*, 164 Ohio St. 437, 132 N.E.2d 118 (1956) at p. 439. This freedom of self-government expresses itself in legions of different local government charters. The forms of local governments in Ohio vary from the number of elected legislators, the powers of the mayor, and the number of votes needed to pass different types of local legislation. In directing how the "Hearing Officer" shall be appointed, the statute, once again, impermissibly dictates, without acknowledging the power of local self-government.

c. The Statute Violates Local Self-Government in Other Ways

The statute also dictates the contractual terms between municipalities and their vendors. R.C. 4511.0911(A) & (B). The statute establishes violation "buffer zones" whereby a driver could be violating the traffic laws, but not subject to a ticket. R.C. 4511.0912. The statute requires signs to be placed in a certain manner near the locations of automated devices. R.C. Section 4511.094. All of these requirements also violate the constitutional right of self-government.

The City of Toledo agrees with Appellant that there are only three parts of S.B. 342 that do not limit local legislative authority (R.C. 3937.411, 4511.0910 & 4511.204(C)(2)). Every other section of S.B. 342 should be reviewed and struck down as unconstitutional as applied against chartered municipal corporations.

CONCLUSION

For the reasons set forth above, this case involves a substantial constitutional question and warrants the Court's acceptance of this jurisdictional appeal.

Respectfully submitted,

/S/ Joseph V. McNamara
Joseph V. McNamara (0076829)
Adam Loukx (0062158)
City of Toledo, Department of Law
One Government Center, Ste. 2250
Toledo, Ohio 43604
(419)245-1020
F(419)245-1090

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing was sent via e-mail on this 11th day of April 2016, to the following:

Halli Brownfield Watson (0082466)
Nicole Koppitch (0082129)
Assistant Attorneys General
Ohio Attorney General's Office
30 East Broad Street, 16th Floor
Columbus, Ohio 43215
Telephone:(614) 466 – 2872
Facsimile: (614) 728 – 7592
Halli.watson@ohioattorneygeneral.gov
Nicole.koppitch@ohioattorneygeneral.gov

Counsel for Appellee
State of Ohio

Jerome M. Strozdas, Esq. (0003263)
Law Director
The City of Springfield, Ohio
76 East High Street
Springfield, Ohio 45502
Telephone: (937) 324 - 7351
Facsimile: (937) 328 – 3919
jstrozdas@springfieldohio.gov

Counsel for Appellant,
The City of Springfield, Ohio

/S/ Joseph V. McNamara