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I. The State's brief shows that SB 342, the Traffic Camera Act, is not a general law because it fails the third and fourth tests set forth in Canton.

In its brief, the State acknowledges that laws that do not “ ‘regulate any activity’ by ‘citizens’ ” are not general laws. *State Brief 23-24, Citing Village of West Jefferson v. Robinson*, 1 Ohio St. 2d 113 (1965). Examination of the Traffic Camera Act shows that it contains no regulation of citizen conduct.

The Contested Provisions do not mention citizens. They do not control or manage the flow of traffic. Having an officer present at the camera site as mandated by §4511.093(B)(1) does not affect whether a citizen motorist may or may not proceed through the intersection without stopping. Whether a stretch of roadway was studied for three weeks, three years or three decades has no effect on the movement of traffic. The Speeding Leniency Provision does not make exceeding the speed limit by 5 MPH legal; it just hampers local government's ability to hold speeders accountable for their speeding.

If one examines the other provisions of the Traffic Camera Act as the State says that one must, the same is true; not one core provision regulates motorists¹:

1. Sections 4511.098 and 4511.099 establish procedural rules for the administrative hearing processes that municipalities must use.
2. Section 4511.099(E) mandates that the city must require a motor vehicle owner to be present at a hearing to determine the civil liability of the person

¹ Only three small parts of SB 342 do not limit local legislative authority. Section 3937.411 prohibits insurance companies from using records of violation of local civil enforcement programs in coverage or rating decisions. Section 4511.0910 prohibits state agencies from charging “points” against the license of a driver for a civil violation. Section 4511.204(C)(2) requires the Ohio Department of Public Safety to report annually on the number of texting while driving citations issued. These three sections do not impair or restrict local legislative authority and do not violate the Home Rule principles. They can be severed from the balance of SB 342 and remain in effect.

the owner has identified by affidavit as the driver of the vehicle that ran the light.

4. Section 4511.099(B) requires that the hearing officer must issue a written decision the day of the hearing.
5. Section 4511.0911 imposes conditions regarding equipment used in the programs.

The State cites *Village of West Jefferson v. Robinson*, 1 Ohio St. 2d 113 in its brief. This case involves a local ordinance regarding licensing of door-to-door sales people and a state statute purporting to limit municipal power to issue such licenses. In *West Jefferson* the Supreme Court posed this hypothetical:

“The validity and scope of section 3628 may properly be tested by supposing an extreme case. Let it be supposed that it provided for a complete prohibition upon municipal legislation. Manifestly such a law would not be effective to take away the power conferred upon municipalities by the plain provisions of the Constitution. Or let it be supposed that section 3628 provided that municipalities should not impose any fine in excess of \$1 for violation of any police or sanitary ordinance, and that it prohibited punishment by imprisonment altogether. No one would contend that such an indirect effort would be in any wise different in effect from a plain prohibition. This principle was discussed and decided in [City of] Fremont v. Keating, 96 Ohio St. 468, 470, 118 N.E. 114.” *Village of West Jefferson v. Robinson*, 1 Ohio St.2d, 113 at 117 (1965).

This is precisely analogous to the Traffic Camera Act. The state statute at issue in *West Jefferson* did not itself regulate door-to-door sales people. It only attempted to limit how municipal governments regulate them. This Court in *West Jefferson* said that the state statute was not a general law. In the Traffic Camera Act, the state has not regulated motorists; it has only limited how cities and villages go about regulating motorists.

State regulation of motorists does not take place within the Traffic Camera Act. The substantive regulation of traffic and motorists takes place elsewhere. Revised Code §4511.13(C) requires motorists to stop for red lights. Revised Code §4511.21 establishes speed limits. Nothing in Dayton's traffic camera ordinances conflict with, subverts or modifies these substantive regulatory pronouncements.

The State's Traffic Camera Act arrogantly presumes to "authorize" municipal traffic camera programs although the power to make local regulations arises from the Ohio Constitution. "Municipalities derive their authority to enact municipal legislation relating to minor offenses directly from the Constitution." *Village of West Jefferson v. Robinson*, 1 Ohio St.2d 113 at 117 (1965), quoting *City of Youngstown v. Evans*, 121 Ohio St. 342 (1929). The Traffic Camera Act then conditions its "authorization" upon slavish adherence to conditions it establishes, conditions designed to hamper or prevent the very programs the Act purports to authorize. To borrow a phrase from the State's own brief, "It was a regulation of municipalities, plain and simple."

The State argues that the third and fourth tests of a general law under *Canton* arise from a common core. The City of Springfield concurs with this statement. Both of these tests require that the state statute must be one that regulates the conduct of

citizens if it is to be a general law. It is difficult to see how a statute might pass the third test and fail the fourth or vice versa.

The common core of these two tests is the substantive regulation of citizen's conduct. The Ohio Constitution does not contain a Supremacy Clause like the United States Constitution. Through its Home Rule Provision, the Ohio Constitution establishes coordinate governments, each having "supremacy" in its appropriate bailiwick.

Article XVIII §3 of the Ohio Constitution addresses a conflict between a local ordinance and a general law, not supremacy. The conflicts that Article XVIII §3 addresses arise where there are contrary directives to citizens. A statute says "one shall" and an ordinance says "one shall not." An ordinance says "one shall" and a statute says "one shall not." These contrary directives must be resolved so that citizens are not caught in the cross fire between two coordinate governments.

Where an ordinance and a statute contain contrary directives to citizens, the state-wide directive prevails. But, when as here, the state statute contains *no directives*, there can arise *no contrary directives* creating a conflict between opposing rules of citizen conduct.

II. This Court must reject the State's "plausible connection" theory.

The State does not argue that the Traffic Camera Act establishes rules of citizen conduct. Instead, it sets forth a more startling proposition. It argues that it can enact a statute that regulates municipalities as long as that statute has a mere "plausible connection to state laws exercising the police power over the public at large." *State Brief at 22.*

Here, the State admits that the Traffic Camera Act is not an exercise of the police power, does not itself regulate citizens and is therefore not a general law. The Act fails both the third and fourth general law tests in *Canton v. State*, 95 Ohio St. 3d 149. In order to try to salvage the Traffic Camera Act, the State asserts that it can invalidate local ordinances by enacting a statute that regulates municipalities, and does not regulate citizen conduct by establishing a “plausible connection” with a statute that does regulate citizen conduct.

Adoption of this proposition would constitute a radical, fundamental change in the constitutional relationship between a city and its local citizens. Adoption of this proposition would be a giant step backward toward the pre-Home Rule era when cities were mere vassals of the state. The State implicitly recognizes the novelty of this proposition by failing to cite any authority to support it.

The cases that the State does cite show that for a statute to be a general law, the citizen conduct regulation must be within the statute itself. A statute does not acquire its character as a general law through osmosis, absorbing its citizen regulation from some other statute.

The statute at issue in *State ex rel Morrison v. Beck Energy Corp.*, 143 Ohio St. 3d 271 (2015) regulated drilling. Although the only challenge to the general law character of the statute was based on its lack of uniformity, it is clear that by stating conditions for drilling, the statute governed citizen conduct.

Cleveland v. State, 138 Ohio St. 3d 232 involved R. C. §4921.25. The statute authorized PUCO to regulate towing companies but also purported to prohibit municipal regulation. This Court held that the sentence authorizing PUCO regulation was valid as

a general law. It involved citizen conduct: the conditions for operating a towing service. But, this Court struck the sentence that purported to prohibit municipal regulation. That sentence did not regulate citizens who wanted to tow vehicles, it regulated municipalities. Thus, this second sentence was not a general law and was stricken.

The *Cleveland* towing case is quite instructive. If the Ohio Constitution allowed the legislature to invalidate local ordinances by enacting a statute that had a mere “plausible connection” to a citizen regulatory statute, the second sentence would not have been ruled unconstitutional. There was more than a mere “plausible connection” between the first and second sentences of Revised Code §4921.25.

The *Cleveland* towing case shows that where a statute itself, even a sentence within a statutory section, fails to regulate citizens conduct it is not a general law.

In re Complaint of Reynoldsburg, 134 Ohio St.3d 29, 2012-Ohio-5270 dealt with tariffs established by PUCO. This Court held that those tariffs were a general law because they regulated both what a utility company could charge and what a customer had to pay for utility service. Regulation of citizen conduct is at the core of those tariffs.

Cleveland v. State, 128 Ohio St. 3d 135 (2010) and *Ohioans for Concealed Carry v. Clyde*, 120 Ohio St. 3d 96 (2008) both involved statutes that also regulated citizen conduct; where and under what conditions citizens could possess firearms. The regulatory provisions were contained within those statutes; they were not absorbed into those statutes through a “plausible connection” with a different statute that regulated conduct.

Marich v. Bob Bennett Construction Co., 116 Ohio St. 3d 553 (2008) involved a statute that prohibited operating a motor vehicle exceeding width limitations. This Court

determined that that statute was a general law without resort to any other statute with which it bore a “plausible connection.”

The lending regulation statutes in *American Financial Services v. Cleveland*, 112 Ohio St. 3d 170 (2006) were evaluated on their own merit and found to be general laws independently of other statutes.

Clermont Environmental Reclamation Co. v. Wiederhold, 2 Ohio St. 3d 44 (1982) involved statutes that control citizen conduct in the context of solid waste disposal. One particular section of Chapter 3734 gave the state exclusive control over siting decisions. That statutory scheme is not analogous to the Traffic Camera Act. The limitation on local authority in Chapter 3734 was incidental to its content the regulating citizen conduct. In the Traffic Camera Act there is no regulatory content, no regulation of citizen conduct. It is a limitation of local authority “pure and simple.”

This Court should read the Contested Provisions in pari materia with the entire Traffic Camera Act. This Court will find an absence of content that regulates citizen conduct. That absence of content that regulates citizen conduct shows that the Traffic Camera Act lacks the “common core” of the third and fourth test under the *Canton* general law test. The Act regulates no citizen conduct, only municipal conduct.

III. The Traffic Camera Act is not part of a comprehensive scheme of traffic regulation.

This Court should decline the State’s invitation to deem the Traffic Camera Act as part of the comprehensive regulation of traffic. As shown repeatedly in the briefs, the Traffic Camera Act does not regulate traffic. No motorist is authorized to or prohibited from doing anything under its provisions. If the State only has to chant the magic words

“traffic regulation” or merely append legislation to Title 45 to wipe out local initiatives which certain legislators disfavor, Home Rule as an effective principle is dead.

In *Village of Linndale v. State*, 85 Ohio St. 3d 52 (1999) this Court held that a state statute prohibiting municipalities from enforcing state speeding laws under certain conditions was unconstitutional. The statute invalidated there was “plausibly connected” to the speeding statute. The State claimed that statute was “traffic regulation” and inserted it into Title 45. The statute was declared unconstitutional even though it shared the same characteristics that the State argues makes the Traffic Camera Act valid.

The State would have this Court believe that the statute in *Linndale* was invalidated solely because it did not operate uniformly throughout the state. *State Brief at 37*. That is not the case. While this Court said that the statute in *Linndale* was unconstitutional because it is “not a part of uniform state regulation...” it also said that “it is simply a limit on the powers of municipal corporations to adopt and enforce specified police regulations.” *Id at 55*. This Court also said that it “need not address...the Uniformity Clause.” *Id*.

The State’s reference to Revised Code §4511.11 is similarly inapt. This statute mandates local adherence to the state’s uniform standards for traffic control devices. This reference is inapt because traffic cameras are not traffic control devices. Revised Code §4501.01(QQ) defines traffic control devices as follows:

" 'Traffic control device' means a flagger, sign, signal, marking, or other device used to regulate, warn, or guide traffic, placed on, over, or adjacent to a street, highway, private road open to public

travel, pedestrian facility, or shared-use path by authority of a public agency or official having jurisdiction, or, in the case of a private road open to public travel, by authority of the private owner or private official having jurisdiction.”

A traffic camera does not “regulate, warn or guide traffic.” A traffic camera merely observes and records.

CONCLUSION

The Traffic Camera Act, SB 342 is not a general law. It merely limits municipal authority and does not regulate citizens. It is unconstitutional because it usurps municipal Home Rule, violating Article XVIII, Section 3 of the Ohio Constitution.

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned certifies that on July ^{8th} 2016, a copy of the foregoing Reply

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