IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY
CIVIL DIVISION

CITY OF DAYTON, OHIO,	:	CASE NO. 2015-CV-1457
Plaintiff,	:	
v.	:	
	:	(Judge Barbara P. Gorman)
STATE OF OHIO,	:	
Defendant.	:	**DECISION, ORDER, AND ENTRY SUSTAINING IN PART THE MOTION FOR SUMMARY JUDGMENT OF PLAINTIFF CITY OF DAYTON, OHIO AND OVERRULING DEFENDANT STATE OF OHIO'S MOTION FOR SUMMARY JUDGMENT**

On March 18, 2015, the City of Dayton filed *Plaintiff's Verified Complaint for Declaratory Judgment and Preliminary and Permanent Injunction.* In accordance with a telephone conference among the Court and the parties, the following simultaneous briefs for summary judgment were filed on March 23, 2015: (i) the *Motion for Summary Judgment of Plaintiff City of Dayton, Ohio,* and (ii) *Defendant State of Ohio's Motion for Summary Judgment*. The following reply briefs were filed on March 30, 2015: (i) *Plaintiff City of Dayton's Reply Brief in Support of Summary Judgment and Brief in Opposition to Defendant's Motion for Summary* and (ii) *Defendant State of Ohio's Memorandum in Opposition to Plaintiff's Motion for Summary Judgment.*

This matter is properly before the Court.

I. FACTS

Plaintiff, the City of Dayton (the "City") seeks a declaration that Amended Substitute Senate Bill 342, effective March 23, 2015, is an unconstitutional use of state power that violates the Home Rule Amendment of the Ohio Constitution and an injunction prohibiting the State of Ohio from enforcing it. Am. Sub. S.B. No. 342 regulates automatic traffic camera enforcement systems established by local governments.

The City is a home rule jurisdiction under the home-rule amendment to Article XVIII, Sec. 3 of the Ohio Constitution. On June 12, 2002, the City enacted an Automatic Traffic Control Photographic System (the "Traffic Control System") to identity and impose a civil sanction for red light traffic violations. The ordinance adopting the Traffic Control System stated its purpose as:

> WHEREAS, The City seeks to reduce the frequency of vehicle operators running red traffic lights; and
> WHEREAS, The frequency of running red lights creates a substantial risk to the safety of citizens on the roadway; and
> WHEREAS, An automated traffic control photographic system will assist the Dayton Police Department by alleviating the necessity for conducting extensive conventional traffic enforcement at high accident intersections; and
> WHEREAS, The adoption of an automated traffic control photographic system will result in a significant reduction in the number of red light violations and/or accidents within the City of Dayton;

On February 17, 2010, the City modified the Traffic Control System to include speed violations. The ordinances relating to both the red light and speed provisions of the Traffic Control System are codified at Dayton R.C.G.O. Section 70.121.

The Traffic Control System provides video and still photographs of vehicles that fail to obey posted speed limits or run red lights. Before a citation is issued, a Dayton police officer reviews the video footage and photos to confirm that a violation occurred. A civil monetary fine is then imposed on the owners of such vehicles. There is no criminal penalty for

violations captured by the Traffic Control System, and the fines are not enforced by a court. Rather, the City has an administrative appeal process.

In 2008, and again in 2014, the Ohio Supreme Court affirmed that "municipalities have Home Rule Authority under Article XVIII of the Ohio Constitution to impose civil liability on traffic violators through an administrative enforcement system." *Walker v. City of Toledo*, 2014-Ohio-5461 (Slip Op. Dec. 18, 2014). See also, *Mendenhall v. City of Akron*, 117 Ohio St. 3d 33, 41 (2008). Since 2009, the State of Ohio has placed some regulations on photo monitoring devices like the Traffic Control System. For example, O.R.C. Section 4511.094(A)(1)-(2) requires specific signage when a photo monitoring system is used in a municipality. Likewise, O.R.C. Section 4511.094(C) requires that the yellow signal light must exceed the mandated time set by the Ohio Department of Transportation for the steady yellow light by at least one second.

On December 19, 2014, Amended Substitute Senate Bill 342 was signed into law. Effective March 23, 2015, Am.Sub.S.B. No. 342 mandates that municipalities may employ photo monitoring devices like the Traffic Control System "only if a law enforcement officer is present at the location of the device at all times during the operation of the device." O.R.C. Section 4511.093(B)(1). Specifically, the new law requires:

> The use of a traffic law photo-monitoring device is subject to the following conditions:
>
> **(1)** A local authority shall use a traffic law photo-monitoring device to detect and enforce traffic law violations only if a law enforcement officer is present at the location of the device at all times during the operation of the device and if the local authority complies with sections 4511.094 and 4511.095 of the Revised Code.
>
> **(2)** A law enforcement officer who is present at the location of any traffic law photo-monitoring device and who personally witnesses a traffic law violation may issue a ticket for the violation. Such a ticket shall be issued in accordance with section 2935.25 of the Revised Code and is not subject to sections 4511.096 to 4511.0910 and section 4511.912 of the Revised Code.
>
> **(3)** If a traffic law photo-monitoring device records a traffic law violation and the law enforcement officer who was present at the location of the traffic law photo-

> monitoring device does not issue a ticket as provided under division (B)(2) of this section, the local authority may only issue a ticket in accordance with sections 4511.096 to 4511.0912 of the Revised Code.

Notably, the officer needs only to be present at the device. Such an officer does not need to witness a violation or even be viewing the intersection for a fine to be imposed. Rather, newly enacted O.R.C. Section 4511.097(B)(9) requires that an officer must later review the footage and photographs to confirm that a violation occurred before a ticket is issued. As set forth above, the Traffic Control System has had such a procedure in place since the ordinance was enacted in 2002.

Another requirement implemented by Am.Sub.S.B. No. 342 mandates under O.R.C. Section 4511.095 that, prior to installing cameras at a location, the local government must conduct a study of traffic incidents at the intersection for the previous three years and make such study available to the public. The statute also requires local jurisdictions to conduct "a public relations campaign" and "observe a public awareness warning period of not less than thirty days" before issuing any tickets at any new automatic traffic camera location. R.C. 4511.095. Amended Senate Bill 342 also prohibits municipal authorities from issuing automatic traffic camera enforcement tickets to speeders unless they are driving more than six miles per hour above the speed limit in school zones and parks or ten miles per hour above the speed limit in other locations. R.C. §4511.0912.

Each of the City and the State of Ohio has moved for summary judgment on the City's causes of action for declaratory judgment that Am.Sub.S.B. No. 342 is unconstitutional because it violated the Home Rule Amendment to the Ohio Constitution and injunctive relief enjoining enforcement of the new law by the State.

II. LAW & ANALYSIS

A. Standard of Review.

Ohio Rule of Civil Procedure 56(C) states:

> Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. No evidence or stipulation may be considered except

> as stated in this rule. A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party's favor.

Ohio Rule of Civil Procedure 56(E) provides in relevant part:

> When a motion for Summary Judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the party's pleadings, but the party's response, by affidavit or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the party does not so respond, summary judgment, if appropriate shall be entered against the party.

Upon a motion for summary judgment, the moving party bears the initial burden of showing that no genuine issue of material fact exists for trial. See *Harless v. Willis Day Warehousing Co., Inc.* (1978), 54 Ohio St.2d 64, 66, 375 N.E.2d 46. Any inferences to be drawn from the underlying facts must be viewed in the light most favorable to the party opposing the motion. *Leibreich v. A.J. Refrigeration, Inc.* (1993), 67 Ohio St.3d 266, 269, 1993 Ohio 12, 617 N.E.2d 1068; *Williams v. First United Church of Christ* (1974), 37 Ohio St.2d 150, 152, 309 N.E.2d 924.

The burden then shifts to the non-moving party to set forth specific facts which show that there is a genuine issue of fact for trial. *Harless*, 54 Ohio St.2d at 65-66, 375 N.E.2d 46. The non-moving party has the burden "to produce evidence on any issue for which that party bears the burden of production at trial." *Leibreich*, 67 Ohio St.3d at 269, 1993 Ohio 12, 617 N.E.2d 1068; *Wing v. Anchor Media, Ltd.* (1991), 59 Ohio St.3d 108, 111, 570 N.E.2d 1095, citing *Celotex Corp. v. Catrett* (1986), 477 U.S. 317, 322-323. Therefore, the non-moving party may not rest upon unsworn or unsupported allegations in the pleadings. *Harless*, 54 Ohio St.2d at 66, 375 N.E.2d 46. The non-moving party must respond with affidavits or other appropriate evidence to controvert the facts established by the moving party. Id. Further, the non-moving party must do more than show there is some metaphysical doubt as to the material facts of the case. *Matsushita Electric Ind. Co. v. Zenith Radio* (1980), 475 U.S. 574.

B. Portions of Am. Sub. S.B. 342 Violate the City's Home Rule Authority.

In *Walker*, supra, the Ohio Supreme Court reaffirmed its holding in *Mendenhall v, City of Akron*, 117 Ohio St. 3d 33, 36-37 (2008) "that Ohio Constitution, Article XVIII, Sections 3 and 7 grant municipalities the authority to protect the safety and well-being of their citizens by establishing automated systems for imposing civil liability on traffic-law violators." In *Walker*, the automated system employed by Toledo utilized a traffic camera and vehicle sensor similar to the Traffic Control System used by the City.

The question before the Court in the instant case is whether the requirements for operating such a system as imposed by Am. Sub. S.B. 342 violate the Home Rule Amendment of the Ohio Constitution. The Home Rule Amendment provides that municipalities are authorized "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, Sec. 3. The State of Ohio argues that Am. Sub. S.B. 342 is a general law that must be enforced over a conflicting local ordinance. The City argues, however, that Am. Sub. S.B. 342 fails to meet the four-part test to determine whether a state law is a general law as established by the Ohio Supreme Court in *Canton v. State of Ohio*, 95 Ohio St. 3d 149 (2002).

In *Canton*, the Ohio Supreme Court held that to be a valid general law, a state statute must "(1) be part of a statewide and comprehensive legislative enactment, (2) apply to all parts of the state alike and operate uniformly throughout the state, (3) set forth police, sanitary, or similar regulations, rather than purport only to grant or limit legislative power of a municipal corporation to set forth police, sanitary, or similar regulations, and (4) prescribe a rule of conduct upon citizens generally." Id. at 153. As set forth below, the Court finds that

Am. Sub. S.B. 342 does not meet all four prongs of the *Canton* test for a valid general state law.

1. Am. Sub. S.B. 342 is part of a statewide and comprehensive legislative enactment.

The State contends that Am. Sub. S.B. 342 is part of a comprehensive and statewide legislative enactment found in O.R.C. Chapter 4511 governing Traffic Laws-Operation of Motor Vehicles. The City argues that the statute merely targets municipal action and "varies widely" in the subjects that it regulates.[1] For example, the subjects regulated by O.R.C. Chapter 4511 include emergency vehicles, driving with animals, vehicle weighing and tourist information, as well as the newly enacted provisions governing automatic traffic cameras. In *Mendenhall v. City of Akron,* 117 Ohio St. 3d 33, 38 (2008), the Ohio Supreme Court stated, "the sections within a chapter will not be considered in isolation when determining whether a general law exists." *Mendenhall,*at Para. 27. Rather, "all sections of a chapter must be read in pari materia to determine whether the statute in question is part of a statewide regulation and whether the chapter as a whole prescribes a rule of conduct upon citizens generally." Id. The Court then determined that Ohio's speed limit statute, O.R.C. Section 4511.21, is a statewide and comprehensive enactment despite being of the several traffic control subjects covered in O.R.C. Chapter 4511. Accordingly, this Court finds that the laws regarding traffic control photo monitoring devices in O.R.C. Chapter 4511 is also part of a comprehensive and statewide legislative enactment.

2. Am Sub. S.B. 342 applies uniformly throughout the state.

The City argues that the requirements of Am Sub. S.B. 342 do not apply uniformly throughout Ohio. Specifically, the City contends that the new law (i) provides exceptions to the some of its provisions for pre-existing traffic locations (ie., the requirement that a study be conducted of a new location for the previous three years), and (ii) " destroys uniformity in traffic

[1] The City cites to the *Canton* decision in which the Court struck down a state statute prohibiting a municipality from banning manufactured homes within its jurisdiction. The Court held that Chapter 3781 of the Ohio Revised Code related to building standards generally and covered varied subjects and did not represent a statewide "zoning plan" to which the contested law was part.

enforcement by prohibiting automatic traffic camera violations from being enforced if they are less than six miles per hour over the speed limit in school and park zones and less than ten miles per hour over the speed limit elsewhere." *City of Dayton Motion for Summary Judgment* at 10. The Court does not find these arguments to be persuasive.

In *Canton,* the Court clarified that, "[t]he requirement of uniform operation throughout the state of laws of a general nature does not forbid different treatment of various classes or type of citizens," but merely prohibits classifications that are "arbitrary, unreasonable or capricious." *Canton* at para. 30. The examples cited by the City are not arbitrary, unreasonable or capricious. First of all, the exceptions for the pre-implementation study built into the statute in O.R.C. Section is a grandfathering provision that recognizes that conducting the study for pre-existing camera locations is simply not practical. Secondly, the prohibition on municipal authorities from issuing automatic traffic camera enforcement tickets to speeders unless they are driving more than six miles per hour above the speed limit in school zones and parks or ten miles per hour above the speed limit in other locations is not arbitrary or capricious because school and park zones are treated differently under Ohio's speed laws in general. Based on the foregoing, the Court finds that Am. Sub.S.B. 342 applies uniformly throughout Ohio.

3. Am. Sub S.B. 342 limits municipal powers and is not a general police, sanitary or similar regulation.

The City argues that Am. Sub. S.B. 342 was enacted to limit municipal legislative powers. The State maintains that the new law implements police regulations that do more than simply limit municipal authority. For the following reasons, the Court agrees with the City that certain provisions of Am. Sub. S.B. 342 fail the third prong of the *Canton* test and are directed toward limiting municipal authority. Under *Canton,* general laws do not include those "which purport only to grant or limit the legislative power of a municipal corporation."

In *Village of Linndale v. State of Ohio*, 85 Ohio St. 3d 52 (1999), a state statute prohibited municipalities from issuing citations on interstate highways under the following conditions: (i) the

city has less than 880 yards of interstate freeway in its jurisdiction, (ii) local law enforcement had to travel outside of its jurisdiction to enter the freeway, and (iii) local law enforcement entered the freeway for the primary purpose of issuing citations. The Court noted that "because a municipal corporation's authority to regulate traffic comes from the Ohio Constitution, *State v. Parker* (1994), 68 Ohio St. 3d 283, 285, 626 N.E.2d 106, 108; see, also, *Munn, supra*, a statute that, like R.C. 4549.17, purports only to limit this constitutionally granted power is not a "general law." *Linndale*, at 55. Rather, the law was "simply a limit on the legislative powers of municipal corporations to adopt and enforce specific police regulations." Id.

Likewise, certain provisions of Am. Sub S.B. 342 simply limit the legislative powers of local jurisdictions. The first such provision is O.R.C. Section 4511.093(B), which prohibits a municipality from using a photo-monitoring device at a location unless a law enforcement officer "is present at the location of the device at all times during the operation of the device…" O.R.C. Section 4511.093(B)(1). The statute imposes no function for such officer other than to be present. The officer is not responsible for writing citations or even observing violations. The statute simply mandates to local jurisdictions how to allocate their law enforcement personnel. Such a requirement is nothing more than an impermissible limit on a municipality to enforce its civil administrative laws for traffic control.

Secondly, O.R.C. Section 4511.095 also impermissibly limits a municipality's legislative powers by requiring that prior to deploying a photo monitoring device at any given location, the local authority must (i) conduct a study which shall include "an accounting of incidents that have occurred in the designated area over the previous three-year period…" O.R.C. Section 4511.095(A)(1), and (ii) conduct a public relations campaign to inform motorists of the camera locations and have a thirty-day warning period before citations are issued at a location. Again, such requirements merely limit a local municipal corporation's power to enforce their traffic control laws and enforcement procedures.

Finally, although as set forth above, this Court found that O.R.C. section 4511.0912 relating to the prohibition on municipal authorities from issuing automatic traffic camera enforcement tickets to speeders unless they are driving more than six miles per hour above the speed limit in school zones and parks or ten miles per hour above the speed limit in other locations met the second prong of the *Canton* test, it does not meet the third prong because it limits the speeds at which violators can be issued citations. Here, the offensive provision is not the difference in speeds between different locations, but that the statute purports to set any such limits on the ability of a local jurisdiction to enforce its traffic laws.

Based on the foregoing, the Court finds that O.R.C. Sections 4511.093(B)(1) and (3), 4511.095, and 4511.0912 do not meet the third prong of the *Canton* test and thus are not general laws. Under the guise of a general police power, the State has placed an onerous burden on local municipalities seeking to administratively enforce their own traffic control procedures.

4. Portions of Am. Sub. S.B. 342 do not prescribe a rule of conduct on citizens generally.

A general law must "prescribe a rule of conduct upon citizens generally." *American Financial Services Asso. v. City of Cleveland*, 112 Ohio St.3d 170. In *Linndale*, supra, the Court determined that "the statute in question, prohibiting local law enforcement officers from certain localities issuing speeding and excess weight citations on interstate freeways did not prescribe a rule of conduct upon citizens generally." *Canton*, supra, at 156. While certain of the provisions of Am. Sub. S.B. 342 are directed at the conduct of citizens, O.R.C. Sections 4511.093(B)(1) and (3), 4511.095, and 4511.0912 are, like the statute in *Linndale*, directed at municipal legislative bodies. Having an officer present at the location of a traffic camera does not prescribe a rule of conduct on citizens. Likewise, the onerous requirements of O.R.C. 4511.095 and O.R.C 4511.0912 are aimed at the ability of a municipality to use devices such as the Traffic Control System. The Court notes that the even the preamble to Am. Sub. S.B. 342 indicates that the intended impact is on local

governments as the purpose of the Act is stated as "to establish conditions for the use by local authorities of traffic law photo-monitoring devices to detect certain traffic law violations."

Because O.R.C. Sections 4511.093(B)(1) and (3), 4511.095, and 4511.0912 do not prescribe a rule of conduct on citizens generally, these provisions fail to meet the fourth prong of the test for a general law set forth in *Canton.*

C. Summary

As set forth above, O.R.C. Sections 4511.093(B)(1) and (3), 4511.095, and 4511.0912 are not general laws and, therefore, enforcement of such provisions against the City and its Traffic Control System violates the Home Rule Amendment of the Ohio Constitution.

As a result, the Court finds that the City is entitled to partial summary judgment as a matter of law on Count I of its Complaint and hereby DECLARES that O.R.C. Sections 4511.093(B)(1) and (3), 4511.095, and 4511.0912 are unconstitutional, in violation of the Home Rule Amendment of the Ohio Constitution. The Court further grants the City partial summary judgment in its favor as to Count II of its Complaint by hereby permanently enjoining enforcement of O.R.C. Sections 4511.093(B)(1) and (3), 4511.095, and 4511.0912 against the City. The State of Ohio's motion for summary judgment is hereby OVERRULED.

III. CONCLUSION

Accordingly, the *Motion for Summary Judgment of Plaintiff City of Dayton, Ohio* is hereby SUSTAINED in part as to O.R.C. Sections 4511.093(B)(1) and (3), 4511.095, and 4511.0912. *Defendant State of Ohio's Motion for Summary Judgment* is hereby OVERRULED.

This is a final appealable order, and there is not just cause for delay for purposes of Ohio Civ. R. 54. Therefore, the time for prosecution and appeal to the Second District Court of Appeals must be computed from the date upon which this decision and entry is filed.

The above captioned case is ordered terminated upon the records of the Common Pleas Court of Montgomery County, Ohio.

Plaintiff's costs are to be paid by Defendant.

SO ORDERED:

_____

BARBARA P. GORMAN, JUDGE

The parties listed below were notified of this Decision, Order and Entry through the electronic notification system of the Clerk of Courts.

Halli Brownfield Watson
John C. Musto

Phyllis Treat, Bailiff 225-4392

General Divison
Montgomery County Common Pleas Court
41 N. Perry Street, Dayton, Ohio 45422

Type: Decision

Case Number: 2015 CV 01457

Case Title: CITY OF DAYTON OHIO vs STATE OF OHIO

So Ordered

Barbara Pugliese Gorman