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INTRODUCTION

In appealing the Second District's decision below, the City of Dayton argues that the Contested Provisions of 2014 Am.Sub.S.B. No. 342 ("S.B. 342") are not general laws under *Canton v. State*, 95 Ohio St.3d 149, 2002-Ohio-2005, 766 N.E.2d 963. The State, on the other hand, contends that "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." Appellee's Merit Brief at 40. The State's concept of "a connection to the State's police-power choices over the public" is not, however, part of the test this Court articulated in *Canton*.¹ And, even if the State's interpretation of the Court's Home-Rule-Amendment jurisprudence was accurate (it is not), the Contested Provisions do not represent a rational "exercise police power over the public" but rather, by the law's own terms, merely "establish conditions for the use by local authorities of traffic law photo-monitoring devices[.]" 2014 Am.Sub.S.B. No. 342. Indeed, an examination of the State's arguments for why the Contested Provisions are "rational" reveals that the Contested Provisions serve only to limit municipal powers in violation of the Home Rule Amendment.

ARGUMENT

A. The Appellant does not appeal on the basis that the Contested Provisions are arbitrary.

In the first paragraph of its Merit Brief, the State argues that Dayton's appeal is based on the notion that S.B. 342 is "arbitrary." Appellee's Merit Brief at 1. The State then argues that "[w]hether traffic cameras are a good or bad idea should be of no concern to this Court." *Id.*

¹ The City of East Cleveland understands that fellow *amicus curiae*, the City of Akron, will address the State's interpretation of *Canton*. East Cleveland therefore adopts and incorporates by reference Akron's Reply Brief herein.

The State's line of reasoning ignores Dayton's actual argument: The Contested Provisions are not general laws and thus violate the Home Rule Amendment of the Ohio Constitution.

B. The State's policy arguments are misplaced.

Because Dayton appeals on the basis that the Contested Provisions are not general laws, the State's citation to case law for the proposition that "[t]his court is not the forum in which to second-guess [] legislative choices; [the Court] must simply determine whether they comply with the Constitution" is inapposite. Appellee's Merit Brief at 38, quoting *Arbino v. Johnson & Johnson*, 116 Ohio St. 3d 468, 2007-Ohio-6948, 880 N.E.2d 420, ¶ 21; see generally *id.* at 38-41, citing *Fletcher v. Peck*, 10 U.S. 87, 128 (1810); *Cincinnati, Wilmington Zanesville R.R. Co. v. Comm'rs of Clinton Cnty.*, 1 Ohio St. 77, 82-83 (1852). While the Appellant and its *amici curiae* have articulated for the Court the practical impact of the Contested Provisions, that explanation serves to highlight the State's purpose in enacting S.B. 342: to limit municipal authority through rules that unconstitutionally circumscribe municipalities' conduct.

After contending that the Court should not consider whether S.B. 342 is "rational," the State nonetheless argues that "a legislative choice is not subject to courtroom factfinding and may be based on rational speculation unsupported by evidence or empirical data" and that "[t]he Contested Provisions meet these deferential standards." (Quotations omitted.) *Id.* at 41, citing *Pickaway Cnty. Skilled Gaming, L.L.C. v. Cordray*, 127 Ohio St. 3d 104, 2010-Ohio-4908, 936 N.E.2d 944, ¶ 32. But the Court has never utilized the "rational basis" test that the State suggests to evaluate challenges under the Home Rule Amendment.² Contrary to the State's suggestion,

² The "rational basis" test to which the State refers has been and remains the basis of analysis for challenges under Ohio's and the United States' Constitutions' Equal Protection Clauses. See, e.g., *Pickway* at syllabus ("The prize-value limit set forth in R.C. 2915.01(AAA)(1) is rationally related to legitimate government interests and does not violate the Equal Protection Clauses of the United States and Ohio Constitutions.").

neither the Home Rule Amendment nor municipal authority was at issue in *Pickaway*. See generally *id.*

C. The Contested Provisions serve no goal besides limiting municipalities' authority.

Even assuming that the “rational basis” test applied here, the Contested Provisions are not rationally related to the State’s police powers. Indeed, they were passed solely to limit municipal authority.

- i. *The “Police Presence Provision” serves no purpose other than to restrict municipalities’ regulatory powers.*

The State argues that new R.C. 4511.093(B)’s requirement that a police officer be present at locations where municipalities place automated traffic cameras is “rational” because: “[p]olice officers may still use traffic cameras to impose civil penalties[.]” The State cites two articles that it claims “suggest[] that some localities planned to continue to use mobile cameras at risky intersections or schools.” Appellee’s Merit Brief at 42, citing Kimball Perry, Cincinnati Enquirer, *New traffic camera law requires a cop, too* (March 20, 2015), <http://www.cincinnati.com/story/news/2015/03/20/new-ohio-traffic-camera-bill-starts-march/24858977/> (accessed June 30, 2016); Jeremy Pelzer, Northeast Ohio Media Group, *Parma’s traffic cameras might survive even if effective statewide ban passes* (November 20, 2014), http://www.cleveland.com/open/index.ssf/2014/11/parmas_traffic_cameras_might_s.html (accessed June 30, 2016).

Neither of the news articles cited by the State supports the State’s argument. Instead, both show that municipalities that already use automatic traffic camera programs manned by police officers will continue to do so. These programs are irrelevant to those utilized by municipalities that are not manned by police officers—*e.g.*, East Cleveland’s. For cities like East Cleveland, “a new law t[ook] effect March 23 that effectively kill[ed] the old programs that

allowed cities and villages to use traffic cameras” Kimball Perry, Cincinnati Enquirer, *New traffic camera law requires a cop, too* (March 20, 2015), <http://www.cincinnati.com/story/news/2015/03/20/new-ohio-traffic-camera-bill-starts-march/24858977/> (accessed June 30, 2016).

Unfortunately, the City of East Cleveland does not have the luxury of choosing whether to assign police officers to each of its automated traffic camera locations. As Chief of Police Michael Cardilli has stated, the City of East Cleveland does not have “a sufficient number of police officers to meet the request of having a police officer present at each camera location for each shift or at all times.” Affidavit of Michael Cardilli, attached as Exhibit 1 to the Brief of *Amicus Curiae* the City of East Cleveland, and attached as Exhibit D to Plaintiffs’ Reply Brief in Support of Motion for Summary Judgment and Brief in Opposition to Defendant’s Motion for Summary Judgment in the case styled *City of East Cleveland, et al., v. State of Ohio*, No. CV-15-842116 (Cuyahoga County Court of Common Pleas), at ¶¶ 3-4. The City of East Cleveland needs its traffic cameras to complement a police force that has been substantially depleted along with other essential services. *See, e.g.*, Brief of *Amicus Curiae* the City of East Cleveland at 2-3.³

³ In recent years, several revenue streams from the State of Ohio have been eliminated or reduced through cuts to budgets, estate tax receipts, and the local government revenue funds. *See* Alexia Fernández Campbell, *The Atlantic*, *A Suburb on the Brink of Bankruptcy* (June 8, 2016), <http://www.theatlantic.com/business/archive/2016/06/a-suburb-on-the-brink-of-bankruptcy/486188/> (accessed July 8, 2016). “There were other revenue streams, but one in particular that affected [East Cleveland]. The state of Ohio, at one time, allowed traffic cameras to generate automated tickets. For all intents and purposes, the state legislature outlawed those or made it so difficult and costly to provide them that they were just abandoned by the cities. Taking away these revenue streams is like taking legs from a table or chair. East Cleveland now has a revenue problem.” *Id.* (quoting Gary Norton, Mayor of the City of East Cleveland).

The State also contends that the “Police Presence Provision” is “rational” because: “a police officer’s presence will, among other things, detect camera system malfunctions, [or] identify situations where a camera finds a violation when none exists[.]” Appellee’s Merit Brief at 42. The State’s explanation for the “Police Presence Provision” requirement demonstrates a fundamental lack of understanding concerning automatic traffic camera programs. An officer staffing an automated traffic camera would not be able to determine at the scene whether a camera malfunctioned because it is not until after the camera electronically records a violation and produces a photo that such a review could take place. Even if a police officer stationed at an automatic traffic camera could, in real-time, review photos, unless he or she were simultaneously taking radar, the officer would be unable to evaluate whether a camera was measuring speed correctly. In addition, municipalities’ administrative appeals processes provide citizens an opportunity to contest civil violations, allowing the opportunity to show that the system malfunctioned or that no violation occurred. *See, e.g.*, East Cleveland Ordinance No. 07-06, § 1(d)(4) (codified as East Cleveland Municipal Code 313.011).

Finally, the State contends that the “Police Presence Provision” is rational because it protects against situations where a “citation should not be issued such as when a father is driving his screaming daughter, who is giving birth, to the hospital.” Appellee’s Merit Brief at 42.⁴

⁴ The full circumstances of the incident the State cites to for this point are illuminating. *See* John Horton, The Plain Dealer, *Cleveland traffic camera ticket delivers quite a story: Road Rant* (March 27, 2011; updated February 6, 2012), http://www.cleveland.com/roadrant/index.ssf/2011/03/cleveland_traffic_camera_ticke.html (accessed June 30, 2009). In this instance, the automatic traffic camera demonstrated that a red-light violation had occurred, which the driver/owner/father did not dispute. The system did not malfunction and therefore the red-light violation properly resulted in a notice of civil liability. The driver contested the ticket. The hearing examiner determined there was not “sufficient evidence of mitigating circumstances.” *Id.* The State has not explained and cannot explain how the “Police Presence Provision” would have changed this outcome, even if a changed outcome were desirable.

Once again, having an officer present would not actually serve this purpose. The only way in which an officer would know that (a) the driver is the father of a screaming woman who is giving birth, and (b) that the father was driving to the hospital is if the officer stopped the driver to issue a traffic ticket, further hindering the father in this hypothetical emergency. *See* Appellee's Merit Brief at 42.

ii. The Study and Promotion Provision restricts municipal authority.

The State argues that "Study and Promotion Provision"—which "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"—is "rational" because "it encourages local authorities to take safety concerns into account by looking at accident data when deciding where to place traffic cameras" and "rationally compels governments to give the public notice before sanctioning drivers for violating new traffic-camera systems at particular locations." *Id.* at 42-43.

However, the State neither offers an explanation for why three years of research is necessary nor why local authorities are incapable of identifying unsafe locations in a shorter period of time. And, more importantly, the State ignores that reducing speeding and red-light violations at any road location is always desirable, and that those are the exact results that East Cleveland and other cities across the world have realized as a result automatic-traffic-camera programs. *See, e.g.,* Brief of *Amicus Curiae* the City of East Cleveland at 4-5. This "research" requirement is clearly a *non sequitur* that the state is mandating under the guise of public health, safety and welfare.

With respect to notice, R.C. 4511.095 requires municipalities utilizing automatic traffic cameras to provide signage on roadways that identifies the presence of cameras. Accordingly, additional "public notice" provides little if any marginal value to drivers. Furthermore, the

voters of East Cleveland approved by referendum East Cleveland's use of the automated traffic cameras in October 2011, rejecting a specific challenge to their continued use. *See, e.g.*, Brief of *Amicus Curiae* the City of East Cleveland at 2-3. The citizens of East Cleveland thus have the notice and information necessary to make an informed decision regarding their city's automated traffic camera program.

iii. *The "Speeding Ticket Provision" does nothing besides limit municipal authority.*

The State argues that the "Speeding Ticket Provision"—which "prohibits municipalities from issuing speeding tickets unless the drivers exceed certain speeds"—is "rational" because it "recognizes that measurement always includes a margin of error." Appellee's Merit Brief at 44. The State offers no evidence as to the purported margin of error for automated traffic cameras, and offers no explanation for why this margin of error analysis applies to automatic traffic cameras and not radars.

The State also argues that the Speeding Ticket Provision is "rational because legislatures often decide to relieve citizens of the consequences of minor infractions." *Id.*⁵ But the fact that legislatures have "often decide[d] to relieve citizens" from punishment for minor infractions says nothing about whether doing so benefits the public. Here, the State neither offers a reason for why speeding in school zones or elsewhere should be considered "minor infractions" nor a rationale for why the public would be served by relieving violators from punishment.

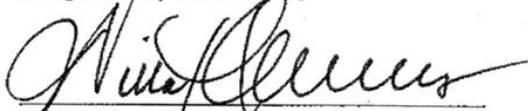
⁵ For support, the State again cites an equal protection case. *See* Appellee's Merit Brief at 44, citing *Armour v. City of Indianapolis*, 132 S. Ct. 2073 (2012) (addressing an equal protection argument arising from an Indianapolis tax issue, wholly unrelated to Ohio's Home Rule Amendment or any analysis of a general law).

CONCLUSION

For the foregoing reasons, the Court should reverse the Second District Court of Appeals and uphold the trial court's decision.

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Respectfully submitted,



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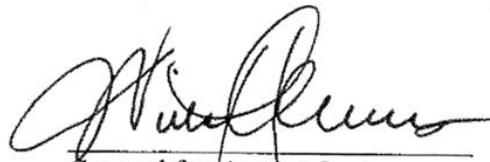
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