

**IN THE SUPREME COURT OF OHIO**

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

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**MERIT BRIEF OF AMICUS CURIAE, CITY OF TOLEDO  
IN SUPPORT OF APPELLANT**

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## **STATEMENT OF FACTS**

Toledo is an Ohio charter municipality established and governed pursuant to the Ohio Constitution. The City of Toledo passed an Ordinance creating an automated traffic-law-enforcement system within its corporate limits. Because provisions of 2014 Am.Sub.S.B. No. 342 (“S.B. 342”), if enacted, would have effectively prevented Toledo from enforcing the Ordinance, the City filed suit against the State on March 12, 2015 seeking a declaration that provisions of S.B. 342 were unconstitutional and additionally seeking preliminary and permanent injunctions prohibiting the State from enforcing the unconstitutional provisions. The trial court found that several provisions of S.B. 342 were not general laws and violated Article XVIII § 3 of the Ohio Constitution. The trial court permanently enjoined the State from enforcing the specified sections of S.B. 342 and the State appealed to the Sixth District. The appeal has been fully briefed and is currently decisional.

Toledo accepts and adopts the City of Dayton’s Statement of Facts and procedural history as it relates to Dayton’s program and the litigation in this case. To summarize, Dayton, through its home rule authority, created an automated traffic-law-enforcement system. Because enactment of S.B. 342 would have ended the ability of Dayton to keep this system, Dayton sued the State of Ohio in the Montgomery County Court of Common Pleas. The Trial Court held that there were three provisions within S.B. 342 that violated the Home Rule Amendment of the Ohio Constitution. The State of Ohio appealed to the Second District Court of Appeals who overturned the Trial Court’s decision. Dayton appeals the Second District’s decision.

This case involves three contested provisions of S.B. 342 that are codified as R.C. 4511.093 (the officer present requirement), 4511.095 (the device deployment prerequisites, including a three-year study and public information campaign), and 4511.0912 (the speeding leeway provision). Collectively these statutes will be referred to as the “Contested Statutes.” In analyzing the purpose of the Contested Statutes, it is helpful to review the final debates, which took place in the two chambers of the General Assembly just before passage votes on S.B. 342. The legislation was relieved from committee on November 19, 2014 and passed by the Senate on the same day. On the chamber floor, Senator William Seitz, the primary sponsor, explained that the House had previously sought to explicitly ban automated traffic-law-enforcement systems with H.B. 69. (2013 Am. H.B. No. 69 130<sup>th</sup> General Assembly).<sup>1</sup> However, because of concerns that an explicit ban would be held an unconstitutional violation of home rule, passage of H.B. 69 was not pursued. *Id.* Senator Seitz admitted that, with one exception, he “plagiarized *in toto*” S.B. 342 from Senator Kevin Bacon’s legislation to regulate automated traffic-law-enforcement systems. The sole difference in Senator Seitz’ version was the requirement that a law enforcement officer be present at the location of the device while it is being operated. *Id.* Senator Bacon stated that he believed that there were circumstances of abuse with these automated systems, which was why he supported legislation to regulate them.<sup>2</sup> However, Senator Bacon also recognized the substantial public safety benefits of these systems which included: a 74% reduction of right-angle crashes in Columbus, a 47% decrease of crashes in Springfield, a 39% reduction of red-light-running fatalities in Toledo and a 35% reduction of red-light running in Dayton. *Id.*

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<sup>1</sup> Speech of Sen. William Seitz, Ohio Senate, November 19, 2014 available at <http://ohiosenate.gov/session/session-video-library>.

<sup>2</sup> Speech of Sen. Kevin Bacon, Ohio Senate, November 19, 2014 available at <http://ohiosenate.gov/session/session-video-library>.

Senator Bacon did not support S.B. 342 because the impact of adding the officer present requirement made this bill “worlds apart” from his own. *Id.* Senator Bacon explained that “we all know that adding a police officer at the intersection will in effect ban the use of speeding and red-light cameras.” *Id.*

The legislation passed the Senate and it was debated on the floor of the House on December 10, 2014. Representative Ron Maag explained that while S.B. 342 was not the same bill as H.B. 69, “it is the next best thing....”<sup>3</sup> Representative John Patrick Carney was more blunt when he explained that the bill was “an attempt to just outright ban red-light cameras. The idea that we are going to take limited police resources and require them to actually physically sit at these cameras to monitor the intersections does not make good sense.”<sup>4</sup>

S.B. 342 was designed to look like a series of regulations when, in fact, it is actually a ban. The fact that the legislation creates a ban is supported by math. 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.<sup>5</sup> This new cost was more than quadruple the amount of fine revenue generated state-wide from current devices. *Id.* In other words, the cost of an “automated” traffic-law-enforcement system under S.B. 342 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 systems by making them too expensive to use.

Both the legislative intent and the actual effects of S.B. 342 demonstrate that the statute is actually a ban on a constitutionally-protected exercise of home rule authority.

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<sup>3</sup> Speech of Rep. Ron Maag, Ohio House, December 10, 2014 available at <http://www.ohiohouse.gov/session/session-video-library>.

<sup>4</sup> Speech of Rep. John Patrick Carney, Ohio House, December 10, 2014 available at <http://www.ohiohouse.gov/session/session-video-library>.

<sup>5</sup> See <http://www.lsc.ohio.gov/fiscal/fiscalnotes/130ga/sb0342sp.pdf>.

## ARGUMENT

### **A. Summary of Argument**

At stake in this case is the fate of Article XVIII § 3 of the Ohio Constitution - the “Home Rule Amendment.” For almost one hundred years this provision has preserved the basic tenet that Ohio cities should have the latitude through their democratic processes to address local issues –locally. Of course, there have been bumps along the road and, invariably, local ordinances and state statutes have clashed on occasion. These occasions led to the creation of a body of precedent and tests that have defined the perimeters of state and local authority. The Contested Statutes of S.B. 342 represent an attempt by the State to disguise a proverbial wolf -an improper, an absurd, limit on municipal authority - in the sheep’s clothing of a “comprehensive legislative enactment.” If the State prevails in this case, home-rule powers will be fatally eviscerated. Anytime a majority in the General Assembly disagrees with a local law they can simply restrict the municipal law however they want so long as they dress the restriction up as a part of an alleged “uniform, comprehensive, statewide statutory scheme.”

This Court has made it clear that Ohio cities may create automated traffic-law-enforcement systems and corresponding administrative processes for those programs under the authority of the Home Rule Amendment. *Mendenhall v. City of Akron*, 117 Ohio St.3d 33, 2008-Ohio-270, 881 N.E.2d 255 at ¶ 39; *Walker v. City of Toledo*, 143 Ohio St.3d 420, 2014-Ohio-5461, 39 N.E.3d 474 at ¶ 13. This Court has been consistent in finding that provisions in state statutes that serve “simply as a limit on the legislative powers of municipal corporations to adopt and enforce specified police regulations” or that do not “prescribe a rule of conduct upon citizens generally” are not general laws and, therefore, cannot usurp local exercise of Home Rule. *Linndale v. State*, 85 Ohio St.3d 52, 706 N.E.2d 1227 (1999); *Canton v. State*, 95 Ohio St.3d 149, 2002-Ohio-2005, 766 N.E.2d 963; *West Jefferson v. Robinson*, 1 Ohio St.2d 113, 205 N.E.2d 382 (1965).

This Court has also held that it is possible for a legislative act -a statute- to be a general law but have portions that violate home-rule. When that happens, the offending portion of the legislative act should be severed. *Cleveland v. State*, 138 Ohio St. 3d 232, 2014-Ohio-86, 5 N.E.3d 644 at p. 236.

The State argues that because these provisions are included in a larger legislative act, they are not merely limits on municipal authority, they constitute general laws. In addition, the State argues that the decisions in the *Linndale* and *Canton* cases only apply where the State is specifically prohibiting municipal action. Not only were these arguments specifically rejected in *Linndale* and *Canton*, but adopting them would eviscerate the Home Rule Amendment of the Ohio Constitution.

**B. 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.**

The Trial Court properly found that the Contested Statutes are not general laws because they serve no purpose other than to limit municipal legislative power and do not prescribe rules of conduct on citizens generally. Under the Home Rule Amendment, “[m]unicipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws.” Article XVIII, Section 3. This Court has explained that “[t]he purpose of the Home Rule amendment was to put the conduct of municipal affairs in the hands of those who know the needs of the community best, to-wit, the people of the city.” *Northern Ohio Patrolmen’s Benevolent Ass’n v. Parma*, 61 Ohio St.2d 375, 379, 402 N.E.2d 519 (1980).

The City of Dayton’s automated photo-enforcement program was lawfully enacted pursuant to its constitutionally protected home rule powers and through local democratic process. This Court has specifically ruled that automated traffic-law-enforcement systems fall squarely

within a municipality's home-rule authority, and are not dependent upon the State Legislature. See *Walker*, 2014-Ohio-5461; *Mendenhall*, 117 Ohio St.3d at 41.

As Dayton's program was lawfully enacted by ordinance under its home rule authority, S.B. 342's provisions can only take precedence if: (1) the ordinance is an exercise of police power, rather than of local self-government; (2) the relevant statutes of S.B. 342 are general laws; and (3) the ordinance is in conflict with the statute. *Mendenhall, supra*.

In this case, the Trial Court correctly found that the Contested Statutes created by S.B. 342 were unconstitutional because they are not general laws. In so ruling, the Trial Court properly relied, for the most part, upon the cases of *Linndale v. State*, 85 Ohio St.3d 52, 706 N.E.2d 1227 (1999) and *Canton v. State*, 95 Ohio St.3d 149, 2002-Ohio-2005, 766 N.E.2d 963.

This Court set forth a four-part test for evaluating whether a statute is a general law in *Canton*, 95 Ohio St.3d 149:

[t]o constitute a general law for purposes of home-rule analysis, a statute must (1) be part of a statewide and comprehensive legislative enactment, (2) apply to all parts of the state alike and operate uniformly throughout the state, (3) set forth police, sanitary, or similar regulations, rather than purport only to grant or limit legislative power of a municipal corporation to set forth police, sanitary, or similar regulations, and (4) prescribe a rule of conduct upon citizens generally.

(Emphasis added.) *Id.* at syllabus. A statute must meet each of the *Canton* factors in order to be a general law. If the relevant provisions of a statute fail to meet any one of these four factors, the provisions are not general laws and are invalid under Ohio's Home Rule Amendment. *Id.* at ¶

21. In reversing the Trial Court, the Court of Appeals misapplied the third and fourth factors of the *Canton* test as they relate to the Contested Statutes.

The Contested Statutes of S.B. 342 are not general laws because they serve no purpose other than to impermissibly restrict municipal legislative powers and do not prescribe a rule of conduct upon citizens generally.

### **1. The Contested Statutes Impermissibly Limit Municipal Power**

The Home Rule Amendment prohibits both limitations and outright prohibitions of municipal legislative authority. The plain terms of the Contested Statutes absolutely *prohibit* municipalities from issuing speeding or red light violations unless unfeasible conditions are met.

There must be an officer present. R.C. 4511.093. New automated devices cannot be deployed unless a series of prerequisites are met including a three-year study and public relations campaign. R.C. 4511.095. Tickets may not be issued unless the speeding driver is over the speed limit by a specified amount. R.C. 4511.0912.

The worst of these three sections, however, is the officer present requirement. Legislators in both chambers knew at the time the vote was taking place that this provision would serve as a ban on automated-traffic-law systems. As the *Canton* court recognized in interpreting this third prong of the *Canton* test, general laws do not include those “which purport only to grant or to limit the legislative powers of a municipal corporation[.]” (Emphasis added.) 95 Ohio St. 3d at ¶31. There is no question that S.B. 342 limits municipal authority in a myriad of ways, and that its purpose is to do just that. The stated purpose in the preamble of S.B. 342 is to limit what municipalities can do with respect to automatic traffic-law-enforcement systems.

It is exactly the type of restrictive legislation directed towards municipalities, but not connected to a broader statutory scheme, that this Court has held to be unconstitutional in *Canton, Linndale, and Cleveland v. State*, 138 Ohio St.3d 232, 2014-Ohio-86, 5 N.E.3d 644

(striking down a portion of state statute prohibiting municipalities from enacting laws governing licensing, registering, and regulation of tow vehicles).

Because the Contested Statutes limit municipal power, they fail to pass the third factor of the *Canton* test are unconstitutional violations of the Home Rule Amendment.

## **2. The Contested Statutes Do Not Prescribe a Rule of Conduct on Citizens Generally**

No average Ohioan is going to install an automated traffic device on his or her street. The plain fact of the matter is that the Contested Statutes do not direct citizen conduct. The Contested Statutes direct the conduct of municipalities that chose to enact automated traffic-law-enforcement systems. In fact, almost all of S.B. 342 is directed towards regulating the conduct of municipalities.<sup>6</sup>

The Court of Appeals held that that S.B. 342 is a general law because when analyzed “in its entirety” it constitutes a comprehensive scheme that prescribes a rule of conduct on citizens generally. *Dayton v. State*, 2015-Ohio-3160, 26 N.E.3d 235 (2d Dist.) at ¶ 38. This Court has repeatedly rejected this argument and held that provisions in legislation that merely target municipal power are not general laws, regardless of the fact that they are placed in larger legislative enactments that provide rules of conduct on citizens generally. *See Linndale, supra; Canton, supra*. Courts are required to look at the actual effect of the challenged provisions. *Id.*

In *Linndale*, this Court found that legislation that limited municipal power to enforce the traffic code did not apply to citizens generally, despite the fact that it was part of the larger traffic code. The State argued that while the specific provisions in the legislation only limited

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<sup>6</sup> A great portion of S.B. 342 directs the administrative procedures a municipality must follow if it chooses to have an “automated” traffic-law-enforcement system. These sections are also unconstitutional, but unfortunately, not the subject of this appeal. On the other hand, there are only a handful of sections in the bill that are unrelated to the conduct of municipalities. For example, R.C. 3937.411 prohibits insurance companies from considering these violations. R.C. 4511.204(C)(2) requires the department of public safety to issue a report. R.C. 4511.0910 prohibits points from being assessed because of these violations.

municipal authority, that the legislation was part of the traffic code as a whole, which provided restrictions on citizens. *Linndale*, 85 Ohio St.3d at 54. This Court rejected this argument finding that the actual effect of the provisions was to place a limit “on the legislative powers of municipal corporations to adopt and enforce specified police regulations [and]...do not prescribe a rule of conduct upon citizens generally” and are not general laws. *Id.* at. 55. None of the Contested Statutes have any effect on the conduct of citizens generally.

Citizens do not decide where police officers should be stationed. Citizens do not conduct traffic studies. Citizens do not decide how much leeway to give drivers before enforcing the speed limit. The Contested Statutes affect the conduct of municipalities, which have home rule authority to make these resource and enforcement decisions. They are not general laws.

Similarly, in *Canton* the Ohio Supreme Court found that legislation that applies to municipal legislative bodies rather than citizens generally cannot be a general law. 95 Ohio St.3d 149, at ¶ 36. The State had passed a provision as part of a larger bill governing manufactured housing that, among other things, limited municipal authority to restrict manufactured housing. The legislation also contained provisions that established rules and requirements for the construction of manufactured housing. (*See* 122<sup>nd</sup> General Assembly, 1998 Am. Sub. S.B. 142). The State in *Canton* likewise attempted to argue that the prohibition was part of a larger legislative act that placed restrictions on citizens involving manufactured housing. However, this Court rejected the argument and looked to the actual effect of the specific legislative provisions. The Court found that the specific provisions in question did not prescribe a rule of conduct on citizens generally, and therefore were unconstitutional, even when reading the legislation as a whole.

The State also cited a number of cases for the proposition that if the prohibitions are part of a larger legislative enactment that they should be construed together as a general law. (*See Cleveland v. State*, 128 Ohio St.3d 135, 2010-Ohio-6318, 942 N.E.2d 370; *Ohio Assn. of Private Det. Agencies v. N. Olmstead*, 65 Ohio St.3d 242, 602 N.E.2d 1147 (1992); *Clermont Environmental Reclamation Co. v. Wiederhold*, 2 Ohio St.3d 44, 442 N.E.2d 1278 (1982).) However, in all of these cases the Ohio Supreme Court specifically analyzed the challenged provisions and determined that they served an important statewide purpose and were an integral part of a comprehensive regulatory scheme. There is no important statewide purpose to require a police officer to be present at an automated traffic camera.

The presence or absence of a police officer does not change the illegality of running a red light. The Contested Statutes serve no statewide interest, and bear no relationship to any public health, safety, or welfare issue. Rather, they serve only to limit municipal power and make photo enforcement programs too expensive –creating a *de facto* ban. As such, the Contested Statutes fail to pass the fourth factor of the *Canton* are unconstitutional violations of the Home Rule Amendment.

**C. 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 whole, they are also required to specifically analyze the challenged provisions to determine if they unconstitutionally limit cities’ home-rule authority.**

The Contested Statutes serve only to limit municipal power. This Court has been clear that legislation that “purports only to grant or limit the legislative power of a municipal corporation to set forth police, sanitary, or similar regulations” is unconstitutional in violation of the home-rule amendment. *West Jefferson v. Robinson*, 1 Ohio St.2d 113, 205 N.E.2d 382 (1965); *Linndale, supra*; and *Canton, supra*. Simply placing the limitations of municipal

legislative power in a larger legislative enactment and claiming that it serves a statewide purpose does not convert the limitations into general laws. *See Canton, supra; Linndale, supra*. This Court must analyze the Contested Statutes, and they will only pass constitutional muster if they serve an “overriding statewide interest.” *Canton* at ¶¶ 32-33; *Garcia v. Siffrin Residential Assn.*, 63 Ohio St.2d 259, 407 N.E.2d 1369 (1980) (finding restrictions in State statute were not general laws because they did not actually serve overriding statewide purpose).

In *Canton*, the Legislature passed a statute prohibiting local governments from passing zoning regulations that restricted manufactured housing. *Canton* challenged the legislation arguing that it violated its home rule rights under the Ohio Constitution, and was merely a limitation on municipal legislative power. The State argued that the prohibition was part of a larger legislative enactment to “provide statewide uniformity” and to “clarify the definition of a permanently sited manufactured home.” *Id.* at ¶ 20. In rejecting this argument, the Ohio Supreme Court held that “a statute which prohibits the exercise by a municipality of its home rule powers without such statute serving an overriding statewide interest would directly contravene the constitutional grant of municipal power.” *Id.* at ¶ 32. The Court noted that the prohibition of zoning restrictions did not serve any statewide interest, but only served to limit the legislative power of municipal governments and was unconstitutional.

Likewise, in *Linndale*, this Court again rejected this identical argument. The State passed a statute restricting municipal issuance of speeding tickets. The Village of *Linndale* challenged the state statute arguing that it violated its home-rule powers. In response, the State argued that the challenged provisions should be read in *pari materia* with the “statewide regulatory scheme covering the interstate highway system and that the general assembly enacted it to assure the traveling public that the law enforcement on the interstate highways was not occurring merely as

a revenue-raising plot.” *Linndale* at p. 54. The village, however, argued that the statute was a special law and could not rightfully restrict local police officers from enforcing local traffic laws. This Court rejected the State’s argument that the legislation served a statewide purpose. Instead, the Court found that the actual effect of the legislation was “simply a limit on the legislative powers of municipal corporations to adopt and enforce specified police regulations.” *Id.* at pg. 55.

More recently, in *Cleveland v. State*, 2014-Ohio-86, 138 Ohio St. 3d 232, 236, 5 N.E.3d 644, this Court made it clear through its actions that a statute that would otherwise be a permissible general law can still have parts that violate home rule. This Court found that a single sentence of a statute could be stricken where that sentence improperly sought to limit municipal authority.

Here, the Contested Statutes of S.B. 342 serve only to limit municipal power and are not general laws. The State’s claim that the Contested Statutes of S.B. 342 serve an important statewide purpose is more tenuous than the claims this Court rejected in *Canton* and *Linndale*. After all, S.B. 342 makes it clear that the entire act’s purpose was “to establish conditions for the use by local authorities of traffic law photo-monitoring devices to detect certain traffic law violations.” It is clear that “conditions,” as the word is used in the legislation is synonymous with “limitations.”

The officer present edict might have enjoyed the ruse of having some sort of larger comprehensive purpose if the statute required the law enforcement officer to do any actual policing. The officer need not witness or review anything for the ticket to be valid. All the statute requires of this hypothetical officer is to be a proverbial bump on the log. The only

reason this requirement exists is to take the “automation” out of automated traffic-law-enforcement system and limit municipal power.

Likewise, requiring the municipality to conduct a three-year traffic study before installing a new photo-enforcement device and not permitting municipalities to issue violations for speeding violations below a certain threshold serves no public safety purpose or statewide interest. Rather, these requirements further limit municipal legislative power, waste police resources and create an onerous burden for municipalities. These restrictions are not just limitations on a municipality’s police powers, but interfere with the powers of local self-government. They tell cities how to deploy its police force and mandate what information a municipality must collect before passing legislation. Even the dissent in the *Linndale* case would agree that this constitutes an unconstitutional infringement of Dayton’s home-rule powers. The dissent in *Linndale* gave examples of what they believed would be blatantly unconstitutional conduct by the State. These included “trying to tell Linndale how many traffic lights it should have, how to enforce jaywalking laws, or how many police officers to hire.” *Id.* at 56 (Pfeifer, J. dissenting). This is precisely what the State is attempting to do in this case, and is a violation of Dayton’s home-rule powers of local self-government.

Nor is it readily apparent that the Contested Statutes are part of a statewide comprehensive enactment. To be sure, the Contested Statutes are placed in Revised Code Chapter 4511, which is a statewide motor vehicle code. However, placing the Contested Statutes in that Chapter does not magically convert them into general laws. After all, the unconstitutional statute struck down in *Linndale* was also placed in Chapter 4511. Candidly, the Contested Statutes do not fit. Unlike the other provisions of Chapter 4511 that establish a code of conduct upon the citizens, the Contested Statutes have no effect on the conduct of drivers generally.

The Contested Statutes do not change how an Ohio driver is permitted to drive. It is pretty clear that, as S.B. 342's preamble makes obvious, that the Contested Statutes are designed solely to limit local authority. The Contested Statutes are square pegs being squeezed into the round holes of Chapter 4511 in order to create the appearance of propriety.

### **CONCLUSION**

If the ruling of the Second District Court of Appeals is affirmed, home-rule as a constitutional principal is dead. To suggest, as the Second District clearly has, that the General Assembly can impose arbitrary limitations upon municipal authority simply by thinly disguising those limitations as part of a greater legislative scheme<sup>7</sup>, is to give the State carte blanche over local matters. This Court should reverse the Second District Court of Appeals, and hold that S.B. 342 is an unconstitutional violation of the Home Rule Amendment of the Ohio Constitution.

Respectfully submitted,

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<sup>7</sup> Though not raised by Dayton in its challenge below, there are substantial home rule issues implicated in various other sections of S.B. 342. These issues were raised by the City of Springfield in a brief seeking jurisdiction of this Court in Case No. 2016-0461.

**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing was sent via e-mail on this 11<sup>th</sup> day of April

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