

**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.	:	
	:	

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**BRIEF OF AMICUS CURIAE THE CITY OF AKRON  
IN SUPPORT OF APPELLANT, CITY OF DAYTON, OHIO**

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## INTRODUCTION

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

In 2005, Akron enacted its automated traffic school zone safety program, which was narrowly tailored to ensure the safety of Akron's schoolchildren coming and going to school. Akron's school zone safety program was a direct response to a tragic accident in which a ten-year-old Akron boy was hit by a hit-and-run driver in a crosswalk on the way to school, and died pushing his six-year-old sister to safety. Akron's school zone safety program has succeeded in making Akron's school zones safer.

Akron was forced to expend considerable resources defending its school zone safety program in response to a constitutional challenge in *Mendenhall v. Akron*, 117 Ohio St.3d. 33, 2008-Ohio-270, 881 N.E.2d 255. The outcome of *Mendenhall* was that this Court held that Akron's program was a valid exercise of its Home Rule authority. The General Assembly, however, has embarked upon a campaign to force municipalities to terminate their safety programs, in violation of Home Rule. Amended Senate Bill 342 ("S.B. 342"), which Governor Kasich signed into the law the day after this Court's decision in *Walker v. Toledo*, 143 Ohio St.3d 420, 2014-Ohio-5461, 9 N.E.3d 474. S.B. 342 is an unconstitutional infringement of municipal Home Rule rights. *See* 2014 Am.Sub.S.B. No. 342.

Akron's school zone safety program cannot continue to exist if S.B. 342 is upheld. Akron's school zone safety program was enacted in response to a specific crisis by means of an Emergency Ordinance. S.B. 342, however, prohibits municipalities from responding quickly to community needs, since it compels them to conduct a three-year "safety study" and a public information campaign for each proposed traffic camera location. *See* R.C. 4511.095. Second,

S.B. 342 compels municipalities to station a full-time law enforcement officer at the location of each automated traffic camera. *See* R.C. 4511.093(B). Akron does not have the law enforcement resources to comply with this provision. Among other reasons, Akron has lost almost two-thirds of its annual tax revenues since 2010, the majority of which is due to changes in the State's municipal tax policies.<sup>1</sup>

Thus, S.B. 342 would force Akron to terminate its school zone safety program.

### **STATEMENT OF FACTS**

Akron 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, Akron provides the following background regarding its school zone safety program:

A. *Akron's School Zone Safety Program Was Enacted In Response To A Community Tragedy.*

Akron is a northeast Ohio municipality with a population of nearly 200,000.<sup>2</sup> The Akron City School District is the fifth largest school district in Ohio, with student enrollment of nearly 22,000 children in nine high schools, nine middle schools, and 30 elementary schools.<sup>3</sup> Except for charter schools, Akron students who live within two miles of school are not bused,<sup>4</sup> and a

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<sup>1</sup> 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](http://www.cleveland.com/datacentral/index.ssf/2016/03/ohio_tax_changes_under_gov_joh.html) (accessed April 6, 2016).

<sup>2</sup> United States Census Bureau, *QuickFacts – Akron*, <http://www.census.gov/quickfacts/table/PST045215/3901000> (accessed April 9, 2016).

<sup>3</sup> Akron Public Schools, *About*, <http://akronschools.com/about> (accessed April 9, 2016).

<sup>4</sup> Akron Public Schools, *Transportation Services*, <http://akronschools.com/group/departments/Transportation+Services> (accessed April 9, 2016).

majority of Akron’s students walk to and from school every day. Akron has 68 “school zones,” meaning areas near schools where children frequently cross public streets.<sup>5</sup>

On September 6, 2005, ten-year-old Tony Swain was hit by a speeding hit-and-run driver while walking to school in a crosswalk manned with a crossing guard.<sup>6</sup> He died pushing his six-year-old sister to safety.<sup>7</sup> The speeding driver was never caught.<sup>8</sup> In response to this tragedy, the Akron City Council acted quickly to pass Emergency Ordinance 461-2005 on September 12, 2005 (the “Akron Emergency Ordinance”), enacting Akron’s school zone safety program.<sup>9</sup> Akron’s City Council passed the Emergency Ordinance after determining that “frequent incidents of speeding cause a substantial risk to the safety of children in school zones and crosswalks,” and that “an automated mobile speed enforcement system will assist the Akron

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<sup>5</sup> Rene Garrett, Akron Public Schools, *APS: Traffic Cams Are Back*, <http://www.akronschools.com/school/North+High+School/headlines/2682> (accessed April 9, 2016).

<sup>6</sup> Transcript of the testimony of Lt. Richard Decatur at July 31, 2015 preliminary injunction hearing in case styled *Akron v. Ohio*, No. CV-2015-07-3666 (Summit County Court of Common Pleas), which is attached hereto as Ex. 1 and was filed on January 12, 2016, by the City of Akron in support of its Submission of Evidence in Support of its Motion for Temporary Restraining Order in the case styled *Akron v. Ohio*, No. CV-2015-02-0955 (Summit County Court of Common Pleas), at pp. 8-9 (Lt. Decatur has served as Commander of the Akron Traffic Bureau since 2007) (hereinafter, “Decatur Tr.”); *see also* Bob Jones, newsnet5.com, *Vigil Planned on 8-Year Anniversary of Tony Swain’s Death; Boy Killed by Hit-Skip Driver in Akron* (September 6, 2013), <http://www.newsnet5.com/news/local-news/akron-canton-news/vigil-planned-on-8-year-anniversary-of-tony-swains-death-boy-killed-by-hit-skip-driver-in-akron> (accessed April 9, 2016).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> Akron Ordinances 461-2005.

Police Department by alleviating the need for conducting extensive conventional traffic enforcement in and around school zones.”<sup>10</sup>

Akron’s school zone safety program is narrowly tailored to control speeding around Akron’s schools during the times when school is in session. Akron uses six mobile speeding cameras that rotate among the city’s 68 school zones.<sup>11</sup> The mobile speed cameras operate only during the hours when students are coming to and from schools.<sup>12</sup> The cameras do not operate on weekends, holidays, or any day that school is not in session.<sup>13</sup> Revenue from the Akron school zone safety program is reinvested entirely in safety.<sup>14</sup> All ticket revenue goes into a “Safety Fund” that is used to pay for crossing guards, school officers, educational safety programs, and safety features in and around Akron’s schools.<sup>15</sup>

*B. Automated Traffic Camera Programs Are Effective In Akron And Nationwide.*

Akron’s school zone safety program has decreased speeding and increased safety in school zones in Akron. As of July 2015, the speeding incidence rate at Akron’s camera locations was just two percent of vehicles observed.<sup>16</sup> The cameras have also heightened the community’s

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<sup>10</sup> *Id.*

<sup>11</sup> Affidavit of Lt. Richard Decatur, which is attached hereto as Exhibit 2 and was attached as Exhibit C to Akron’s March 13, 2015 Motion for Summary Judgment in the case styled in case styled *Akron v. Ohio*, No. CV-2015-02-0955 (Summit Court of Common Pleas), at ¶ 5 (hereinafter, “Decatur Aff.”); *see also* Decatur Tr. at p. 7.

<sup>12</sup> Decatur Tr. at pp. 7-8.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at p. 10.

<sup>15</sup> *Id.*; *see also* Decatur Aff. at ¶ 8.

<sup>16</sup> Decatur Tr. at pp. 9-11; Decatur Aff. at ¶ 9.

awareness of the importance of traffic safety in school zones.<sup>17</sup> Moreover, because the school zone safety program frees up law enforcement resources, Akron’s police department is able to increase its effectiveness in other areas such as drug enforcement and answering calls for services.<sup>18</sup> Without Akron’s school zone safety program, speeding would again rise to an unsafe level, risking further tragedies.<sup>19</sup>

The success Akron has experienced with its program is mirrored by national and international statistics. In 2007, the National Highway Traffic Safety Administration (“NHTSA”) reviewed evaluations of automated traffic camera programs in multiple locations.<sup>20</sup> NHTSA found that in each jurisdiction where speed cameras were used, there were documented decreases in “injury crashes, all crashes, [and] speed-related crashes at camera sites.”<sup>21</sup>

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<sup>17</sup> Decatur Tr. at p. 10.

<sup>18</sup> *Id.* at pp. 13-14.

<sup>19</sup> *Id.* at 15.

<sup>20</sup> 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.

<sup>21</sup> *Id.* at 2; *see also, 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); 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](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*

Likewise, with respect to red-light cameras, NHTSA found “decreases in red light running violations—even at non-treatment intersection sites,” which NHTSA noted was consistent with previous studies.<sup>22</sup> As the NHTSA study concluded, “[e]xisting research indicates that automated enforcement systems can result in measurable safety improvements at high crash locations.”<sup>23</sup>

A 2011 study published in the *Journal of Safety Research* similarly found that “the fatal red light running crash rates during 2004-2008 in the cities with cameras were estimated to be 24 percent lower than the rates that would have been expected without cameras[,]” while “[t]he rates of fatal crashes at signalized intersections during 2004-2008 were estimated to be 17 percent lower in the cities with cameras than the rates that would have been expected without cameras.”<sup>24</sup> Likewise, the World Health Organization determined that “[s]peed cameras are a highly cost-effective means of reducing road crashes.”<sup>25</sup>

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*City of Scottsdale Loop 101 Photo Enforcement Program* (November 2007), available at <http://ncrsafety.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\\_allso\\_181110.pdf](http://www.racfoundation.org/assets/rac_foundation/content/downloadables/efficacy_of_speed_cameras_allso_181110.pdf) (accessed April 8, 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.viriniadot.org/rsb/rsb23.pdf> (accessed April 8, 2016) (collecting research).

<sup>22</sup> See Decina, *Automated Enforcement: A Compendium of Worldwide Evaluations of Results, supra*, at 40.

<sup>23</sup> *Id.* at 3.

<sup>24</sup> 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%20rafikkontrol/IIHS\\_Study\\_2-1-11.pdf](http://vejdirektoratet.dk/DA/viden_og_data/temaer/its/Documents/Evalueringer/Automatisk%20rafikkontrol/IIHS_Study_2-1-11.pdf) (accessed April 6, 2016) at 1; see also, e.g., Fields, *Stop for the Camera: Study shows Automated Enforcement Does work, and It Is Legal, supra*, at 10

When automated traffic camera programs terminate, national statistics show that safety is compromised. For example:

- in Houston, Texas: **Injury crashes increased by 350 percent** when traffic safety cameras were turned off. One intersection saw crashes increase by 1,300 percent;<sup>26</sup>
- in Garfield Heights, Ohio: **Speeding increased 214%** when traffic safety cameras were removed;<sup>27</sup>
- in Scottsdale, Arizona: **Speeding increased by between 1,006 and 1,047%** when traffic safety cameras were turned off on Scottsdale's Loop 101.<sup>28</sup>

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(discussing various studies showing efficacy of red-light cameras in red-light violations and injury crashes); Wen Hu, Anne T. McCart, Eric Teoh, *Effects of Red Light Camera Enforcement on Fatal Crashes in Large US Cities*, 42(4) *Journal of Safety Research* 277 (August 2011), available at [http://vejdirektoratet.dk/DA/viden\\_og\\_data/temaer/its/Documents/Evalueringer/Automatisk%20trafikkontrol/IIHS\\_Study\\_2-1-11.pdf](http://vejdirektoratet.dk/DA/viden_og_data/temaer/its/Documents/Evalueringer/Automatisk%20trafikkontrol/IIHS_Study_2-1-11.pdf) (accessed April 8, 2016) (finding reduction in fatal crashes from red-light cameras); 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/txdotinfo/trf/final\\_report\\_rlc\\_1008.pdf](ftp://ftp.dot.state.tx.us/pub/txdotinfo/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-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”).

<sup>25</sup> See United States Department of Transportation, *Speed Management Strategic Initiative* (September 2005), available at [http://safety.fhwa.dot.gov/speedmgt/ref\\_mats/fhwasa09028/resources/DOT%20Speed%20Management%20Strategic%20Initiative.pdf](http://safety.fhwa.dot.gov/speedmgt/ref_mats/fhwasa09028/resources/DOT%20Speed%20Management%20Strategic%20Initiative.pdf) (accessed April 10, 2016) at 5.

<sup>26</sup> Ted Oberg, abc13 Eyewitness News, *Exclusive: Accidents Way Up with Red Light Cameras Off* (June 8, 2011), <http://abc13.com/archive/8178752/> (accessed April 11, 2016).

<sup>27</sup> Alison Grant, The Plain Dealer, *Bill to Ban Traffic Cameras Across Ohio Set for Hearing in Senate Committee* (February 16, 2014), [http://www.cleveland.com/metro/index.ssf/2014/02/bill\\_to\\_ban\\_traffic\\_cameras\\_st.html](http://www.cleveland.com/metro/index.ssf/2014/02/bill_to_ban_traffic_cameras_st.html) (accessed April 11, 2016).

<sup>28</sup> See Washington, et al., *Evaluation of the City of Scottsdale Loop 101 Photo Enforcement Program*, *supra*, at 2.

The consensus within the safety industry is that automated traffic camera programs are effective at increasing safety without burdening law enforcement resources. Municipalities in Ohio, such as Akron, should be allowed to avail themselves of the benefits of these technological innovations.

*C. The General Assembly Has Targeted Automated Traffic Programs In Conscious Disregard Of Municipalities' Constitutional Home Rule Rights.*

Despite the proven effectiveness of automated traffic camera programs, Akron has had to defend its school zone safety program repeatedly against legal challenges. First, Akron's program was made the target of an ostensible constitutional challenge in *Mendenhall*, in which this Court held that Akron's school zone safety program was a valid exercise of its Home Rule authority. Now, Akron (along with other municipalities) is a target of numerous attempts by the General Assembly to force municipalities to terminate their safety programs. The General Assembly will continue its pattern of passing legislation to eliminate automated safety programs until this Court rules that municipalities have the authority to implement these programs under the Home Rule Amendment.

In 2006, the General Assembly passed 2006 Sub.H.B. No. 56, which would have required an officer to be present at every speed camera except those located in school zones. Then-Governor Robert Taft vetoed the legislation on Home Rule grounds, reasoning:

Local governments and their law enforcement agencies have the best knowledge of their streets, including the location of their most dangerous intersections. Along with this knowledge, they must have the ability and flexibility to enforce traffic laws for the safety of all Ohio citizens. Substitute House Bill 56 unjustifiably eliminates the discretion of our locally elected and locally accountable officials in favor of a one-size-fits-all method with essentially unenforceable penalties. I am especially concerned that the requirement for a permanently fixed structure to mount cameras in school zones may make it impractical for municipalities to act to protect the safety of school children. I can discern no strong public policy that warrants this sweeping preemption of

local control over our local streets. For these reasons, I am vetoing Substitute House Bill 56.<sup>29</sup>

Similarly, in 2014, the Ohio House of Representatives passed 2014 Am.H.B. No. 69, which would have banned automated traffic cameras except in school zones, and would have allowed these cameras only if a law enforcement officer was present at each camera location. The Ohio Senate rejected the bill after the Legislative Service Commission determined that it “appear[ed] to infringe on local governments’ home-rule authority.”<sup>30</sup>

At least 23 Ohio municipalities have implemented automated traffic camera programs.<sup>31</sup> On two occasions, one of which involved Akron, this Court has affirmed that municipalities may constitutionally implement automated traffic camera programs. *See Mendenhall*, 117 Ohio St.3d 33, 2008-Ohio-270, 881 N.E.2d 255; *Walker v.*, 143 Ohio St.3d 420, 2014-Ohio-5461, 9 N.E.3d 474. The day after this Court issued its opinion in *Walker*, Governor John Kasich signed S.B. 342 into law.<sup>32</sup> S.B. 342 makes Akron’s automated traffic camera program

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<sup>29</sup> Governor Bob Taft, State of Ohio – Office of the Governor – News Release, *Taft Vetoes Red Traffic Bill*, January 5, 2007; *see also* TheNewspaper.com, *Ohio Governor Vetoes Camera Ban* (January 6, 2007), <http://www.thenewspaper.com/news/15/1536.asp> (accessed April 10, 2016) (quoting same).

<sup>30</sup> Jeremy Pelzer, Northeast Ohio Media Group, *Bill to Ban Traffic Cameras May Infringe on Cities’ Home-Rule Authority, Study Finds* (February 19, 2014), [http://www.cleveland.com/open/index.ssf/2014/02/bill\\_to\\_ban\\_traffic\\_cameras\\_ma.html](http://www.cleveland.com/open/index.ssf/2014/02/bill_to_ban_traffic_cameras_ma.html) (accessed April 6, 2016).

<sup>31</sup> In addition to Akron, Ashtabula, Campbell, Chillicothe, Cleveland, Columbus, Dayton, East Cleveland, Garfield Heights, Hamilton, Heath, Middletown, Newburgh Heights, Parma, Parma Heights, Richmond Heights, Rutland, Springfield, Steubenville, Toledo, Trotwood, West Carrolton, and Youngstown have implemented automated traffic camera programs. *See* Appellant’s Memorandum in Support of Jurisdiction of Appellant City of Dayton (filed September 21, 2015).

<sup>32</sup> Rob Nichols, John R. Kasich – Governor – State of Ohio – Communication Department, *Kasich Signs 40 Bills* (Dec. 19, 2014), available at <http://www.governor.ohio.gov/Portals/0/12.19.14%20Kasich%20Signs%2040%20Bills.pdf> (accessed April 6, 2016).

prohibitively expensive to administer—which was precisely the General Assembly’s publicly-announced intent. State Senator William Seitz, S.B. 342’s sponsor, advocated for the bill on the basis that automated traffic camera programs generated “illicit revenue” that should be eliminated.<sup>33</sup>

Several Ohio municipalities launched Home Rule challenges to S.B. 342. Akron, Toledo, and Dayton were successful in persuading Common Pleas courts to hold certain provisions of S.B. 342 unconstitutional and to enjoin their enforcement. In reaction to these legal challenges, the General Assembly added a midnight amendment to Ohio’s most recent budget bill, 2015 Am.H.B. No. 64 (“H.B. 64”), punishing municipalities that failed to comply with S.B. 342—even those like Akron that successfully challenged the legislation in court. H.B. 64 reduces noncompliant municipalities’ Local Government Fund allocations by an amount equal to the total amount that municipalities bill to violators. As such, H.B. 64 does not merely cause municipalities’ traffic camera revenues to net to zero; it penalizes them further, since the amount “billed,” to violators exceeds the amount actually collected. The General Assembly’s motivation for the budget bill provisions was expressly stated as being “the quickest way to end the rebellion of the rogue cities[.]”<sup>34</sup> Thus, “even if [cities challenging the constitutionality of Senate Bill 342] win” in court, “they will lose,” according to Senator Seitz.<sup>35</sup>

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<sup>33</sup> Jeremy Pelzer, Northeast Ohio Media Group, *Akron, Toledo Should Lose State Funding if They Win Traffic-Camera Lawsuits, Senator Says* (March 10, 2015), [http://www.cleveland.com/open/index.ssf/2015/03/akron\\_toledo\\_should\\_lose\\_state.html](http://www.cleveland.com/open/index.ssf/2015/03/akron_toledo_should_lose_state.html) (accessed April 5, 2016).

<sup>34</sup> See Stephanie Warsmith, Akron Beacon Journal, *State Legislatures Seeks to Siphon Funds from Akron, other Cities Operating Traffic Cameras* (April 15, 2015), <http://www.ohio.com/news/break-news/state-legislature-seeks-to-siphon-funds-from-akron-other-cities-operating-traffic-cameras-1.583813> (accessed April 10, 2016).

<sup>35</sup> See Pelzer, *Akron, Toledo Should Lose State Funding if They Win Traffic-Camera Lawsuits, Senator Says*, *supra*.

At least four additional bills have been introduced in the General Assembly that are hostile to automated traffic camera programs since cities began challenging S.B. 342 in court. 2016 S.B. No. 275 would prohibit municipalities from deriving more than 30 percent of their annual revenue through automated traffic camera citations. 2016 S.B. No. 276 would prohibit municipalities from issuing a total number of automated traffic camera tickets that exceeds two times its population. 2016 S.B. No. 277 would prohibit municipalities with populations of 200 or fewer from using automated traffic camera programs altogether. And, finally, 2016 S.B. No. 278 would prohibit municipalities that do not operate fire departments or emergency medical services organizations from using automated traffic camera programs.

Municipalities therefore need the Court to protect their Home Rule powers. Otherwise, these attacks by the General Assembly will continue forever, draining resources and causing distractions from other priority issues.

## 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.**

Akron adopts and incorporates the reasoning set forth in Dayton's Merit Brief and in the Amicus Briefs of the other municipalities. The Second District Court of Appeals' decision incorrectly interpreted the Home Rule Amendment's protection of municipal authority as against State legislative encroachment.

The proposition that an unconstitutional legislative provision may be converted into a constitutional one by including it in a bill that has provisions that are constitutional defies conventional legal reasoning and the precedent of this Court. Under the Ohio Constitution, the power of the General Assembly is intentionally limited. Pursuant to Article II, Section 32 of the Ohio Constitution, the General Assembly is “expressly prohibited from exercising any judicial power which is not expressly conferred by the constitution.” *Bartlett v. State*, 73 Ohio St. 54, 58, 75 N.E. 929 (1905). The Home Rule Amendment provides a purposeful boundary on legislative powers, dictating that the General Assembly may not enact statutes that infringe on municipal “self-government” or on municipal authority to “adopt and enforce within their limits such local police, sanitary, and other similar regulations, as are not in conflict with general laws.” Ohio Constitution, Article XVIII, Section 3. This division of powers has historical 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).

Accordingly, as this Court held in *Mendenhall*, the authority of Akron and other municipalities to enact traffic camera programs “comes from the Ohio Constitution,” not the General Assembly. 117 Ohio St.3d, 2008-Ohio-270, 881 N.E.2d at ¶ 33 (quotation omitted). A “municipality does not need the grant of authority [from the General Assembly]” to enact a traffic camera program “because it already possesses it pursuant to its home rule powers.” *Id.* (quotation omitted). Thus, traffic camera programs are not a subject where “state dominance” has been achieved or is beneficial or required, in contrast, for example, to the

predatory lending regulations at issue in *Am. Fin. Servs. Ass'n v. Cleveland*, 112 Ohio St.3d 170, 2006-Ohio-6043, 858 N.E.2d 776, ¶ 27.

This Court has rejected the argument that nesting constitutional provisions within constitutional provisions insulates the offending provisions from constitutional scrutiny many times. It has struck down the State's infringements on municipal Home Rule authority, whether or not unconstitutional provisions are passed in isolation, are passed alongside provisions that are constitutional, or are passed to become part of an existing statutory scheme, the balance of which is constitutional.

In *Canton v. State*, 95 Ohio St.3d 149, 2002-Ohio-2005, 766 N.E.2d 963, ¶ 2, the General Assembly passed a four-part statute governing manufactured homes. Subsections (A) and (B) of the statute related to federal construction and safety standards. *Id.* Subsection (C), however, forbid municipalities from restricting the location of manufactured homes from any area where single-family homes were permitted. *Id.* This provision contradicted a Canton municipal ordinance that banned manufactured homes in the city. *Id.* at ¶ 1. Subsection (D) created an exception to subsection (C) for private landowners who wanted to ban manufactured homes through restrictive covenants in private deeds. *Id.* at ¶ 2. Although the legislation in question had four separate subsections, and Canton admitted that the first two subsections were constitutional, this Court held that subsections (C) and (D) violated the Home Rule Amendment. *Id.* at ¶ 39. The presence of the constitutional subsections had no impact on this conclusion, and the Court held that the appropriate remedy was to sever subsections (A) and (B) from the unconstitutional subsections (C) and (D). *Id.*

Similarly, in the recent case of *Cleveland v. Ohio*, 138 Ohio St.3d 232, 2014-Ohio-86, 5 N.E.3d 644, ¶¶ 16-17, this Court struck down half of a state law that granted the Public

Utilities Commission of Ohio (“PUCO”) authority to regulate towing companies as “for-hire motor-carriers.” The law in question had two sentences. The first sentence provided that anyone engaged in towing of motor vehicles was subject to regulation by PUCO as a for-hire motor carrier. *Id.* at ¶ 5. The second sentence, however, provided that “[s]uch 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.” *Id.* This Court held that the first sentence was constitutional, but the second sentence unconstitutionally “purport[ed] to limit legislative power of a municipal corporation to set forth police, sanitary, or similar regulations,” in violation of the Home Rule Amendment. *Id.* at ¶ 16. The constitutionality of the first sentence did not redeem the unconstitutionality of the second sentence. *Id.* at ¶ 20. Rather, as in *Canton*, the Court held that “severing the second sentence of the statute is appropriate.” *Id.*

*Linndale v. State*, 85 Ohio St.3d 52, 54, 706 N.E.2d 1227 (1999), involved a traffic law that the State argued would become part of the “comprehensive statewide regulatory scheme covering the interstate highway system.” The new law prohibited municipal police from issuing speeding or vehicle weight violations on interstate freeways if (1) the municipality had fewer than 880 yards of freeway in its jurisdiction, (2) law enforcement officers had to travel outside the jurisdiction to enter the freeway, and (3) law enforcement entered the freeway with the primary purpose of issuing such citations. *See* R.C. 4549.17. Even though the state regulates interstates generally and has promulgated a uniform motor vehicle code under R.C. 4511, *et seq.*, this Court held, “The statute before us is not a party 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.... Moreover, this enactment does not prescribe a rule of conduct upon citizens generally as required by this court.” *Linndale*, 85 Ohio St.3d at 55, 706 N.E.2d 1227.

This Court’s decisions on constitutional issues outside the Home Rule context and illustrate that the Court has no hesitation about excising unconstitutional provisions from legislative enactments, and that the presence of other provisions that are constitutional will not save unconstitutional provisions. In *The Village of Euclid v. Camp Wise Assn.*, this Court held that a state law requiring municipalities that operated waterworks to provide free services to charitable organizations was unconstitutional in violation of the Ohio constitutional requirement that legislation have uniform operation throughout the state. 102 Ohio St. 207, 214-15, 131 N.E. 349 (1921) (citing Ohio Constitution, Article II, Section 26). In so holding, the Court acknowledged that “[t]he sections of the Code under consideration contain many provisions other than the ones having a direct bearing upon this controversy” that “were undoubtedly constitutional,” and severed them. *Id.*

Similarly, in *State v. Bodyke*, 126 Ohio St.3d 266, 2010-Ohio-2424, 933 N.E.2d 753, this Court struck down certain provisions of “Megan’s Law” that would have retroactively reclassified certain offenders who had already been classified by the courts. Because Megan’s Law also included provisions that were constitutional, the Court held that severance—not unqualified deference to the General Assembly—was “the proper remedy.” *Id.* at ¶ 66. “By excising the unconstitutional component ... the remainder of the AWA, ‘which is capable of being read and of standing alone, is left in place.’” *Id.* (internal citations omitted); *see also Simmons-Harris v. Goff*, 86 Ohio St.3d 1, 39, 711 N.E.2d 203 (1999) (school voucher program, inserted into budget bill, found unconstitutional in violation of one-subject rule, but remaining provisions severed).

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, as the trial court below determined. “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.” *Id.* 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 Akron, and does not create rules of conduct governing Ohio’s citizens. S.B. 342 is unconstitutional in violation of the Home Rule Amendment to the Ohio Constitution, and the Second District’s decision should be reversed.

### **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

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