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May 10, 2015

The Honorable Kris Jordan
Chair, Ohio Senate Finance Subcommittee
on General Government
Senate Building
1 Capitol Square, Ground Floor
Columbus, Ohio 43215

Mr. Chairman and Honorable Members of the Committee:

My name is Andy Douglas. I am an Attorney with the firm of Crabbe, Brown & James here in Columbus. In concert with others, I represent the City of Toledo (City) with regard to certain legislation now before you for your consideration. I write to you in my representative capacity and as a past nineteen year member of Toledo City Council during the years 1961 – 1980.

I appreciate your taking the time to consider my testimony. I would be appearing in person if I had not been required to be in Washington, D.C. on a previous commitment.

I write to you today respectfully requesting, on behalf of the City, that you review and then subsequently recommend that certain proposed language in Sub. H.B. 64 be deleted from the pending legislation. The language we seek to have deleted presents a real threat to the Home Rule Authority of the City and others likely situated. I have attached hereto a copy of proposed Amendment SC2563. Approval by you of this Amendment is vital to thwarting the danger now facing us and all other recipients of Local Government Funding. We very respectfully and sincerely ask that you support this Amendment.

By the 1912 version of the Ohio Constitution, qualifying cities and villages were granted certain powers that exist outside those found in the Ohio Revised Code. Thus, Article XVIII, Section 3 of our Constitution provides:

> "Municipalities shall have authority to exercise all powers of local-self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws."

Pursuant to this authority, the City, in accordance with Section 7, Article XVIII of the Constitution framed and adopted a Charter for the City. Exercising its powers, the City enacted an ordinance providing for the use, within the City, of traffic law photo-monitoring devices euphemistically known as "red light cameras." In recent opinions, the Ohio Supreme Court upheld the City's authority, under its Home Rule Powers, to enact the ordinance and to implement the placing and use of these much-needed traffic control devices. Those determinations should end the attempts to circumvent the City's constitutional right to install and maintain the much-maligned devices.

Strange as it may seem to some, eliminating the devices is not the City's main concern with the proposed legislation. Of much greater impact is the permanent and lasting damage that passing the legislation could, and surely will, do to the City's clear authority under its Article XVIII, Sections 3 and 7 powers. While the proposed legislation is probably being submitted by its supporters for righting a perceived wrong, the City believes, however, it is just mean-spirited and punitive in nature. To, for any reason, take yet more funds from the City that are properly allocated to it by longstanding legislative enactments is Draconian in nature. As a former City Councilman, I can attest to the need for and the use of the City's allocation from the Local Government Fund. It is one of the lifelines of a City's financial structure. If enacted, the proposed legislation will establish a dangerous precedent that others following you could use to further erode, if not effectively eliminate, the City's powers of Home Rule. We plead with you not to let this happen.

While the foregoing sets forth, in a limited fashion, the City's primary objection to the legislation, there are also a number of legal arguments that can be made as to why the proposed legislation should not be enacted. The following is one argument that we make to you now in order to preserve its future use if that becomes necessary. The discussion is not meant to be a legal treatise of any sort and certainly it is not exhaustive in any regard. We just believe that it should be called to your attention because you are the first line of defense against this unfairness and, if you believe the argument, then you are in the position to do something about what we believe is not only bad precedent but a severe injustice.

The 130th General Assembly passed Amended Substitute Senate Bill No. 342. In part, the Bill enacted Section 4511.093 of the Ohio Revised Code. The law was subsequently signed by the Governor. In part (B) of R.C. 4511.093, the law provides that:

> "(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." (Emphasis added.)

The passage of this law effectively, of course, eliminated the use of the traffic control devices at issue. The law resulted, for lack of a better term, in the "constructive prohibition" of the devices. Toledo, believing this to be a clear violation of its Home Rule powers, filed suit in the Common Pleas Court of Lucas County seeking an order to permanently enjoin the enforcement of Am. Sub. S.B. No. 342. In a well-reasoned opinion (copy attached), Judge Mandros ordered that:

> "Defendants are permanently enjoined from enforcing Ohio Revised Code Sections *4511.093(B)(1)* and (3), 4511.095, 4511.096, 4511.097, 4511.098, 4511.099, 4511.0911(A) and (B) and 4511.0912." (Emphasis added.)

It is clear that the Court found, among other sections of Am. Sub. S.B. No. 342, Section 4511.093(B)(1) to be unconstitutional. The result of this finding is that those sections found unconstitutional are not the law and, in fact, never were the law. The effect is not that 342 was bad law, but rather that it never was the law. See *Roberts v. Treasurer* (2001) 147 Ohio App.3d 403.

As far back as 1886, the United States Supreme Court held (subsequently followed by a number of Ohio cases including the Ohio Supreme Court) in *Norton v. Shelby County* (1886) 118 U.S. 425, 442 that:

> "An unconstitutional act is not a law; it confers no right; it imposes no duties; it affords no protection; it creates no office; it is, in legal contemplation, as inoperative as though it had never been passed."

In the proposed legislation now before you, new Section 4511.0915 of the Revised Code is sought to be enacted. Section 4511.0915(A)(1) provides:

> "If the local authority operated any traffic law photo-monitoring device without *fully complying with sections 4511.092 to 4511.0914* of the Revised Code, the local authority shall file a report that includes a detailed statement of the civil

> fines the local authority has billed to drivers for any violation of any municipal ordinance that is based upon evidence recorded by a traffic law photo-monitoring device, including the gross amount of fines that have been billed." (Emphasis added.)

Accordingly, this new proposed section in Sub. H.B. No. 64 (4511.0915), clearly relies on sections 4511.092 to 4511.0914 (which, of course, includes 4511.093) as its predicate for tampering with the City's local government fund allocation and if the City does not "fully comply" with those sections, and the City has or will operate the devices, then the City's share of the local government fund is diminished and/or abolished. This, of course, can't stand because the sections relied on by the proposed legislation have been found unconstitutional and, thus, it is though they never existed and, therefore, the City need not nor can it comply with law that does not exist.

It follows then, we believe, that the proposed Section 4511.0915 falls by its own weight since it relies for its authority on specific sections of Senate Bill 342 that have been found to be unconstitutional and thus of no force and effect.

To sum up, in accordance with all of the foregoing and, specifically, because the proposed legislation violates the City's powers of Home Rule, we ask this Honorable Committee to recommend deleting from Sub. H.B. 64, in accordance with Amendment SC2563, the following:

1. In line 153, delete "5747.50, 5747.51" and "5747.53."
2. In line 178, delete "4511.0915."
3. In line 192, delete "5747.502."
4. In line 349, delete "5747.50" and "5747.51."
5. In line 350, delete "5747.53."
6. In line 369, delete "4511.0915."
7. In line 380, delete "5747.502."
8. Delete lines 51102 through 51138.
9. Delete lines 81189 through 81734.

10. In line 84159, delete "5747.50, 5747.51" and "5747.53."

We thank you for your kind attention to our concerns. If the Committee decides to take additional testimony, I would be happy to appear at the Committee's call. Also, I can be reached at (614) 506-8050.

Please accept my best regards.

Respectfully submitted,

CRABBE, BROWN & JAMES LLP

By Andy Douglas
Andy Douglas

AD/sd
Enc.
cc: Honorable Lou Gentile
Honorable John Eklund
Honorable Shannon Jones
Honorable Bob Peterson
Honorable Michael J. Skindell

SC2563

Sub. H.B. 64
As Passed by the House

_____ moved to amend as follows:

In line 153 of the title, delete "5747.50, 5747.51, 5747.53,"

In line 178 of the title, delete "4511.0915,"

In line 192 of the title, delete "5747.502,"

In line 349, delete "5747.50, 5747.51,"

In line 350, delete "5747.53,"

In line 369, delete "4511.0915,"

In line 380, delete "5747.502,"

Delete lines 51102 through 51138

Delete lines 81189 through 81734

In line 84159, delete "5747.50, 5747.51, 5747.53,"

The motion was _____ agreed to.

SYNOPSIS

Report of traffic camera penalties; LGF reductions

R.C. 4511.0915, 5747.50, 5747.502, 5747.51, and 5747.53

Removes provisions of the bill that do all of the following:

(1) Require any local authority that has operated a traffic law photo-monitoring device between March 23, 2015 and June 30, 2015, to file either of the following with the Auditor of State on or before July 31, 2015:

-- If the local authority has complied with the traffic camera law, a statement of compliance with the traffic camera law; or

-- If the local authority has not complied with the traffic camera law, a report including the civil fines the local authority has billed to drivers for any violation of any municipal ordinance that is based upon evidence recorded by a traffic law photo-monitoring device.

(2) Require any local authority that operates a traffic law photo-monitoring device to submit a report or statement of compliance, as discussed above, to the Auditor of State every three months;

(3) Reduce Local Government Fund (LGF) payments to subdivisions filing such reports (noncompliant subdivisions) in an amount equal to the gross amount of fines reported by a subdivision on such reports;

(4) Eliminate LGF payments to a subdivision that is required to but does not submit such a report or statement (delinquent subdivisions) until such time as the subdivision files required reports or statements; and

(5) Redistribute LGF payments withheld from a noncompliant or delinquent subdivision on a pro rata basis to other subdivisions in that subdivision's county.

IN THE COURT OF COMMON PLEAS OF LUCAS COUNTY, OHIO

City of Toledo,	*	Case No. CI 15-1828
Plaintiff,	*	Honorable Dean Mandros
vs.	*	**OPINION AND JUDGMENT ENTRY**
State of Ohio, et al.,	*	
Defendants.	*	

This is an action for declaratory and injunctive relief brought by the City of Toledo to prevent the enforcement of Am.Sub.S.B. No. 342, which regulates the use of automated traffic control devices. The Ohio Supreme Court has already approved the creation and use by municipalities of automated traffic photo enforcement programs to regulate speeding and red light violations without requiring the physical presence of a law enforcement officer. *Mendenhall v. City of Akron*, 117 Ohio St.3d 33, 2008-Ohio-270, 881 N.E.2d 255. There is much debate surrounding the use of automated traffic photo enforcement. However, the utilization of photographic traffic enforcement programs is not the issue before this judicial tribunal. The use of such cameras is the exclusive concern of the legislative branch of the government. "[A] court has nothing to do with the policy or wisdom of a statute [or ordinance]. That is the exclusive concern of the legislative branch of the government. When the validity of a statute [or ordinance] is challenged on constitutional grounds, the sole function of the court is to determine whether it transcends the limits of legislative power." *State ex rel. Bishop v. Board of Education of Mt. Orab Village School District*, 139 Ohio St. 427, 438, 40

N.E.2d 913 (1942). The issue before this Court is whether S.B. 342 violates the City's constitutional authority to exercise all powers of local self-government. Upon consideration of the facts, arguments, and applicable law, the Court finds that Revised Code Sections 4511.093(B)(1) and (3), 4511.095, 4511.096, 4511.097, 4511.098, 4511.099, 4511.0911(A) and (B), and 4511.0912 as set forth within S.B. 342 comprise an unconstitutional exercise of legislative power.

I. FACTS AND PROCEDURAL BACKGROUND

On March 15, 1999, the City of Toledo ("City") enacted Toledo Municipal Code ("TMC") 313.12 ("Ordinance") authorizing an automated traffic photo enforcement program that assesses civil penalties against a vehicle's owner for speeding and red-light violations. The criminal justice system is not involved with the City's photo enforcement program, the offender is not issued a criminal traffic citation by a police officer, the offender is not summoned to the traffic court in the Municipal Court, and points are not assessed against the driver or owner's record by the Bureau of Motor Vehicles.

Toledo transportation officials, as well as Toledo's police and law departments, administer the program. TMC 313.12 provides video and still photographs of vehicles that fail to obey posted speed limits or run red lights. If a vehicle passes through a red light at an intersection or exceeds the speed limit, the owner of the vehicle is issued a "notice of liability." The notice of liability includes the photographs of the vehicle, the vehicle's speed (if applicable), and the amount of civil penalty. The notice states that the owner must pay the fine or file an appeal within 21 days of the date listed on the notice.

If the owner of the vehicle wishes to challenge his or her liability, the appeal is heard through the administrative process established by the City of Toledo Police Department. An independent hearing officer conducts a review. The Ordinance declares that the fact an individual is the registered owner of a vehicle is "prima-facie evidence" that he or she was operating the vehicle at the time of the violation. Persons dissatisfied with the finding of the independent hearing officer may file an administrative appeal pursuant to R.C. Chapter 2506.

On December 19, 2014, the Governor of Ohio signed into law Amended Senate Bill 342 ("S.B. 342"), which added and revised provisions to the Ohio Revised Code including Photo Enforcement Programs. S.B. 342 was scheduled to take effect on March 23, 2015.

On March 13, 2015, the City filed the instant Complaint against the State of Ohio and Ohio Attorney General Michael DeWine requesting 1) that the Court grant Plaintiff a temporary restraining order prohibiting and restraining S.B.342 from going into effect on March 23, 2015, or until such time as otherwise set by this Court; 2) that the Court grant Plaintiff a temporary restraining order preserving status quo by prohibiting and restraining the Defendants from enforcing S.B. 342 until this matter is heard and decided by this Court; 3) that the Court grant Plaintiff a preliminary and permanent injunction preserving status quo ante and prohibiting the Defendants from enforcing S.B.342 in the future; 4) that the Court declare that S.B.342 violates the Home Rule Amendments of the Ohio Constitution in whole or in part; and 5) that the Court grant Plaintiff such other and further relief as may be just and/or appropriate.

Also on March 13, 2015, the City filed a Motion for Temporary Restraining Order, Preliminary Injunction, and Permanent Injunction.

A hearing was held on March 20, 2015. Lieutenant Jeff Sulewski, Commander of the Toledo Police Traffic Section and Project Director of the Total Enforcement Program for the City of Toledo, testified at the hearing on behalf of the City. According to Lieutenant Sulewski, the Total Enforcement Program deals with the City's automated traffic photo enforcement of speeding and red light violations. The program allows them to specify and target problem areas within the City of Toledo where cameras are then installed along with signage notifying drivers that the program is being enforced in that area. The factors considered by the Enforcement Program when deciding where to install the cameras include citizen complaints, police officer observations, a study completed by the City of Toledo's Transportation Department - Traffic Engineering, and a test by the photo vendor using equipment that gathers data regarding the number of violations in a given area. There are currently 44 cameras in place within the City of Toledo. Eleven patrol officers, one sergeant, and Lieutenant Sulewski are assigned to the day shift but only four of the traffic officers can be committed to street duties at any one time. Eight patrol officers and one sergeant are assigned to the second shift. These 19 officers are assigned city-wide which covers approximately 85 square miles. Lieutenant Sulewski emphasized that the Toledo Police Department absolutely did not have the manpower to provide a police officer at every one of the 44 camera locations.

On March 22, 2015, this Court granted the City's Motion for Preliminary Injunction in part and enjoined Defendants from enforcing R.C. 4511.093(B)(1), 4511.095(A)(1), and 4511.0912 until a final determination is made.

This cause is now before the Court upon Cross Motions for Summary Judgment. The City argues that it is entitled to summary judgment because S.B. 342 plainly violates the City's right to home rule, as guaranteed by the Ohio Constitution, in that it is an impermissible attempt by the State

to limit the powers of municipalities to adopt or enforce their own home rule regulations. The City seeks a judgment declaring S.B. 342 unconstitutional or, alternatively, that this Court declare unconstitutional R.C. 4511.092, 4511.093, 4511.095, 4511.096, 4511.097, 4511.098, 4511.099, 4511.0911, 4511.0912, 4511.0913, 4511.0914, and the reference to R.C. 4511.093 in R.C. 1901.20(A)(1). Defendants counter that S.B. 342 is a general law that is constitutionally valid under the Home Rule provisions of the Ohio Constitution.

III. SUMMARY JUDGMENT STANDARD

The Supreme Court of Ohio has set forth a tripartite test that must be met before a motion for summary judgment can be granted: that there is no genuine issue as to any material fact; that movant is entitled to judgment as a matter of law; and that reasonable minds can come to but one conclusion and that conclusion is adverse to the non-moving party. *Harless v. Willis Day Warehousing Co., Inc.*, 54 Ohio St.2d 64, 66, 375 N.E.2d 46 (1978).

A party who claims to be entitled to summary judgment on the grounds that a nonmovant cannot prove its case bears the initial burden of (1) specifically identifying the basis of its motion, and (2) identifying those portions of the record that demonstrate the absence of a genuine issue of material fact regarding an essential element of the nonmovant's case. *Dresher v. Burt*, 75 Ohio St.3d 280, 293, 1996-Ohio-107, 662 N.E.2d 264 (1996). The movant satisfies this burden by calling attention to some competent summary judgment evidence, of the type listed in Civ.R. 56(C), affirmatively demonstrating that the nonmovant has no evidence to support his or her claims. *Id.* Once the movant has satisfied this initial burden, the burden shifts to the nonmovant to set forth specific facts, in the manner prescribed by Civ.R. 56(E), indicating that a genuine issue of material

fact exists for trial. *Id.; accord Vahila v. Hall*, 77 Ohio St.3d 421, 1997-Ohio-259, 674 N.E.2d 1164 (1997).

III. DISCUSSION

A. Preliminary Matters

1. Standing.

Defendants have asserted that the City has largely failed to establish that it has standing to challenge S.B. 342. Standing determines "whether a litigant is entitled to have a court determine the merits of the issues presented." *Ohio Contractors Association v. Bicking*, 71 Ohio St.3d 318, 320, 1994-Ohio-183, 643 N.E.2d 1088 (1994). To establish standing, "the plaintiff must show that he or she suffered (1) an injury that is (2) fairly traceable to the defendant's allegedly unlawful conduct, and (3) likely to be redressed by the requested relief." *Papps v. Karras*, 6th Dist. No L-14-1246, 2015-Ohio-1055, ¶10 (citations omitted). Thus, a party who has been or will be adversely affected by the enforcement of a statute has standing to attack its constitutionality. *Walker v. City of Toledo*, 6th Dist. No. L-12-1056, 2013-Ohio-2809, 994 N.E.2d 467, ¶ 15 (*rev'd. on other grounds* at *Walker v. City of Toledo*, Slip Op., 2014-Ohio-5461 (Dec. 18, 2014), *citing State v. Bloomer*, 122 Ohio St.3d 200, 2009-Ohio-2462, 909 N.E.2d 1254, ¶ 30.

Chief of Police George Kral stated in his affidavit that if the City of Toledo is required to place an officer at each device as stated in R.C. 4511.093(B)(1), the Photo Enforcement Program would be too expensive to operate as it would potentially cost the City millions of dollars to man its devices on a continuous basis. Both Chief Kral and Lieutenant Sulewski stated that Toledo does not have the current manpower or resources to station a law enforcement officer at each camera and still

maintain a level of patrol necessary to keep the City of Toledo safe. As a result, the roads of Toledo would become less safe. This monetary injury, lack of necessary manpower, and the likelihood of increase in accidents produces sufficient interest in the operation of the statute to challenge its constitutionality.

2. Relevant statutory provisions within S.B. 342.

The City requests that S.B. 342 be declared unconstitutional in its entirety. Alternatively, the City asks that the Court declare the following provisions within S.B. 342 unconstitutional: R.C. 4511.092, 4511.093, 4511.095, 4511.096, 4511.097, 4511.098, 4511.099, 4511.0911, 4511.0912, 4511.0913, 4511.0914, and the reference to R.C. 4511.093 in R.C. 1901.20(A)(1). However, the City's arguments are devoid of any factual or legal allegations specifically concerning R.C. 4511.092, 4511.093 (A) and (B)(2), 4511.0911(C), 4511.0913, 4511.0914, and the reference to R.C. 4511.093 in R.C. 1901.20(A)(1).

Therefore, the Court will address only the following provisions within S.B. 342 regarding automated traffic photo enforcement: 4511.093(B)(1) and (3) (allow municipalities to enact automatic camera traffic tickets only if a law enforcement officer is present at all camera locations at all times); 4511.095 (requires municipalities to conduct a pre-implementation safety study covering the previous three-year period at a new location and to conduct a public relations campaign and observe a public awareness warning period of at least thirty days before issuing any tickets at any new camera location); 4511.096 (signage and evidentiary requirements); 4511.097 (procedure for issuing and processing tickets for violations detected by photo monitoring devices); 4511.098 (options for paying or challenging a ticket); 4511.099 (indicates how administrative hearings are to be conducted, what types of evidence can be considered at those hearings, and applicable affirmative

defenses); 4511.0911(A) and (B) (manufacturer of a traffic law photo-enforcement device must provide to the local authority the maintenance record of each device used and an annual certificate of proper operation for each device, municipalities must test the accuracy of the device, and signage requirements for mobile devices); and 4511.0912 (prohibits municipalities 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 and park zones or ten miles per hour above the speed limit in other locations).

B. Permanent Injunction

To obtain the equitable remedy of a preliminary injunction, the party must show, by clear and convincing evidence: (1) a substantial likelihood of success on the merits; (2) the existence of irreparable harm if an injunction is not issued; (3) that third parties will not be unjustifiably harmed if an injunction is issued; and (4) that granting an injunction will serve the public interest. *Neal v. Regina Manor*, 6th Dist. No. L-07-1055, 2008-Ohio-257, ¶ 11. The requirements for a permanent injunction are essentially the same "except instead of the plaintiff proving a 'substantial likelihood' of prevailing on the merits, the plaintiff must prove that he has prevailed on the merits." *Novy v. Ferrara*, 11th Dist. No. 2013-P-0063, 2014-Ohio-1776, ¶55 (citations omitted). No one factor in the analysis is dispositive and all must be balanced as a characteristic of the law of equity. *Toledo Police Patrolman's Association, Local 10 v. City of Toledo*, 127 Ohio App.3d 450, 469, 713 N.E.2d 78 (6th Dist.1998).

1. The City has established that the relevant portions of S.B.342 are unconstitutional because they violate the City's Home Rule authority.

Under the Home Rule Amendment to the Ohio Constitution, "[m]unicipalities shall have

authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws." Article XVIII, Section 3. "The purpose of the Home Rule amendment was to put the conduct of municipal affairs in the hands of those who know the needs of the community best, to-wit, the people of the city." *Northern Ohio Patrolmen's Benevolent Association v. Parma*, 61 Ohio St.2d 375, 379, 402 N.E.2d 519 (1980) (citations omitted).

The Ohio Supreme Court has ruled that municipalities have Home Rule authority under the Amendment to impose civil liability on traffic violators through an administrative enforcement system and to establish administrative proceedings related to civil enforcement of traffic ordinances. *Walker v. City of Toledo, supra*, 2014-Ohio-5461. The decision in *Walker* reaffirmed the Ohio Supreme Court's prior holding in *Mendenhall, supra*, 117 Ohio St.3d 33, at syllabus, that "[a]n Ohio municipality does not exceed its home rule authority when it creates an automated system for enforcement of traffic laws that imposes civil liability upon violators, provided that the municipality does not alter statewide traffic regulations." Thus, the City's adoption of its automated traffic photo enforcement program under TMC 313.12 was a proper exercise of the City's Home Rule powers.

The City asserts that the relevant provisions of S.B. 342 violate the Home Rule Amendment by placing numerous limitations upon municipalities that use automated photo traffic enforcement including the method by which the City determines whether in the first instance to operate an automatic traffic camera enforcement program, where to place the camera, how to deploy police officers, how the City establishes administrative review processes, and how the City regulates activity solely within its own borders while remaining in conformity with statewide traffic laws.

The relevant provisions of S.B. 342 can take precedence over TMC 313.12 only if (1) the Ordinance is an exercise of the police power, rather than of local self-government, (2) the relevant provisions of S.B. 342 are general laws, and (3) the Ordinance is in conflict with the statute. *Mendenhall, supra* at ¶17. Here, the parties focus primarily on the second factor.

The Ohio Supreme Court set forth a four-part test for evaluating whether a statute is a general law in *Canton v. State*, 95 Ohio St.3d 149, 2002-Ohio-2005, 766 N.E.2d 963:

> To constitute a general law for purposes of home-rule analysis, a 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 syllabus.

If the relevant provisions of S.B.342 fail to meet any one of these four factors, they are not general laws and thus invalid under Ohio's Home Rule Amendment. *Id.* at ¶21. The Court will address only the third and fourth prongs of the *Canton* test as they are dispositive of the case.

a. The relevant provisions of S.B. 342 are not general laws because they impermissibly restrict the legislative powers of municipalities.

General laws are "statutes setting forth police, sanitary or similar regulations and not statutes which purport only to grant or to limit the legislative powers of a municipal corporation to adopt or enforce police, sanitary or other similar regulations." *West Jefferson v. Robinson*, 1 Ohio St.2d 113, 205 N.E.2d 382 (1965), at paragraph 3 of syllabus. Powers of local self-government conferred upon municipalities by the Home Rule Amendment include, inter alia, the authority to control the manner in which the local government decision-making process is conducted (*Hills & Dales, Inc. v. City of Wooster*, 4 Ohio App.3d 240, 448 N.E.2d 163 (9th Dist. 1982), at paragraph 1 of syllabus), to establish administrative proceedings (*Walker*, 2014-Ohio-5401, ¶3), to establish and operate a police

department, including the duties of the law enforcement officers (*State ex rel. Canada v. Phillips*, 168 Ohio St. 191, 151 N.E.2d 722 (1958), at paragraph 1 of syllabus; *State Personnel Board of Review v. Bay Village Civil Service Commission*, 28 Ohio St.3d 214, 216, 503 N.E.2d 518 (1986)), and the ability to contract (*Dies Electric Company v. Akron*, 62 Ohio St.2d 322, 326-27, 405 N.E.2d 1026 (1980)). Here, the relevant statutory provisions read together clearly limit such powers.

For example, R.C. 4511.095 sets forth required actions by the municipality prior to the deployment of traffic law photo monitoring devices such as a three-year study of the proposed location as well as a minimum thirty-day public relations campaign. R.C. 4511.0912 prohibits municipalities from issuing automated traffic enforcement tickets unless the vehicle is going more than six miles per hour over a school zone or park speed limit or over ten miles per hour over the speed limit in other locations. R.C. 4511.096, 4511.097, 4511.098, and 4511.099 micromanage the procedure for issuance of a ticket initiated by a photo monitoring device, how a municipality conducts administrative appeals, what evidence can be considered in those appeal hearings, and whom it may hold civilly liable for what offense. Municipalities are told under R.C. 4511.093 how to allocate their personnel by mandating an officer be present at each photo enforcement device location at all times. R.C. 4511.0911 imposes requirements on the contracts municipalities enter into with the manufacturers of photo-enforcement devices.

Moreover, these relevant provisions of S.B. 342 were enacted under the State's police powers. Laws passed by virtue of the police power are unconstitutional if they are arbitrary or unreasonable or fail to "bear a real and substantial relation to the object sought to be obtained, namely, the health, safety, morals or general welfare of the public." *Arnold v. City of Cleveland*, 67 Ohio St.3d 35, 46, 616 N.E.2d 163 (1993) (citations omitted); *see also, Garcia v. Siffrin Residential Association*, 63

Ohio St.2d 259, 271, 407 N.E.2d 1369 (1980). Again, the relevant provisions fail to meet this criteria.

The requirement that a police officer be present at all times at every photo enforcement device location is arbitrary, unreasonable, and not rationally related to any legitimate government purpose. It would force municipalities to divert precious and limited police resources from other important tasks and to incur extraordinary expenses to pay potentially thousands of hours of officer time to perform a function that does nothing to benefit the citizenry. The statute imposes no function upon the officer except that the officer be present at the location of the device - the officer is not required to be looking at the intersection, at the vehicle in question, or at anything in particular while there.

Similarly, the three-year study and public relations campaign prior to deployment of the device are not related to the safety of citizens as they prevent a municipality from immediately installing a camera in an emergency situation when it is patently obvious that an intersection is dangerous. Nor does, in effect, arbitrarily increasing the speed limit six miles per hour in school zones and at parks and ten miles per hour elsewhere contribute to the general welfare of the public.

Therefore, the Court concludes that the relevant provisions of S.B. 342 unreasonably, arbitrarily, and unlawfully limit the enforcement by municipalities of certain of the police powers authorized by the Home Rule Amendment to such municipalities.

b. The relevant provisions of S.B. 342 do not prescribe a rule of conduct upon citizens generally.

General laws do not include statutes that purport to grant or limit the home rule powers of a municipality when the statute does not prescribe a rule of conduct on citizens generally. *West*

Jefferson, supra, 1 Ohio St.2d 113. *See, e.g., Linndale v. State*, 85 Ohio St.3d 52, 1999-Ohio-434, 706 N.E.2d 1227 (statute 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*, 95 Ohio St,.3d 149 (state law that prohibited municipalities from banning manufactured homes was directed at municipalities, not at citizens generally).

In the instant case, the relevant provisions collectively do not prescribe a rule of conduct upon citizens generally but instead limit lawmaking by municipal legislative bodies. This is revealed in the stated purpose of S.B. 342 "to establish conditions for the use by local authorities of traffic law photo-monitoring devices to detect certain traffic law violations * * *." These provisions tell municipalities how to allocate their law enforcement officers, what procedure to follow when issuing a ticket, how to conduct administrative appeals, and what to include in their contracts with camera manufacturers.

Since the relevant provisions do not meet the third and fourth prongs of the *Canton* test, they are not general laws and unconstitutionally limit municipal Home Rule authority.

2. The City will suffer irreparable injury if the permanent injunction is not granted.

"Irreparable harm exists when there is a substantial threat of a material injury which cannot be adequately compensated through monetary damages." *Restivo v. Fifth Third Bank of Northwestern Ohio*, 113 Ohio App.3d 516, 521, 681 N.E.2d 484 (6th Dist. 1996) (citations omitted). *See also, TGR Enterprises, Inc. v. Kozhev*, 167 Ohio App.3d 29, 2006-Ohio-2915, 853 N.E.2d 739, ¶ 23 (2nd Dist.).

The testimony of Lieutenant Jeff Sulewski, as well as the affidavit of Chief of Police George Kral, established, without contradiction, that the City does not have the requisite number of police

officers to monitor the traffic control devices consistent with S.B. 342, concluding that if the statute goes into effect, the cameras at the fixed locations will be rendered inoperable and that in their opinion the number of traffic violations will increase. Thus, the City of Toledo is forced into either foregoing a traffic control system whose legitimacy was most recently reaffirmed by the Ohio Supreme Court in *Walker, supra*, on December 18, 2014, or to reassign its limited personnel to the detriment of the rest of its other law enforcement responsibilities which Lieutenant Sulewski testified will not happen. A proverbial Hobson's choice. The testimony established that the end result would mean more speeding vehicles on the City streets, more red light violations, and more accidents with the appendant injuries to persons.

This Court finds that the City of Toledo has met its burden of proving by clear and convincing evidence that it will suffer irreparable injury if the injunction is not granted. The evidence established that the injury would be material and is one that cannot be adequately compensated through monetary damages.

3. Injunctive relief will not inflict greater injury on others.

There must be a showing that no third parties will be unjustifiably harmed if the permanent injunction were granted. *Village of Ottawa Hills v. Boice*, 6th Dist. No. L-12-1301, 2014-Ohio-1992, ¶ 14. The Defendants have offered no evidence as to how the State or third parties would be unjustifiably harmed if the injunction were granted. Defendants did argue that the granting of an injunction would create confusion and a lack of uniformity for motorists and municipalities across Ohio. This Court finds that there would not be any confusion for motorists in Toledo as the allowance of an injunction would only maintain the 16-year status quo regarding the utilization of this photo-enforcement program. Further, any purported lack of uniformity for motorists already

exists throughout the State as every municipality has local traffic ordinances that differ from neighboring communities. That no third party will be unjustifiably harmed by the granting of an injunction has been clearly and convincingly established.

4. The public interest will be served by the injunction.

This Court further finds that the public interest will be served by granting the requested injunction. The evidence was uncontroverted that the camera placements resulted in fewer moving violations by local motorists. Slower moving traffic and fewer red light violators results in greater safety for fellow drivers and pedestrians alike. Permitting the continued use of these traffic control devices allows the City of Toledo to dedicate and direct its limited manpower to other areas relating to public safety concerns. The City has "a duty to enforce the law and preserve the public rights, revenues and property from injury and loss." *State ex rel. Doran v. Preble County Board of Commissioners*, 12th Dist. No. CA2012-11-015, 2013-Ohio-3579, 995 N.E.2d 239, ¶ 22. Clearly the public interest will be served by the issuance of this permanent injunction.

In summary, Ohio Revised Code Sections 4511.093(B)(1) and (3), 4511.095, 4511.096, 4511.097, 4511.098, 4511.099, 4511.0911(A) and (B), and 4511.0912 violate the City of Toledo's authority under the Home Rule Amendment to the Ohio Constitution and the City has established by clear and convincing evidence the four requirements necessary to obtain the equitable remedy of a permanent injunction as to those provisions. The Court further finds that these provisions may properly be severed as the remaining portions of Amended Senate Bill 342 can be given effect without the invalid provisions. R.C. 1.50; *see also, Canton, supra*, 95 Ohio St.3d 149, ¶ 39; *Board of Lucas County Commissioners v. Waterville Township Board of Trustees*, 171 Ohio App.3d 354, 2007-Ohio-2141, 870 N.E.2d 791, ¶ 44 (6th Dist.).

JUDGMENT ENTRY

It is **ORDERED** that the Motion for Summary Judgment filed by Defendants State of Ohio and Ohio Attorney General Michael DeWine is **DENIED.**

It is further **ORDERED** that the Motion for Summary Judgment filed by Plaintiff City of Toledo is **GRANTED** in part. Defendants are permanently enjoined from enforcing Ohio Revised Code Sections 4511.093(B)(1) and (3), 4511.095, 4511.096, 4511.097, 4511.098, 4511.099, 4511.0911(A) and (B), and 4511.0912.

Date: 4-27-15

Dean Mandros, Judge

THIS IS A FINAL APPEALABLE ORDER