IN THE SUPREME COURT OF OHIO

KELLY MENDENHALL, et al.	)	
	)	
Petitioners,	)	**CASE NO: 06-2265**
	)	
v.	)	
	)	**On Certified Question of Law From the**
THE CITY OF AKRON, et al.	)	**United States District Court for the**
	)	**Northern District of Ohio**
Respondents.	)	

BRIEF OF *AMICUS CURIAE* OF MICHAEL McNAMARA, DAWN ROGASKIE, AND STATE REPRESENTATIVE JAMES T. RAUSSEN IN SUPPORT OF PETITIONERS, KELLY MENDENHALL, ET AL.

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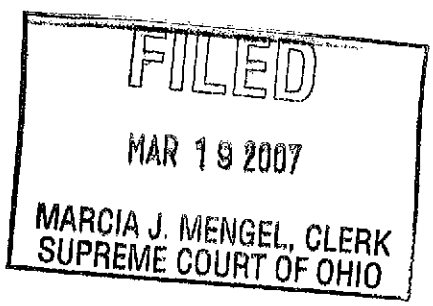

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TABLE OF AUTHORITIES

Cases

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I. INTEREST OF AMICUS CURIAE

The instant matter has major consequences for the power of the Ohio General Assembly. It presents the question whether municipalities may enact particularized local traffic laws which conflict with the general state laws on the same subject enacted by the General Assembly.

Therefore, Representative James T. Raussen, a member of the Ohio House of Representatives from the 28th District, submits this amicus brief to the court in support of the petitioners, Kelly Mendenhall, et. al. The Representative is the author and sponsor of Sub. HB. 56, commonly known as the "red light cameras" bill. This Bill recognizes the traffic laws are general laws in the state, and municipalities may not enact conflicting local provisions without a specific grant of authority from the general assembly to do so. The Bill grants municipalities the power to enact local traffic provisions employing traffic cameras, but only for speed in school zones. The Bill does not grant municipalities the general power to impose municipal laws on general speeding or red light violations, because those matters are already subject to general law enactments in the Ohio Revised Code. Representative Raussen is interested in seeing the Supreme Court answer the certified question in the negative, and is specifically interested in a pronouncement from this Court that the local traffic camera enforcement schemes of Akron and other municipalities are in conflict with general state law and therefore unenforceable.

Individuals Michael McNamara and Dawn Rogaskie also participate in this brief. They are persons who have actually been fined due to the City of Cleveland's traffic cameras and have challenged this law's legality in the Cuyahoga County Court of Common Pleas.

II. STATEMENT OF FACTS[1]

In September of 2005, the City of Akron enacted Chapter 79 "Automated Mobile Speed Enforcement System," including Section 79.01 entitled "Civil Penalties for Automated Mobile Speed Enforcement System Violations" (the "Ordinance"). (Attached as Exhibit A). In furtherance of the Akron Ordinance, the City entered into contracts with Nestor Traffic Systems, Inc. ("Nestor") for the provision of services designed to detect mobile speed violations.

Pursuant to the Ordinance, the City assesses civil fines – not criminal penalties – against vehicles photographed and identified by the automated traffic system as exceeding the posted speed limits. Akron Muni. Code, § 79.01(A)(1). The Ordinance further states that "[a]ny violation of this section shall be deemed a noncriminal violation for which a civil penalty ... shall be assessed." *Id.* At § 79.01(D)(2). A violation of the Ordinance is not considered a moving violation and no "points" are assessed to anyone's driving record. *Id.* At § 79.01(D)(3). There is no possibility of imprisonment. Moreover, individuals faced with a civil penalty under this Ordinance have the right to institute an administrative appeal before a "Hearing Officer" as selected by the Akron City Mayor. *See Id.* at § 79.01(F).

Other municipalities, including the Cities of Cleveland, Toledo, Steubenville, and Girard, have enacted similar ordinances regarding photo traffic enforcement and its prosecution for speed and red lights. These ordinances have lead to litigation in their respective jurisdictions, challenging such enforcement systems on Constitutional and legal grounds that are the same as those before the Court herein. See, e.g., *Michael McNamara, et al. v. City of Cleveland, et al.*, No. 06-582364 (Cuyahoga County, filed January 20, 2006); *Lewicki v. City of Toledo, et al.*, No. G-4801-C1-2006-4524 (Lucas County, filed July 13, 2006); *April Stern v. City of Steubenville, et*

[1] As part of its Order of Certification, the United States District Court provided this Court with the parties' Agreed Stipulations of Fact and accordingly, only a brief summary of the background is provided herein.

al., No. 05-CV-524 (Jefferson County, filed November 23, 2005); *Daniel Moadus, Jr., et al. v. City of Girard, et al.*, No. 05-CV-1927. Indeed, each of the above-noted lawsuits involve an ordinance similar to that enacted in the City of Akron, wherein the municipality has employed photo traffic enforcement to issue only civil penalties to motorists for speeding and/or traffic light violations. These ordinances also similarly provide the recipient of a fine with the opportunity for administrative hearing outside the municipal courts, where the burden of proof as to an alleged violation is established only by preponderance of the evidence, and where the notice and photographs are considered *prima facie* proof of the violation. (Order of Certification, p. 8, Stipulation of Fact No. 18).

It is the position of these municipalities in the above-noted matters, and the Respondent herein, that exclusively civil penalties for criminal traffic violations detected via photo enforcement are permissible pursuant to Section 3, Article XVIII of the Ohio Constitution, also known as the Home Rule Amendment. In part, this Amendment states as follows:

> 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 the general laws.

Section 3, Article XVIII of the Ohio Constitution.

Conversely, it is the position of these *Amicus Curiae* that this Honorable Court has previously rejected the same type of efforts by municipalities, and has already answered the question certified to it in the negative. Home Rule municipalities which enact laws contrary to the policy of this State as expressed by the General Assembly are acting *ultra vires*. On at least two occasions, this Court has issued rulings in cases involving municipalities legislating substantive changes to State criminal statutes.

In *City of Cleveland v. Betts*, (1958) 168 Ohio St. 386, this Court was confronted by the City of Cleveland changing the crime of carrying a concealed weapon from a felony to a misdemeanor. The Court specifically held that the Home Rule Amendment did not permit municipal entities to enact ordinances which contravene State policy as expressed in State statutes. In *Betts,* the State policy was that carrying a concealed weapon was felonious conduct that could not be emasculated via an inconsistent municipal ordinance.

Similarly, in *City of Niles v. Howard*, (1984) 12 Ohio St.2d 162, the Court held that Home Rule cities could increase criminal penalties for misdemeanors, but could not change the degree of an offense as determined by the legislature. Based upon the Court's prior holdings, the Respondent and other municipalities of this State have unlawfully generated revenue via there imposition of only civil fines for traffic violations that State policy has previously determined to be criminal in nature.

II. LAW AND ARGUMENT

A. A Municipality Does Not Have the Power Under Home Rule to Enact Civil Penalties for the Offense of Violating a Traffic Signal Light or for the Offense of Speeding, Both of Which Are Criminal Offenses Under the Ohio Revised Code.

The Ordinance in Akron as well as those in Cleveland, East Cleveland, and Toledo and throughout the state is not legitimate exercises of police power with a substantial relationship to the general health, safety, welfare or morals of the citizens of the municipality. *West Jefferson v. Robinson* (1965) 1 Ohio St.2d 113, syllabus 4. The ordinances are revenue raising exercises. If the municipalities were interested in the safety of their citizens and those who are employed within their borders, the criminal penalties for speeding and/or red light violations would have been increased, not done away with.

Instead the municipalities have chosen to decriminalize criminal behavior for financial gain. Since municipalities do not have the authority, either from the Home Rule Amendment or statute, to overtly tax vehicles traversing their jurisdictions, they have chosen this covert manner of raising funds using safety as a fig leaf of legitimacy.

The issue facing this Court is whether, in their quest for "safety", the City of Akron, and others, have pushed past the powers granted under Section 3, Article XVIII of the Ohio Constitution to interfere with the General Assembly's power to maintain state-wide uniformity and due process for prosecuting and penalizing certain Ohio Traffic Law violations. This discussion also implicates the impact that the Ordinance, and those similar to it, have on other State laws, such as whether a municipality can, by ordinance, abrogate the statutorily mandated duties of its Municipal Court Clerk to report violations of State traffic laws that are necessary for the State to enforce regulation of drivers' licenses and public safety.

B. The Cities Do Not Have The Power Under The "Home Rule" Amendment To Decriminalize Traffic Violations.

Respondent and other cities have maintained that Section 3, Article XVIII of the Ohio Constitution, the "Home Rule" Amendment gives them *carte blanche* to create an entirely new system of traffic enforcement, purportedly for public safety reasons, even though this new civil enforcement mechanism conflicts with the general laws and express policy pronouncements of the State of Ohio.

The actions of the Respondent and other municipalities in decriminalizing behavior deemed criminal by the General Assembly are not powers granted to municipal entities by the Amendment. The General Assembly defined speeding at O.R.C. § 4511.21 (Maximum Speed Limits; Assured Clear Distance). This definition was co-opted almost in its entirety in Akron Muni Code § 73.20 and imported wholesale from there into the Ordinance at § 79.01(C)(1). The

General Assembly and the Respondent deem violations of O.R.C. §§ 4511.21 to be misdemeanors, yet the Ordinance as set forth under Section 79.01 decriminalizes these acts. Similar ordinances in other municipalities decriminalize "red-light" traffic signal violations under R.C.§ 4511.13, though such violations are also misdemeanors as set forth by the General Assembly.

The Respondent and other municipalities will likely contend that O.R.C. § 4511.21 is not a general law for Home Rule analysis. While this Court has held that a municipal corporation exercising its Home Rule powers can increase the penalty for actions defined as crimes by the State, the Respondent cannot cite any cases which support its position that such activities determined by the General Assembly to be criminal in nature can be decriminalized by a municipal ordinance.

The sole case which has directly addressed the issue of whether or not a municipal corporation can, under color of Home Rule, decrease a penalty for criminal behavior is *City of Cleveland v. Betts*, (1958) 168 Ohio St. 386. There the defendant challenged his conviction for carrying a concealed weapon under a city ordinance which rendered a State defined felony into a misdemeanor. That Court, noting the test for conflict set out in *The Village of Struthers v. Sokol* (1923) 108 Ohio St. 263[2], stated:

> But surely this test is not exclusive. Although the ordinance in issue does not permit what the statute prohibits and vice versa, it does contravene the expressed policy of the state with respect to crimes by deliberately changing an act which constitutes a felony under state law into a misdemeanor, and this creates the kind of conflict contemplated by the Constitution.

Betts, 168 Ohio St. at 389.

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[2] In *Sokol* the Court stated that a conflict can only exist where "the ordinance permits or licenses that which the statute forbids and prohibits and vice versa." *Sokol* 108 Ohio St. at 268.

Similarly, the Court in *City of Niles v. Howard* (1984), 12 Ohio St.3d 162, held that increasing the penalty for misdemeanor violations was permissible so long as the degree of the crime was not changed. Specifically a municipal ordinance which attempted to change a misdemeanor into a felony would be in conflict with the general laws. It is submitted by your *Amicus Curiae* that, as in *Betts* and *Howard*, decreasing the degree of a crime via the municipal corporation decriminalizing speeding and/or red-light traffic violations, contravenes State policy and constitutes an impermissible conflict.

This position is buttressed by O.R.C. § 4521.02. This is the statutory basis for the municipalities to operate Parking Violations Bureaus. In the ordinary course, a municipality is permitted, either inherently or pursuant to the statute, to regulate parking. To penalize parking violations, the municipal corporation may rely on O.R.C. § 4511.99, which deems these violations to be minor misdemeanors. However, at O.R.C. § 4521.02, the General Assembly specifically provided a mechanism for decriminalizing parking violations and handling them through an administrative process. No such provision was made for moving traffic violations of any kind, or for that matter for any other behavior the General Assembly has deemed criminal. If the General Assembly wished to bestow this power to decriminalize speeders upon Respondent and other municipalities, it would have set this forth via statutory language akin to that used as to parking violations.

The decriminalization of moving violations by the Respondent and other municipalities is simply *ultra vires*, creates a conflict with the general laws, and is wholly without statutory or constitutional support. This position of the Petitioner and these *Amicus Curiae* is further supported by the holding in *Daniel Moadus, Jr., et al. v. City of Girard, et al.*, (2006) Trumbull County Case No. 05-CV-1927, a copy of which is attached hereto. This is the first of the so

called "red-light camera" cases to address the substance of the city ordinances at issue, and to find them contrary to state general law.

C. The Decriminalizing of Speeding Violations Conflicts With Several General Laws Of The State Of Ohio.

1. The Ordinance Is In Conflict With The Statutes Controlling Drivers Licensure.

The current definition of what constitutes a general law is found in the syllabus of *City of Canton v. State of Ohio* (2002) 95 Ohio St.3d 149, where the Ohio Supreme Court held that:

> To constitute a general law for purposes of home-rule analysis, a statute must (1) be part of a 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.

An example of a general law in conflict with the Ordinance is the statutory enactments regarding drivers' licenses. The State alone has the right to confer drivers' licenses. Further, the State alone has the power to revoke, cancel and limit the holders of the licenses once they have been issued. See, *Wilsch v. Bencar* (1966), 7 Ohio App.2d. 165. The licensing laws found at O.R.C. Chapter 4510 are general laws and to the extent that they direct actions on the part of certain officials, these are mostly State officers or employees. The licensing laws in no manner purport to grant any powers to municipal corporations.

The licensing of drivers is a matter of State concern and a valid exercise of police power by the State. Pursuant to the exercise of this power, the General Assembly has enacted comprehensive legislation to provide for the safety of the general public by making provision for the suspension, revocation or limitation of the driving privilege for violation of the traffic laws

and ordinances. Specifically, O.R.C. §§ 4510.036 and .037, provide for the charging of "points" against a licensee for violations of O.R.C. §§ 4511.13 (red lights) and 4511.21 (speed).[3]

A conviction for violation of either of these statutes, or substantially similar municipal ordinances requires a report by the appropriate Clerk of Court to the Bureau of Motor Vehicles. Ohio Rev. Code § 4510.03 (A) states:

> Every county court judge, mayor of a mayor's court, and clerk of the court of record shall keep a full record of every case in which a person is charged with any violation of any provision of sections 4511.01 to 4511.771 or 4513.01 to 4513.36 of the Revised Code or of any other law or ordinance regulating the operation of vehicles, streetcars, and trackless trolleys on highways or streets.

These reports are the basis for the assessment of points against the driver's license. Should a driver accumulate 5 points a letter is sent warning of possible suspension.[4] At 12 points the license is suspended until such time as the licensee complies with certain state statutory requirements the substance of which involve retraining with an emphasis on safety.

However, violations of the Ordinance do not result in the assessment of points, although both ordinance and the state laws define the prohibited behavior in the same language. The Respondent and other municipalities simply ignore the statutory language that requires reporting a violation of "*any other law or ordinance* regulating the operation of vehicles, streetcars, and trackless trolleys on highways or streets." The Ordinance thereby eliminates the statutory duty of the Clerk of the Municipal Court to maintain a record of these offenses and to comply with the reporting requirements imposed by the General Assembly.

The statutory scheme of R.C. Chapter 4510 is clearly directed to promote statewide uniformity in the prosecution and penalization of certain traffic offenses, improve safety and remove bad drivers from the road. The statutory scheme clearly places a non-delegable duty of

[3] O.R.C. § 4510.037(A)
[4] O.R.C. § 4510.037(B)

the Clerk of the Court of record in the City of Akron. This duty is so clearly mandatory that the failure of a Municipal Court Clerk to report violations is misconduct by statute, which can call for removal from office[5].

As noted above, the *Sokol* test for conflict is whether "the ordinance permits or licenses that which the statute forbids and prohibits, and vice versa." The Ordinance conflicts with the statute by permitting the retention of a driver's license even when a driver has committed a sufficient number of moving violations to have accumulated 12 or more points. The Ordinance conflicts with the statute by failing to require remedial training after the accumulation of 12 points. The Ordinance is *ultra vires* in attempting to nullify the statutorily imposed reporting requirements of the Clerk of the Akron Municipal Court or the clerk of any other municipality that enacts a similar provision.[6]

2. The Ordinance Usurps The Power Of The General Assembly By Removing Certain Speeding Violations From Jurisdiction Of The Municipal Court.

The removal of moving violations from the Akron Municipal Court and the vesting of jurisdiction over these matters before a Hearing Officer of the Mayor's designation is a matter of usurpation of the general law.

There is no authority provided under the Home Rule amendment, or any state law, which would permit the Respondent or other municipalities to declare criminal activity a civil violation subject to administrative treatment.[7] Pursuant to Section 18, Article IV of the Ohio Constitution, the General Assembly set out the criminal jurisdiction of the municipal courts at O.R.C. § 1901.20. No provision is made in this law that allows for the modification of the jurisdiction, either by addition or subtraction, by means of a municipal ordinance.

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[5] R.C. 4510.035
[6] In accord, *Moadus*, supra.
[7] See IV, supra.

The statewide creation under general law of the municipal court system by the General Assembly, pursuant to its constitutional mandate, and the attendant creation of the office of Clerk are matters of statewide concern and a comprehensive legislative scheme. *Canton*, supra; *Ohio Association of Private Detective Agencies, Inc. v. North Olmsted* (1992), 65 Ohio St.3d 242. The state interest precludes local additions and deletions.

The Respondent does not have the power under the Home Rule amendment to create courts. The Respondent does not have the power to vest jurisdiction in a court, or to divest a court of jurisdiction. Despite the absence of such powers the Respondent has removed their speeding violations from the jurisdiction of its municipal court and vested jurisdiction in a non-judicial office as designated by its Mayor.

Similarly, the General Assembly by general law created and defined the office of the Clerk of Court at O.R.C. § 1901.31. This law provides a detailed exposition of the manner of election and selection of clerks and the duties of the office. The statute makes no provision for the alteration, by either addition or subtraction, of the duties of the clerk by municipal ordinance.

The Municipality did not create the position of the clerk of courts in municipal court, nor did it define the duties of the office. The clerk is a creation of general, state statutory law. Municipal ordinances and regulations are valid if consistent with the related state statute. *Weir v. Rimmelin*, (1984) 15 Ohio St.3d 55. The Ordinance at issue is inconsistent with the statute. O.R.C. § 1901.31 makes no provision adjudication of traffic violations outside the courts. O.R.C. § 1901.31 similarly does not permit, with good reason, the deletion of clerk duties via local ordinance.

The Respondent and similar municipalities have acted *ultra vires* in vesting traffic violations proceedings outside their municipal court systems.[8] Such conduct is clearly not permitted under General Assembly's statutory framework.

D. The Ordinance Denies The Petitioner Due Process.

As a result of the *ultra vires* acts of the Respondents divesting the municipal court of jurisdiction over State misdemeanor offenses as discussed previously, Petitioners and those similarly situated have been deprived of due process rights. First, the Respondent usurped the authority of the General Assembly and sought to treat criminal behavior as a civil infraction. Following this, the Respondent placed these speeding and red light infractions in the jurisdiction of a non-judicial body for adjudication, without the need to prove the offense by proof beyond a reasonable doubt or any of the other common protections provided to criminal defendants by the Ohio Constitution. As a result, provisions of the Ordinances effectively deny Petitioner and others their rights to due process.

Additionally, a general review of this Court's Traffic Rules makes clear that the Ordinance and others similar to it have gone to great lengths to do away with procedural due process in the interest of revenue generation. This Court, pursuant to the authority granted it under R.C. §§ 2935.17 and 2937.46 has now spent over 30 years promulgating the Ohio Traffic Rules to "secure the fair, impartial, speedy and sure administration of justice, simplicity and uniformity in procedure" as to cases arising under the traffic laws of this State **and related ordinances**. O.R.C. § 2937.46 and Traf. R. 1(B). These rules were first effective in 1975 and last amended on July 1, 2006.

[8] In the City of Cleveland, hearings on contested civil fines for speeding are heard in the City's Parking Violations Bureau by a lawyer or police officer as selected by the Clerk of its Municipal Court.

The Ohio Traffic Rules provide explicit detail as to the procedures to be followed in all courts of the State in traffic cases. Traffic cases, by definition of the statute, include violations of ordinances relating to the operation, use, or movement of vehicles on streets within this State. Traf. R. 2(A)(C). The Traffic Rules further define their application to municipal court or mayoral court proceedings to control the conduct of mayors, court clerks, or their appointees, as it relates to the prosecution of traffic cases for violation of general laws and/or ordinances. Traf. R. 2(F)(J).

The Traffic Rules of this Court further provide detailed procedural directives for prosecution of traffic offenses via violation of ordinance. They specifically require that traffic cases be commenced via the issuance of a complaint and summons in the same form as the "Ohio Uniform Traffic Ticket". This form provides the recipient notice of the alleged violation and an initial disclosure of rights and procedural options. It is to be used in all moving traffic cases, including violation of city ordinances, and only allows the local jurisdictions to use another form in instances of parking and equipment violations. Traf. R. 3(C).

Though the Ohio Uniform Traffic Ticket may be adopted into an electronic format, the Rules state that the electronic form must still conform "in all substantive respects, including layout and content, to the Ohio Uniform Traffic Ticket set forth in the Appendix of Forms." The Uniform Traffic Ticket sets forth basic requisites concerning notice and a preliminary discussion of potential jeopardy. It is unquestionable that the notices of liability furnished to civil violators of the Ordinance and others similar to it does not comport in form and substance to the requisite form as proved by this Court.

Also, the Ordinance and similar provisions do away with the procedural and prosecutorial safeguards that this Court painstakingly defined under the Ohio Traffic Rules. There is no

arraignment procedure conducted in open court with explanation as to the substance of any charge in a traffic case for violation of an ordinance, and alleged violators are not provided any explanation of legal rights regarding counsel and/or the right against self-incrimination. Traf. R. 8(B)(D).

In promulgating these Rules, so strong was this Court's interest in keeping strict compliance that it included a punishment provision for violations. Indeed, Traffic Rule 15 expressly provides that any clerk or personnel failing to apply the Rules or engaging in practices forbidden by them, or any person dispensing of a ticket in any manner other than that authorized by the Rules, may be prosecuted for criminal contempt of court. It therefore seems clear that this Court never contemplated prosecution of ordinance speeding violations in the format that Respondent and other municipalities have undertaken via implementation of photo enforcement. To think otherwise would be akin to the complete emasculation of the Traffic Rules in their entirety.

The Ohio Traffic Rules accordingly make clear that Respondent and other municipalities have engaged in impermissible conduct, and have denied Petitioner and others like her the due process rights as delineated by this Court. By definition, the Traffic Rules were to apply to all traffic cases, including violations of speeding and/or red light ordinances. Such violations under the Rules are to be prosecuted via issuance of a summons and complaint in the form of the Ohio Uniform Traffic Ticket. Such violations call for procedural safeguards concerning notice, arraignment, acceptance of plea, and advising alleged violators of constitutional rights and potential penalties.

In their effort to "end run" these rules, the Respondent and other municipalities have improperly divested prosecution of certain speeding and/or red light ordinance violations from

their municipal courts, and have reclassified them as administrative hearings to occur before appointees of their mayors or other individuals who are not magistrates and do not have the requisite qualifications for making such determinations. The activities of Respondent and other municipalities are therefore clearly improper, and arguably of the breath that this Court sought to preclude in implementing the Traffic Rule 15 penalties for the failure to properly prosecute and process these traffic offenses. The Ordinance and others like it are therefore further improper because of their failure to satisfy prerequisite and safeguards as defined by this Court.

III. CONCLUSION

Based upon all of the foregoing, your *Amicus Curiae* on behalf of Petitioner, Kelly Mendenhall, respectfully request that this Court answer the question certified to it in the negative, and specifically issue a holding that a municipality does not have the power under

home rule to enact civil penalties for the offense of violating criminal speeding and traffic signal offenses as set forth under the Ohio Revised Code.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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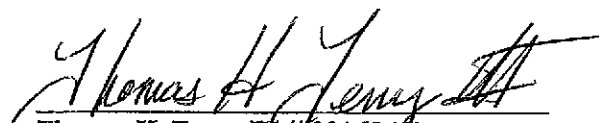

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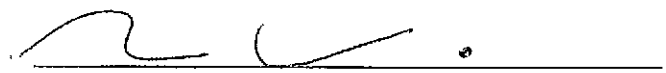

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APPENDIX

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TITLE 7 TRAFFIC CODE

CHAPTER 79 AUTOMATED MOBILE SPEED ENFORCEMENT SYSTEM

79.01 Civil penalties for automated mobile speed enforcement system violations.

A. General.
1. Notwithstanding any other provision of this traffic code, the City of Akron hereby adopts a civil enforcement system for automated mobile speed enforcement system violations as outlined in this section. Said system imposes monetary liability on the owner of a vehicle for failure of an operator thereof to strictly comply with the posted speed limit in school zones or streets or highways within the City of Akron that include crosswalks used by children going to or leaving a school during recess and opening and closing hours.
2. The Akron Police Department shall be responsible for administering the automated mobile speed enforcement system. Specifically, the Akron Police Department shall be empowered to install and operate the automated mobile speed enforcement system within the City of Akron using trained technicians who may be police officers, Police Department employees, or other trained technicians who are not employees of the Akron Police Department.
3. Any citation for an automated mobile speed system violation pursuant to this section, known as a "notice of liability" shall:
a. Be processed by officials or agents of the City of Akron; and
b. Be forwarded by first-class mail or personal service to the vehicle's registered owner's address as given on the state's motor vehicle registration; and
c. Clearly state the manner in which the violation may be appealed.
B. Definitions.
1. Automated mobile speed enforcement system is a system with one or more sensors working in conjunction with a speed measuring device to produce recorded images of motor vehicles traveling at a prohibited rate of speed.
2. "Hearing Officer" is the independent third party appointed by the Mayor.
3. "Vehicle owner" is the person or entity identified by the Ohio Bureau of Motor Vehicles, or registered with any other state vehicle registration office, as the registered owner of a vehicle or a lessee of a motor vehicle under a lease of six months or more.
C. Offense.
1. The owner of a vehicle shall be liable for a penalty imposed pursuant to this section if such vehicle is operated at a speed in excess of those set forth in Section 73.20.
2. It is prima facie evidence that the person registered as the owner of the vehicle with the Ohio Bureau of Motor Vehicles (or with any other state vehicle registration office) was operating the vehicle at the time of the offense set out in subsection (C)(l).
3. Notwithstanding subsection (C)(2) above, the owner of the vehicle shall not be responsible for the violation if, within twenty-one days from the date listed on the "notice of liability," as set forth in subsection (D)(2) below, he furnishes the Hearing Officer:
a. An affidavit by the vehicle owner, stating the name and address of the person or entity who leased the vehicle in a lease of six months or more at the time of the violation; or
b. A law enforcement incident report/general offense report from any state or local law enforcement agency/record bureau stating that the vehicle involved was reported as stolen before the time of the violation.
4. Nothing in this section shall be construed to limit the liability of an owner of a vehicle for any violation of subsection (C)(l) or (C)(2) herein.
D. Civil Penalties.
1. Unless the operator of the motor vehicle received a citation from a police officer at the time of the violation, the owner of the motor vehicle is subject to a civil penalty if the motor vehicle is recorded by an automated mobile speed enforcement system while being operated in violation of this ordinance.

2. Any violation of this section shall be deemed a noncriminal violation for which a civil penalty of one hundred fifty dollars shall be assessed to the owner for speed in excess of twenty miles per hour and less than thirty-five miles per hour in a school zone during restricted hours and a civil penalty of two hundred fifty dollars shall be assessed for speeds of thirty-five miles per hour or greater in a school zone during restricted hours. A civil penalty of one hundred fifty dollars shall be assessed for speeds in excess of the posted limits, but less than fifteen miles per hour over the posted limit, on streets and highways not in school zones that include crosswalks used by children going to or leaving school. A civil penalty of two hundred fifty dollars shall be assessed for speeds that exceed the posted speed limit by fifteen miles per hour or greater on streets and highways not in school zones that include crosswalks used by children going to or leaving school.
3. A violation for which a civil penalty is imposed under this ordinance is not a moving violation for the purpose of assessing points under Ohio Revised Code Section 4507.021 for moving traffic offenses and may not be recorded on the driving record of the owner of the vehicle and shall not be reported to the Bureau of Motor Vehicles.
E. Collection of Civil Penalty. If the civil penalty is not paid, the civil penalty imposed under the provisions of this ordinance shall be collectible, together with any interest and penalties thereon, by civil suit pursuant to procedures established by the City of Akron for the collection of debts.
F. Administrative Appeal. A notice of appeal shall be filed within twenty-one days from the date listed on the "notice of liability" with the Hearing Officer appointed by the Mayor of the City of Akron. The failure to give notice of appeal or pay the civil penalty within this time period shall constitute a waiver of the right to contest the citation and will be considered an admission of a violation of this section. Administrative appeals shall be heard through an administrative process established by the City of Akron. A decision in favor of the City of Akron may be enforced by means of a civil action or any other means provided by the Ohio Revised Code. (Ord. 461-2005)

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IN THE COURT OF COMMON PLEAS
TRUMBULL COUNTY, OHIO
CASE NO. 05-CV-1927

DANIEL MOADOS, JR., et al.,)
Plaintiff(s))
vs.) JUDGMENT ENTRY
CITY OF GIRARD, et al.,)
Defendant(s))

This matter is before the Court on Plaintiffs' claims for Declaratory and Permanent Injunctive Relief against Defendant, City of Girard, Ohio, with respect to Girard Ordinance No. 7404-05 (the "Ordinance"), which created a civil enforcement system for speeding violations within the City utilizing a camera and radar device. For the reasons set forth herein, the Court concludes that the Ordinance violates Article XVIII, section 3 of the Ohio Constitution and that Plaintiffs are therefore entitled to the declaratory and injunctive relief requested.

The Court has allowed a class action under Civil Rule 23. Those included in the class are all parties not seeking exclusion who have been cited under the traffic camera system, and who have failed to pay the fines assessed against them under the notice provision of the Ordinance.

The pertinent facts are set forth in the Joint Statement of Facts submitted by the parties, a copy of which is attached hereto as Appendix A.

Although the parties have briefed various issues, the Court finds the first argument raised by Plaintiffs dispositive of the claims now before it, and therefore limits its discussion to that particular issue. Specifically, Plaintiffs contend that the Ordinance violates Article XVIII, Section 3 of the Constitution of the State of Ohio by being in conflict with general laws of the state governing traffic in Title 45 of the Ohio Revised Code. The constitutional provision at issue reads as follows:

> 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 the general laws.

In Canton v. State, 95 Ohio St. 3d 149, 2002-Ohio-2005, 766 N.E.2d 963, the Ohio Supreme Court set forth the three part test for determining whether a provision of a state statute takes precedence over a municipal ordinance as follows:

> A state statute takes precedence over a local ordinance when (1)the ordinance is in conflict with the statute; (2)the ordinance is an exercise of the police power, rather than of local self government; and (3)the statute is a general law.

Addressing the third prong of the test first, the Court rejects Defendants' claim that the various speeding-related statutes cited by Plaintiffs, and in particular R.C. Section 4511.21, 4510.036 and 4511.99, are not "general laws." In Canton, the Court cited with approval its decision in Schneiderman v. Sesanstein (1929), 121 Ohio St.80, 167 N.E. 158, in which it held that a statute setting speed limits throughout Ohio was a general law. As is particularly significant here, the Canton Court stated:

> We have noted in the past that statutes regulating matters such as speed limits and hazardous waste facilities are regulations "for the protection of the lives of the people of the whole state" and have "no special relation to any of the political subdivisions of the state." Schneiderman, 121 Ohio St. 84, 167 N.E. 158 (speed limits), quoting Froelich v. Cleveland (1919), 99 Ohio St. 376, 386, 124 N.E. 212; Clermont [Environmental Reclamation Co. v. Wiederhold (1982)], 2 Ohio St. 44, 2 OBR 587, 442 N.E. 1278 (hazardous waste facility). Thus, those statutes were deemed to be "general laws."

Additionally, and in contrast to the approach advocated here by Defendants, the Canton Court noted that among the "steadfast parameters" it had established for determining when a law is a general law was that statutory schemes should be viewed "in their entirety, rather than a single statute in isolation," with an eye toward determining whether the statutes in question promoted "statewide uniformity." Canton

at paragraphs 12, 18. The foregoing reasoning strikes this court as abundantly sound. Moreover, none of the above-mentioned statutes can be viewed as placing limitations upon law making by municipal legislative bodies; rather, these statutes quite plainly apply to citizens generally, and not to municipal legislative bodies. See Canton at paragraphs 34-36, and cases cited therein.

As to the second prong of the three-part test set forth in Canton, Defendants essentially acknowledge that the Ordinance represents an exercise of the police power. Further, Defendants cursory assertion that the Ordinance also represents an exercise of self-government, i.e., "The City enacted the Ordinance to govern how the city treats traffic offenses," represents little more than wordplay and the Court finds no difficulty in concluding that the second part of the test has been met here.

Finally, as to the first prong of the three-part test, the Court concludes that the Ordinance is plainly in conflict with various general laws of the state regulating speeding, and in particular, with R.C. Sections 4510.036, 4511.21(G), 4511.21(P), and 4511.99. The most basic conflict is that the ordinance purports to decriminalize a type of conduct (driving in excess of the applicable speed limit) that the State has,

through R.C. Sections 4511.21(P) and 4511.99, defined as criminal in nature. In City of Cleveland v. Betts (1958), 168 Oh. St. 386, 154 N.E 2d 917, 7 O.O. 2d 115, the Ohio Supreme Court invalidated a city ordinance making carrying a concealed weapon a misdemeanor because it conflicted with the general state law which made the offense a felony. Noting that the conflict seemed "obvious," the Court stated as follows:

> We are aware that in the case of Village of Struthers vs. Sokol, 108 Oh. St. 263, 140 N.E. 519, followed in other later cases decided by this court, it was declared that in determining whether a conflict exists between a statutory enactment and a municipal ordinance 'the test is whether the ordinance permits or licenses that which the statute forbids and prohibits and vice versa.' but surely this test is not exclusive. Although the ordinance in issue does not permit what the statute prohibits, and vice versa, it does contravene the expressed policy of the state with respect to crimes by deliberately changing an act which constitutes a felony under state law into a misdemeanor, and this creates the kind of conflict contemplated by the constitution. Conviction of a misdemeanor entails relatively minor consequences, whereas the commission of a felony carries concealed weapons a misdemeanor, what is there to prevent it from treating armed robbery, rape, burglary, grand larceny or even murder in the same way, and finally dispose of such offenses in the Municipal Court.

Here the conflict is arguably even more extreme than that at issue in Betts, as the Ordinance purports to transform what the State has defined as criminal conduct into merely a civil wrong. In City of Niles v. Howard (1984), 12 Oh.St. 3d 162, 466 N.E. 2d 539, the Court drew a clear distinction

between ordinances which impose a greater penalty than that imposed by a corresponding state criminal statute, and ordinances which change the "degree" of the crime, i.e., felony or misdemeanor, to something other than provided for by the state statute. Howard, at 165. The Court held that the former type of ordinances are valid, while the latter impermissibly conflict with general laws. Here, the Ordinance purports to not simply change the degree of the crime, but to redefine the conduct at issue as non-criminal. Defendant has failed to cite any persuasive authority which would support this.

Similarly, the Ordinance purports to simply override R.C. Sections 4510.036 and 4511.21(G) with respect to the point system. There is a public policy the State Legislature has implemented through the point system to take careless or reckless drivers off the roads. The Niles Ordinance has no sanctions other than the civil penalty of paying a fine.

Defendant in its Supplement to its Trial Memorandum cites an interlocutory opinion by the United District Court, North Eastern District of Ohio, Eastern Division in Case No. 5:06CV139. This case is not binding law on this Court, but the opinion uses the statutory scheme adopted by the Ohio Legislature under O.R.C. Chapter 4521. Under this statutory

scheme, the Legislature has authorited civil, non-criminal penalties to be set by municipalities for parking tickets. There has been no legislative action by the State to allow the extension of this concept to speeding.

For the reasons stated, this court holds the Girard Ohio Ordinance under question to be in violation of Article XVIII, Section 3 of the Ohio Constitution and that Plaintiffs are entitled to the declaratory and injunctive relief requested.

IT IS THE ORDER OF THIS COURT that the City of Girard, Ohio, will cease and desist in using cameras for enforcement of speeding laws unless done so under the general criminal laws of Ohio.

This Court further ORDERS the City of Girard to not attempt collection of any fines claimed by said city under the "civil" ordinance drafted by said city.

Costs to Defendants.

There is no just cause for delay of appeal of this matter.

7/6/06 — DATE

JUDGE JOHN M. STUARD

TO THE CLERK OF COURTS: YOU ARE ORDERED TO ISSUE COPIES OF THIS JUDGMENT ON ALL COUNSEL OF RECORD AND UPON THE PARTIES WHO ARE UNREPRESENTED FORTH WITH BY ORDINARY MAIL.

JUDGE