

In the
Supreme Court of Ohio

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

**MERIT BRIEF OF DEFENDANT-APPELLEE
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INTRODUCTION

As this Court has recognized, an ongoing (often heated) national policy debate exists over whether traffic cameras are more motivated “by concerns over safety or by a desire to increase revenue.” *Mendenhall v. City of Akron*, 117 Ohio St. 3d 33, 2008-Ohio-270 ¶ 39; *cf. In re Disqualification of Ruehlman*, 136 Ohio St. 3d 1217, 2013-Ohio-2717 ¶ 6 (noting that a judge’s ruling against a village’s traffic-camera system called it “a ‘scam that motorists can’t win’”). In 2014, the General Assembly balanced these competing policy views in Am. Sub. S.B. 342 (the “Traffic Camera Act”), which provides a uniform traffic-camera framework. To use traffic cameras now, local authorities must have a police officer “present at the location of the device” during its operation, R.C. 4511.093(B)(1), conduct a “safety study” that includes traffic-accident data over the preceding three years for new locations, R.C. 4511.095(A)(1), notify the public of the new locations, R.C. 4511.095(A)(2), and issue tickets with a traffic camera only if a driver exceeds the speed limit by six miles per hour in a school zone, park, or recreation area, or ten miles per hour in other locations, R.C. 4511.0912. The City of Dayton and its *amici* challenge these provisions (the “Contested Provisions”), primarily arguing that they are “arbitrary” and designed to end traffic cameras even though the cameras have allegedly been good traffic-enforcement tools. *See* Dayton’s Br. 10, 13; *cf.* Toledo’s *Amicus* Br. 5; Akron’s *Amicus* Br. 3-9.

These arguments suggest that this case represents a mere extension of the *policy* debate into a new arena—from the General Assembly to the Court. That is not so. Whether traffic cameras are a good or bad idea should be of no concern to this Court. As a plurality noted in response to similar claims, “[t]his is no doubt an interesting policy question, but it is one for our elected representatives in the General Assembly, not the judiciary.” *State ex rel. Morrison v. Beck Energy Corp.*, 143 Ohio St. 3d 271, 2015-Ohio-485 ¶ 33 (plurality op.). Instead, this case involves a *legal* debate about the Home Rule Amendment, which grants to municipalities

unconditional “self-government” powers, but only *conditional* “police” powers that give way whenever the General Assembly enacts conflicting “general laws.” Ohio Const. art. XVIII, § 3. This Court’s precedents and the Home Rule Amendment’s original meaning both illustrate that the General Assembly acted within its authority when it passed the Contested Provisions.

To begin with, there can be no question (and Dayton does not dispute) that the traffic-related laws at issue in this case involve the *police* power (not the *self-government* power). As this Court noted when considering a similar traffic-camera provision, “[e]nactment of Akron’s ordinance is not an exercise of self-government but of concurrent police power.” *Mendenhall*, 2008-Ohio-270 ¶ 42. That is because “the regulation of traffic is an exercise of police power that relates to public health and safety as well as the general welfare of the public.” *Marich v. Bob Bennett Constr. Co.*, 116 Ohio St. 3d 553, 2008-Ohio-92 ¶ 14. This fact has significance for this case. By granting municipalities the authority to enact *only* those police ordinances that are not in conflict with general laws, the Home Rule Amendment’s framers “preserved the supremacy of the state in matters of ‘police, sanitary and other similar regulations.’” *City of Canton v. Whitman*, 44 Ohio St. 2d 62, 65 (1975) (citation omitted); see 2 *Proceedings and Debates of the Constitutional Convention of the State of Ohio* 1456 (1913) (“If you will read this proposal carefully you will see that the state is dominant.”). The State remains supreme in this traffic-related context.

In addition, the traffic-related laws at issue here are “general laws.” Since 2002, this Court has used four factors to determine whether a law is “general,” the last two of which Dayton invokes in this case: the law must *both* “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* “prescribe a rule of conduct upon citizens

generally.” *City of Canton v. State*, 95 Ohio St. 3d 149, 2002-Ohio-2005 syl. These two factors accomplish the same general goal: They ensure that a law regulating *municipalities* has some connection to other enactments that exercise the State’s police power over the *public*, and that the law does not simply regulate municipalities for the sake of regulating municipalities. Thus, since the time of the Home Rule Amendment’s enactment to the present day, the Court has repeatedly upheld laws that restricted municipal police powers when those laws were connected to the State’s exercise of its own police powers. In the traffic context, for example, the Court has upheld laws that banned municipal interference with state speed-limit provisions, *Schneiderman v. Sesanstein*, 121 Ohio St. 80, 85-90 (1929), and laws that required municipalities to enact and enforce permit programs for oversized vehicles on their streets, *Marich*, 2008-Ohio-92 ¶¶ 27-29.

The Contested Provisions fit this mold. They have a direct connection to state laws regulating the public as part of the State’s police power—e.g., the traffic laws that prohibit drivers from exceeding the speed limits or running red lights. *See* R.C. 4511.13(C), 4511.21(A). Indeed, a ruling against the Contested Provisions could upend the entire state traffic regime. Many laws, like the Contested Provisions, regulate a local authority’s traffic powers. Under state law, for example, the state manual for a uniform system of traffic-control devices “is binding upon local authorities.” *Winwood v. City of Dayton*, 37 Ohio St. 3d 282, 284 (1988). That manual requires municipalities to, among other things, use red stop signs and undertake engineering studies before placing traffic-control signals. *See* Ohio Dep’t of Transp., Office of Traffic Eng’g, *Ohio Manual of Uniform Traffic Control Devices* §§ 2B.05(02), 4C.01(01) (Jan. 13, 2012) (“Manual”), *available at* <http://goo.gl/DOLbeQ>. Similarly, state law bars local authorities from using undercover police for traffic control in order to “put a curb upon the speed traps which were often operated by ‘peace officers’ of the municipalities and townships.” *City of*

Dayton v. Adams, 9 Ohio St. 2d 89, 90 (1967). State law also generally bars local authorities from arresting individuals for minor traffic infractions, and this Court has held that municipalities violate the Ohio Constitution when they violate this *state* limit on their *local* authority. See *State v. Brown*, 99 Ohio St. 3d 323, 2003-Ohio-3931 ¶ 25. These state-law regulations regarding *traffic-control devices* or *police officers* are no different than the Traffic Camera Act's regulations regarding *traffic cameras*. Just as a local authority may not use blue stop signs or arrest drivers for every minor traffic infraction, so too that local authority may not use traffic cameras in conflict with state standards.

Aside from policy arguments, Dayton adds the legal argument that the Contested Provisions cannot qualify as police regulations over the public because they must be considered *in isolation* rather than with the entire state traffic regime. This conflicts with black-letter law. The Court has long held that a provision “should not be read and interpreted in isolation from the other sections of” the Revised Code. *Clermont Envtl. Reclamation Co. v. Wiederhold*, 2 Ohio St. 3d 44, 48 (1982). Instead, all laws on the same subject must be read in their “entirety” to determine whether a general law exists. *Ohio Ass’n of Private Detective Agencies, Inc. v. City of N. Olmsted*, 65 Ohio St. 3d 242, 245 (1992). The cases on which Dayton relies do not hold the contrary. In *Canton*, the Court held that a law limiting local zoning of manufactured homes was *not* part of a “statewide and comprehensive” scheme, and so the law could not have related to broader police regulations. 2002-Ohio-2005 ¶¶ 23, 31-36. The traffic-camera laws at issue here, by contrast, are part of the statewide traffic regime. And while *Village of Linndale v. State*, 85 Ohio St. 3d 52 (1999), involved a traffic law, that law targeted “certain cities” for special burdens; it did not apply uniformly throughout the State. *Id.* at 55. Here, by contrast, the Traffic Camera Act applies uniformly and statewide.

At day's end, the Home Rule Amendment's framers enacted a compromise. Municipalities gained the power to establish internal government structures, but not the power to regulate the citizenry in a way that conflicted with the General Assembly's choices. Yet Dayton (and the *amici* cities) ask the Court to undo that compromise by granting them supremacy in the police-power realm. This Court should reject that approach to the Home Rule Amendment today just as it has done in the past. "It is not the province of a court to write Constitutions or to give to the language used such forced construction as would warp the meaning to coincide with the court's notion of what should have been written therein." *Cleveland Tel. Co. v. City of Cleveland*, 98 Ohio St. 358, 368 (1918). The Court should adhere to the Home Rule Amendment that the People ratified in 1912, not the one that the cities wish they would have ratified.

STATEMENT OF CASE AND FACTS

A. The General Assembly has adopted a comprehensive scheme governing traffic on the public roads, one that regulates local authorities along with the public at large.

With the increasing use of the "automobile" in the early 1900s, a need to regulate traffic began to arise. See U.S. Dep't of Transp., Fed. Highway Admin., *The Evolution of MUTCD* (Oct. 20, 2015), <http://mutcd.fhwa.dot.gov/kno-history.htm>. In 1911, a "center line" was first used in Michigan; in 1914, an "electric traffic signal installation" was first used in Cleveland; and, in 1915, a "stop sign" was first used in Detroit. H. Gene Hawkins, Jr., *Evolution of the MUTCD: Early Standards for Traffic Control Devices*, ITE Journal, July 1992, at 23. In the early years, government and private entities developed a patchwork system of traffic control "with little regard for uniformity in appearance or consistency in use." *Id.* By the 1930s, however, more and more entities came to recognize the value of uniformity in traffic regulation; the Joint Committee on Uniform Traffic Control Devices emerged from this consensus. In 1935, that committee developed the first national "Manual of Uniform Traffic Control Devices." H.

Gene Hawkins, Jr, *Evolution of the MUTCD: Early Editions of the MUTCD*, ITE Journal, Aug. 1992, at 17. By the 1940s, uniform traffic control had become “widely recognized as one of the most important objectives in the program to reduce accidents and facilitate the orderly flow of traffic.” *Manual on Uniform Traffic Control Devices for Streets and Highways* 1 (Aug. 1948).

In 1941, Ohio responded to these concerns with a “uniform traffic act.” 119 Ohio Laws 766, 766 (1941). These provisions, as amended, are largely codified today in R.C. Chapter 4511. Chapter 4511 is a “comprehensive legislative enactment,” *Mendenhall v. City of Akron*, 117 Ohio St. 3d 33, 2008-Ohio-270 ¶ 23, that “provide[s] uniformity in traffic laws,” *State v. Parker*, 68 Ohio St. 3d 283, 284 (1994). The Chapter—along with regulations by the Ohio Department of Transportation (“Department”)—covers nearly every aspect of traffic on the roads.

1. *Traffic-Control Devices*. State law requires the Department to “adopt a manual for a uniform system of traffic control devices, including signs denoting names of streets and highways, for use upon any street, highway, bikeway, or private road open to public travel within this state.” R.C. 4511.09. This state manual must “correlate with, and so far as possible conform to, the system approved by the federal highway administration.” *Id.* That is because the United States grants federal highway funds to the States on the condition that they adopt state manuals substantially similar to the national one. *See* 23 U.S.C. § 109(d); 23 C.F.R. § 655.603(b).

State law and the state manual comprehensively regulate traffic-control devices, defined to include “sign[s], signal[s], marking[s], or other device[s] used to regulate, warn, or guide traffic.” R.C. 4511.01(QQ); *see also* Ohio Dep’t of Transp., Office of Traffic Eng’g, *Ohio Manual of Uniform Traffic Control Devices* § 1A.13(03)(247) (Jan. 13, 2012) (“Manual”), *available at* <http://goo.gl/DOLbeQ>. State law establishes the meaning of, among other things,

the familiar green, yellow, and red lights for traffic signals, R.C. 4511.13, and of the familiar walk and wait signals for pedestrian traffic, R.C. 4511.14.

The state manual regulates the placement and design of signs, markings, and signals. A few examples illustrate its breadth. Its chapters on signs note that a stop sign “shall be an octagon with a white legend and border on a red background,” Manual § 2B.05(02), that it must be at least “36 x 36” at multi-lane approaches, *id.* § 2B.03(6), and that “the decision to install multi-way stop control should be based on an engineering study,” *id.* § 2B.07(3). Its chapters on markings require center-line markings to be yellow, *id.* § 3B.01(01), edge-line markings to be solid white, *id.* § 3B.06(04), and speed-measurement markings for police to be white and no greater than 24 inches in width, *id.* § 3B.21(02). And its chapters on traffic-control signals indicate that entities must undertake an engineering study “to determine whether installation of a traffic control signal is justified at a particular location,” *id.* § 4C.01(01), and that they should cover or turn signal faces of traffic signals that are not in use, *id.* § 4D.01(03).

State and local authorities must follow the state manual. The *Department* “may place and maintain traffic control devices, conforming to its manual and specifications, upon all state highways.” R.C. 4511.10. *Local authorities* must place and maintain traffic-control devices on their respective roads in conformity with the state manual, and cannot purchase devices that do not meet the manual’s standards. R.C. 4511.11(A), (D)-(F). Local authorities bear responsibility for “the care, supervision, and control” of those roads, R.C. 723.01, and can be held liable for negligently maintaining the roads, R.C. 2744.02(B)(3), which are defined to encompass all traffic-control devices that are mandated by the state manual, R.C. 2744.01(H).

2. *Driver Regulations.* In addition to regulating traffic control by *governments*, Chapter 4511 regulates the use of the roads by *citizens*. State law establishes many rules of the road. It

requires that drivers adhere to lawfully placed traffic-control devices, R.C. 4511.12, use the right side of the road, R.C. 4511.25, pass vehicles in a particular way, R.C. 4511.27-.31, give sufficient space to nearby vehicles, R.C. 4511.34, turn at intersections in specific methods, R.C. 4511.36, and follow right-of-way rules, R.C. 4511.41-.48. State law also establishes many prohibitions for drivers, including that they not operate vehicles in a manner that shows “willful or wanton disregard” for the safety of others, R.C. 4511.20-.201, that they not drive while under the influence of alcohol or drugs, R.C. 4511.19-.194, and that they not text, R.C. 4511.204. And state law establishes a “comprehensive” scheme for speed limits. *Mendenhall*, 2008-Ohio-270 ¶ 21. It sets a general reasonableness standard and adds specific default rules for specific roads, ranging from 70 miles per hour for rural freeways, R.C. 4511.21(B)(14), to 15 miles per hour for municipal alleys, R.C. 4511.21(B)(7).

3. *Enforcement Limitations.* State law also regulates the police who enforce the traffic laws. Among other things, state and local officers who are on duty to enforce those laws must “wear a distinctive uniform,” R.C. 4549.15, and drive a vehicle that is “marked in some distinctive manner or color,” R.C. 4549.13. When officers do not do so, they may not testify about traffic violations that they witness. R.C. 4549.14, 4549.16. More generally, state law makes the violation of most traffic laws a minor misdemeanor. *See, e.g.*, R.C. 4511.99. Accordingly, state and local officers may only issue *citations* for those traffic offenses; they may not *arrest* traffic violators for minor misdemeanors except in limited circumstances. R.C. 2935.26(A). In addition, agencies with arrest power must establish a policy for the pursuit of vehicles that have violated the law. R.C. 2935.031. And they must follow general guidelines for the contents of warrants, summonses, and notices for violations of law. R.C. 2935.18.

B. Dayton and other municipalities began operating traffic cameras on top of the State’s comprehensive traffic regime, and the General Assembly responded with regulations tailored to those traffic-camera systems.

1. In 2002, Dayton placed “automated traffic control photographic systems” (“traffic cameras”) at various intersections to enforce civilly rather than criminally the ban on running red lights. Dayton App’x 51-59 (2002 ordinance). In 2010, Dayton began using cameras to civilly enforce speed violations as well. *Id.* at 60-66 (2014 ordinance); *id.* at 48. Dayton’s ordinance authorized its police department “to install and operate [traffic cameras] for enforcement of red light and speed violations.” Dayton Ord. § 70.121(A)(2) (Dayton App’x 60). Dayton would send to owners of vehicles that ran red lights or exceeded speed limits “notice[s] of liability” along with a traffic camera’s recorded images and a statement from an officer that the images show a prima facie violation. *Id.* § 70.121(D) (Dayton App’x 63). The ordinance gave the owner various options: (1) pay the civil penalty (up to \$250); (2) identify the driver of the vehicle, if it was someone other than the owner; or (3) request within 30 days a hearing before an independent officer (paying the fine in the interim). *Id.* § 70.121(E)-(F) (Dayton App’x 64-65).

Vehicle owners challenged local traffic-camera systems like Dayton’s soon after they were enacted. In 2005, those who had received tickets for violating Akron’s system sued on the ground that cities lack authority under the Home Rule Amendment to enact a civil-enforcement method for criminal laws. *Mendenhall*, 2008-Ohio-270 ¶¶ 9-12. This Court disagreed. It held that “an Ohio municipality does not exceed its home rule authority when it creates an automated system for enforcement of traffic laws that imposes civil liability upon violators, provided that the municipality does not alter statewide traffic regulations.” *Id.* at syl. That is because, the Court clarified, Akron’s system did not conflict with *then-existing* state law. *Id.* ¶¶ 28-37.

2. As with other traffic-related areas, the General Assembly began to establish uniform standards for traffic-camera systems in 2009. *See* Sub. H.B. 30 (127th G.A. 2008), *available at*

<http://goo.gl/cTgoMI>. Its first act imposed two mandates on local authorities that use traffic cameras. A local authority had to “erect[] signs on every highway . . . that enters that local authority . . . inform[ing] inbound traffic that the local authority utilizes” traffic cameras. R.C. 4511.094(B)(1) (2009). And a local authority had to ensure that the traffic signals at intersections using traffic cameras remained on the yellow light for at least one second longer than the traffic signals at similar non-camera intersections. *See* R.C. 4511.094(C) (2009).

Subsequently, in 2014, after a decade in which local authorities enacted a patchwork of traffic-camera regimes, the General Assembly considered additional legislation. This legislation arose for procedural and substantive reasons. As a matter of procedure, two courts of appeals had held that the *administrative* enforcement under these systems unconstitutionally encroached on the *judicial* power by “establish[ing] an administrative alternative” to the courts “without the express approval of the legislature.” *Walker v. City of Toledo*, 2013-Ohio-2809 ¶ 36 (6th Dist.); *Jodka v. City of Cleveland*, 2014-Ohio-208 ¶ 33 (8th Dist.). As a matter of substance, many felt an unease toward traffic cameras. Since the onset of traffic-camera systems, a national policy disagreement has existed over their use. *See* Office of the Majority Leader, U.S. House of Representatives, *The Red Light Running Crisis: Is it Intentional* (May 2001), available at App’x to Merit Br. of Pet’rs Janice Sipe et al., in *Mendenhall*, 2008-Ohio-270 (No. 2006-2265). As *Mendenhall* noted, this debate has centered on whether these systems are “motivated by concerns over safety or by a desire to increase revenue.” 2008-Ohio-270 ¶ 39. “[I]n Committee,” therefore, legislators “talked a lot about safety vs. the revenue.” Testimony of Rep. Bill Patmon, H.B. 69, attached to Ohio’s Mem. in Opp. to Mot. for Summ. J. (Ex. 2).

Ultimately, the General Assembly passed Am. Sub. S.B. 342 (the “Traffic Camera Act” or “Act”), to provide a statewide, uniform framework for traffic cameras. *See* Am. Sub. S.B. 342

(130th G.A.), available at <http://goo.gl/Bk1ntP>. The Traffic Camera Act permits local authorities to use “a traffic law photo-monitoring device for the purpose of detecting traffic law violations.” R.C. 4511.093(A). To clarify that a local authority may *administratively* enforce a traffic-camera system in the wake of decisions invalidating that enforcement, the Act removes the courts’ original jurisdiction over civil penalties and grants courts appellate jurisdiction instead. R.C. 1901.20. (After the General Assembly had sent the Act to the Governor, the Court itself reversed those decisions. *Walker v. City of Toledo*, 143 Ohio St. 3d 420, 2014-Ohio-5461 ¶ 29.)

At the same time, the Act imposes requirements on local authorities and manufacturers with respect to traffic cameras. A local authority must have a police officer “present at the location of the device” during its operation. R.C. 4511.093(B)(1). The local authority must post signs at its geographic borders (noting generally that the local authority uses traffic cameras) and at each location that uses a traffic camera (noting specifically that a camera is present). R.C. 4511.094(A)(1)-(2). It must conduct and make available to the public a “safety study” that includes traffic-accident data over the preceding three years for new locations at which it proposes to place cameras. R.C. 4511.095(A)(1). And it must conduct a public-information campaign to notify the public of new locations. R.C. 4511.095(A)(2). Manufacturers, by comparison, must provide maintenance records of their cameras to local authorities upon request, and must attest annually that the cameras are operating properly. R.C. 4511.0911(A), (B)(1).

In addition, the Act establishes uniform rules for ticketing. A police officer must examine the traffic camera’s recorded image to confirm that a violation has occurred. R.C. 4511.096(A). A “certified copy of the ticket” sworn by the officer becomes “prima facie evidence of the facts contained therein.” R.C. 4511.096(D). The local authority must send the ticket to the vehicle owner within 30 days, and the ticket must contain certain information,

including a copy of the record images, the amount of the penalty, and the owner's options. R.C. 4511.097(B)-(C). For speed-limit violations, a local authority may issue a civil ticket through its traffic-camera system only if a vehicle exceeds the speed limit by six miles per hour in a school zone, park, or recreation area, or by ten miles per hour in other locations. R.C. 4511.0912.

The Act also grants rights to the public. Vehicle owners may: (1) pay the penalty and waive their ability to contest liability; (2) provide an affidavit stating that another individual had been driving the vehicle at the time of the infraction; or (3) request a hearing to contest the ticket. R.C. 4511.098. If the owner contests the ticket, the owner may present evidence and assert affirmative defenses, including, for example, that the camera had been malfunctioning. R.C. 4511.099(A)(3), (C). The hearing officer must find a violation by a preponderance of the evidence, and may consider "the totality of the circumstances" when deciding whether to impose liability. R.C. 4511.099(A)(4), (C)(2). A party may appeal to the courts. R.C. 4511.099(G). The Traffic Camera Act also clarifies that the civil penalties do not qualify as moving violations. R.C. 4511.0910. And it bars insurers from using those penalties as a basis for refusing to provide insurance to a vehicle owner or for increasing the owner's premiums. R.C. 3937.411.

C. Dayton challenged the Traffic Camera Act under the Home Rule Amendment, and the trial court permanently enjoined enforcement of three provisions.

Dayton sued, claiming that the Traffic Camera Act violates the Home Rule Amendment. *City of Dayton v. State*, 2015-Ohio-3160 ¶ 2 (2d Dist.) ("App. Op.") (Dayton App'x 6). The court of common pleas granted partial summary judgment to Dayton. *City of Dayton v. State*, No. 2015-cv-1457 (Ct. Com. Pl. Apr. 2, 2015) ("Tr. Op.") (Dayton App'x 35). The court identified four factors to decide whether a law qualifies as a "general law" that trumps conflicting local ordinances. The law must: "(1) be part of a statewide and comprehensive legislative enactment, (2) apply to all parts of the state alike and operate uniformly throughout

the state, (3) set forth police, sanitary, or similar regulations, rather than purport only to grant or limit legislative power of a municipal corporation to set forth police, sanitary, or similar regulations, and (4) prescribe a rule of conduct upon citizens generally.” *Id.* at 30 (quoting *City of Canton v. State*, 95 Ohio St. 3d 149, 2002-Ohio-2005 ¶ 21).

The trial court held that the Traffic Camera Act met the first two factors. As for the first, the court held that the Act’s traffic-camera provisions were “part of a comprehensive and statewide legislative enactment” governing traffic. *Id.* at 31. As for the second, the court held that the Act applied uniformly throughout the State. *Id.* at 31-32.

The court determined, however, that three of the Act’s provisions (the “Contested Provisions”) failed the last two home-rule factors. With respect to the third factor, the court adopted a *provision-by-provision* approach that considered whether each provision, in isolation, established a police regulation or merely restricted municipal power. *Id.* at 33-35. It held that R.C. 4511.093(B)—the “Police Presence Provision” requiring a police officer to be present at an intersection using a traffic camera—was “an impermissible limit on a municipality to enforce its civil administrative laws for traffic control.” *Id.* at 33. It held that R.C. 4511.095—the “Study and Promotion Provision” requiring a municipality to conduct a safety study and give the public notice—also limited the municipality’s power to enforce traffic laws. *Id.* And it held that R.C. 4511.0912—the “Speeding Ticket Provision” prohibiting municipalities from issuing tickets to drivers unless they exceed certain speeds—improperly did the same. *Id.* at 34. With respect to the fourth factor, the court held—for identical reasons—that these provisions were “directed at municipal legislative bodies” and did not “prescribe a rule of conduct on citizens generally.” *Id.* at 34-35. The court permanently enjoined enforcement of the Contested Provisions. *Id.* at 35.

D. The Second District Court of Appeals reversed.

The State appealed to the Second District Court of Appeals. After appellate briefing but before the Second District's decision, the General Assembly passed the budget bill for Fiscal Years 2016 and 2017. *See* Am. Sub. H.B. 64 (131st G.A.). This bill enacted two provisions related to traffic cameras. The first directs local authorities to report to the State their compliance with Ohio's traffic-camera laws. If a local authority falls out of compliance, it must report the amount of fines issued for violations recorded by traffic cameras. R.C. 4511.0915(A)-(B). The second provision adjusts local-government funding. Local authorities that operate non-compliant traffic cameras (or that fail to report the status of their compliance) receive reduced local-government funds. R.C. 5747.502(B)-(C). These provisions are not part of this appeal.

Back in the Second District, the State's appeal focused on one issue: Was the Traffic Camera Act a general law? App. Op. ¶¶ 21-22. The State argued that the trial court mistakenly used a provision-by-provision approach to hold that the Contested Provisions were not police regulations (the third general-law factor) and that the Contested Provisions did not prescribe a rule of conduct on citizens generally (the fourth general-law factor). *See id.* ¶¶ 16-18. The Second District agreed with the State. *Id.* ¶¶ 39-41.

The court determined that the Traffic Camera Act satisfies the third general-law factor because it “provides for a uniform, comprehensive, statewide statutory scheme regulating the use and implementation of [traffic cameras] in Ohio, and was clearly not enacted to limit municipal legislative powers.” *Id.* ¶ 36. Although the Contested Provisions contain requirements that municipalities must follow, the Second District adhered to this Court's view that “‘sections within a chapter will not be considered in isolation when determining whether a general law exists.’” *Id.* ¶ 33 (quoting *Mendenhall*, 2008-Ohio-270 ¶ 27). Considering the statutory

framework as a whole, the court rejected Dayton’s argument that the General Assembly enacted the Traffic Camera Act merely to limit municipal power. *Id.*

The court next held that the Traffic Camera Act satisfies the fourth general-law factor for the same reason: because it contains rules ensuring “that traffic law photo-enforcement is implemented and regulated in the manner which best serves the statewide public interest and its citizenry.” *Id.* ¶ 37. It found that the trial court overlooked the many instances in which state law “directly and uniformly applied to all motor vehicle operators in Ohio.” *Id.* ¶ 38.

ARGUMENT

Appellee’s Proposition of Law:

Ohio’s traffic-camera provisions are general laws that displace conflicting municipal traffic-camera ordinances.

The Home Rule Amendment provides: “Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws.” Ohio Const. art. XVIII, § 3. While this text gives *unconditional* self-government powers to municipalities, it delegates only *conditional* police powers to them. Thus, Dayton’s concession that its traffic-camera ordinance originates with its police power illustrates that the State remains supreme in this traffic context so long as it acts through “general laws.” *See* Part A. To qualify as a “general law” under this Court’s four-part test, a law must apply uniformly throughout the State and have a connection to another law that exercises the State’s police power over its citizens. *See* Part B. Under this rubric, the Traffic Camera Act’s Contested Provisions qualify as general laws because they apply throughout the State and rationally relate to the traffic laws that exercise the State’s police power over the citizenry. *See* Part C. Dayton’s narrow view of “general laws,”

by contrast, conflicts both with decades of this Court’s cases and with the Home Rule Amendment’s basic design. *See* Part D.

A. Dayton’s concession that its traffic-camera ordinance originates with its *police* powers, not its *self-government* powers, shows that the State remains supreme in this traffic context.

1. The Home Rule Amendment delegates to municipalities both unconditional “powers of local self-government” and conditional powers to pass “local police, sanitary and other similar regulations” if those regulations do not “conflict with general laws.” Ohio Const. art. XVIII, § 3. This distinction between *self-government* powers and *police* powers shows that the amendment accomplishes two things—one internal to local government, the other external to local citizens.

Internally, the *self-government* powers give municipalities the exclusive right “to govern themselves.” *Am. Fin. Servs. Ass’n v. City of Cleveland*, 112 Ohio St. 3d 170, 2006-Ohio-6043 ¶ 27. That is, these powers “relate[] solely to the government and administration of the internal affairs of the municipality.” *Vill. of Beachwood v. Bd. of Elections*, 167 Ohio St. 369, syl. ¶ 1 (1958). Should a city use a mayor-council or manager-council form of government? *State ex rel. City of Bedford v. Bd. of Elections*, 62 Ohio St. 3d 17 (1991). Each city may decide those types of structural questions, *id.* at 19, making “it possible for different cities in the state of Ohio to have, if they so desire, different forms and types of municipal organizations.” *2 Proceedings and Debates of the Constitutional Convention of the State of Ohio* 1433 (1913) (“Const. Debates”); *State ex rel. Morrison v. Beck Energy Corp.*, 143 Ohio St. 3d 271, 2015-Ohio-485 ¶ 18 (plurality op.).

The self-government powers are both absolute and optional. They are *absolute* because a local charter’s self-government provisions trump conflicting general laws. *See, e.g., State ex rel. Ebersole v. Delaware Cnty. Bd. of Elections*, 140 Ohio St. 3d 487, 2014-Ohio-4077 ¶ 47; *State ex rel. City of Toledo v. Lucas Cnty. Bd. of Elections*, 95 Ohio St. 3d 73, 76 (2002). They are

optional because a municipality need not exercise these powers: The Home Rule Amendment alternatively requires the General Assembly to pass “[g]eneral laws” setting the default rules for the “incorporation and government of cities and villages.” Ohio Const. art. XVIII, § 2. If a municipality lacks a charter establishing its governance, a non-chartered municipality must abide by those general default rules. See *State ex rel. Ziegler v. Hamilton Cnty. Bd. of Elections*, 67 Ohio St. 3d 588, 588 (1993); *Morris v. Roseman*, 162 Ohio St. 447, syl. ¶ 2 (1954).

Externally, the *police powers* allow municipalities to regulate citizens so long as the regulations do not conflict with general laws. The Home Rule Amendment thus overturns the traditional rule of strict construction—known as the “Dillon Rule” after an Iowa Supreme Court justice—that narrowly restricted a municipality’s powers to those that were *clearly delegated* to them by the legislature. See *Ohio Patrolmen’s Benevolence Ass’n v. City of Parma*, 61 Ohio St. 2d 375, 378-79 (1980); see *City of Clinton v. Cedar Rapids & Mo. River R.R. Co.*, 24 Iowa 455 (1868) (Dillon, C.J.). The Home Rule Amendment’s police-power provision flipped this presumption, “provid[ing] that municipalities shall have the power to do those things which are *not prohibited*” by the legislature. 2 Const. Debates at 1433 (emphasis added).

Accordingly, unlike the Home Rule Amendment’s self-government powers (absolute powers that trump conflicting state laws), its police powers do *not* fundamentally alter the basic relationship between the State and its subdivisions as it existed before 1912. Rather, the Home Rule Amendment “preserve[s] the supremacy of the state in matters of ‘police, sanitary and other similar regulations,’” *City of Canton v. Whitman*, 44 Ohio St. 2d 62, 65 (1975) (“*Whitman*”), by allowing the State to “control [municipalities] in the exercise of [their] police power,” *Cleveland Tel. Co. v. City of Cleveland*, 98 Ohio St. 358, 381 (1918). In sum, “[n]either the municipality nor its officers are relieved of any obligation which other political subdivisions and other officers

owe to the state, except in the matter of local self-government, and such municipalities and their officers are still agencies of the state, acting in behalf of that portion of the state in which they have jurisdiction.” *Niehaus v. State ex rel. Bd. of Educ. of City Sch. Dist.*, 111 Ohio St. 47, 53 (1924); see *State ex. rel. McElroy v. City of Akron*, 173 Ohio St. 189, 194 (1962).

2. Dayton nowhere disputes that its traffic-camera ordinance originates with its police powers or that its ordinance conflicts with state law. Dayton’s Br. 11. That is for good reason. As this Court noted when considering a similar traffic-camera provision, “[e]nactment of Akron’s ordinance is not an exercise of self-government but of concurrent police power.” *Mendenhall v. City of Akron*, 117 Ohio St. 3d 33, 2008-Ohio-270 ¶ 42. Indeed, the Court has treated many traffic-related ordinances as flowing from the police power, including: ordinances regulating utility lines on public streets, *In re Complaint of Reynoldsburg*, 134 Ohio St. 3d 29, 2012-Ohio-5270 ¶¶ 25-31; ordinances regulating vehicles that may use those streets, *Marich v. Bob Bennett Constr. Co.*, 116 Ohio St. 3d 553, 2008-Ohio-92 ¶ 15; ordinances regulating the use of stop signs, *Tolliver v. City of Newark*, 145 Ohio St. 517, syl. ¶ 3 (1945), *overruled in part on other grounds by Fankhauser v. City of Mansfield*, 19 Ohio St. 2d 102 (1969); and ordinances regulating vehicle speeds, *Schneiderman v. Sesanstein*, 121 Ohio St. 80, 80-82 (1929).

The Court should keep in mind what this means for the big picture. Because this case involves the police powers, the State remains “supreme.” *State ex rel. Brickell v. Frank*, 129 Ohio St. 604, 614 (1935). Dayton may not “enact and enforce legislation which will obstruct or hamper the [State] in the exercise of” its traffic-related choices. *Niehaus*, 111 Ohio St. at 54. And because Dayton concedes that its traffic-camera choices conflict with state laws, the only remaining question is whether those state laws are “general.”

B. A “general law” may regulate municipalities or limit their police regulations if it applies statewide in a uniform and comprehensive manner, and has a rational connection to the State’s exercise of its own police-power choices.

Dayton may not enforce its traffic-camera ordinance if the conflicting state laws are “general laws.” Since 2002, this Court has invoked four factors to determine whether a law is “general.” *First*, the law must “be part of a statewide and comprehensive legislative enactment.” *City of Canton v. State*, 95 Ohio St. 3d 149, 2002-Ohio-2005 syl. *Second*, the law must “apply to all parts of the state alike and operate uniformly throughout the state.” *Id.* *Third*, the law must “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.” *Id.* *Fourth*, the law must “prescribe a rule of conduct upon citizens generally.” *Id.* The first two factors ensure that a law does not arbitrarily discriminate against a subset of municipalities; the second two ensure that a law does more than merely regulate municipalities qua municipalities.

1. Under the first and second general-law factors, state laws regulating or limiting municipal power apply comprehensively and uniformly when the laws cover all municipalities or reasonably distinguish between them.

The first general-law factor requires a law to “be part of a statewide and comprehensive legislative enactment.” *Id.* The second requires the law to “apply to all parts of the state alike and operate uniformly throughout the state.” *Id.* These factors address the same general concern—ensuring that a law *covers* the entire regulated class across the State, and does not *discriminate* in favor of or against certain entities or municipalities.

a. The first general-law factor requires *both* that a law cover all entities who fall within the relevant class that the law addresses (“comprehensive”) *and* that the law apply across the State (“statewide”). Under this test, a statewide law can be comprehensive even if the regulated “class” is quite small. The Court, for example, has upheld—as comprehensive—laws that applied only to “industrialized units,” *In re Decertification of Eastlake*, 66 Ohio St. 2d 363,

369 (1981), only to private detectives, *Ohio Ass’n of Private Detective Agencies, Inc. v. City of N. Olmsted*, 65 Ohio St. 3d 242, 245 (1992), only to hazardous-waste facilities, *Clermont Envtl. Reclamation Co. v. Wiederhold*, 2 Ohio St. 3d 44, 45-46 (1982), and only to for-hire motor carriers, *City of Cleveland v. State*, 138 Ohio St. 3d 232, 2014-Ohio-86 ¶ 10 (“*Cleveland Towing*”). These cases comport with the meaning of “general law” in 1912 when the Home Rule Amendment was enacted. One early case found a law to be “comprehensive” because it applied to *all* gas companies, distinguishing it from laws that targeted a *specified* few. *State ex rel. Att’y Gen. v. Cincinnati Gaslight & Coke Co.*, 18 Ohio St. 262, 298-99 (1868).

To be comprehensive, moreover, “[t]here is no requirement that a statute must be devoid of exceptions.” *Marich*, 2008-Ohio-92 ¶ 20. Put another way, a law’s “comprehensiveness” depends on *whom* it reaches, not on *how much* it regulates. “A comprehensive enactment need not regulate every aspect of disputed conduct, nor must it regulate that conduct in a particularly invasive fashion.” *City of Cleveland v. State*, 128 Ohio St. 3d 135, 2010-Ohio-6318 ¶ 21 (“*Cleveland Firearm*”). The Court, for example, held that a law that broadly *permitted* the concealed carry of firearms qualified as “comprehensive” because it applied to *all firearm owners* across the State. *Ohioans for Concealed Carry, Inc. v. Clyde*, 120 Ohio St. 3d 96, 2008-Ohio-4605 ¶¶ 40-41. In short, the Home Rule Amendment’s “statewide and comprehensive” element adopts a *neutral* test toward government regulation; it does not place a thumb on the scale in favor of regulatory-intensive laws over laws taking a more laissez-faire approach.

b. The second uniformity factor comes from the constitutional provision applying to laws “of a general nature”—namely, that those laws “have a uniform operation throughout the state.” Ohio Const. art. II, § 26. As relevant here, laws regulating municipalities satisfy this element if they “appl[y] to *all* municipalities in the same fashion.” *Beck Energy*, 2015-Ohio-485

¶ 23 (plurality op.) (emphasis added). Such laws “create[] no classifications.” *Clermont*, 2 Ohio St. 3d at 50. Thus, a law requiring municipalities to implement permit programs for oversized vehicles was uniform because it “require[d] all municipalities to create a written permit-application process, grant permits only for good cause shown, and issue permits in writing before an individual” could drive those vehicles. *Marich*, 2008-Ohio-92 ¶ 24. Likewise, a law regulating oil-and-gas wells was uniform because it “prohibit[ed] all local governments from interfering” in the oil-and-gas domain; it did “not create any classifications or exemptions favoring some over others.” *Beck Energy*, 2015-Ohio-485 ¶¶ 22-23 (plurality op.).

Indeed, laws may treat municipalities *non-uniformly* if the distinction between them has a rational basis. The State “may limit the application of a statute to a given class of people or objects, even if the result of the classification is that the statute does not operate in all geographic areas within the state, so long as the classification is a reasonable one and the statute operates equally upon every person and locality within such classification.” *Clermont*, 2 Ohio St. 3d at 49. A comparison of *Whitman* to *Village of Linndale v. State*, 85 Ohio St. 3d 52 (1999), shows when laws will (and will not) rationally distinguish between municipalities. The law in *Whitman* required municipalities to put fluoride in the water, but allowed municipalities to opt out via a referendum. 44 Ohio St. 2d at 69. The city asserted that this local-option provision made the law non-uniform because it permitted some areas to avoid the mandate. *Id.* This Court disagreed, noting that the local-option provision “made no discrimination between” localities and furthered an interest in local decisionmaking. *Id.* at 70-71. The law in *Linndale*, by comparison, prevented only a *small subset* of municipalities from issuing speeding tickets on interstate freeways. 85 Ohio St. 3d at 52-53. The law barred municipalities from issuing tickets if they: (1) had less than 880 yards of the freeway in their jurisdiction, (2) had no onramp in the

jurisdiction to enter the freeway, and (3) had their officers enter the freeway for the purpose of issuing tickets. *Id.* at 52. This Court held that the law was not general because it was “not a part of a system of *uniform* statewide regulation,” but targeted particular cities by “say[ing], in effect, *certain cities* may not enforce local regulations.” *Id.* at 55 (emphases added).

2. Under the third and fourth general-law factors, laws regulating or limiting municipal powers set “police regulations” that “prescribe rules of conduct on citizens generally” whenever those laws bear some plausible connection to other state laws exercising the State’s police power.

The third general-law factor requires a law to “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.” *Canton*, 2002-Ohio-2005 syl. The fourth requires the law to “prescribe a rule of conduct upon citizens generally.” *Id.* These factors place the same limit on “general laws”: A law expressly regulating *municipalities* must have a plausible connection to state laws exercising the police power over the *public at large*.

a. The third and fourth general-law factors require state laws to have a plausible connection to the State’s police power.

The third and fourth general-law factors address the same concern. Both require a law to have some connection to the State’s *police-power* choices for the *public*. Conversely, a law cannot seek *only* to grant or limit municipal powers in a way unmoored from this police power. This standard follows from the text of the two factors, from the cases that created them before *Canton* adopted its four-factor test, and from the cases that have applied them since *Canton*.

First, the factors’ language supports this reading. Saying that a law must “set forth police, sanitary, or similar regulations” (the third factor) or that it must set a “rule of conduct” on the citizenry (the fourth factor) are both ways of saying that the law must “relat[e] to the public health, safety, morals, or general welfare of the public.” *See Wymyslo v. Bartec, Inc.*, 132 Ohio St. 3d 167, 2012-Ohio-2187 ¶ 50 (describing contours of the State’s “police power”). By adding

this police-power requirement, the third factor (expressly) and the fourth factor (impliedly) both bar the State from enacting laws that do *nothing more* than grant or limit municipal power with no connection to some law that implements a State’s authority over the public’s health, safety, morals, or welfare. These factors thus prohibit the State from regulating municipalities qua municipalities, but allow the State to regulate municipalities if the regulation stems from *some* police-power choice that the State has made for the public at large.

Second, the pre-*Canton* cases that developed the third and fourth factors used them to describe this *same*, not a *distinct*, limit on “general laws.” The fourth factor came first, dating to *City of Youngstown v. Evans*, 121 Ohio St. 342 (1929). *Evans* addressed a law that *predated* the Home Rule Amendment. The law gave municipalities the generic power to make the violations of their ordinances a misdemeanor, but placed a cap on the punishment. *See* Ohio Gen. Code 3628 (1910). This law—enacted in the code section granting municipal powers—did not make a police-power choice about the proper punishment for specific activity. It was a regulation of municipalities, plain and simple. *See Evans*, 121 Ohio St. at 345. The Court thus held that it was “not a general law in the sense of prescribing a rule of conduct upon citizens generally” because it merely established “a limitation upon law making by municipal legislative bodies.” *Id.*

The Court used *identical* logic when it created the third general-law factor in *Village of West Jefferson v. Robinson*, 1 Ohio St. 2d 113 (1965). In that case, a municipal ordinance banned door-to-door sales. *Id.* at 114. An individual convicted under the ordinance argued that it conflicted with laws addressing municipal licensing of salespeople. *Id.* at 115-16. As in *Evans*, the state laws predated the Home Rule Amendment. *Compare* R.C. 715.64-.65, with Ohio Gen. Code 3672-73 (1910). The Court invalidated these laws based on *Evans*. *West Jefferson*, 1 Ohio St. 2d at 116-17. It noted that the state laws did not “regulate any activity” by

citizens—e.g., did not establish rules of conduct—and “purport[ed] only to grant legislative power to and to limit legislative power of municipal corporations to adopt and enforce certain police regulations.” *West Jefferson*, 1 Ohio St. 2d at 118. Accordingly, when *West Jefferson* used the language of the third general-law factor, it was *describing* what *Evans* meant by the statement that a law must establish a rule of conduct on citizens. Both factors require the law to have some connection to the State’s exercise of a police-power choice with respect to *citizens*.

Third, the Court’s post-*Canton* cases applying its four-part test confirm that these factors address the same concern. None of those cases has found that a law *violated* one of the two factors, but *satisfied* the other. Instead, the cases have for the most part found that a law either passed or failed *both* factors. *Compare Beck Energy*, 2015-Ohio-485 ¶¶ 19-20 (plurality op.) (finding that law passed both factors); *Cleveland Towing*, 2014-Ohio-86 ¶¶ 13-14 (same); *Reynoldsburg*, 2012-Ohio-5270 ¶¶ 47-49 (same); *Cleveland Firearm*, 2010-Ohio-6318 ¶¶ 27-29 (same); *Clyde*, 2008-Ohio-4605 ¶¶ 49-52 (same); *Mendenhall*, 2008-Ohio-270 ¶¶ 24-25 (same); *Marich*, 2008-Ohio-92 ¶¶ 27-29 (same); *Am. Fin. Servs. Ass’n*, 2006-Ohio-6043 ¶¶ 35-36 (same), *with Canton*, 2002-Ohio-2005 ¶¶ 31-36 (finding that law violated both factors); *Cleveland Towing*, 2014-Ohio-86 ¶ 16 (finding that portion of law violated third factor, without addressing the fourth factor either way). That the Court has, in practice, not reached differing outcomes for these two factors confirms their common core.

b. The Court routinely upholds laws regulating municipalities under the third and fourth general-law factors if those laws relate to other laws that exercise the State’s police-power choices over the public.

A law that regulates municipalities satisfies the third and fourth factors if it relates to a law that concerns the “public health and safety as well as the general welfare of the public.” *Clyde*, 2008-Ohio-4605 ¶ 50 (quoting *Marich*, 2008-Ohio-92 ¶ 14). Conversely, a law flunks these factors if it “purport[s] only to grant or limit” municipal power with *no* connection to state

police-power choices. *Canton*, 2002-Ohio-2005 syl. Given this framework, when deciding whether a law regulating municipalities has a connection to the State’s police-power choices, the law must “not be read and interpreted in isolation from the other sections of” the Revised Code on the subject. *Clermont*, 2 Ohio St. 3d at 48. Rather, “[a]ll such sections” should be “read *in pari materia*” to decide whether the law does *nothing more* than regulate municipalities. *Id.*; *Cleveland Firearm*, 2010-Ohio-6318 ¶ 29. Under this test, the Court has long upheld two types of laws regulating municipalities: (1) laws that limit a municipality’s ability to regulate citizens in areas where the State has made police-power choices, and (2) laws that regulate a municipality’s enforcement of the State’s police-power choices.

i. *Laws Limiting Municipal Power.* The State often authorizes *individuals* to engage in certain conduct, and restricts *municipalities* from interfering with the private conduct that it has allowed. In many contexts—from firearms to traffic—the Court has upheld these laws.

An early case upheld a law providing that the state provisions governing speed on the roads “shall not be diminished, restricted or prohibited by an ordinance, rule or regulation of a municipality or other public authority.” *Schneiderman*, 121 Ohio St. at 85 (quoting Ohio Gen. Code 12608). While this law limited *municipal* power, it had a connection to the State’s police power over the *public*. Laws governing speed were “safety regulations enacted in the interest of, and for the protection of, the public.” *Id.* at 84. And the law limiting municipalities showed that the State meant to permit “any rate of speed other than that expressly prohibited.” *Id.* at 86.

More recently, the Court applied the same logic to firearms. *Cleveland Firearm*, 2010-Ohio-6318 ¶ 35. R.C. 9.68 restricts municipal power over firearms: “Except as specifically provided by the United States Constitution, Ohio Constitution, state law, or federal law, a person, *without further license, permission, restriction, delay, or process*, may own, possess, purchase,

sell, transfer, transport, store, or keep any firearm, part of a firearm, its components, and its ammunition.” *Id.* (emphasis added). This Court upheld R.C. 9.68 because the ban on *municipal* firearm regulation was rationally connected to (“address[ed]”) the State’s police-power choice for the *public* (a choice to pass relatively light regulation of firearms in order to protect the public’s right to bear arms). *Cleveland Firearm*, 2010-Ohio-6318 ¶¶ 2, 27-29, 35.

Decisions issued in between these cases reaffirm this basic principle. The Court has upheld predatory-lending laws that permitted lending following state standards and prohibited “other regulation of such activities by any municipal corporation or other political subdivision.” R.C. 1.63; *Am. Fin.*, 2006-Ohio-6043 ¶¶ 35-36. It has upheld hazardous-waste-facility laws prohibiting municipalities from limiting a state-permitted facility’s activities. *Clermont*, 2 Ohio St. 3d at 49-50. And it has upheld industrialized-unit laws barring municipalities from imposing conflicting standards on those units. *Eastlake*, 66 Ohio St. 2d 363, syl. ¶ 1 & 365.

ii. *Laws Regulating Municipal Enforcement.* The State routinely regulates municipalities in their enforcement or implementation of a state regulatory scheme that has been established under its police power. The Court has just as frequently upheld laws of this sort.

An early case upheld a state building code that required *builders* to obtain permits for schools, and required *municipalities* with building inspection departments to review and issue permits for the school-building plans. *Niehaus*, 111 Ohio St. at 50-52. When Dayton refused to issue a permit to a local school board unless the board paid a fee required by an ordinance, the Court held that the law trumped the ordinance. *Id.* The state building code was “an exercise of the police power.” *Id.* at 52. And the requirement that municipalities undertake a permit program rationally related to this power. *Id.* Home-rule municipalities are “still agencies of the

state,” the Court held, and they may not “enact and enforce legislation” (like the fee provision) “which will obstruct or hamper the [State] in the exercise of” its police powers. *Id.* at 53-54.

This logic has more recent applications. For example, state traffic laws bar the *public* from driving oversized vehicles on the roads, but require *municipalities* to administer a permit system authorizing those vehicles. *Marich*, 2008-Ohio-92 ¶¶ 3, 24-27. The Court upheld this mandate that municipalities implement a permitting regime. The State’s regulation of oversized vehicles was “an exercise of the police power.” *Id.* ¶¶ 27-28. And the requirement that *municipalities* administer a permitting program had a connection to that power because it regulated enforcement of the oversized-vehicles ban on the *public*. *Id.* ¶ 27.

Many other cases permit the State to regulate municipal implementation of laws growing out of its police power. The Court has upheld a law requiring municipalities to implement the State’s police-power choice to put fluoride in the water. *Whitman*, 44 Ohio St. 2d at 68. It has upheld a law that allowed municipalities to license detectives but “prohibit[ed] the imposition of a local registration fee.” *Ohio Ass’n of Private Detective Agencies*, 65 Ohio St. 3d at 245. And it has upheld a tariff by the Public Utilities Commission of Ohio that permitted a city to require public utilities to move their overhead distribution lines underground, but that prohibited the city from charging the relocation costs to the utility. *Reynoldsburg*, 2012-Ohio-5270 ¶¶ 2-4, 42-51.

iii. *Laws With No Police-Power Connection.* The few laws that have failed the third and fourth factors have fallen into two camps. Some laws limiting municipal power have lacked—on their face—*any* connection to the police power. As noted, the cases that created these factors addressed laws that *predated* the Home Rule Amendment and were designed *solely* to grant municipal powers with no connection to state police-power choices. *West Jefferson*, 1 Ohio St. 2d at 118; *Evans*, 121 Ohio St. at 345. Those laws were holdovers from the Dillon Rule days

when the State had to codify every municipal right. The cases show that the State cannot regulate municipalities *merely* to regulate municipalities, but they say nothing about whether the State may regulate municipalities in connection with its police-power choices. *See also Cleveland Towing*, 2014-Ohio-86 ¶ 16 (invalidating “broad” law preempting *all* ordinances as applied to tow trucks, even those with *no* connection to state police-power choices).

Other laws limiting municipal zoning power have lacked a plausible connection to a state police-power choice. *See Canton*, 2002-Ohio-2005 ¶¶ 31-33; *Garcia v. Siffrin Residential Ass’n*, 63 Ohio St. 2d 259, 271 (1980). *Canton*, for example, invalidated a law barring a municipality from zoning out “manufactured homes” from areas in which the municipality allowed single-family homes. 2002-Ohio-2005 ¶¶ 2, 11. This law, the Court held, was not part of a statewide zoning code or a statewide manufactured-homes regime. *Id.* ¶¶ 23-30. The Court thus could not identify any connection to a state police-power choice. *Id.* ¶¶ 31-33. *Garcia* relied on similar reasoning when invalidating a state law designed to allow residential facilities for the intellectually disabled by preempting ordinances barring those facilities. 63 Ohio St. 2d at 270-71. It found that the law limiting zoning was “not reasonably related to” any police-power choice by the State. *Id.* at 271. (Ironically, five years later, the U.S. Supreme Court held that an ordinance requiring a special permit for a similar home violated equal protection because it rested on an “irrational prejudice against” the disabled. *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 450 (1985)).

c. This interpretation of the third and fourth general-law factors best adheres to the original meaning of the phrase “general laws.”

The original meaning of the phrase “general laws,” a legal term of art before 1912, supports reading the third and fourth factors narrowly to require *only* that a state regulation of municipalities have some plausible connection to the State’s exercise of its police powers. *See*,

e.g., Toledo City School Bd. of Educ. v. State Bd. of Educ., __ Ohio St. 3d __, 2016-Ohio-2806 ¶ 19 (looking to the “established meaning” of a term when it was initially enacted for guidance).

Near the time of the Home Rule Amendment’s adoption, dictionaries defined “general law” as follows: “A general law as contradistinguished from one that is special or local, is a law that embraces a class of subjects or places, and does not omit any subject or place naturally belonging to such class.” Henry Campbell Black, *A Law Dictionary* 701 (2d ed. 1910). The general law’s opposite—a “special law”—was “one relating to particular persons or things[,] one made for individual cases or for particular places or districts[,]” or “one operating upon a selected class, rather than upon the public generally.” *Id.*; *see, e.g.*, 1 Benjamin W. Pope, *Legal Definitions* 616 (1919); 1 John Bouvier, *Bouvier’s Law Dictionary* 877 (Francis Rawle ed., Boston Book Co. 1897). This Court’s cases defined “general law” in a similar way: ““A law framed in general terms, restricted to no locality, and operating equally upon all of a group of objects, which, having regard to the purposes of the legislation, are distinguished by characteristics sufficiently marked and important to make them a class by themselves, is not a special or local law, but a general law.”” *Bronson v. Oberlin*, 41 Ohio St. 476, 481 (1885) (citation omitted); *see Cincinnati St. Ry. Co. v. Horstman*, 72 Ohio St. 93, 109 (1905) (same); *Costello v. Vill. of Wyoming*, 49 Ohio St. 202, 211-12 (1892) (same).

Notably, it was established under these definitions that a general law could *expressly* regulate municipalities. A law that “relate[d] to certain municipal corporations as a class, and having a like effect upon all within the class [was] *general*,” the Court held, “but one that relate[d] to a particular municipality of a class [was] *special*.” *Bronson*, 41 Ohio St. at 481 (emphases added); *State ex rel. Att’y General v. Hawkins*, 44 Ohio St. 98, 108 (1886) (noting that “it is now too well settled by the decisions of this court to be called in question that

legislation may be adapted to the different classes into which the municipal corporations of the state have been classified” without violating any general-law mandate). Indeed, the Home Rule Amendment *itself* demonstrates that a “general law” may regulate municipalities. It *required* the General Assembly to pass “[g]eneral laws” regulating the “incorporation and government” of cities and villages. Ohio Const. art. XVIII, § 2. A special law with respect to municipalities, by contrast, was one that *targeted* specific municipalities for special benefits or burdens. *Cf. State ex rel. Att’y General v. City of Cincinnati*, 20 Ohio St. 18, 36-37 (1870).

C. The Traffic Camera Act’s Contested Provisions, when analyzed with the State’s comprehensive traffic regime, qualify as “general laws” because they extend to all municipalities and rationally relate to the State’s police-power choices over traffic.

The Traffic Camera Act’s Contested Provisions are “general laws.” Dayton does not dispute that the Contested Provisions satisfy the first two factors. Dayton’s Br. 11. Starting with the first, as a small component of the State’s broad traffic-related regulatory regime, the Traffic Camera Act and its Contested Provisions are “part of a statewide and comprehensive legislative” scheme. *Mendenhall*, 2008-Ohio-270 ¶ 23. Turning to the second, the Act and its Contested Provisions apply uniformly to all municipalities; they do not single out some municipalities for special benefits or burdens concerning their traffic authority. *Bronson*, 41 Ohio St. at 481; *cf. Linddale*, 85 Ohio St. 3d at 55 (striking down traffic law that applied only to “certain cities”).

The Contested Provisions satisfy the third and fourth general-law factors because they have a direct connection to the State’s exercise of its police power over traffic. *See Clyde*, 2008-Ohio-4605 ¶ 50; *Marich*, 2008-Ohio-92 ¶ 14. To be sure, the Contested Provisions address a *local authority’s* use of traffic cameras. But they cannot “be considered in isolation when determining whether a general law exists.” *Mendenhall*, 2008-Ohio-270 ¶ 27. Rather, they must be “read *in pari materia*” with the rest of the Revised Code to decide whether they relate to the exercise of state police-power choices. *Clermont*, 2 Ohio St. 3d at 48. Just as a law absolutely

banning local firearm ordinances must be assessed together with all state laws on firearms, *Cleveland Firearm*, 2010-Ohio-6318 ¶ 22, so too a law merely *regulating* local traffic-camera ordinances must be assessed together with all state laws on traffic. From this perspective, the Contested Provisions meet both general-law factors.

Police Regulations. As noted above, the Revised Code regulates all aspects of traffic on the public roads, from a government’s placement of traffic-control devices on those roads, to the rules of the road for drivers, to the rules of enforcement for police officers. *See supra* at 5-8. This exhaustive framework originates with the State’s police power. As the Court has noted, “the regulation of traffic is an exercise of police power that relates to public health and safety as well as the general welfare of the public.” *Marich*, 2008-Ohio-92 ¶ 14; *Reynoldsburg*, 2012-Ohio-5270 ¶ 29. And this traffic regulatory regime is just as extensive as, for example, the regime governing public utilities, *see Reynoldsburg*, 2012-Ohio-5270 ¶ 47, or the regime governing lending, *see Am. Fin.*, 2006-Ohio-6043 ¶ 35; *cf. Cleveland Firearm*, 2010-Ohio-6318 ¶¶ 27-28 (finding that firearm laws qualified as police regulations even though they had “many gaps” and were not as extensive as other States’ laws). In sum, the Revised Code’s numerous traffic-related laws qualify as classic police regulations, and do far “more than grant or limit” the powers of municipalities. *See Mendenhall*, 2008-Ohio-270 ¶ 24.

Rule of Conduct. As part of this police-power regulatory scheme, state laws prescribe countless rules of conduct for *citizens* using the roads. Of relevance here, state law requires the public to follow the speed limits at which vehicles may travel, *see* R.C. 4511.21(A), and to stop at red lights at intersections that have traffic signals, *see* R.C. 4511.13(C)(1)(a). State law generally makes the violation of these rules of conduct minor misdemeanors. *See* R.C. 4511.12(B); 4511.21(P). “These laws are safety regulations enacted in the interest of, and for the

protection of, the public, and they definitely fix and prescribe the standard of care that must be exercised in the operation of automobiles throughout the state.” *Schneiderman*, 121 Ohio St. at 84-85; *cf. City of Cleveland Heights v. Woodle*, 176 Ohio St. 113, 116-17 (1964) (invalidating city’s efforts to reduce speed limits below those set by state law). Indeed, the Court has *already* found that the speed-limit laws are general laws even though some of the provisions regulate municipal power. *See Mendenhall*, 2008-Ohio-270 ¶¶ 26-27; *see, e.g.*, R.C. 4511.21(I)-(J), (P).

Further, the Contested Provisions have a direct connection to these “police regulations” of traffic that establish “rules of conduct upon citizens” because they concern the *enforcement* of those very regulations. In that respect, the Contested Provisions fall comfortably within the second category of laws that this Court has repeatedly upheld. *See supra* Part B.2.b.ii. Like the laws at issue in *Niehaus*, *Marich*, *Whitman*, *Ohio Association of Private Detective Agencies*, and *Reynoldsburg*, the Traffic Act’s Contested Provisions regulate the *enforcement* or *implementation* of police regulations governing the public at large.

A comparison to *Marich* proves the similarity. There, as here, traffic laws regulated the public. In this case, the laws concern traffic signals and speed limits. *See* R.C. 4511.12, 4511.13(C)(1)(a), 4511.21(A). In *Marich*, the laws concerned oversized vehicles. *See* R.C. 5577.05, 4513.34. There, as here, state laws also imposed mandates on *municipal* enforcement of those traffic provisions. In this case, the State imposes mandates on municipalities that wish to use traffic cameras (e.g., that they have a police officer present at the intersection, that they conduct a safety study and give notice to the public, and that they issue tickets only for certain camera-captured speed violations). R.C. 4511.093, 4511.095, 4511.0912. In *Marich*, the State imposed mandates on municipalities that wished to have oversized vehicles traverse their roads (e.g., that they adopt a permit program, identify good cause, and issue the permit in writing).

Marich, 2008-Ohio-92 ¶ 24; R.C. 4513.34. If anything, this case is *easier* than *Marich*. Here, state law places no duty on municipalities to use traffic cameras. There, state law “require[d] municipalities to participate in the permit-review process.” *Marich*, 2008-Ohio-92 ¶ 27.

As *Marich* shows, the Contested Provisions fit next to many state laws regulating municipalities in the traffic context. After all, the State thoroughly regulates local authorities as part of its comprehensive regime, so a holding invalidating the Contested Provisions could throw the State’s entire traffic regime into doubt. Take the State’s regulation of traffic-control devices. State law requires municipalities to follow the state manual’s standards. R.C. 4511.11(A), (D). The state manual is “binding upon local authorities,” *Winwood v. City of Dayton*, 37 Ohio St. 3d 282, 284 (1988), and their violation of its mandates can subject them to tort liability, *see Darby v. City of Cincinnati*, 2014-Ohio-2426 ¶¶ 8-10 (1st Dist.). For example, as one of many requirements, the manual requires local authorities to use red stop signs. Manual § 2B.05(02); *cf.* R.C. 4511.11(F). State law thus prohibits the City of Cleveland from using brown stop signs to show pride in the Cleveland Browns, or the City of Dublin from using green stop signs to highlight Irish traditions. *Cf. City of Bowling Green v. McNamara*, 132 Ohio App. 3d 240, 242 (6th Dist. 1999) (overturning municipal citation for running stop sign because the sign did not comport with the state manual). Yet the manual’s regulations regarding *traffic-control devices* are no different than the Traffic Camera Act’s regulations regarding *traffic cameras*. Both types of laws regulate *municipal* traffic enforcement. And both satisfy the home-rule test because they have a direct connection to the State’s traffic-related, police-power regulations over the *public*.

Or take the police-enforcement context. State law prohibits local police officers from enforcing the traffic laws in particular ways. The State has long barred municipalities from using undercover police officers or undercover police cars to make it easier to catch traffic violators.

See R.C. 4549.13-.16. When overturning a citation that violated these rules, the Court noted that the State passed these provisions, in part, to “put a curb upon the speed traps which were often operated by ‘peace officers’ of the municipalities and townships.” *City of Dayton v. Adams*, 9 Ohio St. 2d 89, 90 (1967). The State also generally bars municipalities from arresting drivers for minor misdemeanors. R.C. 2935.26(A). This Court has held that a *municipality’s* violation of this *state-law* limit violates the Ohio Constitution’s ban on unreasonable seizures. See *State v. Brown*, 99 Ohio St. 3d 323, 2003-Ohio-3931 ¶ 25. It would be strange if the Ohio Constitution prohibited *both* a municipality’s violation of a state limit on their traffic enforcement *and* also the state limit on their traffic enforcement itself. And, again, these state-law regulations regarding *police officers* are no different than the Traffic Camera Act’s regulations regarding *traffic cameras*. Both regulate *municipal* enforcement of the traffic laws. And both have a direct connection to the State’s traffic-related, police-power regulations over the *public*.

D. Dayton’s reading of the third and fourth general-law factors would require the Court to overrule many cases and would fundamentally change the relationship between the State and its municipalities.

Dayton makes two general arguments why the Contested Provisions violate the third and fourth general-law factors: (1) because they limit municipal power when considered by themselves and (2) because they are arbitrary and irrational. Both arguments are mistaken.

1. Dayton wrongly takes a provision-by-provision approach to the home-rule analysis in conflict with many precedents from this Court.

When discussing the third factor, Dayton argues that the Contested Provisions, considered in *isolation*, “serve only to limit municipal power,” and that they cannot be considered as part of “a larger legislative” scheme on traffic. Dayton’s Br. 12. When discussing the fourth factor, Dayton makes the same point, noting that courts must “*specifically* analyze the

challenged provisions” by themselves. *Id.* at 15 (emphasis added). This argument ignores many of this Court’s decisions, and does not follow from the few cases that Dayton cites as support.

a. *Cases That Dayton Ignores.* For decades, the Court has recognized that “[c]onsidered in isolation, [a law regulating municipalities] may fail to qualify as a general law because it prohibits a municipality from exercising a local police power while not providing for uniform statewide regulation of the same subject matter.” *Ohio Ass’n of Private Detective Agencies*, 65 Ohio St. 3d at 245 (emphasis added). Yet this provision-by-provision approach would bar the State from regulating municipalities *at all* because laws will almost always establish police regulations in *one provision* and clarify the extent to which municipalities may interfere with the State’s police-power choices over the citizenry in *another*. See, e.g., *Am. Fin.*, 2006-Ohio-6043 ¶ 33; *Schneiderman*, 121 Ohio St. at 85. Accordingly, the Court has repeatedly held that a provision “should *not* be read and interpreted in isolation from the other sections of” the Revised Code on the same subject. *Clermont*, 2 Ohio St. 3d at 48 (emphasis added). Or, as another case noted, “sections within a chapter will not be considered in isolation when determining whether a general law exists.” *Mendenhall*, 2008-Ohio-270 ¶ 27. And, as one more said, a court of appeals “erred in considering [a law] in isolation.” *Cleveland Firearm*, 2010-Ohio-6318 ¶¶ 22, 29.

Contrary to Dayton’s provision-by-provision approach, therefore, the Court has repeatedly held that courts should “look[] to other statutes regulating the same subject to determine whether the particular statute in question” satisfies the general-law factors. *Id.* ¶ 29. Put another way, a chapter (and, indeed, the Revised Code) should be read “in its entirety” to determine whether it adopts police-power regulations on the subject. *Ohio Ass’n of Private Detective Agencies*, 65 Ohio St. 3d at 245; see *Cleveland Firearm*, 2010-Ohio-6318 ¶ 17 (relying on a “host of state and federal laws regulating firearms”). When “[a]ll such sections read *in pari*

materia do not merely prohibit political subdivisions of the state from regulation,” a single provision that does so will pass home-rule scrutiny. *Clermont*, 2 Ohio St. 3d at 48; *see Mendenhall*, 2008-Ohio-270 ¶ 27. In short, Dayton criticizes the Second District for doing *exactly* what this Court has repeatedly instructed lower courts to do: consider provisions governing municipalities as “part of a larger legislative enactment.” Dayton’s Br. 14; *but cf. Cleveland Firearm*, 2010-Ohio-6318 ¶ 29 (“consider[ing] the entire legislative scheme”).

Dayton’s view is thus irreconcilable with outcomes in many cases. An early case upheld a speed-limit law that expressly noted that state speed provisions “shall not be diminished, restricted or prohibited by” local authorities. *Schneiderman*, 121 Ohio St. at 85 (citation omitted). Recent cases have upheld laws expressly barring municipalities from imposing costs on public utilities, *Reynoldsburg*, 2012-Ohio-5270 ¶¶ 44-48, expressly prohibiting them from imposing “local registration fee[s]” on private detectives, *Ohio Ass’n of Private Detective Agencies*, 65 Ohio St. 3d at 245, expressly preventing them from regulating lending, *Am. Fin.*, 2006-Ohio-6043 ¶¶ 35-36, and expressly preempting their firearm regulations, *Cleveland Firearm*, 2010-Ohio-6318 ¶¶ 27-29. All of these provisions expressly regulate *municipalities*; all would be invalid if considered in isolation. That is not the law.

b. *Cases That Dayton Cites.* Given that this Court has repeatedly taken a comprehensive approach to the general-law analysis, it should come as no surprise that the two cases on which Dayton relies (*Canton* and *Linndale*) do not support its provision-by-provision view.

Dayton relies primarily on *Canton*. Dayton’s Br. 13-14, 16-17. But *Canton* does not justify Dayton’s request to consider provisions of a legislative regime in isolation. Indeed, *Canton* approvingly cited earlier cases that did the opposite: “examine statutes in *pari materia* with other sections of the same chapter rather than in isolation to determine whether they were

general laws.” *Canton*, 2002-Ohio-2005 ¶ 17 (citing *Clermont*). *Canton* applied this holistic approach to the facts of that case. While the State argued that the law preempting local zoning for manufactured homes “was part of a larger legislative enactment,” Dayton’s Br. 13, this Court disagreed. It held that the law was “not part of a statewide and comprehensive . . . plan.” *Canton*, 2002-Ohio-2005 ¶¶ 23-24. Thus, when the Court asked whether the law regulating municipalities had a plausible connection to laws establishing police regulations on the public, it answered “no” because there was no larger framework in which to place the law. *Id.* ¶¶ 31-37. Here, by contrast, Dayton nowhere disputes that the Contested Provisions are part of a comprehensive traffic regime. Dayton’s Br. 11. The Contested Provisions directly relate to traffic regulations of the public because they concern the enforcement of those very regulations.

Dayton’s reliance on *Linndale* is equally misplaced. Dayton’s Br. 12-13, 15. Like *Canton*, that case did not suggest that courts should consider a challenged provision in isolation; it too followed the Court’s holistic approach. Like *Canton*, however, the Court found that the law was not part of a statewide traffic regime and instead singled out a small number of municipalities for unique burdens: “The statute before us is not a part of a system of *uniform statewide regulation* on the subject of traffic law enforcement. It is a statute that says, in effect, *certain cities* may not enforce local regulations.” *Linndale*, 85 Ohio St. 3d at 55 (emphases added). Legislative efforts to target cities are classic “special” laws. Here, by contrast, Dayton nowhere disputes that the Contested Provisions are part of a *uniform* traffic regime that applies *statewide* and does not single out “certain cities” for unique burdens or benefits. This case, therefore, is not like the discriminatory law in *Linndale*; it is like the uniform law in *Adams* requiring police cars to have distinctive markings. 9 Ohio St. 2d 89. In sum, whether or not it is proper to consider a *non-uniform* law like the one in *Linndale* together with other statewide

regulations, it is proper to do so for *uniform* laws regulating municipalities like those at issue here. See *Cleveland Firearm*, 2010-Ohio-6318 ¶¶ 22, 29; *Mendenhall*, 2008-Ohio-270 ¶ 27; *Ohio Ass’n of Private Detective Agencies*, 65 Ohio St. 3d at 245; *Clermont*, 2 Ohio St. 3d at 48.

2. Dayton mistakenly makes policy arguments against the Contested Provisions that are more suited for the General Assembly than for the Court.

Dayton also attacks the policy choices underlying the Contested Provisions. The city and its *amici* argue, among other things, that the Contested Provisions are “arbitrary,” Dayton’s Br. 10, that they have “absolutely no relationship to the public health, safety, morals, or general welfare,” *id.* at 13, that they serve no “statewide interest,” *id.* at 14, and that they “waste police resources” and “create an onerous burden” for no benefit, *id.* Yet mere disagreement with a law does not turn it into a “special” law. These arguments are as irrelevant as they are mistaken.

a. *Dayton’s arguments are irrelevant.* The Court should not even consider Dayton’s policy arguments. As a general matter, the Court has noted in many contexts “that the General Assembly is ‘the ultimate arbiter of public policy’ and the only branch of government charged with fulfilling that role.” *State v. Blankenship*, 145 Ohio St. 3d 221, 2015-Ohio-4624 ¶ 37 (plurality op.) (quoting *Arbino v. Johnson & Johnson*, 116 Ohio St. 3d 468, 2007-Ohio-6948 ¶ 21); see also, e.g., *State ex rel. Ohio Civil Ser. Emps. Ass’n v. State*, ___ Ohio St. 3d ___, 2016-Ohio-478 ¶ 16; *State ex rel. Ohio Congress of Parents & Teachers v. State Bd. of Educ.*, 111 Ohio St. 3d 568, 2006-Ohio-5512 ¶ 20. Thus, “[t]his court is not the forum in which to second-guess such legislative choices; we must simply determine whether they comply with the Constitution.” *Arbino*, 2007-Ohio-6948 ¶ 71.

This bedrock principle implements the “separation of powers.” *Id.* ¶ 21. The Ohio Constitution vests “[t]he legislative power” (including the power to make policy choices for the public) in the General Assembly. Ohio Const. art. II, § 1. It vests the “judicial power”

(including the power to interpret the Constitution in concrete cases) in the courts. Ohio Const. art. IV, § 1. When Ohioans ratified these provisions in 1851, the “judicial power” had a well-established meaning that excluded the ability to invalidate laws as “arbitrary” or “bad.” At that time, it was well recognized that courts exercised “neither Force nor Will, but merely judgment.” The Federalist No. 78, p. 465 (C. Rossiter ed. 1961) (A. Hamilton). To ensure that they would stay within their policy-neutral sphere, moreover, courts established demanding judicial-review standards before they could invalidate laws. “The opposition between the constitution and the law should be such that the judge feels a clear and strong conviction of their incompatibility with each other.” *Fletcher v. Peck*, 10 U.S. 87, 128 (1810) (Marshall, C.J.); see *Cincinnati, Wilmington Zanesville R.R. Co. v. Comm’rs of Clinton Cnty.*, 1 Ohio St. 77, 82-83 (1852).

As a specific matter, Dayton identifies no case suggesting that courts should depart from this principle under the Home Rule Amendment by evaluating the wisdom of a law limiting municipal power to determine its “general law” status. “General” is not a synonym for “good.” As a plurality noted in a case in which a city asserted that the oil-and-gas laws were arbitrary, “[t]his is no doubt an interesting policy question, but it is one for our elected representatives in the General Assembly, not the judiciary.” *Beck Energy*, 2015-Ohio-485 ¶ 33 (plurality op.). And when the Court has held that a law was not “general,” it has not critiqued the law’s wisdom. In the zoning context, for example, the Court has invalidated laws limiting local zoning over *residential homes for the intellectually disabled*, see *Garcia*, 63 Ohio St. 2d at 271, while upholding laws limiting local zoning over *liquor establishments*, see *City of Westlake v. Mascot Petroleum Co.*, 61 Ohio St. 3d 161, 168 (1991). Neither of these decisions (one would hope) was based on a policy assessment of the laws. Instead, they were tied to whether the laws limiting zoning had a connection to police regulations over citizens generally.

In the same way, whether the Contested Provisions are sound policy choices for enforcing traffic laws should not concern this Court. Indeed, the Court has *already* made this clear. *Mendenhall* recognized the policy “disagreement” about whether traffic cameras are “motivated by concerns over safety or by a desire to increase revenue.” 2008-Ohio-270 ¶ 39. But it refused to enter the political thicket, noting that “[m]otivation does not play any role in home rule analysis.” *Id.* The Court should not enter that debate in this case, either, now that the General Assembly has acted in a way that conflicts with local ordinances. Instead, it should simply ask whether the Contested Provisions have a connection to the State’s police regulations over the public. That connection is plain—laws addressing *enforcement* of police regulations for the public have an obvious connection to those same police regulations.

One final point. Dayton’s argument conflicts with the Home Rule Amendment’s original meaning. By granting municipalities the authority to enact only those police regulations that are not in conflict with general laws, the framers recognized that the amendment’s plain text “preserve[d] the supremacy of the state in matters of ‘police, sanitary and other similar regulations.’” *Whitman*, 44 Ohio St. 2d at 65; *see* 2 Const. Debates at 1456 (“If you will read this proposal carefully you will see that the state is dominant.”). The amendment did not preserve the State’s supremacy only when the courts found that it had acted wisely. As the Court long ago noted to reject a city’s similarly broad view of its police powers vis-a-vis the State, “[i]t is not the province of a court to write Constitutions or to give to the language used such forced construction as would warp the meaning to coincide with the court’s notion of what should have been written therein.” *Cleveland Tel.*, 98 Ohio St. at 368.

In sum, once the Court concludes that a law regulating municipalities has a connection to the State’s police-power choices over the public, the analysis ends. The Court does not then ask

whether the General Assembly has regulated municipalities in the “right” way. Those policy choices are for the General Assembly, not for this Court.

b. *Dayton’s arguments are mistaken.* Regardless, the Contested Provisions are—at the very least—rational policy choices, not arbitrary ones. In that respect, a “legislative choice is not subject to courtroom factfinding and may be based on rational speculation unsupported by evidence or empirical data.” *Pickaway Cnty. Skilled Gaming, L.L.C. v. Cordray*, 127 Ohio St. 3d 104, 2010-Ohio-4908 ¶ 32 (citation omitted). And the “party challenging the constitutionality of a statute ‘bears the burden to negate every conceivable basis that might support the legislation.’” *Id.* ¶ 20 (citation omitted).

The Contested Provisions meet these deferential standards. As a general matter, the Court must remember the backdrop against which the General Assembly acted. There had been a longstanding debate where constituents on one side asserted that some local authorities were using traffic cameras to generate revenue, and constituents on the other side asserted that other local authorities were using traffic cameras for valid safety reasons. *See Mendenhall*, 2008-Ohio-270 ¶ 39; *cf.* Testimony of Rep. Bill Patmon, H.B. 69, attached to Ohio’s Mem. in Opp. to Mot. for Summ. J. (Ex. 2) (noting that “in Committee we talked a lot about safety vs. the revenue”). This debate has not been one sided. Indeed, a large majority of Clevelanders voted to abolish traffic cameras in that city. *See Issue 35: Cleveland’s Traffic Cameras To Be Removed*, WKYC (Nov. 5, 2014), attached to Ohio’s Mem. in Opp. to Mot. for Summ. J. (Ex. 1). This Court has already suggested that the General Assembly undertakes a legitimate policy goal when it “attempt[s] to curb the use of speed traps.” *State v. Heins*, 72 Ohio St. 3d 504, 506 (1995). Ensuring that traffic cameras remain firmly rooted on the safety side of the line thus qualifies as a valid objective. And the Contested Provisions rationally pursue that objective by putting safety

concerns at the fore. Whether or not this Court believes that there were better ways to do so does not—and cannot—invalidate the General Assembly’s chosen methods.

A closer look at each of the Contested Provisions confirms their rationality. The Police Presence Provision requires a police officer to be present at any location using traffic cameras. R.C. 4511.093(B). This represents a classic legislative compromise, one that does not outright ban traffic cameras but that requires them to be *secondary* enforcement tools. On the one hand, police officers may still use traffic cameras to impose civil penalties—without having to take their time (and risk their safety) to stop and cite every violator. Indeed, news accounts published around the time of the Act’s passage suggested that some localities planned to continue to use mobile cameras at risky intersections or schools. Kimball Perry, *New Traffic Camera Law Requires A Cop, Too*, Cincinnati Enquirer (March 20, 2015), *attached to* Ohio’s Mem. in Opp. to Mot. for Summ. J. (Ex. 6); Jeremy Pelzer, *Parma’s Traffic Cameras Might Survive Even If Effective Statewide Ban Passes*, Cleveland Plain Dealer (Nov. 20, 2014), *attached to* Ohio’s Mem. in Opp. to Mot. for Summ. J. (Ex. 7). On the other hand, a police officer’s presence will, among other things, detect camera system malfunctions, identify situations where a camera finds a violation when none exists, or recognize circumstances where a citation should not be issued (such as when a father is driving his screaming daughter, who is giving birth, to the hospital). *Cf.* John Horton, *Cleveland Traffic Camera Ticket Delivers Quite A Story*, Cleveland Plain Dealer (Feb. 6, 2012), *attached to* Ohio’s Mem. in Opp. to Mot. for Summ. J. (Ex. 5). A police officer’s presence inserts a level of common sense, and allows for a greater perspective than the limited video and still photographs provided by cameras alone.

The Study and Promotion Provision requires a municipality *both* to conduct a safety study that identifies accidents over the preceding three years *and* to give the public notice before

placing new cameras. R.C. 4511.095(A). Both requirements are rational. As for the study requirement, it encourages local authorities to take *safety* concerns into account by looking at accident data when deciding where to place traffic cameras. That is not irrational. Indeed, a host of state provisions direct municipalities to undertake studies of this sort. State law, for example, permits local authorities to ask the Department to reduce speed limits on particular roads, but only after they “determine upon the basis of an engineering and traffic investigation” that the reduction is necessary. R.C. 4511.21(I)(1); *see also* R.C. 4511.21(I)(2) (noting that local authority may conduct “geometric and traffic characteristic study” to recommend reduced speed limits). Likewise, the state manual repeatedly suggests or requires engineering studies, including when determining where to put traffic signals. *See, e.g.*, Manual §§ 2C.02(01) (“The use of warning signs shall be based on an engineering study or on engineering judgment.”); 4C.01(01) (“An engineering study of traffic conditions, pedestrian characteristics, and physical characteristics of the location shall be performed to determine whether installation of a traffic control signal is justified at a particular location.”).

As for the promotional requirement, it rationally compels governments to give the public notice before sanctioning drivers for violating new traffic-camera systems at particular locations. In this very traffic-camera context, the Court has already observed that traffic cameras raise due-process questions. *Mendenhall*, 2008-Ohio-270 ¶ 40. More generally, “elementary notions of fairness ‘dictate that a person receive fair notice not only of the conduct that will subject him to punishment, but also of the severity of the penalty that a State may impose.’” *Barnes v. Univ. Hosps. of Cleveland*, 119 Ohio St. 3d 173, 2008-Ohio-3344 ¶ 32 (citation omitted). The promotion provision promotes fairness in municipal traffic enforcement. *Cf.* R.C. 4511.07(B) (requiring local authorities to post notice signs whenever they enact certain traffic regulations).

Finally, the Speeding Ticket Provision prohibits municipalities from issuing speeding tickets unless the drivers exceed certain speeds. R.C. 4511.0912. The provision rationally recognizes that measurement always includes a margin of error. *Cf.* Testimony of Rep. Bill Patmon, H.B. 69, *attached to* Ohio’s Mem. in Opp. to Mot. for Summ. J. (Ex. 2) (expressing concerns with “technical errors”). The provision rationally accounts for error of the driver’s speedometer and errors of the measuring device, and prevents traffic-camera punishment for speeds that could be the result of error. The law frequently accounts for reliability, *see e.g.*, Ohio R. Evid. 702, 802, 803, and the legislature frequently weighs in, *see, e.g., City of Cincinnati v. Ilg*, 141 Ohio St. 3d 22, 2014-Ohio-4258 ¶ 23 (noting that reliability of certain blood-testing devices had been “legislatively resolved” (citation omitted)). The provision is also rational because legislatures often decide to relieve citizens of the consequences of minor infractions. Amnesty programs for taxes or fines are common, and those programs rationally balance the need to punish with the desire to focus on more pressing problems. *See Armour v. City of Indianapolis*, 132 S. Ct. 2073, 2082 (2012) (describing such programs as examples of laws having a rational basis). And the provision is rational because it in no way blocks municipalities from stopping motorists for speeding to issue warnings or traditional citations. It merely leaves traffic cameras for more serious speeding violations—again ensuring that they are firmly rooted in safety concerns.

* * *

Because the Contested Provisions are “general laws” under the Home Rule Amendment, this Court need not consider the city’s request to sever those provisions from the Act. Dayton’s Br. 17-19. Such severance questions arise only when a provision is unconstitutional. *See Ohio Civil Serv. Emps. Ass’n*, 2016-Ohio-478 ¶¶ 26-34 (refusing to sever *constitutional* provisions).

CONCLUSION

For the foregoing reasons, the Court should affirm the Second District Court of Appeals.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Merit Brief of the Defendant-Appellee State of Ohio was served by regular U.S. mail this 31st day of May, 2016, upon the following counsel:

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