ORIGINAL

IN THE SUPREME COURT OF OHIO

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

BRIEF OF AMICUS CURIAE THE CITY OF EAST CLEVELAND IN SUPPORT OF APPELLANT, CITY OF DAYTON, OHIO

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State Cases

Canton v. State of Ohio,
95 Ohio St.3d 149, 2002-Ohio-2005, 766 N.E.2d 963 9

Mendenhall v. Akron,
117 Ohio St.3d. 33, 2008-Ohio-270, 881 N.E.2d 255 1

Perrysburg v. Ridgeway,
108 Ohio St. 245, 140 N.E. 595 (1923) 9

Walker v. Toledo,
143 Ohio St.3d 420, 2014-Ohio-5461, 9 N.E.3d 474 1

Municipal Ordinances

East Cleveland Ordinance No. 07-06 ..... 3, 4

Legislation

2014 Am.Sub.S.B. No. 342 ..... 1, 4, 8, 9

Other Authorities

Dave Yost – Auditor of State, *City of East Cleveland – Cuyahoga County Ohio* (August 28, 2015), https://ohioauditor.gov/publications/EastClevelandFinal__ReportAugust2820 15.pdf (accessed April 6, 2016) at 3 (hereinafter, "Auditor's 2015 Report"). 2, 7, 8

Dave Yost – Auditor of State, *Declaration of Fiscal Caution* (January 5, 2012), https://ohioauditor.gov/auditsearch/Reports/2012/City_of_East_Cleveland_Fis cal_ Caution_ Declaration.pdf (accessed April 6, 2016). 2

Dave Yost – Auditor of State, *Declaration of Fiscal Emergency* (October 9, 2012), http://www.ohioauditor.gov/auditsearch/Reports/2012/ City_of_East_Cleveland_FE_Declarationt.pdf (accessed April 6, 2016). 3

Fields, *Stop for the Camera: Study shows Automated Enforcement Does work, and It Is Legal*, Transportation Management and Engineering Magazine (July 2008) 6

Jackie Borchardt, cleveland.com, Ohio Proposes Paying $10 Million to Help East Cleveland-Cleveland Merger (March 31, 2016), http://www.cleveland.com/metro/index.ssf/2016/03/state_would_pay_10_million_to.html#incart_river_mobile_home_pop (accessed April 5, 2016). 3

Jen Steer, newsnet5 Cleveland, *20 East Cleveland Police Officers, Dispatchers Get Layoff Notices* (January 9, 2013), http://www.newsnet5.com/news/local-news/oh-cuyahoga/20-east-cleveland-police-officers-dispatchers-get-layoff-notices (accessed April 6, 2016) 3

Joe Vardon, The Columbus Dispatch, *Political Sparring Continues on Funding Ohio's Local Governments* (July 15, 2013), http://www.dispatch.com/content/stories/local/2013/07/15/ sparring-at-statehouse-continues-on-funding-local-governments.html (accessed April 6, 2016) 7

John Caniglia, The Plain Dealer, *East Cleveland Mayor Announces 19 Police Layoffs* (October 7, 2009), http://blog.cleveland.com/metro/2009/10/east_cleveland_mayor_announces.html (accessed April 6, 2016) 3

John Horton, The Plain Dealer, *East Cleveland Residents Vote to Keep the City's Traffic Cameras* (Nov. 8, 2016), http://www.cleveland.com/politics/index.ssf/2011/11/voters_saying_no_to_traffic_ca.html (accessed April 5, 2016) 4

Lawrence E. Decina, Libby Thomas, Raghavan Srinivasan, & Lorin Staplin, TransAnalytics, LLC (sponsored by National Highway Traffic Safety Administration - Office Research and Technology, Behavioral Technical Research Division), *Automated Enforcement: A Compendium of Worldwide Evaluations of Results* (September 2007), available at http://www.nhtsa.gov/DOT/NHTSA/Traffic%20Injury%20Control/Articles/Associated%20Files/HS810763.pdf (accessed April 6, 2016) 5

Misty A. Boos, Virginia Department of Transportation, *Speed Cameras as a Tool to Reduce Road Fatalities* (May 2009), available at http://vtrc.virginiadot.org/rsb/rsb23.pdf (accessed April 8, 2016) 6

Ohio Legislative Service Commission, *Fiscal Note & Local Impact Statement – Sub. S.B. 342 of the 130th G.A.* (December 1, 2014), http://www.lsc.ohio.gov/fiscal/fiscalnotes /130ga/sb0342sp.pdf (accessed April 5, 2016) 4

Rich Exner, cleveland.com, *Ohio Tax Changes Under Gov. John Kasich Leave Villages, Cities Scrambling to Cope with Less* (March 9, 2016), http://www.cleveland.com/ datacentral/index.ssf/2016/03/ohio_tax_changes_under_gov_joh.html (accessed April 6, 2016) 8

Richard Alsop, RAC Foundation, *The Effectiveness of Speed Cameras: A Review of Evidence* (November 2010), available at http://www.racfoundation. org/assets/rac_foundation/content/downloadables/efficacy_of_speed_cameras _allsop_181110. pdf (accessed April 10, 2016) 6

Richard Romer, Aron Trombka, Sarah Downie, Office of Legislative Oversight – Report No. 2010-3, *Evaluation of Montgomery County's Safe Speed Program* (September 29, 2009), available at https://www.montgomerycountymd. gov/olo/resources/files/2010-3_speed.pdf (accessed April 8, 2016) 6

Shauna Hallmark, Tom McDonald, Iowa State University – Center for Transportation Research and Education, *Evaluating Red Light Running Programs in Iowa* (December 2007), available at http://ncsrsafety.org/wp-content/uploads/2011/02/Evaluating-Red-Light-Running-Programs-in-Iowa1.pdf (accessed April 8, 2016) 6

Simon Washington, Kangwon Shin, Ida van Shalkwyk, Arizona State University – Department of Civil & Environmental Engineering, *Evaluation of the City of Scottsdale Loop 101 Photo Enforcement Program* (November 2007), available at http://ncsrsafety.org/wp-content/uploads/2012/11/evaluation-of-city2.pdf (accessed April 8, 2016) 6

Troy Walden, The Texas A&M University System – Crash Analysis Program of the Center for Transportation Safety – Texas Transportation Institute, *Analysis on the Effectiveness of Photographic Traffic Signal Enforcement Systems in Texas* (November 2008), available at ftp://ftp.dot.state.tx.us/ pub/txdot-info/trf/final_report_rlc_1008.pdf (accessed on April 8, 2016) 6

United States Census Bureau, *QuickFacts – East Cleveland*, http://www.census.gov/ quickfacts/table/PST045215/3923380 (accessed April 6, 2016). 2

Wen Hu, Anne T. McCartt, & Eric Teoh, *Effects of Red Light Camera Enforcement on Fatal Crashes in Large US Cities*, 42(4) *Journal of Safety Research* 277 (2011), available at http://vejdirektoratet.dk/DA/viden_og_data/temaer/its/Documents/Evaluering er/Automatisk%20trafikkontrol/IIHS_Study_2-1-11.pdf (accessed April 6, 2016) 6

Wendy Patton, Policy Matters Ohio, *Cuts to Cities, Counties Threatens Local Services: Safety, Roads, Recreation and More* (June 2015), http://www.policymattersohio.org/wp-content/uploads/2015/06/local-gov-operations-loss.pdf (accessed April 6, 2016) 7

Wendy Patton, Zach Schiller, and Piet van Lier, Policy Matters Ohio, *Overview: Ohio's 2014-2015 Budget* (October 2013), http://www.policymattersohio.org/wp-content/uploads/2013/10/Budget-Oct2013.pdf (accessed on April 7, 2016) 7

Wen Hu, Anne T. McCart, *Effects of Automated Speed Enforcement in Montgomery County, Maryland, on Vehicle Speeds, Public Opinion, and Crashes* (August 2015), available at http://www.iihs.org/frontend/iihs/documents/masterfiledocs.ashx?id=2097 (accessed April 8, 2016) 6

INTRODUCTION

East Cleveland files this Amicus Brief in support of the City of Dayton to underscore the importance of automated traffic camera programs to Ohio municipalities, and to urge the reversal of the Second District's decision below.

Technology has enabled local governments to increase traffic safety while expending fewer law enforcement resources. This is particularly important since the State of Ohio has slashed funding and tax receipts available to municipalities, requiring municipalities to do more with less in order to protect their residents. East Cleveland has been in a state of fiscal emergency off and on since 1988. East Cleveland's automated traffic camera program has allowed the city to enforce traffic laws and keep its residents safe to a degree it could not otherwise accomplish.

The need for and wisdom of East Cleveland's automated traffic camera program was approved by the residents of East Cleveland in a voter referendum held in November 2011. East Cleveland does not have the resources to comply with 2014 Am.Sub.S.B. No. 342 ("S.B. 342"), which would require posting a law enforcement officer at each traffic camera location and conducting a three-year safety study and public information campaign for every camera location. S.B. 342 would therefore legislate East Cleveland's traffic program out of existence.

The legality of automated traffic camera programs in Ohio has been affirmed by this Court twice, in *Mendenhall v. Akron*, 117 Ohio St.3d. 33, 2008-Ohio-270, 881 N.E.2d 255, and *Walker v. Toledo*, 143 Ohio St.3d 420, 2014-Ohio-5461, 9 N.E.3d 474. Municipalities like East Cleveland, therefore, should be allowed to implement and administer these programs according to their law enforcement needs and as they see fit.

STATEMENT OF FACTS

The City of East Cleveland adopts and incorporates by reference the Statement of the Case and Facts in Appellant's Memorandum in Support of Jurisdiction (filed September 21, 2015) and its Merit Brief. Additionally, East Cleveland states:

A. *East Cleveland's Program Was Enacted Democratically And Affirmed By Voter Referendum.*

East Cleveland is a charter city with a population of approximately 17,500 that borders the City of Cleveland.[1] While East Cleveland was an affluent community before the Great Depression, 42.1 percent of East Cleveland's residents now live in poverty.[2] East Cleveland was placed in fiscal emergency for the first time in September 1988, and remained in fiscal emergency for over 17 years.[3] In January 2012, the Ohio Auditor of State declared East Cleveland in a state of fiscal caution, and escalated the city's status to fiscal watch in May 2012.[4] In October 2012, the Auditor placed East Cleveland back into a state of fiscal emergency based on the city's inability to meaningfully attain financial recovery, and East Cleveland remains in a state of fiscal emergency to this day.[5] East Cleveland needs approximately $17 million per year

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[1] United States Census Bureau, *QuickFacts – East Cleveland*, http://www.census.gov/quickfacts/table/PST045215/3923380 (accessed April 6, 2016).

[2] *Id.*

[3] Dave Yost – Auditor of State, *City of East Cleveland – Cuyahoga County Ohio* (August 28, 2015), https://ohioauditor.gov/publications/EastClevelandFinal__ReportAugust282015.pdf (accessed April 6, 2016) at 3 (hereinafter, "Auditor's 2015 Report").

[4] *Id.*; *see also* Dave Yost – Auditor of State, *Declaration of Fiscal Caution* (January 5, 2012), https://ohioauditor.gov/auditsearch/Reports/2012/City_of_East_Cleveland_Fiscal_Caution_ Declaration.pdf (accessed April 6, 2016).

[5] Auditor's 2015 Report at 3; *see also* Dave Yost – Auditor of State, *Declaration of Fiscal Emergency* (October 9, 2012), http://www.ohioauditor.gov/auditsearch/Reports/2012/City_of_East_Cleveland_FE_Declarationt.pdf (accessed April 6, 2016).

to provide adequate services to its residents, but nevertheless it is authorized to spend only approximately $11 million this year.[6] The city is currently facing major cuts to basic resident services and does not have the resources to repair its streets or fix public lighting.[7] In addition, over the last several years, East Cleveland has been forced to cut essential police services.[8]

East Cleveland has operated its automated traffic camera program since 2006, when the East Cleveland City Council enacted Ordinance 07-06.[9] In enacting Ordinance 07-06, the East Cleveland City Council determined "that motorists driving the streets and avenues of the City often have a dangerous disregard for the posted traffic signals and signs," and that "this disregard has caused legislative concern for the health, safety and welfare of [East Cleveland's] citizens and those who visit and do business in [the] City."[10] East Cleveland's City Counsel further determined that "an automated red light and speeding enforcement system can assist the City in

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[6] Jackie Borchardt, cleveland.com, Ohio Proposes Paying $10 Million to Help East Cleveland-Cleveland Merger (March 31, 2016), http://www.cleveland.com/metro/index.ssf/2016/03/state_would_pay_10_million_to.html#incart_river_mobile_home_pop (accessed April 5, 2016).

[7] *Id.*

[8] *See* John Caniglia, The Plain Dealer, *East Cleveland Mayor Announces 19 Police Layoffs* (October 7, 2009), http://blog.cleveland.com/metro/2009/10/east_cleveland_mayor_announces.html (accessed April 6, 2016) (in October 2009, East Cleveland cut 19 police department employees, a reduction of 23 percent, in order to cover drop in tax revenue); Jen Steer, newsnet5 Cleveland, *20 East Cleveland Police Officers, Dispatchers Get Layoff Notices* (January 9, 2013), http://www.newsnet5.com/news/local-news/oh-cuyahoga/20-east-cleveland-police-officers-dispatchers-get-layoff-notices (accessed April 6, 2016) (in 2011, East Cleveland laid of 36 police officers and in 2013 fired 10 police officers and 10 dispatchers).

[9] East Cleveland Ordinance No. 07-06 (codified as East Cleveland Municipal Code 313.011).

[10] *Id.*

enforcing the City's traffic ordinances without further taxing the efforts of police officers whose time is in great demand."[11]

In November 2011, the citizens of East Cleveland approved by referendum East Cleveland's automated traffic camera program. The referendum arose because a resident group petitioned for the right to challenge the program.[12] The East Cleveland voters rejected the challenge and approved the city's automated traffic camera program by over 54 percent.[13]

With respect to S.B. 342, the Ohio Legislative Commission Service estimated that, "[i]f new officers are hired at posted at each of the approximately 250 traffic law photo-monitoring devices currently in use, then staffing these devices will cost about $73.0 million statewide per year."[14] This amounts to an additional $292,000 per camera, per year. For East Cleveland and its 14 cameras, the result of this General Assembly created cost could be more than $4 million.

B. East Cleveland's Automated Traffic Camera Program Has Been Effective In Lowering Traffic Offenses and Increasing Safety.

East Cleveland's automated traffic camera enforcement program has decreased speeding and red-light violations and increased safety in East Cleveland. In December 2010, the average number of red-light violations at camera locations in East Cleveland was documented at 324 per

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[11] *Id.*

[12] John Horton, The Plain Dealer, *East Cleveland Residents Vote to Keep the City's Traffic Cameras* (Nov. 8, 2016), http://www.cleveland.com/politics/index.ssf/2011/11/voters_saying_no_to_traffic_ca.html (accessed April 5, 2016).

[13] *Id.*

[14] Ohio Legislative Service Commission, *Fiscal Note & Local Impact Statement – Sub. S.B. 342 of the 130th G.A.* (December 1, 2014), http://www.lsc.ohio.gov/fiscal/fiscalnotes/130ga/sb0342sp.pdf (accessed April 5, 2016).

month. This figure fell to almost 200 per month by March 2014—a 38 percent decrease.[15] In October 2011, the average number of speeding violations at camera locations was documented at 87 per day. This figure fell to 28 per day by March 2014—a 68 percent decrease.[16] Moreover, the recidivism rate for red-light violations is now only 12 percent and for speeding violations is only 5 percent, indicating that the automated traffic camera program has successfully changed driver behavior in East Cleveland.[17]

The success that the City of East Cleveland has experienced with its program is mirrored by national and international statistics, and East Cleveland hereby incorporates the facts and arguments set forth in the City of Akron's Amicus Brief concerning the success of these programs nationally, including:

- a 2007 study by the National Highway Traffic Safety Administration ("NHTSA"), reviewing evaluations of automated traffic programs that found that in each location where speed and red-light cameras were used, there were documented decreases in injuries and accidents; [18]

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[15] Affidavit of Michael Cardilli, which is attached hereto as Exhibit 1 and was attached as Exhibit D to Plaintiffs' Reply Brief in Support of Motion for Summary Judgment and Brief in Opposition to Defendant's Motion for Summary Judgment in the case styled *City of East Cleveland, et al., v. State of Ohio*, No. CV-15-842116 (Cuyahoga County Court of Common Pleas), at ¶¶ 3-4 ("Cardilli Aff."). Mr. Cardelli is the Police Chief of East Cleveland.

[16] *Id.* at ¶ 6.

[17] *Id.* at ¶¶ 5, 7.

[18] Lawrence E. Decina, Libby Thomas, Raghavan Srinivasan, & Lorin Staplin, TransAnalytics, LLC (sponsored by National Highway Traffic Safety Administration - Office Research and Technology, Behavioral Technical Research Division), *Automated Enforcement: A Compendium of Worldwide Evaluations of Results* (September 2007), available at http://www.nhtsa.gov/DOT/NHTSA/Traffic%20Injury%20Control/Articles/Associated%20Files/HS810763.pdf (accessed April 6, 2016) at iii, 40.

- a 2011 study published in the *Journal of Safety Research* that found that the fatal red light running crash rates during 2004-2008 was estimated to be 17 to 24 percent lower as the result of traffic cameras;[19] and

- numerous other studies and statistics demonstrating the effectiveness of these programs.[20]

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[19] Wen Hu, Anne T. McCartt, & Eric Teoh, *Effects of Red Light Camera Enforcement on Fatal Crashes in Large US Cities*, 42(4) *Journal of Safety Research* 277 (2011), available at http://vejdirektoratet.dk/DA/viden_og_data/temaer/its/Documents/Evalueringer/Automatisk%20trafikkontrol/IIHS_Study_2-1-11.pdf (accessed April 6, 2016) at 1.

[20] *See, e.g.*, Fields, *Stop for the Camera: Study shows Automated Enforcement Does work, and It Is Legal*, Transportation Management and Engineering Magazine (July 2008) 10 (discussing various studies showing efficacy of speed cameras in reducing speeding and crashes and various studies showing efficacy of red-light cameras in reducing red-light violations and injury crashes); Wen Hu, Anne T. McCart, *Effects of Automated Speed Enforcement in Montgomery County, Maryland, on Vehicle Speeds, Public Opinion, and Crashes* (August 2015), available at http://www.iihs.org/frontend/iihs/documents/masterfiledocs.ashx?id=2097 (accessed April 8, 2016) (finding that speed cameras resulted in reduction in speeds and reducing incapacitating or fatal injuries from crashes); Richard Romer, Aron Trombka, Sarah Downie, Office of Legislative Oversight – Report No. 2010-3, *Evaluation of Montgomery County's Safe Speed Program* (September 29, 2009), available at https://www.montgomerycountymd.gov/olo/resources/files/2010-3_speed.pdf (accessed April 8, 2016) at iii (finding reduction in speeds and crashes from speed cameras); Simon Washington, Kangwon Shin, Ida van Shalkwyk, Arizona State University – Department of Civil & Environmental Engineering, *Evaluation of the City of Scottsdale Loop 101 Photo Enforcement Program* (November 2007), available at http://ncsrsafety.org/wp-content/uploads/2012/11/evaluation-of-city2.pdf (accessed April 8, 2016) at 3-7 (finding reduction in speeding and crashes, as well as economic benefits, from speed cameras); Richard Alsop, RAC Foundation, *The Effectiveness of Speed Cameras: A Review of Evidence* (November 2010), available at http://www.racfoundation.org/assets/rac_foundation/content/downloadables/efficacy_of_speed_cameras_allsop_181110.pdf (accessed April 10, 2016) (reviewing speed cameras in Great Britain and finding reductions in speeding and "that collisions and casualties decreased substantially at the more than 4,000 sites covered by the four-year evaluation"); Misty A. Boos, Virginia Department of Transportation, *Speed Cameras as a Tool to Reduce Road Fatalities* (May 2009), available at http://vtrc.virginiadot.org/rsb/rsb23.pdf (accessed April 8, 2016) (collecting research); Troy Walden, The Texas A&M University System – Crash Analysis Program of the Center for Transportation Safety – Texas Transportation Institute, *Analysis on the Effectiveness of Photographic Traffic Signal Enforcement Systems in Texas* (November 2008), available at ftp://ftp.dot.state.tx.us/ pub/txdot-info/trf/final_report_rlc_1008.pdf (accessed on April 8, 2016) at i (finding reduction in crashes overall after introduction of red-light cameras); Shauna Hallmark, Tom McDonald, Iowa State University – Center for Transportation Research and Education, *Evaluating Red Light Running Programs in Iowa* (December 2007), available at http://ncsrsafety.org/wp-content/uploads/2011/02/Evaluating-Red-Light-Running-Programs-in-

C. East Cleveland Has Fewer Law Enforcement Resources Than Ever.

East Cleveland's financial troubles are exacerbated by the fact that the State of Ohio's recent budgetary policies have reduced the tax funds available to municipalities. The major source of revenue for the City is local government funds from the State of Ohio.[21] In the State's 2012-2013 budget, the State cut the Local Government Fund ("LGF"), which was established in 1935 and has been a long-time source of municipal funding, in half by almost $350 million.[22] The State reduced the LGF by an additional $95 million in the 2014-2015 budget.[23] Moreover, in 2013, the State eliminated its estate tax, 80 percent of which went to local communities and generated more than $600 million for local governments during fiscal years 2012-2013.[24] In recent years, state lawmakers have also phased out tangible personal property taxes on businesses and utilities and tax replacement payments that were promised to local governments.[25]

Iowa1.pdf (accessed April 8, 2016) at 4 (finding that red-light camera programs were "were very successful in reducing crashes related to red light running").

[21] Auditor's 2015 Report at 3.

[22] Joe Vardon, The Columbus Dispatch, *Political Sparring Continues on Funding Ohio's Local Governments* (July 15, 2013), http://www.dispatch.com/content/stories/local/2013/07/15/sparring-at-statehouse-continues-on-funding-local-governments.html (accessed April 6, 2016).

[23] Wendy Patton, Zach Schiller, and Piet van Lier, Policy Matters Ohio, *Overview: Ohio's 2014-2015 Budget* (October 2013), http://www.policymattersohio.org/wp-content/uploads/2013/10/Budget-Oct2013.pdf (accessed on April 7, 2016) at 1.

[24] *Id.* at 15.

[25] Wendy Patton, Policy Matters Ohio, *Cuts to Cities, Counties Threatens Local Services: Safety, Roads, Recreation and More* (June 2015), http://www.policymattersohio.org/wp-content/uploads/2015/06/local-gov-operations-loss.pdf (accessed April 6, 2016) at 1.

East Cleveland has lost roughly one-third of its annual tax revenue since 2010.[26] Roughly 97 percent of this change is due to LGF reductions.[27]

D. The General Assembly Has Targeted Automated Traffic Programs, Often In Conscious Disregard Of Municipalities' Constitutional Home Rule Rights.

The Amicus Brief submitted by Akron details the General Assembly's long history of targeting automated traffic camera programs. East Cleveland incorporates this section of Akron's brief herein.

ARGUMENT

Proposition of Law No. 1: Provisions in a state statute that are arbitrary and serve no purpose except to limit municipal police power are not general laws and violate the Home Rule Amendment of the Ohio Constitution.

Proposition of Law No. 2: Including provisions that violate the Home Rule Amendment into larger legislative enactments does not convert the offending provisions into general laws. While under home-rule analysis courts are required to analyze the legislation as a whole, they are also required to specifically analyze the challenged provisions to determine if they unconstitutionally limit cities' home-rule authority.

Article I, Section 2 of the Ohio Constitution states, "[a]ll political power is inherent in the people." In S.B. 342, the General Assembly has commandeered powers that the Ohio Constitution specifically and expressly reserves to local governments. *See* Ohio Constitution, Article XVIII, Section 3 (the "Home Rule Amendment"). This division of powers has historical

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[26] Rich Exner, cleveland.com, *Ohio Tax Changes Under Gov. John Kasich Leave Villages, Cities Scrambling to Cope with Less* (March 9, 2016), http://www.cleveland.com/datacentral/index.ssf/2016/03/ohio_tax_changes_under_gov_joh.html (accessed April 6, 2016).

[27] *Id.*; *cf.* Auditor's 2015 Report at 3 ("The major sources of revenues for the City are income taxes, local government revenues received from the State of Ohio, property taxes and charges for services receipts from a trash collection fee as well as a street lighting assessment. The City has seen a reduction in its revenues over the past few years. This reduction has created challenges for the City as they have attempted to keep their expenditures within those reduced revenues.").

significance; through the Home Rule Amendment, "the sovereign people of the state expressly delegated to the sovereign people of the municipalities of the state full and complete political power in all matters of 'local self-government.'" *Perrysburg v. Ridgeway*, 108 Ohio St. 245, 255, 140 N.E. 595 (1923) (quotation omitted). The Second District Court of Appeals ignored this Court's precedent and failed to uphold its obligation to protect Ohio's municipalities and its citizens from overreaching state legislation.

The Home Rule Amendment does not allow the State to override the wisdom and judgment of East Cleveland and other municipalities in matters that are purely of local concern. "Local authorities are presumed to be familiar with local conditions and to know the needs of the community.... Local legislative authorities, and not the Courts, are primarily judges of the necessities of the local situations calling for police regulation." *Id.* at 258. Where, as here, a municipality—through both its city council and its voters—has enacted and implemented a program enforcing local laws for the benefit of its citizens, the State cannot enact legislation prohibiting the municipality's action.

S.B. 342 does not satisfy the third and fourth prongs of the test set forth in *Canton v. State of Ohio*, 95 Ohio St.3d 149, 2002-Ohio-2005, 766 N.E.2d 963, syllabus: "To constitute a general law for purposes of home-rule analysis, a statute must ... (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." Indeed, as the statements of S.B. 342's sponsors and supporters make clear, the law aims to limit the authority of Ohio's municipalities, such as East Cleveland, and not to create rules of conduct governing Ohio's citizens. In doing so, S.B. 342 will not only

cause the termination of East Cleveland's voter-approved automated traffic camera program, it will negatively impact the safety of its citizens.

CONCLUSION

For the foregoing reasons, as well as those enunciated by Appellant, this Court should reverse the decision of the Second District.

Date: April 11, 2016

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Willa Hemmons, hereby certify that I served a copy of the foregoing brief and exhibit thereto on the following persons by regular U.S. Mail, postage prepaid, on April 11, 2006:

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EXHIBIT 1

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

City of East Cleveland, et al.,	)	Case No. CV-15-842116
	)	
Plaintiff,	)	Judge Kathleen Ann Sutula
	)	
v.	)	
	)	**AFFIDAVIT OF MICHAEL CARDILLI**
State of Ohio, et al.,	)	
	)	
Defendants.	)	
	)	

Michael Cardilli, being duly sworn according to law deposes and says:

1. I am the Chief of Police, City of East Cleveland. I was appointed Chief of Police in March 2014 after my predecessor retired. I have served on the East Cleveland Police Force for over 15 years and I am aware of the positive impact red light and speed cameras have had in our community. The City of East Cleveland uses both red light cameras and mobile speed cameras to assist the police force in its ongoing effort to make East Cleveland a safer place.
2. East Cleveland's red-light safety camera program began in November 2010.
3. East Cleveland uses 11 Red-Light Safety Cameras to deter red-light running at eight intersections throughout the city. Since implementation, red-light violations have trended decidedly downward.
4. Based on statistical information we have received, the average number of red-light running violations per camera was 324 per month in December 2010, but fell almost to 200 per month by March 2014, indicating a 38% decrease in red-light violations issued. As violations decrease, the opportunity for dangerous red-light running related crashes drops, contributing to safer traveling throughout the City.
5. Repeat offenders of red-light violations are low in East Cleveland, indicating the safety camera program is successful in changing driver behavior. The community's recidivism rate for red-light violations is just 12%, which means 88% of all violators who receive a ticket and pay it do not get another violation. This low rate of repeat behavior, dating from program inception through May 2014, indicates a change in driver behavior for the better.
6. East Cleveland began using mobile speed vans to deter dangerous speeding habits throughout the City in September 2011. We use three mobile speed cameras. Since implementation, mobile speed violations have trended decidedly downward. The average number of mobile

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speed violations per camera per day stood at 87 per day in October 2011, but fell to 28 per day by March 2014, indicating a 68% decrease in violations issued. As speed violations decrease, the opportunity for dangerous speed-related crashes diminishes, contributing to safer traveling throughout the city.

7. Drivers are getting the message to slow down in East Cleveland. The community's recidivism rate for mobile speed violations is only 5%, which means 95% of all violators who receive a ticket and pay it do not get another violation. This low rate of repeat behavior, dating from inception through March 2014, indicates a positive change in driver behavior.

8. If we were required to post a police officer at each of the 14 traffic cameras, we would not be able to do so as we do not have a sufficient number of officers to meet that requirement for each shift or at all times. We would be forced to shut off cameras if a police officer's presence was a pre-condition to their use.

9. As to mobile vans for speed cameras, the City of East Cleveland does not own any of them and could not afford to purchase them. It would be misleading and incorrect to place a sign on each vehicle that states the van is "property of the local authority" (East Cleveland) as the new state law seems to require.

10. Based on available information, seventy-five percent of the violations of East Cleveland's automated traffic camera enforcement program arise from vehicles titled in municipalities outside of East Cleveland.

Michael Cardilli
Chief of Police, City of East Cleveland

Sworn to and subscribed before me this 30th day of March, 2015.

Notary Public

WILLA M. HEMMONS, Atty.
NOTARY PUBLIC • STATE OF OHIO
My commission has no expiration date
Section 147.03 O.R.C.

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