

UTILIZATION AND IMPACTS OF AUTOMATED TRAFFIC ENFORCEMENT

(111-125)

HEARING
BEFORE THE
SUBCOMMITTEE ON
HIGHWAYS AND TRANSIT
OF THE
COMMITTEE ON
TRANSPORTATION AND
INFRASTRUCTURE
HOUSE OF REPRESENTATIVES
ONE HUNDRED ELEVENTH CONGRESS
SECOND SESSION

JUNE 30, 2010

Printed for the use of the
Committee on Transportation and Infrastructure



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<i>(Ex Officio)</i>	

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U.S. House of Representatives
Committee on Transportation and Infrastructure
Washington, DC 20515

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June 29, 2010

SUMMARY OF SUBJECT MATTER

TO: Members of the Subcommittee on Highways and Transit

FROM: Subcommittee on Highways and Transit Staff

SUBJECT: Hearing on "Utilization and Impacts of Automated Traffic Enforcement"

PURPOSE OF THE HEARING

The Subcommittee on Highways and Transit is scheduled to meet on Wednesday, June 30, 2010, at 10:00 a.m., in room 2167 of the Rayburn House Office Building to receive testimony on the utilization and impacts of automated traffic enforcement techniques. The Subcommittee will hear from representatives from the National Highway Traffic Safety Administration (NHTSA), several local elected and law enforcement officials, the Insurance Institute for Highway Safety (IIHS), a road safety advocacy association, and a motorist association.

BACKGROUND

Automated traffic enforcement refers to the use of technology to monitor and enforce compliance with traffic safety laws. Red-light cameras, which are activated when a vehicle remains in an intersection for a set amount of time after the light turns red, are the most prevalent form of automated traffic enforcement. Speed cameras, which are triggered when a passing vehicle exceeds the speed limit by a predetermined amount, are becoming more common, although they are still less prevalent than red-light cameras. Less common automated enforcement techniques include those that target toll evaders or those that violate railroad crossing signals.

According to NHTSA, in 2008, 37,261 people were killed and 2.35 million people were injured on the nation's roadways. In 2008, 762 people were killed and approximately 137,000 people were injured as a result of red-light running,¹ meaning that two percent of the traffic crash fatalities

¹ Insurance Institute for Highway Safety, *Questions and Answers: Red light cameras* (December 2009), <http://www.iihs.org/research/qanda/rdc.html>.

that occurred in 2008 were a result of these violations. Speeding represents a more significant factor in traffic crashes. According to NHTSA, speeding played a role in 11,674 traffic fatalities in 2008. This amounts to nearly a third of all traffic fatalities, and represents a \$40.4 billion economic cost associated with these crashes.²

The Federal Government does not regulate the use of automated enforcement; the decision to allow or prohibit the use of automated traffic enforcement techniques is left to States or local jurisdictions. According to the IIHS, red-light cameras have been implemented in approximately 482 communities across the nation, and approximately 57 communities utilize speed cameras. Although many jurisdictions that use automated enforcement are located in States that specifically permit the use of this type of enforcement, others are in States that remain silent on the issue. This approach has led to wide variations in automated traffic enforcement models.

Federal highway safety programs provide funds to States to improve the safety of roadway infrastructure and driver behavior, and to reduce the societal and economic costs associated with traffic crashes. States that choose to implement automated enforcement methods may use Federal Highway Safety Improvement Program funds to purchase the necessary equipment. To provide further assistance to communities seeking to implement automated enforcement methods, the U.S. Department of Transportation (DOT) has produced informational guidelines on both red-light cameras³ and speed cameras.⁴

AUTOMATED TRAFFIC ENFORCEMENT TECHNOLOGY AND METHODS

Photo enforcement systems are typically comprised of sensors or radar that triggers a camera when a vehicle runs a red light or exceeds the speed limit by a preset amount. Photographs are taken of the rear of the vehicle, or both the front and rear (if utilizing two cameras). The system can record data including the date, time of day, time elapsed since beginning of the red signal, and the speed of the vehicle. Tickets are reviewed, typically by both the photo enforcement vendor and local law enforcement, and are mailed to the registered owner of the vehicle.

Initially, industrial-quality 35-mm camera technology was commonly used for automated traffic enforcement, but has since been replaced with digital photography. Digital cameras have the capability to produce higher resolution, more sharply detailed images or videos of vehicles, and can help prevent reflections or headlights from smearing the image.⁵

In order to ensure effective and fair enforcement, photo enforcement vendors and jurisdictions employing these technologies must take into consideration a wide array of factors, including: a consistent method of capturing, storing, transmitting, processing, and recovering images; clarity of

² NHTSA, *Traffic Safety Facts 2008: Speeding* (DOT HS 811 166), <http://www.nrd.nhtsa.dot.gov/Pubs/811166.pdf>.

³ Federal Highway Administration (FHWA) and NHTSA, *Red Light Camera Systems Operational Guidelines* (January 2005) (FHWA-SA-05-002), <http://safety.fhwa.dot.gov/intersection/redlight/cameras/fhwasa05002/fhwasa05002.pdf>.

⁴ FHWA and NHTSA, *Speed Camera Systems Operational Guidelines* (March 2008) (DOT HS 810 916), http://safety.fhwa.dot.gov/speedmgt/ref_mats/fhwasa09028/resources/Speed%20Camera%20Guidelines.pdf.

⁵ FHWA, *Red Light Camera Technology*, <http://safety.fhwa.dot.gov/intersection/redlight/cameras/tech.cfm>.

images; prevention of overexposure or blurring of images; the ability to capture images in varying levels of light; and the ability to capture successive violations within a short period of time.⁶

CHALLENGES AND BENEFITS OF AUTOMATED ENFORCEMENT

I. Automated Enforcement as Revenue-Generators

As automated enforcement techniques have become more prevalent, debates have arisen on a number of topics relating to its use. Foremost among these debates is whether automated enforcement systems are used primarily for safety improvements, or if their primary purpose is to serve as revenue-generators.

Automated enforcement generates revenue for private sector photo enforcement vendors and public sector entities including law enforcement and highway safety departments. Photo enforcement systems often become controversial when the laws regarding the length of a yellow-light are not adhered to, when fines increase rapidly in a short period of time, or when photo enforcement becomes primarily focused on raising revenue, rather than improving safety and aiding law enforcement efforts. Specific instances of controversial automated enforcement systems include:

- **Atlanta, GA:** A local media outlet conducted an investigation into the duration of yellow lights at intersections with red-light cameras, and contends that 75 percent of the 33 traffic lights they tested had yellow light durations shorter than the minimum required by law.⁷
- **Chattanooga, TN:** A judge dismissed 176 citations after it was determined that the yellow light duration at the intersection for which these citations were given was too short, based on appropriate yellow light durations determined by traffic engineers.⁸
- **Los Angeles, CA:** Fines for red-light violators in Los Angeles County increased 65 percent in eight years, climbing to \$446 per violation, and reaching over \$500 once other fees are included.⁹

These examples are representative of similar problems that have occurred in jurisdictions around the country.

Also controversial is the mechanism by which the automated enforcement private vendor is paid. In some cases, communities have entered into contracts with photo enforcement vendors under which the vendors are paid a percentage of each citation issued. These “contingency fees” place a financial incentive on the issuance of large volumes of citations, rather than on improved safety or law enforcement, and can result in incorrect citations being issued to motorists that may

⁶ Karl A. Pasetti, *Use of Automated Enforcement for Red Light Cameras* (August 1997), Texas A&M University, <http://safety.fhwa.dot.gov/intersection/redlight/cameras/docs/pasetti.pdf>.

⁷ Ross McLaughlin, *Red Light Camera Test—Drivers Get Short Changed* (May 2010), <http://www.11alive.com/news/investigative/cja/story.aspx?storyid=143717>.

⁸ Brian Lazenby, “Quick light leads to refunds for 176 drivers,” *Chattanooga Times Free Press*, (March 2008), <http://www.timesfreepress.com/news/2008/mar/13/quick-light-leads-refunds-176-drivers/>.

⁹ Los Angeles Times, “LA County red light violation fines have jumped 65% to \$446,” *Los Angeles Times* (Feb. 2010), <http://latimesblogs.latimes.com/lanow/2010/02/la-redlight-violation-fines-have-jumped-65-to-446-times-review-finds.html>.

not have been in violation of the law. These contingency fees have resulted in public criticism of photo enforcement, in addition to legal challenges.

One such notable case occurred in San Diego in 2001, when a Superior Court judge dismissed 290 citations under the city's red-light camera program. The judge contended that the contingency fee paid to the private vendor, Lockheed Martin IMS, constituted a conflict of interest and made the evidence used to cite these motorists unreliable.¹⁰

The Federal Highway Administration (FHWA) recommends that communities avoid initiating enforcement systems that rely on contingency fees. FHWA also notes that courts in multiple jurisdictions have determined that it is inappropriate for the private contractor to be responsible for determining installation locations and operation of the system, because of an appearance of a conflict of interest. FHWA further recommends that State or local jurisdictions should exercise comprehensive oversight when working with a photo enforcement vendor.¹¹

Due to the problems and legal challenges caused by this business model, many jurisdictions have entered into contracts that include more public protections. These contracts exclude payment of contingency fees, and include provisions for police review of citations before they are sent to a vehicle owner. Consumer protections can be established by legislation to help ensure the protection of the public interest over simple revenue-generation.

One example of a State law with consumer protections can be found in Florida. In Florida, recently enacted red-light camera authorization legislation requires that notifications be sent prior to the issuance of formal violations, to allow motorists more time to review the alleged violations, and requires that cameras be tested regularly to ensure compliance with Florida law. Under the Florida law, for each \$158 citation issued, \$75 will stay with the local jurisdiction where the citation occurred, \$70 will go to the State of Florida, \$10 will be set aside for funding of trauma centers and \$3 will go to the State's Brain and Spinal Cord Injury Trust Fund. Local jurisdictions would be required to pay photo enforcement vendors from their share of the revenues generated. These and other consumer protections can offer alternatives to communities looking to implement automated enforcement techniques without comprising safety and public protection for profit.

The State of Florida estimates that by 2014, about \$200 million in revenue will be collected from red-light cameras. Under the new State law, about \$125 million of the revenue generated will go to the State and approximately \$78 million will go to local governments.¹²

II. Safety Impacts of Automated Enforcement

Following from the question of whether automated enforcement is used primarily as a revenue-generator is the concern whether these measures represent an improvement to, or a

¹⁰ Orlando Sentinel. *Judge Stops Red-light Tickets*. (September 2001), http://articles.orlandosentinel.com/2001-09-05/news/0109050039_1_jeopardy-san-diego-stvn

¹¹ FHWA, *Red-light Camera Questions and Answers* (Accessed June 2010) <http://safety.fhwa.dot.gov/intersection/redlight/cameras/qas.cfm>

¹² Palm Beach Post. *Crist signs Florida bill legalizing red light cameras*. (May 2010), <http://www.palmbeachpost.com/news/state/crist-signs-florida-bill-legalizing-red-light-cameras-687354.html?showComments=true>

hindrance of, highway and traffic safety. There have been a limited number of studies conducted into the safety impacts and costs associated with automated enforcement, and more research is likely to be done in the coming years as these technologies become more prevalent.

Red-Light Cameras

A study conducted by FHWA, characterized by the agency as the most comprehensive red-light camera study to date, examined before-and-after research using data from seven jurisdictions (Baltimore, MD; Charlotte, NC; El Cajon, CA; Howard County, MD; Montgomery County, MD; San Diego, CA; and San Francisco, CA) to estimate the crash and associated economic effects of red-light camera systems at 132 sites. The study found:

- Right angle crashes decreased by 25 percent (including a 16 percent decrease in injuries); and
- Rear-end crashes increased 15 percent (including a 24 percent increase in injuries).

Due to the conflicting results for each type of crash — that is, an increase in the number of rear-end crashes, and the decrease in the number of right-angle, or “T-bone” crashes — FHWA conducted an economic analysis to determine whether the red-light cameras studied yielded net benefits. Their analysis showed that red-light cameras saved society \$39,000 to \$50,000 annually at each intersection where they are installed. This analysis was based on factors including hospital bills, property damage to vehicles, insurance expenses, and the value of lost quality of life.¹³

While some studies find a reduction in crashes and an overall net benefit associated with automated traffic enforcement, other studies present alternative findings. A 2007 report issued by the Virginia Transportation Research Council (VTRC) examined seven years of crash data within six Virginia jurisdictions that operated red-light cameras. The study found an increase in crash costs in some jurisdictions, and a decrease in costs in others. When aggregated, VTRC concluded that red-light cameras yielded a net increase in comprehensive crash costs.¹⁴

In response to this report, the IIHS conducted a review of the methodology used by the VTRC researchers, and question the validity of this methodology. The IIHS review contends that the majority of methods of analysis used under the VTRC report would not yield accurate results, and that the method that would have yielded valid results was not applied accurately.¹⁵

A 2005 *Washington Post* analysis of crash statistics in Washington, D.C. showed that the number of accidents had gone up at intersections with the cameras, compared to crash statistics for the intersections without cameras.¹⁶ The analysis showed that the number of crashes at locations with cameras increased by more than 100 percent, from 365 collisions in 1998 to 755 in 2004 — as compared to a 61 percent increase in crashes city-wide. Injury and fatal crashes climbed 81 percent, from 144 such accidents to 262. Broadside crashes, also known as right-angle or T-bone collisions,

¹³ Id.

¹⁴ VTRC, *The Impact of Red Light Cameras (Photo-Red Enforcement) on Crashes in Virginia* (June 2007), http://www.virginiadot.org/vtrc/main/online_reports/pdf/07-r2.pdf.

¹⁵ IIHS, *Review of “The Impact of Red Light Cameras (Photo-Red Enforcement) on Crashes in Virginia”* (May 2008), <http://www.iihs.org/research/topics/pdf/r1100.pdf>.

¹⁶ D. Wilbur & D. Willis, *D.C. Red-Light Cameras Fail to Reduce Accidents*, *Washington Post* (October 4, 2005), <http://www.washingtonpost.com/wp-dyn/content/article/2005/10/03/AR2005100301844.html>.

rose 30 percent, from 81 to 106 during that time frame. Three outside traffic specialists independently reviewed the data and said the cameras did not appear to be making any difference in preventing injuries or collisions.

The analysis raised questions about the location of the cameras, as nine intersections with cameras had two or fewer crashes annually in 1998 and 1999 and seven reported no crashes that led to injuries or fatalities during that period. Officials installed cameras at six of the 20 most crash-prone intersections in 1998, according to the report.

Speed Cameras

In general, there is less data on speed enforcement cameras. In 2007, NHTSA conducted a worldwide review of a number of studies that examined the impacts of automated traffic enforcement. Based on the studies that met the agency's standards for methodology and analysis, a 20 to 25 percent reduction was found in traffic crashes after the implementation of fixed-location speed cameras. Studies on mobile speed cameras were more varied, with one study finding a 16 percent reduction in crashes in a corridor containing 12 different enforcement sites, and other studies finding a range of a 9-18 percent reduction in crashes.¹⁷

III. Automated Enforcement and Other Countermeasures

An ongoing question is whether or not automated enforcement is a cost-efficient and appropriate countermeasure, or whether other techniques, such as lengthened yellow lights, educational and awareness campaigns, or traffic engineering improvements, may be more effective. Research points to a need for balance in the use of all types of countermeasures, and underscores the need for sound engineering, public awareness, and appropriate yellow-light durations as a foundation for successful automated enforcement.

FHWA and NHTSA support a comprehensive approach when examining the issue of intersection safety and red-light running that incorporates engineering, education, and enforcement countermeasures. The agencies note that red-light cameras can be a very effective countermeasure to prevent red-light running.¹⁸

Similarly, a report issued by FHWA and the Institute of Transportation Engineers (ITE) in 2003 examined methods of intersection engineering to reduce red-light running. The executive summary of the report concludes:

Research cited in the report suggests that "intentional" red-light runners are most affected by enforcement countermeasures while "unintentional" red-light runners are most affected by engineering countermeasures. The report also establishes the essential need for sound engineering at an intersection for the successful

¹⁷ National Highway Traffic Safety Administration, *A Compendium of Worldwide Evaluations of Results* (Sept. 2007) (DOT HS 810 763)

<http://www.nhtsa.gov/DOT/NHTSA/Traffic%20Injury%20Control/Articles/Associated%20Files/HS810763.pdf>

¹⁸ Federal Highway Administration, *Red-Light Camera Questions and Answers* (Accessed June 2010), <http://safety.fhwa.dot.gov/intersection/redlight/cameras/qas.cfm>

implementation of long-term and effective enforcement activities, particularly automated enforcement. The report further concludes that education initiatives can be an effective complement for any approach or as a stand alone program in its own right. Overall, red-light running is recognized as a complex problem requiring a reasoned and balanced application of the three “E”s.¹⁹

The report goes on to discuss signal visibility and conspicuity, intersection design, signage and driver information, and signal timing as key components of a comprehensive plan to reduce red-light running.

NHTSA examined the use of automated traffic enforcement in its report titled “Countermeasures That Work,” which is provided to State highway safety representatives to assist them in implementing comprehensive traffic safety programs. In that report, NHTSA gives a five-star rating to automated enforcement, the highest level given in the report. According to NHTSA, this rating means that the countermeasure is “demonstrated to be effective by several high-quality evaluations with consistent results.”²⁰

A study by the Texas Transportation Institute at Texas A&M University examined 181 intersection approaches across three Texas cities over three years to examine an array of red-light running countermeasures. The study found that improving signal visibility reduced red-light running violations by 25 percent; that adding one second to the ITE’s minimum yellow light duration standard reduced these violations by 53 percent; and that camera enforcement reduced these violations by 40-59 percent.²¹

There have also been discussions of the balance between traditional law enforcement and automated enforcement. Law enforcement departments face a number of challenges in providing adequate traffic enforcement, including: fiscal constraints; vehicle miles traveled that have risen faster than the availability of additional law enforcement personnel; a focus on new homeland security challenges; and emphasis on policing violent crimes.

There have also been concerns raised over the safety and traffic impacts of pulling over red-light or speeding violators, which can prove difficult in congested areas. These factors have contributed to some law enforcement agencies supporting the use of automated enforcement techniques as a complement to traditional enforcement activities.

IV. Other Issues

In addition to the legal challenges based on contingency fees (discussed above), other questions have arisen regarding privacy and due process. A number of court cases nationwide have

¹⁹ FHWA and ITE, *Making Intersections Safer: A Toolbox of Engineering Countermeasures to Reduce Red-Light Running* (2003), http://safety.fhwa.dot.gov/intersection/redlight/cameras/rle_report/rlebook.pdf.

²⁰ NHTSA, *Countermeasures That Work: A Highway Safety Countermeasure Guide for State Highway Safety Offices*.

²¹ Texas Transportation Institute, *Safety Impact of Red-Light-Running in Texas: Where Is Enforcement Really Needed?* (September 2004), <http://tti.tamu.edu/documents/0-4196-2.pdf>.

examined questions of privacy, due process, the process by which citations are issued, and equal protection.

Critics of automated enforcement assert a number of arguments: that images taken of vehicles or motorists violate their rights to privacy; that mailing citations does not constitute adequate notification; that notification does not occur quickly enough; that there is no certifiable witness to the violation; and that the technology can prove inaccurate.

Proponents of automated enforcement argue that there can be no expectation of privacy on a public road, that mailed notices are appropriate and timely, that the photographic evidence from cameras is clear to prove that a violation occurred, and that the technology is, by and large, very reliable.

PRIOR LEGISLATIVE AND OVERSIGHT ACTIVITY

On July 31, 2001, the Subcommittee on Highways and Transportation held a hearing on the topic of "Automated Enforcement – Red Light Cameras."

On July 16, 2008, the Subcommittee on Highways and Transit held a hearing on the topic of "Improving Roadway Safety Assessing the Effectiveness of NHTSA's Highway Traffic Safety Programs."

WITNESSES

Mr. Michael Geraci

Director, Office of Safety Programs
National Highway Traffic Safety Administration

The Honorable Barry Loudermilk

Georgia State Representative

The Honorable Ron Reagan

Florida State Representative

Captain Glenn Hansen

Captain
Howard County (MD) Police Department

Dr. Anne McCartt

Senior Vice President for Research
Insurance Institute for Highway Safety

Mr. David Kelly

Executive Director
Partnership for Advancing Road Safety

Mr. Dan Danila
Virginia State Activist
National Motorists Association

UTILIZATION AND IMPACTS OF AUTOMATED TRAFFIC ENFORCEMENT

Wednesday, June 30, 2010

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON HIGHWAYS AND TRANSIT,
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
Washington, DC

The Subcommittee met, pursuant to call, at 10:00 a.m., in room 2167, Rayburn House Office Building, the Honorable Peter A. DeFazio [Chairman of the Subcommittee] presiding.

Mr. DEFazio. The Highways and Transit Subcommittee will come to order.

Today we are engaging in a hearing at the request of the Ranking Member, to which I am fully in agreement, to take a good, hard look at what is called automated traffic enforcement—some of us know it as speed cameras and red light cameras—and to examine the proper and improper utilization of such devices; what role the Federal Government should play, if any, in regulating the use of these devices or the use of Federal highway safety funds to acquire such devices; and to better understand how these tools can be utilized and targeted at what is their legitimate purpose, which is to make our roads and intersections a safer place for the traveling public.

So I look forward to the testimony. I have read the testimony, but will look forward to individuals summarizing their best points and/or responding to other members of the panel, and we will have an opportunity for questions.

With that, I turn to the Ranking Member, Mr. Duncan.

Mr. DUNCAN. Well, thank you very much, Chairman DeFazio, for holding this hearing on utilization and impacts of automated traffic enforcement. Specifically, as you said, we are talking about the use of red light and speed cameras to enforce traffic laws.

I can assure you, you can never satisfy a government's appetite for money or land; they always want more, and the last decade has seen a technology boom that has awarded government new ways to take more money from the taxpayer. Already, government at all levels is taking at least about 40 percent of the average citizen's income, and government will continue to look for new ways to nickel-and-dime the taxpayer to death. Red light and speed cameras are popping up all over the Country.

In 2008, \$3.1 million in red light camera violations were issued in the city of Knoxville. Knoxville received \$1.1 million, while the vendor received \$2 million. Redflex, the company that operates the red light cameras in Knoxville, is an Australian company, so most

of this revenue is going to foreign markets. Three of the largest photo enforcement vendors declined to testify, but I understand that we have a witness from the Partnership for Advancing Road Safety, Mr. Kelly; that is an organization that is funded by the industry, so we will hear his testimony.

Recently, the State of Florida passed legislation allowing the use of red light cameras, and they expect annual revenue generated by these cameras to be \$200 million by 2013.

These large dollar amounts tell me that this issue is more about raising revenue than making our Nation's roads safer.

While there have been a variety of studies that tout photo enforcement as a cost-effective way of improving safety, there are other studies that show an increase in vehicle crashes after red light cameras were installed. The Washington Post analyzed the District of Columbia database generated from accident reports filed by police. Since the cameras were installed, the analysis shows that the number of crashes at locations with cameras more than doubled, from 365 collisions in 1998 to 755 in 2004. Injury and fatal crashes climbed 81 percent, from 144 such wrecks to 262.

Another such study conducted by the Virginia Transportation Research Council found a reduction in red light running crashes after red light cameras were installed, but an overall increase in crashes and injuries due to more rear-end crashes.

Some States and localities may be too quick to install photo enforcement techniques without first exhausting other techniques that can reduce red light running and improve safety. Improving sign visibility, installing advanced warning flashers, and adjusting yellow light intervals can have a positive impact. Numerous studies have found that longer yellow signal timing can reduce the frequency of red light running violations by as much as 50 percent.

While these solutions may not fill government coffers as much as photo enforcement could, we owe it to our taxpayers to explore these engineering improvements that make our roads and highways safer.

If these cameras were really about safety, then I think we should donate those fines to private charities. I have never forgotten a column written by William Raspberry, a columnist for The Washington Post, a very liberal columnist, who wrote that private charities, on average, spent 85 percent of their funds going to the beneficiaries and only 15 percent going to the cost of administration, while government welfare programs were exactly opposite, spending 85 percent on their administrative and salary costs, and only about 15 percent going to the beneficiaries.

I thank the witnesses for attending this hearing and I look forward to their testimony and then the opportunity to ask some questions.

Mr. DEFAZIO. I thank the gentleman.

Are there any Members on my side who wish to have an opening statement?

[No response.]

Mr. DEFAZIO. OK, then we will go right to testimony, Mr. Michael Geraci, Director, Office of Safety Programs, National Traffic Safety Administration.

TESTIMONY OF MICHAEL GERACI, DIRECTOR, OFFICE OF SAFETY PROGRAMS, NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION; HON. BARRY LOUDERMILK, GEORGIA STATE REPRESENTATIVE; HON. RON REAGAN, FLORIDA STATE REPRESENTATIVE; CAPTAIN GLENN HANSEN, CAPTAIN, HOWARD COUNTY, MARYLAND, POLICE DEPARTMENT; DR. ANNE MCCARTT, SENIOR VICE PRESIDENT FOR RESEARCH, INSURANCE INSTITUTE FOR HIGHWAY SAFETY; DAVID KELLY, EXECUTIVE DIRECTOR, PARTNERSHIP FOR ADVANCING ROAD SAFETY; AND DAN DANILA, VIRGINIA STATE ACTIVIST, NATIONAL MOTORISTS ASSOCIATION

Mr. GERACI. Chairman DeFazio and Ranking Member Duncan and Members of the Subcommittee, I am pleased to be here today to represent the Department of Transportation on the very important safety issue of automated traffic enforcement.

While the number and rate of traffic deaths have decreased significantly in recent years, motor vehicle crashes remain a serious national health problem and a leading cause of death in particular for young Americans. Under the leadership of Secretary LaHood, the Department of Transportation is committed to reducing the motor vehicle crash toll that considers every available evidence-based strategy for reducing roadway risk. Automated traffic enforcement technology is one such strategy, with evidence of effectiveness in reducing risk from speeding and red light running.

Speeding is one of the most prevalent factors contributing to traffic crashes. In 2008, NHTSA data showed that speeding was a contributing factor in 31 percent of all fatal crashes and was associated with more than 11,000 fatalities. NHTSA estimates that speeding-related crashes cost more than \$40 billion each year.

A NHTSA study of fatal intersection crashes indicates that an average of about 38 percent of such events at signal-controlled intersections involved at least one driver who ran a red light. On average, intersection crashes involving red light running result in just about 1,000 deaths per year.

A significant body of evidence that is further discussed in my written testimony reveals that when appropriately used as one component of an overall traffic safety and law enforcement system, automated enforcement programs can be an effective countermeasure for reducing crashes at high-risk locations.

Automated enforcement systems do not replace the need for traditional enforcement operations, but provide an effective supplement when used as part of a comprehensive strategy for reducing traffic crashes.

NHTSA and the Federal Highway Administration have developed operational guidelines to assist States and communities in designing and implementing effective automated speeding and red light running systems. These guidelines are based on program evaluations and documented successful practices in communities all across the Nation. The guidelines stress the importance of integrating automated enforcement in a comprehensive system that is based on problem identification.

NHTSA encourages adoption of these automated enforcement guidelines through speed management workshops. These workshops suggest a comprehensive approach to community speed man-

agement, including incorporation of automated enforcement where appropriate. The workshops involve the active participation of the full range of local partners, including highway engineers, law enforcement officials, prosecutors, judges, and safety advocates. The agency has conducted nine of these workshops, reaching practitioners from 46 States.

Speeding and red light running are serious safety problems, and NHTSA is committed to identifying and advancing effective solutions to reduce the tragic toll from these unsafe driving practices. We will continue to examine the potential safety benefits of promising countermeasures, including automated enforcement systems, and work closely with States to encourage the adoption of effective programs to help improve safety for all road users.

I thank you for today's invitation and I am pleased to answer any questions that you may have.

Mr. DEFAZIO. Thank you.

The Honorable Barry Loudermilk, State Representative of Georgia. Representative Loudermilk.

Mr. LOUDERMILK. Thank you, Mr. Chairman and gentlemen and ladies of the Committee.

Georgia, in 2001, passed legislation that allows red light cameras to be operated by local, municipal, and county governments. After that legislation passed, the Georgia legislature had growing concerns over the operation of red light cameras in the State. Primarily, those concerns were constitutional; the effectiveness of red light cameras, were they actually affecting safety, improving safety; concerns also of abuse of the red light cameras by local governments; and also a lack of regulation and standardization.

We began looking into the red light camera issue. We don't have speeding cameras in Georgia, but we do have the red light cameras. We started realizing that there was questionable effectiveness on safety, especially numerous media reports coming out that accident rates had increased at several of the key intersections within the State. Even more recently, Ross McLaughlin, an investigative reporter with Channel 11 News, reported that some of the highest revenue-generating intersections had actually increased all types of accidents, including the right-angle or T-bone collisions that the red light cameras were supposed to eliminate or reduce.

As we started looking at effective ways to improve safety, we started realizing that there was more than likely a financial incentive created by the use of red light cameras that local governments were no longer induced or inspired to seek out proven engineering methods to improve intersection safety. As a result, we passed House Bill 77, which the results of that bill has reduced violations of 50 percent in red light camera intersections.

The key component of House Bill 77, there were really three components, but the key was requiring an additional second be added to the yellow light time of every intersection that operated photo enforcement. That additional time requirement was to go to the minimum Federal standard time plus an additional second. Within 30 days of the additional second being added, reduction in violations in some cities were reported as much as 81 percent.

Statewide we have seen a 50 percent reduction in red light camera running. Along with that is a 50 percent reduction in revenue.

As a result, many of the cities that had installed the red light cameras as a safety tool have thus removed those cameras because they were no longer profitable.

The other aspect of House Bill 77 was more State oversight and standardization. The Department of Transportation is now a permitting agency for local governments. Before a local government can get a permit to operate a red light camera, there are procedures they have to go through which, first of all, is they have to show that the intersection in question is a dangerous intersection, that there is a compelling reason to put a red light camera there. Second, they have to impose and they have to go through steps to improve the safety of the intersection through engineering standards.

So the focus of House Bill 77 was to focus the State back on safety through engineering, and that photo enforcement would be a means of last resort. The results have been phenomenal. Georgia's intersections are safer. We have now about 20 percent less red light cameras, but we have safer intersections throughout the State of Georgia.

So I think our success in Georgia is a little different than a lot of others that you will hear is that our success has been in refocusing on safety through engineering, and that the red light cameras are going to be a means of last resort.

So I would be glad to answer any questions as we go through the hearing.

Mr. DEFAZIO. Thank you, Representative Loudermilk.

With that, we now turn to the Honorable Ron Reagan, State Representative from Florida. Mr. Reagan.

Mr. REAGAN. Good morning. Thank you very much. It is an honor and a pleasure to be here.

Recently, in the State of Florida, we did pass a bill, House Bill 325, that allows the use of cameras at intersections. When we did this, we focused on two things: number one is public safety and number two is uniformity. State of Florida cities had already been installing cameras on their own, using local ordinances to do so. My bill focused at this point in time for uniform standards throughout the entire State.

We passed this bill on May 14th. We called it the Mark Wandall Traffic Safety Act, named after a young man who was killed about a mile from my house by a vicious red light runner. It was signed into law. This piece of legislation was passed overwhelmingly by the Florida House of Representatives and the Florida Senate.

Thousands of Floridians have been killed by drivers who run red lights as part of their normal behavior. Since 2001, Florida has been among the top three States for pedestrian and bicyclist fatalities, with the latest numbers showing that 502 pedestrians and 118 bicyclists were killed by driving behavior, primarily people running red lights.

In Florida, a recent public opinion showed that 72 percent of Floridians support the use of automated traffic enforcement at intersections. The Mark Wandall Traffic Safety Act, House Bill 325, provides critical funding for medical study in the form of spinal cord research, makes available funding for Florida trauma centers, and

it assists local municipalities that implement this lifesaving technology.

Intersection camera programs are designed to use technology as a tool for traffic safety on local roads. Camera programs can effectively and efficiently modify drivers' behavior by increasing enforcement. These programs encourage all drivers to follow Federal, State, and local traffic laws. The cameras are a proactive solution to reduce preventable deaths, avert serious injuries, and reduce output of funds to respond to accident scenes. Automated enforcement programs mitigate a host of problems that arise on Florida roads when drivers fail to stop at red lights.

This bill requires signage at intersections using traffic infraction detectors and provides that traffic infraction detectors may not be used to enforce violations when the driver is making a right turn in a careful and prudent manner. We tried to do our best to address those issues regarding financial aspects of the bill and the use of these automated systems. The bill provides processes regarding required modifications, the issuance of citations to registered owners of motor vehicles, and defenses available to vehicle owners.

Notifications and citations must include the images indicating that the motor vehicle violated a traffic control device and must offer a physical location or an internet address where images or video may be seen. When a citation is issued, it may be challenged in a judicial proceeding in the same manner as other traffic violations. A contested citation upheld by the court may result in additional costs and fees.

In the State of Florida, one of the things we did was points may not be assessed against a driver's license for infractions enforced by the use of traffic infraction detectors, and violations may not be used for purposes of setting motor vehicle insurance rates. Each governmental entity that operates a traffic infraction detector must submit an annual report to the Department of Highway Safety and Motor Vehicles which details the results of detectors and the procedures for enforcement.

I would like to say, in closing, that I believe that Florida House Bill 325 will keep Florida's first responders from having to go to accident scenes that never needed to occur in the first place. This bill will keep Florida's trauma centers from having to perform lifesaving measures caused by thoughtless drivers who may run red lights as their normal driving pattern. The program will prevent habitual and reckless driving patterns across Florida. This piece of legislation is a good public policy. It brings consistency, it mandates uniformity, it encourages public safety, and it is a tool for over-utilized law enforcement officials.

Thank you for your time, and I appreciate the honor to be here.

Mr. DEFAZIO. Thank you, Representative.

With that, we turn to Captain Glenn Hansen, a captain with the Howard County, Maryland Police Department. Captain?

Mr. HANSEN. Thank you, Mr. Chairman, Members of the Committee. I appreciate the opportunity to come and speak to you today.

Howard County, Maryland is midway between Baltimore and Washington. We have had our share of safety concerns, just as you have seen nationally. In 2008, 102 people died every day on our

streets, and that is really not acceptable. Transportation is a wonderful thing, it gets you from A to B, but we need to find ways to do it in a safer manner.

We talk a lot about a comprehensive approach. We call it a 4E approach: engineering, enforcement, education, and EMS, all working together comprehensively to make it safer for our community. That is something that we instituted in Howard County, where we were experiencing problems with intersection crashes. We looked at it holistically: we did traditional enforcement; we expanded that to team enforcement; we did a lot of public relations; we tried to get the community with us in understanding that there was a problem; and eventually we were able to get U.S. Department of Transportation grants to do a pilot study to test red light camera technology in the United States.

Starting in the late 1990's, we were able to test that technology. The community was very supportive. We issued warnings. We were eventually able to get legislation passed. That legislation passed in Maryland. It has been extremely successful. We have had crash reductions. We have had several studies showing that the socio-economic cost of crashes in Maryland have gone down where we put cameras in place.

Since that time, the system in the United States has matured a great deal. The U.S. Department of Transportation has issued data-driven guidance on best practices; what works well from problem identification to defining how best to address the solution; looking at engineering countermeasures and deciding when and if automated enforcement is successful and can help you with your issue.

Automated enforcement is a tool; it is not a silver bullet, it is not a solution to all your problems. Automated enforcement makes enforcement much more efficient, much more rapid. But if you do it in a noncomprehensive way, it doesn't necessarily make traffic any safer. We recommend doing it in a comprehensive way with a safety focus. That is what the USDOT guidance is pointing out. We believe strongly that as long as people stick to modern programs that are being instituted today, stick to the guidance and best practices, use automated enforcement as one part of a holistic traffic safety solution, that it will continue to be successful in reducing crashes and injuries.

With that, I thank you for your time, and I would be happy to answer questions.

Mr. DEFAZIO. Thank you, Captain.

With that, we would turn to Dr. Anne McCartt, Senior Vice President for Research, Insurance Institute for Highway Safety. Doctor.

Ms. MCCARTT. Thank you for the opportunity to share research findings about automated traffic enforcement. It is a special honor to testify today before Ranking Member Duncan. My parents were among the first settlers of East Tennessee. I graduated from Fulton High School when your father was mayor. My parents now live in Kingsport.

The Insurance Institute for Highway Safety is a nonprofit research and communications organization that identifies ways to re-

duce deaths, injuries, and property damage on our Nation's highways. We are funded by auto insurers.

Running red lights and speeding may be common in some communities, but they are illegal and dangerous behaviors. In debates about automated enforcement, traffic law violators are often portrayed as victims, but the true victims are the people injured and killed in crashes. Each year, about 800 people die in crashes caused by red light runners, and another 137,000 are injured. Speeding was a factor in about 12,000 crash deaths in 2008, a third of all deaths.

A high likelihood of apprehension is what convinces motorists to obey traffic laws, and automated enforcement achieves this. Studies have found that red light cameras reduce red light running violations 40 to 50 percent, and these reductions in a community spill over to intersections without cameras.

Institute research in three communities with speed cameras found dramatic declines in the proportions of drivers traveling more than 10 miles an hour over the speed limit. In Montgomery County, Maryland, where cameras are used on residential streets and in school zones, reductions were 70 percent. On a high speed freeway in Scottsdale, Arizona, the odds of speeding fell 95 percent.

The key question is whether automated enforcement improves safety, and it does. Reviews of the international literature show that red light camera enforcement reduces injury crashes 25 to 30 percent. Speed camera enforcement reduces crashes with deaths and serious injuries 40 to 45 percent. Surveys of the public have consistently shown acceptance of red light cameras and speed cameras.

Although automated traffic enforcement is not a panacea, it is a proven way to reduce traffic violations and prevent crashes, especially serious crashes that result in injury or death.

Thank you very much.

Mr. DEFAZIO. Thank you, Doctor.

Mr. David Kelly, Executive Director, Partnership for Advancing Road Safety.

Mr. KELLY. Thank you, Mr. Chairman and Members of the Committee. Good morning. Thank you for the opportunity to testify today.

PARS represents communities, safety organizations, and law enforcement agencies that use automated road enforcement to calm traffic and make their community safer. There will be a healthy debate this morning about the role that automated enforcement plays in a traffic safety community.

We know that research tells us that safety cameras work. You have heard the statistics, and communities across the Country are affirming these successes. From Aurora to Pensacola to New Orleans to the District of Columbia to Arizona and Maryland, just to cite a few, cameras are keeping the public safe.

We also know that automated enforcement is constitutional. Several cases throughout the Country have gone to court and been appealed, including many favorable decisions in various U.S. circuit courts across the Country. Many of these cases are dismissed at the summary judgment level and the programs are consistently held constitutionally valid. Not once, when faced with the constitu-

tionality of cameras, has photo enforcement been found unconstitutional.

There are those that will debate the merits of the technology. However, we should all agree that it is not appropriate to speed, run red lights, drive while distracted or impaired, or in any other way endanger the lives of others on the road. Why should the time of an offender be more valuable than that of their victim?

Photo enforcement saves lives. We have seen it in cities, towns, and States across the Country. Independent third-party organizations have confirmed that.

I appreciate your time and interest in this lifesaving technology and welcome any questions.

Mr. DEFAZIO. Thank you for your succinct testimony.

Mr. Dan Danila, you are listed as a Virginia State Activist with the National Motorists Association.

Mr. DANILA. That is correct.

Mr. DEFAZIO. OK.

Mr. DANILA. Thank you for inviting me here to provide testimony on this very important topic for our Nation's motorists.

The National Motorists Association basically is a driver's rights organization with members in all 50 States and also in Canada. The NMA is opposed to the use of automatic traffic enforcement. Our objections to such programs can be categorized into three major points, and all based on objective data, over which I am going to go briefly: one, ticket cameras are usually about revenue generation, not about improving safety; number two, an individual's right to due process is subverted; three, there are less expensive and more effective ways of enhancing safety for motorists.

In the written testimony that you guys have in front of you, you will see examples of investigative reports that document an increase in accident rates after red light cameras have been installed. Typically what happens is the instinctive reaction of the drivers when they see a red light camera is to hit their brakes, which increases the risk of rear-end collisions. Also, on page 7 of my testimony you will see examples of counties and cities which have shut down their automatic enforcement programs when those programs seemed to be profitable money-wise.

In regards to the individual's rights to due process, usually the registered owner of the vehicle is notified by regular mail about the alleged violation. First of all, there is no proof that he actually got the violation in the mail. Second, the owner is presumed guilty until proven otherwise, even if he was not driving the vehicle.

On the third point, there are less expensive and more effective ways to increase safety; as an example, I want to cite the studies on pages 5 and 6 of my testimony from Loma Linda and San Carlos, California, and also a 2003 Texas Transportation Institute study which basically concluded, after extensive research, that just by increasing yellow lights from .5 to 1.5 seconds, it decreases the frequency of red light running by at least 50 percent.

Therefore, the NMA is strongly opposed to the use of automatic traffic enforcement. We understand the counties and cities may have financial difficulties with their revenues, but I think they should use alternative means to raise their revenues, and not at the expense of the safety of the motorists. Thank you.

Mr. DEFAZIO. Thank you, sir.

We will now go to questions.

First, Mr. Geraci, we had several people mention the Federal guidelines. A two-part question. We had one reference, I believe it was from Howard County, to having begun the program with some Federal funds. If people are going to utilize Federal funds to establish these programs, should there just be guidelines or should there be standards that they have to meet in order to use Federal highway safety funds?

Mr. GERACI. The funding actually goes through the States through highway safety grants, various sections of the highway safety grants. So, really, it is the States that look at what those requests come in from their local communities and make a decision based on need.

Our guidelines are best practices from around the Country where we have assembled really what we think is the appropriate measures to look at; number one: problem identification, before you put any of these systems in place.

So while there may be funding available, again, it is not directly from USDOT, but, rather, to the States, and it is for the States to make some rational decisions on what those needs are in local communities.

Mr. DEFAZIO. If you have been following our attempts, thus far thwarted by the Obama Administration, to rewrite Federal surface transportation policy and implement an overdue reauthorization, you might have noted that we are proposing to require more accountability by the States, in exchange for flexibility.

Now, what you are describing gives flexibility; the States have the Federal funds. But the question would be about accountability; that is, did the State require local jurisdictions to have a comprehensive plan to look at all of the solutions that might mitigate the problems? Did they appropriately choose intersections that have problems, that are dangerous, with these comprehensive plans, or are the cameras revenue-generating?

Did they meet the Federal guidelines in terms of the period of the yellow light? I think that is pretty compelling testimony we heard from Representative Loudermilk about the impacts of the yellow period, the impacts when it was adjusted upward as opposed to having been adjusted downward, which seems to maximize revenues.

Wouldn't these be concerns that you would have?

Mr. GERACI. Well, they are concerns. We have actually implemented some performance measures for various forms of highway safety funding that is in place right now, so I think these are discussions, certainly, that we will have in the future as more of these systems become in place, as more States become involved in their interest in them.

Mr. DEFAZIO. Do you think there would be an appropriate role for the Federal Government to require these sorts of best practices by the State, the State then having flexibility with the funds within its own jurisdiction?

Mr. GERACI. I am not sure where the requirement sits right now, but certainly those exact discussions are taking place, and I would

expect them to become more advanced as we move forward with more States interested.

Mr. DEFAZIO. OK.

Representative Loudermilk, I thought, in particular, the discussion of the rear-end accidents and yellow lights was fairly extraordinary. You talked very specifically about the reduction in violations. I didn't find in the testimony a specific discussion of comparative accident results at those intersections. Do you have that or does that exist? You know, I mean, if violations were down 70 percent, what was the before and after in terms of accidents at that intersection?

Mr. LOUDERMILK. Well, it varies. We are still compiling the data. One of the problems we have had in Georgia is there was lack of enforcement or penalty, I should say, for local governments who didn't follow the State law regarding red light cameras, so a great instance was we required annual reporting that went to the legislature prior to House Bill 77. Reports were due by the end of February. Half the reports wouldn't show up; those that did come were late. So there is a lot of data that we are missing in the past.

House Bill 77 does put penalties into place now. Basically, the penalty is if there is any violation of the State law regarding red light cameras, then all the revenue generated from the red light camera during that time period goes to the State. So we are seeing a lot more compliance.

And, again, a lot of the data that we are getting is coming from the local media, whose opinion on red light cameras have changed significantly in the last two years. Two years ago, there were proponents of red light cameras, but as more data is coming out and abuses by local government, we are seeing a lot of change. So a lot of the data that we are getting is done through investigative reporting.

So through the House Transportation Committee that I serve on, we are starting to compile a lot of that data from the cities so that we can analyze why are we seeing an increase in accidents at certain intersections. Half of the intersections we are seeing an increase in accidents; not just rear-end, but also angle collisions. Is it because of the location? There was no constraints, prior to House Bill 77, on where a red light camera could go, and we saw a lot of cameras going into low speed, high congestion intersections that weren't accident prone, but they were high revenue generators.

So we are trying to find that correlation right now. What we are finding is that there has been a financial incentive to not do the engineering aspect for safety.

So that is a long way of answering that a lot of that data we are still compiling.

Mr. DEFAZIO. OK. Just one other quick question. If they are out of compliance, you require them to remit all the fines to the State. I guess I am wondering, if they are out of compliance, whether that would raise questions about the guilt or not of the violators, and I wonder why the money wouldn't go back to the persons who received the citations when that jurisdiction was out of compliance.

Mr. LOUDERMILK. Well, that was, you may say, an unintended consequence of the legislation, because, as we were drafting the legislation, we never envisioned that local governments would just

blatantly be not in compliance with State law. Something we are looking at changing is the City of Atlanta recently had to give \$35,000 to the State because they operated one red light camera; their permit was denied by the State Department of Transportation because, over the period of having the red light camera there, there was either no reduction or, in this case, there was an increase in accidents. So the DOT saw that the red light camera was not being effective, denied the permit. The City of Atlanta continued to operate the camera.

So during that time period, by law, they have to give that money to the State. We are looking at—that should have gone back to the violators, especially that same intersection. A year ago the City failed to add the additional second to the yellow light time until CNN came up to do an interview and the time got added at that point.

Judges in the past have ruled that monies had to be refunded back to the citizens in situations like that, so that is something that we are going to be looking in this coming legislative session to change the existing law.

Mr. DEFazio. OK.

Now, Mr. Kelly, hearing the testimony from Representative Loudermilk, where they find that there had not been adequate yellow light timing, and a questionable choice of intersections. You seem to broadly endorse this technology and don't acknowledge that these problems exist and/or there should be some sort of either State or Federal mandatory guidelines. Do you want to address those concerns?

Mr. KELLY. Mr. DeFazio, let me say this—

Mr. DEFazio. And I would reiterate what the Ranking Member said, which is we did invite vendors, and they refused. I thought of subpoenaing them, but we have a lot of other things to do. But I find it disturbing that none of them wanted to come and talk about what a great thing they are doing for America here.

Mr. KELLY. Well, I thank you for having me as the second choice.

Let me say this, Mr. DeFazio. We wholly would support working with State and Federal authorities to develop programs and standards and outline an effective program. When you are talking about an issue of amber light timing, the amber light timing is something that is set by professional traffic engineers. That is something that they have a very specific formula for. I am not an engineer, I don't talk engineer talk, but they have a very specific traffic formula whereby they set those amber light times, and we think that they are the professionals and they are the ones that should be setting amber light times.

Mr. DEFazio. But all they do is set, as I understand it, Mr. Geraci, a minimum standard, which perhaps it has a parameter, upper/lower, I don't know.

Mr. GERACI. That is correct. But again, as Mr. Kelly said, it is up to those local engineers to establish what that timing is.

Mr. DEFazio. Right.

Mr. GERACI. The recommendations are—

Mr. DEFazio. And apparently at some of these jurisdictions in Georgia, and perhaps elsewhere, they decided to either not increase

it or to minimize it in order to maximize infractions and cause more accidents. That is kind of a problem.

Mr. KELLY. Well, if those decisions are being made at the local level, they are being made by the local authorities, they are not being made by the vendors of the machines. We have no access to that information.

Mr. DEFAZIO. Well, I guess the question is: there is an issue of local control, State control, and Federal, and I guess the position I am headed toward here is for any Federal money that is invested, it must comply with comprehensive assessment of the problems and/or intersections, and a comprehensive approach must be taken, which might or might not include the automated enforcement; and, if it does, that the automated enforcement would not be to generate revenues, but to be put back into more safety improvements, which would probably preclude some of the contracts your companies have here.

OK, with that, I have exceeded my time and I will turn to the Republican side. I will have another round of questions.

Mr. Coble?

Mr. COBLE. Thank you, Mr. Chairman, Mr. Duncan.

Good to have you all with us today.

Mr. Geraci, what were some of the negative effects from the automated red light camera systems that you detected in your review of the seven international evaluations?

Mr. GERACI. Really, the—

Mr. COBLE. Or were there any?

Mr. GERACI. If any, there may have been some rear-end collisions. There were significant improvements in right-angle collisions, which are typically higher speed, more severe in terms of property damage and injury. But there was some slight indication of increases of rear-end collisions because of following too close or stopping suddenly, but that is really the only indication that might be there.

Mr. COBLE. Thank you.

Mr. Loudermilk, did you find that once engineering solutions were implemented at intersections with photo enforcement, that violations dropped dramatically to the extent that localities canceled their photo enforcement contracts because insufficient revenue was being generated?

Mr. LOUDERMILK. Yes, sir, we did. Specifically, in 12 cities, within three months of House Bill 77 going into effect, at least the additional one second to the amber time going into effect, we had 12 cities to remove some or all of the red light cameras because the revenues dropped below the cost to operate the cameras. I guess the most compelling was the City of Dalton, Georgia, the carpet capital of the world. The mayor not only removed his red light cameras, made the statement that they did not see any significant improvement or any improvement at all in safety until they added the one second. Not only did they remove the camera, but they went and added one second to all the major intersections in the city because they saw that the timing of the yellow light significantly reduced red light running and improved safety much more than they ever saw from red light cameras.

Mr. COBLE. I thank you, sir.

Mr. LOUDERMILK. Thank you.

Mr. COBLE. Mr. Reagan, you alluded to House Bill 325. Has that bill been enacted or is it awaiting enactment?

Mr. REAGAN. Actually, it goes into effect July 1st. So this week it will actually go into effect.

Mr. COBLE. Well, who is responsible for reviewing the tapes and issuing subsequent citations?

Mr. REAGAN. What we did in the State of Florida, we put that back on every local law enforcement official. No citation can be issued in the State of Florida, regardless of what camera company the individual city is using, unless a local law enforcement official reviews the tape, issues a citation using basically whatever language that they would have for their current issuance of a citation.

Mr. COBLE. And how does the bill, Mr. Reagan, provide for distribution of revenue?

Mr. REAGAN. Primarily what we did was split the revenue basically in half, between the local municipality, the other half going to the State of Florida. The money that goes to the State of Florida does go to our general revenue fund. Of the balance that stays in the local community, they have to operate their camera costs out of that.

Now, a portion of the money that goes to the State of Florida is directed to trauma centers and brain and spinal institute studies.

Mr. COBLE. I thank you, sir.

Dr. McCartt, in your testimony you mentioned that the installation of roundabouts at intersections can reduce accidents by 40 percent. What other engineering modifications can result in a reduction of speeding and red light running crashes, A; and, B, how do these other improvements compare to photo enforcement?

Ms. MCCARTT. Well, I think the main thing that would come to mind, as others have mentioned, lengthening the yellow signal. And we have done research that shows that the proper yellow signal time does reduce red light running violations. But we did a study in Philadelphia a couple years ago where we actually worked with the city and they first made the yellow timing meet the engineering requirements and actually even go beyond that, and that did reduce red light running violations by about a third.

But then they added red light camera enforcement and there was a further reduction of 96 percent in violations beyond the reductions achieved with yellow timing. So we concluded from that study that at some intersections better yellow timing won't fully address the problem of red light running.

Mr. COBLE. I thank you.

Thank you again, Mr. Chairman. My red light is about to illuminate, so I will yield back.

Mr. DEFAZIO. We don't want to hit you with a violation, Howard. With that, I would turn to Mr. Baird.

Mr. BAIRD. Thank you, Mr. Chairman.

And I thank our witnesses. A couple of quick things. First of all, as a behavioral scientist, I just have to say the mere possibility that accident rates go up following installation of red light cameras does not necessarily mean they are ineffective. The research design might suggest that maybe there are just a lot more people on that road. So you just have to watch that reporting conclusion.

Secondly, what is the average cost to install and maintain one of these? Mr. Kelly?

Mr. KELLY. Thank you, Mr. Baird. The average cost to install a red light pole is around \$100,000. That cost is borne by the manufacturer, and those costs get recouped back through monthly leases with the locality.

Mr. BAIRD. OK. One of the things that puzzles me about this is, my experience with this, it seems like it is a little bit like invisible fencing for your dog, but the shock doesn't come for about three weeks, in the mail, and then you wonder why your dog is not stopping at the invisible fence. How do I know that there is a red light camera or a speeding camera present, other than this little obscure sign that I drive by a week after I got the red light ticket and realize I should have slowed down?

Mr. REAGAN. If I may, in the State of Florida, part of our legislation requires basically I call it a massive sign, it is almost like a billboard type sign at every intersection where a camera is being used. In addition to that, on the right turn on red there is an additional sign that is going to be located right there.

So, in my opinion, if someone violates that law with signage there, I hate to say it, but they deserve the ticket.

Mr. BAIRD. Yes, I think that makes sense. I mean, to me, behaviorally, I would say that if I look at that red light and there is a flag on it and I say, "Ah!", then you are more likely to get people to stop running red lights. So too with speeding; if you have some type of marking on the pavement or something that says you have a speeding camera here, then, you know—people slow down when they see the police car.

Mr. REAGAN. Absolutely.

Mr. BAIRD. They drive faster when there is not a police car present. Well, if you have an invisible police car, you have a good revenue generator, but you don't have a public safety generator here, would be my perspective.

What do we know about the use of these things in school zones? I have twin five-year-olds, and people drive like crazy past their school, and it is quite frustrating. What do we know about their effective use in school zones?

Mr. KELLY. We do know, Mr. Baird, that school zones are a popular place for mainly speed cameras, as opposed to red light cameras, to be implemented, and we do need some more data about the effectiveness in school zones. We need more data generally on the effectiveness of speed cameras. There are studies out there that do show that speeds are reduced, but we don't have nearly the quantitative number of studies on speed camera enforcement effectiveness as we do on red light effectiveness.

Mr. BAIRD. I am intrigued by this yellow light issue. Every now and then you visit another community, and you are driving, and suddenly the yellow is a lot quicker than in your own community. What do we know, in the absence of punitive-like cameras, about safety in general as it pertains to the length of the yellow light signal?

Mr. LOUDERMILK. Well, thank you for the question; I think it is very good and it is very relevant. A lot of the information that we have derived actually goes back to a testimony to this body by the

former majority leader, Dick Armey, in studies that he had done that showed that an increase in just one second of a yellow light time can decrease accidents 30 to 40 percent. However, a decrease in the yellow light time has the opposite effect, but even greater, in that it increases the number of red light running.

One thing to keep in mind is the majority of injury accidents or the majority of accidents that happen in these intersections is not by the intentional red light runner, the person who is turning left and gets caught by a short yellow. The majority of these accidents are caused by the unintentional runner; the person who is texting, who——

Mr. BAIRD. That is very helpful. Some of us will not allow Dick Armey to be cited as a predominant expert.

Dr. McCartt, do you have any response to that?

Sorry, but I am suspect of Dick Armey.

Ms. MCCARTT. Our research does show that yellow signal timings that meet the engineering guidelines do reduce violations. But as I said earlier, we also showed that red light cameras further reduce violations. So it is sometimes not enough to change the yellow signal.

Mr. BAIRD. Great. I thank you.

No disrespect to our witness here, or to Mr. Armey, I just want a second opinion on that.

Thanks. I yield back.

Mr. DEFAZIO. I thank the gentleman and turn now to Representative Buchanan. This will be the last round of questions. We have votes. I assume Members do have questions, so we will recess for those votes. Hopefully you can all stay. The votes, by the time we leave, should be concluded in about 25 or 30 minutes. OK?

Go ahead.

Mr. BUCHANAN. Thank you, Mr. Chairman.

Representative Reagan, it is great to see you here today. He has been a great leader in our community and in Florida, and obviously this is an issue that has been very important to you and been passed into law. Let me ask you. In your testimony, you said there have been probably about 5600 injuries prevented. What do you base that on? I mean, how did you come up with that number?

Mr. REAGAN. By the way, Representative Buchanan, it is good to see you. Thanks for being here and thanks for inviting me, as well.

What we looked at was statistical data that was provided by the Department of Highway Safety and Motor Vehicles, and we had to make a conclusion based on the parameters and data that they gave us, and what we did is we said if these violations had not occurred, what injuries would not have occurred. And that is where we extrapolated that data for the State of Florida.

Mr. BUCHANAN. And how many accidents will this prevent in the years to come? Do you have any sense of that going forward once this gets fully implemented in Florida?

Mr. REAGAN. Well, number one, I think it is really going to depend on how many of these cameras are installed, what cities, what intersections. As we speak, the Department of Highway Safety and Motor Vehicles, as well as the Department of Transportation, are working to come up with standardized data that other

States have used for the conditions to use these cameras and at what intersections.

All the statistical data that I have seen throughout the Nation, T-bone type accidents generally drop anywhere from 50 to 70 percent when these cameras are installed. While I have heard testimony that rear-end collisions have gone up, in some communities they have. In our test data in Sarasota and Manatee Counties, we had three intersections with these cameras for 90 days and we did not have one single rear-end collision.

So I do believe, number one, if we educate the motoring public, number two, if we engineer correctly the standards and the intersections where these cameras are used, I believe we are going to see a dramatic reduction in accidents.

Mr. BUCHANAN. Why did you initially get involved in this proposed bill? What happened in your area? I don't know if I have ever heard that story. Because you have spent a lot of energy and time and been a major leader in Florida on it, and I know it is your bill in the new law, but what was the motivation initially?

Mr. REAGAN. Thank you, Representative. Actually, a constituent of yours and mine that was killed about a mile from my house, on State Road 70. He and his brother-in-law had gone out for dinner, were returning. His wife was nine months pregnant. He had a green arrow, made the turn, and a woman, at about 50 miles an hour, slammed into the side, killing him instantly. Two weeks after she buried her husband, she delivered her only child.

She actually contacted me after that, looking for some situation, some help as to what can we do for habitual drivers, number one, and people who do violate the law, primarily red light camera running. By the way, her husband's name was Mark Wandall; her name is Melissa Wandall, and she has been a very great advocate in the State of Florida, as you well know.

I worked with her for about a year looking at what could we do legally to try to prevent red light running. The cameras, we found they work. We have studied other States and, as you well know, I spent five years in the State of Florida trying to get this legislation passed. I do believe they are going to work. I do believe it is going to make our roads safer in the State of Florida, as well as the rest of the Country, when these things are implemented. But, realistically, I got involved because one of my constituents was killed.

Mr. BUCHANAN. Well, thanks for your leadership. I know that you just term limited out. We are going to miss you, but, again, thanks for your leadership.

And I yield back.

Mr. DEFAZIO. I thank the gentleman for his questions.

We will recess until 11:30. And if any of you have other commitments, I understand, but if you can be here at 11:30, it would be appreciated for additional questions.

The Committee stands in recess.

[Recess.]

Mr. DEFAZIO. The Committee will return to order and I would recognize the Ranking Member, Representative Duncan, for questions.

Mr. DUNCAN. Well, thank you, Mr. Chairman.

First, let me tell the witnesses how sorry I am that we have had these votes to interrupt this hearing, but this sometimes happens. So we are going to make this quick. I have a luncheon appointment at 11:45, so, really, I am just going to ask one question that I am curious about. Can anybody tell me what percentage of these red light violations are for turning right, as opposed to actually running the red light?

Mr. REAGAN. Mr. Duncan, I will tell you one of the studies we did in the State of Florida was that very issue, and that is right turn on red, and what is the revenue generated from that versus people that blow right through the intersection. In some cities it was as high at 60 percent; in some cities it was as low as 35 percent. So I would say, realistically, what we found was probably in the neighborhood of 50 to 55 percent of violations were for right turn on red.

What we did in the State of Florida, though, we said since, number one, no citation can be issued in the State of Florida unless the local law enforcement official reviews the tape, certifies basically using the standard if you were there and could write a ticket, would you. I mean, while we didn't write that in the bill, that is kind of the explanation we gave and asked them to do.

But what they did was simply this. We also put in our language if you make that right turn on red, even though it is a violation of the law, in a careful and prudent manner, then no citation should be issued. So we left it up to local law enforcement officials, whether it is in Pensacola, Tampa, or Miami. Since they know their own rules, they know their own roads, they know their own intersections, we think it makes sense to do it that way.

But basically, to get back to your question, it is over 50 percent on average.

Mr. DUNCAN. Well, the reason I asked that is this. I am really skeptical about these polls that say most people support these things, because I have noticed, in Mr. Danila's form here, that 15 States and 11 cities have now banned the use of these cameras. And I guess the reason that I got so interested in it was not only because I was having a lot of people talk to me about it but, in addition, it was a real controversial thing in the last session of the Tennessee legislature.

I mean, they really got into this in a big, big way, and I guess they did in Georgia too, Representative Loudermilk. And it wouldn't have been such a big issue in the Tennessee legislature if a lot of people weren't talking about it, and some of the legislators told me that they were hearing from a lot of people. And the ones I was hearing from were all these people upset about this turning right on the red lights, because we have been doing that for years. Now, just flat out running a red light, not too many people are concerned about that.

But I am impressed, though, by the fact that this increased use of the yellow light can make such a difference and going to more roundabouts and increased signage and these other things, and I think these cities should try all these other things first.

And I will always be convinced. You know, we have created so many parks in this Country now we can't even take care of all of them, and we can't get the use out of them unless people just some-

how find the way to go on permanent vacations. And we keep taking all this land off the tax rolls at the same time that the police and the schools and everybody is coming to us wanting more money.

So the States have tried to come up with every way they possibly could to raise money, and all the States have gone most heavily into gambling—lotteries and other forms of gambling—and I understand that. And I think these red light cameras are a whole lot more about money than they are about safety. I know people say it is about safety, but you will never convince me, because I think, as I said in my opening statement, you can never satisfy government's appetite for money or land; they always want more. And they are going to get it one way or the other, I assume, but I don't think it is good.

So I was impressed and appreciated all of your testimonies. I have learned from it and I think it has been a good hearing. I am sorry that we were interrupted by the votes, but thank you very much for being here.

And thank you, Mr. Chairman, for calling this hearing.

Mr. DEFAZIO. I thank the gentleman both for raising the subject and for his participation, and recognize that we ran over, so he has another commitment, but I have a few additional questions.

Captain Hansen, in your testimony you said the International Association of Chiefs of Police and NHTSA are working together to establish technical standards for red light and speed cameras. Can you give us a little bit more elaboration on that? Because we had some discussion about guidelines earlier. Is this different? What are we talking about here?

Mr. HANSEN. It is different. Thank you, sir. The International Association of Chiefs of Police and NHTSA have formed a sub-committee called ETATS, and that committee is setting up technical standards. So the guidelines on red light running camera systems operational guidelines, speed enforcement systems operational guidelines, they look at the policy issues, look at how a program should be established, from problem identification to pulling your stakeholders together, to making sure you look at engineering alternatives before you go to enforcement, all of that, which I support 100 percent, I think is critical.

Once you get to you are going to do automated enforcement and what steps do you take from there, ETATS is picking up with technical standards to make sure that when a local government entity or a local law enforcement agency selects a piece of technology, that that technology does accurately reflect the car that is running the red light, it does capture an image when the light turns red, doesn't make any mistaken images, and does it in a reliable manner.

So where the operational guidelines are very important for what they do, these technical standards are also important for what they do.

Mr. DEFAZIO. OK, thank you.

Mr. Kelly, you talked earlier about the average \$100,000 installation cost, and a couple of the Members that were here at that point sort of raised their eyebrows. I guess we are talking a very tall standard and a large boom that has to exceed truck height, so basi-

cally that is generally how they are suspended and that is where most of the cost comes in?

Mr. KELLY. The cost comes in from not only the pole and the camera on top of the pole, but also there are sensors that are built into the intersection that can judge the speed of the oncoming vehicle, keep that in mind with the light that is about to turn or has turned; it can judge the speed and make a pretty good assessment of whether or not that vehicle is going to go through the intersection—

Mr. DEFAZIO. Meaning if they say it was a yellow light and I couldn't stop safely.

Mr. KELLY. Yes. And at that point, that is when the camera will get triggered to take a picture of that vehicle going through the intersection. So it is not a situation where the cameras are taking pictures of every single vehicle that goes through the intersection, it is just the ones that are most likely or highly likely to run the red light in the first place.

So the cost comes from the equipment and also from the construction of putting the sensors and the coils in the intersection.

Mr. DEFAZIO. We had some other testimony about some of these devices being removed. Mr. Danila spoke to this. He said there are many examples of automated enforcement programs being shut down because they are not profitable. I guess first I would ask Mr. Danila to sort of expand or comment on what is many. Give us a number.

Mr. DANILA. Well, basically, what they looked at in certain situations, some of those examples that are listed in my written testimony, is the yellow lights at certain intersections have been increased to the point—normally they are supposed to be increased based on engineering studies, and then they noticed that basically the traffic cameras were not profitable anymore because nobody—I shouldn't say nobody, but there is a huge decrease in the incidents of people running the red light. And basically what happened was the cost of operating these cameras, as Mr. Kelly said is pretty significant, didn't make the revenue they were supposed to generate, and then certain counties and cities eventually have given up using them because they were not profitable.

Mr. DEFAZIO. Right. But I asked the question about the word many. Do you have a list? Can you quantify?

Mr. DANILA. Yes, there is a list, actually on page 7 of my testimony.

Mr. DEFAZIO. OK. All right.

Mr. DANILA. Basically there is a list of States and then particular cities which have banned these programs.

Mr. DEFAZIO. Mr. Kelly, I understand the installation cost; you explained that. But it doesn't seem to me that there would be a particularly substantial ongoing operating cost, so I am a bit puzzled here as to why so many places would be removing the cameras. I mean, in particular, if it isn't that you have to parse through all the traffic, as you explained, you don't, it is people approaching too quickly, knowing the cycle of the light, and then they are likely and then they are videoed, and then that is reviewed.

And there is obviously a cost to the public agency in Florida to review, but that is not your cost or your vendor's cost. So I am curi-

ous what is the substantial operating cost and why would there be so many withdrawn? Because it doesn't seem to me there would be a very large monthly operating cost.

Mr. KELLY. Thank you, Mr. Chairman. We have really two issues at play here. As Mr. Danila points out, there have been some localities that have withdrawn the cameras, and his contention would be it is because they are not making the revenue that they thought they would make. Another way to look at that would be that the cameras were there to address a safety issue, and when you have the violations going down and when you have crashes going down, the safety issue has been addressed; and there may not be a safety need for the camera at that particular intersection anymore, and that could be one of the considerations that localities are taking when they are withdrawing the cameras from an intersection.

Mr. DEFAZIO. But that would imply a permanent change, withdrawing the enforcement mechanism. I would argue that there may have been a decrease in violations, but it may increase if you remove—

Mr. KELLY. And it may, but there are some instances in traffic safety enforcement programs that you see the deterrence effect and the halo effect of that happening continuing out. You see the same sort of thing with drunk driving enforcement when you know checkpoints are at a particular intersection. Even if they are not there every time you drive through that intersection, the perception of enforcement is out there and it changes your behavior.

On your other question about the monthly fees and the associated costs, one of the things that the vendors do, it is not just sort of put in the equipment and walk away. The vendors do monthly services, and it is negotiated, it is different with every locality; it is sort of a negotiated contract, where they are taking the cameras and processing it—

Mr. DEFAZIO. Right. But again, it seems to me there is a big investment up front, it is amortized or not amortized, and it just seems that a monthly maintenance fee in comparison to that would be quite small. Can you give me a number of what monthly maintenance fees run? Or is this an issue where you expect a minimum return, and if the jurisdiction or the intersection doesn't meet that, then the jurisdiction has to make up the difference and, therefore, they have a motivation to remove the light because they are now not getting revenue from it, but have to pay for it? Is that the problem?

Mr. KELLY. To the contrary, sir. What we are seeing now with a lot of the contracts that municipalities and localities are entering into is that they are holding themselves harmless.

Mr. DEFAZIO. OK.

Mr. KELLY. Whereas, if you are not receiving enough revenue to pay for the equipment for their monthly fee or whatever it is, they are holding themselves harmless and they are saying—and I will make a number up here—if we are going to charge you \$5,000 a month, but we only have \$4,000 a month in revenues, we are not responsible for the other \$1,000; those costs have to be borne by the vendor.

So those types of contracts are becoming more popular and increasingly in use in various localities. So the cities are really putting the onus back on the vendors for their——

Mr. DEFAZIO. So who, then, controls the decision to remove the device if it is a money-losing proposition; is it up to the vendor, is it joint? What do the contracts normally say there?

Mr. KELLY. The city has the ultimate decision on whether or not a device is to be removed.

Mr. DEFAZIO. So if it has been installed, it is there, and even if it is losing money, the city can say “we want to keep it there”?

Mr. KELLY. Depending on the various contracts with the locality, there are escape clauses that are there. But the reason that the cameras are there and the reason that the cameras are effective is because people are running red lights and people are speeding.

Mr. DEFAZIO. Right. OK, but I am just trying——

Mr. KELLY. There is a need there to address this issue, and photo enforcement is one of the tools, as others have talked about, one of the tools of enforcement that go along with traditional enforcement.

Mr. DEFAZIO. Sure. OK, I got that. What about what Mr. Baird said, which I think makes a tremendous amount of sense, which is: require prominent posting of these intersections which would give people—I think he is spot on in terms of saying that would bring about compliance at sort of the after-the-fact, oh gosh, I didn't know there was a camera there, I go through that intersection every day; now I won't do it again.

Or maybe you just went through that intersection once and it is not going to make any difference in your behavior because you are not going through it again; maybe you will be careful somewhere else, maybe you won't. What about prominent posting? What is the position of your association on prominent posting?

Mr. KELLY. Signage is in use in many different programs across the Country and is something that is an integral part to an effective program. Remember, the goal of the program is to reduce the incidence in the first place. So we do support in various States and localities, wherever working with the vendor, prominent signage to let people know this is an issue; this is an area where there is photo enforcement.

And the definition of prominent signage is mostly regulated on a State level, so what might be prominent in one district could be different than what is prominent in another district, but prominent signage so people understand this is an intersection where there is photo enforcement, this is a freeway where there is speed enforcement. And how that is signed and people understand that there is a problem is something that we would support.

Mr. DEFAZIO. All right.

Mr. Danila, would your organization oppose any use of automated technology, even if we have taken a comprehensive approach, we are meeting best practices in terms of length of yellow light, we have prominent signage and we have looked at design parameters, we have looked at other factors and we still have a problem? Are you opposed then to the use of automated technology even then?

Mr. DANILA. I think yes, and the reason probably in that case would be, one, would be the way the drivers are actually being notified about these alleged violations. First of all, the camera is very unpopular to the public. Every time they appear on ballots, they get voted down. And the way the drivers get notified, first of all, nobody knows who the driver was, you know, there is just a vehicle who is getting—

Mr. DEFAZIO. Yes, but I think you have a responsibility to control the use of your vehicle and be certain the person using your vehicle uses the vehicle responsibly. So you can't just say, oh, I have a friend who has a drunk driving problem, I am going to lend him my car and I am not going to worry about it.

Mr. DANILA. That is correct. However, the notification process, the way it is currently in place, I think has some flaws in terms of the driver, the owner of the vehicle, is notified by regular mail, and I know this for a fact, from a personal situation when it happened to a friend of mine who actually did not get the actual so-called first notification.

However, he got the second one with a double fine. And when he called in to contest it, he was told he has to pay what the double fine is or otherwise his fine would be reported to the credit collectors and stuff. So that is one of the main problems I think that this program is facing, about notifying properly the drivers about the situation.

The other thing, the second problem is there is no human factor involved in it. If, let's say, a driver contests it in court, there is nobody there from the State who would actually say, yes, this was the driver who committed this violation. There is hearsay, basically; there is a camera on the road that took a picture.

And that leads to the third problem, which is how well these cameras are actually maintained, because I know for a fact in some places they had problems with weather interference, whether two vehicles were photographed in the same picture. So there were other problems with the maintenance of the cameras themselves which at times may not function properly; however, they still issued a citation.

So I think on these three levels the NMA would definitely still oppose the cameras.

Mr. DEFAZIO. OK. Would either Representative Loudermilk or Representative Reagan want to address those issues or that issue?

Mr. LOUDERMILK. Yes, Mr. Chairman, and thank you. The question that you posed to the gentleman, from a personal standpoint, I would still be opposed to the red light cameras from a constitutional standpoint. The statement was made earlier that there have been no court cases ruling them unconstitutional, but just this year the State of Minnesota, in *Minnesota v. Coleman*, the Supreme Court of Minnesota ruled that placing the burden of proof upon the accused is a violation of the Fifth Amendment by due process.

And currently in California the Supreme Court is hearing a case from a lower appellate court, interestingly enough, dealing with the Sixth Amendment, the right to confront your accuser, and stating that a camera is so focused on an intersection that it can't testify to other aspects of what was going on.

And a perfect illustration we have had of that in Georgia that we are trying to address in the legislature now is the legal running of red lights, such as a funeral procession. We have had instances where funeral parlors have contacted me and said we have a problem; every time the procession goes through an intersection, every car in the procession receives a red light camera ticket. There is no provision in the law for them to get out of it because they can't sign off saying that they weren't the driver because they were.

And we had an incident where a citizen from Alabama was required by the City of Rome in Georgia to drive back into Georgia—they were there out of State for a funeral—get a copy of the obituary that ran in the local paper, and take it to the local court before they would allow them out of paying the fine.

So there is this continual concern that although House Bill 77 has been very effective in Georgia in reducing red light running, it still has not addressed the constitutional concerns of the Fifth, the Sixth, now what we are seeing with the Sixth Amendment—in fact, the State of South Dakota, the Supreme Court is dealing with a Fifth Amendment case right now dealing with due process.

But also the Fourteenth Amendment we are looking at in Georgia that states that no State shall deprive any citizen of life, liberty, or property without due process to law. Without taking a picture of the driver, it is very difficult to not put the burden of proof upon the accused, especially.

And there are many instances where they didn't necessarily loan the car to someone; we have had many instances where the tag was misread, a G was read as a C. We have also had instances where a maintenance shop had the vehicle and was test driving the vehicle and ran through the intersection. So now the accused is having to prove that—in fact, we have had instances where they were out of State, and they have had to go and show airline tickets and hotel tickets, taking time off work.

So there are still going to remain the constitutional concerns, but if we are going to have the red light cameras, then we have to focus on the safety.

Mr. DEFazio. Representative Reagan?

Mr. REAGAN. If I might. Thank you, Mr. DeFazio, I appreciate that. I would like to address two things. One is the notification. In the State of Florida, we have toll booths at expressways, just like many other States do, and if you violate that under State statute today, we send the owner of the vehicle a picture of the automobile violating the law and a \$100 fine. We don't take a picture of the driver because we ask, just as you said, Mr. DeFazio, we ask that you, as the owner of the vehicle, be responsible for your vehicle.

Also, parking tickets. Virtually every State sends a ticket to the owner of the vehicle, not the driver of the vehicle.

So I think notification is fine; I don't think there is a problem with that whatsoever, and I think those standards should be followed properly.

Now, my colleague brought up something regarding funeral processions. In the bill in the State of Florida, we actually addressed that very specifically. If you are in a funeral procession, then all you have to do is basically make a statement to that effect and you are off the hook. Also, if you are at the direction of a law enforce-

ment official violating a red light via getting out of the way of an ambulance or anything of that nature, also you have the opportunity to do that.

And one other thing we did in the State of Florida, when you receive the citation, is simply this: If you were not the driver and you do know who that driver is, you can sign an affidavit to that effect, and we transfer the ticket away from you to that individual.

So I think we are trying, in the State of Florida, to address all the concerns that we have heard throughout the Nation.

I might also mention one other thing. We have heard testimony today about the extension of the amber light by one additional second. We ran tests in Florida regarding that very thing and, yes, it does initially stop people from running red lights by 50 percent. I have heard the testimony and I will buy that, with the exception of two things. Number one is once you have changed somebody's driving habit and behaviors, we did a test study, and five days after we added the additional second to the amber light, the same people were violating that red light again.

The other concern about that is what about the next intersection down the road that doesn't have the extension on their amber light? We found that people actually exceed the speed limit running that next red light because of the fact they believe, mentally, they have gotten in the habit of they have that extra time.

So I don't necessarily believe that adding the one additional second, unless you are going to do it across your entire State or across the entire Nation, then you are going to have, I think, tremendous additional traffic problems if you do that. So proper engineering probably is the thing to do overall.

Mr. DEFAZIO. Thank you.

Mr. KELLY. Mr. Chairman, may I just address the court cases for a second?

Mr. DEFAZIO. Briefly, yes. Go ahead.

Mr. KELLY. I would say the Seventh Circuit Court of Appeals agrees with you about responsibility for the ticket, and they have issued such an opinion, and I would be happy to provide that to the Committee for the record.

Mr. DEFAZIO. Sure. OK, thank you.

OK, anybody have anything they wanted to add, contest, or otherwise augment the record with?

[No response.]

Mr. DEFAZIO. OK, seeing no volunteers, then, I would thank you all for your time and your testimony on this issue, and the Committee stands adjourned.

[Whereupon, at 12:03 p.m., the Subcommittee was adjourned.]



STATEMENT OF THE HONORABLE PETER A. DEFazio
CHAIRMAN
SUBCOMMITTEE ON HIGHWAYS AND TRANSIT
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

HEARING ON
UTILIZATION AND IMPACTS OF AUTOMATED TRAFFIC ENFORCEMENT


June 30, 2010

On average, each year over 40,000 people die on the nation's roadways. We are here today at the request of Ranking Member Duncan to examine automated traffic enforcement issues surrounding two behaviors that contribute significantly to the number of annual traffic fatalities – speeding and red-light running. In 2008, speeding played a role in one-third of all traffic fatalities. That same year two percent of the traffic crash fatalities in the U.S. came as a result of motorists running red lights. In order to reduce the number of accidents and fatalities caused by motorists who speed and run red lights, more and more municipalities are installing automated traffic enforcement technology like red-light and speed cameras.

While the Federal government doesn't regulate the use of automated traffic enforcement technologies, Federal transportation safety funds can be used by States to pay for automated enforcement methods and many local governments have adopted such systems. Across the nation 482 communities utilize red-light cameras and 57 communities use speed cameras.

Many issues are raised when the topic of automated traffic enforcement is discussed, but the main question seems to be whether or not these cameras are used primarily for safety enforcement or to generate revenue. In addition to that argument, there are legitimate concerns about the way some contracts are structured with private vendors. In some cases the private vendor gets paid a contingency fee per citation, which means they have a financial incentive to issue large volumes of citations. An agreement like that really does cause one to wonder if using a contingency fee model is really about safety or lining the pockets of the vendor. However, there are states like Florida, who we will hear from today, who have passed legislation to protect the public interest in these contracts by, among other measures, eliminating contingency fees, requiring that motorists have time to review the alleged violation before the issuance of a formal violation, and standardizing how the generated revenue is allocated.

These are all issues we will explore today and I again want to thank Ranking Member Duncan for suggesting this hearing topic. I thank our witnesses for being here and I look forward to a vigorous debate.



STATEMENT OF
THE HONORABLE JAMES L. OBERSTAR
HEARING ON "UTILIZATION AND IMPACTS OF AUTOMATED TRAFFIC ENFORCEMENT"
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
SUBCOMMITTEE ON HIGHWAYS AND TRANSIT
JUNE 30, 2010

- I want to thank Chairman DeFazio and Ranking Member Duncan for holding this hearing today. Automated enforcement can be an effective component of comprehensive efforts to improve highway safety.
- Although some concerns have been raised with the way these systems have been implemented, when used appropriately, automated enforcement can serve as life-saving aid to our law enforcement professionals.
- Red-light runners were responsible for 762 deaths and 137,000 injuries in 2008. Fifty-six percent of these fatalities were innocent bystanders—pedestrians and cyclists, motorcyclists and other motorists, hit by red-light runners who didn't simply wait another few seconds for the signal to change.
- Speeding is an even more serious problem, playing a role in approximately 31 percent of traffic fatalities, or 11,674 fatalities in 2008 alone. These crashes cost an estimated \$40.4 billion in medical costs, lost productivity, and property damage.

- Solving these problems represents a substantial challenge, one that must be addressed using every effective method possible. This includes engineering improvements, public outreach and education, and enforcement technologies—including the appropriate utilization of red-light and speed enforcement cameras.
- Given budgetary constraints and ever-increasing demands on the time of law enforcement personnel, red-light and speed cameras provide a valuable means of assisting police officers in protecting the public. Officers can't be everywhere at once, and cameras serve as a reminder that no one has the right to violate traffic laws and endanger others.
- A study conducted by the Federal Highway Administration (FHWA) in seven communities serves as the most comprehensive study of red-light cameras in the U.S. to date. The study found that while rear-end collisions increased 15 percent at intersections with red-light cameras, the more dangerous broadside, or "T-bone", collisions were reduced by 25 percent—resulting in a total cost savings of between \$39,000 to \$50,000 annually at each intersection.

- Results were similarly promising for speed cameras. A worldwide review conducted by the National Highway Traffic Safety Administration (NHTSA) found that fixed-location speed cameras reduced traffic crashes between 20 and 25 percent.
- NHTSA also gives automated enforcement a 5-star rating—the highest rating given—in its report examining the efficacy of various safety countermeasures.
- Some opponents of the technologies will raise privacy concerns. However, these are cameras stationed on the public roadway—and are only activated once a motorist is breaking the law.
- Others will raise concerns about the way local jurisdictions have structured their contracts with private vendors, or about the duration of yellow lights. These are legitimate concerns, and should be remedied at the local level—these are not issues that the Congress has a hand in.
- It's important that these concerns are addressed, but that they aren't used by opponents to ban a sensible use of technology to save lives. In order to make

real strides in lowering the number of traffic fatalities, we must use every tool at our disposal.

- When structured appropriately, automated traffic enforcement technologies save lives and provide necessary assistance to our over-stretched law enforcement personnel. They should continue to play a role in the effort to improve public safety and save lives on the nation's roadways.

A handwritten signature in black ink, appearing to read "Laura Richardson", with a stylized flourish at the end.

Congresswoman Laura Richardson

**Statement at Committee on Transportation and Infrastructure
Committee, Subcommittee on Highways and Transit
"Utilization and Impacts of Automated Traffic Enforcement"
2167 Rayburn House Office Building**

Wednesday, June 30, 2010

10:00 AM

Mr. Chairman, I would like to thank you for convening this hearing to discuss automated traffic enforcement. Traffic safety is often ignored, and in the notoriously heavily trafficked Southern California area I represent, including four major highways in my district, traffic safety is of paramount importance.

I am also glad you have called this hearing because it gives us the opportunity to review the program implemented in 2006 in the County of Los Angeles. Since 2006, the City of Los Angeles and the Los Angeles Police Department have employed an Automated Photo Red Light Enforcement Program (PRL) with the goal of improving road safety.

Currently, American Traffic Solutions, (ATS) operates 32 intersections within the City. A study by LAPD of the intersections with the cameras from just before and just after implanting the program show a modest safety improvement, with an overall 9% reduction in accidents.

However, running counter to this study, a report presented by Mr. David Goldstein, Investigative Reporter, CBS2/KCAL9, on the City's PRL Program on November 9, 2009 indicated that there was a 24 percent increase in traffic collisions from the six month period before the implementation of the first cameras to the six months after.

I applaud any effort to make our streets safer to travel. Nevertheless, I am also aware that there are numerous concerns involving automated enforcement measures. As was heard in the testimony of the Honorable Barry Loudermilk from the Georgia House of Representatives, Georgia, as well as other states, are grappling with several problems. The State of California, and more specifically Los Angeles, is doing so as well.

My first concern with Los Angeles' PRL program is the cost of the program. Each intersection costs \$8,125 a month to operate based on the current contract, leading to an annual cost of \$3.12 million plus

\$800,000 in administrative costs. The revenue is just \$3.6 million from the fines, meaning this system, with controversial safety results, is yielding a net deficit to the government in addition to fining the citizens.

Second, I would like to inquire as to how the PRL program, and for that matter other automated enforcement measures, impacts the drivers subject to penalty. In September of 2009, the City of Los Angeles increased the fine amount associated with its PRL program and the LAPD also decided to cite all violations under the same vehicle code section (CVC 21453a), rather than citing right-turn violations under a different, and significantly less costly, section. Additionally, over an eight-year period, fines for red-light violators in Los Angeles County increased 65 percent, climbing to \$446 per violation, and reaching over \$500 once other fees are included.

While there could be logical explanations for these changes, I am concerned that the fines are possibly being raised not in order to promote safety and discourage certain behaviors, rather to assist municipal governments budgets in light of the severe budget deficits they are facing and to fulfill private contracts.

The last point of discussion has to do with the methodology used to test the PRL program. Based on the testimony heard today and the information coming from the City of Los Angeles, it is evident that no consensus exists on whether or not automated enforcement methods lead to a decreased accident rate.

I would like to thank the witnesses for appearing before us today and I look forward to their testimonies which will hopefully provide the committee with sufficient information to determine the federal role, if any, at this time.

Thank you, Mr. Chairman.


NATIONAL MOTORISTS ASSOCIATION
Advocating, Representing, and Protecting the Interests of North American Motorists

608/849/6000
 Fax: 608/849/8697
 E-mail: nma@motorists.org
 Web site: www.motorists.org

**Testimony for the House Subcommittee on Highways and Transit
 June 30, 2010 Hearing: "Utilization and Impacts of Automated Traffic Enforcement"**

Presented by Dan Danila
 Virginia State Activist for the National Motorists Association
 402 W. 2nd Street
 Waunakee, WI 53597
 608-849-6000

THE CASE AGAINST TRAFFIC TICKET CAMERAS

The **National Motorists Association (NMA)** opposes the use of automated devices, such as red-light cameras and (highway) speed cameras, to issue traffic tickets. Traffic ticket cameras serve no purpose other than revenue generation. Traffic authorities should utilize properly posted speed limits and properly installed traffic-control devices to manage traffic flow safely and effectively.

Traffic cameras make our roads less safe by creating sudden driver reactions, resulting in a proven increase of accidents such as rear-end collisions.

The NMA's objections to the use of ticket cameras include:

- Needed intersection safety improvements are deferred to maintain ticket income
- Traffic ticket cameras cause an increase in traffic accidents
- The hypocrisy of claiming that ticket cameras are all about safety despite example after example of automated enforcement programs being shut down after becoming unprofitable.
- Ticket recipients are not promptly or verifiably notified
- The driver of the vehicle is not positively identified
- The vehicle owner is presumed guilty until proven innocent (regardless of who the driver was)
- There is no certifiable witness to the alleged violation
- The public has voted down photo enforcement every time it has appeared on a ballot

Included with this packet of information are summaries of the following studies and case histories:

- ▶ Red Light Cameras Increase Accidents (*Washington Post*) - executive summary
- ▶ Investigation of Crash Risk Reduction Resulting from Red-Light Cameras in Small Urban Areas (*North Carolina Agricultural & Technical State University*) - executive summary
- ▶ Red Light Running Cameras: Would Crashes, Injuries and Automobile Insurance Rates Increase if they are used in Florida? (*University of South Florida*) - executive summary
- ▶ Use of Red-Light Cameras Challenged After Longer Yellow Lights Dramatically Decrease Violations
- ▶ Fifteen States and Eleven Cities That Have Banned the Use of Automated Traffic Enforcement

Presented by Dan Danila, Virginia State Activist for the National Motorists Association, on June 30, 2010

Washington Post: Red Light Cameras Increase Accidents

Analysis of accident data shows accidents doubled at intersections with red light cameras in Washington, D.C.

October 4, 2005

(from www.thenewspaper.com)

Since the District of Columbia installed its first red light camera in 1999, The Washington Post has championed use of photo enforcement technology on both its editorial and news pages. Now, five years into the program, the District's largest newspaper has discovered that accidents are up significantly as a result of their use.

A comparison of accidents at camera intersections before / after they were installed produced the following results:

Accident Type	1998	2004	Change
Broadside	81	106	+30%
Fatal/Injury	144	262	+81%
Overall	365	755	+107%

The accident doubling effect is not a statistical anomaly, happening in 2000, 2001, 2002 and 2004. In 2003, accidents did increase, but by less than 200 percent.

AAA and other critics have accused the city of installing cameras in high-volume locations where they could generate thousands of tickets, regardless of how many accidents happened there. The analysis raised questions about where police installed the cameras. Nine intersections with cameras had two or fewer crashes annually in 1998 and 1999; seven reported no crashes that led to injuries or fatalities during that period. Officials installed cameras at six of the 20 most crash-prone intersections in 1998, data show.

In total, the city's photo enforcement program has issued two million red light and speed camera tickets worth \$151 million. DC police have never studied the accident data and do not dispute the Post's findings.

Key Statistic:

The analysis shows that the number of crashes at locations with cameras more than doubled, from 365 collisions in 1998 to 755 last year. Injury and fatal crashes climbed 81 percent, from 144 such wrecks to 262. Broadside crashes, also known as right-angle or T-bone collisions, rose 30 percent, from 81 to 106 during that time frame.

Article Excerpt:

Douglas Noble, the chief traffic engineer for the D.C. Department of Transportation, said his office was examining crash data and plans to review the red-light camera locations. The department collects the data from police reports and advises police about where to install the devices. Noble said that no studies have been conducted on the District's red-light cameras in several years but that he "would not disagree" with The Post's analysis. "I don't necessarily have an explanation" for the trends, he said.

Source: D.C. Red-Light Cameras Fail to Reduce Accidents (Washington Post, 10/4/2005)

(<http://www.washingtonpost.com/wp-dyn/content/article/2005/10/03/AR2005100301844.html>)

Presented by Dan Danila, Virginia State Activist for the National Motorists Association, on June 30, 2010

Investigation of Crash Risk Reduction Resulting From Red-Light Cameras in Small Urban Areas

July 2004

Mark Burkey, Ph.D., Kofi Obeng, Ph.D., Co-Principal Investigators
Urban Transit Institute, Transportation Institute
North Carolina Agricultural & Technical State University, Greensboro, NC

Prepared for:
U.S. Department of Transportation
Research and Special Programs Administration
Washington, DC 20590

Executive Summary

(Full report at http://www.motorists.org/photoenforce/Burkey_Obeng_Updated_Report_2004.pdf)

This paper analyzes the impact of red light cameras (RLCs) on crashes at signalized intersections. It examines total crashes and also breaks crashes into categories based on both severity (e.g., causing severe injuries or only property damage) and by type (e.g., angle, rear end).

Prompted by criticism of the simplistic methods and small data sets used in many studies of red light cameras, we relate the occurrence of these crashes to the characteristics of signalized intersections, presence or absence of RLC, traffic, weather and other variables. Using a large data set, including 26 months before the introduction of RLCs, we analyze reported accidents occurring near 303 intersections over a 57-month period, for a total of 17,271 observations. Employing maximum likelihood estimation of Poisson regression models, we find that:

The results do not support the view that red light cameras reduce crashes. Instead, we find that RLCs are associated with higher levels of many types and severity categories of crashes. (emphasis added)

An overall time trend during the study indicated that accidents are becoming less frequent, about 5 percent per year.

However, the intersections where RLCs were installed are not experiencing the same decrease. When analyzing total crashes, we find that RLCs have a statistically significant ($p < 0.001$) and large (40% increase) effect on accident rates.

In addition, RLCs have a statistically significant, positive impact on rear-end accidents, sideswipes, and accidents involving cars turning left (traveling on the same roadway).

The one type of accident found to experience a decrease at RLC sites are those involving a left turning car and a car traveling on a different roadway.

When accidents are broken down by severity, RLCs were found to have a statistically significant ($p < 0.001$) and large effect (40-50% increase) on property damage only and possible injury crashes. There was a positive, but statistically insignificant estimated effect on severe (fatal, evident, and disabling) accidents.

These results run contrary to the many studies in the RLC literature. Previous studies have sometimes found an increase in rear-end accidents, but often find offsetting decreases in other types of accidents. While this study incorporated many advances in methodology over previous studies, additional work remains to be done. Because accident studies rarely use a true experimental design and data are not perfectly observable, additional careful study of RLCs is warranted to verify our results.

Presented by Dan Danila, Virginia State Activist for the National Motorists Association, on June 30, 2010

Red Light Running Cameras: Would Crashes, Injuries and Automobile Insurance Rates Increase If They Are Used in Florida?

Florida Public Health Review, 2005; 5: 1-7

Barbara Langland-Orban, Ph.D., MSPH, Associate Professor and Chair
 Etienne E. Pracht, Ph.D., Associate Professor
 John T. Large, PhD., Assistant Professor
 University of South Florida, College of Public Health, Tampa, FL

Executive Summary

(Full report at <http://health.usf.edu/NR/rdonlyres/C1702850-8716-4C2D-8EEB-15A2A741061A/0/2008pp001008OrbanetalRedLightPaperMarch72008formatted.pdf>)

The theory behind red light cameras as potentially effective is that they rely on deterring red light running primarily through punishment of a specific driving behavior and secondarily by changing drivers' experience. By definition, the punishable behavior and resulting potentially harmful action will already have taken place when a ticket is issued. In other words, the crash, injury, and mortality risks do not change immediately, if at all.

Even if red light cameras could be effective in the long run, which is debatable, they are associated with an added cost, consisting of fines, crashes and injuries that could have been avoided by using engineering solutions, which are effective in both the short term and the long run. Because the rigorous and robust studies conclude cameras are associated with increased crashes and costs, any economic analysis of cameras should include these newly generated costs to the public. Indirect costs to the public are usually not considered in the calculation of total revenues and profits generated from red light cameras.

Cities and counties should follow the state's lead and likewise pursue engineering improvements to enhance intersection safety for all drivers and passengers. Proven engineering practices and counter-measures can reduce crashes and injuries due to red light running, as well as other causes of intersection crashes. A public health approach to improved intersection engineering is particularly needed since 26% of Florida's traffic fatalities occur at intersections (with and without traffic signals), in contrast to 18% nationally (NHTSA, 2005). This means that more than 22% of traffic fatalities in Florida occur at intersections for reasons other than red light running, as red light constitutes less than 4% of total traffic fatalities. Further, **red light cameras are an inefficient means to raise revenue for local and state governments and can disadvantage the state's economy.**

Running a red light can cause severe traffic crashes especially when one vehicle runs into the side of another. Red light cameras photograph violators who are sent traffic tickets by mail. Intuitively, cameras appear to be a good idea. However, **comprehensive studies conclude cameras actually increase crashes and injuries, providing a safety argument not to install them.**

Legislation to permit camera citations has been proposed [in Florida] since the 1990s, but none has passed to date. This paper explains red light running trends in Florida; effective solutions to reduce red light running; findings from major camera evaluations; examples of flawed evaluations; the automobile insurance financial interest in cameras; and the increased likelihood of even higher crash and injury rates if cameras are used in Florida due to the high percent of elderly drivers and passengers.

Addendum by the NMA, June 2010: Florida Governor Charlie Crist recently approved legislation that allows the use of automated traffic enforcement on state roads.

Presented by Dan Danila, Virginia State Activist for the National Motorists Association, on June 30, 2010

Use of Red-Light Cameras Challenged after Longer Yellow Lights Dramatically Decrease Violations

Loma Linda, California

*Straight through violations drop 92 percent after yellow lights are extended by one second
(full story at www.thenewspaper.com/news/30/3055.asp)*

The Loma Linda City Council was very pleased with the results of increasing the duration of yellow lights by one second in November 2009 at busy city intersections that had been previously outfitted with red-light cameras. The number of left-turn violations decreased from about 240 per month to between 25 and 30 per month as soon as the yellow lights were lengthened, a drop of 80 percent or more. Straight through occurrences of red-light violations were reduced by an even more impressive 92 percent. The City Council began exploring ways to eliminate the cameras, but not without a fight from camera vendor, Redflex Traffic Systems of Australia.

San Carlos, California

*Engineering solutions and an extra second of yellow duration made red-light cameras a money loser
(full story at www.thenewspaper.com/news/31/3110.asp)*

After receiving numerous complaints from motorists about a short yellow light at a red-light camera intersection, the city found the 3.0 second timing was illegal. The standard was reset to 4.0 seconds, and in the process, the city refunded over \$150,000 to drivers for the invalid tickets that were issued after the camera was installed in November 2008. After the adjustment to the yellow light interval, the number of violations for red-light running went down from ten per day to two per day. As time passed, the violation count dropped even further. The red-light camera was relocated to a higher volume intersection, where testing showed that, with the longer yellow lights, traffic flow improved and red-light violations were minimal. Further testing at other intersections failed to find a location where the ticket camera could be effective. With its photo enforcement program losing money, the San Carlos City Council voted to eliminate the red-light camera in April 2010.

Springfield, Ohio

*Adding one extra second to its yellow lights means less tickets for Springfield
(full story at www.wdtn.com/dpp/news/local/springfield/Longer-yellow-light-means-less-tickets)*

In 2006, Springfield was issuing about 1,700 red-light camera tickets per month. That monthly average has dropped over 60 percent to 667 citations in 2010, with the police noting that the biggest reason for the drop was the lengthening of yellow lights from 3.6 seconds to 4.6 seconds, except for one signal at the bottom of a hill that was increased to 5.0 seconds. Revenue from Springfield's red-light cameras dropped from a high of \$786,000 in 2008 to \$431,000 in 2009.

Presented by Dan Danila, Virginia State Activist for the National Motorists Association, on June 30, 2010

Fifteen States and Eleven Cities That Have Banned the Use of Automated Traffic Enforcement

(from www.thenewspaper.com)

States

Alaska	Minnesota	New Hampshire
Arkansas	Mississippi	South Carolina
Indiana	Montana	Utah
Maine	Nebraska	West Virginia
Michigan	Nevada	Wisconsin

Some measures require explanation. In Arkansas, for example, state law authorizes police to use a photo radar gun if the officer personally delivers the ticket at the time of the violation. This does no more than allow a photograph to be used in conjunction with a traditional traffic stop and serves as an unconditional ban on automated enforcement. In Utah, the legislature has placed so many restrictions on the use of photo radar -- specifically, banning outsourcing of the ticketing process to private, for-profit companies -- that no city uses speed cameras. This serves as an "effective ban" on photo enforcement.

Cities

Anchorage, AK	Cincinnati, OH	Steubenville, OH
Arlington, TX	College Station, TX	Sulphur, LA
Batavia, IL	Heath, OH	Sykesville, MD
Chillicothe, OH	Peoria, AZ	

The voters in these cities banned cameras at a local level by referendum, most by large margins. Photo enforcement has never survived a public vote.

**Questions for Mr. Dan Danila
Virginia State Activist
National Motorists Association**

**Highways and Transit Subcommittee Hearing
June 30, 2010**

Questions from Chairman DeFazio

1. Although there is significant evidence to suggest that red-light and speed cameras can improve safety, there are also reports of some communities locating these cameras in places that seem designed to maximize revenue.
 - How frequently do you believe that cameras are placed at locations that are designed to maximize revenue rather than fix an unsafe intersection or roadway?
 - If some cameras are placed in locations designed to maximize revenue, doesn't the obligation to pay still fall on the motorist who is committing a traffic violation and endangering others?
 - Do States need to be more actively involved in regulating automated enforcement to prioritize the protection of the public interest over the collection of revenue?


NATIONAL MOTORISTS ASSOCIATION
Advocating, Representing, and Protecting the Interests of North American Motorists

608/849/6000
 Fax: 608/849/8697
 E-mail: nma@motorists.org
 Web site: www.motorists.org

August 8, 2010

U.S. House of Representatives
 Committee on Transportation and Infrastructure
 Attention: Chairman Peter A. DeFazio, Subcommittee on Highways and Transit
 2165 Rayburn House Office Building
 Washington, D.C. 20515

Dear Chairman DeFazio,

Thank you for the opportunity to respond to some additional questions for the record of the June 30th House Subcommittee on Highways and Transit hearing on "Utilization and Impacts of Automated Traffic Enforcement" (re: your July 26, 2010 letter).

I do feel it necessary to first comment on the premise preceding the three questions, that "... there is significant evidence to suggest that red-light and speed cameras can improve safety ..." because that sets the tone for the questions and the answers. The contrary of that statement is true: study upon study has shown that accident rates increase after ticket cameras are installed. A few of those studies are listed below. I'll be happy to provide links for each, and additional examples if desired.

- **D.C. Red-Light Cameras Fail to Reduce Accidents** (Washington Post, October 2005)
- **Investigation of Crash Risk Reduction Resulting From Red-Light Cameras in Small Urban Areas** (North Carolina Agricultural & Technical State University, July 2004)
- **Red Light Running Cameras: Would Crashes, Injuries and Automobile Insurance Rates Increase If They Are Used in Florida?** (University of South Florida, Florida Public Health Review, 2005)
- **Do Cameras Make Intersections More Dangerous?** (Investigative Report by David Goldstein of KCAL TV in Los Angeles, November 2009)

There is a misconception that there is positive value in installing red-light or speed cameras in addition to implementing engineering solutions for improved traffic safety. The latter is certainly true; setting proper yellow light intervals, increasing the visibility of traffic signals, refreshing lane and crosswalk markings, and making sure sight lines at intersections are unobstructed are some of the relatively inexpensive but highly effective ways to make our roads safer for drivers, cyclists and pedestrians. Ticket cameras provide no such safety value.

The National Motorists Association believes so strongly in implementing basic design changes to improve intersection and highway safety that for many years now, we have made the following offer to communities that operate red-light cameras: The NMA will pay \$10,000 to a community that implements our recommended engineering solutions, at any camera-equipped intersection that still has high numbers of red-light violations, and does not see a minimum 50 percent reduction in red-light violations. If our

Response to Chairman Peter A. DeFazio, Subcommittee on Highways and Transit
August 8, 2010
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recommendations succeed, the community must remove all of its ticket cameras and employ those same engineering recommendations at other troublesome intersections.

Not a single community has ever taken up the NMA on this challenge. Could it be because engineering improvements do not provide an ongoing revenue stream like red-light and speed cameras do?

In response to your written questions:

How frequently do you believe that cameras are placed at locations that are designed to maximize revenue rather than fix an unsafe intersection or roadway?

Always. Ticket cameras don't fix or improve safety at intersections or on highways. Instance after instance can be cited where camera programs have been shut down when they have failed to produce the anticipated revenue. If public officials really believed that red-light cameras improved traffic safety, why were the cameras removed when they became unprofitable?

If some cameras are placed in locations designed to maximize revenue, doesn't the obligation to pay still fall on the motorists who is committing a traffic violation and endangering others?

There are two points to make here. First, there is no positive identification of the driver of a vehicle flashed by a ticket camera, so most programs default to mailing the photo ticket to the registered owner of the vehicle. The obligation to pay does not necessarily fall on the motorist who allegedly committed a traffic violation; it falls on the vehicle owner regardless of whether he/she was the driver.

Second, whether or not a violation has occurred is highly dependent on the operating parameters of a given camera program. For example, there was discussion and testimony at the June 30th hearing about the proper/improper setting of the yellow light duration at red-light camera intersections. Several communities --- Loma Linda, CA and San Carlos, CA and Gwinnett County, GA to name a few --- have found that when the yellow light interval was increased to proper minimum times (based on the normal approach speed to the intersection) as established by the Institute of Traffic Engineers, the number of red-light violations dropped by at least 50 percent, and as much as 92 percent. Conversely, several cities have been discovered setting artificially low yellow light intervals, driving up the number of tickets being issued.

So the answer to the question is "No, not when the automated traffic enforcement system fails to positively identify the driver, or provide timely and verifiable notification of the charge, and not when the system is set up unfairly to create violations that wouldn't exist under properly set operating parameters." A motorist should not be charged with a violation unless there is a human factor (i.e., a police officer) directly involved in the process --- a witness to the alleged violation. Automated traffic enforcement is unconstitutional because it violates a person's right to due process in a number of ways, including the presumption of guilt rather than innocence and the inability to cross-examine the state's witness in court. Cameras cannot be questioned, nor can they tell the full circumstances surrounding an alleged traffic violation.

Response to Chairman Peter A. DeFazio, Subcommittee on Highways and Transit
August 8, 2010
Page 3

Do states need to be more actively involved in regulating automated enforcement to prioritize the protection of the public interest over the collection of revenue?

The states need to be more actively involved in setting rational speed limits and developing and implementing uniform standards for placing, operating, and maintaining intersection and highway traffic controls. The federal government can aid and support that effort by reversing the long term decline and dilution of traffic control device standards as specified in the Federal Highway Administration's Manual on Uniform Traffic Control Devices.

Specifically, there is a need to reestablish the primacy of setting speed limits at the 85th percentile. Further, there should be a mandatory standard procedure/formula for determining minimum yellow light intervals based on the normal approach speeds and physical characteristics of a traffic intersection.

Because automated traffic enforcement devices disrupt traffic flow, cause motorists to react unpredictably, and thereby increase traffic accidents, the most appropriate state response is to prohibit these devices as fifteen states (Alaska, Arkansas, Indiana, Maine, Michigan, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Hampshire, South Carolina, Utah, West Virginia, and Wisconsin) have already done.

Thank you for this opportunity to provide further input for the hearing record.

Sincerely,

Dan Danila
Virginia State Activist
National Motorists Association

STATEMENT OF
MICHAEL GERACI
DIRECTOR, OFFICE OF SAFETY PROGRAMS
NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION
Before the
SUBCOMMITTEE ON HIGHWAYS AND TRANSIT
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
UNITED STATES HOUSE OF REPRESENTATIVES
JUNE 30, 2010

Chairman DeFazio and Members of the Subcommittee, I am pleased to be here today to represent the Department of Transportation on the very important safety issue of automated speed enforcement.

While the number and rate of traffic deaths have decreased significantly in recent years, motor vehicle crashes remain a serious national health problem and a leading cause of death for young Americans. The National Highway Traffic Safety Administration (NHTSA) is committed to reducing the motor vehicle crash toll and considers every available evidence-based strategy for reducing roadway risk. Automated traffic enforcement technology is one such strategy, with evidence of effectiveness in reducing risks from speeding and red light running.

Speeding is one of the most prevalent factors contributing to traffic crashes.¹ In 2008, speeding was a contributing factor in 31 percent of all fatal crashes and was associated with more than 11,000 fatalities. NHTSA estimates that speeding-related crashes cost more than \$40 billion each year.

Of all drivers in fatal crashes, young males are most likely to have been speeding. In 2008, 37 percent of male drivers between 15 and 24 years of age who were involved in a fatal crash were reported to have been speeding at the time of the crash. The great majority - 88 percent in 2008 - of speeding-related fatal crashes occur on roads other than Interstate highways.

A NHTSA study of fatal intersection crashes indicates that an average of about 38 percent of such events at signal-controlled intersections involved at least one driver who ran a red light.² On average, intersection crashes involving red light running result in about 1,000 deaths per year. The age distribution of drivers who ran a red light in a fatal crash differs from that of speeding-related crashes, with drivers 65 years of age and higher making up about 11 percent of all drivers in two-vehicle intersection crashes, but accounting for 18 percent of those who ran red lights.

¹ NHTSA, Speeding, Traffic Safety Facts, 2008 Data, DOT HS 811 166

² NHTSA, Analysis of Fatal Motor Vehicle Traffic Crashes and Fatalities at Intersections, 1997 to 2004, February 2006, DOT HS 810 682

Research indicates that automated enforcement systems can result in measurable safety improvements in high-crash locations.³ A NHTSA review of thirteen international evaluations of automated speed camera enforcement systems and seven evaluations of automated red light camera systems indicates generally positive effects from these systems.

Several studies of fixed-camera speed enforcement systems indicate 20 to 25 percent reductions in injury crashes, while studies of mobile systems indicate reductions of injury crashes from 21 to as high as 51 percent.

Studies of red light running camera systems indicate reductions in overall crashes, angle crashes and red light running crashes by as much as 30 to 50 percent, but show slight increases in rear end crashes.

Based on available evidence, NHTSA believes that, when appropriately used as one component of an overall traffic safety and law enforcement system, automated enforcement programs can be an effective countermeasure for reducing crashes at high risk locations.. Automated enforcement systems do not replace the need for traditional enforcement operations, but provide an effective supplement when used as part of a comprehensive strategy for reducing traffic crashes.

NHTSA and the Federal Highway Administration have developed operational guidelines to assist States and communities in designing and implementing effective automated speeding and red light running systems.⁴ These guidelines are based on program evaluations and documented successful practices in communities across the Nation. The guidelines stress the importance of integrating automated enforcement in a comprehensive system that includes problem identification, appropriate legal authority, coordination with the courts, public education, communications and community support. The guidelines also address critical automated enforcement operational elements such as enforcement thresholds, the use of fixed and mobile units, overt and covert deployment strategies, signage, and days and hours of operation.

NHTSA encourages adoption of these automated enforcement guidelines through speed management workshops. These workshops encourage a comprehensive approach to community speed management, including incorporation of automated enforcement where appropriate. The workshops involve the active participation of the full range of local partners, including highway engineers, law enforcement officials, prosecutors, judges, and safety advocates. The agency has conducted nine of these workshops, reaching 46 states.

Speeding and red light running are serious safety problems and NHTSA is committed to identifying and advancing effective solutions. We will continue to examine the

³ NHTSA, Automated Enforcement: A Compendium of Worldwide Evaluations of Results, September 2007, DOT HS 810 763

⁴ US Department of Transportation, Speed Enforcement Camera Systems Operational Guidelines, March 2008, DOT HS 810 916

effectiveness of promising countermeasures, including automated enforcement systems, and work closely with States to encourage the adoption of effective programs to help improve safety for all road users.

I would be pleased to answer any questions you may have.

**Questions for Mr. Michael Geraci
Director, Office of Safety Programs
National Highway Traffic Safety Administration
Highways and Transit Subcommittee Hearing
June 30, 2010**

Questions from Chairman DeFazio

1. Your testimony states that red-light running crashes cause about 1,000 fatalities annually, higher than the 762 fatalities in 2008 cited by the Insurance Institute for Highway Safety. Can you provide background on how NHTSA determines this number?
2. Does any research point to the need for a clearly defined federal standard on yellow light length? Or do engineering decisions like these need to be left to local decision-makers?

**QUESTIONS FOR THE RECORD
for Michael Geraci, Director, Office of Safety Programs
National Highway Traffic Safety Administration**

**Highways and Transit Subcommittee
Committee on Transportation and Infrastructure
U.S. House of Representatives
June 30, 2010 Hearing
“Utilization and Impacts of Automated Traffic Enforcement”**

Questions from Chairman DeFazio

1. Your testimony states that red-light running crashes cause about 1,000 fatalities annually, higher than the 762 fatalities in 2008 cited by the Insurance Institute for Highway Safety. Can you provide background on how NHTSA determines this number?

RESPONSE: NHTSA’s Fatality Analysis Reporting System (FARS) contains data derived from a census of fatal traffic crashes within the 50 States, the District of Columbia and Puerto Rico. All FARS data on fatal motor vehicle traffic crashes is gathered from a State’s own source documents and is coded for more than 125 different data elements that characterize the crash, the vehicles and the people involved.

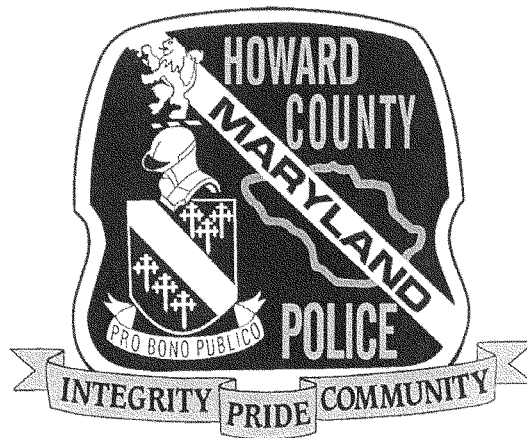
In 2008, our FARS data indicates that there were 762 fatalities attributed to red-light running crashes. Our estimation of “About 1,000 deaths per year” is based on analysis of ten years of FARS data (1999-2008). Over that time period, there were 9,067 fatalities that were identified in the red-light running category. However, our experience indicates that crashes related to red-light running, which often occur in or near intersections, are generally underreported. For example, if a crash occurred at an intersection, State source documents may identify other crash factors, such as alcohol or speed. As a result, the reported data may not identify red-light running as the crash factor even though the crash is related to red-light running. Therefore, we estimated that “About 1,000” portrayed an accurate representation of crash causation.

2. Does any research point to the need for a clearly defined federal standard on yellow light length? Or do engineering decisions like these need to be left to local decision-makers?

RESPONSE: The Federal Highway Administration’s Manual for Uniform Traffic Control Devices (MUTCD) is widely used to determine appropriate yellow light phasing for intersections. The MUTCD provides guidance on yellow light signal phasing and makes recommendations on the sources to be used for determining and using appropriate engineering practices. Engineering practices for determining the duration of yellow light change and red light clearance intervals can be found in the Institute for Transportation Engineers (ITE’s) “Traffic Control Devices Handbook” and in ITE’s “Manual of Traffic Signal Design.” Local decision makers routinely utilize the MUTCD and ITE handbooks for guidance on such issues.

STATEMENT BEFORE THE U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

Utilization and Impacts of Automated Traffic Enforcement



JUNE 30, 2010

CAPTAIN GLENN HANSEN

Howard County Department of Police

3410 Courthouse Drive ■ Ellicott City, MD 21043
410-313-3203

Utilization and Impacts of Automated Traffic Enforcement

Statement before the U.S. House of Representatives Committee on Transportation and Infrastructure
 Glenn Hansen¹
 June 30, 2010

Introduction

Automated traffic enforcement technologies are increasingly being implemented in the United States. The use of automated enforcement systems as one part of a comprehensive traffic safety program has been proven to successfully reduce the severity of crashes. As the use of automated enforcement expands, it is important to design and implement these systems to optimize safety. Publications documenting best practices will help new programs to maximize safety benefits.

Background

For all of the benefits we have achieved with modern transportation in the U.S., safety continues to be a challenge. In 2008, an average of 102 people died each day in motor vehicle crashes for an average of one every 14 minutes (1). Motor vehicle crashes are the leading cause of death for people aged three through 34, based on 2006 data (1).

Traffic safety is an important part of the law enforcement mission. Of course, law enforcement actions alone would not be effective in improving safety. Enforcement must be based on well designed laws. The laws need to be reasonable and based on the engineering of the road system and the design of the vehicles using the road system. The laws need to be supported and understood by the community. As such, an automated enforcement camera system should be looked at as one part of a larger effort to improve safety.

Getting Individuals to Operate According to the Traffic Plan

A traffic engineer can design a beautiful road system. A controlled access highway could lead to a city center with one-way roads, a four-way intersection with a coordinated traffic signal system, etc.. The greatest traffic system today relies, for the most part, on drivers operating vehicles the way the designers intended them to operate.

¹ Glenn Hansen is a captain with the Howard County (MD) Police Department where he designed and implemented the automated enforcement program. He has been a member of the National Academy of Sciences, Transportation Research Board for over ten years and currently sits on the Systems User's Group Executive Board having completed six years as the chairman of the Traffic Law Enforcement Committee. He is on the research team to complete National Cooperative Highway Research Program (3-93) "Automated Enforcement for Speeding and Red Light Running". Captain Hansen earned a M.S. in Applied Behavioral Science and a M.S. in Technology Management.

An amber traffic signal does not make an automobile stop. An amber light illuminates when the system designer wants traffic to stop when it cannot clear through the intersection at a safe speed before the red phase. The designer wants the individual drivers facing that light to see the light change to amber, understand they should stop, decide to stop and be able to stop before the signal illuminates red. This requires good engineering to ensure adequate sight distance to the light, ample light conspicuity, sufficient time to stop, and other requirements. It also requires the drivers to be attentive, see the traffic signal, understand what they are expected to do, have the ability to stop the automobile, and decide to stop the automobile.

To gain compliance from drivers requires a host of experts from diverse disciplines working in a coordinated manner. Engineers need to design roads with signs and other indicators that are easy to see and understand. Drivers need to be educated about what they are expected to do. When drivers understand and appreciate the importance of following a rule they are more likely to comply. Enforcement takes place to increase the likelihood that drivers will comply with these expectations. These efforts are all part of a comprehensive “4E” approach to traffic safety that has been widely promoted. The enforcement, education and engineering parts of the 4Es are all directed to increasing compliance. The remaining E deals with injury mitigation through effective emergency medical services.

Compliance with traffic laws and regulations is a component of a larger model of traffic safety that incorporates many other factors. Compliance must be combined with safe vehicles, proper road engineering, adequate road maintenance, sufficient driver training, and a host of other efforts to optimize traffic safety while accomplishing the required traffic operations.

The Howard County, Maryland Experience

In 1994, Howard County received the first of a series of U.S. Department of Transportation grants to test automated enforcement technology in the U.S.. The pilot test in Howard County used the technology as one part of a comprehensive strategy to reduce red light violations. The community had experienced red light running crash tragedies. The pilot test was preceded by extensive public awareness and information campaigns to gain voluntary compliance with red light laws. Prior to testing automated enforcement, expanded traditional enforcement efforts were implemented. The pilot program was implemented based on what the community felt was acceptable to combat a well recognized safety concern. Camera sites were selected after professional traffic engineers evaluated

other safety improvement options. The program was designed to be sensitive to privacy and fairness concerns of the community. During the pilot program, warnings were issued and community feedback was recorded (2). After the pilot test, the vast majority of the community felt that red light running cameras would be an effective way to reduce crashes. Members of the community testified in support of legislation to allow the issuance of red light running citations. Of the four locations in the U.S. to receive technology pilot grants, only the Howard County program led to legislation being passed to allow actual enforcement to take place. In 1997, a new Maryland law was passed to permit the use of red light running cameras. Multiple evaluations have taken place since that time. Annual evaluations, completed by Dr. George Frangos P.E., showed substantial overall crash reductions at almost every approach that had a red light camera. The majority of the approaches experienced a reduction of over 10% (3). The Maryland State Highway Administration conducted a socio-economic cost of collision study at these and other Maryland red light camera sites. That study found statistically significant reductions in overall crashes and left turn crashes resulting in an average cost savings of \$196,000 per intersection studied (4). A later study combined crash results from Howard County with other jurisdictions from the U.S. and also concluded the camera systems led to overall crash reductions (5). To this day, the program benefits from strong community support.

The Maturity of Automated Enforcement in the U.S.

Since the successful Howard County pilot, there have been multiple publications issued based on safety evaluations and lessons learned. These documents provide solid guidance to assist new program managers to implement programs based on successful crash reduction strategies of the past. The Federal Highway Administration (FHWA) published "Red Light Camera Systems: Operational Guidelines" in 2005. In 2008, the FHWA published "Speed Enforcement Camera Systems: Operational Guidelines". The International Association of Chiefs of Police and the National Highway and Traffic Safety Administration are working together through the Enforcement Technologies Advisory Technical Subcommittee (ETATS) to establish technical standards for automated red light camera systems and automated speed enforcement systems. A current National Cooperative Highway Research Program (3-93) is examining the best practices of automated enforcement programs to improve traffic safety. These efforts detail step by step strategies from identifying root safety problems before an automated enforcement program is considered to evaluating and monitoring program safety results post implementation.

Automated Enforcement Safety Evaluations

Safety results have been documented from the experience of many automated traffic enforcement programs in the United States and around the world. The variability of the results may well be attributed to differences in program implementation, site selection criteria, level of public awareness, signage, evaluation methods and a host of other issues. A team of researchers have evaluated published automated enforcement studies and compiled a compendium of the most rigorous (6). These evaluations indicated the selected red light camera and speed enforcement camera programs led to reductions in crashes and/or crash severities. In each of these cases, automated enforcement programs supplemented but did not replace traditional traffic law enforcement.

Red light camera program evaluations have indicated reductions in crash severity after camera installation. An evaluation of the Oxnard, California red light camera program found a 7% reduction in overall crashes and a 29% reduction in injury crashes (7). These overall results were obtained by reducing right angle crashes by 32% while rear end crashes increased by 3%. A study of the socio-economic costs related to traffic collisions found red light camera equipped intersections experienced a safety benefit of \$836,460 per year based on a 40% reduction in left turn crashes, a 17% reduction in angle crashes, and a 45% increase in rear end crashes (8). A broader study of multiple red light camera programs in the U.S. found 25% less right-angle crashes and 15% more rear end crashes were experienced after program initiation (5). The same study looked at the cost of crashes and determined an overall crash cost reduction of 9%.

Speed camera program evaluations have demonstrated reductions in all crashes and injury crashes in particular. An Australian study documented travel speed reduction and crash reductions associated with the use of automated speed enforcement cameras (9). Another study that documented travel speed reductions also determined a 25% reduction in injury crashes were experienced after the deployment of speed enforcement cameras (10). A study in Norway found a 20% decrease in injury crashes (11). A 12% reduction in all crashes was determined in Charlotte, NC (12). Another study focused on mobile systems and found a 51% reduction in injury crashes (13).

How the Traffic Safety Environment is Changing

There will be many changes that impact traffic safety in the future. Some of these changes will increase the need for effective enforcement. A couple of demographic projections will illustrate these changes.

Driving challenges are different for different age groups. Older drivers have slower reaction times, have more difficulty seeing and interpreting some types of signs, have night vision challenges, may have more difficulty estimating trajectories and speeds of other vehicles and pedestrians, etc. According to the most recent NHTSA Traffic Safety Facts report on Older Population, "In 2007, older people (65 years of age or older) accounted for 14 percent of all traffic fatalities and 19 percent of all pedestrian fatalities" (14). The older driver challenge will increase as the number of older drivers will likely increase dramatically. Between now and 2040, the general population will increase by less than 1/3, while the over-65 population will more than double (15). By 2050, the over-65 group will account for 19% of the population. To put this into perspective, consider the state with the highest percentage of this population today, Florida. At present, only 17% of its population is elderly (16).

Data has shown "teen drivers have the highest crash risk of any age group" (17). Novice drivers often have difficulty focusing on the driving task, may be influenced by a sense of invulnerability and may be unduly distracted by peers. In 2007, youths 15 to 20 years old represented 9% of the U.S. population and only 6% of licensed drivers. That same year, 19% of U.S. traffic fatalities resulted from young driver crashes (18). Census data projections indicate the number of potential young drivers will increase over the next decade. The age cohort from 5 to 19 years of age is expected to increase by over 4 million by 2020 (19).

Other Resource Demands

Other demands on law enforcement personnel seem to be increasing at the same time traffic safety challenges are growing. For obvious reasons, homeland security demands have increased for law enforcement agencies. The population projections point out a few other potential developments. As the elderly population increases, there will likely be an increase in elderly crime victims and other law enforcement service demands (19). Many criminologists and sociologists observe a correlation between the number of individuals in the 15 to 24 year old age cohort and incidence of crime (20) (21) (17) (22) (23) (24). As this portion of the population increases it is reasonable to assume crime will increase as well.

Technology

Current economic conditions have made it difficult for law enforcement agencies to hire additional personnel. As traffic safety challenges increase, and fewer law enforcement personnel are available to conduct

traditional traffic enforcement, agencies will continue to look for alternatives. More law enforcement agencies are adopting the use of automated traffic enforcement technologies and this trend is likely to continue. In 1996, there was only one operational red light camera program in the U.S.. By June of 2010 the number of communities with red light camera programs had grown to 482 and 57 communities had speed camera enforcement programs (25).

Automated enforcement systems are valuable tools to improve traffic safety. While they can be valuable, like many other tools, they are not appropriate in all situations. Automated enforcement technologies increase the efficiency of issuing citations but they do not automatically increase traffic safety. The way these systems are deployed as part of a comprehensive safety program can increase or decrease the net safety impact of the program. Following existing guidance will help to maximize the safety effect on programs.

Support for the Use of Automated Traffic Law Enforcement

The Insurance Research Council reported in 2007 that the public support for “red light and speed cameras is strong and growing” based on a nationwide opinion survey. The survey found that 70% of the public strongly or somewhat favored the use of red light cameras photographing registration plates of vehicles committing violations. They found 60% strongly or somewhat supported the use of speed cameras to photograph registration plates of vehicles traveling “far in excess of a speed limit” (26).

In 1998, the International Association of Chiefs of Police issued a resolution in support of the use of red light running cameras. They passed a resolution in 2005 supporting the use of the Red Light Camera Systems: Operational Guidelines. In 2007, they issued a resolution in support of using the Speed Enforcement Camera Systems: Operational Guidelines (27). The American Association of State Highway and Transportation Officials adopted a resolution in 2004 supporting the greater use of automated enforcement. The Institute for Transportation Engineers included red light cameras as a safety countermeasure to consider as part of the National Agenda for Intersection Safety that was first published in 2002 (28).

A Word of Caution

If programs are initiated for reasons other than safety, a host of future problems could develop. A concern still remains that some automated enforcement programs will be focused on revenue generation rather than traffic safety. In difficult economic times, these concerns will likely increase. Frank McKenna suggests “A key feature in

the perceived legitimacy of interventions is trust in the motivation of authorities. If the public suspect the motives of authorities, then trust is sacrificed” (29). As automated enforcement is properly applied to improve safety in the U.S., the public will tend to understand and support these types of efforts. If these tools are inappropriately utilized, trust in law enforcement will decrease, making the law enforcement mission more difficult to accomplish.

Future Possibilities

Automated enforcement systems have been deployed successfully to improve safety through the enforcement of red light violations and speed violations. They have been part of successful strategies to improve vehicle throughput at toll facilities. They have been deployed to reduce crashes at rail crossings, stop bus lane and HOV violations. The technology could be used for the enforcement of stop sign violations, aggressive driving, tailgating and many other violations.

As officials consider these possibilities, it is important to think of the policy first and the technology second. If a jurisdiction has a significant intersection crash problem, a red light camera program should be considered as one tool in the toolbox that may be used if the problem continued to exist after optimizing engineering solutions. If a community has significant speed related crashes and has tried a comprehensive speed management solution, automated speed enforcement should be considered as a compliment. This same thought process could be applied to the reduction of bus lane violations, prohibited left turns, and aggressive driving, etc..

Conclusion

Automated traffic law enforcement systems, as part of comprehensive traffic safety programs, have been proven to reduce injuries caused by motor vehicle crashes. The use of automated enforcement will almost certainly expand in the United States. As the use of these systems in the United States has matured, data driven guidance has been developed to assist new programs to be developed to maximize traffic safety. To the extent that new programs are implemented following the existing guidance, it is reasonable to project that crashes will be avoided and lives will be saved through this expansion.

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**Questions for Captain Glenn Hansen
Captain
Howard County (MD) Police Department
Highways and Transit Subcommittee Hearing
June 30, 2010**

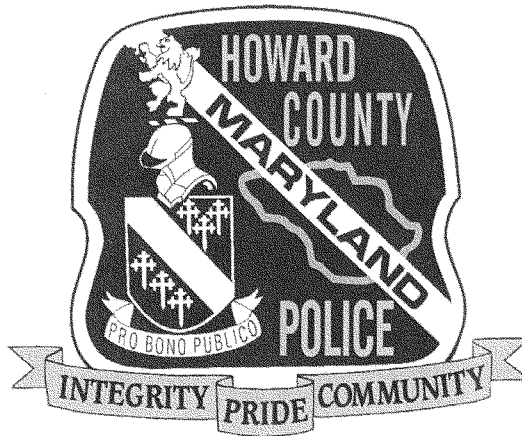
Questions from Chairman DeFazio

1. Can you provide details on the review process your department goes through to analyze any citations before they are sent out? Is your department responsible for mailing out citations, or is the private vendor responsible?
2. Opponents of automated enforcement argue that red-light and speed cameras are positioned to maximize revenue, rather than to improve safety.
 - How does Howard County determine the location of its cameras?
 - Are decisions based on the number of crashes at specific intersections caused by red-light runners?
 - Do you look at factors such as the locations of construction work zones to determine camera placement that will achieve the maximum safety benefits?
3. Captain Hansen, your testimony states that prior to the launch of Howard County's red-light camera pilot, you did extensive public outreach. Does public education have the potential to reduce some of the negative effects of red-light cameras, such as rear-end collisions from people slamming on the brakes to avoid a ticket?

**U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE**

Utilization and Impacts of Automated Traffic Enforcement

Answers to Questions on Record



AUG. 27, 2010

CAPTAIN GLENN HANSEN

Howard County Department of Police

**3410 Courthouse Drive ■ Ellicott City, MD 21043
410-313-3203**

1. Can you provide details on the review process your department goes through to analyze any citations before they are sent out? Is your department responsible for mailing out citations, or is the private vendor responsible?

All personnel, including vendor employees that review potential violation images, work within a Howard County Police Department (HCPD) facility and have successfully completed a background investigation. Electronic incident images are reviewed by two people to determine if the incident constitutes a violation of the law. The first review is conducted by vendor personnel. If that review leads to a determination that a violation is depicted in the image, the image is then reviewed by an HCPD employee. Only if the HCPD employee determines the incident image depicts a violation of the applicable law, Maryland Title 21 Section 202.1, will a red light citation be issued.

The red-light camera systems capture a video of vehicles as they approach a traffic signal at a speed indicating they will not likely stop. Three still images from the red-light camera system are initially reviewed to determine if a red-light citation is warranted. The reviewers examine the entire video of the incident in case the evidence in the still images indicates the vehicle met the issuance criteria but an extraordinary issue may have existed that would cause a citation not to be issued. The criteria for reviewing the three still incident images follow:

General criteria:

- There are no visible factors that would invalidate the violation (e.g. a public safety official waving the driver through the intersection or an obvious funeral procession)
- The name and complete mailing address of the registered owner of the vehicle can be obtained from the appropriate motor vehicle administration
- The vehicle description obtained for the tag appears to match the vehicle photographed in the violation (i.e. same basic vehicle type, make, and model)

The first image must clearly show:

- Vehicle prior to touching the painted stop bar on the roadway
- The governing traffic signal with the red phase illuminated
- The data bar superimposed in a manner not to block key information
- Readable text/characters of the data bar

The second image must clearly show:

- That the same vehicle continued into the intersection
- The governing traffic signal with the red phase illuminated
- The data bar superimposed in a manner not to block key information
- Readable text/character of the data bar

The third image (zoomed version of the second image) must clearly show:

- Vehicle's registration plate, clearly readable to the average naked eye
- That the registration plate was created from the same vehicle violation image

If the HCPD employee determines a red-light violation has occurred, he or she will print a red-light citation. The HCPD employee will examine the printed images on the citation to ensure the citation recipient will be able to clearly see the significant information. The HCPD employee will collect violation citations into a batch. The HCPD employee will count the batch of citations and then hand them to the vendor employee. The vendor employee will then put each citation into an envelope and stamp them for mailing. The vendor employee will return each batch to the HCPD employee, who then must count the envelopes and confirm that the number is the same. The vendor employee then puts the citations into the U.S. Mail system. HCPD is accountable for the red-light citations being mailed.

2. Opponents of automated enforcement argue that red-light and speed cameras are positioned to maximize revenue, rather than improve safety.
 - How does Howard County determine the location of its cameras?

Howard County does not use speed cameras at this time.

Red-light cameras are viewed as one part of a comprehensive traffic safety program in Howard County. Red-light cameras were only deployed after other traffic engineering and enforcement efforts were implemented and crashes were still taking place as a result of red-light running.

On a periodic basis, HCPD personnel meet with Howard County Traffic Engineers to discuss red-light cameras. This group evaluates the safety need for the continuation of red-light cameras at existing sites, as well as the potential safety benefits of red-light cameras at possible new sites.

At these meetings, all reported crashes at intersections are reviewed. The professional engineers and HCPD personnel discuss the crash types reported at each intersection and discuss the types of countermeasures that could have prevented these crashes. Data has shown that red-light cameras can reduce right-angle crashes and red-light running crashes but have on occasion increased rear-end crashes and even side-swipe crashes. Intersections that have right-angle crash and red-light running crash experience with little or no rear-end or side-swipe crash experience are examined further. At some locations, improving the visibility of the signal heads or establishing a protected turning phase may be the chosen safety improvement. At some locations, a red-light camera will tentatively be chosen as the proper safety improvement. The professional traffic engineers must then verify that the intersection is engineered properly. If an

engineering change is needed, that will take place instead of deploying a red-light camera system.

For potential red-light camera sites on Maryland maintained highways, all documented crash data is submitted to the Maryland State Highway Administration (SHA) so a team of engineers can determine if a red-light camera system at that location would be expected to improve safety. The Maryland SHA professional engineers examine the intersection to ensure it is properly designed and operating before they permit the installation of a red-light camera.

- Are decisions based on the number of crashes at specific intersections caused by red-light runners?

Crash types are carefully evaluated at each potential red-light camera site to determine if a red-light camera system would be the best alternative to improve safety. If a location is experiencing a lot of crashes caused by red-light running and few rear-end collisions, it would be a good candidate for a red-light camera system. Professional traffic engineers would then evaluate the site to determine if a different engineering change would be a better safety improvement measure.

For potential red-light camera sites on State highways, all documented crash experience is submitted to the Maryland State Highway Administration so a team of engineers can determine if a red-light camera system at that location would be expected to improve safety.

- Do you look at factors such as the locations of construction work zones to determine camera placement that will achieve the maximum safety benefits?

Most safety evaluations in reference to automated enforcement technologies related to construction work zones relate to speed cameras. Howard County does not use automated speed enforcement cameras at this time.

3. Captain Hansen, your testimony states that prior to the launch of Howard County's red-light camera pilot, you did extensive public outreach. Does public education have the potential to reduce some of the negative effects of red-light cameras, such as rear-end collisions from people slamming on the brakes to avoid a ticket?

Public education is a critical part of a comprehensive traffic safety program that includes red-light cameras. In the 1990s, HCPD conducted extensive red-light violation team enforcement operations. They participated in a U.S. D.O.T.-funded public awareness campaign to reduce red-light running called "The Light Is Red For a Reason." Private

companies joined the effort to expand the impact of the outreach. At the end of televised Volvo commercials, for example, red-light running public awareness messages were aired during prime time. The HCPD red-light enforcement team operations were expanded throughout the Baltimore region with the assistance of the Maryland State Highway Administration. Press events were held in Howard County to raise awareness of the risks of running red lights. Private citizens initiated a "Make A Vow to Stop for Red Lights" Campaign in Howard County and asked people at local grocery stores to sign petitions. By the time HCPD initiated the U.S. D.O.T- funded red-light camera pilot, extensive public outreach had taken place to help citizens understand red-light running was a significant safety problem. During the red-light camera pilot, warning notices were issued to the owners of vehicles observed violated red-light laws. These warning notices helped to increase public awareness. Media coverage related to the pilot program greatly increased the public awareness, as well. The Howard County Council passed a resolution in support of changes to Maryland Law to allow the use of automated enforcement cameras to enforce red-light violations. This high level of public awareness encouraged legislators to pass such a law in Maryland in 1997. As HCPD prepared to begin automated enforcement based on the new law, public outreach increased. Advertisements were published in local newspapers, printed notices were sent to homeowners as an insert with their water bills, signs were posted and radio announcements were aired. The media helped to notify everyone that red-light cameras were being deployed.

Before the first red-light camera citation was issued in Maryland, extensive public outreach had been conducted. Most citizens seemed to understand that running red lights created a safety hazard and that red-light cameras were being deployed to make the community safer.

HCPD has been issuing red-light citations continuously since the first was issued in February of 1998. The program still receives strong community support. More importantly, the program continues to work to reduce crashes. Annual evaluations by Dr. George Frangos, P.E., have documented significant crash reductions since the installation of the red-light cameras. His January 2008 report documented overall crash reductions at every operational red-light camera site. Only one of the 42 red-light camera sites experienced an increase in rear-end crashes (2008). Extensive public education was one important part of the comprehensive traffic safety program that maximized the safety benefits achieved while minimizing unintended consequences, such as increases in rear-end crashes.

Reference

Frangos, G. (2008). *Accident statistics: Red-light camera intersections, January 2008*. Howard County, Maryland.



**Transportation and Infrastructure Committee
Highways and Transit Subcommittee
Prepared Testimony For David Kelly
Executive Director, Partnership for Advancing Road Safety
June 30, 2010**

Good morning and thank you for the opportunity to testify today. My name is David Kelly and I am the Executive Director of the Partnership for Advancing Road Safety (PARS). PARS represents communities, safety organizations and law enforcement agencies that use automated road safety systems to calm traffic and make their communities safer. PARS is committed to working with municipalities, government officials, public and private organizations, and concerned citizens to develop and share best practices in traffic safety and raise awareness of the important role technology plays in enforcing the traffic laws set by the community. PARS is funded by the automated enforcement industry.

Photo Enforcement Saves Lives

The Insurance Institute for Highway Safety has determined that red light running is the number one cause for urban accidents. They have also determined that red light cameras can reduce red light running by about 40%. In 2008, 762 people were killed and an estimated 137,000 were injured in crashes that involved red light running. About half of the deaths in red light running crashes are pedestrians and occupants in other vehicles who are hit by the red light runners.

Safety cameras work, and we have the research to back it up. A recent study in Texas showed a 43% decrease in right angle crashes and a 30% decrease in all crashes after cameras were installed.

Anecdotally, many localities are also reporting safety benefits of these intersection safety systems. Police in Aurora, IL recently reported that in the six months since red-light cameras were installed at three of the city's busiest intersections, traffic crashes drop in those intersections dropped by 43 percent. In the Pensacola, FL area, there has been a 20 percent reduction in the number of accidents on busy U.S. 98 since the cameras were installed five years ago. In New Orleans, cameras led to an 85 percent reduction in violations. In Iowa, cameras led to a 90 and 40 percent reduction in intersection crashes respectively in Council Bluffs and Davenport.

The IIHS has also studied the effectiveness of speed safety systems. These studies show that these systems can substantially reduce speeding on a wide range of roadway types. Institute studies in Maryland, Arizona and the District of Columbia found that the proportion of drivers exceeding speed limits by more than 10 mph declined by 70, 95, and 82 percent respectively.

Photo Enforcement is Constitutional

Several cases throughout the country have gone to court and been appealed, including many favorable decisions in various US Circuit Courts across the country. Most of these cases are dismissed at the summary judgment level and the programs are consistently held constitutionally valid. Not once, when faced with the constitutionality of cameras, has photo enforcement been found unconstitutional.

Once a system is up and running, violations captured are sent to the local police or enforcement entity for their review. If the local enforcement entity approves the violation, and only then, a citation is mailed to the registered owner of the offending vehicle. In most cases, the citation will include a photograph of the vehicle and the license plate. In a few cases, a picture of the driver is also included. At that point, the violator may go online to view a video of their violation and the still pictures.

Photo enforcement is unique in that the same evidence is available to the police, the prosecutor, the judge, and the violator. In addition, it is an overwhelming amount of evidence, which greatly helps determine guilt or innocence. Regardless of the amount of evidence, violators are given the same due process as one captured by a police officer should they decide to contest their ticket in a court of law.

While there are those that debate the merits of this technology, we should all agree that it is not okay to speed, run red lights, drive while distracted or impaired, or in any other way endanger the lives of others on our roads and highways. We will partner with anyone committed to sending this clear and consistent message to the driving public to improve public safety including crash victims, local law enforcement agencies, elected officials, public and private organizations.

Photo enforcement saves lives. We have seen it in cities, towns and states across the country. Independent, third party organizations have confirmed it. I appreciate your time and interest in this life saving technology and welcome any questions.

###

**Questions for Mr. David Kelly
Executive Director
Partnership for Advancing Road Safety
Highways and Transit Subcommittee Hearing
June 30, 2010**

Questions from Chairman DeFazio

1. Your testimony states that in every case in which the constitutionality of photo enforcement has been examined by the courts, not once has photo enforcement been found to be unconstitutional. Can you provide further background material to support your argument?
2. Although there is significant evidence to suggest that red-light and speed cameras can improve safety, there are also reports of some communities locating these cameras in places that seem designed to maximize revenue.
 - Is it possible that, even though these cameras can improve safety, they are also being placed at some locations that are designed to maximize revenue rather than fix an unsafe intersection or roadway?
 - Do States need to be more actively involved in regulating automated enforcement to prioritize the protection of the public interest over the collection of revenue?

Questions For the Record – David Kelly

1. Your testimony states that in every case in which the constitutionality of photo enforcement has been examined by the courts, not once has photo enforcement been found to be unconstitutional. Can you provide further background material to support your argument?

Answer: Many state and federal court rulings have found that these programs do not violate the Constitution, state law or federal law. Among them are : *Idris v City of Chicago, Ill.* 552 F.3d 564 (7th Cir. 2009); *Kilper v. City of Arnold, Mo.*, No. 4:08-cv-0267, 2009 WL 2208404 (E.D. Mo July 23, 2009); *City of Knoxville v. Brown*, 294 S. 3d 330 (Tenn. Ct. App 2008); *Mendenhall v. City of Akron*, No. 09-3061, 2010 WL 1172474 (6th Cir. Mar 29, 2010); *Mendenhall v. City of Akron*, 881 N.E. 2d 255 (Ohio 2008); *City of Davenport v. Seymour*, 755 N.W. 2d 533 (iowa 2008); *Agoma v. Fenty*, 916 A.2d 181 (D.C. 2007); *State of Oregon v. Dahl*, 87 P.3d 650 (Or 2004); *McNell v. Town of Paradise Valley*, No. 01-17003, 44 Fed Appx 871 (9th Cir. Aug 19, 2002); *Todd v. City of Auburn*, No. C09-1232, 2010 WL 774135 (W.D. Wash. Mar. 2, 2010); *Sevin v. Parish of Jefferson*, 621 F. Supp 2d 372 (E.D. La. 2009)

2. Although there is significant evidence to suggest that red-light and speed cameras can improve safety, there are also reports of some communities locating these cameras in places that seem designed to maximize revenue.

-- Is it possible that, even though these cameras can improve safety, they are also being placed at some locations that are designed to maximize revenue rather than fix an unsafe intersection or roadway?

Answer: There are several factors that determine where cameras are placed in any particular locality, all of which are decided by that particular locality in coordination with local law enforcement. Decreasing violations, changing bad driving behavior and increasing safety at an intersection or roadway are the most important determinants of camera placement.

The cameras are only catching people who are engaging in risky behavior and violating a traffic safety statute. If motorists weren't engaging in this dangerous, illegal behavior, there would be no reason for a safety improvement system to be implemented.

-- Do States need to be more actively involved in regulating automated enforcement to prioritize the protection of the public interest over the collection of revenue?

Answer: Most states already have regulations and rules in effect to oversee the proper operation of safety camera systems. Many legislators believe that local law enforcement and safety programs are local control issues and work with communities on effective and fair standards.

Attachment #1

² The Court has dismissed two other Plaintiffs, James W. Hoekstra and Kara L. Hoekstra, for lack of standing. (See Mem. and Order, filed Feb. 3, 2009, at 9-16, 41, 43 [Doc. 82].)

Violation) what is referred to as the Red Light Camera Ordinance of the City of Arnold, Missouri.³ Defendants are: the City of Arnold (City); ATS; Mark Powell, the Mayor of the City of Arnold (Mayor); Paul Vinson, William A. Moritz, Phil Amato, Alfred Ems, Randy Crisler, John Brazeal, Joyce Deckman, and Claude Cooley, members of the City of Arnold's City Council (Council Members); Robert T. Shockey, Chief of Police of the City of Arnold (Police Chief); and Steve Musial, William Bonsack, and Jeremy Christopher, Police Officers for the City of Arnold (Police Officers).

Earlier the Court granted in part and denied in part Defendants' motions to dismiss. (Mem. and Order, filed Feb. 3, 2009 [Doc. 82].) That ruling left pending the following claims in the first amended complaint:

-- Plaintiffs' request for treble damages and costs, including reasonable attorney's fees, for alleged substantive (Count I) and conspiracy (Count II) violations of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. §§ 1962 and 1964 (§§ 1962 and 1964), by ATS and Police Chief, sued in his individual capacity only (First Am. Compl. at 14-19 [Doc. 4]);

-- Plaintiffs' request for actual damages, costs, and attorneys' fees under 42 U.S.C. § 1983 (§ 1983) for alleged procedural (Count III) and substantive (Count IV) due process violations, as well as an alleged conspiracy to violate Plaintiffs' civil rights (Count V), by ATS, City, and all individual Defendants, sued in their official capacities only (*id.* at 19-26);

³ Plaintiffs included class allegations in their first amended complaint but have not yet requested certification of a class.

--- Plaintiffs' request for an award of punitive damages under § 1983 from ATS for its alleged constitutional violations as set forth in Counts III, IV and V (id.);

-- Plaintiffs' request for actual damages, costs, and attorney's fees under § 1983 from all Defendants, except ATS and the Police Officers, for those eleven Defendants' alleged failure to train, supervise, instruct, or control others as set forth in Count VI (id. at 26-30); and

-- Plaintiffs' requests for actual damages, punitive damages, costs, and attorneys' fees from City, ATS, Police Officers sued in their official capacities only, and the ten other individual Defendants, sued in their individual and official capacities, based on state law claims for abuse of process (Count VII), fraudulent misrepresentation (Count VIII), and civil conspiracy (Count VIII) (id. at 31-37).

After that Memorandum and Order, Defendants filed answers to the first amended complaint (Docs. 86 and 87), as well as the pending motions for summary judgment (Docs. 94 and 99).

Background

The undisputed material facts⁴ disclose that, at the time the Notices of Violation were

⁴ These undisputed facts are either from the allegations in the first amended complaint (Doc. 4) to the extent they are admitted by Defendants in their Answers (Docs. 86 and 87) or from statements in Defendants' Statement of Undisputed Material Facts in Support of Defendants' Joint Motion (Doc. 95) to the extent they are admitted by Plaintiffs (Doc. 106).

Additionally, because the Statement of Uncontroverted Material Facts in Support of the Separate Motion ("Statement") (Doc. 101) focuses on matters regarding City's insurance and Council Members' participation in certain activities, matters not necessary to the background summary, the Court will not present or consider any undisputed facts from that Statement as part of the

issued to them, Plaintiff Timothy J. Kilper was a resident of St. Louis County, Missouri; Plaintiff Ran Service Company, Inc. was a Missouri corporation with its principal place of business in St. Louis County, Missouri; and Plaintiff Christine C. Schorr was a resident of Jefferson County, Missouri. (First Am. Compl. ¶¶ 3, 4, and 5 [Doc. 4].) Defendant City of Arnold is a municipal corporation located in Jefferson County, Missouri. (*Id.* ¶ 6.) Defendant ATS is a Kansas corporation registered to do business in Missouri. (*Id.* ¶ 7.) Defendant Mark Powell is the Mayor of the City of Arnold. (*Id.* ¶ 8.) Defendant Council Members, Paul Vinson, Randy Crisler, William A. Moritz, John Brazeal, Phil Amato, Joyce Deckman, Claude Cooley, and Alfred Ems, have been members of the City Council of the City of Arnold, although they may not now be members of the City Council. (*Id.* ¶ 9.) Defendant Robert T. Shockey is the Chief of Police for the City of Arnold. (*Id.* ¶ 10.) Defendant Police Officers, Steve Musial, William Bonsack, and Jeremy Christopher, are police officers employed by and acting on behalf of the City; were at all relevant times acting in their official capacities; and are sued in their official capacities only. (*Id.* ¶ 11.)

The Red Light Camera Ordinance. In June 2005, City passed Bill No. 2102 enacting the original Ordinance 2.2 ("Red Light Camera Ordinance" or "Ordinance"),⁵ which contained declarations that drivers who ran red lights caused many car crashes and numerous

background, but will present them, as necessary, during the discussion of the Separate Motion.

⁵ In the earlier Memorandum and Order, the Court did not discuss the original and second bills that are the basis for the Red Light Camera Ordinance because the record at that time, including the first amended complaint, contained only the codified, amended version of the Ordinance, and not the underlying original and amending bills. (*See, e.g.*, First Am. Compl. at 5-8 and Ex. 1 [Doc. 4]). The present summary judgment record contains both the original and amending bills.

personal injuries each year; that it was impracticable for City to place police officers at each traffic signal at all times of the day to reduce these incidents; that automatic red light enforcement programs in other jurisdictions throughout the United States have been proven to significantly reduce the number of drivers who run red lights in those jurisdictions; and that vehicles are typically driven by their owners and it is therefore reasonable to assume, without evidence to the contrary, that the owner of a vehicle is driving the vehicle at a given time and place. (Defs.' Statem. Undisp. Mat. Facts Supp. Joint Mot. ¶¶ 1, 2, 3, 4, 5 and Ex. A at 1 [Doc. 95 and Doc. 95-1]; see also id. Ex. B at 3 [Doc. 95-2].)

On July 27, 2006, City amended the Red Light Camera Ordinance through approval of Bill No. 2176. (Id. ¶ 10 and Ex. D [Doc. 95 and Doc. 95-6]; see also First Am. Compl. ¶ 21 [Doc. 4].) This amendment changed Section 8,⁶ the Penalty provision of Bill 2102, to add the word "fine" after the word "penalty" in two places and to state "no points will be assigned to the violators drivers [sic] license when guilty of an automated red light enforcement violation." (Defs.' Statem. Undisp. Mat. Facts Supp. Joint Mot. ¶ 10; compare id., Ex. B at 6 [Doc. 95-2] with id., Ex. D at 6 [Doc. 95-6].) Specifically, the Penalty provision in Section 8 of Bill 2102 had read:

⁶ Although the parties do not state they agree that the amendment to the Red Light Camera Ordinance also deleted what had been Section 9, the Reporting requirement provision, the Court notes that the Reporting requirement provision is not in the Red Light Camera Ordinance as amended. (See Defs.' Statem. Undisp. Mat. Facts Supp. Joint Mot., Ex. D at 5-6 [Doc. 95-6].) That Reporting requirement provision, as set forth in the original Red Light Camera Ordinance, had stated: "Nothing in this Ordinance shall be interpreted to avoid reporting requirements under Mo. Rev. Stat. 302.225." (Id., Ex. A at 6 [Doc. 95-1].)

The penalty imposed for a finding of guilt for a violation of Section 23-173⁷ using an Automated Red Light Enforcement System under this Ordinance shall be the same as the penalty for a finding of guilt for a violation of Section 23-173 where an Automated Red Light Enforcement System was not used.

(*Id.*, Ex. B at 6 [Doc. 95-2]) (footnote added).) After the amendment that Penalty provision reads:

The penalty (fine) imposed for a finding of guilt for a violation of Section 23-173 using an Automated Red Light Enforcement System under this Ordinance shall be the same as the penalty (fine) for a finding of guilt for a violation of Section 23-173 where an Automated Red Light Enforcement System was not used. Except that no points will be assigned to the violators drivers [sic] license when guilty of an Automated Red Light Enforcement violation.

(*Id.*, Ex D at 6 [Doc. 95-6]) (emphasis added to indicate language added by Bill No. 2176).)

The Red Light Camera Ordinance, as amended, is codified as City of Arnold, Missouri, Code of Ordinances ("Arnold Code"), Chapter 23, Article V, Division 2, §§ 23-181 to 23-187. (*Id.*, ¶ 6 and Ex. C [Doc. 95 and Doc. 95-5 at 47-50]; First Am. Compl. ¶ 21 [Doc. 4].) Article V of Chapter 23 of the Arnold Code is titled "Traffic-Control Signs, Signals and Devices." (Defs.' Statem. Undisp. Mat. Facts Supp. Joint Mot. ¶ 6 and Ex. C [Doc. 95 and Doc. 95-5 at 43].)

In relevant part, the Red Light Camera Ordinance provides that installed cameras take pictures of the intersection's steady red light, a vehicle going through that red light, and the

⁷ Section 23-173 of the City of Arnold, Missouri, Code of Ordinances (Arnold Code) states, in relevant part, that "[v]ehicular traffic facing a steady red signal alone [on a traffic-control signal] shall stop before entering the crosswalk on the near side of the intersection or, if none, then before entering the intersection and shall remain standing until a green indication is shown." Arnold Code, Ch. 23, Art. V, Div. 1, § 23-173(a)(3)(a). (Defs.' Statem. Undisp. Mat. Facts Supp. Joint Mot., Ex. C [Doc. 95-5 at 45].)

license plate of that vehicle; and expressly prohibits the taking of a picture of the vehicle's occupants. Arnold Code, Ch. 23, Art. V, Div. 2, § 23-181. (Id., Ex. C [Doc. 95-5 at 47]; First Am. Compl. ¶ 22 [Doc. 4].)

City's Police Department "is responsible for the enforcement and administration of" the Red Light Camera Ordinance. Arnold Code, Ch. 23, Art. V, Div. 2, § 23-184(a). (Defs.' Statem. Undisp. Mat. Facts Supp. Joint Mot., Ex. C [Doc. 95-5 at 48]; First Am. Compl. ¶ 24 [Doc. 4].) When a violation is found, a City police officer may use specified sources to obtain additional information about the vehicle's owner that is necessary to complete the Notice of Violation ("Form 37A, Uniform Citation, as described in Missouri Supreme Court Rule 37"), and the officer completes the Notice of Violation and forwards it to City's prosecutor. Arnold Code, Ch. 23, Art. V, Div. 2, § 23-184(b). (Defs.' Statem. Undisp. Mat. Facts Supp. Joint Mot., Ex. C [Doc. 95-5 at 48]; First Am. Compl. ¶ 24 [Doc. 4].) If the City's prosecutor "on his or her information and belief, concludes that a violation of section 23-173 was committed," the prosecutor completes a section of the Notice of Violation "to create an information or complaint that charges the owner with the commission of a violation of section 23-173 and . . . file[s] the information or complaint with the municipal court." Arnold Code, Ch. 23, Art. V, Div. 2, § 23-184(c). (Defs.' Statem. Undisp. Mat. Facts Supp. Joint Mot., Ex. C [Doc. 95-5 at 48]; First Am. Compl. ¶ 24 [Doc. 4].) Once an information or complaint is filed in court, the municipal court clerk issues and then serves summons by mailing the Notice and photographs to the vehicle's owner. Arnold Code, Ch. 23, Art. V, Div. 2, § 23-184(d). (Defs.' Statem. Undisp. Mat. Facts Supp. Joint Mot., Ex. C [Doc. 95-5

at 48-49]; First Am. Compl. ¶ 24 [Doc. 4].)

Section 23-183 of the Ordinance provides that, if the City proves (1) that a motor vehicle was being operated; (2) that the operation was in violation of Section 23-173; and (3) that the defendant is the owner of the motor vehicle, then a rebuttable presumption exists that the owner of a motor vehicle was the operator of the vehicle at the time and place the violation was captured by a recorded image. Arnold Code, Ch. 23, Art. V, Div. 2, § 23-183. (Defs.' Statem. Undisp. Mat. Facts Supp. Joint Mot. ¶ 7 and Ex. C [Doc. 95 and Doc. 95-5 at 48]; First Am. Compl. ¶ 23 [Doc. 4].) The Ordinance further states that a defendant may introduce any evidence of innocence to rebut the presumption that he or she was operating the motor vehicle. Arnold Code, Ch. 23, Art. V, Div. 2, § 23-186(c). (Defs.' Statem. Undisp. Mat. Facts Supp. Joint Mot. ¶ 8 and Ex. C [Doc. 95 and Doc. 95-5 at 50]; First Am. Compl. ¶ 23 [Doc. 4].) A variety of affirmative defenses, any one of which, if proven by a preponderance of the evidence, mandates a dismissal of the charge is set forth in the Ordinance. (Defs.' Statem. Undisp. Mat. Facts Supp. Joint Mot. ¶ 9 [Doc. 95].) The nine affirmative defenses specified in the Ordinance are: (1) the traffic-control signal was not sufficiently legible; (2) the driver was acting at the direction of a police officer; (3) the driver violated the traffic-control signal to yield to an approaching emergency vehicle; (4) the vehicle was part of a funeral procession; (5) the vehicle was operated as an authorized emergency vehicle; (6) the vehicle was stolen; (7) the license plate depicted was stolen; (8) the vehicle was being operated by a person other than the owner, provided the owner submits an affidavit or testifies under oath at the municipal court proceeding to identify the actual

driver at the time of the violation; or (9) the presence of hazardous road conditions, such as ice, made compliance more dangerous than non-compliance. Arnold Code, Ch. 23, Art. V, Div. 2, § 23-186(a). (Defs.' Statem. Undisp. Mat. Facts Supp. Joint Mot. ¶ 9 and Ex. C [Doc. 95 and Doc. 95-5 at 49-50].)

As noted earlier, upon a finding of guilt for a violation under the Red Light Camera Ordinance, the Ordinance provides for the imposition of a

penalty (fine) . . . [that is] the same as the penalty (fine) for a finding of guilt for a violation of section 23-173 where an automated red light enforcement system was not used. Except that no points will be assigned to the violators drivers [sic] license when guilty of an automated red light enforcement violation.

Arnold Code, Ch. 23, Art. V, Div. 2, § 23-187. (*Id.*, Ex. C [Doc. 95-5 at 50]; First Am. Compl. ¶ 25 [Doc. 4].)

The motor vehicle owner has a right to a hearing before the City's municipal court and the right to appeal a finding of guilt in the Circuit Court for the 23rd Judicial Circuit pursuant to Mo. Rev. Stat. § 479.200. Arnold Code, Ch. 23, Art. V, Div. 2, § 23-185(b). (Defs.' Statem. Undisp. Mat. Facts Supp. Joint Mot. ¶ 21 and Ex. C [Doc. 95 and 95-5 at 49].) As stated in the Ordinance, "[t]he proceeding for a prosecution of a violation of section 23-173 using an automated red light enforcement system shall be conducted in the same manner as any other violation of the ordinances of the city." Arnold Code, Ch. 23, Art. V, Div. 2, § 23-185(a). (*Id.* ¶ 20 and Ex. C [Doc. 95 and 95-5 at 49].)

The Notices of Violation. The Notice of Violation sent to the owner of a vehicle photographed running a red light states that the owner may pay the fine online, by mail, or

in person; may request a hearing to dispute the Notice of Violation in person; or, if the owner was not operating the motor vehicle at the time the vehicle was photographed running the red light, may transfer liability to the person operating the vehicle by completing an Affidavit of Non-Responsibility in which the owner identifies the person operating the motor vehicle at the time of the alleged violation. (Id. ¶ 22 [Doc. 95]; First Am. Compl. ¶¶ 36, 37 [Doc. 4]; see also First Am. Compl. Ex. 2 [Doc. 4-1 at 6].) Each Notice of Violation also states that "payment is an admission of guilt or liability," and that "[y]our failure to appear in court at the time specified on this citation or otherwise respond to this Notice of Violation as directed may result in a warrant being issued for your arrest." (First Am. Compl. ¶¶ 31 and 32 [Doc. 4].)

In February 2008, each Plaintiff was sent a Notice of Violation reporting a violation of the Ordinance in either January or February 2008. (Defs.' Statem. Undisp. Mat. Facts Supp. Joint Mot. ¶ 24 [Doc. 95]; see also First Am. Compl. Exs. 2B, 2C, and 2D [Doc. 4-1 at 8-10].) Each of these Notices of Violation contained three images of the photographed vehicle; identified a City police officer;⁸ and reported that officer had "proba[b]le cause" to believe that on a specified date at a specified intersection the relevant Plaintiff unlawfully "operate[d]/dr[o]ve" a specified vehicle, committing the offense of "Failure to Stop at a Red Light" in violation of the Ordinance. (First Am. Compl. ¶ 29 and Exs. 2B, 2C, and 2D

⁸ Defendants Bonsack and Christopher were the officers named in the Notices of Violation sent to the three remaining Plaintiffs; Defendant Musial was the officer named in the Notices of Violation sent to the Hoekstras, whose claims have been dismissed. (See Mem. and Order, filed Feb. 3, 2009 [Doc. 82].)

[Doc. 4 and Doc. 4-1 at 8-10].) Each of those Notices of Violation also stated "[o]n information, the City's prosecutor charges the [relevant Plaintiff] and informs the court that above facts are true and punishable by a fine of \$94.50," and included the City prosecutor's electronic signature. (*Id.* ¶ 33 and Exs. 2B, 2C, and 2D [Doc. 4 at 11-12 and Doc. 4-1 at 8-10].)

As of March 23, 2009, when Defendants filed their Joint Motion, Plaintiffs had not paid a fine relating to their Notices of Violation; "there ha[d] been no adjudication[s] or conviction[s] based on" the violations reflected in the Notices of Violation sent to Plaintiffs; and Plaintiffs' "matter[s] were] still pending in the City's municipal court." (Defs.' Statem. Undisp. Mat. Facts Supp. Joint Mot. ¶¶ 27, 28, 29, 31, 32, 33, 35, 36, and 37 [Doc. 95].)

ATS's Involvement in the City's Red Light Camera Systems Program. In the summer of 2005, City passed Resolution 05-59 authorizing an agreement with ATS for the installation of automated red light enforcement equipment at various intersections in the City. (*Id.* Exs. F and I [Doc. 95-8 at 5 and Doc. 95-11 at 2].) City and ATS then entered into a Professional Services Agreement (Agreement), dated December 5, 2005, by which ATS agreed to install cameras and other equipment at various intersections in the City and to provide additional services. (First Am. Compl. ¶¶ 15, 17 [Doc. 4]; Defs.' Statem. Undisp. Mat. Facts Supp. Joint Mot. ¶ 14 and Ex. H [Doc. 95 and Doc. 95-10].) Mayor signed the Agreement on behalf of the City. (First. Am. Compl. ¶ 16 [Doc. 4].)

By the terms of this Agreement, ATS agreed to provide traffic light cameras to the City, to install the cameras in specified locations, to maintain the cameras in good working

order, to be responsible for the operation of an automated web-based citation processing program which is linked to the cameras stationed at the intersections, to review the photographs and video from its web-based program and utilize data provided by the appropriate division of motor vehicles to determine ownership information, and then make the photographs, video, and ownership information available to a City police officer who reviews the information to determine whether a violation has occurred. (Defs.' Statem. Undisp. Mat. Facts Supp. Joint Mot. ¶¶ 15-18 and Agreement at Ex. A ¶¶ (a)(ii), (b), (d), (i), (k) and at Ex. B ¶¶ (b) and (c), Ex. H to Defs' Statem. Undisp. Mat. Facts Supp. Joint Mot. [Doc. 95 and Doc. 95-10].) Additionally, by a "Contract Change Notice 1," dated July 27, 2006, to the Agreement, ATS is required to implement, install, and maintain a method for the electronic payment of citations issued by the Arnold Police Department as a result of the red light camera systems. (First Am. Compl. ¶ 20 [Doc. 4]; see also Defs.' Statem. Undisp. Mat. Facts Supp. Joint Mot. Ex. H [Doc. 95-10 at 15-16].)

Discussion

By their Joint Motion, Defendants seek summary judgment in their favor on all claims on the grounds the § 1983 claims fail as a matter of law because no violation of Plaintiffs' constitutional rights has occurred; the RICO claims fail as a matter of law because Defendants did not form an enterprise and did not engage in racketeering acts; and the Court should decline to exercise supplemental jurisdiction over Plaintiffs' state law claims. (Joint Mot. at 2 [Doc. 94].)

By their Separate Motion, all Defendants except ATS seek summary judgment in their

favor on the grounds the Police Chief, in his individual capacity, has qualified immunity from the civil RICO claims; City and the individual Defendants sued in their official capacities have sovereign immunity from the state law claims or, if not, they are entitled to judgment on the state law claims for punitive damages pursuant to Mo. Rev. Stat. § 537.610.3; the individual Defendants, to the extent they are sued in their individual capacities, have official immunity from the state law claims or, if not, have absolute immunity for their legislative conduct ; and Defendants Moritz and Vinson did not participate in the legislative conduct at issue in this case. (Defs.' Separate Mot. at 2-3 [Doc. 99].)

The Court will first address Defendants' Joint Motion, because the Separate Motion was filed for consideration "in the event that the Joint Motion does not dispose of this case in its entirety." (Separate Mot. at 1 [Doc. 99]; see also Defs.' Mem. Supp. Joint Mot. at 7 n.4 [Doc. 96] ("In the event that the Court grants this Joint Motion for Summary Judgment in its entirety, th[e Separate Motion] will be moot."))

Summary judgment standard. Rule 56(c) of the Federal Rules of Civil Procedure mandates the entry of summary judgment if all of the information before the court shows "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." See Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986) (quotation marks omitted) (quoting Rule 56(c) of the Federal Rules of Civil Procedure). An issue of material fact is genuine if it has a real basis in the record; and, a genuine issue of fact is material if it "might affect the outcome of the suit under the governing law." Hartnagel

v. Norman, 953 F.2d 394, 395 (8th Cir. 1992) (quotation marks omitted) (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986)).

The initial burden is on the moving party to establish the non-existence of any genuine issue of fact that is material to a judgment in its favor. See Van Horn v. Best Buy Stores, L.P., 526 F.3d 1144, 1146 (8th Cir. 2008) ("the defendants met their initial burden of notifying the . . . court of the basis for their summary judgment motion and identifying the documents that they believed demonstrated the absence of a material fact"). After the moving party discharges this burden, the non-moving party must do more than show that there is some doubt as to the facts. See Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986). Instead, the non-moving party bears the burden of setting forth specific facts by affidavit or otherwise showing that there is a genuine issue for trial. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986); Palesch v. Missouri Comm'n on Human Rights, 233 F.3d 560, 565-66 (8th Cir. 2000). All disputed facts are to be resolved, and all inferences are to be drawn, in favor of the non-moving party. See Ghane v. West, 148 F.3d 979, 981 (8th Cir. 1998); Kopp v. Samaritan Health Sys., Inc., 13 F.3d 264, 269 (8th Cir. 1993). "[I]n order to defeat a motion for summary judgment, the non-movant cannot simply create a factual dispute; rather, there must be a genuine dispute over those facts that could actually affect the outcome of the lawsuit." Webb v. Lawrence County, 144 F.3d 1131, 1135 (8th Cir. 1998). See also Stanback v. Best Diversified Prods., Inc., 180 F.3d 903, 909 (8th Cir. 1999) (finding general statements in affidavits and

depositions are insufficient to defeat a properly supported summary judgment motion).

Standing. In a footnote in their brief supporting the Joint Motion, Defendants suggest that the remaining "Plaintiffs lack standing because they have not paid their fines and, therefore, have suffered no injury in fact," citing Shavitz v. City of High Point, 270 F. Supp.2d 709 (M.D. N.C. 2003), vacated in part on other grounds sub nom. Shavitz v. Guilford County Bd. of Educ., 100 Fed. Appx. 146 (4th Cir. June 7, 2004) (No. 03-1960) (unpublished per curiam opinion). (Defs.' Mem. Supp. Joint Mot. at 15 n.7 [Doc. 96].)⁹

The issue of Plaintiffs' standing must be addressed before the Court considers the merits of either summary judgment motion. City of Clarkson Valley v. Mineta, 495 F.3d 567 (8th Cir. 2007) (remanding a case on appeal from the entry of summary judgment upon finding the district court had not sufficiently addressed standing issues that were raised first in a motion to dismiss and then in a motion for summary judgment). To establish standing a litigant first "must have suffered an 'injury in fact,' an actual or imminent concrete and particularized invasion to a legally protected interest; second, the injury must be fairly traceable to the challenged action of the defendant; and third, the injury must be redressable

⁹ Plaintiffs have not responded to Defendants' noted challenge to Plaintiffs' standing. In their brief opposing the Joint Motion, Plaintiffs state that "[t]he Court's dismissal of the Hoekstras[]" claims after it found that they lacked standing does not require the dismissal of the remaining Plaintiffs' claims because standing is a jurisdictional prerequisite. Hodak v. City of St. Peters, 535 F.3d 899, 903 (8th Cir. 2008)[, cert. denied, 129 S.Ct. 1352 (2009)]." (Pls.' Br. Opp'n. Joint Mot. at 21 n.5 [Doc. 107].) The Court understands this statement does not pertain to the issue whether Plaintiffs have standing to pursue the federal claims, however, because it was in Plaintiffs' discussion of the state law claims and their argument that the Court should exercise supplemental jurisdiction over those claims.

by a favorable decision." Hodak, 535 F.3d at 903 (citing Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992) (plurality opinion)). When a plaintiff has not suffered an injury, the plaintiff has no standing and the court lacks jurisdiction to consider the plaintiff's claims. International Ass'n of Fire Fighters, Local 2665 v. City of Clayton, 320 F.3d 849, 850 (8th Cir. 2003). The party invoking federal jurisdiction bears the burden of establishing standing. Lujan v. Defenders of Wildlife, 504 U.S. 555, 561 (1992) (plurality opinion); Mineta, 495 F.3d at 570.

While standing is a jurisdictional prerequisite to suit, it may arise and be addressed at various stages of the lawsuit. See Gray v. City of Valley Park, 567 F.3d 976, 982-87 (8th Cir. 2009) (finding the appellants, who were the plaintiffs and who challenged for the first time on appeal their own standing, had standing to challenge a city's ordinance); Nolles v. State Comm. for Reorg. of Sch. Dists., 524 F.3d 892, 897-901, 905 (8th Cir.) (*sua sponte* dismissing appeal of procedural and substantive due process claims on standing grounds, and affirming district court's dismissal of another claim), *cert. denied*, 129 S.Ct. 418 (2008); Medalie v. Bayer Corp., 510 F.3d 828, 830 (8th Cir. 2007) (concluding that, by failing to file an expert's report regarding the plaintiff's personal injuries as directed by the district court, the plaintiff failed to satisfy the evidentiary burden necessary to show standing during the discovery stage of litigation); Mineta, *supra*; Harmon v. City of Kansas City, Mo., 197 F.3d 321, 327 (8th Cir. 1999) (noting "A federal court bears the burden of examining standing at all stages of litigation, even if the parties do not raise the issue themselves" and

vacating the district court's injunctive order, but not the district court's damages award, on standing grounds). The manner and degree of evidence needed to support standing changes depending on the stage of the litigation at which the issue is addressed. Lujan, 504 U.S. at 561. While

[a]t the pleading stage, general factual allegations of injury resulting from the defendant's conduct may suffice, . . . [i]n response to a summary judgment motion, . . . the plaintiff can no longer rest on such "mere allegations," but must "set forth" by affidavit or other evidence "specific facts," which for purposes of the summary judgment motion will be taken to be true.

Id. (citations omitted). At the summary judgment stage, standing requires "a factual showing of perceptible harm." Id. at 566; Eckles v. City of Corydon, 341 F.3d 762, 767 (8th Cir. 2003).

Here, Defendants first raised a challenge to Plaintiffs' standing in Defendants' earlier motions to dismiss. Based on the allegations of the first amended complaint, the Court granted the motions to dismiss on standing grounds to the extent Defendants challenged the standing of two of the then-named Plaintiffs, and denied the motions to dismiss on standing grounds to the extent Defendants challenged the standing of the other three Plaintiffs, who are the Plaintiffs remaining before the Court. (Mem. and Order at 9-16, filed Feb. 3, 2009 [Doc. 82].) Specifically, with respect to the injury-in-fact requirement for standing, this Court concluded that the three remaining Plaintiffs' "allegations that they have had to defend the Notices [of Violation] . . . suggest that those Plaintiffs have suffered an injury sufficient for standing purposes at this stage of the proceedings." (Mem. and Order at 13, filed Feb.

3, 2009 [Doc. 82].) Based on the allegations that the three remaining Plaintiffs were defending the Notices of Violation and the absence of allegations regarding the resolution of those Plaintiffs' Notices of Violation, the Court distinguished Shavitz, *supra*, and concluded those Plaintiffs had standing to pursue their federal claims at that stage of the proceedings. (Mem. and Order at 13-16, filed Feb. 3, 2009 [Doc. 82].)

Now that Plaintiffs' standing is raised at the summary judgment stage, the Court finds it proper to consider Plaintiffs' standing in light of the record beyond the allegations of the first amended complaint. Lujan, 504 U.S. at 561. Therefore, the Court will consider whether Plaintiffs have satisfied their burden of making a factual showing of perceptible harm sufficient to demonstrate their standing to pursue the § 1983 and RICO claims.

"The essential elements of a § 1983 claim are (1) that the defendant(s) acted under color of state law, and (2) that the alleged wrongful conduct deprived the plaintiff of a constitutionally protected federal right." Schmidt v. City of Bella Villa, 557 F.3d 564, 571 (8th Cir. 2009) (alteration in original). In relevant part, Plaintiffs allege Defendants' enactment and enforcement of the Red Light Camera Ordinance violate Plaintiffs' constitutional rights to procedural and substantive due process causing Plaintiffs to be "charged with and forced to defend a red light violation issued pursuant to a red light camera[; to] suffer[] embarrassment, humiliation, and inconvenience[, and to be] forced to hire attorneys and expend money for attorneys' fees and costs," entitling Plaintiffs to actual damages, attorneys' fees, and costs. (First Am. Compl. at 19-30 and ¶¶ 74, 79, 86, and 98

[Doc. 4].)

When challenging the constitutionality of a legislative act or the application of the act, a plaintiff has standing if the act or its application results in or threatens a direct injury to the plaintiff that is fairly traceable to the defendant's conduct and that is real, immediate, and specific. Eckles, 341 F.3d at 767-68 (standing to seek damages and equitable relief in an action presenting a constitutional challenge to a nuisance abatement ordinance); accord International Ass'n of Fire Fighters, Local 2665, 320 F.3d at 850 (standing to challenge an "ordinance as applied is present when the challenger has experienced a direct injury or will soon sustain a direct injury redressable by the court" (internal quotation marks omitted) (quoting Harmon, 197 F.3d at 326)); Harmon, 197 F.3d at 326-27 (standing to seek damages, but not injunctive relief, in an action against a city presenting a constitutional challenge to an ordinance regulating advertisements and sales of certain items on city streets and sidewalks).

The undisputed record reveals that Plaintiffs' "matter[s are] still pending in the City's municipal court," Plaintiffs have not paid a fine relating to the Notices of Violation they had received, and "there have been no adjudication[s] or conviction[s] based on" the violations reflected in the Notices sent to Plaintiffs. (Defs.' Statem. Undisp. Mat. Facts Supp. Joint Mot. ¶¶ 27, 28, 29, 31, 32, 33, 35, 36, and 37 [Doc. 95].) The fact that the proceedings are still pending in municipal court indicates that Plaintiffs are still subject to the provisions of the Red Light Camera Ordinance and may soon be subject to a fine or other sanction for their

alleged violations of that Ordinance. Nothing of record indicates that Plaintiffs have failed to do what they need to do to pursue their positions in the municipal court proceedings. Therefore, Plaintiffs have made a factual showing of "perceptible harm," Lujan, 504 U.S. at 566, for purposes of standing to pursue the § 1983 damages claims. See Eckles, 341 F.3d at 768 (finding the plaintiff's receipt of an abatement notice from the city was sufficient to confer standing to pursue a constitutional challenge to that notice); accord Harmon, *supra* (in a § 1983 damages action, a plaintiff who was arrested under an ordinance and another plaintiff who had been threatened with arrest and harassed under the ordinance, had standing to challenge the constitutionality of the ordinance); Sevin v. Parish of Jefferson, No. 08-802, 2008 WL 5273718, at *8-11 (E.D. La. Dec. 16, 2008) ("Sevin I") (finding a plaintiff who had received four notices that he had violated an automated red light camera, two of which he did nothing about and two of which he requested a hearing on, had standing to pursue constitutional challenges under § 1983). Using the words of the United States Court of Appeals for the Eighth Circuit upholding the standing of a landowner who was challenging notices of abatement he had received from a city, this Court concludes Plaintiffs have standing to pursue their § 1983 claims because:

[t]he . . . [N]otice[s of violation are] in effect, and if the suit is dismissed [Plaintiffs] could expect the City to enforce the [N]otice[s of Violation]. Moreover, there is nothing to prevent the City from enforcing [the Notices of Violation] immediately if it so chose. The threat of injury to [Plaintiffs] is imminent and concrete. . . . The concrete and particular harm that [Plaintiffs] will suffer is . . . spelled out in the City's [N]otice[s of Violation]. . . . [Plaintiffs] stand[] to suffer direct . . . injury should [they] choose to ignore the demands of the [N]otice[s of Violation]. It is not necessary that [Plaintiffs]

wait until the City actually enforces the [N]otice[s of Violation] to bring suit challenging the City's actions as long as those actions are imminent and not speculative. The City's planned actions are not merely speculative

Eckles, 341 F.3d at 768 (footnote and citation omitted).

Defendants' reliance on Shavitz to argue Plaintiffs lack standing is not persuasive. There, the court concluded the plaintiff lacked standing to pursue procedural due process challenges to an automated red light ordinance upon finding the plaintiff had refused to pay the citation he received, had not appealed from the notice of failure to comply that he subsequently received, and, therefore, "ha[d] not availed himself of the process" provided by the defendants. Shavitz, 270 F. Supp. 2d at 707, 710-11. Accord Williams v. Redflex Traffic Sys., Inc., No. 3:06-cv-400, 2008 WL 782540, at *4 (E.D. Tenn. Mar. 20, 2008) (a plaintiff, who received a citation under a red light camera ordinance and did not seek a court hearing, did not suffer "a concrete and particularized injury as a result of the allegedly deficient process and therefore ha[d] no standing to challenge it"); but see Sevin I, 2008 WL 5273718, at *8-11 (plaintiff who had received four notices of violating a red light camera ordinance had standing based on all four violations even though he requested a hearing on only two of the notices because "it is beyond dispute that [this plaintiff] is an 'object of' defendants' allegedly unconstitutional ticketing and enforcement procedures") (quoting Lujan, 504 U.S. at 561)). Here, the available undisputed record indicates that Plaintiffs have availed themselves of the process available, but the proceedings on Plaintiffs' Notices are not yet resolved. There is no indication that the present, unresolved status of Plaintiffs'

municipal court proceedings is due to actions taken by Plaintiffs themselves. Therefore, Shavitz is distinguishable.

While not expressly addressed by the parties, the Court also finds Plaintiffs have standing to pursue some of their RICO claims at this stage of the proceedings. "RICO provides a private right of action for any person 'injured in his business or property by reason of a violation of its substantive prohibitions. 18 U.S.C. § 1964(c)." Dahlgren v. First Nat'l Bank of Holdrege, 533 F.3d 681, 689 (8th Cir. 2008), cert. denied, 129 S.Ct. 1041 (2009). A plaintiff has standing to pursue RICO claims when, in relevant part, the plaintiff has suffered injury to the plaintiff's "business or property" due to RICO violations. Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479, 496 (1985) ("the plaintiff only has standing if, and can only recover to the extent that, he has been injured in his business or property by the conduct constituting the violation"); Hamm v. Rhone-Poulenc Rorer Pharms, Inc., 187 F.3d 941, 954 (8th Cir. 1999) (plaintiffs who did not show injury to "business or property" within the meaning of § 1964(c), but only damage to their reputation, lacked standing to pursue RICO civil claims). Here, for their RICO claims, Plaintiffs allege in relevant part that they are "injured in their property [in that] Plaintiff[s] have suffered embarrassment, humiliation, and inconvenience as well as being forced to hire attorneys and expend money for attorneys' fees and costs." (First Am. Compl. ¶¶ 59 and 65 [Doc. 4].)

To the extent Plaintiff allege they have suffered embarrassment, humiliation, and inconvenience, Plaintiffs lack standing to pursue their RICO claims, as such injuries are more

akin to personal injuries than to injuries to "business or property." Cf. Regions Bank v. J. R. Oil Co., 387 F.3d 721, 728-29 (8th Cir. 2004) (a showing of injury for a civil RICO claim "requires proof of concrete financial loss, and not mere injury to a valuable intangible property interest" (quoting Steele v. Hospital Corp. of Am., 36 F.3d 69, 70 (9th Cir. 1994))); Ham, 187 F.3d at 954 ("[d]amage to reputation is generally considered personal injury and thus is not injury to 'business or property' within the meaning of 18 U.S.C. § 1964(c)").

"[M]oney . . . is a form of property," Reiter v. Sonotone Corp., 442 U.S. 330, 338 (1979) (interpreting "business or property" in a consumer's antitrust case), however, and monetary losses or expenditures related to court proceedings before the RICO litigation may satisfy the "business or property" requirement for civil RICO claims. See Handeen v. Lemaire, 112 F.3d 1339, 1354 (8th Cir. 1997) (plaintiff had standing to pursue a RICO claim to recover attorneys' fees the plaintiff incurred in objecting to the defendants' allegedly fraudulent claims in bankruptcy).

Therefore, Plaintiffs have satisfied their burden to show perceptible harm for purposes of standing to pursue their civil RICO claims, but only to the extent they may have expended money for attorneys' fees and costs related to the defense of the Notices of Violation, and not to the extent they allege they have suffered embarrassment, humiliation, and inconvenience.

§ 1983 Claims. Defendants move for the entry of summary judgment in their favor on the § 1983 claims on the grounds no violation of Plaintiffs' federal constitutional rights has occurred.

For their § 1983 claims, Plaintiffs must establish "that they were deprived of a right secured by the Constitution or laws of the United States, and that the alleged deprivation was committed under color of state law." American Mfrs. Mut. Ins. Co. v. Sullivan, 526 U.S. 40, 49-50 (1999); accord Schmidt, 557 F.3d at 571.

All of Plaintiffs' § 1983 claims are based on allegations that the Red Light Camera Ordinance violates the federal due process clause in that the rebuttable presumption in the Ordinance both shifts the burden of proof to the vehicle owner to establish he or she was not driving at the time of the violation and, through the use of an irrational inference to establish a prima facie case, allows City to meet its burden of proof without sufficient evidence establishing that the vehicle owner was driving at the time of the violation; and in that the Ordinance permits proof of liability without proof beyond a reasonable doubt.¹⁰ (See, e.g., First Am. Compl. ¶¶ 69-72, 78(b), 78(f), 82(c), and 89(d) [Doc. 4].) The claims regarding

¹⁰ Plaintiffs also allege the Red Light Camera Ordinance violates the federal due process clause in that it allows the issuance of a citation in the absence of probable cause to believe the vehicle owner was the driver at the time of the violation. (See e.g., First Am. Compl. ¶ 78(b) [Doc. 4].) Earlier, the Court pointed out that the alleged absence of probable cause may be a Fourth Amendment issue, rather than a substantive due process issue, based on the plurality in Albright v. Oliver, 510 U.S. 266 (1994) (plurality opinion) (there is no substantive due process right, but there may be a Fourth Amendment right, arising from malicious prosecution due to the absence of probable cause). (Mem. and Order, filed Feb. 3, 2009, at 25 n.5 [Doc. 82].) The Court further noted Plaintiffs may not base their § 1983 claims on an absence of probable cause to issue the Notices of Violation because Plaintiffs have not clearly set forth a Fourth Amendment claim in their first amended complaint. (*Id.*) The first amended complaint has not been amended. Therefore, the Court will not further consider the lack of probable cause allegations.

Additionally, to the extent Plaintiffs base their § 1983 claims on allegations and arguments that the Ordinance violates state law, those allegations and arguments are not dispositive, and will not be considered further, because violations of state law do not state a claim under § 1983. Doe v. Gooden, 214 F.3d 952, 955 (8th Cir. 2000).

the absence of proof beyond a reasonable doubt arise out of the use of the Ordinance's rebuttable presumption to establish that the vehicle owner was the driver of the vehicle at the time of the Ordinance violation. Therefore, all of Plaintiff's constitutional due process claims arise out of the Ordinance's rebuttable presumption that the vehicle owner drove the vehicle at the time of the Violation incident.

In essence, the parties' positions on whether or not Plaintiffs' federal due process rights were violated depend upon whether the Ordinance violation proceeding is characterized as civil or criminal in nature. Plaintiffs' due process claims rely on their position that the Ordinance is criminal in nature, and Defendants counter that the Ordinance is civil in nature. In its earlier ruling, the Court suggested the parties further develop the record and their positions on the constitutionality of the Ordinance, including its civil or criminal nature. (Mem. and Order, filed Feb. 3, 2009, at 31 [Doc. 82].) The parties have done this through the Joint Motion and response. If the Court finds the Ordinance civil in nature, Defendants are entitled as a matter of law to entry of summary judgment in their favor on Plaintiffs' § 1983 damages claims because those claims are based on Plaintiffs' position the Ordinance is criminal in nature. If the Court finds the Ordinance criminal in nature, then the Court must ascertain whether Defendants are entitled to summary judgment on the § 1983 claims either as a matter of law or because there exists no genuine issue of material fact regarding the enactment and enforcement of the Ordinance and Plaintiffs' due process challenges.

"[T]he characterization of [a] proceeding and the relief given as civil or criminal in

nature, for purposes of determining the proper applicability of federal constitutional protections, raises a question of federal law rather than state law." Hicks on behalf of Feiock v. Feiock, 485 U.S. 624, 630 (1988). The issue whether a particular punishment or proceeding is criminal or civil is first a matter of statutory construction. Smith v. Doe, 538 U.S. 84, 92 (2003) (addressing ex post facto challenge to sex offender registration and notification law); Hudson v. United States, 522 U.S. 93, 99 (1997) (addressing double jeopardy challenge to imposition of monetary penalties and occupational debarment); Kansas v. Hendricks, 521 U.S. 346, 361 (1997) (addressing double jeopardy and ex post facto challenges to sexually violent predator civil commitment proceeding); Allen v. Illinois, 478 U.S. 364, 368 (1986) (addressing privilege against self-incrimination challenge to sexually dangerous persons civil commitment proceeding).

At the outset, in resolving whether proceedings are civil or criminal in nature, the Court ascertains "whether the legislature meant the [legislation] to establish 'civil' proceedings." Hendricks, 521 U.S. at 361; Doe v. Miller, 405 F.3d 700, 718 (8th Cir. 2005) (constitutional challenges to residence restrictions on sex offenders); see also Allen, 478 U.S. at 368 (finding initially that the state had expressly provided that proceedings under the challenged statute were civil in nature indicating the state's intent "to proceed in a nonpunitive, noncriminal manner" under the challenged statute). Similarly, in resolving whether a penalty is civil or criminal in nature, the Court must determine "whether the legislature, 'in establishing the penalizing mechanism, indicated either expressly or impliedly

a preference for" the civil or criminal label. Hudson, 522 U.S. at 99 (quoting U.S. v. Ward, 448 U.S. 242, 248 (1980)); accord Smith, 538 U.S. at 93 (quoting Hudson, 522 U.S. at 99); Students for Sensible Drug Policy Found. v. Spellings, 523 F.3d 896, 900 (8th Cir. 2008) (quoting Hudson, 522 U.S. at 99) (addressing double jeopardy challenge to legislation providing for the suspension of federal financial assistance to students convicted of drug offenses).

The legislature's intent to create a civil proceeding or penalty may be ascertained either from the express language of the legislation, see Allen, 478 U.S. at 368, or from other aspects of the legislation, see, e.g., Hudson, 522 U.S. at 103 (finding a debarment sanction was intended to be civil in nature, even in the absence of express language "denominating the sanction as civil," because an administrative agency had the authority to issue the debarment order). To ascertain legislative intent, the Court may consider the purpose or objective of the legislation, the manner of its codification, and the enforcement procedures it establishes. Smith, 538 U.S. at 93-94.

Having considered the Ordinance, the Court concludes the City intended it to be civil in nature, despite the absence of language explicitly expressing that intent. First, the location of this Ordinance in the Arnold Code indicates an intent that the Ordinance is civil in nature. The Ordinance is not in Chapter 17 of the Arnold Code, the chapter titled "Offenses," in which the City expressly specifies acts constituting crimes. (See, e.g., §17-8 of the Arnold Code, "the crime of harassment"; § 17-11(a) of the Arnold Code, "the crime of endangering

the welfare of a child"; § 17-13 of the Arnold Code, "the crime of leaving a mentally- or physically- challenged individual of any age unattended in a motor vehicle"; § 17-19(a) of the Arnold Code, "the crime of assault"; and § 17-20 of the Arnold Code, "the crime of peace disturbance." (Ex. C of Defs.' Statem. Undisp. Mat. Facts Supp. Joint Mot. at 17, 19-20, and 21 [Doc. 95-3].) Instead, the Ordinance is part of Chapter 23 of the Arnold Code, the chapter for "Traffic" ordinances, and, more specifically, part of Article V of that chapter, which is titled "Traffic-Control Signs, Signals and Devices." (*Id.* Ex. C at 47-50 [Doc. 95-5].) The placement of the Ordinance outside the chapter containing the ordinance provisions the City explicitly characterizes as criminal in nature indicates the City intended that the Red Light Camera Ordinance proceedings and penalty are civil in nature. *See, e.g., Hendricks*, 521 U.S. at 361 (noting a state legislature's "objective to create a civil proceeding [wa]s evidenced [in part] by its placement of the [legislation] within the [state] probate code, instead of the [state] criminal code"). This determination that the City intended the Ordinance to be civil in nature is also supported by the absence of the word "crime" and its derivations in the Ordinance's provisions.

Furthermore, the 2006 amendment of the Ordinance's penalty provision indicates an intention not to impose criminal penalties for violations of the Ordinance. Prior to the amendment, the Ordinance's penalty provision stated that the penalty imposed for a violation of § 23-173, running a red light, was the same whether or not a red light camera was used. (§ 8 of Bill No. 2102, Defs.' Statem. Undisp. Mat. Facts Supp. Joint Mot., Ex. A at 6 [Doc. 95-1].) The parties have not clearly indicated what the penalty for a red light violation

enforced without a camera was at the time of the Ordinance's amendment. Assuming the Code's general penalty provision, § 1-16 of the Code, applied to a red light violation of § 23-173 not enforced through a camera, such a violation might have been penalized with a fine of not more than \$1,000, imprisonment for up to one year, or both, the penalties specified in § 1-16. (*Id.*, Ex. C at 13-14 [Doc. 95-3].) Therefore, prior to the 2006 amendment of the Red Light Camera Ordinance, the Ordinance's language may have allowed the imposition of a term of imprisonment as well as a fine or both. With the 2006 amendment, "(fine)" was added after the word "penalty" in the Ordinance's penalty provision, § 23-187, indicating an intent to limit to a fine the penalty for a violation of § 23-173 enforced through the use of a red light camera. (*Id.*, Ex. C at 50 [Doc. 95-5] and Ex. D at 6 [Doc. 95-6].) With this amendment, the Ordinance provides a specific penalty, a fine, so that the Arnold Code's generally applicable penalty provision, § 1-16, does not apply to red light camera violations.

Without setting forth an explanation for the addition of "(fine)" in the Ordinance's penalty provision or providing alternative meanings for the amended sentence, Plaintiffs urge that this amendment of the penalty provision is vague and ambiguous.¹¹ The Court disagrees.

¹¹ Plaintiffs urge the penalty provision is ambiguous and vague due to the City's own actions in that the fine imposed for a red light violation enforced by a camera is not the same as a fine for a red light violation enforced without a camera. (Pls.' Br. Opp'n. Defs.' Joint Mot. at 5 [Doc. 107].) Specifically, Plaintiffs point to the City's Traffic Violation Schedule of Fines and Costs, effective June 7, 2007, which reports that the fine for an "Electric Signal/Stop Sign" violation is "\$75.50+\$24.50 = \$100.00" (Pls.' Statem. Disp. Mat. Facts Opp'n. Defs.' Joint Mot, Additional Mat. Facts Necessary to Resolve Summ. J., Ex. 8 at 1 [Doc. 106-1 at 24]) and to the Notices of Violation received by Plaintiffs, which each assess a fine of \$94.50 for violating a red light enforced by a camera (First Am. Compl., Exs. 2-B, 2-C, and 2-D [Doc. 4]). To the extent the Court should consider this information, which goes beyond the Ordinance's language and is not clearly undisputed, it does not create a genuine issue of material fact, whether the difference in the fines is \$5.50 or \$21.50, because the

The added language clearly limits the Red Light Camera Ordinance penalty to a fine; otherwise there was no need to add "(fine)" after the word "penalty" in § 23-187.

Despite Plaintiffs' argument to the contrary, the penalty in § 1-16 of the Arnold Code, which contains a term of imprisonment as a potential penalty, does not apply to a Red Light Camera Ordinance violation. This is because § 1-16 of the Arnold Code is expressly limited to providing a penalty for a Code violation "where no specific penalty is provided" (id., Ex. C at 13-14 [Doc. 95-3]) and § 23-187 of the Red Light Camera Ordinance now provides a specific penalty of a fine and no assessment of points on red light camera violators' driver's licenses (id., Ex. C at 50 [Doc. 95-5]).

If, as here, the legislation indicates a preference for the civil label, then the court must determine whether the legislation is so punitive in purpose or effect that the proceeding or penalty should be considered criminal in nature. Smith, 538 U.S. at 92; Hudson, 522 U.S. at 99; Hendricks, 521 U.S. at 361; Allen, 478 U.S. at 369; Students for Sensible Drug Policy Found., 523 F.3d at 900; Miller, 405 F.3d at 718. In making that determination, the court considers the following factors in relation to the legislation on its face:

- (1) "[w]hether the sanction involves an affirmative disability or restraint"; (2) "whether it has historically been regarded as a punishment"; (3) "whether it comes into play only on a finding of scienter"; (4) "whether its operation will promote the traditional aims of punishment – retribution and deterrence"; (5) "whether the behavior to which it applies is already a crime"; (6) "whether an

difference in fines is minimal. To the extent this minimal discrepancy exists in the fines assessed for red light violations enforced with a camera and red light violations enforced without a camera, such a discrepancy may be a matter of local law, but is not a matter of federal constitutional law or the proper subject of a § 1983 claim.

alternative purpose to which it may rationally be connected is assignable for it"; and (7) "whether it appears excessive in relation to the alternative purpose assigned."

Hudson, 522 U.S. at 99-100 (quoting **Kennedy v. Mendoza-Martinez**, 372 U.S. 144, 168-69 (1963)); **Students for Sensible Drug Policy Found.**, 523 F.3d at 901 (quoting **Hudson**, 522 U.S. at 99-100); see **Smith**, 538 U.S. at 97 (finding relevant five of the factors in **Kennedy**, 372 U.S. at 168-69); **Miller**, 405 F.3d at 719 (same). Courts may also weigh additional considerations. **Burr v. Snider**, 234 F.3d 1052, 1054 (8th Cir. 2000). Notably, "only the clearest proof" will override legislative intent and transform into criminal what was intended to be civil. **Hudson**, 522 U.S. at 100 (quoting **Ward**, 448 U.S. at 249); accord **Smith**, 538 U.S. at 92; **Hendricks**, 521 U.S. at 361; **Allen**, 478 U.S. at 369; **Students for Sensible Drug Policy Found.**, 523 F.3d at 900; **Miller**, 405 F.3d at 718. Having considered these factors, the Court concludes there is not either the "clearest proof" or the existence of a genuine issue of material fact indicating that the Red Light Camera Ordinance is criminal in nature.

First, the Ordinance's sanction, a fine, does not involve an affirmative disability or restraint. This factor requires an inquiry into "how the effects of the [legislation] are felt by those subject to it. If the disability or restraint is minor and indirect, its effects are unlikely to be punitive." **Smith**, 538 U.S. at 99-100. Moreover, when legislation "imposes no physical restraint, [it] does not resemble the punishment of imprisonment, which is the paradigmatic affirmative disability or restraint." **Id.** at 100. Monetary sanctions do not involve an affirmative disability or restraint. **Hudson**, 522 U.S. at 104 (imposition of

monetary sanctions and debarment do not involve an affirmative disability or restraint); Students for Sensible Drug Policy Found., 523 F.3d at 901 (suspension of federal aid to students convicted of drug offenses "does not involve an affirmative disability or restraint"). Here, the only penalty available for a Red Light Camera Ordinance violation is monetary, the imposition of a fine, which does not involve an affirmative disability or restraint. This factor supports the determination that the Ordinance and its penalty are civil in nature.

Next, the Court considers whether the sanction has been regarded historically as punishment. Hudson, 522 U.S. at 99. Monetary penalties are not "historically . . . viewed as punishment." Id. at 104; but see Harmelin v. Michigan, 501 U.S. 957, 978 n.9 (1991) (plurality opinion) (characterizing "disproportionate fines" as "certainly punishments"). Rather, "the payment of fixed or variable sums of money [is a] sanction[] which ha[s] been recognized as enforceable by civil proceedings since . . . 1789." Helvering v. Mitchell, 303 U.S. 391, 400 (1938); accord Hudson, 522 U.S. at 104 (quoting Helvering, 303 U.S. at 400). As noted above, the only penalty available for a Red Light Camera Ordinance violation is the imposition of a fine, which requires the payment of money. Such a monetary penalty is not deemed a punishment. Therefore, this factor supports a determination that the Ordinance and its sanction are civil in nature.

The third factor asks whether the sanction only comes into play on a finding of scienter. Hudson, 522 U.S. at 99. "The existence of a scienter requirement is customarily an important element in distinguishing criminal from civil statutes." Hendricks, 521 U.S.

at 362. When there is no scienter requirement, it is evidence that the penalty is not intended to be retributive. **Id.**; **Students for Sensible Drug Policy Found.**, 523 F.3d at 901. The parties agree that a violation of the Red Light Camera Ordinance does not require scienter. (Defs.' Mem. Supp. Joint Mot. at 12 [Doc. 96]; Pls.' Br. Opp'n. Joint Mot. at 7 [Doc. 107].) Because the Ordinance's sanction does not come into play only on a finding of scienter, this third factor further supports a determination that the Ordinance and its penalty are not criminal in nature.

The fourth factor is whether the sanction "will promote the traditional aims of punishment – retribution and deterrence." **Hudson**, 522 U.S. at 99 (internal quotation marks omitted) (quoting **Kennedy**, 372 U.S. at 168). As noted above, the lack of a scienter requirement "is evidence that . . . the [legislation] is not intended to be retributive." **Students for Sensible Drug Policy Found.**, 523 F.3d at 901 (quoting **Hendricks**, 521 U.S. at 361). The parties urge that fines have a deterrent effect. (Defs.' Mem. Supp. Joint Mot. at 13 [Doc. 96]; Pls.' Br. Opp'n. Joint Mot. at 7 [Doc. 107].) While the deterrent aspect of fines may be apparent, "the mere presence of [a deterrent] purpose is insufficient to render a sanction criminal, as deterrence 'may serve civil as well as criminal goals.'" **Hudson**, 522 U.S. at 105 (quoting **U. S. v. Ursery**, 518 U.S. 267, 292 (1996)); **Students for Sensible Drug Policy Found.**, 523 F.3d at 901 (quoting **Hudson**, 522 U.S. at 105). As the Supreme Court has noted, "[a]ny number of governmental programs might deter crime without imposing punishment." **Smith**, 538 U.S. at 102. Without more, this factor weighs in favor of a finding

that the Ordinance and its penalty are civil in nature.

The fifth factor the Court may consider is "whether the behavior to which [the penalty] applies is already a crime." Hudson, 522 U.S. at 99 (internal quotation marks omitted) (quoting Kennedy, 372 U.S. at 168). Assuming that the violation of a red light is criminal, the fact that conduct for which the Ordinance's penalty is imposed "may also be criminal . . . is insufficient to render the money penalties . . . criminally punitive . . ." Id. at 105; Students for Sensible Drug Policy Found., 523 F.3d at 901 (quoting Hudson, 522 U.S. at 105); cf. Hendricks, 521 U.S. at 362 ("the fact that the [legislation] may be 'tied to criminal activity' is 'insufficient to render the [legislation] punitive. . . . Ursery, 518 U.S. . . . [at 292]"). Without more, this factor weighs in favor of a finding that the Ordinance and its penalty are civil in nature.

The sixth factor is "whether an alternative purpose to which it may rationally be connected is assignable for it." Hudson, 522 U.S. at 99 (quotation marks omitted) (quoting Kennedy, 372 U.S. at 168-69). This "is a '[m]ost significant' factor in [the] determination that the [legislation]'s effects are not punitive." Smith, 538 U.S. at 102 (first alteration in original) (quoting Ursery, 518 U.S. at 290). Importantly, public safety is a "legitimate nonpunitive purpose." Id. at 102-03.

Here, as the parties agreed, the City decided to implement a safety program designed to reduce the number of drivers running red lights "[i]n the interests of the public health, safety, and welfare of its citizens." (Defs.' Statem. Undisp. Mat. Facts ¶ 5 [Doc. 95].) More

specifically, the bills enacting the Red Light Camera Ordinance declare that the City determined that cars violating red lights "damage[] the public by endangering vehicle operators and pedestrians alike, by decreasing the efficiency of the traffic control and traffic flow efforts, and by increasing the number of serious accidents to which public safety agencies must respond at the expense of the taxpayers"; are "the cause of many vehicle collisions and numerous personal injuries each year in the City"; and "present a grave and serious risk to the health, safety, and welfare of the citizens of the City." (Defs.' Statem. of Undisp. Mat. Facts Supp. Joint Mot., Ex. A at 2 [Doc. 95-1] and Ex. D at 2 [Doc. 95-6].) The Ordinance, therefore, has a legitimate, non-punitive, public safety purpose.¹² Moreover, the use of red light cameras and related proceedings are rationally connected to the valid public safety purpose of reducing traffic accidents at traffic light intersections. This factor, then, weighs in favor of a determination the Ordinance and its penalty are civil in nature.

¹² Plaintiffs argue, based on information beyond the language and structure of the Ordinance and only available after enactment of the Ordinance, that a reduction of accidents at those City intersections having red light cameras has not actually occurred and there has been a "significant impact on the Defendants' revenue," or more specifically increased revenue, as a result of the red light cameras. (Plfs.' Br. Opp'n. Joint Mot. at 8 [Doc. 107]; Pls.' Statem. Disp. Mat. Facts in Opp'n. Defs.' Joint Mot. ¶¶ 1, 62 [Doc. 106].) To the extent the Court may consider this information, the information does not change the public safety purpose of the Ordinance or create a genuine issue regarding the Ordinance's purposes. Legislation "is not deemed punitive simply because it lacks a close or perfect fit with the nonpunitive aims it seeks to advance." Smith, 538 U.S. at 103. Any evidence of the effect the red light cameras may have had on the amount of accidents at traffic signal intersections or the amount of revenue in the City's coffers does not indicate the non-punitive, public safety purpose of the Ordinance was pretextual or a sham at the time the Ordinance was enacted. Cf. id. ("The imprecision [the plaintiffs] rely upon[, that the statute is not narrowly drawn to accomplish the public safety purpose] does not suggest that the [statute]'s nonpunitive [public safety] purpose is a 'sham or mere pretext.'" Hendricks, 521 U.S. at 371 ... (Kennedy, J., concurring).")

For the seventh factor, the Court considers whether the penalty seems excessive in relation to the alternative purpose. Hudson, 522 U.S. at 99-100. Plaintiffs argue that "imprisonment is excessive in relation to the purported public safety purpose" of the Ordinance. (Plfs.' Br. Opp'n. Joint Mot. at 8 [Doc.107].) The Court has concluded, however, that the only available penalty under the Red Light Camera Ordinance is the imposition of a fine, and the fine reportedly is \$94.50 (First Am. Compl., Exs. 2B, 2C, and 2D [Doc. 4-1 at 7-9]). The amount of the potential fine for violating a red light enforced through a camera is not excessive in relation to the public safety purpose of the Ordinance. This factor also weighs in favor of a determination that the Ordinance and its penalty are civil in nature.

Plaintiffs urge that a proceeding under the Ordinance is criminal in nature due to the fact that "the rules of criminal procedure apply, including the criminal standard of proof beyond a reasonable doubt." City of Webster Groves v. Erickson, 789 S.W.2d 824, 826 (Mo. Ct. App. 1990) (citation omitted). However, the fact that a proceeding under the Ordinance is "accompanied by procedural safeguards usually found in criminal trials," such as the requirement of proof beyond a reasonable doubt, does not alone "turn the[Ordinance] proceedings into criminal prosecutions requiring the full panoply of rights applicable there." Allen, 478 U.S. at 371 (concluding the availability of the right to proof beyond a reasonable doubt, among other constitutional rights in criminal cases, in a sexually dangerous persons civil commitment proceeding did not make such a proceeding criminal in nature). Because

the Court has concluded that all other factors properly considered to ascertain, as a matter of federal law, whether the Ordinance and its remedy are civil or criminal in nature favor a conclusion that the Ordinance and its remedy are civil in nature, the applicability of state criminal procedural rules to an Ordinance violation proceeding is not sufficient to change the nature of the Ordinance and its remedy from civil to criminal.¹³

The Court's conclusion that the Red Light Camera Ordinance and its penalty are civil in nature is further supported by dicta in Shavitz, *supra*. In Shavitz, after concluding the plaintiff lacked standing to pursue his constitutional due process challenges to the state statute and city ordinance regarding red light cameras, the United States District Court for the Middle District of North Carolina determined, in relevant part, that the statute and ordinance were civil in nature. Shavitz, 270 F. Supp.2d at 709-21. In particular, the Middle District of North Carolina found that the statute and ordinance expressly provided for civil proceedings and penalties, *id.* at 713-14; the monetary penalty imposed for a red light camera violation did not impose an affirmative restraint or disability, *id.* at 714; "monetary assessments can be imposed under both civil and criminal statutes and . . . are traditionally viewed as a form of civil remedy," *id.*; the absence of scienter weighed in favor of finding

¹³ Notably, Missouri case law supports a determination that an ordinance violation is civil in nature. See, e.g., Frech v. City of Columbia, 693 S.W.2d 813, 814 (Mo. 1985) (en banc) ("the violation of a municipal ordinance is a proceeding that is civil, rather than criminal, in nature. Kansas City v. Stricklin, 428 S.W.2d 721 (Mo. 1968) [(en banc)]"); City of Webster Groves, 789 S.W.2d at 826 ("even when an ordinance authorizes incarceration as a punishment, violation of the ordinance is not usually regarded as a crime").

the enforcement scheme civil rather than criminal, id. at 715; there is "some deterrent effect" in the assessment of a civil fine, although the primary purpose is safety, and this factor "cuts in favor of" the suggestion that the ordinance is criminal in nature, id.; the fact that another statutory scheme allows punishment of the same conduct as a criminal infraction does not transform the scheme from civil to criminal, especially when the civil penalties are in subsequently enacted legislation, id.; the primary purpose of the challenged ordinance and enabling statute "is to promote public safety" and the challenged provisions are "rationally connected to advancing this alternative purpose," so this factor weighs in favor of finding the challenged laws civil in nature, id. at 715-16; and "the \$50.00 civil penalty is not excessive in relation to the alternative purpose of promoting public safety," id. at 716. See Idris v. City of Chicago, No. 06 C 6085, 2008 WL 182248, *6 (N.D. Ill. Jan. 16, 2008) (rejecting various challenges to a red light camera ordinance having a \$90.00 fine, including a double jeopardy challenge after finding the penalty was civil rather than criminal), aff'd, 552 F.3d 564 (7th Cir. 2009); City of Knoxville v. Brown, 284 S.W.3d 330, 336-39 (Tenn. Ct. App. 2008) (rejecting various challenges to a red light camera ordinance having a \$50.00 penalty, including an ultra vires challenge after finding the proceeding was civil in nature); cf. Sevin v. Parish of Jefferson, 08-802, 2009 WL 1402332, at *4, *5, *6-10 and *11-13 (E.D. La. May 14, 2009) (noting "the classification of the [red light camera] ordinance [as civil or criminal] determines which procedures are constitutionally required," but finding it unnecessary to decide whether the challenged ordinance was civil or criminal in nature

because the defendants were entitled to judgment as a matter of law "irrespective of whether the ordinance is classified as civil or criminal"; then discussing the constitutional challenges to the red light camera ordinance as criminal in nature and as civil in nature); **State v. Dahl**, 87 P.3d 650, 652 n.6 (Or. 2004) (en banc) (noting the defendant did not argue an automated traffic enforcement offense for speeding was criminal in nature, in a case in which the defendant presented due process challenges to the statute's rebuttable presumption that the vehicle's owner was the driver).

Having considered the relevant factors, the Court concludes that Plaintiffs have not shown, much less by the clearest proof, either that the effects of the Ordinance and its penalty negate City's intention to create a civil Ordinance and remedy, or that there is a genuine issue of material fact regarding the intention to create a civil proceeding and remedy through the Red Light Camera Ordinance. Nor have Plaintiffs shown there is a genuine issue of material fact regarding whether or not the Ordinance and its penalty are civil in nature. The Ordinance and its remedy are civil in nature. Therefore, Plaintiffs' § 1983 claims, which rely on a determination that the Ordinance and its remedy are criminal in nature, lack merit. See **Agomo v. Fenty**, 916 A.2d 181, 193 (D.C. 2007) (noting that explicit code language made "[i]t . . . clear . . . that violations under the [Automated Traffic Enforcement] System impose only civil liability in the form of a modest fine, and thus analysis [of a due process challenge to the code's rebuttable presumption] under the rubrics of criminal law is inappropriate" (footnote omitted)).

Defendants are entitled as a matter of law to summary judgment in their favor on Plaintiffs' § 1983 claims, and Defendants' Joint Motion for summary judgment is granted with respect to those claims.

RICO Claims. Defendants argue they are entitled to entry of summary judgment in their favor on Plaintiffs' RICO claims because there is no enterprise and Defendants have not engaged in racketeering activity.

The only RICO claims remaining in this case are alleged substantive (Count I) and conspiracy (Count II) violations of RICO, 18 U.S.C. §§ 1962 and 1964¹⁴ (§§ 1962 and 1964), by ATS and by Police Chief, sued in his individual capacity only. (First Am. Compl. at 14-19 [Doc. 4]). The specific provision supporting Plaintiffs' substantive RICO claim is 18 U.S.C. § 1962(c), which makes it

unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

The only conspiracy provision in § 1962 is § 1962(d), which provides in relevant part that it is unlawful for any person to conspire to violate § 1962(c). Because Plaintiffs' RICO

¹⁴ In general, 18 U.S.C. § 1964 provides that the United States district courts have jurisdiction to prevent and restrain violations of 18 U.S.C. § 1962, 18 U.S.C. § 1964(a); the Attorney General may institute proceedings under the section, 18 U.S.C. § 1964(b); with exceptions not applicable here, "any person injured in his business or property by reason of a violation of section 1962" may sue and recover "threefold the damages [the party] sustains and the cost of the suit, including a reasonable attorney's fee," 18 U.S.C. § 1964(c); and a criminal RICO conviction estops the defendant from "denying the essential allegations of the criminal offense in any subsequent civil proceeding brought by the United States," 18 U.S.C. § 1964(d).

conspiracy claim is based on a conspiracy to violate § 1962(c), the conspiracy claim fails if the substantive claim under § 1962(c) fails. See Tal v. Hogan, 453 F.3d 1244, 1270 (10th Cir. 2006) ("[b]ecause Appellants have failed to allege a sufficient claim under subsections (b) or (c) [of 18 U.S.C. § 1962], their subsection (d) conspiracy claim fails as a matter of law"); Lum v. Bank of Am., 361 F.3d 217, 227 n.5 (3rd Cir. 2004) (noting the district court properly dismissed the RICO conspiracy claim under 18 U.S.C. § 1962(d) after correctly finding that the plaintiffs' substantive RICO claim under 18 U.S.C. § 1962(c) failed). Therefore, the Court will first address whether Plaintiffs' substantive claim under 18 U.S.C. § 1962(c) survives Defendants' Joint Motion.

To establish a violation of § 1962(c), Plaintiffs must show, in relevant part, "(1) the existence of an enterprise; (2) defendant's association with the enterprise; (3) defendant's participation in predicate acts of racketeering; and (4) defendant's actions constitute a pattern of racketeering activity." United HealthCare Corp. v. American Trade Ins. Co., 88 F.3d 563, 570 (8th Cir. 1996); accord Nitro Distrib., Inc. v. Alticor, 565 F.3d 417, 428 (8th Cir. 2009) ("A violation of § 1962(c) requires [a showing of] '(1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity.' Sedima, S.P.R.L. . . . , 473 U.S. [at] 496 . . ."). These elements "must be established as to each individual defendant." Craig Outdoor Adver., Inc. v. Viacom Outdoor, Inc., 528 F.3d 1001, 1028 (8th Cir. 2008), *cert. denied*, 129 S.Ct. 1000 (2009). If one element of a RICO claim is not established, the Court need not address the other elements. Dahlgren, 533 F.3d at 692; see Craig Outdoor Adver.,

Inc., 528 F.3d at 1028 ("[f]ailure to present sufficient evidence on any one element of a RICO claim means the entire claim fails").

For their RICO claims, Plaintiffs allege that ATS and Police Chief committed extortion and/or fraud by using the mail to mail the Notices of Violation and obtaining or attempting to obtain money from Plaintiffs through the collection of unlawful fines. (First Am. Compl. ¶¶ 48(a)-48(c), 49 [Doc. 4].) In relevant part, Plaintiffs allege the fines, and enforcement system, are unlawful because they conflict with Mo. Rev. Stat. "§ 302.302 by guaranteeing that no points will be assessed for the moving violation if the required fine is paid"; because they require "alleged violators to prove their innocence rather than requiring the City to prove the existence of guilt"; and they "threaten[] an arrest warrant will be issued if the ticket is not resolved knowing that if a trial is requested that the case will be dismissed since actual criminal culpability cannot be proven on the evidence generated by the Red Light Camera System." (Id. ¶ 48d [Doc. 4].) ATS allegedly "participated in this scheme by developing and enacting the scheme to defraud Plaintiffs" (Id. ¶ 49(b).) Police Chief allegedly "participated in this scheme by either directing his officers to issue Notices of Violations or by failing to train, instruct and supervise his officers in the proper legal standard required to . . . issue Notices of Violations to Plaintiffs" (Id. ¶ 49(c).) Therefore, Plaintiffs base their RICO claims against ATS and Police Chief, in his individual capacity only, on allegations those Defendants engaged in mail fraud and extortion in the enforcement of the Red Light Camera Ordinance.

RICO defines "racketeering activity" as including certain specified crimes, including extortion and mail fraud. 18 U.S.C. § 1961(1). Therefore, mail fraud and extortion may be predicate acts sufficient to support RICO claims. Blue Dane Simmental Corp. v. American Simmental Ass'n, 178 F.3d 1035, 1041 (8th Cir. 1999) (mail fraud may constitute a predicate act for RICO); I. S. Joseph Co. v. Lauritzen A/S, 751 F.2d 265 (8th Cir. 1984) (discussing extortion as "racketeering" for a RICO claim). Extortion is "the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear or under color of official right." 18 U.S.C. § 1951(b)(2). Mail fraud occurs when a person "devises a 'scheme or artifice to defraud' and uses the mails 'for the purpose of executing such scheme or artifice' 18 U.S.C. § 1341." Schoedinger v. United Healthcare of the Midwest, Inc., 557 F.3d 872, 876 (8th Cir. 2009).

Here, the alleged mail fraud and extortion arise out of the implementation of the Ordinance and the Agreement between ATS and the City, according to their terms, and the enforcement of the Ordinance in accordance with its terms. There is no evidence that, in implementing and enforcing the Ordinance and Agreement, either ATS or Police Chief engaged in conduct beyond that allowed by the Red Light Camera Ordinance and the Agreement. There is no evidence that either the Ordinance or the Agreement arose out of fraudulent, deceptive, or extortionate conduct. There is no evidence that, in the implementation and enforcement of the Ordinance or Agreement either ATS or Police Chief acted wrongfully or unlawfully; acted to obtain money through false pretenses; had the intent

to defraud; used force, violence, or fear to obtain money from Plaintiffs; or threatened to use force, violence, or fear to obtain money from Plaintiffs. There is no evidence that Plaintiffs did not own the vehicles that were the subject of the Notices of Violation or that the violations did not occur as reported. Additionally, there is no evidence that ATS or Police Chief acted with reckless disregard for whether the statements in the Notices of Violation were true.¹⁵ See Diamonds Plus, Inc. v. Kolber, 960 F.2d 765, 768-69 (8th Cir. 1992) (noting for mail fraud, intent to defraud may "be demonstrated when the defendant recklessly disregards whether his representations are true"). Plaintiffs have not provided any evidence to raise a genuine issue of material fact about whether ATS or Police Chief engaged in racketeering activity or predicate acts of mail fraud or extortion in the implementation and enforcement of the Ordinance or the implementation of the Agreement.

The predicate acts of racketeering allegedly supporting Plaintiffs' RICO claims are

¹⁵ In support of their position that Defendants' acted with reckless disregard and knowledge of the wrongfulness of their conduct, Plaintiffs point to a memorandum of a law firm's opinion, dated May 24, 2005, that ATS reportedly received and provided to City suggesting that a municipality could not, as part of a red light camera ordinance, "circumvent the Missouri Director of Revenue's point system for the suspension and revocation of motor vehicle licenses." (Pls.' Statem. Disp. Mat. Facts Opp'n Joint Mot. ¶¶ 45-49 and Ex. 12 at 2 [Doc. 106 and Doc. 106-1 at 35].) The Court does not find this presents a genuine issue of fact regarding the propriety or lawfulness of Defendants' alleged racketeering activity or predicate acts in sending Notices of Violation after the Ordinance was enacted, because the opinion was dated before the Red Light Camera Ordinance was first enacted and approximately three years before Plaintiffs received their Notices of Violation. More importantly, Plaintiffs rely on that opinion as showing an intent to defraud because Defendants knew "representations that no points would be assessed against an owner's driver[s] license if [the owner] simply paid the fee imposed" were improper based on that opinion. (Plaintiffs' Br. Opp'n Joint Mot. at 17-18 [Doc. 107].) The Notices of Violation sent to Plaintiffs do not, however, mention or make any representations about the assessment of points against a driver's license. (See, e.g., First Am. Compl., Ex. 2 [Doc. 4-1 at 5-6].)

based solely on Plaintiffs' position that the terms of the Ordinance and its enforcement are invalid as violating state law or federal constitutional law, therefore the fines sought through and proceedings resulting from the mailed Notices of Violation are fraudulent and extortionate. The Court concludes a RICO claim does not encompass such allegations; otherwise, a RICO claim would exist in any instance when a party challenged the validity of a legislative provision and the implementation of that provision. As the United States District Court for the District of Colorado concluded in a RICO case: "Mail fraud is not committed simply by sending notices through the mail, even if the recipient . . . perceives them as fraudulent based upon his feelings about the . . . state . . . authorities." Tassio v. Mullarkey, No. 07-cv-02167-WYD-KMT, 2008 WL 3166149, at *18 (D. Colo. Aug. 5, 2008) (discussing a RICO claim arising out of the mailing of tax deficiency and related notices to the plaintiff). The mailing of notices under the circumstances of this case also does not constitute racketeering activity based on extortion, because nothing in the Notices of Violation is "wrongful," except to the extent Plaintiffs challenge the validity of the Ordinance and its implementation.

Because there is no genuine issue of material fact regarding Defendants' racketeering activity or predicate acts necessary to Plaintiffs' substantive RICO claim under 18 U.S.C. § 1962(c), and no racketeering activity or predicate acts by ATS or Police Chief exist, Defendants are entitled to summary judgment as a matter of law on that RICO claim and the related RICO conspiracy claim under 18 U.S.C. 1962(d). See Demerath Land Co. v. Sparr,

48 F.3d 353, 355 (8th Cir. 1995) (summary judgment was properly entered in RICO case where the party opposing the motion "adduced no evidence whatsoever of the requisite intent to defraud"). Accordingly, Defendants' Joint Motion is granted with respect to Plaintiffs' RICO claims.

Supplemental jurisdiction over state claims. Finally, Defendants urge the Court to decline to exercise supplemental jurisdiction¹⁶ over Plaintiffs' state law claims for abuse of process, fraudulent misrepresentation, and civil conspiracy because the issues are unique to Missouri law and should be litigated and decided in Missouri state court. (Defs.' Mem. Supp. Joint Mot. at 26 [Doc. 96]; Defs.' Joint Reply Supp. Joint Mot. at 15 [Doc. 114].)

Having dismissed all the federal claims over which it has original jurisdiction and finding the state claims raise novel issues of state law, the Court declines to exercise supplemental jurisdiction over Plaintiffs' remaining state law claims. 28 U.S.C. § 1367(c). Therefore, Defendants' Joint Motion will also be granted with respect to Plaintiffs' state law claims only insofar as those claims are dismissed without prejudice.

Because the federal claims are dismissed with prejudice and the state law claims are dismissed without prejudice, the Separate Motion is denied as moot.

¹⁶ This Court lacks diversity jurisdiction over Plaintiffs' state law claims. A federal district court has diversity jurisdiction where the amount in controversy is greater than \$75,000 and there is complete diversity of citizenship. 28 U.S.C. § 1332(a); Capitol Indem. Corp. v. Russellville Steel Co., 367 F.3d 831, 835 (8th Cir. 2004). "Complete diversity of citizenship exists where no defendants hold citizenship in a state where any plaintiff holds citizenship." Capitol Indem. Corp., 367 F.3d at 835. In this case, all Plaintiffs and most Defendants are citizens of Missouri. Therefore, complete diversity of citizenship does not exist.

Accordingly, for the foregoing reasons,

IT IS HEREBY ORDERED that Defendants' Joint Motion for Summary Judgment [Doc. 94] is **GRANTED**.

IT IS HEREBY FURTHER ORDERED that the Separate Motion for Summary Judgment filed by all Defendants, except ATS, [Doc. 99] is **DENIED as moot**.

IT IS HEREBY FURTHER ORDERED that Plaintiffs' state law claims for abuse of process (Count VII), fraudulent misrepresentation (Count VIII), and civil conspiracy (Count IX) are **DISMISSED WITHOUT PREJUDICE**.

A separate Judgment shall be entered in accordance with this Order.

/s/ Thomas C. Mummert, III
THOMAS C. MUMMERT, III
UNITED STATES MAGISTRATE JUDGE

Dated this 23rd day of July, 2009.

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
June 18, 2008 Session

CITY OF KNOXVILLE v. RONALD G. BROWN

**Appeal from the Circuit Court for Knox County
No. 3-649-06 Wheeler Rosenbalm, Judge**

No. E2007-01906-COA-R3-CV - FILED JULY 30, 2008

Ronald G. Brown ("Defendant") is the registered owner of a vehicle which was photographed running a red light in Knoxville, Tennessee. The intersection where this occurred was one of the intersections monitored by Knoxville's red light camera enforcement program. Defendant was mailed a \$50 citation for the violation. Defendant, proceeding pro se, challenged the validity of the Knoxville City Ordinance establishing the red light camera enforcement program. Defendant claimed that the ordinance was an ultra vires act of the City of Knoxville's police power. Defendant also claimed that the ordinance violated due process and equal protection of the laws. The Trial Court upheld the validity of the ordinance. We affirm.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the
Circuit Court Affirmed; Case Remanded**

D. MICHAEL SWINEY, J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and CHARLES D. SUSANO, JR., J., joined.

Ronald G. Brown, pro se Appellant.

Ronald E. Mills, Deputy Law Director, Knoxville, Tennessee, for the Appellee City of Knoxville.

OPINION

Background

This appeal involves a challenge to the validity of the City of Knoxville's red light camera enforcement system. The underlying facts in this case were stipulated below. That stipulation provides as follows:

1. That Defendant Ronald G. Brown was the registered owner of a Chevrolet motor vehicle bearing Tennessee license number 396 BBN on or about September 18, 2006.

2. That on or about September 18, 2006 at approximately 2:49 p.m. the Chevrolet motor vehicle bearing Tennessee license plate number 396 BBN was driven in a generally westerly direction on Kingston Pike across the stop bar for westbound traffic and into and through the intersection with Alcoa Highway while the traffic signal controlling westbound traffic was displaying an illuminated red light.

3. That at the time said Chevrolet motor vehicle crossed the stop bar for westbound traffic on Kingston Pike and proceeded into and through the intersection with Alcoa Highway its speed was approximately twenty-nine (29) miles per hour.

4. That the act of driving said motor vehicle in a generally westerly direction on Kingston Pike across the stop bar for westbound traffic and into and through the intersection with Alcoa Highway while the traffic signal controlling westbound traffic was displaying an illuminated red light violated Section 17-506(a)(3)(a) of the Code of Ordinances of the City of Knoxville.

5. That ownership of a motor vehicle entering an intersection against an illuminated red light, in violation of Section 17-506(a)(3)(a), renders the registered owner responsible for the unlawful use of that automobile pursuant to Section 17-210 of the Code of Ordinances of the City of Knoxville, subject to certain exceptions noted in the ordinance.

6. That the attached Exhibit A is a true and exact copy of the citation issued to Defendant Ronald G. Brown alleging liability under Section 17-210 of the Code of Ordinances of the City of Knoxville.

7. That each of the photographic images attached as Exhibits B, C and D are true and accurate depictions of the Chevrolet motor vehicle bearing Tennessee license plate 396 BBN proceeding in a generally westerly direction on Kingston Pike at or near the intersection with Alcoa Highway on or about September 18, 2006 at approximately 2:49 p.m., and of the status of the traffic signal controlling that intersection.

8. That the video images contained in the disk attached as exhibit E are a true and accurate depiction of the Chevrolet motor vehicle bearing Tennessee license number 396 BBN proceeding in a generally westerly direction on Kingston Pike at or near the intersection with Alcoa Highway on or about September 18, 2006 at approximately 2:49 p.m., and of the status of the traffic signal controlling that intersection.

9. That the attached Exhibit F is a true and correct copy of Sections ... 17-210 and 17-506 of the Code of Ordinances of the City of Knoxville.

After receiving the citation, Defendant, proceeding pro se, filed a "Motion to Declare Knoxville City Code § 17-210(c) an Ultra Vires Act of Police Power."¹ Defendant argued, among other things, that City Code § 17-210(c) was an "ultra vires act of police power" because: (1) the ordinance violates procedural and substantive due process rights because it holds Defendant liable for the violation, regardless of who committed the act, unless Defendant identifies the actual driver; and (2) the ordinance violates equal protection because it affords a greater degree of protection to the guilty driver than the innocent vehicle owner.

Following a hearing on Defendant's motion, the Trial Court issued an order stating as follows:

This cause came to be heard on the 29th day of June, 2007 on the Motion of the Defendant to declare Knoxville City Code § 17-210(c) an *ultra vires* act of police power. Upon review of the memoranda submitted by the parties, and upon hearing the argument of the Defendant and counsel for the City of Knoxville, it is the opinion of this Court that the City of Knoxville possessed sufficient authority, through its general police powers and through authority granted by the General Assembly, to enact City Code § 17-210,

¹ The "Motion to Declare Knoxville City Code § 17-210(c) an Ultra Vires Act of Police Power" was filed in the Knox County Circuit Court, on appeal from a judgment of the Knoxville Municipal Court. Although the Municipal Court's judgment is not in the record, we can safely assume that Defendant was found to have violated the City Code.

authorizing the City of Knoxville's red light photo enforcement program and providing for liability of the registered owner of a vehicle for use of the vehicle in violation of the City Code. The Court therefore finds that Defendant's Motion is not well taken, in that City Code § 17-210 is a valid exercise of the City of Knoxville's police power....

After the Trial Court determined that Knoxville City Code § 17-210 was a valid exercise of police power, the Trial Court concluded in a separate order that "under the stipulated facts Defendant Ronald G. Brown is liable under Section 17-210 of the Code of Ordinances of the City of Knoxville." The Trial Court then imposed a \$50 fine.

Defendant appeals and raises the following issue, which we quote: "Did the City of Knoxville possess the authority to enact Knoxville City Code § 17-210 as it was written?"

Discussion

Defendant's various challenges to the validity of Knoxville City Code § 17-210 present questions of law. With respect to legal issues, our review is conducted "under a pure *de novo* standard of review, according no deference to the conclusions of law made by the lower courts." *Southern Constructors, Inc. v. Loudon County Bd. Of Educ.*, 58 S.W.3d 706, 710 (Tenn. 2001).

The Municipal Court Reform Act of 2004, codified at Tenn. Code Ann. § 16-18-301, *et seq.*, sets forth the jurisdiction of municipal courts. In relevant part, the statute provides:

16-18-302. Jurisdiction of municipal courts.—(a) Notwithstanding any provision of law to the contrary:

(1) A municipal court possesses jurisdiction in and over cases:

(A) For violation of the laws and ordinances of the municipality; or

(B) Arising under the laws and ordinances of the municipality; and

(2) A municipal court also possesses jurisdiction to enforce any municipal law or ordinance that mirrors, substantially duplicates or incorporates by cross-reference the language of a state criminal statute, if and only if the state criminal statute mirrored, duplicated or cross-referenced is a Class C misdemeanor and the maximum penalty

prescribed by municipal law or ordinance is a civil fine not in excess of fifty dollars (\$50.00).

Tenn. Code Ann. § 16-18-302(a) (Supp. 2007).

Knoxville City Code § 17-210 provides, in relevant part, as follows:

(c) *Offense.*

- (1) It shall be unlawful for a vehicle to cross the stop line at a system location per subsection 17-506(a)(3)(a), or for a vehicle to violate any other traffic regulation specified in chapter 17 (motor vehicles and traffic) of the Code of Ordinances of the city.
- (2) A person who receives a citation under subsection (c) may:
 - a. Pay the civil penalty, in accordance with instructions on the citation, directly to the city court; or
 - b. Elect to contest the citation for the alleged violation.
- (3) The owner of a vehicle shall be responsible for a violation under this section, except when he can provide evidence that the vehicle was in the care, custody, or control of another person at the time of the violation, as described in subsection (c)(4) of this section, in which circumstance the person who had the care, custody, and control of the vehicle at the time of the violation shall be responsible.
- (4) Notwithstanding subsection (c)(3) of this section, the owner of the vehicle shall not be responsible for the violation if, on the designated court date, he furnishes the city court:
 - a. An affidavit by him stating the name and address of the person or entity who leased, rented, or otherwise had the care, custody, and control of the vehicle at the time of the violation; or
 - b. An affidavit by him stating that, at the time of the violation, the vehicle involved was stolen or was in the care, custody, or control of some person who did not have his permission to use the vehicle.

(d) *Penalty*

- (1) Any violation of subsection (c) of this section shall subject the responsible person or entity to a civil penalty of \$50, without assessment of court costs or fees. Failure to pay the civil penalty or appear in court to contest the citation on the designated date shall subject the responsible person or entity to assessment of court costs and fees as set forth in this chapter and chapter 8 of the Code of Ordinances. The city may establish procedures for the trial or civil violators, and the collection of civil penalties and may enforce the penalties by a civil action in the nature of a debt.
- (2) A violation for which a civil penalty is imposed under this section shall not be considered a moving violation and may not be recorded by the police department or the state department of safety on the driving record of the owner of the vehicle and may not be considered in the provision of motor vehicle insurance coverage.

Tenn. Code Ann. § 55-8-110 (Supp. 2007) addresses traffic control signals, including what is required when a motorist is at or approaching a red light. According to Tenn. Code Ann. § 55-8-110(a)(3)(A):

(3) Red alone or "Stop":

(A) Vehicular traffic facing the signal shall stop before entering the crosswalk on the near side of the intersection or, if none, then before entering the intersection and shall remain standing until green or "Go" is shown alone. A right turn on a red signal shall be permitted at all intersections within the state; provided, that the prospective turning car shall come to a full and complete stop before turning and that the turning car shall yield the right-of-way to pedestrians and cross traffic traveling in accordance with their traffic signal. However, such turn will not endanger other traffic lawfully using the intersection. A right turn on red shall be permitted at all intersections, except those that are clearly marked by a "No Turns On Red" sign, which may be erected by the responsible municipal or

county governments at intersections which they decide require no right turns on red in the interest of traffic safety....²

The General Assembly has specifically provided that municipalities may adopt various traffic regulations, including those set forth in Tenn. Code Ann. § 55-8-110. Tenn. Code Ann. § 55-10-307(a) (Supp. 2007) provides, in relevant part, as follows:

55-10-307. Adoption of statutes and regulations by municipalities and exceptions. – (a) Any incorporated municipality may by ordinance adopt, by reference, any of the appropriate provisions of §§ 55-8-101 – 55-8-180, 55-10-101 – 55-10-310, 55-50-301, 55-50-302, 55-50-304, 55-50-305, 55-50-311, 55-10-312, and 55-12-139, and may by ordinance provide additional regulations for the operation of vehicles within the municipality, which shall not be in conflict with the provisions of the listed sections....

Pursuant to Tenn. Code Ann. § 55-10-307(a), the City of Knoxville had adopted an ordinance regulating motorists approaching or at a red light. Knoxville City Code § 17-506(a)(3) provides as follows:

(3) Red alone or "Stop":

- a. Vehicular traffic facing the signal shall stop before entering the crosswalk on the near side of the intersection or, if none, then before entering the intersection, and shall remain standing until green or "go" is shown alone; provided, however, that a right turn on a red signal shall be permitted at all intersections within the city provided that the prospective turning car comes to a full and complete stop before turning and that the turning car shall yield the right-of-way to pedestrians and cross traffic traveling in accordance with their traffic signal. However, such turn will not endanger other traffic lawfully using the intersection. A right turn on red shall be permitted at all intersections, except those that are clearly marked by a "no turns on red" sign, which may be erected by the city at intersections which the city decides require no right turns on red in the interest of traffic safety....

There is no doubt that Knoxville City Code § 17-506(a)(3) substantially mirrors Tenn. Code Ann. § 55-8-110(a)(3)(A) and the City of Knoxville had the authority to enact § 17-506(a)(3).

² For purposes of Tenn. Code Ann. § 16-18-302, *supra*, a violation of Tenn. Code Ann. § 55-8-110 is a Class C misdemeanor. See Tenn. Code Ann. § 55-8-109 (2004).

The next question then become whether the City of Knoxville had authority to enact City Code § 17-210, which is one of the methods utilized by the City to enforce § 17-506(a)(3).

In July of 2007, the General Assembly amended Tenn. Code Ann. § 55-8-110 by adding subsection (d). This subsection provided that: "A traffic citation that is based on evidence obtained from a surveillance camera that has been installed to enforce or monitor traffic violations shall be for a nonmoving traffic violation." Subsection (d) was in effect for only one year. Effective July of 2008, the General Assembly deleted subsection (d) and enacted Tenn. Code Ann. § 55-8-198. This new statute provides as follows:

55-8-198. - (a) A traffic citation that is based solely upon evidence obtained from a surveillance camera that has been installed to enforce or monitor traffic violations shall be considered a nonmoving traffic violation.

(b) An employee of the applicable law enforcement office shall review video evidence from a traffic light signal monitoring system and make a determination as to whether a violation has occurred. If a determination is made that a violation has occurred, a notice of violation or a citation shall be sent by first class mail to the registered owner of the vehicle that was captured by the traffic light signal monitoring system. A notice of violation or citation shall allow for payment of such traffic violation or citation within thirty (30) days of the mailing of such notice. No additional penalty or other costs shall be assessed for non-payment of a traffic violation or citation that is based solely on evidence obtained from a surveillance camera installed to enforce or monitor traffic violations, unless a second notice is sent by first class mail to the registered owner of the motor vehicle and such second notice provides for an additional thirty (30) days for payment of such violation or citation.

(c) The following vehicles are exempt from receiving a notice of violation:

- (1) Emergency vehicles with active emergency lights;
- (2) Vehicles moving through the intersection to avoid or clear the way for a marked emergency vehicle;
- (3) Vehicles under police escort; and
- (4) Vehicles in a funeral procession.

(d)(1) Except as otherwise provided in this subsection, the registered owner of the motor vehicle shall be responsible for payment of any notice of violation or citation issued as the result of a traffic light monitoring system.

(2) An owner of a vehicle shall not be responsible for the violation if, on or before the designated court date, such owner furnishes the court an affidavit stating the name and address of the person or entity that leased, rented or otherwise had care, custody or control of the motor vehicle at the time of the violation.

(3) If a motor vehicle or its plates were stolen at the time of the alleged violation, the registered owner must provide an affidavit denying such owner was an operator and provide a certified copy of the police report reflecting such theft.

(4) An affidavit alleging theft of a motor vehicle or its plates must be provided by the registered owner of a vehicle receiving a notice of violation within thirty (30) days of the mailing date of the notice of violation.

Tenn. Code Ann. § 55-8-198 (2008).

Although not directly on point because Tenn. Code Ann. § 55-8-110(d) (repealed) and Tenn. Code Ann. § 55-8-198 (2008) became effective after Defendant received the citation, these statutes nevertheless are helpful. Knoxville City Code § 17-210 certainly is consistent with Tenn. Code Ann. § 55-8-198. Likewise, Tenn. Code Ann. § 55-8-198 indicates that red light enforcement cameras can be utilized by “applicable law enforcement office[s].” Municipalities are not exempted from this and would be included as law enforcement offices. Knoxville City Code § 17-210 also is consistent with Tenn. Code Ann. § 55-8-198. Even though Tenn. Code Ann. § 55-8-198 was not in existence when Knoxville City Code § 17-210 was enacted, Defendant has not provided this Court with anything to suggest that Knoxville City Code § 17-210 was in any way inconsistent or in conflict with any state statute, even before Tenn. Code Ann. §§ 55-8-110(d) (repealed) and 55-8-198 were passed. *See* Tenn. Code Ann. § 55-10-307(a) (“Any incorporated municipality may ... by ordinance provide additional regulations for the operation of vehicles within the municipality, which shall not be in conflict with the provisions of the listed sections....”).

Defendant challenges Knoxville City Code § 17-210 by claiming that the ordinance imposes a criminal fine, as opposed to a civil fine. Defendant claims that because the fine is a criminal fine, City Code § 17-210 it is an ultra vires act.

As to whether the fine imposed by City Code § 17-210 is a criminal fine rendering the ordinance invalid, as suggested by Defendant, we turn to *City of Chattanooga v. Davis*, 54 S.W.3d 248 (Tenn. 2001). One of the issues in *Davis* was “whether a monetary assessment imposed for the violation of a municipal ordinance is subject to the provisions of Article VI, section 14 of the Tennessee Constitution.”³ *Id.* at 257. In analyzing this issue, the Supreme Court explained that at the time the Tennessee Constitution was drafted, the term “fine” was “understood to mean ‘a payment to a sovereign as punishment for some offense.’” *Id.* at 259 (quoting *Browning-Ferris Indus. of Vt., Inc. v. Kelco Disposal*, 492 U.S. 257, 265, 109 S.Ct. 2909, 106 L.Ed.2d 219 (1989)). The Court went on to explain that Article VI, section 14 does not apply to fines greater than \$50 that are not punitive in nature. *Id.*

An important aspect of the *Davis* opinion is the Court’s explanation that a fine in a “civil” proceeding may implicate constitutional protections, depending on the nature of the fine. This is so regardless of whether the fine is formally called a “civil” fine by the legislation. According to *Davis*:

Although the intended character of the proceeding may be relevant to the nature of a sanction imposed in that proceeding, the *O'Dell* [*v. City of Knoxville*, 388 S.W.2d 150 (Tenn. Ct. App. 1964)] Court was plainly misguided to the extent that it believed a court could not impose a punitive sanction in a “civil action.” As the United States Supreme Court has acknowledged, “The notion of punishment, as we commonly understand it, cuts across the division between the civil and the criminal law. It is commonly understood that civil proceedings may advance punitive as well as remedial goals, and, conversely, that both punitive and remedial goals may be served by criminal penalties.” *Austin v. United States*, 509 U.S. 602, 610, 113 S.Ct. 2801, 125 L.Ed.2d 488 (1993) (citations and quotations omitted). Moreover, *O'Dell*’s rationale has been substantially, if not entirely, abrogated by our recognition that civil proceedings may impose sanctions that are “so punitive in form and effect” as to trigger constitutional protections. See *Stuart v. State Dept. of Safety*, 963 S.W.2d 28, 33 (Tenn. 1998). Indeed, in the specific context of a “civil” proceeding for a municipal ordinance violation, this Court has held that the imposition of a pecuniary sanction triggers the protections of the double jeopardy clause to prevent a second “punishment” in the state courts for the same offense. See *Miles*, 524

³ Article VI, section 14 of the Tennessee Constitution, commonly referred to as the Fifty-Dollar Fines Clause, provides that:

No fine shall be laid on any citizen of this State that shall exceed fifty dollars, unless it shall be assessed by a jury of his peers, who shall assess the fine at the time they find the fact, if they think the fine should be more than fifty dollars.

S.W.2d at 660 (“We hold that the imposition of a *fine* is punishment.” (emphasis in original)).

When examined in this light, it is clear that *O'Dell* does not represent an accurate statement of the law regarding application of the Fifty-Dollar Fines Clause. Therefore, to the extent that *O'Dell* compels the conclusion that proceedings involving municipal ordinance violations are outside the scope of Article VI, section 14, it is expressly overruled. Because Article VI, section 14 is concerned with the punitive purpose or effect of the sanctions imposed, the proper inquiry must be whether, despite the primary character of the proceeding, the purpose or effect of the monetary assessment is to further the goals of punishment. Accordingly, when analyzing issues touching upon the protections of Article VI, section 14, we will favor the substance of the sanction over its form, and we will not permit the language used to describe the particular sanction to govern the constitutional analysis. See *State v. Martin*, 940 S.W.2d 567, 570 (Tenn. 1997). We also recognize that a “fine” within the meaning of Article VI, section 14 may be imposed in a proceeding that has been traditionally considered to be civil in nature, and although the nature of the proceeding in which the assessment is imposed may be relevant to some aspects of the inquiry, it cannot simply be the sole or determinative factor.

Davis, 54 S.W.3d at 261, 262.

The Court in *Davis* then adopted the following test to determine if a monetary sanction imposed by a municipal ordinance was subject to the limitation of Article VI, section 14:

[W]e hold that a monetary sanction imposed for a municipal ordinance violation falls within the scope of Article VI, section 14 when: (1) the legislative body creating the sanction primarily intended that the sanction punish the offender for the violation of an ordinance; or (2) despite evidence of remedial intent, the monetary sanction is shown by the “clearest proof” to be so punitive in its actual purpose or effect that it cannot legitimately be viewed as remedial in nature.

Davis, 54 S.W.3d at 264.

Because the fine in the present case was not more than \$50, there is no issue as to whether Article VI, section 14 of the Tennessee Constitution is implicated. Thus, *Davis* is not directly on point. Having said that, we nevertheless believe *Davis* is instructive in resolving whether

the \$50 fine associated with Knoxville City Code § 17-210 is, as Defendant claims, a “criminal fine” which has been cloaked as a civil fine by the City of Knoxville. We conclude that the fine imposed by § 17-210 is a civil fine for purposes of establishing the Knoxville Municipal Court’s jurisdiction pursuant to Tenn. Code Ann. § 16-18-302. We likewise conclude that the fine is a civil fine for procedural and appellate issues. However, we are unable to find any remedial purpose to the fine imposed by § 17-210. *See Town of Nolensville v. King*, 151 S.W.3d 427, 433 (Tenn. 2004)(“Primarily remedial sanctions, such as to cover the cost of clean-up, reimburse administrative costs, or to compensate for actual loss may all be imposed in greater amounts [than \$50] pursuant to authority granted by statute.”). The clear intent of the ordinance is to punish the registered owner of the vehicle and to deter similar conduct in the future. Presumably, the ordinance is intended to deter the registered owner from running a red light or loaning the vehicle to persons who run red lights. We, therefore, conclude that while the proceeding in the present case is “traditionally considered to be civil in nature,” because the fine imposed is intended to be punitive and a deterrent, constitutional protections are triggered.

Even though constitutional protections are triggered by the fine imposed by City Code § 17-210, we nevertheless conclude that the proceeding is civil in nature and, in accordance with the statutes quoted above, well within the police power of the City of Knoxville. Therefore, we reject Defendant’s argument that City Code § 17-210 is ultra vires and affirm the Trial Court’s judgment on this issue.

We next address Defendant’s argument that City Code § 17-210 violates Defendant’s due process rights. Defendant argues that City Code § 17-210 essentially creates an impermissible rebuttable presumption of guilt against the owner of a vehicle, which can be rebutted by the owner setting forth who actually was in control of the vehicle at the time the vehicle was used to run a red light. We disagree with this characterization. What Defendant fails to acknowledge is that City Code § 17-210 makes the owner of the vehicle responsible for a red light violation, regardless of who was driving the vehicle. At all times the City has the burden of proving every element of its case. This is so regardless of who was driving the vehicle. The City Code merely permits the responsible vehicle owner to shift the responsibility for the violation to the actual driver of the vehicle in certain circumstances. This does not mean that the owner of the vehicle was not in violation of the City Code. Since the City at all times must establish the necessary elements of its case by the requisite burden of proof, we reject Defendant’s argument that City Code § 17-210 violates his due process rights.

Defendant likewise argues that City Code § 17-210 violates his fifth amendment privilege against self-incrimination. According to Defendant, the City Code requires him to violate his fifth amendment privilege by forcing him to establish that someone else was driving his vehicle. Again, this misses the point. City Code § 17-210 does not make the driver of the vehicle liable. Rather, it is the owner of the vehicle who is responsible for a red light violation, regardless of who actually was driving. The City must prove its case regardless of whether Defendant testifies or files an affidavit, etc. Simply because vehicle owners are permitted to shift liability by establishing

someone else was in control of their vehicle at the time of the violation does not amount to a fifth amendment violation.⁴

Defendant's final argument is his claim that City Code § 17-210 violates equal protection because the City Code requires a citation be mailed to the vehicle owner instead of the "guilty party." Again, we emphasize that pursuant to the City Code, it is the vehicle owner who is responsible for the violation. Therefore, when a red light violation occurs, the "guilty party" is the vehicle owner, who may or may not be driving the vehicle at the time of the violation. We reject Defendant's claim that the mailing of a citation to the vehicle's registered owner violates equal protection.

After considering all of the various arguments raised by Defendant, we affirm the Trial Court's judgment sustaining the validity of Knoxville City Code § 17-210.⁵ In light of our decision upholding Knoxville City Code § 17-210 and because Defendant does not claim there was insufficient proof to establish a violation of the City Code, we affirm the Trial Court's judgment in all respects.

Conclusion

The judgment of the Trial Court is affirmed and this cause is remanded to the Trial Court for collection of the costs below. Costs on appeal are taxed to the Appellant, Ronald G. Brown, and his surety, if any.

D. MICHAEL SWINEY, JUDGE

⁴ Because we conclude there is no fifth amendment violation, we need not decide whether the fifth amendment privilege is one of the constitutional provisions that are implicated by a civil penalty which has as its main purpose a deterrent or punishment effect.

⁵ *Idris v. City of Chicago*, No. 06 C 6085, 2008 WL 182248 (N.D. Ill. 2008) involved virtually identical challenges to the City of Chicago's red light camera enforcement system. The ordinance at issue in *Idris* imposed a \$90 fine on the owner of the vehicle. Unlike Knoxville's ordinance, the ordinance for Chicago did not allow the vehicle's owner to shift liability if the owner was able to prove he or she was not actually driving the vehicle. The only exception involved automobiles that were leased from a car dealership. The United States District Court for the Northern District of Illinois rejected claims that Chicago's ordinance violated substantive and procedural due process. The District Court also rejected the plaintiffs' claim that the ordinance violated equal protection.

IN THE SUPREME COURT OF IOWA

No. 33 / 06-1753

Filed August 29, 2008

CITY OF DAVENPORT,

Appellee,

vs.

THOMAS J. SEYMOUR,

Appellant.

Appeal from the Iowa District Court for Scott County, Mary E. Howes, District Associate Judge.

Defendant challenges the legality of the Davenport Automated Traffic Enforcement ordinance. **AFFIRMED.**

Michael J. McCarthy of McCarthy, Lammers & Hines, Davenport, and Randall C. Wilson of ACLU of Iowa Foundation, Inc., Des Moines, for appellant.

Christopher S. Jackson, Davenport, for appellee.

APPEL, Justice.

In this case, the court must decide whether traffic regulations and enforcement mechanisms contained in Iowa Code chapter 321 and other code provisions were intended by the legislature to prohibit a municipality from establishing an automatic traffic enforcement system through which the city levels civil penalties against the owners of vehicles that fail to obey red light traffic signals or violate speed laws. Applying our well-established method of preemption analysis, we hold that the legislature has not preempted this automatic traffic enforcement ordinance through these statutory provisions.

I. Factual and Procedural Background.

If the twentieth century may be characterized as the Era of the Automobile, it was also the Era of Automobile Regulation. In 1902, officers in Westchester County, New York, concealed themselves in fake tree trunks at specified intervals and, armed with stop watches and telephones, attempted to detect and apprehend speeders. Not to be outdone, innovative constables in Massachusetts in 1909 deployed a method of detecting speeding motorists that used a combination of a camera and a stop watch. *See Commonwealth v. Buxton*, 91 N.E. 128 (Mass. 1910). These comparatively simple approaches to traffic law enforcement were subsequently replaced in the 1940s and 1950s by “radar” detection systems. Attacked as Orwellian when first introduced, the use of radar is now a standard tool of law enforcement.

Innovation in traffic management has not been limited to speed control. As every motorist knows, automated stop lights have come to replace the blue-suited patrolman with outstretched arms engaged in perpetual motion with a whistle at the ready. Most municipal authorities

believe police officers have better things to do than to control traffic at intersections.

Modern technological advances have also led to the development of more sophisticated “automated traffic enforcement” (ATE) systems. Using a combination of cameras and sensors, the ATEs allow municipal governments to detect traffic violations without a law enforcement officer present on the scene. Promoted by private vendors who have developed and operated the systems, ATE red light cameras were first deployed abroad over thirty-five years ago and according to industry sources are now operational in forty-five countries. Kevin P. Shannon, *Speeding Towards Disaster: How Cleveland’s Traffic Cameras Violate the Ohio Constitution*, 55 Clev. St. L. Rev. 607, 610 (2007). As of 2005, ATE speed detection systems were in use in as many as seventy-five countries. *Id.*

In this country, speed cameras have been utilized on a limited basis in several states, including Arizona, California, North Carolina, Ohio, Oregon, and the District of Columbia. Red light systems have also been utilized by a number of municipalities, including those in Arizona, California, Virginia, and North Carolina. *Id.* at 611.

The advent of automatic traffic enforcement has prompted legislative action in a number of jurisdictions. Some state legislatures have elected expressly to authorize local governments to establish ATE systems provided that certain statutory requirements are met, including posting notice to drivers that automated traffic devices are in use. *See, e.g.*, Colo. Rev. Stat. § 42-4-110.5 (2008); N.C. Gen. Stat. § 160A-300.1 (2007). Other states have authorized ATE ordinances only in the vicinity of schools, residency zones, or railroad crossings. *See, e.g.*, Ark. Code §§ 27-52-110, 27-52-111 (2007); Md. Code Ann., Transp. § 21-809 (2008). Some states have explicitly prohibited their use. *See, e.g.*, N.J.

Stat. Ann. § 39:4–103.1 (2008); W. Va. Code § 17C–6–7a (2008); Wis. Stat. § 349.02(3) (2008). Most states, like Iowa, have no legislation directly addressing the issue.

In 2004, the City of Davenport enacted an ordinance entitled “Automatic Traffic Enforcement.” Davenport Mun. Code § 10.16.070 (2005). The Davenport ATE ordinance authorized the city to install cameras and vehicle sensors at various locations in the city to make video images of vehicles that fail to obey red light traffic signals or speeding regulations. The information obtained from these automated devices is then forwarded to the Davenport Police Department for review. The Davenport police then determine whether there has been a violation of the city’s traffic control ordinances.

Under the Davenport ATE ordinance, a vehicle owner is issued a notice and is liable for a civil fine as a result of any detected violation. A vehicle owner may rebut the city’s claim by showing that a stolen vehicle report was made on the vehicle which encompassed the time in which the violation allegedly occurred. Citations issued pursuant to the Davenport ATE ordinance are not reported to the Iowa Department of Transportation (IDOT) for the purpose of the vehicle owner’s driving record.

A recipient of an automated traffic citation may dispute the citation by requesting the issuance of a municipal infraction citation. If so disputed, the recipient is entitled to a trial before a judge or magistrate. In the event the disputing vehicle owner is found to have violated the ordinance, state-mandated court costs are added to the amount of the violation.

Thomas J. Seymour felt the sting of the Davenport ATE ordinance on April 28, 2006. He received a citation alleging that his vehicle

traveled forty-nine miles per hour in a thirty-five mile-per-hour zone on March 17, 2006. Seymour contested the citation.

Seymour's case was tried to a magistrate on a stipulated record. Seymour claimed that the ATE ordinance violated due process by shifting the burden of proof to the defendant to disprove a citation, by depriving a defendant of the presumption of innocence, by changing the burden of proof from the reasonable doubt standard to the lesser standard of clear, satisfactory, and convincing evidence, and by shifting liability to vehicle owners, not drivers. Seymour also claimed that the Davenport ATE ordinance was invalid because it was preempted by traffic regulations and enforcement mechanisms contained in Iowa Code chapter 321 and sections 364.22(5)(b), 805.6, and 805.8A.

The magistrate rejected all of Seymour's claims, found that he violated the ordinance, and entered judgment against him. Seymour appealed to the district court, which affirmed the judgment.

We granted Seymour's application for discretionary review. While Seymour raised constitutional challenges based on due process in the lower courts, he has not pressed these claims on appeal and, as a result, these issues are not before us. The only issue raised in this appeal is whether the Davenport ATE ordinance is preempted because it is inconsistent or contrary to Iowa's statewide traffic laws as cited by Seymour.

II. Standard of Review.

A trial court's determination of whether a local ordinance is preempted by state law is a matter of statutory construction and is thus reviewable for correction of errors at law. *State v. Tarbox*, 739 N.W.2d 850, 852 (Iowa 2007).

III. Discussion.

A. Principles of Preemption Analysis. The central issue in this case is whether the provisions of the Davenport ATE ordinance are preempted by traffic regulation and enforcement provisions of Iowa Code chapter 321 (laws of the road) and sections 364.22(5)(b) (municipal infractions), 805.6 (form of citation in criminal cases), and 805.8A (schedule of criminal fines). An overview of the principles of preemption analysis provides the framework for resolution of the issue presented on appeal.

In 1968, the Iowa Constitution was amended to provide municipal governments with limited powers of home rule. Iowa Const. art. III, § 38A. The home rule amendment established what we have referred to as legislative home rule. *Berent v. City of Iowa City*, 738 N.W.2d 193, 196 (Iowa 2007). Under legislative home rule, the legislature retains the unfettered power to prohibit a municipality from exercising police powers, even over matters traditionally thought to involve local affairs. Conversely, as long as an exercise of police power over local affairs is not “inconsistent with the laws of the general assembly,” municipalities may act without express legislative approval or authorization. Iowa Const. art. III, § 38A. City authorities are no longer frightened by Dillon’s ghost.¹

In order to determine whether municipal action is permitted or prohibited by the legislature, courts have developed the doctrine of preemption. The general thrust of the preemption doctrine in the context of local affairs is that municipalities cannot act if the legislature has

¹In 1868, the Chief Justice of the Iowa Supreme Court, John F. Dillon, declared that municipalities were creatures of the legislature and had only those powers expressly granted by the legislature. *City of Clinton v. Cedar Rapids & Mo. River R.R.*, 24 Iowa 455, 475 (1868). Later this rule became known as the Dillon Rule.

directed otherwise. When exercised, legislative power trumps the power of local authorities.

We have recognized three types of preemption. The first type, generally known as express preemption, applies where the legislature has specifically prohibited local action in a given area. *Goodell v. Humboldt County*, 575 N.W.2d 486, 492–93 (Iowa 1998); *Chelsea Theater Corp. v. City of Burlington*, 258 N.W.2d 372, 373 (Iowa 1977). In cases involving express preemption, the specific language used by the legislature ordinarily provides the courts with the tools necessary to resolve any remaining marginal or mechanical problems in statutory interpretation.

Where the legislature seeks to prohibit municipal action in a particular subject area, express preemption offers the highest degree of certainty with the added benefit of discouraging unseemly internecine power struggles between state and local governments. Express preemption is most consistent with the notion that “[l]imitations on a municipality’s power over local affairs are not implied; they must be imposed by the legislature.” *City of Des Moines v. Gruen*, 457 N.W.2d 340, 343 (Iowa 1990).

Nonetheless, this court has found that express preemption alone is not a sufficient tool to vindicate legislative intent in all circumstances. In order to ensure maximum loyalty to legislative intent, this court has developed the residual doctrine of implied preemption, notwithstanding language in our cases disapproving of implied limitations on municipal power. Implied preemption arises in two situations where the intent of the legislature to preempt is apparent even though the legislature did not expressly preempt in unambiguous language.

Implied preemption occurs where an ordinance prohibits an act permitted by statute, or permits an act prohibited by statute. *Goodell*, 575 N.W.2d at 493; *Gruen*, 457 N.W.2d at 342. Under these circumstances, although there is no express preemption, the statute on its face contains a command or mandate that by its very nature is preemptory. The theory of this branch of implied preemption is that even though an ordinance may not be expressly preempted by the legislature, the ordinance cannot exist harmoniously with a state statute because the ordinance is diametrically in opposition to it. The exclamation point of an express preemption provision is simply redundant in light of the mandatory legislative expression. Although we used the label “implied preemption” to distinguish it from express preemption, this type of preemption is perhaps more accurately described as “conflict preemption.” See, e.g., *Colacicco v. Apotex Inc.*, 521 F.3d 253, 261 (3d Cir. 2008); *Mars Emergency Med. Servs., Inc. v. Twp. of Adams*, 740 A.2d 193, 195 (Pa. 1999).

Although implied preemption of the conflict variety occurs frequently, the legal standard for its application is demanding. In order to qualify for this branch of implied preemption, a local law must be “irreconcilable” with state law. *Gruen*, 457 N.W.2d at 342. Further, our cases teach that, if possible, we are to “interpret the state law in such a manner as to render it harmonious with the ordinance.” *Id.*; see also *Iowa Grocery Indus. Ass’n v. City of Des Moines*, 712 N.W.2d 675, 680 (Iowa 2006); *City of Iowa City v. Westinghouse Learning Corp.*, 264 N.W.2d 771, 773 (Iowa 1978). In applying implied preemption analysis, we presume that the municipal ordinance is valid. *Iowa Grocery*, 712 N.W.2d at 680. The cumulative result of these principles is that for

implied preemption to occur based on conflict with state law, the conflict must be obvious, unavoidable, and not a matter of reasonable debate.

A second form of implied preemption occurs when the legislature has so covered a subject by statute as to demonstrate a legislative intent that regulation in the field is preempted by state law. Like implied preemption based on conflict, the test for field preemption is stringent. Extensive regulation of area alone is not sufficient. *Goodell*, 575 N.W.2d at 493; *City of Council Bluffs v. Cain*, 342 N.W.2d 810, 812 (Iowa 1983). In order to invoke the doctrine of field preemption, there must be some clear expression of legislative intent to preempt a field from regulation by local authorities, or a statement of the legislature's desire to have uniform regulations statewide. *Goodell*, 575 N.W.2d at 499–500; *City of Vinton v. Engledow*, 258 Iowa 861, 868, 140 N.W.2d 857, 861 (1966). The notion behind field preemption is that the legislature need not employ “magic words” to close the door on municipal authority. Yet, courts are not to speculate on legislative intent, even in a highly regulated field. There must be persuasive concrete evidence of an intent to preempt the field in the language that the legislature actually chose to employ. *Goodell*, 575 N.W.2d at 493.

Field preemption is a narrow doctrine that cannot be enlarged by judicial policy preferences. In determining the applicability of field preemption, this court does not entertain arguments that statewide regulation is preferable to local regulation or vice versa, but focuses solely on legislative intent as demonstrated through the language and structure of a statute. *Id.* at 498–99.

In this case, the parties agree that the legislature has not expressly preempted the Davenport ATE ordinance. The only question is whether

one of the branches of implied preemption applies in light of the statutory provisions cited by Seymour.

B. Application of Preemption Principles to the ATE Ordinance.

1. *Relevant statutory provisions.* Entitled “Motor Vehicles and the Law of the Road,” Iowa Code chapter 321 contains 562 sections. Among other things, Iowa Code chapter 321 establishes substantive standards related to speeding, obeying traffic signals, and establishes mechanisms of enforcement. Iowa Code §§ 321.285, 321.256. Infractions for speeding and violating traffic signals are generally considered simple misdemeanors. *Id.* § 321.482. Convictions for violation of these criminal statutes are reported to the IDOT and can result in suspension or revocation of driving privileges where the driver has committed multiple offenses within a prescribed statutory period. *Id.* §§ 321.201–.215.

Of central concern to the preemption challenge in this case is Iowa Code section 321.235, which provides:

The provisions of this chapter shall be applicable and *uniform throughout this state* and in all political subdivisions and municipalities therein and no local authority shall enact or enforce any rule or regulation in conflict with the provisions of this chapter unless expressly authorized herein. Local authorities may, however, adopt *additional traffic regulations which are not in conflict with the provisions of this chapter.*

Id. § 321.235 (emphasis added). Iowa Code section 321.235 is a two-faced statute. The Janus-like code provision declares that the provisions of the chapter are “applicable and uniform” throughout the state, but then expressly authorizes local governments to enact “additional traffic regulations” that are “not in conflict” with the provisions of the chapter.

The next provision of the code adds additional relevant language. Iowa Code section 321.236 provides:

Local authorities shall have no power to enact, enforce, or maintain any ordinance, rule or regulation *in any way in conflict with, contrary to or inconsistent with the provisions of this chapter*, and no such ordinance, rule or regulation of said local authorities heretofore or hereafter enacted shall have any force or effect, however the provisions of this chapter shall not be deemed to prevent local authorities with respect to streets and highways under their jurisdiction and within the reasonable exercise of police power from: [list of fourteen exceptions].

Id. § 321.236 (emphasis added). The fourteen listed exceptions in this section give municipalities or rural residence districts the power to prescribe standards of conduct. Under the listed exceptions, municipalities are expressly authorized to regulate conduct related to the parking of vehicles, processions or assemblages on highway, traffic flow on highways locally designated for one-way traffic, speed in public parks, designation of highways as a through highway requiring intersecting traffic to yield, operation of vehicles for hire, use of highways by heavy trucks and rubbish vehicles, turning of vehicles at and between intersections, the operation of bicycles, speed limits in public alleys, use of highways during snow conditions, and the operation of electric personal assistive mobility devices. *Id.*

The only exception contained in Iowa Code section 321.236 that does not expressly authorize limitations of conduct in a specific subject area is the penultimate listed exception, which authorizes boards of supervisors to create rural residence districts. *Id.* But even this provision indirectly relates to regulation of conduct, as rural residence districts created by the board of supervisors are authorized to regulate speed and parking of vehicles within the rural residence district consistent with the provisions of chapter 321.

Another provision of Iowa law cited by Seymour is Iowa Code section 364.22(5)(b). This provision of Iowa law authorizes municipalities

to establish civil infractions and provide for enforcement. Among other things, section 364.22(5)(b) provides that “[t]he city has the burden of proof that the municipal infraction occurred and that the defendant committed the transaction.” The Code provision also provides that the burden of proof for municipal civil infractions is “clear, satisfactory, and convincing evidence.” *Id.*

Seymour also cites Iowa Code sections 805.6 and 805.8A in support of his preemption argument. Iowa Code section 805.6 establishes a uniform citation and complaint for criminal infractions related to the rules of the road established in Iowa Code chapter 321. *Id.* § 805.6. Iowa Code section 805.8A establishes a schedule of fines for such criminal violations. *Id.* § 805.8A.

2. *Contentions of the parties.* The parties agree that there are a number of differences between the provisions of Iowa Code chapter 321 and the Davenport ATE ordinance. For example, the Davenport ATE ordinance creates civil penalties while state law provides only for criminal violations; the offense under the Davenport ATE ordinance is against the owner of the motor vehicle rather than the driver; violation of the Davenport ATE ordinance is not reported to the IDOT and made part of the violator’s driving record, whereas violations of state law are so reported; the standards of proof in the Davenport ATE ordinance differ from those of state violations, which are criminal; the citation form under the Davenport ATE ordinance is different from that prescribed for criminal violations; and the schedule of municipal civil fines under the Davenport ATE ordinance is different from the schedule for violation of state criminal law.

The parties, however, take opposing views of these differences. The City maintains that the differences between the Davenport ATE

ordinance and the applicable state laws demonstrate that the Davenport ATE ordinance is not contrary to, or inconsistent with state law, but is merely supplemental to provisions of the state code. Seymour, on the other hand, maintains that the differences powerfully demonstrate conflict with state law by creating an entirely new enforcement regime that is wholly absent from chapter 321 and related provisions.

3. *Application of preemption principles.* A number of our cases have explored the question of whether a local ordinance conflicts with state law, thereby triggering implied preemption. For example, in *Iowa Grocery*, we invalidated a Des Moines ordinance that allowed the city to charge an administrative fee related to liquor licenses and permits in the face of a state statute which provided that the Iowa Alcoholic Beverages Division, by rule, shall establish the administrative fee to be assessed by all local authorities. *Iowa Grocery*, 712 N.W.2d at 680. Similarly, in *James Enterprises, Inc. v. City of Ames*, 661 N.W.2d 150, 153 (Iowa 2003), we held that an Ames ordinance which prohibited smoking in restaurants during certain hours was preempted by state law which allowed designated smoking areas in restaurants. In these cases, local ordinances simply could not be reconciled with state law. An additional preemption case of older vintage is *Engledow*, 258 Iowa at 861, 140 N.W.2d at 857. In that case, we invalidated a local ordinance that attempted to change the substantive elements of the crime of reckless driving. *Engledow*, 258 Iowa at 868, 140 N.W.2d at 861.

The above cases demonstrate that the phrase “irreconcilable” used in preemption analysis is a hard-edged term. In order to be “irreconcilable,” the conflict must be unresolvable short of choosing one enactment over the other. No such bitter choice is presented in this case. The Davenport ATE ordinance simply cannot be said to authorize

what the legislature has expressly prohibited, or to prohibit what the legislature has authorized. Nothing in Iowa Code chapter 321, or sections 805.6 and 805.8A addresses the question of whether a municipality may impose civil penalties on owners of vehicles through an ATE regime. Whether such penalties may be imposed by a municipality can only be characterized as a question which the legislature did not address.

Using the principles established by our case law regarding implied conflict preemption, namely, that a local ordinance is not impliedly preempted unless it is “irreconcilable,” that every effort should be made to harmonize a local ordinance with a state statute, and that implied preemption only applies where a local ordinance prohibits what a state statute allows or allows what a state statute prohibits, we conclude that implied conflict preemption simply does not apply in this case. As stated by the Ohio Supreme Court in *Village of Struthers v. Sokol*, 140 N.E. 519, 521 (Ohio 1923), whether a municipal ordinance is in conflict is not determined by the penalties prescribed, but whether the ordinance permits or licenses that which the state prohibits or forbids or vice versa. *See also Chicago & N.W. Transp. Co. v. Kalo Brick & Tile Co.*, 450 U.S. 311, 317–18, 101 S. Ct. 1124, 1130, 67 L. Ed. 2d 258, 265 (1981) (stating conflict in preemption context is to be assessed by examining the activity which the state has attempted to regulate, rather than the method used); 56 Am. Jur. 2d *Municipal Corporations* § 329, at 368–70 (stating state and local regulation may coexist in identical areas although local regulation exacts additional requirements, unless state statute limits requirements by prescription).

We find nothing in Iowa Code section 321.236 to alter our analysis. In this provision, the legislature has expressly authorized local

governments to establish rules of conduct related to rules of the road. The legislature used no words of limitation in the section. Further, as pointed out by the City, the legislature in other sections of the Code has authorized municipal action over traffic subjects not contained in section 321.236. See, e.g., Iowa Code §§ 321.255 (traffic devices), 321.273 (traffic reports), 321.293 (speed). We do not regard the fourteen categories in Iowa Code section 321.236, therefore, as exclusive or as overriding the general command of Iowa Code section 321.235 that authorizes additional traffic regulations where they are not contrary to or inconsistent with state law.

We also reject Seymour's claim that the Davenport ATE ordinance conflicts with Iowa Code section 364.22(5)(b). We certainly agree that under this statutory provision, the municipality has the burden of proving all elements of a civil infraction by clear and convincing evidence.² But there is nothing in the Davenport ATE ordinance that is inconsistent with Iowa Code section 364.22(5)(b) that requires us to hold that the Davenport ATE ordinance is preempted. There is simply no provision in the Davenport ATE ordinance that alters the requirement that the City prove, by a clear, satisfactory, and convincing preponderance of evidence, that the defendant was the registered owner of the vehicle photographed violating the ATE ordinance. Seymour may not like the substance of the ordinance, which potentially imposes vicarious liability for traffic violations upon registered owners, but such a substantive challenge is irrelevant to the narrow question at hand,

²The Davenport ordinance creates civil penalties and, as a result, the "clear, satisfactory, and convincing" standard of Iowa Code section 364.22(5)(b) is not inconsistent with the reasonable doubt standard established in our case law for criminal violations. *City of Des Moines v. Rosenberg*, 243 Iowa 262, 272-73, 51 N.W.2d 450, 456 (1952).

namely, whether the Davenport ATE ordinance is inconsistent with state law.

The remaining question is whether the traffic regulations and enforcement mechanisms of Iowa Code chapter 321 are designed to preempt the field in a fashion that prohibits municipalities from enacting supplementary traffic enforcement ordinances such as the Davenport ATE ordinance. The legislative language related to uniform enforcement of traffic laws in Iowa Code section 321.235 suggests that field preemption may be at work. In addition, the length, breadth, and comprehensiveness of Iowa Code chapter 321 offers support for the application of field preemption to the Davenport ATE ordinance.

Yet, the introductory language in Iowa Code section 321.235 regarding uniformity must be read in tandem with the subsequent language expressly vesting power in municipalities to enact additional traffic regulations that are not “inconsistent” with Iowa Code chapter 321. This subsequent language eliminates any basis for field preemption because the legislature has expressly authorized municipalities to enact local ordinances regarding the subject matter—namely, traffic regulations—that are “not inconsistent with” the Code. Indeed, when it comes to traffic regulations, the legislature has expressly declined to preempt the field, so long as conflicts are not present. Iowa Code § 321.235; *see, e.g., Big Creek Lumber Co. v. County of Santa Cruz*, 136 P.3d 821, 833 (Cal. 2006) (finding that general legislative statements of intent to establish comprehensive regulation do not preempt field where statute also expressly authorizes local action); *Dep’t of Licenses & Inspections, Bd. of License & Inspection Review v. Weber*, 147 A.2d 326, 328 (Pa. 1959) (holding legislative language allowing municipality to adopt appropriate ordinances not inconsistent with act demonstrates

lack of field preemption); *Brown v. City of Yakima*, 807 P.2d 353, 355 (Wash. 1991) (noting where statute expressly confers some measure of concurrent jurisdiction, field preemption does not apply).

Although not articulated as such by the parties, we believe the nub of both the conflict and field preemption issues is whether the doctrine of *expressio unius est exclusio alterius* applies to defeat the Davenport ATE ordinance. Under this rule of statutory interpretation, a provision that a statutory mandate be carried out in one way implies a prohibition against doing it another way. See Norman J. Singer, *Statutes and Statutory Construction* ch. 46 (6th ed. 2000). Arguably, by providing a criminal penalty for speeding and red light violations, the legislature should be deemed to have rejected alternate remedies such as civil penalties.

The issue here, however, is not whether the state legislature has authorized *state* authorities to establish an ATE system to enforce red light and speeding laws. This case involves the materially different question of whether state law prohibits *municipal* authorities from creating such a system. Unless the long-deceased Dillon Rule is resurrected, the notion that the mere failure of the legislature to authorize invalidates municipal action is without merit. Under our case law, the state statute and the municipal action must be *irreconcilable*. The fact that state law does not authorize the state to enforce its statute through certain remedial options does not mean that it forbids municipalities from the same course of action. In the context of state-local preemption, the silence of the legislature is not prohibitory but permissive. See *Cameron v. City of Waco*, 8 S.W.2d 249, 254 (Tex. Civ. App. 1928) (holding that rule of *expressio unius est exclusio alterius* does not apply in determining scope of municipal powers under home rule).

We recognize that the Colorado and Minnesota Supreme Courts have held that automated traffic enforcement regimes were preempted by state traffic laws. *City of Commerce City v. State*, 40 P.3d 1273, 1285 (Colo. 2002); *State v. Kuhlman*, 729 N.W.2d 577, 584 (Minn. 2007). On the other hand, the Supreme Court of Ohio has reached an opposite conclusion. *Mendenhall v. City of Akron*, 881 N.E.2d 255, 265 (Ohio 2008). We have reviewed the Colorado and Minnesota cases and find nothing to dissuade us from our approach, which is dictated by well-established Iowa case law.

In reaching our conclusion, we are aware that the desirability of ATE ordinances is the subject of contentious political debate. *See generally* Robin Miller, *Automated Traffic Enforcement Systems*, 26 A.L.R.6th 179 (2007). Supporters of ATE ordinances may passionately assert that the presence of the cameras and speed sensors promote public safety and save lives, especially the lives of children, when careless driving and road rage are all too common. In contrast, opponents may view ATE ordinances as unduly intrusive, unfair, and simply amounting to sophisticated speed traps designed to raise funds for cash-strapped municipalities by ensnaring unsuspecting car owners in a municipal bureaucracy under circumstances where most busy people find it preferable to shut up and pay rather than scream and fight.

As we have previously stated, “In construing statutes it is our duty to determine legislative intent; the wisdom of the legislation is not our concern.” *Hines v. Ill. Cent. Gulf R.R.*, 330 N.W.2d 284, 289 (Iowa 1983). As a result, the pros and cons of ATE ordinances have no bearing on the narrow legal issue that we are required to decide in this case. Our only task is to determine, under established legal principles, the issues that

the parties have presented, specifically, whether the Davenport ATE ordinance is preempted by the traffic regulatory and enforcement provisions of Iowa Code chapter 321 and sections 364.22(5)(b), 805.6, or 805.8A. In light of the established cases and the enabling language of Iowa Code chapter 321.235, we hold that the doctrine of preemption does not apply. Any determination on the merits of the policy arguments is not for the court, but the political organs of government influenced by an informed electorate.

We also recognize that a number of statutory and constitutional questions have been raised to ATE ordinances that are not presented in this appeal. ATE ordinances have been attacked as amounting to an unlawful revenue raising measure or as improperly delegating government authority to a private vendor. Andrew W. J. Tarr, *Picture It: Red Light Cameras Abide by the Law of the Land*, 80 N.C. L. Rev. 1879, 1886 (2002) (issue of unlawful revenue raising); see also *Leonte v. ACS State & Local Solutions, Inc.*, 19 Cal. Rptr. 3d 879 (Ct. App. 2004) (delegation of power). Academic commentators have debated whether ATE ordinances violate rights of privacy. See, e.g., Quentin Burrows, *Scowl Because You're on Candid Camera: Privacy and Video Surveillance*, 31 Val. U. L. Rev. 1079 (1997); Mary Lehman, *Are Red Light Cameras Snapping Privacy Rights?*, 33 U. Tol. L. Rev. 815 (2002); Steven Tafoya Naumchik, *Stop! Photographic Enforcement of Red Lights*, 30 McGeorge L. Rev. 833 (1999). ATE ordinances also have been attacked on due process, Fourth Amendment, and equal protection grounds. See, e.g., *McNeill v. Town of Paradise Valley*, 44 Fed. App'x 871 (9th Cir. 2002) (Fourth Amendment); *Shavitz v. City of High Point*, 270 F. Supp. 2d 702 (M.D.N.C. 2003), *vacated on other grounds sub nom. Shavitz v. Guilford*

County Bd. of Educ., 100 Fed. App'x 146 (4th Cir. 2004) (equal protection); *Agomo v. Fenty*, 916 A.2d 181 (D.C. 2007) (due process).

All of the above questions are not raised in this appeal, and we consequently express no view on them. This court is not a roving commission that offers instinctual legal reactions to interesting issues that have not been raised or briefed by the parties and for which the record is often entirely inadequate if not completely barren. We decide only the concrete issues that were presented, litigated, and preserved in this case.

IV. Conclusion.

We hold the Davenport ATE ordinance is not preempted by the traffic regulations and enforcement mechanisms of Iowa Code chapter 321 and sections 364.22(5)(b), 805.6, or 805.8A. As a result, the ruling of the district court in this matter is affirmed.

AFFIRMED.

All justices concur except Wiggins, J., who dissents and Baker, J., who takes no part.

#33/06–1753, *City of Davenport v. Seymour*

WIGGINS, Justice (dissenting).

I dissent. I cannot agree with the majority's conclusion that the legislature's comprehensive enactment of the traffic regulations and enforcement mechanisms contained in chapter 321 of the Iowa Code does not preempt Davenport's Automated Traffic Enforcement ordinance. Although the majority recognizes the doctrine of implied preemption, it fails to follow our existing case law in its application of the doctrine.

Chapter 321 includes a uniform law provision. Iowa Code § 321.235 (2007). This provision provides:

The provisions of this chapter shall be applicable and uniform throughout this state and in all political subdivisions and municipalities therein and no local authority shall enact or enforce any rule or regulation in conflict with the provisions of this chapter unless expressly authorized herein. Local authorities may, however, adopt additional traffic regulations which are not in conflict with the provisions of this chapter.

Id.

Chapter 321 also limits the power of local authorities to enact an ordinance that conflicts with the Code. *Id.* § 321.236. It states in relevant part:

Local authorities shall have no power to enact, enforce, or maintain any ordinance, rule or regulation in any way in conflict with, contrary to or inconsistent with the provisions of this chapter, and no such ordinance, rule or regulation of said local authorities heretofore or hereafter enacted shall have any force or effect

Id. Although section 321.236 enumerates specific areas where a local municipality may regulate, it does not include automatic enforcement ordinances.

This court has applied these sections on two prior occasions and struck down local ordinances that were inconsistent with chapter 321.

Central City v. Eddy, 173 N.W.2d 582, 583–84 (Iowa 1970); *City of Vinton v. Engledow*, 258 Iowa 861, 868, 140 N.W.2d 857, 862 (1966). In *City of Vinton*, the city enacted a local ordinance defining reckless driving as:

“Every driver of any vehicle upon any street in the city shall drive and operate such vehicle in a careful and prudent manner and with due regard and precaution for the safety of pedestrians, persons, property and other vehicles. No person shall operate or drive any vehicle in a manner or at a speed greater or other than is reasonable and safe with respect to such vehicles, persons, pedestrians or property.”

City of Vinton, 258 Iowa at 864, 140 N.W.2d at 860 (citation omitted). Although a prior state statute defined reckless driving in this manner, the present state statute only allowed a finding of reckless driving when “[a]ny person [] drives any vehicle in such manner as to indicate either a willful or a wanton disregard for the safety of persons or property” *Id.* at 865, 140 N.W.2d at 860.

There this court recognized the state of mind of the violator for committing the offense of reckless driving was lower under the city ordinance than the state statute. The city ordinance only required a finding of negligence to hold the driver culpable, while the state ordinance required a finding of “either a willful or a wanton disregard for the safety of persons or property.” *Id.* In analyzing the city ordinance, the court first determined that this type of regulation was not contained as an exception to section 321.236. *Id.* at 865–66, 140 N.W.2d at 860–61.

Next, the court considered whether the city ordinance was consistent with the state statute, as required by section 321.235. The test set out by our court to determine whether a statute is valid under sections 321.235 and 321.236 is that “[a] city ordinance cannot be allowed to change the statutory definition either by enlargement or

diminution.” *Id.* at 866, 140 N.W.2d at 861. The court went on to say, “ [T]he test of the validity of a statute or ordinance is not what has been done under it but what may be done by its authority.” *Id.* (quoting *Chicago, Rock Island & Pac. R.R. v. Liddle*, 253 Iowa 402, 409, 112 N.W.2d 852, 856 (1962)).

In applying these principles, the court found the difference between the state of mind needed to hold violators liable under the state and city laws destroyed the uniformity required by sections 321.235 and 321.236. *Id.* The state of mind needed for holding a person culpable for reckless driving is a matter of legislative policy. *Id.* Because the laws in Vinton were not consistent with the rules of the road enforceable in other parts of the state, this court held the Vinton ordinance invalid. *Id.*

In 1970 the court was asked to revisit a similar issue. *Central City*, 173 N.W.2d at 583–85. There the city held drivers culpable for careless or negligent driving on public streets, alleys, and highways. *Id.* at 583. Our court recognized that the legislature only held a driver culpable for driving with either a willful or a wanton disregard for the safety of persons or property. *Id.* at 584. Thus, the city’s ordinance holding a driver culpable for negligent driving was inconsistent with state law. *Id.* Accordingly, the ordinance was invalid. *Id.*

Applying established law to the facts of this case can only lead to one conclusion—Davenport’s Automated Traffic Enforcement ordinance violates sections 321.235 and 321.236. No one argues the ordinance is allowed under an enumerated exception to section 321.236. Thus, we must determine whether the Davenport ordinance is inconsistent with chapter 321.

The legislature has defined when an owner of a vehicle may be culpable for a violation of chapter 321. Iowa Code § 321.484. Under

chapter 321, an owner can only be culpable for a driver's moving violation if the owner of any vehicle requires, or knowingly permits the operation of such vehicle upon a highway in any manner contrary to the law. *Id.* Under Davenport's ordinance, an owner is strictly liable for the actions of a person driving the owner's vehicle. By requiring a lesser state of mind for an owner to be culpable of the same offense, the Davenport ordinance is inconsistent with the stated legislative policy regarding the culpability of owners under chapter 321.

It may be asserted that because the violation of the ordinance is a civil infraction, it is not inconsistent with chapter 321. I cannot agree with this premise.

In Illinois several municipalities passed local ordinances allowing traffic offenders to pay a civil settlement fee in lieu of court adjudication. *People ex rel. Ryan v. Vill. of Hanover Park*, 724 N.E.2d 132, 135 (Ill. App. Ct. 1999). Like Davenport's ordinance, a traffic violator in these municipalities would pay a fine to the municipality and the violation would not be reported to the state. Section 11-207, chapter 11 of the Illinois Code contains the same language as section 321.235 of the Iowa Code. *Id.* at 139.

The Illinois Appellate Court found this statute violated the uniformity requirement of traffic laws contained in section 11-207 of chapter 11 for two reasons. *Id.* at 143-44. First, the ordinance allows certain moving violations to be adjudicated administratively, while the Illinois Code requires moving violations to be dealt with judicially. *Id.* at 140. Second, by not reporting the violations to the licensing authority, the licensing authority cannot exercise its exclusive authority to cancel, suspend, or revoke a license. *Id.* at 141. I agree with the reasoning of the Illinois court.

The Iowa legislature has given Iowa municipalities the power to adjudicate parking violations administratively. Iowa Code § 321.236(1). The legislature has not given municipalities the authority to adjudicate other violations of our traffic code administratively. The judicial system must adjudicate all other violations. When law enforcement cites a person for a moving violation, the officer must arrest the violator or issue a citation. *Id.* §§ 805.1, 805.6. Court intervention is necessary so the violator cannot pay a civil settlement fee in exchange for “an opportunity to circumvent the potential consequences of committing the offense, namely, a chance to avoid an adjudication [by the court], a finding of guilty, and a guilty finding being reported to the [licensing authority].” *People ex rel. Ryan*, 724 N.E.2d at 140. Consequently, for the Davenport ordinance to be valid, it must treat its violators as the legislature treats violators in other parts of the state. The ordinance can only achieve the uniformity required by section 321.235 by adjudicating these moving violations judicially.

Another problem with the administrative adjudication under the Davenport ordinance is its failure to report violators to the department of transportation (DOT). The DOT is the sole agency designated by the legislature to administer the issuance, suspension, and revocation of a driver’s license. Iowa Code § 321.2. In carrying out these duties, the DOT has instituted various rules regarding the suspension and revocation of a license. Iowa Admin. Code r. 761—615. The action the agency takes is dependent on the nature of the violation. *See, e.g., id.* r. 761—615.9 (providing for suspension of habitual offenders). The DOT has also developed driver improvement programs as an alternative to license suspension. *Id.* r. 761—615.43.

In order for the DOT to administer the suspension or revocation of a driver's license, it must receive a record of the conviction from the court system. Chapter 321 requires the court to advise the DOT of a conviction. Iowa Code § 321.491. The Davenport ordinance does not. The legislative intent behind the enactment of traffic laws is to keep the streets and highways of this state safe. One of the most effective means of doing that is to reeducate drivers who violate the laws through driver improvement programs. If a driver cannot be reeducated, then the DOT has the ability to suspend or revoke a license. For this legislative scheme to work, the DOT needs to have exclusive control over the administration, suspension, and revocation of drivers' licenses so the consequences of committing a violation of chapter 321 remain uniform throughout the state.

The Davenport ordinance circumvents the DOT's exclusive control, and undermines the goal set forth by the legislature that repeat offenders should be kept off our roads. Why would the legislature allow a person with five violations under the Davenport ordinance to continue to drive, when its stated legislative policy is to prohibit a driver with three moving violations in any other part of the state from operating a motor vehicle? An unsafe driver in Davenport is an unsafe driver anywhere else in this state. By not applying our suspension and revocation laws uniformly, our streets and highways become a more dangerous place.

I understand Davenport's desire to decrease the occurrences of speeding without the expense of adding more officers for enforcement in these tough economic times. I also understand the city's need to raise revenue from new sources. However, I cannot believe an ordinance that holds the owner strictly liable and does nothing to remove repeat offenders from the road furthers the legislative intent of sections 321.235

and 321.236. Sections 321.235 and 321.236 require the uniform applicability of chapter 321 and prohibit municipalities from enacting or enforcing any rule or regulation in conflict with the provisions of chapter 321 unless expressly authorized by the legislature. The uniformity of our traffic laws keeps the roads safe for all Iowans. The legislature never envisioned that municipalities could raise revenue under the guise of traffic law enforcement at the expense of safer highways.

Accordingly, without specific authorization by the legislature to hold owners strictly liable for the acts of a driver, without judicial adjudication, and without DOT authority to regulate who should not be on the roads, I would hold Davenport's Automated Traffic Enforcement ordinance invalid.

IN THE SUPREME COURT OF IOWA

No. 52 / 07-0172

Filed August 29, 2008

MONIQUE RHODEN and **CURT W. CANFIELD**,
on behalf of themselves and others Similarly Situated,

Appellees,

vs.

THE CITY OF DAVENPORT, IOWA,

Appellant.

Appeal from the Iowa District Court for Scott County, Gary D.
McKenrick, Judge.

Decision of the district court granting summary judgment and
certifying the class action is reversed. **REVERSED.**

Craig A. Levien and Peter J. Thill of Betty, Neuman & McMahon,
P.L.C., Davenport, for appellant.

Thomas D. Waterman and Richard A. Davidson of Lane &
Waterman, LLP, Davenport, and Catherine Z. Cartee of Cartee & Clausen
Law Firm, P.C., Davenport, for appellees.

APPEL, Justice.

In this case, plaintiffs brought a class action challenging the validity of the Davenport Automated Traffic Enforcement (ATE) ordinance. See Davenport Mun. Code § 10.16.070 (2005). On cross motions for summary judgment, the district court ruled that the Davenport ATE ordinance was preempted by state traffic regulations and therefore was invalid. The district court also held that the City was not entitled to summary judgment on its claim that the individual plaintiffs who paid the civil penalty voluntarily waived their right to recover against the City. In a subsequent order, the district court certified the class and ruled that plaintiffs who had paid the civil fine were entitled to recover against the City. We granted the City's application for interlocutory review.

In *City of Davenport v. Seymour*, ___ N.W.2d ___ (2008), we considered whether the Davenport ATE ordinance is preempted by the same state statutes cited by the plaintiffs in this case. In *Seymour*, we held that the Davenport ATE ordinance was not preempted by the cited state law.

Seymour is controlling as to most of the issues presented in this case. The plaintiffs additionally allege that the Davenport ATE ordinance is preempted because it is inconsistent with Iowa Code sections 805.9, 805.12, 602.8106(1), and 364.22(6). Sections 805.9, 805.12, and 602.8106(1) concern the proper procedure for collecting fines for *criminal* traffic violations. This court concluded in *Seymour*, however, that the Davenport ATE ordinance provides for a civil violation that is parallel to and not preempted by the criminal scheme outlined in Iowa Code chapter

321. Any perceived inconsistency with sections 805.9, 805.12, and 602.8106(1), therefore, does not defeat the Davenport ATE ordinance.

Iowa Code section 364.22(6) concerns the proper procedure for collecting civil penalties for municipal infractions. That section provides in relevant part, “All penalties or forfeitures collected *by the court* for municipal infractions shall be remitted to the city in the same manner as fines and forfeitures are remitted for criminal violations under section 602.8106.” Iowa Code § 364.22(6) (emphasis added). Section 602.8106 requires fines to be collected by the clerk of court. Ninety percent of the fine is thereafter remitted to the city which prosecuted the action. *Id.* § 364.22. Plaintiffs contend that the Davenport ATE ordinance is inconsistent with this requirement because it provides that civil fines under the ordinance are payable to the City at the City’s finance department. Davenport Mun. Code § 10.16.070(D)(1)–(2).

Assuming that section 364.22 applies to the Davenport ATE ordinance, we nevertheless conclude that the two provisions are not “irreconcilable.” *City of Des Moines v. Gruen*, 457 N.W.2d 340, 342 (Iowa 1990). Section 364.22(6) provides that all civil penalties collected *by the court* be payable to the clerk of court and then remitted to the city. The Davenport ATE ordinance, alternatively, requires only that payments for unchallenged violations, which do not involve the court, be payable to the City’s finance department. As a result, no conflict exists between the two provisions and the Davenport ATE ordinance is not preempted by section 364.22(6).

For the reasons expressed above and in *Seymour*, the district court order granting summary judgment to the plaintiffs on the ground that the Davenport ATE ordinance is preempted by state traffic and

enforcement regulations is reversed. In light of this disposition, it is not necessary to address the other issues raised in this appeal.

REVERSED.

All justices concur except Wiggins, J., who dissents and Baker, J., who takes no part.

#52/07-0172, *Rhoden v. City of Davenport*

WIGGINS, Justice (dissenting).

I dissent for the reasons stated in my dissent in *City of Davenport v. Seymour*, ___ N.W.2d ___, ___ (Iowa 2008) (Wiggins, J., dissenting).

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DISTRICT OF COLUMBIA COURT OF APPEALS

No. 03-CV-813

EMELIKE U. AGOMO, *et al.*, APPELLANTS,

v.

ADRIAN FENTY, MAYOR,
DISTRICT OF COLUMBIA, APPELLEE.*

Appeal from the Superior Court
of the District of Columbia
(CA-6520-02)

(Hon. Melvin R. Wright, Trial Judge)

(Argued May 12, 2005

Decided February 1, 2007)

Thomas Ruffin, Jr., with whom *Horace L. Bradshaw, Jr.*, was on the brief, for appellants.

Stephen C. Rogers, Volunteer Attorney, with whom *Robert J. Spagnoletti*, Attorney General for the District of Columbia at the time the brief was filed, and *Edward E. Schwab*, *Deputy Attorney General*, were on the brief, for appellee.

Before FARRELL and GLICKMAN, *Associate Judges*, and NEBEKER, *Senior Judge*.

NEBEKER, *Senior Judge*: Appellants Emelike U. Agomo and Auto Ward, Inc. filed a complaint against the District of Columbia under 42 U.S.C. § 1983, alleging that the Automated Traffic Enforcement System (“ATE System”) established by D.C. Code § 50-2209.01 (2001) *et seq.* violates the guarantees of due process under the Fifth Amendment of the Constitution. In essence, the ATE System detects moving violations under the District’s traffic laws through the use of photographs taken by automated cameras installed at various locations throughout the District. The

* Under D.C. App. R. 43 (c)(2) Mayor Adrian Fenty has been substituted for former Mayor Anthony Williams as an appellee and the caption amended as reflected above.

trial court denied the District's initial motion to dismiss the complaint on January 14, 2003, but six months later granted summary judgment for the District and denied appellants' subsequent motion to alter or amend the summary judgment order on July 14, 2003. Appellants filed a timely notice of appeal on July 21, 2003.

Appellants argue that the method of assessing liability preliminarily to the registered owner of the car conflicts with the statutory framework set forth in D.C. Code § 50-2302.06 (a), which requires that the District prove a moving violation by clear and convincing evidence, and that this "presumption of liability" violates their due process rights. Second, appellants argue that the compensation arrangement with a private corporation, Automated Computer Systems, Inc. ("ACS"), for certain administrative aspects of the ATE System violates due process by creating an adjudicatory tribunal that is tainted by financial considerations. We hold that there exists no constitutional violation as asserted and affirm.

Background

I. The Statutory Scheme

A. D.C. Code Title 50, Chapter 23: Traffic Adjudication

The stated purpose of the traffic adjudication statutes is "to decriminalize and to provide for the administrative adjudication of certain violations," D.C. Code § 50-2301.01, such as the moving

violations involved in this case. An “infraction” subject to this section of the Code is defined as “any conduct subject to administrative adjudication under the provisions of this chapter and with respect to which the [Attorney General] does not commence a proceeding in the Superior Court of the District of Columbia.” D.C. Code § 50-2301.02 (4). The statute defines “operator” and “owner” as follows:

(6) The term “operator” means:

(A) Any person, corporation, firm, agency, association, organization, federal, state or local governmental agency in the business of renting or leasing vehicles to be used or operated in the District;

(B) An owner who operates his own vehicle; or

(C) A person who operates a vehicle owned by another.

(7) The term “owner” means:

(A) Any person, corporation, firm, agency, association, organization, federal, state or local governmental agency or other authority or other entity having the property of or title to a vehicle used or operated in the District; or

(B) Any registrant of a vehicle used or operated in the District; or

(C) Any person, corporation, firm, agency, association, organization, federal, state or local government agency or authority or other entity in the business of renting or leasing vehicles to be used or operated in the District.

Id. § 50-2301.02 (6)-(7).

Applying these statutes to moving violations, Subchapter II of this code chapter specifies that

“[n]otwithstanding any other provision of law, all violations of statutes, regulations, executive orders or rules relating to the operation of any vehicle in the District . . . shall be processed and adjudicated pursuant to the provisions of this subchapter. . . .” D.C. Code § 50-2302.01. For any such alleged traffic violation, Subchapter II provides for a hearing:

(a) Each hearing for the adjudication of a traffic infraction pursuant to this subchapter shall be held before a hearing examiner in accordance with Chapter IX of Title 18 of the District of Columbia Municipal Regulations except as provided by this chapter. The burden of proof shall be on the District and no infraction shall be established except by clear and convincing evidence.

(b) If a person to whom a notice of infraction has been issued fails to appear at a hearing for which he or she received notice, the hearing examiner may enter a default judgment

. . . .

(d) After due consideration of the evidence and arguments presented, the hearing examiner shall determine whether the infraction has been established. Where the infraction is not established, an order dismissing the charge shall be entered. Where a determination is made that an infraction has been established or where an answer admitting the commission of the infraction or admitting the commission of the infraction with explanation has been received, an appropriate order shall be entered in the Department’s records.

(e) An order, entered pursuant to a determination that an infraction has been established or pursuant to the receipt of an answer admitting the infraction or admitting the infraction with explanation, shall be civil in nature but shall be treated as an adjudication that an infraction has been committed

Id. § 50-2302.06. An appeal from an adverse decision by the examiner may be made to an Appeals Board, D.C. Code § 50-2304.02, and ultimately to the Superior Court, D.C. Code § 50-2304.05. *See*

generally *Kovach v. District of Columbia*, 805 A.2d 957, 961-63 (D.C. 2002) (describing procedures for motorists challenging traffic tickets).

B. District Regulations Governing Issuance and Adjudication of Notices of Infraction

Further procedural protections are established through District regulations. The regulations require certain identifying information to be included in any Notice of Infraction (“ticket”). 18 DCMR § 3000.1 (2006).¹ The regulations also delineate the rules of evidence applicable to any administrative hearing on traffic violations:

3012.1 The burden of proof shall be on the District.

3012.2 The standards of proof established by the D.C. Traffic Adjudication Act are the following:

(a) Clear and convincing evidence in cases of moving violations; and

(b) Preponderance of the evidence in cases of parking violations.

3012.3 All testimony shall be given under oath or affirmation administered by the hearing examiner.

3012.4 The respondent shall have the right to present witnesses, to conduct examination and cross examination, and to introduce documentary evidence.

3012.5 The hearing examiner may require production of evidence.

¹ “The Notice of Infraction, also referred to as a ticket, shall be in the form prescribed by the Director and shall contain the type of registration; the registration plate number; the jurisdiction of registration; a description of the vehicle; a general statement of the violation alleged; the date, time, and place of the occurrence” 18 DCMR § 3000.1.

3012.6 The Notice of Infraction shall constitute prima facie evidence of the statements contained in the notice and shall be a record in the ordinary course of business.

Id. at § 3012.

C. Automated Traffic Enforcement System ("ATE System")

1. D.C. Code Title 50, Chapter 22, Subchapter V: Automated Traffic Enforcement

There is no dispute between the parties that, in all ways relevant to this litigation, moving violations resulting from use of the ATE System are subject to the statutory scheme as set out above.² D.C. Code § 50-2209.01 expressly authorizes use of the ATE System and establishes the weight given to evidence obtained through it:

(a) The Mayor is authorized to use an automated traffic enforcement system to detect moving infractions. Violations detected by an automated traffic enforcement system shall constitute moving violations. Proof of an infraction may be evidenced by information obtained through the use of an automated traffic enforcement system. For the purposes of this subchapter, the term "automated traffic enforcement system" means equipment that takes a film or digital camera-based photograph which is linked with a violation detection system that synchronizes the taking of a photograph with the occurrence of a traffic infraction.

(b) Recorded images taken by an automated traffic enforcement system are prima facie evidence of an infraction and may

² One exception is the assessment of "points." Although District regulations permit a hearing examiner to assess points against a driver found liable for certain moving violations, the regulations expressly exclude those traffic convictions obtained through use of the ATE System. *See* 18 DCMR § 303.1.

be submitted without authentication.

Id. Section 50-2209.02 describes liability, limitation of liability, and due process rights afforded to those vehicle owners who have been charged with a moving violation on the basis of ATE System evidence:

(a) The owner of a vehicle issued a notice of infraction shall be liable for payment of the fine assessed for the infraction, unless the owner can furnish evidence that the vehicle was, at the time of the infraction, in the custody, care, or control of another person. In the event that the registered owner claims that the vehicle was in the custody, care, or control of another person, the registered owner of the vehicle shall provide evidence in a sworn affidavit, under penalty of perjury, setting forth the name, drivers license number, and address of the person who leased, rented, or otherwise had care, custody, or control of the vehicle

(b) When a violation is detected by an automated traffic enforcement system, the Mayor shall mail a summons and a notice of infraction to the name and address of the registered owner of the vehicle on file with the Bureau of Motor Vehicle Services or the appropriate state motor vehicle agency. The notice shall include the date, time, and location of the violation, the type of violation detected, the license plate number, and state of issuance of the vehicle detected, and a copy of the photo or digitized image of the violation.

(c) An owner or operator who receives a citation may request a hearing which shall be adjudicated pursuant to subchapter I of Chapter 23 of this title.

(d) The owner or operator of a vehicle shall not be presumed liable for violations in the vehicle recorded by an automated traffic enforcement system when yielding the right of way to an emergency vehicle, when the vehicle or tags have been reported stolen prior to the citation, when part of a funeral procession, or at the direction of a law enforcement officer.

Id. Finally, D.C. Code § 50-2209.03 permits the District to engage a private contractor to handle ministerial functions of operating the ATE System:

The Mayor may enter an agreement with a private entity to obtain relevant records regarding registration information or to perform tasks associated with the use of an automated traffic enforcement system, including, but not limited to, the operation, maintenance, administration or mailing of notices of violations.

Id.

2. Standard Language of Tickets Issued by the District in ATE System Cases

Once the ATE System receives information that a vehicle has violated either District speeding or red-yellow light laws, a ticket is issued to the vehicle's owner, complete with the statutorily-required information. *See* D.C. Code § 50-2209.02 (b); 18 DCMR § 3000.1. The boilerplate language on the front of the ticket is as follows:

Your vehicle was photographed violating District of Columbia Traffic Regulations on the date and time listed below. Under District law, the registered owner of a vehicle is liable for payment of the fine for violations recorded using an automated traffic enforcement system, unless the vehicle was not in the custody of the owner at the time of the infraction. **POINTS WILL NOT BE ASSESSED AGAINST THE REGISTERED OWNER OR THE DESIGNATED DRIVER FOR THIS VIOLATION.**

On the back of this notice you will find detailed information regarding payment, ticket adjudication, and assignment of responsibility.

. . . .

Your answer to this notice of infraction must be submitted by the payment due date listed below.

Failure to pay the fine or otherwise answer in the manner and time required is an admission of liability. This will result in additional penalties and the loss of your right to a hearing. In addition, your driving privileges may be suspended and your home state may place a hold on the renewal of your vehicle registration. For vehicles registered in the District of Columbia, the District Department of Motor Vehicles will place a hold on the renewal of the vehicle registration as long as the fine and penalty are unpaid.

The back of the District's ticket explains how the automated system works, and provides an answer form. The owner is offered two basic alternatives: to admit or deny the infraction. If the owner denies the infraction, s/he may either request (1) a hearing, (2) mail adjudication, or (3) outright dismissal of the ticket, on the basis of the vehicle having been "stolen prior to the issuance of the citation," or that the "vehicle was not in my custody, care, or control at the time of the infraction." If the owner wishes to claim that s/he was not the driver, s/he must complete the very bottom portion of the ticket, submitting a notarized certification with the name and address of the "actual driver."

If the registered owner fails to respond to the ticket within thirty days of its issuance, the District sends a "Notice of Deemed Admission." This notice states:

Your vehicle was photographed violating District of Columbia Traffic Regulations on the date and time listed above. Under District law, the registered owner of a vehicle is liable for payment of the fine assessed for violations recorded using an automated traffic enforcement system. **This includes rental, leased, and fleet**

vehicles. As the registered owner of the vehicle with the tag listed above, you were mailed a notice of infraction for this offense.

Our records show that you failed to answer the initial Notice of Infraction for this violation within 30 calendar days from issuance as required by law.

Under District law, you are deemed to have admitted this violation. Therefore, a penalty equal to the original fine was added to the total amount due. You may not request a hearing on this infraction.

You must pay this fine and penalty within ten days or your home state Department of Motor Vehicles will be notified of your failure to answer this violation. Your state may also place a registration hold on your vehicle registration.

II. The Appellants

A. *Emelike U. Agomo*

Agomo is the registered owner of a vehicle with the Texas license plate G36-NVZ. Between November 10, 2001 and March 16, 2002, the ATE System identified Agomo's car as speeding in the District at least eighteen different times. Tickets for each of the moving violations were issued to Agomo at his registered address in Texas. Each gave Agomo thirty days to respond, or else it deemed the moving violation admitted.

On July 17, 2002, a hearing was held on six of the eighteen citations issued to Agomo. Although not personally present for the hearing, Agomo was represented by counsel who made the following argument on his behalf:

[Agomo's] counsel denies the infraction and alleges the following: [Agomo] lives in Houston, TX. He received notices too late to schedule a hearing. He got a list of the infractions at once. He wasn't driving the vehicle but he doesn't know who was driving the vehicle. The Constitution doesn't allow a presumption of guilt which is what the Government is doing in this instance by making [Agomo] identify the driver or be found guilty of the violation. One of three people could be driving the vehicle [sic].

The hearing examiner determined that Agomo was liable for two of the six tickets, based on the fact that he was the registered owner of the vehicle.

B. *Auto Ward, Inc.*

Auto Ward is a registered District of Columbia corporation which leases automobiles to taxicab drivers in the District. Auto Ward was issued over 100 tickets between February 23, 2000 and October 19, 2002; these tickets included both speeding and red-yellow light violations. On November 7, 2002, Muhammad Saleem, President of Auto Ward, attempted to renew one of his fleet vehicle's registration with the District; however, he was told that any vehicle registration renewals would be "blocked" until the company paid its outstanding fines. The District supplied Saleem with a list of fifty-seven outstanding tickets.³ At the time the trial court granted the District's motion for summary judgment in this case, Auto Ward's tickets were at various stages of the administrative process, but it had been found liable on at least some of them.

³ In a sworn affidavit dated March 3, 2003, Saleem contends that he filed the requisite affidavits with the District identifying the drivers in each of the fifty-seven outstanding notices, although he kept no copies of those filings, nor could he produce the standard acknowledgment letters the District sends upon receipt of such affidavits.

Procedural History**I. The Complaint**

The amended complaint asserted that Agomo had been charged with at least eleven different speeding violations⁴ which, at the time of complaint's filing, were at various stages of the administrative process. Auto Ward had been charged with at least fifty-seven moving violations, consisting of both speeding and red-yellow light violations, and was found liable on at least some of them. However, the complaint alleged that some of those tickets were "adjudicated . . . without providing notice and an opportunity to be heard on the charges."

The amended complaint specified two causes of action, both as civil rights due process violations under 42 U.S.C. § 1983: first, on the basis of the "presumption of guilt" of the vehicle owner inherent in the ATE System, and second, on the basis of the compensation arrangement between the District and ACS (the private contractor charged with processing ATE System tickets).

⁴ It was later determined that Agomo had been charged with at least eighteen different speeding violations.

II. The Trial Court Proceedings

A. *The Parties' Opposing Motions*

After appellants amended their complaint to alter plaintiffs and delineate two separate claims, the District filed a motion to dismiss the amended complaint on February 14, 2003. At the outset, the motion described the impact of the ATE System on traffic safety:

Since its inauguration in August of 1999, the [ATE System] has proven a significant element in improving public safety in the District. Traffic violations at intersections with cameras have dropped more than 60 percent, and red light running fatalities were reduced from 16 to 2 in the first two years of operations. With the implementation of photo radar in high-risk areas in August of 2001, the percentage of motorists speeding has dropped by more than 65 percent.

The motion described the process through which raw ATE System data was translated into charges of a moving violation:

[W]here an image is recorded by system cameras – and unless the image is indecipherable (e.g., no clear image of the license plate) or patently unusable (e.g., in speeding photos, more than one vehicle in the “detection area”)—a “draft” [ticket] is prepared by ACS personnel for review by an MPD [Metropolitan Police Department] officer. An MPD officer reviews each “draft” [ticket], and decides whether the [ticket] should be issued to the vehicle owner.

In support of this description, the District attached declarations by MPD Captain Kevin Keegan⁵ and Matthew Hopwood, a Senior Manager at ACS.

Hopwood's declaration confirmed the manner in which ACS administered the ATE System, asserting that "ACS makes no determinations concerning issuance of [tickets] to vehicle owners." On the basis of the MPD officer's determination, ACS mails a ticket. Once a ticket is returned, ACS is responsible for processing the payment and sorting through "[a]ll correspondence not related to payment." In the event that a ticket recipient requests a hearing or mail adjudication:

. . . ACS transmits the documents submitted by the owner, together with a copy of the Notice and related logs, to DMV [Department of Motor Vehicles] for consideration and disposition. Where a hearing is requested, ACS also schedules a hearing date, based on time availabilities furnished by DMV to ACS, and advises the vehicle owner of the time and location of the hearing by mail.

. . . In either adjudicative event, if the ticket is dismissed, that determination will be entered into the database by the responsible DMV hearing examiner and no further action is taken. On the other hand, if the owner is found liable, the responsible DMV hearing examiner will enter that result in the database, and the owner will be so advised. ACS does not participate in any adjudicating activities.

. . . Finally, if the vehicle owner timely returns the Notice and properly identifies another individual as the driver of the vehicle at the time of the violation, ACS enters that information into the [ATE System] database, with two consequences: (a) the vehicle owner is noted as having identified a 3rd party as responsible and is no longer to be considered liable for the violation; and (b) a new [ticket] is issued to the other individual identified as the driver. In the latter case, procedures are then followed in the same fashion as if an initial

⁵ Captain Keegan's declaration is not included in the appellate record.

[ticket] had been issued, except that the identified driver is not provided the option of designating someone else as responsible.

As to the merits of the claim that the ATE System violated appellants' due process rights, the District's motion to dismiss asserted that the statutory scheme denied the appellants neither proper notice nor a pre-deprivation opportunity to be heard, as the appellants received tickets prior to any determination of liability, which permitted them to request a hearing to contest the alleged violation. Further, the District claimed, the statute did not create an "irrebuttable presumption of liability" with "conclusive effect on adjudicative determinations by DMV hearing examiners." Finally, the motion contended that the procedural protections inherent in the ATE System were proper under the balancing test of *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

The District also disputed the appellants' second claim that the compensation arrangement between ACS and the District violated due process. The appellant's claim was based, in large part, on an assertion that ACS "examines, and on a substantial basis adjudges the validity and content of" tickets. For a period up to April of 2002, ACS was compensated on a per-citation basis. Appellants asserted that these factors combined to render the process "impermissibly partial towards a verdict against automobile owners." The District conceded that from March 1999-March 2002, ACS received a fee per citation (\$29, later raised to \$32); however, since March of 2002, ACS has received a fixed monthly fee of approximately \$190,000 per month. However, the District asserted that ACS performs only ministerial, rather than adjudicative functions in the administration of the

ATE System. “ACS has no role in the determinations of liability.” Therefore, the District argued, unlike the precedents from criminal law cited by appellants, there was no danger of a tainted process.

On March 27, 2003, the appellants filed a cross-motion for summary judgment on count one of their amended complaint, describing the District’s ATE System as “the most glaringly unconstitutional program for automated policing of traffic in the nation.”

B. The Trial Court Ruling

The trial court granted the District’s motion for summary judgment⁶ in a memorandum order and judgment issued on June 12, 2003. The trial court held that under the balancing test in *Mathews v. Eldridge*,

the plaintiffs’ due process rights were not violated based on failure of notice or deprivation of the opportunity to be heard. It is undisputed that (a) the plaintiffs received notices of infraction in advance of any determinations of liability, (b) that the notices contained an accurate identification of the vehicle, and (c) a clear description of the asserted violation. . . .

Neither plaintiff states in their amended complaint that they ever demanded a hearing and were denied. The plaintiffs were fully informed as to the nature of their infraction and the manner in which they could obtain a fair hearing.

⁶ Because the court considered matters outside the complaint, it treated the Motion to Dismiss the Amended Complaint filed by the District of Columbia as one for summary judgment, *American Ins. Co. v. Smith*, 472 A.2d 872, 874 (D.C. 1984); thus hereinafter we shall refer to it as the District’s “motion for summary judgment.”

The court further found that, although cameras operated by the Government created a privacy issue, those concerns were outweighed by “the legitimate concerns for safety on our public streets,” and that the District of Columbia was acting within its power “when it created the rule of evidence stated in D.C. Code § 50-2209.01 (b) and created the presumption that the owner of a vehicle was its driver at the time of the infraction.”

Analysis

When reviewing a trial court’s order granting summary judgment, this court conducts an independent review of the record and will affirm the order if “there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law.” *Holland v. Hannan*, 456 A.2d 807, 814 (D.C. 1983) (citations omitted). We review the record in the light most favorable to the non-moving party, and summary judgment is properly granted if the record would not permit an impartial jury, acting reasonably, to return a verdict in the non-moving party’s favor. *Poyner v. Loftus*, 694 A.2d 69, 70-71 (D.C. 1997) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986)). The parties do not dispute any material facts relating to the first issue; that is, whether the procedures set forth in the ATE System’s statutory scheme violate due process.

I. Statutory ATE System Due Process Claim

In evaluating a due process claim brought under § 1983, “it is necessary to ask what process the State provided, and whether it was constitutionally adequate.” *Zinermon v. Burch*, 494 U.S. 113,

126 (1990). The Supreme Court has set forth a balancing test to determine whether a state's due process procedures are adequate:

First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Mathews, 424 U.S. at 335.

We begin by noting that appellants are not challenging the trial judge's ruling that the basic procedures for contesting a traffic citation under the Act satisfy the requirements of due process.⁷ Appellants instead focus their appeal on the constitutionality of the liability system created by statute in D.C. Code § 50-2209.02. Appellants contend that the trial judge incorrectly interpreted § 50-

⁷ The trial judge found that the ATE System:

...passes the *Mathews* test because (a) the private interest involved is small in the respect that a red-light violation carries only a \$75 civil penalty with no points; (b) regarding the risk of an erroneous deprivation, the amended complaint identifies no concern that cannot be addressed through the DMV's quasi-judicial administrative hearing process and subsequent judicial review provided by statute; and (c) the District's interest in deterring the life-threatening activity of red light running and speeding is significant. Financial and administrative burdens of alternatives to [the ATE System], such as the plaintiff's suggestion of manning each dangerous intersection with a police officer, is simply not feasible in this time of heightened security and does not sway the court to find that extra procedural protections are necessary. Therefore, the District of Columbia's [automated traffic enforcement] program is within the flexible concept of due process that the Supreme Court has embraced.

2209.02 as creating a rebuttable presumption that the owner of the car was the driver. Appellants' first argument is that the language of D.C. Code § 50-2209.02 instead creates a statutory presumption of liability, whereby the identity of the driver is irrelevant, and that this system therefore violates due process and conflicts with the requirements in other sections of the traffic code that require the identity of the driver to be proved before liability can be assessed. Because this presents a question of statutory construction, we review it de novo. *Robert Siegel, Inc. v. District of Columbia*, 892 A.2d 387, 393 (D.C. 2006); *Richardson v. Easterling*, 878 A.2d 1212, 1216 (D.C. 2005).

“As always, our first task when called upon to choose between two conflicting interpretations of a statutory provision is to examine the statute itself, so as to determine whether its language is ambiguous.” *District of Columbia v. Gallagher*, 734 A.2d 1087, 1090 (D.C. 1999). We find the meaning of the plain language clear, therefore we need look no further. *See id.* at 1091 (citing cases). D.C. Code § 50-2209.02 states that “[t]he owner of a vehicle issued a notice of infraction shall be liable for payment of the fine assessed for the infraction, unless the owner can furnish evidence that the vehicle was, at the time of the infraction, in the custody, care, or control of another person.” This language creates a rebuttable presumption that the car used in the infraction was in the custody, care, or control of the registered owner, and it imposes vicarious liability on that basis. Vicarious liability, in and of itself, is merely a legal concept used to transfer liability from an agent to a principal. *See Hayes v. Chartered Health Plan*, 360 F. Supp. 2d 84, 90 (D.D.C. 2004). If the factual predicate is established, *i.e.*, that the car was in the care, custody, or control of the registered owner, then liability is imposed on the owner without further inquiry into who specifically may have been driving.

It is instructive to compare the instant statute with D.C. Code § 50-1301.08, the statute that holds the owner of an automobile liable for accidents committed by another person if the person was operating the vehicle with the owner's consent. This statute also creates a system of vicarious liability, again through the use of a rebuttable presumption. See *Athridge v. Rivas*, 354 U.S. App. D.C. 105, 106, 312 F.3d 474, 475 (2002) (describing plaintiff as "seek[ing] to impose vicarious liability on the appellees" through the statute). "[T]he purpose of [§ 50-1301.08] was to place the liability upon the person in a position immediately to allow or prevent the use of the vehicle and to do so by giving a lawful and effective consent or prohibition to its operation by others." *Curtis v. Cuff*, 537 A.2d 1072, 1074 (D.C. 1987) (quoting *Mason v. Automobile Finance Co.*, 73 App. D.C. 284, 287, 121 F.2d 32, 35 (1941)). The rebuttable presumption under this statute is that "proof of the ownership of said motor vehicle shall be prima facie evidence that such person operated said motor vehicle with the consent of the owner." D.C. Code § 50-1301.08. See also *U-Haul Co. v. State Farm Mut. Auto. Ins. Co.*, 616 A.2d 1264, 1265 (D.C. 1992) ("The Motor Vehicle Safety Responsibility Act creates a rebuttable presumption that any operator of a vehicle has the consent of its owner and is therefore the owner's agent"); *Curtis*, 537 A.2d at 1074 ("Once the defendant's ownership has been established, the statute creates a presumption of agency which places the burden of proof as to the question of consent upon the defendant-owner.") In other words, there is a rebuttable presumption that any person driving a car does so with the consent of the registered owner, and unless the owner comes forward with evidence to rebut that presumption, liability will be vicariously imposed. See, e.g., *Athridge v. Iglesias*, 382 F. Supp. 2d 42, 47 (D.D.C. 2005) (clarifying that D.C. Code § 50-1301.08 does not create *strict* vicarious liability, instead deeming the legal concept "liability turning on the fulfillment of a condition"). Similarly, in D.C. Code § 50-

2209.02, there is a rebuttable presumption that the vehicle was in the custody, care, or control of the registered owner, and unless the owner rebuts that presumption, liability is vicariously imposed.

Appellants' argument that this liability system undermines the clear and convincing standard of proof required by D.C. Code § 50-2302.06 (a) is misplaced. The statute provides that "no *infraction* shall be established except by clear and convincing evidence." *Id.* (emphasis added). Appellants confuse proof of the violation with the imposition of liability. The statutory mechanism for assessing liability once an infraction has been established in no way affects the requirement that the District prove the commission of a traffic infraction by clear and convincing evidence. As conceded by the appellants in this case, the ATE System accurately captures and records traffic violations; thus there is no constitutional infirmity in the code provision that declares recorded images to be *prima facie* evidence of an infraction. See D.C. Code § 50-2209.01 (b).

Having determined that the statute at issue imposes vicarious liability through the use of a rebuttable presumption, we turn to the question of whether such a system violates the constitutional protections of due process, and we conclude that it does not. "[A] strong presumption of constitutionality inheres in legislative enactments, and there is a heavy burden on a party who seeks to overturn one." *In re W.T.L.*, 656 A.2d 1123, 1131 (D.C. 1995) (citing cases). The Supreme Court has long held that on their face, systems of vicarious liability that impose civil liability are not contrary to the notions of due process. "[T]he extension of the doctrine of liability without fault to new situations to attain a permissible legislative object is not so novel in the law or so shocking 'to reason or to conscience' as to afford in itself any ground for the contention that it denies due process

of law.” *Louis Pizitz Dry Goods Co. v. Yeldell*, 274 U.S. 112, 115 (1927). “It is not unknown or indeed uncommon for the law to visit upon the owner of property the unpleasant consequences of the unauthorized action of one to whom he has entrusted it.” *Van Oster v. Kansas*, 272 U.S. 465, 467 (1926) (upholding constitutionality of statute that declared any vehicle used in the state to transport liquor a common nuisance and subject to forfeiture). As long as the legislature “adopt[s] a device consonant with recognized principles” to “effect a purpose clearly within its power” there is no violation of due process. *Id.* at 468. It is within the legislature’s power to regulate traffic violations and ensure the safety of its streets; thus on its face, a statute imposing vicarious liability on automobile owners does not offend due process. See *Smith v. District of Columbia*, 436 A.2d 53, 58 (D.C. 1981) (“The regulation of highway speed is one of the most pressing obligations of a state.”). *Cf. id.* at 60 (“The causal link between prohibiting the use of radar detectors and protecting the public safety . . . is sufficient to support the reasonableness of the regulation on due process grounds.”).

We next address whether the rebuttable presumption created by the statute violates due process, as appellant contends, by impermissibly “shifting the burden of proof” to the defendant. We pause in our analysis to note that much of appellant’s brief focuses on the “presumptions of innocence” that are applicable in criminal proceedings. It is clear, however, that violations under the ATE System impose only civil liability in the form of a modest fine,⁸ and thus analysis under the

⁸ See D.C. Code § 50-2302.06 (e) (order establishing traffic infraction shall be “civil in nature”); D.C. Code § 50-2302.06 (f) (sanction is “civil fine”); D.C. Code § 50-2301.05 (providing for “civil fines” and monetary penalties); *Purcell v. United States*, 594 A.2d 527, 529 (D.C. 1991) (“Traffic Adjudication Act . . . converted almost all District of Columbia traffic offenses from crimes to civil violations”).

rubrics of criminal law is inappropriate. See *District of Columbia v. Hudson*, 404 A.2d 175, 179 n.6 (D.C. 1979) (en banc) (“presumption of innocence in a criminal prosecution has no place in a civil proceeding . . .”). Cf. *Medina v. California*, 505 U.S. 437, 443 (1992) (“*Mathews* balancing test does not provide the appropriate framework for assessing the validity of state procedural rules which . . . are part of the criminal process.”). As the trial court noted, presumption of liability is not a novel concept in civil cases.

Legislation providing that proof of one fact shall constitute prima facie evidence of the main fact in issue, is but to enact a rule of evidence, and quite within the general power of government That a legislative presumption of one fact from evidence of another may not constitute a denial of due process of law or a denial of the equal protection of the law it is only essential that there shall be some rational connection between the fact proved and the ultimate fact presumed, and that the inference of one fact from proof of another shall not be so unreasonable as to be a purely arbitrary mandate.

Mobile, Jackson & Kansas City R.R. Co. v. Turnipseed, 219 U.S. 35, 43 (1910). It is entirely rational to presume that a vehicle is in the custody, care, or control of its registered owner. Cf. *Jones v. Halun*, 111 U.S. App. D.C. 340, 341, 296 F.2d 597, 598 (1961) (stating that because the driver of a car has the owner’s consent more often than not, there is a rational basis for the presumption of consent). Moreover, the Supreme Court has stated that a presumption is valid as long as it does not preclude a defense, *Turnipseed*, 219 U.S. at 43, and it is clear the instant statute provides ample leeway for the defendant to rebut the presumption by identifying a third-party driver.⁹ That the

⁹ Although it is true that “[s]tatutes creating permanent irrebuttable presumptions have long been disfavored under the Due Process Clauses of the Fifth and Fourteenth Amendments,” *Vlandis v. Kline*, 412 U.S. 441, 446 (1973), there is some suggestion that even an irrebuttable presumption may not violate due process as long as there is a strong, rational connection between the actual facts (continued...)

legislature has chosen to require specified means of rebutting the presumption does not invalidate it; as one court has succinctly stated, “[t]he public has a right to expect that a vehicle owner who voluntarily surrenders control of his vehicle to another is in the best position both to know the identity and competence of the person to whom he entrusts the vehicle. . . .” *Chicago v. Hertz Commercial Leasing Corp.*, 375 N.E.2d 1285, 1291 (Ill.), *cert. denied*, 439 U.S. 929 (1978).¹⁰

II. Compensation Arrangement with ACS

Appellants’ second argument is that the large sums of money involved in the administration of the ATE System created a biased adjudication process. They allege that administration of the ATE System by ACS, a private company, violates due process because ACS’s financial profit from the fines imposed by the system creates a tainted tribunal.¹¹ They further argue that the District’s

(...continued)

and the presumption. *Compare Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1, 22-24 (1976) (upholding irrebuttable statutory presumption allocating costs of compensation for Black Lung Disease victims) with *United States Dep’t of Agric. v. Murry*, 413 U.S. 508, 514 (1973) (holding irrebuttable presumption invalid under due process because the presumption often operated “contrary to fact”).

¹⁰ To the extent that appellants are challenging the regulation based on the possibility that a situation may arise in which a motorist has a “truthful alibi” under circumstances that might justify his lack of knowledge about who was driving his car, such as a motorist being in the hospital at the time of the violation, or a car stolen and photographed before owner became aware of theft, we need not address those claims. We have made clear that “a party has standing to challenge the constitutionality of a statute only insofar as it has an adverse impact on his own rights. . . . if there is no constitutional defect in the application of the statute to a litigant, he does not have standing to argue that it would be unconstitutional if applied to third parties in hypothetical situations.” *In re W.T.L.*, 656 A.2d at 1132 (citing *County Court of Ulster County v. Allen*, 442 U.S. 140, 154-55 (1979)).

¹¹ The parties agree that from March 1999 until February 2002, ACS received compensation
(continued...)

contractual financial obligation to ACS “imperil[s] the fundamental fairness” of the adjudicatory process by creating a financial incentive for the District to enter determinations of liability against them in order to generate enough revenue to fulfill the monthly contract amount guaranteed to ACS. At minimum, appellants state that there are disputed issues of material fact that warrant reversal of the grant of summary judgment, especially, they argue, in light of the fact that the trial court articulated no reasons for its ruling on this issue.¹²

Our review of the record, viewing it in the light most favorable to the appellants, reveals that the following facts are undisputed: if a vehicle commits an infraction by speeding or going through a red light, ATE System cameras take a picture of the car’s license plate. The picture is reviewed for certain defects, and ACS issues and mails a ticket to the registered owner of the vehicle. The ticket states that under District law the registered owner is liable, and then provides instructions on how to admit or deny the infraction. Appellants made clear that they are not challenging the

(...continued)

based on the number of citations that were paid. Beginning in March 2002, ACS received a set amount of compensation under a monthly contract with the District. Appellants do not rely on this distinction and argue that their due process rights were violated under either compensation method.

¹² The mere fact that the trial court granted the District’s motion for summary judgment without articulating its reasons for doing so on Count 2 does not preclude us from ruling on it. The cases cited by appellants in support of a remand all involved situations where the reviewing court found disputed issues of material fact. See *Wilson v. Halley Gardens Assocs.*, 738 A.2d 265, 266 (D.C. 1999) (summary judgment granted prematurely because of genuine issue of material fact); *Isen v. Calvert Corp.*, 126 U.S. App. D.C. 349, 353, 379 F.2d 126, 130 (1967) (record discloses “genuine issues of material fact”); *Weade v. Trailways of New England, Inc.*, 117 U.S. App. D.C. 73, 325 F.2d 1000 (1963) (record raises substantial issues of fact). Although appellants dispute minor issues such as the veracity of the ACS Ticket Detail Report, we are satisfied that none of these facts is material to the issue of whether the general compensation arrangement for administration of the ATE System violates due process.

accuracy of the ATE System cameras; thus for the purposes of this case we assume that all citations issued accurately captured a violation of traffic laws. The parties dispute whether ACS performs any adjudicatory function, and appellants argue that this dispute should warrant reversal. However, the parties do not dispute the procedures that are followed by ACS, and whether those actions constitute an imposition of liability is a question of law, not a dispute of fact. A “mixed question” of law and fact exists where “the historical facts are admitted or established, the rule of law is undisputed, and the issue is . . . [how] the rule of law [is] applied to the established facts” *Davis v. United States*, 564 A.2d 31, 35 (D.C. 1989) (en banc) (citing *Pullman-Standard v. Swint*, 456 U.S. 273, 289 n.19 (1982). Cf. *Southern Ry. Co. v. Taylor*, 57 App. D.C. 21, 26, 16 F.2d 517, 522 (1926) (“whether certain facts do or do not constitute a ground of liability is in its nature a question of law”) (quoting *Beutler v. Grand Trunk Junction Ry. Co.*, 224 U.S. 85, 89 (1912)).

ACS issues the notice of infraction, which indeed states that the owner of the vehicle is “liable”; however, in doing so ACS has not performed any adjudicatory function. It is by operation of the statutory scheme that liability is imposed, not by the act of ACS issuing the citation. ACS merely makes factual determinations about violations of speed or red-yellow light laws, and those determinations are reviewed by an MPD officer who decides whether a ticket should be issued. Once ACS makes that factual determination, the accuracy of which is not being challenged, the predicate has been established, and by operation of the statute, vicarious liability is imposed unless the factual predicate is rebutted. As discussed in section I, *supra*, this mechanism for imposing liability does not violate due process.

Having determined that, as a matter of law, ACS does not make determinations of liability, any financial compensation received by ACS thus has no effect on the adjudicatory process. Moreover, appellants do not dispute that all citations contain information on the process for challenging liability, either through live hearings or submission of affidavits. That most people choose to admit liability and pay the fine without availing themselves of this process does not change the fact that ultimate liability in a contested case is imposed only after a hearing examiner or judge has reviewed evidence of the violation as well as any challenges to its validity or other statutorily-prescribed defenses.

Appellants' argument that the District's budgetary obligation to ACS taints the impartiality of its adjudicatory tribunals likewise fails. The cases relied on by appellants indicate that impartiality is affected where there is a direct link between the judge's behavior and the money received. See *Tumey v. Ohio*, 273 U.S. 510, 523 (1927) (holding that due process is violated where judge has "direct, personal, substantial pecuniary interest" in convicting). In *Ward v. Monroeville*, 409 U.S. 57 (1972), even though the mayor did not receive direct financial compensation from convictions, the Supreme Court found that mayor's executive responsibilities for village finances may have made him "partisan to maintain the high level of [revenue] contribution from the mayor's court," and thus it was a violation of due process for him to personally make judgments of liability for traffic violations. *Id.* at 60. Here, however, the connection is too attenuated and overbroad. *Ward* instructs us that "the test is whether the . . . situation is one 'which would offer a possible temptation to the average man as a judge to forget the burden of proof required to convict the

defendant, or which might lead him not to hold the balance nice, clear, and true between the state and the accused” *Id.* (quoting *Tumey*, 273 U.S. at 532).

The hearing examiners and judges who make the ultimate liability determinations in ATE System cases have no direct connection to the Mayor of the District or its budget. Appellants’ argument is tantamount to arguing that all judges employed by the District are biased in civil suits in which the District is a party, simply over concern that the District may fall into a budget deficit. Appellants have not suggested, nor is there any evidence, that the salaries of the individual hearing examiners or judges are contingent upon findings of liability, or that their salaries are directly affected in any way by the state of the District’s budget. Unlike the city at issue in *Ward*, the judicial and executive functions in traffic adjudication in the District are entirely separate, and on the facts before us there is no basis for questioning the impartiality of the tribunal.

Conclusion

Because we conclude that there is no dispute of material fact, and having determined that neither the statutory mechanism for imposition of liability nor the compensation arrangement of the Automated Traffic Enforcement System violates due process, the grant of summary judgment for the District of Columbia on both counts is

Affirmed.

FILED: March 4, 2004

IN THE SUPREME COURT OF THE STATE OF OREGON

STATE OF OREGON,

Respondent on Review,

v.

CHRISTINE DAHL,

Petitioner on Review.

(CC PR106249; CA A112549; SC S50053)

En Banc

On review from the Court of Appeals.*

Argued and submitted November 3, 2003.

Jeffrey C. Dahl, argued the cause and filed the briefs for petitioner on review.

Rolf Moan, Assistant Attorney General, Salem, argued the cause and filed the brief for respondent on review. With him on the brief were Hardy Myers, Attorney General, and Mary H. Williams, Solicitor General.

KISTLER, J.

The decision of the Court of Appeals and the judgment of the circuit court are affirmed.

*Appeal from Multnomah County Circuit Court, Steven R. Evans, Judge pro tempore. 185 Or App 149, 57 P3d 965 (2002).

KISTLER, J.

The primary question that this case presents is whether the state may rely on a statutory presumption to prove a traffic violation. We hold, as did the trial court and the Court of Appeals, that it may do so and accordingly affirm the Court of Appeals decision and the trial court's judgment.

A Portland police officer using "photo radar"⁽¹⁾ determined that a car registered to defendant had exceeded the speed limit. Although the photo radar took a photograph of the car and its driver, the officer did not stop the car or otherwise determine the driver's identity. Pursuant to ORS 810.439(1),⁽²⁾ the state mailed a citation to defendant alleging that she had committed a speeding violation, and defendant asked for a hearing.

At the hearing, the state introduced evidence that "the photo radar unit detected and photographed a dark maroon utility vehicle with Oregon plate WVC313" exceeding the speed limit in violation of ORS 811.123, that defendant was the registered owner of that car, and that the state had mailed the citation to defendant in compliance with ORS 810.439. Beyond that, the state did not offer any evidence that defendant was driving her

car when the violation occurred.⁽³⁾ The state relied instead on the presumption in ORS 810.439(1)(b) to prove that defendant was the driver. That paragraph provides:

"A rebuttable presumption exists that the registered owner of the vehicle was the driver of the vehicle when the citation is issued and delivered as provided in this section."

ORS 810.439(1)(b). Defendant did not offer any evidence to rebut the presumption; rather, she moved to dismiss the state's case at the close of the evidence on the ground that due process prevented the state from relying on the presumption to prove an element of its case. Without the presumption, defendant argued, the evidence was insufficient to establish that she was the driver.

The trial court rejected defendant's constitutional challenges, found that defendant had committed the traffic violation, and fined her \$85. On appeal, the Court of Appeals rejected defendant's various challenges to the statutory presumption and affirmed the judgment. *State v. Dahl*, 185 Or App 149, 57 P3d 965 (2002). We allowed review to consider the recurring question whether the state may rely on a statutory presumption to prove a traffic violation. See *State v. Clay*, 332 Or 327, 331 n 4, 29 P3d 1101 (2001) (noting but not reaching various challenges to using presumption in ORS 810.439(1)(b) to prove traffic violations).

On review, defendant advances three reasons why the trial court should have granted her motion to dismiss. She argues initially that no reasonable trier of fact could find on this record that she was driving her car when the violation occurred. Alternatively, relying on state statutes and the Due Process Clause, she argues that the state may not rely on a presumption to prove an element of a traffic violation. Finally, defendant contends that, even if the state may rely on some presumptions to prove traffic violations, this presumption violates due process because the connection between the predicate and presumed facts is too tenuous.⁽⁴⁾

Before addressing those issues, we begin by describing the statutory background against which they arise. The state cited defendant for driving 11 miles faster than the speed limit in an urban area. See former ORS 811.123 repealed by Or Laws 2003, ch 819, §§ 19, 21 (describing traffic violation). If the allegations in the citation are true, defendant committed a Class C traffic violation and was subject to a maximum fine of \$150. See ORS 811.109(1)(b) (2001) amended by Or Laws 2003, ch 819 §, 17 (identifying different classes of violations); ORS 153.018(2) (identifying maximum fines for violations).

Although a traffic violation is an "offense" within the meaning of the criminal code, ORS 161.505, it is not a crime, ORS 161.515.⁽⁵⁾ A traffic violation is instead civil.⁽⁶⁾ Consistently with that designation, ORS chapter 153 provides that only some criminal procedural rules will apply to violations. See ORS 153.030 (so providing). More specifically, ORS 153.076(2) provides that the state has the burden of proving a violation by only a preponderance of the evidence.

ORS 810.439 sets out additional procedures for issuing citations and trying traffic violations based on "photo radar." If the state complies with certain specified conditions, ORS 810.439(1)(a) authorizes the state to issue a citation for speeding to the registered owner of the car pictured in the photograph. ORS 810.439(3) requires the court to dismiss the citation if the registered owner submits a "certificate of innocence," stating that he or she was not driving when the violation occurred, and a photocopy of his or her driver's license. Finally, ORS 810.439(1)(b) creates a "rebuttable presumption * * * that the registered owner of the vehicle was the driver of the vehicle when the citation is issued and delivered as provided in this subsection." Because that presumption is the object of defendant's various challenges, we examine it in greater detail.

In order to take advantage of the presumption, the state must prove two predicate facts -- that the defendant is the registered owner of the car and that the state "issued and delivered" the citation in accordance with ORS 810.439. See ORS 810.439(1)(b) (stating predicate for presumption); *Clay*, 332 Or at 331 (discussing one predicate fact). If the state proves those predicate facts, then the statute provides that "a rebuttable presumption" exists. Beyond identifying the presumption as "rebuttable," the statute does not define its effect, and we turn to

the customary method of statutory interpretation to determine the legislature's intent. See *PGE v. Bureau of Labor and Industries*, 317 Or 606, 859 P2d 1143 (1993) (explaining statutory construction methodology).

We begin with the text and context of ORS 810.439(1)(b). See *PGE*, 317 Or at 610-11 (explaining methodology). As noted, the text of that paragraph uses the phrase "rebuttable presumption" but does not identify more precisely what the legislature intended. The phrase "rebuttable presumption" can refer to more than one procedural device. See Laird C. Kirkpatrick, *Oregon Evidence* § 308.03 (4th ed 2002) (identifying differing theories of rebuttable presumptions). It can refer to the common-law view, which holds that "a presumption disappears, or at least is reduced to an inference, in the face of legally sufficient rebutting evidence." *Id.* Alternatively, it can refer to the view, associated with Professor Edmund Morgan, that a rebuttable presumption shifts the burden of persuasion to the party against whom it is directed. *Id.*

In this case, the context makes the legislature's intent clear. Context includes related statutes as well as "the preexisting common law and the statutory framework within which the law was enacted." *Denton and Denton*, 326 Or 236, 241, 951 P2d 693 (1998). Here, the context includes OEC 308. That rule adopts Morgan's view of rebuttable presumptions and provides that, "[i]n civil actions and proceedings, a presumption imposes on the party against whom it is directed the burden of proving that the nonexistence of the presumed fact is more probable than its existence."

Another contextual source points in the same direction. In *State v. Rainey*, 298 Or 459, 462 n 2, 693 P2d 635 (1985), the court noted that historically the legislature had distinguished among conclusive presumptions, rebuttable presumptions, and permissive inferences. The court explained that, because the legislature had omitted any reference to conclusive presumptions in the evidence code, "the only presumption remaining [in the Oregon Evidence Code] is one that is disputable or rebuttable within the terms specified in OEC 308." *Id.* The court thus made clear that, in Oregon, OEC 308 defines the terms on which a presumption may be rebutted in a civil action.

Reading ORS 810.439(1)(b) in context, we conclude that, when the legislature referred to a "rebuttable presumption" in that statute, it intended to refer to the procedural device described in OEC 308. It follows that, under ORS 810.439(1)(b), once the state proves the predicate facts, the presumption shifts the burden of persuasion (not just production) to the defendant to prove that he or she was not driving when the violation occurred. OEC 308; see *Massee and Massee*, 328 Or 195, 203, 203 n 3, 970 P2d 1203 (1999) (describing effect of rebuttable presumption in ORS 107.105(1)(f)).¹²

With that background in mind, we turn to defendant's arguments. Defendant begins her first argument by noting that the court explained in *Clay* that "ORS 811.123 requires proof that a particular *person* was speeding." 332 Or at 331 (emphasis in original). She argues that a reasonable trier of fact could not infer from this record that she was the person driving her car. The Court of Appeals did not reach that issue because it held that defendant had not preserved it. *Dahl*, 185 Or App at 152 n 3. We read the record differently.

In support of her motion to dismiss, defendant argued to the trial court that the state had not introduced any evidence that she was the driver. We think that that argument was sufficient to put the trial court on notice that, in defendant's view, the state had to prove something more than that she was the registered owner; it had to introduce some evidence from which a reasonable trier of fact could find that she was the person driving the car. See *State v. Wyatt*, 331 Or 335, 343, 15 P3d 22 (2000) (explaining that, to preserve issue, party must provide trial court with sufficient explanation to identify alleged error).

Although defendant preserved the issue, the trial court correctly denied her motion to dismiss. To be sure, no evidence identified defendant as the driver, but the trial court reasonably could find that defendant was the registered owner of the car and that the state issued and delivered the citation in accordance with ORS 810.439. If the court found those predicate facts, then ORS 810.439(1)(b) directed it to find that defendant was the driver

unless she proved otherwise.⁽⁸⁾ See *Clay*, 332 Or at 332 (describing effect of presumptions). Aided by the presumption, the evidence was sufficient to avoid a motion to dismiss.

Defendant raises a second issue. Relying on state statutes and the Due Process Clause, she argues that ORS 810.439(1)(b) improperly relieves the state of the burden of proving an element of the traffic violation. We begin with defendant's statutory argument. Defendant notes that ORS 153.076(2) puts the burden on the state "of proving the charged violation by a preponderance of the evidence."⁽⁹⁾ She contends that ORS 153.076(2) is inconsistent with and trumps ORS 810.439(1)(b). The former statute, defendant argues, requires the state to prove each element of the violation by a preponderance of the evidence while the latter relieves the state of that burden. She concludes that, as a matter of statutory interpretation, the former statute controls.

We question whether any conflict exists. ORS 153.076(2) provides that the state must prove each element of a traffic offense by a preponderance of the evidence. ORS 810.439(1)(b) identifies a specific situation in which the burden of persuasion shifts to the defendant. The latter statute carves out an exception to the former. To the extent, however, that a conflict exists, the specific statute controls over the general. See ORS 174.020(2) (so stating); *Kambury v. DaimlerChrysler Corp.*, 334 Or 367, 374, 50 P3d 1163 (2002) (explaining methodology for resolving conflicting statutes). The specific exception set out in ORS 810.439(1)(b) thus applies despite the state's general statutory obligation to prove a violation by a preponderance of the evidence.

Defendant argues, somewhat obliquely, that the court's decision in *Rainey* leads to a different result. In *Rainey*, the court held that the statutory requirement that the state prove each element of a crime beyond a reasonable doubt was inconsistent with and negated a statutorily based presumption. 298 Or at 465. That case, however, involved a consideration that is absent here. *Rainey* was a criminal case, and a different resolution of the two statutes would have resulted in a due process violation -- a problem that the court both noted and carefully avoided. See *id.* (citing *State v. Stilling*, 285 Or 293, 590 P2d 1223, *cert den*, 444 US 880 (1979), and *Sandstrom v. Montana*, 442 US 510, 99 S Ct 2450, 61 L Ed 2d 39 (1979)). As we explain below, the due process concern that drove the court's statutory analysis in *Rainey* is absent here.

Relying on *Sandstrom*, defendant argues alternatively that the Due Process Clause prevents the state from using a rebuttable presumption to prove an element of a violation. As defendant notes, the trial court in *Sandstrom* instructed the jury on a presumption that, at a minimum, shifted the burden of production on an element of the charged crime to the defendant. 442 US at 517-18. The United States Supreme Court held that that presumption was inconsistent with the requirement, grounded in the Due Process Clause, that the state prove each element of a crime beyond a reasonable doubt. *Id.* at 523-24.

Sandstrom involved a crime, not a violation, and is not on point. The Due Process Clause requires the state to prove each element of a crime beyond a reasonable doubt, but that requirement does not extend to civil actions, such as this one. See *Lavine v. Milne*, 424 US 577, 585, 96 S Ct 1010, 47 L Ed 2d 249 (1976) (explaining that, "[o]utside the criminal law area, where special concerns attend, the locus of the burden of persuasion is normally not an issue of federal constitutional moment"); *In re Winship*, 397 US 358, 368, 90 S Ct 1068, 25 L Ed 2d 368 (1970) (holding that due process requirement of proof beyond reasonable doubt applies to crimes and similar offenses). The Due Process Clause poses no impediment to shifting the burden of persuasion to the defendant on one element of a traffic violation.

Defendant advances a final argument. She contends that, even if the Due Process Clause does not prevent the state from using some presumptions to prove violations, this presumption violates due process because the connection between the predicate fact (that defendant was the registered owner) and the presumed fact (that defendant was driving) is too tenuous to satisfy due process. Relying on criminal cases, defendant argues that the presumed fact must follow "more likely than not" from the predicate fact. She contends that the presumption in ORS 810.439(1)(b) does not satisfy that standard because some people drive cars that they do not own.

Defendant uses the wrong constitutional standard. The United States Supreme Court has explained that "a criminal statutory presumption must be regarded * * * as unconstitutional, unless it can at least be said with substantial assurance that the presumed fact is more likely than not to flow from the proved fact on which it is made to depend." *Leary v. United States*, 395 US 6, 36, 89 S Ct 1532, 23 L Ed 2d 57 (1969) (emphasis added); see *Ulster County Court v. Allen*, 442 US 140, 167, 99 S Ct 2213, 60 L Ed 2d 777 (1979) (applying that standard to permissive inferences in criminal cases). The Court has applied a less stringent standard in civil cases, however. See *Lavine*, 424 US at 585 n 10 (explaining distinction). The Court thus reaffirmed in *Usery v. Turner Elkhorn Mining Co.*, 428 US 1, 96 S Ct 2882, 49 L Ed 2d 752 (1976), that, to avoid a due process violation in a civil case,

"it is only essential that there shall be some rational connection between the fact proved and the ultimate fact presumed, and that the inference of one fact from the proof of another shall not be so unreasonable as to be a purely arbitrary mandate."

Id. at 28 (quoting *Mobile, J. & K. C. R. R. v. Turnipseed*, 219 US 35, 43, 31 S Ct 136, 55 L Ed 78 (1910)).

In *Usery*, the Court upheld a rebuttable presumption that a "coal miner with 10 years' employment in the mines who suffers from pneumoconiosis will be presumed to have contracted the disease from his employment." 428 US at 27. In reaching that conclusion, the Court accepted the defendant's argument that the degree of exposure to coal dust was more relevant to the likelihood of contracting pneumoconiosis than the length of employment. The Court held, however, that Congress could rely on the latter factor to shift the burden of production to the defendant. It reasoned:

"In its 'rough accommodations,' Congress was surely entitled to select duration of employment, to the exclusion of the degree of dust exposure and other relevant factors, as signaling the point at which the [defendant] must come forward with evidence of the cause of pneumoconiosis[.]"

Id. at 29-30 (citation omitted).

The presumption in ORS 810.439(1)(b) satisfies the standard stated in *Usery*. The legislature's determination that the registered owner was driving his or her car is not "so unreasonable as to be a purely arbitrary mandate." See *Usery*, 428 US at 28 (stating standard). Rather, it was rational for the legislature to assume that registered owners commonly drive their own cars. As the state argues, without challenge by defendant, of all the conceivable purposes for which a person might register ownership of a vehicle in Oregon (including, for example, resale, investment or display as a collector's item), *use* of the vehicle for transportation exceeds all others. To paraphrase *Usery*, the legislature reasonably could select proof of ownership as the point at which the burden shifts to the registered owner to prove that he or she was not driving. See *id.* at 29-30 (explaining why Congress's choice was reasonable). Having considered defendant's statutory and constitutional arguments, we hold that the state validly relied on the presumption in ORS 810.439(1)(b) to prove that defendant committed a traffic violation.

The decision of the Court of Appeals and the judgment of the circuit court are affirmed.

1. Photo radar is a system in which radar detects a person driving in excess of a specified speed and a camera takes a photograph of the speeding car.

2. ORS 810.439(1) provides that, in jurisdictions using photo radar:

"(a) A citation for speeding may be issued on the basis of photo radar if the following conditions are met:

"(A) The photo radar equipment is operated by a uniformed police officer.

"(B) The photo radar equipment is operated out of a marked police vehicle.

"(C) An indication of the actual speed of the vehicle is displayed within 150 feet of the location of the photo radar unit.

"(D) Signs indicating that speeds are enforced by photo radar are posted, so far as is practicable, on all major routes entering the jurisdiction.

"(E) The citation is mailed to the registered owner of the vehicle within six business days of the alleged violation.

"(F) The registered owner is given 30 days from the date the citation is mailed to respond to the citation.

"(G) If the person named as the registered owner of a vehicle in the current records of the Department of Transportation fails to respond to a citation issued under this subsection, a default judgment under ORS 153.102 may be entered for failure to appear after notice has been given that the judgment will be entered.

"(b) A rebuttable presumption exists that the registered owner of the vehicle was the driver of the vehicle when the citation is issued and delivered as provided in this section.

"(c) A person issued a citation under this subsection may respond to the citation by submitting a certificate of innocence or a certificate of nonliability under subsection (3) of this section or may make any other response allowed by law."

3. Defendant did not attend the hearing but appeared instead through her lawyer. The officer accordingly could not testify whether defendant appeared to be the driver pictured in the photograph that the photo radar took.

4. In the Court of Appeals, defendant also argued that the presumption violated her right against self-incrimination. The Court of Appeals rejected that argument. *Dahl*, 185 Or App at 156-58. Defendant does not pursue that issue on review, and we decline to reach it. ORAP 9.20(2).

5. ORS 161.505 provides that "an offense is either a crime, as described in ORS 161.515, or a violation, as described in ORS 153.008." Not only does ORS 161.505 distinguish violations from crimes, but violations do not come within either of the definitions of "crime" set out in ORS 161.515. See ORS 161.515 (defining "crime" as either an "offense for which a sentence of imprisonment is authorized" or "a felony or a misdemeanor").

6. On review, defendant does not argue that, although her offense was nominally civil, it was criminal in nature. See State v. Selness/Miller, 334 Or 515, 536, 54 P3d 1025 (2002) (analyzing similar issue under Article I, section 12, of Oregon Constitution).

7. If the evidence already in the record permits a reasonable trier of fact to find that the registered owner was not driving, the presumption does not require the registered owner to submit additional evidence. Rather, the registered owner may argue from the existing record that the trier of fact should find that he or she was not driving. The registered owner, however, bears the risk of nonpersuasion on that issue once the state proves the predicate facts.

8. Defendant does not argue that the evidence required the trial court to find, as a matter of law, that she proved that she was not the driver; indeed, defendant introduced no evidence to rebut the presumption.

9. ORS 153.030(1) provides that, with certain exceptions, "the criminal procedure laws of this state applicable to crimes also apply to violations." Defendant argues that this subsection makes a variety of state statutes and federal constitutional rights applicable to violations. We address in the text the state statute that provides the strongest support for defendant's position. Although defendant argues that the phrase "criminal procedure laws of the state" includes federal constitutional rights, a federal constitutional right is not a criminal procedure law of this state.

McNeil v. Town of Paradise Valley, No. 01-17003, 2002 (9th Cir. Aug. 12, 2002).

Synopsis:

McNeil appealed the district court's dismissal of alleged civil rights and Racketeer Influenced and Corrupt Organizations Act (RICO) violations premised on the issuance of an automated speed citation. The facts and basis for these contentions was not clearly set forth. However, it appears that McNeil contended the mailing of a traffic citation to the registered owner was a seizure and the process was in violation of due process.

In addition, the court found municipalities could not constitute a RICO enterprise. Furthermore, the court indicated that, because a seizure requires intentional physical control, the mailing of a citation is not a seizure. As for the due process claim, the court indicated that the challenge to the citation in municipal court was sufficient.

Source of synopsis: <http://www.nhtsa.gov/people/injury/enforce/guidance03/appendixA.htm>

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICHAEL TODD, GREGORY STACKHOUSE,)	
STEVE BLAI, VONDA SARGENT, MAX)	Case No. C09-1232JCC
HARRISON, ZOANN CHASE-BILLING, OGNJEN)	
PANDZIC, SEUNGRAN CHWE, DANIEL WU,)	ORDER
MARCUS NAYLOR, MELISSA MILLER, LEN)	
JOHNSON, ASHLEY ALM, JIM AMES, BLANCA)	
ZAMORA, CHARLES MAEL, SOMER CHACON,)	
BRAD HAMPTON, NICHOLAS JUHL,)	
GEORGINA LUKE, JUDITH STREDICKE, RICH)	
NEWMAN, MARK CONTRATTO, ANEVA)	
FREEMAN, CHRIS CLINE, TERA CLINE, JIM)	
ABRAHAM, CATHERINE IWAKIRI, VICKI)	
WAGNER, CODY EDWARDS, JULIE WILLIAMS,)	
MICHAEL SALOKAS, BARBARA KELLER,)	
CRAIG COATES, CHRIS SPERLICH, LORI)	
FLEMING, BEN BACCARELLA, DALTON)	
SHOTWELL, JERE KNUDTSEN, BELINDA RIBA)	
GREIG FAHNLANDER, DONALD STAVE,)	
RICHARD MERCHANT, DAVID ROARK,)	
TIMOTHY MORGAN, CHARLES GUST, CASEY)	
HALVORSON, STEVEN MOODY, RICHARD)	
DAIKER, individually and on behalf of two classes)	
of similarly situated persons,)	
Plaintiffs)	
v.)	
THE CITIES OF AUBURN, BELLEVUE, BONNEY)	
LAKE, BREMERTON, BURIE, FEDERAL WAY,)	
FIFE, ISSAQUAH, LACEY, LAKE FOREST)	
PARK, LAKEWOOD, LYNNWOOD, PUYALLUP,)	
RENTON, SEATAC, SEATTLE, SPOKANE,)	
TACOMA, , as well as AMERICAN TRAFFIC)	
SOLUTIONS (d/b/a "ATS"); AMERICAN)	
TRAFFIC SOLUTIONS, LLC (DBA "ATS)	
SOLUTIONS") AND REDFLEX TRAFFIC)	
SYSTEMS, INC.,)	
Defendants)	

ORDER
PAGE - 1

1 This matter comes before the Court on Defendants' motion to dismiss (Dkt. No. 108),
 2 Plaintiffs' response (Dkt. No. 118), and Defendants' reply. (Dkt. No. 119.) Having thoroughly
 3 considered the parties' briefing and the relevant record, the Court finds oral argument
 4 unnecessary and hereby GRANTS the motion for the reasons explained herein.

5 **I. BACKGROUND**

6 In 2005, the Washington State Legislature passed a law granting municipalities the
 7 authority to issue citations to owners of vehicles that were photographed violating red lights or
 8 school speed zones. WASH. REV. CODE 46.63.170. Several municipalities throughout the state
 9 adopted the traffic camera program and contracted with either American Traffic Solutions,
 10 LLC or Redflex Traffic Systems, Inc. to provide equipment and services. (Mot. 4 (Dkt. No.
 11 108).) Plaintiffs are a group of vehicle owners who were issued a notice of infraction ("NOI")
 12 generated by a traffic camera. (Resp. 20 (Dkt. No. 118).) Plaintiffs are at different stages of the
 13 proceedings that ensued from the issuance of the NOI, but all have either paid or are subject to
 14 fines of \$101, \$104 or \$124. (*Id.*) Defendants are a group of municipalities in Washington
 15 State ("Defendant Cities") and two companies that contracted with Defendant Cities to operate
 16 and maintain the traffic cameras.

17 Plaintiffs originally filed suit in King County Superior Court, but Defendants removed
 18 the case to this court pursuant to the Class Action Fairness Act, which grants original
 19 jurisdiction to federal district courts for any civil action in which the amount in controversy
 20 exceeds \$5,000,000 and is a class action in which any plaintiff is a citizen of a State different
 21 from any defendant. 28 U.S.C. § 1332(d)(2)(A). Plaintiffs challenge the legality of the traffic-
 22 camera program on the grounds that the fines are excessive, the contracts with the Defendant
 23 corporations are contrary to statute, and Defendant Cities failed to get the required approval for
 24 the NOIs from the Administrative Office of the Courts ("AOC"). Defendants dispute Plaintiffs'
 25 claims and bring this motion to dismiss on the grounds that jurisdiction over claims relating to
 26 traffic infractions should be limited to the municipal courts.

1 **II. APPLICABLE LAW**

2 Under Federal Rule of Civil Procedure 12(b)(6), a party may move to dismiss a claim
 3 for “failure to state a claim upon which relief can be granted.” Although a complaint
 4 challenged by a Rule 12(b)(6) motion to dismiss need not provide detailed factual allegations,
 5 it must offer “more than labels and conclusions” and contain more than a “formulaic recitation
 6 of the elements of a cause of action.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007).
 7 The complaint must indicate more than mere speculation of a right to relief. *See id.* When a
 8 complaint fails to adequately state a claim, such deficiency should be “exposed at the point of
 9 minimum expenditure of time and money by the parties and the court.” *Id.* at 558. A complaint
 10 may be lacking for one of two reasons: (1) absence of a cognizable legal theory or (2)
 11 insufficient facts under a cognizable legal claim. *Robertson v. Dean Witter Reynolds, Inc.*, 749
 12 F.2d 530, 534 (9th Cir. 1984). In ruling on a defendant’s motion to dismiss under Rule
 13 12(b)(6), the Court assumes the truth of the plaintiff’s allegations and draws all reasonable
 14 inferences in the plaintiff’s favor. *See Usher v. City of Los Angeles*, 828 F.2d 556, 561 (9th Cir.
 15 1987).

16 **III. ANALYSIS**

17 **A. Jurisdiction**

18 Defendants argue that the Court lacks jurisdiction to hear Plaintiffs’ claims. The Seattle
 19 Municipal Court has statutory jurisdiction over traffic cases. WASH. REV. CODE 35.20.010(1).
 20 Municipal courts in all other Defendant Cities have exclusive original jurisdiction over traffic
 21 infractions arising under city ordinances. WASH. REV. CODE 3.50.020. However, this does not
 22 mean that municipal courts have original jurisdiction over any case conceivably related to the
 23 enforcement of municipal ordinances; many such cases will be outside their purview. *Orwick*
 24 *v. City of Seattle*, 692 P.2d 793, 796 (Wash. 1984). The Supreme Court of Washington has held
 25 that “superior courts have original jurisdiction over claims for equitable relief from alleged
 26 system-wide violations of mandatory statutory requirements by a municipal court and from

1 alleged repetitious violations of constitutional rights by a municipality in the enforcement of
2 municipal ordinances.” *Id.* at 795.

3 The Court notes that there was some inconsistency with respect to the different claims
4 and defenses made by different Plaintiffs in municipal court. (Reply 12–13 (Dkt. No. 119).)
5 Before the filing of this case, some municipal courts allowed Plaintiffs to bring the claims that
6 they repeat now. (*Id.*) This, Defendants argue, proves that municipal courts did indeed have
7 jurisdiction to hear these claims. (*Id.*) Plaintiffs argue that the examples Defendants cite are
8 merely instances where *Orwick* was not properly applied, and that because municipal courts
9 lacked the authority to hear tort claims, Consumer Protection Act (“CPA”) claims, and
10 equitable claims, prior arguments to the municipal courts should be disregarded and considered
11 here afresh. (Resp. 11 (Dkt. No 118).) The Court agrees. Article IV Section 6 of the
12 Washington State Constitution does not grant municipal courts the authority to hear equitable
13 claims. These claims can be resolved consistently only in federal courts or Washington
14 superior courts.

15 Defendants offer two more jurisdictional reasons why this Court should dismiss. First,
16 Plaintiffs argue that municipal courts have jurisdiction over these claims and that where two
17 tribunals have jurisdiction, the one first obtaining jurisdiction maintains it exclusively. *Yakima*
18 *v. Int’l Ass’n of Fire Fighters, et al.*, 117 Wn.2d 655, 673–76 (1991). Second, Defendants cite
19 *Younger v. Harris*, 401 U.S. 37 (1971) for the position that a federal court must abstain in
20 deference to state courts where: (1) there is an ongoing state proceeding; (2) the proceeding
21 implicates important state interests; and (3) the federal litigant is not barred from litigating
22 federal constitutional issues in that proceeding.

23 However, as stated above, the Court finds that municipal courts do not have jurisdiction
24 over claims that relate to system-wide violations of statutory requirements in the enforcement
25 of municipal ordinances. The Court agrees with Plaintiffs that they could be barred from
26

litigating federal constitutional issues, and, accordingly, will not abstain from hearing Plaintiffs' claims.

B. Res Judicata

Defendants argue that res judicata bars Plaintiffs' claims. Res judicata prevents a party from re-litigating all claims that were raised, or could have been raised, in an earlier action. *Stevens County v. Futurewise*, 192 P.3d 1, 6 (Wash. Ct. App. 2008). Defendants cite several cases in which Plaintiffs failed to bring possible claims in municipal courts or superior courts and were therefore prohibited from bringing these claims in federal court. *Idris v. City of Chicago*, 552 F.3d 564, 565 (7th Cir. 2009); *McCarthy v. City of Cleveland*, 2009 WL 2424296 (N.D. Ohio Aug. 6, 2009); *Kovach v. District of Columbia*, 805 A.2d 957 (D.C. Ct. App. 2002); *Dajani v. Governor & General Assemble of the State of Md.*, 2001 WL 85181 (D. Md. Jan. 24, 2001). The Court finds these cases to be unpersuasive.

None of Defendants' cases is from Washington. As stated above, the Washington Supreme Court has stated that the superior courts have original jurisdiction over claims alleging system-wide violations in the enforcement of municipal ordinances. *Orwick v. Seattle*, 692 P.2d at 795. Defendants have not established that the states in which their cases were decided have similar laws. To the extent that Defendants' cases stand for the proposition that Plaintiffs should have brought their claims in municipal court, they simply do not apply to Washington law.¹

Accordingly the Court finds that res judicata does not bar Plaintiffs' claims.

C. Declaratory and Injunctive Relief Claims

Plaintiffs present three challenges to the traffic camera system. The first is that Defendant municipalities violated due-process requirements when they failed to get approval

¹ This logic also applies to Plaintiffs' failure to appeal the infractions. Because Superior Courts have *original* jurisdiction, Plaintiffs cannot be faulted for not engaging in an appeals process that would have skirted that jurisdiction.

1 for the NOIs from the Administrative Office of the Courts. (Resp. 6–9 (Dkt. No. 118).) Rule
2 2.1 of the Infraction Rules for Courts of Limited Jurisdiction (“ILRJ”) states: “Infraction cases
3 shall be filed on a form entitled ‘Notice of Infraction’ *prescribed* by the Administrative Office
4 of the Courts; except that the form used to file cases alleging the commission of a parking,
5 standing or stopping infraction shall be *approved* by the Administrative Office of the Courts.”
6 (emphasis added). WASH. REV. CODE 46.63.170(2) states: “infractions generated by the use of
7 automated traffic safety cameras under this section shall be *processed* in the same manner as
8 parking infractions, including for the purposes of RCW 3.50.100, 35.20.220, 46.16.216, and
9 46.20.270(3).” (emphasis added). Plaintiffs argue that because traffic camera infractions should
10 be processed in the same manner as parking infractions, and the form used to file cases
11 alleging parking infractions requires AOC approval, then NOIs generated by traffic cameras
12 must also require approval. Not so.

13 The Code does not require a traffic camera infraction to be treated like a parking
14 infraction in every single respect. WASH. REV. CODE 46.63.170(2) states only that when an
15 infraction is generated, is to be processed like a parking infraction. This refers to individual
16 NOIs given to individual drivers and the legal steps and consequences that ensue. The four
17 code sections that WASH. REV. CODE 46.63.170(2) specifies, WASH. REV. CODE 3.50.100,
18 35.20.220, 46.16.216, and 46.20.270(3), confirm this interpretation in that they all concern
19 aspects of post-infraction procedure: treatment of funds collected by an infraction, renewal of a
20 driver’s license following infractions, and withholding of driving privileges following traffic
21 offenses. AOC approval is not a step contemplated in the processing of any infraction; it is a
22 way of ensuring, before any processing of infractions begins, that a municipality is using
23 legally sufficient forms. Although NOIs from traffic cameras are processed like parking
24 tickets, the forms are to be drafted in compliance with rules for traffic tickets. And ILRJ 2.1
25 states that NOIs for traffic tickets need only be on forms prescribed by the AOC, not approved
26 by them. Plaintiffs have not alleged that the NOIs fail to meet any of the AOC’s prescriptions.

1 Plaintiffs' second challenge is that the fines generated by traffic cameras are excessive.
 2 WASH. REV. CODE 46.63.170(2) states that the fines "shall not exceed the amount of a fine
 3 issued for other parking infractions within the jurisdiction." Plaintiffs argue that the
 4 Washington State Legislature intended for the fines to be no higher than a normal parking
 5 ticket, i.e. twenty dollars. (Resp. 4 (Dkt. No. 118).) Defendants respond that in the intervening
 6 five years, the Legislature could have clarified its views on fine limits if they felt they had been
 7 misinterpreted. (Mot. 23 (Dkt. No. 108).) A more plausible reading of the Code, Defendants
 8 argue, is that the municipalities may set fine amounts at or below those of the maximum fine
 9 allowed for parking infractions. (*Id.* at 22.) Traffic camera fines range from \$101 to \$124. (*Id.*
 10 at 23.) Fines for fire lane parking and disabled parking violations in each municipality range
 11 from \$175 to \$250. (*Id.*) While these fines are set by state law rather than municipal code
 12 (WASH. REV. CODE 46.16.381(7)–(9); WASH. REV. CODE 46.55.105(2)), Plaintiffs offer no
 13 reason to conclude that these fines are outside the jurisdiction of the city, and therefore an
 14 impermissible ceiling on fine amounts, given that WASH. REV. CODE 35A.12.140 allows
 15 municipalities to adopt state code by reference. The Court agrees that the Code grants
 16 municipalities flexibility in determining fine levels, and that the fines are not excessive.

17 Plaintiff's third challenge is that the municipalities' contracts with ATS and Redflex
 18 violate Washington law. WASH. REV. CODE 46.63.170(1)(i) states that "the compensation paid
 19 to the manufacturer or vendor of the equipment used must be based only upon the value of the
 20 equipment and services provided or rendered in support of the system, and may not be based
 21 upon a portion of the fine or civil penalty imposed or the revenue generated by the equipment."
 22 Plaintiffs argue that the contracts violate this statute in two ways, but they are misinterpreting
 23 the law.

24 First, the contracts contain "stop-loss" provisions. These provisions allow the
 25 municipalities to defer payment until the cameras generate enough revenue to cover their
 26 expense. (Mot. 18 (Dkt. No. 108).) But they do not change the amount that the municipalities

1 must eventually pay the camera companies. (*Id.*) Plaintiffs insist that these provisions run
2 counter to the prohibition on any system of compensation based on a portion of the revenue
3 generated. (Resp. 6 (Dkt. No. 118).) The Court does not agree. Under this system, it is the
4 payment schedule, not the amount of compensation, that is based on a portion of revenue
5 generated. The stop-loss provisions have allowed the municipalities to purchase traffic
6 enforcement on a layaway plan, but not to change the price.

7 Second, Plaintiffs argue that some contracts with Bellevue, Lynwood, Seattle, and
8 Spokane include unlawful volume-based payments. The Lynwood contract, for example, states
9 that ATS charges a fee of \$5.00 for the first infraction per camera, and then processes all
10 following infractions via that camera during a month, up to 800, as part of the flat fee per
11 camera. (Mot. 6 n. 6 (Dkt. No. 108).) However, when infractions per camera exceed 800 per
12 month, Lynwood pays ATS a processing fee of \$5.00 per infraction over 800. (*Id.*) As with the
13 stop-loss provisions, Plaintiffs argue that this is a system of compensation based on a portion
14 of the revenue generated. Again, Plaintiffs misread the statute. The statute specifically allows
15 for compensation based on the value of services provided. WASH. REV. CODE 46.63.170(1)(i).
16 The Court agrees with Defendants that the \$5.00 is a service charge, not a share of the
17 revenues.

18 Plaintiffs have failed to state facts sufficient to support their claims for declaratory and
19 injunctive relief.

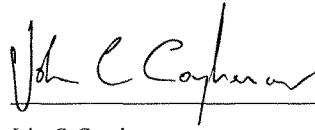
20 **D. Additional Claims.**

21 Plaintiffs also bring a claim for violation of the CPA and common law claims for
22 Abuse of Process and Unjust Enrichment. (Resp. 32–36 (Dkt. No. 118).) But all of these claims
23 are predicated on the finding that Defendants violated Washington law by entering into illegal
24 contracts, charging excessive fees, and issuing unapproved NOIs. (*Id.*) As detailed above, the
25 Court finds that Defendants' actions were not in violation of Washington law. Accordingly,
26 Plaintiff's CPA and common law claims fail.

1 **IV. CONCLUSION**

2 Defendants' motion to dismiss (Dkt. No. 108) is GRANTED. The Clerk is DIRECTED
3 to CLOSE the case.

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5 DATED this 2nd day of March, 2010.

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11 John C. Coughenour
12 UNITED STATES DISTRICT JUDGE
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632 F.Supp.2d 586 (2008)

Barry SEVIN, et al.
v.
PARISH OF JEFFERSON, et al.

Civil Action No. 08-802.

United States District Court, E.D. Louisiana.

December 16, 2008.

588*588 Joseph R. McMahon, III, Anthony Scott Maska, Joseph R. McMahon, III, PLC, Metairie, LA, for Barry Sevin.

Guice Anthony Giambrone, III, Craig R. Watson, Blue Williams, LLP, Metairie, LA, Stephen M. Pizzo, Blue Williams, LLP (Mandeville), Mandeville, LA, for Parish Of Jefferson, et al.

Douglas R. Holmes, Douglas L. Grundmeyer, George Wogan Bernard, Walter 589*589 Francis Becker, Jr., Chaffe McCall LLP, New Orleans, LA, for Redflex Traffic Systems, Inc.

ORDER AND REASONS

SARAH S. VANCE, District Judge.

Before the Court are defendants' motions to dismiss for lack of jurisdiction over the subject matter, motions to dismiss for failure to state a claim upon which relief can be granted, and, in the alternative, motions for summary judgment. (R. Docs. 16, 20.) For the following reasons, the Court GRANTS the motions in part and DENIES them in part.

I. BACKGROUND

In June of 2007, Jefferson Parish enacted Chapter 36, Article XI of the Jefferson Parish Code of Ordinances, known as the Automated Traffic Signal Enforcement ("ATSE") ordinance. The ATSE authorizes the installation of camera systems at traffic intersections and the assessment of fines to individuals whose vehicles are photographed driving through a steady red signal. (See R. Doc. 1 at ¶¶ 4, 6.) Plaintiffs Barry Sevin and Edwin Bernard were allegedly photographed by an ATSE-authorized camera system and were issued a notice of violation for running a red light in Jefferson Parish. On January 31, 2008, they filed an action against Jefferson Parish, the Jefferson Parish Council, and the private operator of the cameras, Redflex Traffic Systems, alleging deprivations of their civil rights in violation of 42 U.S.C. § 1983. (*Id.*)

According to the complaint, the defendants began enforcing the ATSE in October of 2007. (*Id.* at ¶ 7.) Redflex installed the red light traffic cameras in parts of Jefferson Parish and is also responsible for administering "civil" tickets on behalf of the Parish. (*Id.* at ¶ 5.) After a vehicle is photographed violating a red light traffic signal, defendants send a Photo Red Light Enforcement Program Notice of Violation ("Notice of Violation") to the owner of the photographed vehicle. (*Id.* at ¶ 7.) After receiving a notice of violation, an owner has thirty days either to pay the fine or to contest the fine. If the vehicle owner does neither, she or he will be assessed an additional \$25.00 late payment penalty. If the owner still does not respond, the violations will be sent to the Jefferson Parish District Attorney's Office for review. (*Id.* at ¶ 6.)

Plaintiffs seek to represent a class of automobile owners who received notices of violation pursuant to the ATSE ordinance. The complaint has been amended three times since it was originally filed (see R. Docs. 3, 24, 35), but the present motions to dismiss were filed before the second and third amendments and do not address the later-added parties and claims. The Court will therefore focus on the parties and claims in the original and first amended complaints.^[1] The plaintiffs have pleaded a broad-ranging case under the Civil Rights Act of 1871, 42 U.S.C. § 1983, alleging violations of their civil rights under color of state law. They seek federal relief under section 1983 for alleged violations of the Fifth, Sixth, and Fourteenth Amendments to the federal constitution and for alleged violations of the Louisiana state constitution and statutes. (See R. Doc. 1 at ¶ 13-15; R. Doc. 3 at ¶¶ 4-10.)

On March 31, 2008, defendants filed two motions to dismiss the claims brought by plaintiffs Barry Sevin and Edwin Bernard, 590*590 who were the only plaintiffs in the putative class action at the time the motion was filed.⁶² Defendants contend that Mr. Sevin is collaterally estopped from bringing suit and that Mr. Bernard lacks standing to sue the defendants. The defendants have also urged the court to abstain from hearing the case on federalism grounds and to decline to exercise supplemental jurisdiction over the plaintiffs' state law claims. The Court addresses these arguments as follows.

II. LEGAL STANDARDS

A. 12(b)(1) Motion to Dismiss

Defendants seek dismissal of the instant action pursuant to Rule 12(b)(1), or alternatively Rule 12(b)(6) of the Federal Rules of Civil Procedure. Rule 12(b)(1) requires dismissal if the court lacks jurisdiction over the subject matter of the plaintiff's claim. Motions submitted under Rule 12(b)(1) allow a party to challenge the court's subject matter jurisdiction based upon the allegations on the face of the complaint. *Lopez v. City of Dallas, Tex.*, 2006 WL 1450520, *2 (N.D.Tex.2006). In ruling on a Rule 12(b)(1) motion to dismiss, the court may rely on (1) the complaint alone, presuming the allegations to be true, (2) the complaint supplemented by undisputed facts, or (3) the complaint supplemented by undisputed facts and by the court's resolution of disputed facts. *Id.*; see also *Barrera-Montenegro v. United States*, 74 F.3d 657, 659 (5th Cir.1996). Furthermore, the plaintiff bears the burden of demonstrating that subject matter jurisdiction exists. See *Paterson v. Weinberger*, 644 F.2d 521, 523 (5th Cir.1981). When examining a factual challenge to subject matter jurisdiction that does not implicate the merits of plaintiff's cause of action, the district court has substantial authority "to weigh the evidence and satisfy itself as to the existence of its power to hear the case." *Garcia v. Copenhaver, Bell & Assocs.*, 104 F.3d 1256, 1261 (11th Cir.1997); see also *Clark v. Tarrant County*, 798 F.2d 736, 741 (5th Cir.1986). Accordingly, the Court may consider matters outside the pleadings, such as testimony and affidavits. See *Garcia*, 104 F.3d at 1261. A court's dismissal of a case for lack of subject matter jurisdiction is not a decision on the merits, and the dismissal does not prevent the plaintiff from pursuing the claim in another forum. See *Hitt*, 561 F.2d at 608.

B. 12(b)(6) Motion to Dismiss

In considering a 12(b)(6) motion to dismiss, a court must accept all well-pleaded facts as true and must draw all reasonable inferences in favor of the plaintiff. *Baker v. Putnal*, 75 F.3d 190, 196 (5th Cir.1996). To survive a motion to dismiss, the plaintiff must plead "enough facts to state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 127 S.Ct. 1955, 1974, 167 L.Ed.2d 929 (2007); *In re Katrina Canal Breaches Litigation*, 495 F.3d 191, 205 (5th Cir.2007) (recognizing a change in the standard of review). "Factual allegations must be enough to raise a right to relief above the speculative level on the assumption that all allegations in the complaint are true (even if doubtful in fact)." *Twombly*, 127 S.Ct. at 1965 (quotation marks, citations, and footnote omitted).

III. DISCUSSION

Defendants challenge the plaintiffs' claims on several grounds. First, they ask 591*591 the Court to abstain from hearing the case on federalism grounds. Second, they urge the Court not to exercise supplemental jurisdiction over plaintiffs' state law claims. Third, they argue that individuals like Mr. Sevin who have paid the traffic fines have admitted their liability and are collaterally estopped from challenging that determination in a later proceeding. Finally, they argue that individuals like Mr. Bernard, who have neither paid a fine nor challenged their citation at a hearing, lack standing to attack the constitutionality of the procedures.

A. Pullman Abstention

The defendants first argue that the Court should abstain from hearing this case pursuant to the doctrine announced in *Railroad Comm'n v. Pullman Co.*, 312 U.S. 496, 61 S.Ct. 643, 85 L.Ed. 971 (1941). (See R. Doc. 47 at 5.) Under *Pullman*, a district court may abstain from hearing a case "when state law is uncertain and a state court's clarification of state law might make a federal court's constitutional ruling unnecessary." *Gomez v. Dretke*, 422 F.3d 264, 268 (5th Cir.2005) (quoting ERWIN CHEMERINSKY, FEDERAL JURISDICTION 763 (4th ed.2003)). Although federal courts have a "virtually unflagging obligation... to exercise the jurisdiction given them," *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 817, 96 S.Ct. 1236, 47 L.Ed.2d 483 (1976), they may "decline to exercise their jurisdiction, in otherwise exceptional circumstances, where denying a federal forum would clearly serve an important countervailing interest,"

Quackenbush v. Allstate Ins. Co., 517 U.S. 706, 716, 116 S.Ct. 1712, 135 L.Ed.2d 1 (1996) (internal quotation marks omitted). For *Pullman* abstention, that countervailing interest is rooted in federalism: "federal courts, exercising a wise discretion, restrain their authority because of scrupulous regard for the rightful independence of the state governments and for the smooth working of the federal judiciary." *Pullman Co.*, 312 U.S. at 500, 61 S.Ct. 643 (internal quotation marks omitted); see also *Arizonans for Official English v. Arizona*, 520 U.S. 43, 76, 117 S.Ct. 1055, 137 L.Ed.2d 170 (1997) (noting that *Pullman* abstention is "[d]esigned to avoid federal-court error in deciding state-law questions antecedent to federal constitutional issues").

In order for *Pullman* abstention to be appropriate, the case must present:

- (1) a federal constitutional challenge to state action and
- (2) an unclear issue of state law that, if resolved, would make it unnecessary for [the court] to rule on the federal constitutional question.

Nationwide Mut. Ins. Co. v. Unauthorized Practice of Law Committee, 283 F.3d 650, 653 (5th Cir.2002). If these requirements are met, the court must then "assess the totality of the circumstances presented by a particular case, considering the rights at stake and the costs of delay pending state court adjudication." Baran v. Port of Beaumont Nav. Dist. of Jefferson County Tex., 57 F.3d 436, 442 (5th Cir.1995). For example, if the litigation "has already been long delayed" or it seems "unlikely that resolution of the state-law question would significantly affect the federal claim," the court should not abstain. Harris County Com'rs Court v. Moore, 420 U.S. 77, 84, 95 S.Ct. 870, 43 L.Ed.2d 32 (1975). Finally, even when the court decides to abstain, "a party has the right to return to the District Court, after obtaining the authoritative state court construction for which the court abstained, for a final determination of his claim." England v. Louisiana State Bd. of Medical Examiners, 375 U.S. 411, 417, 84 S.Ct. 461, 11 L.Ed.2d 440 (1964) (quoting NAACP v. Button, 371 U.S. 415, 592*592 427, 83 S.Ct. 328, 9 L.Ed.2d 405 (1963)). The typical procedure is for the federal court to stay the action and retain jurisdiction pending resolution of the state law issues by a state court. See 17A WRIGHT, MILLER, COOPER & AMAR, FEDERAL PRACTICE & PROCEDURE: JURISDICTION § 4243 (3d ed.2007).

In arguing for *Pullman* abstention, the defendants focus on the plaintiffs' claim that the ATSE ordinance is "preempted and voided" by the Louisiana Highway Regulatory Act ("LHRA"). (See R. Doc. 47 at 6.) The defendants argue that abstention is warranted because (1) the scope of LHRA preemption is unclear and (2) a decision that the ATSE is void under state law would render the federal claims moot. (See *id.* at 5-6.)

The Court finds that the "exceptional circumstances" that make *Pullman* abstention appropriate, Allegheny County v. Frank Mashuda Co., 360 U.S. 185, 189, 79 S.Ct. 1060, 3 L.Ed.2d 1163 (1959), are not presented by this case. With respect to the vast majority of the state law issues, plaintiffs have simply alleged that the defendants' violations of various state laws are *ipso facto* violations of the plaintiffs' federal rights under 42 U.S.C. § 1983. (See R. Doc. 1 at ¶ 14 (alleging that the ATSE "conflict[s] with the uniform provisions of the Louisiana Highway Regulatory Act" and that it "was enforced by the defendants while acting under color of state law, in violation of 42 U.S.C.A. § 1983"); *id.* at ¶ 15 (alleging that the ATSE "violates the provisions of Louisiana Code of Civil Procedure, Arts. § 1232 and § 1234 ... in a manner that violates plaintiffs' civil and constitutional rights, as enforced by the defendants while acting under color of state law, in violation of 42 U.S.C.A. § 1983); R. Doc. 3 at ¶ 4 (alleging that the ATSE "violates the Constitution of the State of Louisiana, Art. VI, § [9] ... in violation of 42 U.S.C.A. § 1983"); *id.* at ¶ 8 (alleging that the "defendants have authorized Redflex to calibrate and/or re-calibrate the timing of traffic lights ... in violation of public policy, the Constitution of the State of Louisiana, and the [Manual on Uniform Traffic Control Devices] as adopted by Louisiana," all "in violation of 42 U.S.C.A. § 1983"); *id.* at ¶ 10 (seeking "all damages allowed under 42 U.S.C.A. § 1983").

Of course, it is hornbook law that "a violation of a state statute alone is not cognizable under § 1983 because § 1983 is only a remedy for violations of federal statutory and constitutional rights." Woodard v. Andrus, 419 F.3d 348, 353 (5th Cir.2005); see also Rector v. City and County of Denver, 348 F.3d 935, 947 (10th Cir.2003) ("It is well-established ... that a state's violation of its own laws does not create a claim under § 1983"). Plaintiffs' "state law" section 1983 claims, which allege that the defendants' violation of state law amounts to a violation of section 1983, thus appear to be facially defective and would be prime candidates for dismissal upon an appropriate motion. On these facts, the Court cannot say that there are "difficult and unsettled questions of state law [that] must be resolved before a substantial federal constitutional question can be decided." Hawaii Housing Authority v. Midkiff, 467 U.S. 229, 236, 104 S.Ct. 2321, 81 L.Ed.2d 186 (1984) (emphasis added). Because the state law issues are likely to be eliminated from this litigation on settled federal law grounds, irrespective of how a state court would resolve them, it is unnecessary to waste the parties' time and resources by "[s]huttling [them] between state and federal tribunals." Clay v. Sun Ins. Office, Ltd., 363 U.S. 207, 228, 80 S.Ct. 1222, 4 L.Ed.2d 1170 (1960) (Douglas, J., dissenting). Moreover, declining to abstain in these circumstances does not disregard 593*593 "the rightful independence of the state governments," *Pullman Co.*, 312 U.S.

at 500, 61 S.Ct. 643, because Louisiana will not be deprived of the first opportunity to interpret its own laws. For all of the foregoing reasons, the Court finds that it should not abstain from hearing this case.

The Court also notes that two of the plaintiffs' state law claims do not specifically allege violations of section 1983. (See R. Doc. 1 at ¶ 17 (alleging that the ATSE "impermissibly attempts to govern civil relationships" in violation of Louisiana Constitution Article VI, § 9); R. Doc. 3 at ¶ 9 (alleging that the ATSE violates the Louisiana spousal witness privilege)). Because the Court declines to exercise supplemental jurisdiction over these freestanding state law claims, *see infra*, it is unnecessary to consider whether they affect the *Pullman* analysis.

B. Supplemental Jurisdiction

In one of their reply briefs, the defendants urge the Court to decline to exercise supplemental jurisdiction over the plaintiffs' "state law" claims. A district court may exercise supplemental jurisdiction over any claims "that are so related to claims in the action within [the court's] original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution." 28 U.S.C. § 1367(a). If the claim falls within the court's original jurisdiction—for example, under diversity or federal question jurisdiction—supplemental jurisdiction is not the appropriate basis for the exercise of the court's jurisdiction.

As noted in the preceding section, the plaintiffs have pleaded most of their "state law" claims as violations of 42 U.S.C. § 1983. It is well-established that a claim falls within a district court's federal question jurisdiction if "federal law creates the cause of action." *Franchise Tax Bd. v. Construction Laborers Vacation Trust*, 463 U.S. 1, 27-28, 103 S.Ct. 2841, 77 L.Ed.2d 420 (1983); *see also* ERWIN CHEMERINSKY, *FEDERAL JURISDICTION* 282-83 (4th ed.2003). Because the plaintiffs' "state law" claims are premised upon a federal cause of action, the Court has original jurisdiction over those claims pursuant to 28 U.S.C. § 1331. It is therefore improper to consider whether the Court should decline to exercise supplemental jurisdiction over them. The Court notes that this ruling pertains to the jurisdictional basis for, not the merits of, plaintiffs' section 1983 claims.

With respect to the two claims pleaded as freestanding state law claims, the Court finds that it is appropriate not to exercise supplemental jurisdiction. Under the Judicial Improvements Act of 1990, a district court may decline to exercise supplemental jurisdiction over a claim if:

- (1) the claim raises a novel or complex issue of State law,
- (2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction,
- (3) the district court has dismissed all claims over which it has original jurisdiction, or
- (4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

28 U.S.C. § 1367(c).

Here, the plaintiffs' pendent claims raise novel issues of Louisiana law that are best resolved in state court. First, the plaintiffs allege that the ATSE "impermissibly attempts to govern civil relationships" in violation of Louisiana Constitution Article VI, § 9(A)(1). (See R. Doc. 1 at ¶ 17.) That provision has been interpreted only once by the Louisiana Supreme Court, *see Hildebrand v. City of New Orleans*, 549 So.2d 1218, 1223-24 (La. 594*594 1989), and its meaning is the subject of confusion and debate, *see New Orleans Campaign For a Living Wage v. City of New Orleans*, 825 So.2d 1098, 1111-20 (2002) (Weimer, J., concurring in the result). The plaintiffs also allege that the ATSE violates the Louisiana spousal witness privilege, LA.CODE EVID. art. 505. (R. Doc. 3 at ¶ 9.) Although this evidentiary privilege is often applied and interpreted in criminal prosecutions, *see, e.g., State v. Parent*, 836 So.2d 494, 503-04 (La.App. 2002), it is not clear whether and how it applies in the context of an attack on the validity of a local ordinance. In light of the novelty of the plaintiffs' claims and the unsettled nature of Louisiana law in these areas, the Court finds that the interests of comity and judicial economy are better served if all of the plaintiffs' state law claims are heard in state court. The claims based on LA. CONST. art. VI, § 9(A)(2) and LA.CODE EVID. art. 505 are therefore dismissed without prejudice to the plaintiffs' right to refile those claims in state court.

C. Barry Sevin

On December 31, 2007, Mr. Sevin's vehicle was photographed proceeding through an intersection as the traffic control signal emitted a steady red signal. He received a Notice of Violation on January 9, 2008, which included a \$110.00 penalty. On February 15, Sevin paid the fine. Defendants contend that Sevin's payment of his fine and failure to contest

liability is an admission and adjudication of liability, which collaterally estops him from now asserting that he is part of a class of people whose rights were violated.

The Full Faith and Credit Statute, 28 U.S.C. § 1738, "requires federal courts to give the same preclusive effect to state court judgments that those judgments would be given in the courts of the State from which the judgments emerged." *Kremer v. Chemical Const. Corp.*, 456 U.S. 461, 466, 102 S.Ct. 1883, 72 L.Ed.2d 262 (1982); see also *St. Paul Mercury Ins. Co. v. Williamson*, 224 F.3d 425 (5th Cir.2000). This is true even when, as here, a suit raises a federal question or seeks to vindicate federal constitutional rights. See *Migra v. Warren City Sch. Dist. Bd. of Educ.*, 465 U.S. 75, 80-85, 104 S.Ct. 892, 79 L.Ed.2d 56 (1984); *Allen v. McCurry*, 449 U.S. 90, 96-105, 101 S.Ct. 411, 66 L.Ed.2d 308 (1980); *Marrese v. American Academy of Orthopaedic Surgeons*, 470 U.S. 373, 105 S.Ct. 1327, 84 L.Ed.2d 274 (1985). Consequently, the Court must look to Louisiana's preclusion statute, LA.REV.STAT. § 13:4231, in order to determine the effect of Sevin's failure to contest his liability.

Although plaintiffs correctly note that Louisiana did not always recognize the doctrine of collateral estoppel, see *B.E. Welch v. Crown Zellerbach Corp.*, 359 So.2d 154, 156-57 (La.1978), the preclusion statute enacted in 1991 "embraces the broad usage of the phrase 'res judicata' to include both claim preclusion (res judicata) and issue preclusion (collateral estoppel)." *Mandalay Oil & Gas, L.L.C. v. Energy Development Corp.*, 867 So.2d 709, 713 (La.App.2002). Louisiana Revised Statutes 13:4231 provides in relevant part that a "valid and final judgment" entered "in favor of either the plaintiff or the defendant is conclusive, in any subsequent action between them, with respect to any issue actually litigated and determined if its determination was essential to that judgment." This provision requires that four elements must be met before an earlier "valid and final judgment" will preclude relitigation of an issue: "(1) the parties must be identical; (2) the issue to be precluded must be identical to that involved in the prior action; (3) the issue must have been actually litigated; and (4) the determination 595*595 of the issue in the prior action must have been necessary to the resulting judgment." *In re Keaty*, 397 F.3d 264, 270-71 (5th Cir.2005) (citing *Charpentier v. BG Wire Rope & Slings, Inc.*, 174 B.R. 438, 441 n. 1 (E.D.La.1994); see also *Matter of Whittaker*, 225 B.R. 131 (Bkrtcy. E.D.La.1998)). Because § 4231 is modeled on federal preclusion doctrine and the Restatement of Judgments, federal jurisprudence may be consulted when the relevant Louisiana cases leave doubt as to the meaning of the statute. *In re Keaty*, 397 F.3d at 271.

The Court finds that Sevin is not collaterally estopped from pursuing his claims in this lawsuit because his failure to contest the Notice of Violation did not constitute or lead to a "valid and final judgment" as that term is used in § 4231. In *Wooley v. State Farm Fire & Cas. Ins. Co.*, 893 So.2d 746 (La.2005), the Louisiana Supreme Court considered the types of judgments covered by § 4231. The Louisiana Commissioner of Insurance had brought an action in a Louisiana district court challenging the decision of a state administrative law judge (ALJ). On appeal to the Louisiana Supreme Court, State Farm argued that § 4231 barred relitigation of the ALJ's decision. The Supreme Court rejected this argument, finding that § 4231 "presuppose[s] that the judgment at issue was one wherein judicial power was exercised by an Article V [of the Louisiana Constitution] tribunal." *Wooley*, 893 So.2d at 771. The court noted that some administrative decisions, including certain rulings by workers' compensation hearing officers, meet this criterion because the Louisiana Constitution grants them "authority to hear matters that would otherwise arise under the district courts' original jurisdiction." *Id.* Because there was no analogous constitutional provision relating to ALJs, however, the judgment attacked by the Commissioner was "not entitled to res judicata effect." *Id.*

Like the ALJ decision in *Wooley*, Sevin's failure to contest the Notice of Violation did not constitute or lead to a "valid and final judgment" by an Article V tribunal.¹³ Indeed, the defendants have not directed the Court's attention to any judgment rendered against Sevin by a court or administrative officer. To support their preclusion argument, defendants cite the language of the ATSE, which states that:

An owner who fails to pay the fine and/or enforcement costs imposed under this article or to timely contest liability for said fines and/or costs shall be considered to have admitted liability for the full amount of the fines and costs stated in the notice of violation mailed to the person and the matter will be turned over to the district attorney's office for further prosecution and collection.

ATSE § 36-313. It is not clear from this provision whether payment of the fine constitutes a "failure to contest liability," as the ordinance clearly contemplates "further prosecution and collection" with respect to individuals who fail to contest liability. But even if payment does amount to a legally binding admission under 596*596 the ordinance, there still is no judgment by an Article V tribunal that will be entitled to preclusive effect.

The defendants cite *Kovach v. District of Columbia*, 805 A.2d 957 (D.C.2002), a decision by the District of Columbia Court of Appeals, for the proposition that § 4231 applies to "determinations by agencies other than courts, when such agencies are acting in a judicial capacity." But the local rule in the District of Columbia has little bearing on the proper interpretation of § 4231, because the Louisiana Supreme Court has spoken authoritatively on the matter. As such, only judgments

rendered by Article V tribunals, or officers vested with similar powers under the Louisiana Constitution, are entitled to preclusive effect under § 4231.

D. Edwin Bernard

Plaintiff Edwin Bernard received his first Notice of Violation in November of 2007. Pursuant to the directions on the Notice of Violation, he requested a hearing to contest his liability, which was scheduled for May 27, 2008. Mr. Bernard received an additional Notice in November 2007, but did not pay the fine or request a hearing. Then he received a third Notice of Violation in January 2008, and requested a hearing, which was scheduled for July 2008. Finally, Mr. Bernard received a fourth Notice of Violation on January 15, 2008, and chose not to pay the fine or request a hearing. Each Notice of Violation provides that Mr. Bernard owes a penalty of \$110.00. (See R. Docs. 16-10— 16-19.)

Defendants challenge Mr. Bernard's standing to prosecute his claims, arguing that he has neither taken advantage of the administrative process provided by the Parish, nor has he paid any fines to the Parish. Pursuant to Article III, § 2 of the U.S. Constitution, the federal judicial power extends only to justiciable cases and controversies. As part of the case or controversy requirement, a plaintiff must demonstrate that he has standing, that is, that he is the proper party to assert the claims. See *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992); ERWIN CHEMERINSKY, FEDERAL JURISDICTION 56 (4th ed.2003). Standing ensures that a plaintiff has "alleged such a personal stake in the outcome of the controversy" as to warrant his invocation of federal-court jurisdiction and to justify exercise of the court's remedial powers on his behalf." *Warth v. Seldin*, 422 U.S. 490, 498-99, 95 S.Ct. 2197, 45 L.Ed.2d 343 (1975) (quoting *Baker v. Carr*, 369 U.S. 186, 204, 82 S.Ct. 691, 7 L.Ed.2d 663 (1962)).

The party invoking federal jurisdiction bears the burden of establishing three elements. *Lujan*, 504 U.S. at 561, 112 S.Ct. 2130. "First, the plaintiff must have suffered an 'injury in fact'—an invasion of a legally protected interest which is (a) concrete and particularized and (b) 'actual or imminent, not conjectural or hypothetical.'" *Id.* at 560, 112 S.Ct. 2130. Second, "there must be a causal connection between the injury and the conduct complained of—the injury has to be 'fairly traceable' to the challenged action of the defendant and not ... th[e] result [of] the independent action of some third party not before the court." *Id.* Third, it must be "likely," as opposed to merely "speculative," that the injury will be "redressed by a favorable decision." *Id.* at 561, 112 S.Ct. 2130.

Bernard's claims satisfy the requisites for standing. As noted above, a threatened but as yet unrealized injury is often sufficient to establish standing. See also *Los Angeles v. Lyons*, 461 U.S. 95, 101-02, 103 S.Ct. 1660, 75 L.Ed.2d 675 (1983). In this case, Bernard has alleged 597*597 two types of threatened injury that are personal to him: economic injury and constitutional injury. Defendants have sent him four Notices of Violation. Bernard requested hearings in response to two of the Notices and did not respond to the others. Both courses of action have exposed him to the imminent threat of prosecution or other enforcement action by the Parish.⁶¹

Section 36-308 of the ATSE provides that "[f]ailure to perform by paying the fine or contesting the fine will result in a second notification to the vehicle owner, and an additional late payment penalty of a minimum of twenty-five dollars." If the vehicle owner fails to respond to the second Notice of Violation, "the violation will be sent to the Jefferson Parish First and Second Parish Courts, and processed for review by the Jefferson Parish District Attorney's Office to be handled in a manner consistent with that of a parking violation." Section 36-313 of the ATSE further provides:

An owner who fails to pay the fine and/or enforcement costs imposed under this article or to timely contest liability for said fines and/or costs shall be considered to have admitted liability for the full amount of the fines and costs stated in the notice of violation mailed to the person and the matter will be turned over to the district attorney's office for further prosecution and collection.

It is clear from these provisions that Bernard has alleged an imminent injury with respect to the uncontested tickets. Because Bernard failed to respond to the Notices of Violation, he "went into default," as the defendants put it. (R. Doc. 16-6 at 5; see also R. Doc. 16-9 at 1.) Under the plain terms of the ATSE, Bernard is now subject to "further prosecution and collection." ATSE § 36-313. This type of "conflict between state officials empowered to enforce a law and private parties subject to prosecution under that law is a classic 'case' or 'controversy' within the meaning of Art. III." *Diamond v. Charles*, 476 U.S. 54, 64, 106 S.Ct. 1697, 90 L.Ed.2d 48 (1986). Where, as here, a party faces a "real and genuine threat of prosecution," *Hejira Corp. v. MacFarlane*, 660 F.2d 1356, 1360 (10th Cir.1981), he has standing to contest the legal basis of the threatened action. See *Roark & Hardee LP v. City of Austin*, 522 F.3d 533, 543 (5th Cir.2008) (finding that plaintiffs had standing "because some Plaintiff bar owners have been charged under the [challenged] ordinance and all Plaintiff bar owners face the real potential of immediate criminal prosecution"). Because there is nothing in the record to indicate that Bernard is unlikely to be prosecuted, the Court finds that he has standing to challenge the ATSE ticketing process.

The result is the same with respect to the Notices of Violation that Bernard has decided to challenge. Though the ATSE does not specify a particular procedure to be followed when a motorist contests a fine, it is reasonable to assume that Bernard will receive a hearing before some government officer and will be found liable or not liable. If he is found liable, he will then be required to pay the prescribed fine plus "any costs assessed for the enforcement" of the ATSE. ATSE § 36-309. Moreover, "any court which handles any part of the prosecution for a violation under [the ATSE] may impose costs upon the person responsible for the fine in addition to the fine and enforcement costs imposed under this article." *Id.* By contesting two 598*598 tickets, Bernard has thus exposed himself to the imminent threat of economic deprivation.

Turning to the second and third standing factors, the Court finds that Bernard's injuries are traceable to the defendants' conduct and that they are redressable. The anticipated injuries—fines collected pursuant to allegedly defective procedures—will be directly caused by the defendants' conduct. The Jefferson Parish Council created the challenged procedures by enacting the ATSE. Jefferson Parish and Redflex jointly collect fines pursuant to the ATSE and the Jefferson Parish District Attorney initiates prosecutions against individuals who fail to pay their fines or contest liability. But for the defendants' actions, there would be no threatened injury for Bernard to challenge. Moreover, if the Court were to find in Bernard's favor and impose damages, his injuries would be redressed. For these reasons, the Court finds that Bernard's injury is imminent, traceable to defendants' conduct, and redressable by court action.

Defendants rely heavily on a case from the Middle District of North Carolina, *Shavitz v. City of High Point*, 270 F.Supp.2d 702 (M.D.N.C.2003), to support their standing argument. The *Shavitz* court, however, appears to have confused the "injury in fact" requirement with the separate inquiry, not necessarily related to standing, into whether the plaintiff has stated a valid claim for relief.^[3] The plaintiff in that case had failed to pay or contest tickets issued pursuant to an ordinance similar to the ATSE. Citing a Fourth Circuit case that did not discuss standing, the district court found that a due process violation under § 1983 "is not complete unless and until the State fails to provide due process." *Id.* at 710 (quoting *Fields v. Durham*, 909 F.2d 94, 98 (4th Cir.1990)). Based upon this interpretation of the Due Process Clause, the court held that the plaintiff did not have standing because he had not taken advantage of the hearing procedures established by the city and therefore had not suffered the requisite due process injury. See *id.* at 711.

The *Shavitz* court's analysis confuses the standing inquiry with the merits inquiry. Questions about the proper interpretation of the Due Process Clause, which the *Shavitz* court treated as part of the "injury in fact" requirement, go to the validity of the plaintiff's claim. But the Supreme Court has never held that a valid legal claim for relief is a necessary prerequisite for standing.^[4] Indeed, it has consistently treated the two questions separately. In *Hardin v. Kentucky Utilities Co.*, 390 U.S. 1, 88 S.Ct. 651, 19 L.Ed.2d 787 (1968), for example, the Court found that the plaintiff had standing to sue even though the Court ultimately rejected the plaintiff's legal claims on the merits. 390 U.S. at 7, 13, 88 S.Ct. 651; see also *Roark & Hardee LP*, 522 F.3d 533 (finding that plaintiff bar owners had standing to challenge city ordinance, but rejecting constitutional challenges on the merits). The Court has even pointed out that there is a "fundamental distinction between arguing no cause of action and arguing no Article III redressability." *Steel Co. v. Citizens for 599*599 a Better Environment*, 523 U.S. 83, 96, 118 S.Ct. 1003, 140 L.Ed.2d 210 (1998).

More recently, the Supreme Court has emphasized that it is not only unnecessary, but improper, for a district court to address the validity of the plaintiff's claim as part of the standing analysis. As the Court has explained, a district court may address merits questions only *after* it has satisfied itself that the plaintiff has standing. See *Steel*, 523 U.S. at 93-102, 118 S.Ct. 1003; see also *Sinochem Intern. Co. Ltd. v. Malaysia Intern. Shipping Corp.*, 549 U.S. 422, 127 S.Ct. 1184, 1191, 167 L.Ed.2d 15 (2007) ("[A] federal court generally may not rule on the merits of a case without first determining that it has jurisdiction...."); *Ex parte McCordle*, 74 U.S. (7 Wall.) 506, 514, 19 L.Ed. 264 (1868) ("Without jurisdiction the court cannot proceed at all in any cause."). To do otherwise, "to pronounce upon the meaning or the constitutionality of a state or federal law when [the court] has no jurisdiction to do so," is, "by very definition, for a court to act *ultra vires*." *Steel Co.*, 523 U.S. at 101, 118 S.Ct. 1003. In light of these strict admonitions, this Court would be remiss if it incorporated an assessment of the adequacy of Jefferson Parish's adjudication procedures, or the plaintiff's failure to take advantage of those procedures, into its standing analysis. The Court therefore declines to do so, and rests on its conclusion that Bernard has standing to assert his claims.

Viewed at a more general level, this conclusion should be unsurprising. The purpose of the standing requirement is to ensure that the specific party bringing suit has been injured "in a concrete and personal way." *Massachusetts v. E.P.A.*, 549 U.S. 497, 127 S.Ct. 1438, 1453, 167 L.Ed.2d 248 (2007) (quoting *Lujan*, 504 U.S. at 581, 112 S.Ct. 2130 (Kennedy, J., concurring)); see also *Lujan*, 504 U.S. at 560 n. 1, 112 S.Ct. 2130 ("[T]he injury must affect the plaintiff in a personal and individual way."). Typically, cases dismissed due to lack of standing involve citizens or organizations who seek redress for an injury that falls generally on the public. See, e.g., *Lujan*, 504 U.S. at 578, 112 S.Ct. 2130 (holding that environmental organizations did not have standing to challenge a federal agency's interpretation of the Endangered Species Act); *Massachusetts v. Mellon*, 262 U.S. 447, 486-89, 43 S.Ct. 597, 67 L.Ed. 1078 (1923) (holding that taxpayers did not have standing to challenge government expenditures). As the Supreme Court noted in *Lujan*, when "the plaintiff is himself an object of the action (or forgone action) at issue," there "is ordinarily little question that the action or inaction has

caused him injury, and that a judgment preventing or requiring the action will redress it." 504 U.S. at 561-62, 112 S.Ct. 2130. As it is beyond dispute that Bernard is "an object of" defendants' allegedly unconstitutional ticketing and enforcement procedures, he has standing to maintain the present action.

IV. CONCLUSION

For the foregoing reasons, the Court DISMISSES the plaintiffs' claims based on LA. CONST. art. VI, § 9(A)(2) and LA. CODE EVID. art. 505 without prejudice and DENIES the defendants' motions in all other respects.

[1] Many new parties have been added since the motions to dismiss were filed, but the claims have remained substantially the same.

[2] One of the motions to dismiss was filed by Jefferson Parish and the Jefferson Parish Council and the other was filed by Redflex. Because the two motions are nearly identical, the Court will not distinguish between them.

[3] Though Wooley concerned claim preclusion rather than issue preclusion, the Court finds that the Louisiana Supreme Court's reasoning applies equally in both contexts. The preclusion statute provides that "a valid and final judgment is conclusive between the same parties" in three situations, two of which relate to claim preclusion and the other of which relates to issue preclusion. LA.REV.STAT. 13:4231. The language interpreted by the Louisiana Supreme Court—"valid and final judgment"—is a prerequisite for any of the three types of preclusion. See LA.REV.STAT. 13:4231 cmt. d. Neither the statute nor Wooley gives any indication that the "valid and final judgment" rule is limited to claim preclusion.

[4] One of the issues in this case is whether the penalties imposed by the ATSE are civil or criminal in nature. The Court finds it unnecessary to resolve the issue at this time because the threatened injury is sufficient for standing purposes no matter how it is characterized.

[5] The Court notes that Shavitz was later described as "unpersuasive" by a different section of the same court. *Ashley v. National Labor Relations Bd.*, 454 F.Supp.2d 441, 445 (M.D.N.C.2006).

[6] Justice Frankfurter once suggested that only legal injuries could give rise to standing, see *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U.S. 123, 152, 71 S.Ct. 624, 95 L.Ed. 817 (1951) (Frankfurter, J., concurring), but his view has not prevailed.



Testimony of the Hon. Barry Loudermilk
Georgia House of Representatives, District 14
Before the U.S. House Subcommittee on Highways and Transit
Wednesday June 30, 2010, 10:00AM

TESTIMONY OF THE HON. BARRY D. LOUDERMILK
 GEORGIA HOUSE OF REPRESENTATIVES, DISTRICT 14
 BEFORE THE U.S. HOUSE SUBCOMMITTEE ON HIGHWAYS AND TRANSIT
 WEDNESDAY, JUNE 30, 2010, 10:00AM

Chairman DeFazio, Ranking member Duncan, members of the subcommittee, thank you for the invitation to testify before the House Subcommittee on Highways and Transit regarding the Utilization and Impacts of Automated Traffic Enforcement.

The Georgia General Assembly has carefully considered the operation and use of automated traffic control signal monitoring devices (red-light cameras) over the past several years. In 2008, the Georgia General Assembly enacted House Bill 77, which made fundamental changes to the way red-light cameras operate in Georgia. The legislation took effect in January of 2009 and resulted in an immediate reduction in the number of red-light running violations at intersections that operate red-light cameras.

Within 90 days of the law's implementation, the state experienced significant reductions in the number of red-light camera violations. Several local governments reported that red light violations dropped as much as 81 percent¹ following the implementation of HB77. Statewide, red-light camera violations dropped 72 percent² overall during the first four months following the enactment of HB77.

The provisions of HB77 significantly reduced red-light camera violations, and several local governments have discontinued their camera programs. Requiring local governments to implement sound engineering practices to improve intersection safety before implementing photo enforcement makes sense.

That's why I am pleased to have the opportunity to share the success we have seen with the members of this committee. The success comes from a focus on safety and engineering, not on expanding enforcement.

GEORGIA'S GROWING CONCERN ABOUT RED LIGHT CAMERA OPERATION

The State of Georgia allows local governments to install red light cameras, but the public and the media have raised a number of concerns. In 2007, the Georgia House of Representatives began evaluating the effectiveness of red light cameras within the state. These concerns include the (1) Constitutionality of red light cameras, (2) the effectiveness of red light cameras on improving safety, (3) abuse of red light cameras by local governments and (4) a lack of state regulation and oversight of red light camera operation. Allow me to address each of these points in turn.

1. Constitutional Concerns

The operation of red light cameras has raised numerous Constitutional concerns in several states.

Like the laws in most other states, Georgia's red light camera statute prohibits photographing the driver or occupants of the vehicle, due to Fourth Amendment privacy concerns. When a vehicle is detected proceeding through an intersection when the traffic signal is red, a photograph is taken of the vehicle's license plate. The license plate is compared to the state vehicle registration database to determine who the registered owner of the vehicle is. The owner is then mailed a citation, where they are given the options of paying the fine, signing an affidavit that they were not the driver of the vehicle and must identify who was the driver, or appearing in court.

This process raises serious constitutional questions. Requiring the vehicle owner to prove that he was not the operator of the vehicle places the burden of proof on the accused, in violation of the Fifth Amendment's

¹ Georgia Department of Transportation, "2010 Red Light Camera Operation Report" 15 Mar, 2010.

² Georgia Department of Transportation, "2010 Red Light Camera Operation Report" 15 Mar, 2010

Presumption of Innocence Clause. Requiring the vehicle owner to testify via a written statement and identify the vehicle operator violates the Fifth Amendment's Self-Incrimination Clause.

Most states have attempted to circumvent the requirements of due process by making the red light camera citations a civil penalty instead of a criminal misdemeanor. However, the Fourteenth Amendment states that no state may deprive any citizen of life, liberty or property without due process of the law.

Several courts have shared this concern. Most recently, a South Dakota court ruled against the Constitutionality of red light cameras stating that the process "...improperly reversed the burden of proof. Instead of the city proving the guilt of the accused, the accused must prove his own innocence."³

In 2007, the Supreme Court of Minnesota, in the case *Minnesota v. Kuhlman*, ruled that it was unlawful to use civil penalties to avoid the burden of proof requirements. In its decision, the court stated, "The problem with the presumption that the owner was the driver is that it eliminates the presumption of innocence and shifts the burden of proof from that required by the rules of criminal procedure... Therefore the ordinance provides less procedural protection to a person charged with an ordinance violation than is provided to a person charged with a violation of the Act. Accordingly, the ordinance conflicts with the Act and is invalid."⁴

The California Supreme Court has a case pending regarding the legality of red light cameras. Until that is resolved, lower appellate jurisdictions in several counties have found serious fault with the way photo tickets are administered. The Orange County Superior Court, Appellate Division recently ruled that red light cameras violate the Sixth Amendment. According to the unanimous, three-judge appellate panel, "The photographs contain hearsay evidence concerning the matters depicted in the photograph including the date, time and other information... The person who entered that relevant information into the camera-computer system did not testify. The person who entered that information was not subject to being cross-examined on the underlying source of that information. The person or persons who maintain the system did not testify. No one with personal knowledge testified about how often the system is maintained. No one with personal knowledge testified about how often the date and time are verified or corrected. The custodian of records for the company that contracts with the city to maintain, monitor, store and disperse these photographs did not testify. The person with direct knowledge of the workings of the camera-computer system did not testify."⁵

2. Effectiveness of Red Light Cameras

Our experience in Georgia calls into question the claims of effectiveness heard from the proponents of red light cameras. While the cameras are promoted as tools to improve intersection safety, accident statistics did not support that claim. The common excuse given by red light camera vendors and local governments is that an increase in rear-end collisions is expected, but there would be a reduction in other, more dangerous types of collisions. However, in January 2006, the *Atlanta Journal Constitution* reported that accidents were increasing at several red light camera enforced intersections.⁶ Furthermore there were increases in all types of accidents, including angle collisions, sideswipes, head-on and rear end collisions.⁷ Accidents increased from 21 percent to 54 percent with one intersection having a 128 percent increase in injuries.

In May, 2010 accident data was analyzed at 17 photo enforced intersections in the Atlanta area. Accident data was compared for a period of 6 months prior to camera installation and 6 months after installation. The results of this study showed that collisions of all types, including rear end and angle collisions, had increased at nearly half of these intersections. The more dangerous angle collisions increased at 47 percent of the intersections analyzed.⁸

³ Wiedermann v. Sioux Falls, Circuit Court of South Dakota, 15 Jun, 2010.

⁴ Minnesota v. Kuhlman, Supreme Court of Minnesota, 5 Apr, 2010.

⁵ California v. Khaled, Orange County, California Superior Court, Appellate Division, 25 May, 2010.

⁶ "Accidents Skyrocket at Marietta Camera Intersection", *Atlanta Journal Constitution*, Apr 2006.

⁷ "Georgia Accidents Increased with Red Light Cameras", *Atlanta Journal Constitution* 2 Apr, 2006.

⁸ *Collisions at Red Light Camera Intersections Go Up*, WXIA-TV, Atlanta, Georgia 11 May 2010.

These findings have been duplicated in the peer-reviewed studies by the University of South Florida, published in 2008 by *Florida Public Health Review*⁹ and by the Urban Transit Institute of the North Carolina A&T University¹⁰. Although not peer-reviewed, the Virginia Department of Transportation published a landmark study in 2007 examining six full years' worth of data covering every photo enforced city in the Commonwealth of Virginia. The data showed that, overall, accidents increased 29 percent. The accidents were serious, not minor, as injuries also increased 18 percent.

3. Abuse of Red Light Cameras by Local Governments

A common public concern about red light camera use is that, adoption of the technology is accompanied by a reduction in the length of yellow light times at red light camera enforced intersections. Testimony during committee hearings for House Bill 77 revealed that some local governments had been lowering the duration of the yellow light signal at camera enforced intersections. Local news media investigations followed up the claims and confirmed that yellow light times were reduced at certain intersections following the installation of red light cameras.

Such reports raised significant concern regarding the true purpose of the cameras. Annual reports on red light camera operations provided to the Georgia legislature by local governments revealed that there was an increase in red light running violations at the intersections with reduced yellow light times. The increase in violations also created an increase in revenue for the local government.

Local news media also began investigating reports of vehicle owners who received red light camera tickets, but were not the driver of the vehicle or where the camera misread the tag. The news stories revealed that vehicle owners were being harassed and told to pay the fine or report who was the driver of the vehicle at the time the violation occurred. As the red light camera controversy grew, public acceptance of cameras declined.

4. Limited Regulation and Oversight

The author and sponsors of HB 77 responded to the concerns by addressing the lack of effective regulation and oversight by the state. Georgia's red light camera laws did not address specific issues such as defining under what circumstances red light cameras could be installed, uniformity of operation, and standardization of reporting requirements.

The legislature's inquiry into common practices among municipalities found that some cameras were placed at intersections that were not considered dangerous and that did not have a history of significant collision numbers. Instead, many of these were highly congested, low speed intersections that were not prone to accidents but had a high volume of left-hand turn red light camera violations. It was also discovered that the red light cameras at these intersections generated much higher revenue than other cameras.

The law also lacked penalties for local governments who failed to comply with state red light camera laws. While the prior law had required local governments to file annual reports with the legislature and the governor's office providing details about the number of citations issued, there was no penalty for non-compliance. In 2005 and 2006 about half of the local governments operating red light cameras skipped filing of the required reports, and of those who did file, many of them were received after the deadline.

Accurate and timely reporting on the location of red light cameras and the number and type of citations issued by the cameras is imperative to being able to properly analyze the effectiveness of photo enforcement in deterring red light running.

⁹ Barbara Langland-Orban, PhD., Etienne E. Pracht, PhD and John T. Large, PhD., "Red Light Running Cameras: Would Crashes, Injuries and Automobile Insurance Rates Increase If They Are Used in Florida?", *Florida Public Health Review*, 2008; 5:1-7.

¹⁰ Mark Burkey, PhD. and Kofi Obeng, PhD., "A Detailed Investigation of Crash Risk Reduction Resulting From Red Light Cameras In Small Urban Areas", Urban Transit Institute, Transportation Institute North Carolina Agricultural and Technical State University, July, 2004.

GEORGIA'S RESPONSE TO INTERSECTION SAFETY

Nearly ten years ago, the Majority Leader of the United States House of Representatives, the Honorable Dick Armey, testified before this committee. He warned that changes to yellow light timing standards resulted in shorter yellows that created hazardous intersection conditions across the nation.

His report identified several studies that suggested an increase in the duration of the yellow light signal at problem intersections had the greatest impact on reducing red light running and accidents.

After considering the findings of the Majority Leader's report and analyzing the data from the red light cameras in Georgia, the General Assembly passed House Bill 77, which established statewide standards for red light camera operations and required additional time be added to the yellow light time of all camera-enforced intersections.

Studies have shown that there are three primary ways of reducing red light running. The most effective is engineering, the next is education and the least effective is enforcement. Over the past several years, the use of red light cameras has created a financial incentive for local governments to avoid making engineering changes and rely totally on the revenue generating photo enforcement.

The purpose of House Bill 77 was to require local governments to implement engineering changes at dangerous intersections before resorting to photo enforcement. It also requires that the use of red light cameras must show a decrease in red light running and accidents to continue to be operated.

House Bill 77 gave the Georgia Department of Transportation (GDOT) oversight authority and established a red light camera permitting process. As of January 2010, all red light cameras within the state must have an operating permit issued by the GDOT. Local governments who wish to operate red light cameras must submit an application to GDOT before installing and operating a red light camera. The application must include concrete evidence that the intersection is dangerous and that the camera is being considered to address a genuine safety need. Furthermore, the application must also describe all attempts to solve the problem through engineering changes.

The bill also required that annual reports be filed with the DOT, instead of the legislature. It imposed the ultimate penalty for non-compliance – forfeiture to the state of all revenues received from the red light camera while the local government was not in compliance.

The greatest impact of House Bill 77 was the requirement that all intersections that operate red light cameras must set the timing of the yellow light to the minimum federal standard, plus one additional second. The result of this provision has resulted in a significant reduction in red light running violations at photo enforce intersections across the state.

GEORGIA'S NEW RED LIGHT CAMERA LAW IS WORKING

In January 2010, the provision for adding one additional second to the yellow light times at photo enforced intersections went into effect and the results were immediate. Within 90 days of the law going into effect, red light running violations dropped 72 percent at red light camera intersections. Some local governments reported that violations dropped as much as 81 percent.

With such a significant drop in violations, also came an equal drop in revenue. Many local governments began removing the red light cameras, as they were no longer profitable to operate. The City of Dalton, not only removed their red light cameras, but had the yellow light times extended at all of the larger intersections within the city.

Mayor David Pennington of Dalton, Georgia told WDEF Television in an interview about the city removing the red light cameras "...the only reason to me to have the traffic cameras are do they truly promote public safety at a reasonable cost...and we've seen no evidence that it reduces accidents at all."¹¹

¹¹ "Dalton Rids Red Light Cameras", WDEF-TV, Chattanooga, TN, 27 Mar, 2010.

As a result of the additional yellow light time requirement, a total of twelve Georgia cities have removed some or all of their red light cameras. The table to the right shows the percentage drop in violations following the implementation of HB 77.

City	Violation Decrease
Dalton	68%
Duluth	75%
Decatur	66%
Gwinnett	44%
Lilburn	80%
Norcross	80%
Rome	78%
Suwanee	81%

Since the implementation of the yellow light time provision of HB 77, a total of 57 red light cameras have been removed from operation by local governments because there were no longer considered profitable. As of January 2010, the GDOT has denied 3 permits, due to the intersections were either not considered dangerous, or the accident data showed an increase in accident rates at those intersections. Also, 11 contingency permits have been issued to cities that will allow them to temporarily continue to operate the red light cameras, but the city must implement certain engineering changes.

In December of 2009, the GDOT denied three permits for red light cameras submitted by the City of Atlanta. The denial was due to the lack of evidence that the red light cameras had improved safety at those intersections. However, the City of Atlanta continued operating at least one of those cameras, which was the highest revenue producing camera in the state, even after the permit had been denied. Due to the enforcement provisions of HB 77, the City of Atlanta is now forfeiting \$35,000 in fine revenue generated during the time they operated the camera without a permit.

SUMMARY

Evidence through the analysis of the red light camera program in Georgia, has shown that photo enforcement in the state is not an effective deterrent to intersection collisions. While many local governments still desire to operate photo enforcement as a deterrent to red light running, implementation of proven engineering practices remains the most effective measure to improve intersection safety.

While Georgia's new red light camera law doesn't fully address the Constitutional concerns of operating photo enforcement, it has successfully reduced red light running in photo enforced intersections.

**Questions for the Honorable Barry Loudermilk
Georgia State Representative**

**Highways and Transit Subcommittee Hearing
June 30, 2010**

Questions from Chairman DeFazio

1. The bill enacted in Georgia, HB 77, provided substantial reforms to the red-light camera process. With protections like these in place, are there circumstances under which you would support the continued use of automated enforcement?
2. Your testimony focused on the need for engineering methods to be used prior to the implementation of any automated enforcement, particularly when looking at the length of yellow lights. Is there a need for a federal standard on the length of yellow lights? Or should decisions like these be left to the States or local communities?
3. Another panelist, Mr. Kelly, asserted in his testimony that in all legal challenges, the constitutionality of photo enforcement has been upheld. Is this the case, to your knowledge? Have the constitutional concerns you raised in your testimony been addressed by the courts?



House of Representatives

BARRY LOUDERMILK
REPRESENTATIVE, DISTRICT 14
POST OFFICE BOX 436
CASSVILLE, GEORGIA 30025
(678) 721-5612 (O)
(770) 387-1411 (FAX)
E-MAIL: barry.loudermilk@house.ga.gov

COVERDELL LEGISLATIVE OFFICE BUILDING, ROOM 401
ATLANTA, GEORGIA 30334
(404) 656-0152
(404) 651-8086 (FAX)

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The Honorable Peter A DeFazio
U.S. House of Representatives
Committee on Transportation and Infrastructure
Washington, D.C. 20515

Chairman DeFazio,

Thank you for giving me the opportunity to testify before the House Subcommittee on Highways and Transit at your June 30th hearing on "Utilization and Impacts of Automated Traffic Enforcement."

I hope my testimony regarding the State of Georgia's changes to our automated traffic enforcement laws provided valuable information for the members of the committee.

Below are the responses to the questions you have asked regarding the testimony before the subcommittee.

1. The primary concern I have with the operation of automated enforcement is Constitutional in nature. The way red light cameras are operated within the State of Georgia, even under the new laws enacted by HB 77, violate the Fifth Amendments right to due process. The owner of the vehicle identified by the photograph receives a citation in the mail, if he was not the driver of the vehicle; he is then forced to prove his innocence. The State must bear the burden of proof that the owner of the vehicle was the driver at the time of the infraction.

Since studies from financially disinterested parties indicate that cameras are detrimental to safety, there are better alternatives that don't raise constitutional problems.

2. There is a federal standard for the length of the yellow light, but it is insufficient. Under the Manual of Uniform Traffic Control Devices, maintained by the Federal Highway Administration, the duration of the yellow must be between 3 and 6 seconds. It is up to the local or state jurisdiction to calculate this value.

Photo enforcement programs generally locate red light cameras at the intersections with the shortest yellow for the conditions. It is appropriate, then, to require longer yellow at the intersections where federal funds are used to install a camera. This would be analogous to what HB77 did at the state level in Georgia, with great success.

3. It is untrue that all legal challenges to the constitutionality of photo enforcement have been upheld. Two state supreme courts have ruled against photo enforcement. The issue is highly controversial within the California

courts, and a case is pending before the California Supreme Court on the legality of per-ticket bounty payments to the private vendors that operate the programs.

The following is a partial list of court cases involving the constitutionality of photo enforcement and the courts findings:

- a. Red light camera evidence is inadmissible hearsay
California v. Khaled, Orange County Superior Court Appellate Division -- ordered published by the Court of Appeals July, 2010
<http://www.thenewspaper.com/news/31/3164.asp>
- b. ""Plaintiff was given notice but the court finds that plaintiff was not given a meaningful opportunity to be heard under the Fourteenth Amendment to the United States Constitution and Article Six Section Two of the South Dakota Constitution"
South Dakota Circuit Court
Wiedermann v. Sioux Falls, June 2010
<http://www.thenewspaper.com/news/31/3177.asp>
- c. Found the hearing system set up by municipality to be illegal
Missouri Supreme Court
Missouri v. Belt, March 2010
<http://www.thenewspaper.com/news/30/3067.asp>
- d. "The problem with the presumption that the owner was the driver is that it eliminates the presumption of innocence and shifts the burden of proof from that required by the rules of criminal procedure. Therefore the ordinance provides less procedural protection to a person charged with an ordinance violation than is provided to a person charged with a violation of the Act. Accordingly, the ordinance conflicts with the Act and is invalid."
Minnesota Supreme Court
Minnesota v. Kuhlman, April 2007
<http://www.thenewspaper.com/news/16/1688.asp>

Thank you again for giving me the opportunity to testify before the House Subcommittee on Highways and Transit. If I may be of any further assistance in this or any other matter, please feel free to contact me at any time.

Sincerely,



Barry Loudermilk
Representative, District 14
Georgia House of Representatives

**Statement before the US House
of Representatives Committee on
Transportation and Infrastructure,
Subcommittee on Highways
and Transit**

**Hearing on Utilization and Impacts
of Automated Traffic Enforcement**

Anne T. McCartt, Ph.D.

June 30, 2010

**INSURANCE INSTITUTE
FOR HIGHWAY SAFETY**

1005 NORTH GLEBE ROAD ARLINGTON, VA 22201
PHONE 703/247-1500 FAX 703/247-1678
<http://www.highwaysafety.org>

The Insurance Institute for Highway Safety is a nonprofit research and communications organization that identifies ways to reduce deaths, injuries, and property damage on our nation's highways. We are supported by auto insurers. Thank you for the opportunity to share research findings about the use of automated enforcement to address both red light running violations and speeding violations.

A high likelihood of apprehension is what convinces motorists to comply with traffic laws, but many enforcement agencies have insufficient personnel to mount effective enforcement programs using traditional police patrols. Automated traffic enforcement can supplement traditional methods, especially at times of day and on roads where traditional enforcement can be difficult if not hazardous.

The only relevant question about the use of automated enforcement is whether it reduces crashes — and it does. A wealth of research in US communities and elsewhere indicates it reduces crashes and associated deaths, injuries, and property damage by reducing illegal and dangerous driver behavior.

Red light running

The deliberate running of red lights is a common — and a serious — violation. An Institute study conducted at 5 busy intersections in Fairfax, Virginia, indicated that, on average, a motorist ran a red light every 20 minutes,¹ and at peak travel times the violations became more frequent. In another Institute study conducted in Arlington, Virginia, red light runners were compared with drivers who had an opportunity to run a red light but did not.² As a group, the violators were younger, less likely to use safety belts, and had poorer driving records. Red light runners were more than 3 times as likely to have multiple speeding convictions on their driver records.

Traffic signal violations may seem trivial to the violators, but the safety consequences are considerable. An Institute study of urban crashes found that running red lights and other traffic controls was the most common cause of all crashes (22 percent). Injuries occurred in 39 percent of crashes in which motorists ran traffic controls. This was the highest proportion found for any crash type.³

On a national basis in 2008, drivers who ran red lights were responsible for an estimated 170,400 crashes involving 137,000 estimated injuries and 762 deaths.⁴ Fifty-six percent of the deaths were law-abiding pedestrians, motorcyclists, bicyclists, and people in vehicles hit by red light runners.

Cameras reduce signal violations: Red light cameras are effective in modifying driver behavior. Violation rates in Oxnard, California, and Fairfax, Virginia, decreased about 40 percent during the first year of camera enforcement.^{1,5} Increases in driver compliance with signals were not limited to camera-equipped sites but spilled over to intersections without cameras.

It is sometimes claimed that proper timing of yellow signals can eliminate red light running. While adequate timing is important and can reduce signal violations, longer yellow timing alone does not eliminate the benefits of red light cameras. An Institute study conducted in Philadelphia evaluated the incremental effects on red light running of first lengthening yellow signals and then introducing red light camera enforcement.⁶ Extending yellow lights reduced violations by 36 percent, and camera enforcement further reduced the remaining violations by 96 percent beyond the levels that had been achieved by the longer yellow intervals.

Cameras reduce intersection crashes: The key question is whether red light camera enforcement improves safety. Findings from Institute research indicate it does. Significant citywide crash reductions followed the introduction of cameras in Oxnard, California.⁷ Injury crashes at intersections with traffic signals were reduced 29 percent. Front-into-side collisions — the crash type most closely associated with red light running — were reduced 32 percent, and front-into-side crashes involving injuries were reduced 68 percent. Crashes declined throughout Oxnard, even though cameras were installed at only 11 of the city's 125 intersections with traffic signals.

A subsequent review of the international literature concluded that red light camera enforcement reduces violations an estimated 40-50 percent. It reduces injury crashes 25-30 percent.⁸

Some studies have reported that, even as red light cameras reduce front-into-side collisions and overall injury crashes, they can increase rear-end crashes in the initial period following camera installation. A 2005 study sponsored by the Federal Highway Administration evaluated red light camera programs in 7 communities, finding a 25 percent reduction in right-angle crashes while rear-end collisions increased 15 percent.⁹ But because the types of crashes that are prevented by red light cameras tend to be more severe and more costly than the additional rear-end crashes that can occur, the study estimated a positive societal benefit of more than \$18.5 million in the 7 communities.

Not all studies have reported increases in rear-end crashes. In 2005 the Cochrane Collaboration, an international nonprofit organization that conducts systematic reviews of the scientific literature on public health issues, reviewed 10 controlled before-and-after studies of red light camera effectiveness in Australia, Singapore, and the United States.¹⁰ These studies showed a 16 percent reduction in all types of injury crashes and a 24 percent reduction in right-angle crashes. The review did not find a statistically significant change in rear-end crashes.

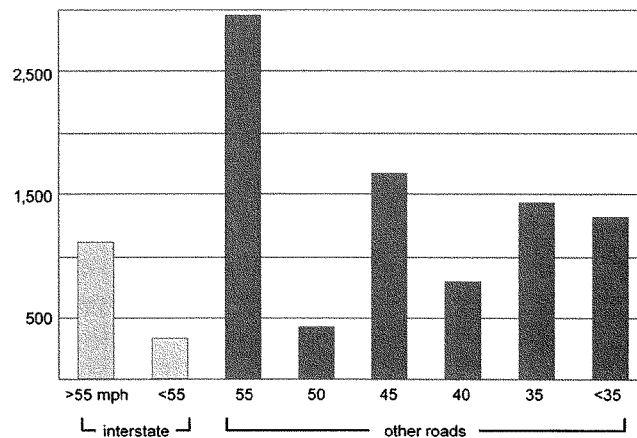
Some studies have purported to find overall crash increases following camera enforcement,^{11,12} but careful review indicates the researchers failed to incorporate appropriate comparison sites. The result is that the expected number of crashes at intersections where cameras were installed could not be properly estimated,^{13,14} so the effects of the enforcement on crashes could not be determined.

Another option: A good way to reduce crashes is to convert traditional intersections to roundabouts, which eliminate the need for traffic signals as well as cameras. Where roundabouts have been installed, crashes have declined about 40 percent. Crashes involving injuries have declined about 80 percent.¹⁵ Still, many intersections will continue to be controlled by traffic lights, so red light cameras will continue to be useful.

Speeding

Traveling at excessive speed contributes to both the frequency and severity of crashes.¹⁶ Speeding is a primary factor in crashes, especially serious ones,¹⁷ and it was a factor in about 31 percent of crash deaths (about 12,000 deaths) in 2008.¹⁸ Although speeding often is associated with interstate highways and other high-speed roads, 88 percent of speeding-related deaths occur on roads other than interstates. Twenty-four percent of all speeding-related deaths in 2008 occurred on streets with speed limits of 35 mph or lower.

Speeding-related crash deaths in the United States by speed limit, 2008



Pedestrians are at special risk. Researchers estimate that fatality risk for a pedestrian struck by a vehicle is about 5 percent when the vehicle is going 20 mph, about 40 percent when it is going 30 mph, and about 80 percent when it is going 40 mph.¹⁹ Urban areas are prime locations for speed enforcement because 72 percent of pedestrian deaths in 2008 occurred on urban streets.²⁰

Cameras reduce speed limit violations: Institute researchers have evaluated the effects of speed cameras in 3 communities, finding significant declines in the proportions of drivers going more than 10 mph faster than posted limits. In Montgomery County, Maryland, speed cameras were installed on residential roads with speed limits of 35 mph or lower and in school zones. Six months after camera enforcement began, the proportion of vehicles going more than 10 mph faster than posted limits fell 70 percent on roads where cameras were operational. The proportion fell 39 percent on roads where signs warned motorists about enforcement but cameras were not yet in place.²¹

In Scottsdale, Arizona, speed cameras were used to enforce the 65 mph speed limit on Loop 101, a 6-lane freeway that encircles the Phoenix metropolitan area. Comparing Loop 101 speeds with those observed on nearby freeways without cameras, researchers concluded that the program in Scottsdale was associated with a decrease of as much as 95 percent in the odds that a driver would surpass 75 mph.²²

In the District of Columbia, 5 vehicles equipped with speed cameras were rotated among 60 zones of enforcement across the city. At sites on 7 neighborhood streets, reductions in the proportions of motorists going more than 10 mph faster than posted limits ranged from 38 to 89 percent after camera deployment. At the same time, the proportion of motorists speeding by the same amount in Baltimore (where cameras were not used) stayed about the same or increased slightly.²³

Cameras reduce crashes involving speeding: A number of studies have evaluated the effects of camera enforcement on crashes, and the results are summarized in 2 systematic reviews of the international literature. A 2005 review of data collected from 14 studies found 5-69 percent reductions in crashes (all severities) in the immediate vicinities of camera sites. Reductions in injury crashes were 12-65 percent, while fatal crashes were reduced 17-71 percent.²⁴ A 2006 review published by the Cochrane Collaboration analyzed data from 21 studies and found reductions of 14-72 percent (all crashes), 8-46 percent (injury crashes), and 40-45 percent (crashes with deaths and serious injury).²⁵

Public support

Like other government policies and programs, camera enforcement requires acceptance and support among the public as well as elected leaders. Some opponents of automated enforcement raise the “big brother” issue to stir up disapproval, but acceptance of cameras always has been strong. An Institute survey conducted in 10 US cities, 5 with red light cameras and 5 without, found more than 75 percent of drivers supported the cameras.²⁶ A nationwide survey sponsored by the National Highway Traffic Safety Administration also found favor among 75 percent of drivers.²⁷ In a survey by the Virginia Transportation Research Council at 5 locations in the state, almost 2 of 3 respondents

supported red light cameras.²⁸ A national survey conducted in 2006 by the Insurance Research Council found 60 percent of US residents in favor of using cameras to enforce speed limits.²⁹ An Institute survey conducted after speed cameras were introduced in the District of Columbia showed 51 percent of drivers in favor.³⁰ A survey of Montgomery County, Maryland, residents found 62 percent supported speed cameras,²¹ and 77 percent of drivers in Scottsdale, Arizona, supported them, too.²²

Summary and conclusions

Automated traffic enforcement is not a panacea, but it is a proven way to reduce traffic violations and prevent crashes, especially serious crashes that result in injury and death. Opponents often criticize the revenue-generating aspects of camera programs, but a plus is that such programs can be financially self-sufficient. Once cameras have been in place long enough that residents know they will be ticketed for flouting the law, violations and revenues decline.

In tallying the costs and benefits of camera enforcement, communities should factor in the considerable social and economic benefits of successfully reducing crashes. Besides foregone medical costs, car repair bills, and lost income, citizens in communities with cameras experience direct savings in terms of reduced police time to investigate and report crashes, lessened need for emergency response service, and lower roadway cleanup costs.

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**Questions for Dr. Anne McCartt
Senior Vice President for Research
Insurance Institute for Highway Safety**

**Highways and Transit Subcommittee Hearing
June 30, 2010**

Questions from Chairman DeFazio

1. Your testimony referred several times to “citywide” safety improvements after automated enforcement is introduced, suggesting that benefits may go beyond just the intersections where the cameras are located. Do speed or red-light cameras change driver behavior community-wide?
2. Some studies have shown that red-light cameras reduce side impact crashes, while increasing rear-end collisions.
 - Are there differences in the general severity of these types of crashes?
 - Is a decrease in side impact crashes worth it if we see an increase in rear-end collisions?
 - Is there an eventual decrease in rear-end collisions over time, as motorists become familiar with the location of automated enforcement cameras?
3. An IIHS study shows that red-light runners tend to have poor driving records and multiple speeding convictions. It seems as those these types of drivers – with multiple violations and poor safety records – are continuing to drive through red-lights.
 - Is this due to a lack of law enforcement; i.e. these drivers don’t think they’ll get caught? Is there any way to really change the behavior of drivers like this?
 - Could engineering improvements – such as the roundabouts your testimony cites as being effective – hold more promise for reducing violations like these?

Responses to Questions for Dr. Anne McCartt
 Senior Vice President for Research
 Insurance Institute for Highway Safety

Highways and Transit Subcommittee Hearing
 June 30, 2010

Questions from Chairman DeFazio

1. *Your testimony referred several times to “citywide” safety improvements after automated enforcement is introduced, suggesting that benefits may go beyond just the intersections where the cameras are located. Do speed or red-light cameras change driver behavior community-wide?*

Yes. Institute evaluations of automated enforcement programs found “spillover” effects of both red light cameras and speed cameras beyond the specific locations where cameras were employed.

Institute evaluations of red light camera programs in Fairfax, Virginia, and Oxnard, California, found that red light camera enforcement reduced red light running violation rates by about 40 percent.^{1,2} In addition to reducing red light running at camera-equipped sites, similar reductions in violation rates (34-50 percent) in both communities carried over to signalized intersections not equipped with red light cameras, indicating community-wide changes in driver behavior. The Institute’s study in Oxnard also examined the effects of red light camera enforcement on crashes.³ Significant citywide crash reductions followed the introduction of red light cameras. Injury crashes at intersections with traffic signals, including those with and without red light cameras, were reduced by 29 percent. Front-into-side collisions, the crash type most closely associated with red light running, were reduced by 32 percent, and front-into-side crashes involving injuries were reduced by 68 percent. Crashes declined throughout Oxnard, even though cameras were installed at only 11 of the city’s 125 intersections with traffic signals.

Institute evaluations of speed camera enforcement programs also found substantial spillover effects on vehicle speeds. Researchers studied travel speeds in Montgomery County, Maryland, before and after the use of speed camera enforcement on residential streets and in school zones.⁴ Relative to speeds of drivers on roads in a comparison community, the proportion of drivers in Montgomery County traveling more than 10 mph above posted speed limits declined by about 70 percent at locations with both warning signs and speed camera enforcement, 39 percent at locations with warning signs but no speed cameras, and 16 percent on residential streets with neither warning signs nor speed cameras. In Scottsdale, Arizona, speed camera enforcement was implemented along an 8-mile segment of a major highway encircling the Phoenix metro area.⁵ The odds that a driver would surpass 75 mph declined by as much as 95 percent along the segment with cameras, and also declined by 78 percent at locations on the same highway but 25 miles away from the camera installations.

2. *Some studies have shown that red-light cameras reduce side impact crashes, while increasing rear-end collisions.*

- *Are there differences in the general severity of these types of crashes?*

Yes, there are substantial differences in the severity of different types of crashes at intersections. Right-angle, left-turn, and head-on crashes are common types of crashes at signalized intersections, and these types of collisions often are severe, partly because vehicles may be traveling through the intersection at high speeds. Rear-end collisions tend to be less severe than right-angle or left-turn crashes, and the most recent statistics on crashes in the United States bear this out. Of fatal crashes occurring in 2008 that involved collisions between two moving vehicles, 52 percent were angle crashes and 15 percent were

rear-end crashes. A strikingly different pattern of crash types occurs in less severe crashes. Of crashes involving nonfatal injuries, 44 percent were angle crashes and 43 percent were rear-end crashes. Of crashes involving property damage only, 36 percent were angle crashes and 46 percent were rear-end crashes.⁶ In 2008 there were 687 fatal crashes caused by red light runners, resulting in 762 deaths. Of the crashes involving two moving vehicles, 95 percent were angle crashes and only 2 percent were rear-end crashes.⁷

It is important to note that not all studies have found increases in rear-end collisions. The Institute study of red light cameras in Oxnard, California, found a 3 percent increase in rear-end crashes, a change that was not statistically significant. This study used methods that overcome the limitations of simpler methods by accounting for regression to the mean, changes in traffic volume, and trends in crashes due to factors such as weather, crash reporting practices, and driving habits.³ The Cochrane Collaboration (an international organization that conducts systematic reviews of the scientific literature on public health issues) reviewed 10 controlled before-after studies of red light camera effectiveness in Australia, Singapore, and the United States.⁸ Using techniques of meta-analysis, the authors estimated a 16 percent reduction in all types of injury crashes and a 24 percent reduction in right-angle crashes. The review did not find a statistically significant change in rear-end crashes. Of the studies that found increases in rear-end crashes, only a study by Council et al.⁹ used methods that sufficiently controlled for such factors as regression to the mean and spillover effects. As discussed below, a 15 percent increase in rear-end crashes was found, using data across seven communities, but this was more than offset by a decrease in right-angle crashes.

- *Is a decrease in side impact crashes worth it if we see an increase in rear-end collisions?*

Research by the Federal Highway Administration shows that the societal benefits resulting from the reduction in side impact crashes at intersections outweigh the societal costs of the increase in rear-end crashes. The ultimate goal is the elimination of all crashes at intersections, but this is difficult to achieve at busy intersections controlled by stop signs or traffic signals. The greatest gains to a community are achieved by reducing the most serious crashes. A study sponsored by the Federal Highway Administration evaluated red light camera programs in seven cities and estimated the economic costs and benefits of these programs.⁹ The study found that, overall, right-angle crashes decreased by 25 percent while rear-end collisions increased by 15 percent. Results showed a positive aggregate societal benefit of more than \$18.5 million over 370 site years, which translates into a crash reduction benefit of approximately \$39,000 per site year. The authors concluded that the economic costs from the increase in rear-end crashes were more than offset by the economic benefits from the decrease in right-angle crashes targeted by red light cameras.

- *Is there an eventual decrease in rear-end collisions over time, as motorists become familiar with the location of automated enforcement cameras?*

As noted above, the Cochrane review of 10 red light camera studies did not find an increase in rear-end crashes.⁸ Only one controlled study that addressed both regression-to-mean and spillover effects found a significant increase in rear-end crashes.⁹ This study involved data from seven communities, and the length of time for which crash data were available after camera enforcement began varied from 1 to 5 years. The researchers did not study whether the occurrence of rear-end crashes changed over time. In the Institute's study of camera enforcement in Oxnard, California, crashes were studied for 29 months after camera enforcement began; a nonsignificant and negligible increase in rear-end crashes was detected.³ So clearly the evidence is mixed with regard to whether rear-end crashes go up at all after camera enforcement. To the extent that rear-end crashes may increase due to sudden braking by drivers who were unaware of the cameras, it could be expected that such crashes would decline over time as

drivers' awareness of the cameras increased. However, the Institute is not aware of research that has studied this question.

3. *An IIHS study shows that red-light runners tend to have poor driving records and multiple speeding convictions. It seems as though these types of drivers, with multiple violations and poor safety records, are continuing to drive through red lights.*

- *Is this due to a lack of law enforcement, i.e., these drivers don't think they'll get caught? Is there any way to really change the behavior of drivers like this?*

Yes, considerable research has found that achieving compliance with traffic laws requires that motorists perceive a high likelihood of apprehension. Neither education nor the mere existence of a law is sufficient; enforcement is sufficient. This has been demonstrated with alcohol-impaired driving laws¹⁰ and safety belt laws.^{11,12} Automated enforcement can substantially increase the likelihood of apprehension, not only at the sites where cameras are located but at other locations in a community. Although there will always be a small minority of lawbreakers who persist in disobeying laws despite the consequences, automated enforcement is an effective way to persuade the vast majority of motorists to obey traffic laws.

- *Could engineering improvements, such as the roundabouts your testimony cites as being effective, hold more promise for reducing violations like these?*

Converting traditional intersections to roundabouts eliminates the need for traffic signals and improves safety, but it is not possible to convert all signalized intersections to roundabouts. Institute research found that where roundabouts have been installed, crashes declined about 40 percent.¹³ Crashes involving injuries declined about 80 percent. Several features of roundabouts promote safety. At traditional intersections with stop signs or traffic signals, some of the most common and most severe crashes are right-angle, left-turn, and head-on collisions. With roundabouts, these types of crashes essentially are eliminated because vehicles travel in the same direction.¹⁴ Installing roundabouts in place of traffic signals also can reduce the likelihood of rear-end crashes and their severity by removing the incentive for drivers to speed up as they approach green lights and by reducing abrupt stops at red lights. The vehicle-to-vehicle conflicts that occur at roundabouts generally involve a vehicle merging into the circular roadway, with both vehicles traveling at low speeds, generally less than 20 mph in urban areas and less than 30-35 mph in rural areas.

Roundabouts are appropriate at many intersections, but they are not appropriate everywhere. Locations that may be suitable for roundabouts include high crash locations and intersections with large traffic delays, complex geometry, frequent left-turn movements, and relatively balanced traffic flows. Roundabouts can be constructed along congested arterials, in lieu of road widening, and can be appropriate in lieu of traffic signals at freeway exits and entrances. Intersections that may not be good candidates include those with topographic or site constraints that limit the ability to provide appropriate geometry, those with highly unbalanced traffic flows (i.e., very high traffic volumes on the main street and very light traffic on the side street), and isolated intersections in a network of traffic signals.

Although there are many traditional intersections where roundabouts would be a safer and more efficient alternative, the reality is that resource-strapped communities cannot afford the wholesale conversion of existing intersections to roundabouts. There also are some intersections where roundabouts are not feasible. Thus, many intersections will continue to be controlled by traffic lights, and red light cameras will continue to provide an effective mechanism to enforce compliance with red lights.

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District Office
7011 15th Street
Suite B-1
Sarasota, FL 34243
941-727-6447
941-727-6449 (fax)



Tallahassee Office
422 The Capitol
402 South Monroe Street
Tallahassee, FL 32399
850-488-921-7747

FLORIDA HOUSE OF REPRESENTATIVES
REPRESENTATIVE RON REAGAN
DISTRICT 67

EMAIL: RON.REAGAN@MYFLORIDAHOUSE.GOV

Testimony of

Speaker Pro Tempore Ron Reagan, Florida House of Representatives

Before the

**Transportation and Infrastructure Committee,
Subcommittee on Highways and Transit**

Regarding

Utilization and Impacts of Automated Traffic Enforcement

June 30, 2010

Good morning Chairman DeFazio, Ranking Member Duncan and distinguished members of the Transportation and Infrastructure Committee's Subcommittee on Highways and Transit. Thank you for inviting me to testify this morning on Utilization and Impacts of Automated Traffic Enforcement.

On May 14, 2010 the Uniform Traffic Control/The Mark Wandall Traffic Safety Act was signed into law in the State of Florida. This piece of legislation was passed overwhelmingly by both the Florida House of Representatives and the Florida Senate. HB 325 will both save lives and curb dangerous habitual driving behavior.

I have enclosed independent public opinion polls, the legislation, and letters to the editor that encompass the topic of automated traffic enforcement. As you will see, a majority of Floridians overwhelmingly support the use of automated enforcement at intersections across Florida.

Speaker Pro Tempore for the Florida House of Representatives

Florida's Traffic Fatalities

Thousands of Floridians have been killed by drivers who run red lights as part of their normal driving behavior.

- 5,607 Floridians were injured due to drivers that failed to obey traffic signals.
- More than 11% of all pedestrian deaths and at least 17% of all bicycle fatalities across the entire United States occur in Florida (National Highway Traffic Safety Administration).
- Since 2001, Florida has been among the top three states for pedestrian and bicyclist fatalities with the latest numbers showing that 502 pedestrians and 118 bicyclists were killed by dangerous driving behavior (Florida Department of Highway Safety and Motor Vehicles).

Public Opinion

Recent public opinion research shows:

- 72% of Floridians support the use of automated traffic enforcement at intersections.

Added Benefits to Floridians

The Mark Wandall Traffic Safety Act, provides critical funding for medical studies in the form of spinal cord research, makes available funding for Florida trauma centers, and it assists local municipalities that implement this life-saving technology.

Intersection camera programs are designed to use technology as a tool to hearten traffic safety on local roads. Camera programs can effectively and efficiently modify driver's behavior by increasing enforcement. These programs encourage all drivers to follow federal, state, and local traffic laws. The cameras are a proactive solution to reduce preventable deaths, avert serious injuries, and reduce output of funds to respond to accident scenes. Automated enforcement programs mitigate a host of problems that arise on Florida's roads when drivers fail to stop at red lights.

Parameters of HB 325, *Uniform Traffic Control/The Mark Wandall Traffic Safety Act*

The bill creates the "Mark Wandall Traffic Safety Act", and it expressly preempts to the State of Florida the regulation of the use of cameras to enforce the provisions of ch. 316, F.S., and it authorizes the Department of Highway Safety and Motor Vehicles (DHSMV), counties, and municipalities to use cameras to enforce violations of ss. 316.074(1) and 316.075(1)(c)1., F.S., for a driver's failure to stop at a traffic signal.

The bill defines a "traffic infraction detector" as a vehicle sensor and a camera, working in connection with a traffic control device, to record a series of images or video of motor vehicles failing to stop at an intersection. The detector must be capable of recording only the rear of the motor vehicle, and any notification or citation issued from a detector must show the license tag of the offending vehicle and the traffic control device.

The bill requires signage at intersections using traffic infraction detectors, and provides that traffic infraction detectors may not be used to enforce violations when the driver is making a right turn in a careful and prudent manner.

Speaker Pro Tempore for the Florida House of Representatives

The bill provides processes regarding required notifications, the issuance of citations to registered owners of motor vehicles, and defenses available to vehicle owners. Notifications and citations must include the images indicating that the motor vehicle violated a traffic control device, and must offer a physical location or an Internet address where images or video may be reviewed.

When a citation is issued, it may be challenged in a judicial proceeding in the same manner as other traffic violations. A contested citation upheld by the court may result in additional court costs and fees.

The bill increases the penalty for any violations of s. 316.074(1) or S. 316.075(1)(c)1., F.S., from \$125 to \$158, regardless of the method of enforcement, and provides for distribution of revenue.

Points may not be assessed against a driver's license for infractions enforced by the use of a traffic infraction detector, and violations may not be used for purposes of setting motor vehicle insurance rates.

The bill provides a transitional period for those counties and municipalities instituting a traffic infraction detector program on or before July 1, 2011. These counties and municipalities may continue to use equipment acquired under an agreement entered into on or before July 1, 2011.

Each governmental entity that operates a traffic infraction detector must submit an annual report to the Department of Highway Safety and Motor Vehicles which details the results of the detectors and the procedures for enforcement. The Department of Highway Safety and Motor Vehicles must subsequently submit an annual summary report to the Governor and Legislature. The report must include a review of the information submitted by the counties and municipalities and any recommendations or necessary legislation.

Conclusion

I would like to say, in closing, that Florida HB 325 will keep Florida's first responders from having to go to accident scenes that never needed to occur. This bill will keep Florida's trauma centers from having to perform life saving measures caused by thoughtless drivers who may run red lights as their normal driving pattern. This program will prevent habitual and reckless driving patterns across Florida. This piece of legislation is good public policy. It brings consistency, it mandates uniformity, it encourages public safety, and it is a tool for our over utilized law enforcement officers on Florida's roads.

Thank you for your time. I greatly appreciate you allowing me to share my views and Floridian's opinions with you today.

Sincerely,

Rep. Ron Reagan, Dist #7
Speaker Pro Tempore

Speaker Pro Tempore for the Florida House of Representatives

Full Appropriations Council on Education & Economic Development-Vice Chair

Full Appropriations Council on General Government & Health Care -Vice Chair

Rules & Calendar Council

Proudly Serving all Floridians

Public Opinion

Section One - Table of Contents

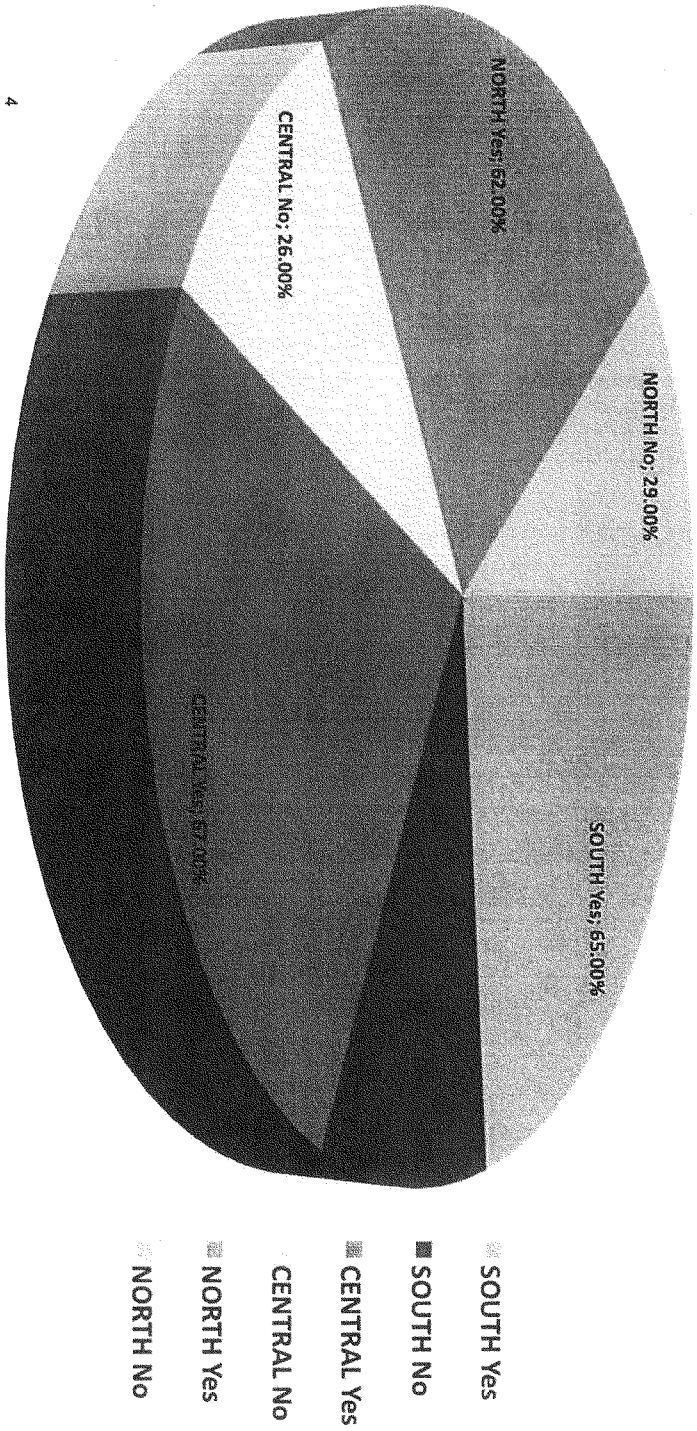
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Public Opinion

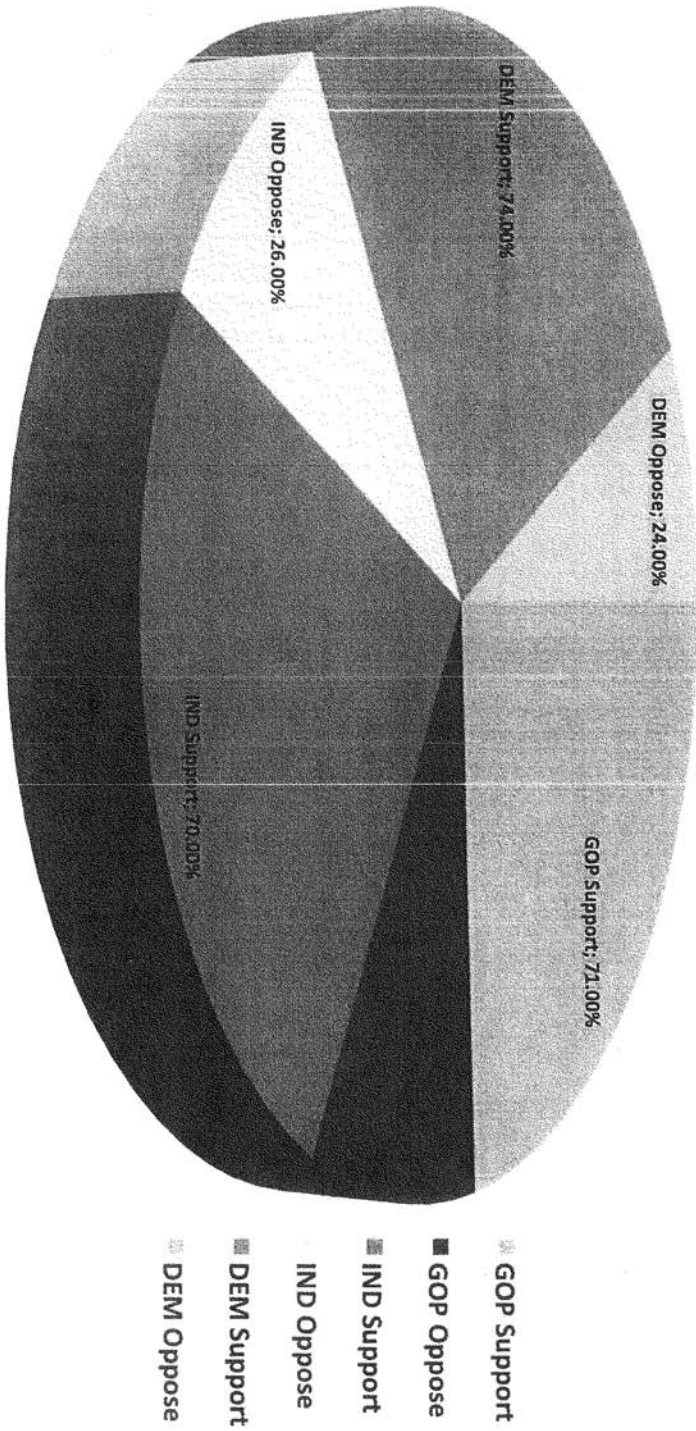
- A 2010 poll of Floridians executed by Public Opinion Strategies*, shows:
 - 65% of voters believe red-light cameras improve traffic safety.
 - 72% support the use of these cameras in their communities to detect red-light runners.
 - More than 60% of registered voters believe the state should adopt a law that standardizes red-light camera fines in Florida.
 - Support is high even among voters who have received a red-light or speeding citation in the past five years. 61% of those polled in this category approve of the cameras.
 - More than 70% of voters of all ages stand up for cameras in their communities, with 35- to 44-year-olds voicing 75% support and voters age 65-plus showing 80% support.
 - Across party lines, red-light cameras draw large majorities: 71% of Republicans, 70% of Independents and 74% of Democrats favor cameras at high-volume intersections.
 - Support for red-light cameras is mostly even across the state. 74% of those polled in Central Florida favor the cameras, while 70% of voters in the South and North regions expressed support.
 - Voters who hear pro and con arguments about red-light cameras show little change in their opinion, and the core 47% of them who strongly support the cameras remain unchanged.

(* 2010 Public Opinion Strategies, Feb. 2010, surveyed 800 registered voters in Florida. www.floridastopsonred.org)

Support For Use of Intersection Safety Cameras Across Florida



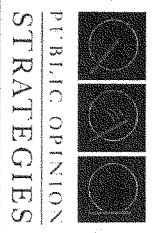
Support For Use of Intersection Safety Cameras Across Party Lines



ATTITUDES TOWARD RED LIGHT CAMERAS: FLORIDA

Key findings from a survey of 800 registered voters in the
state of Florida, conducted February 14-15, 2010.

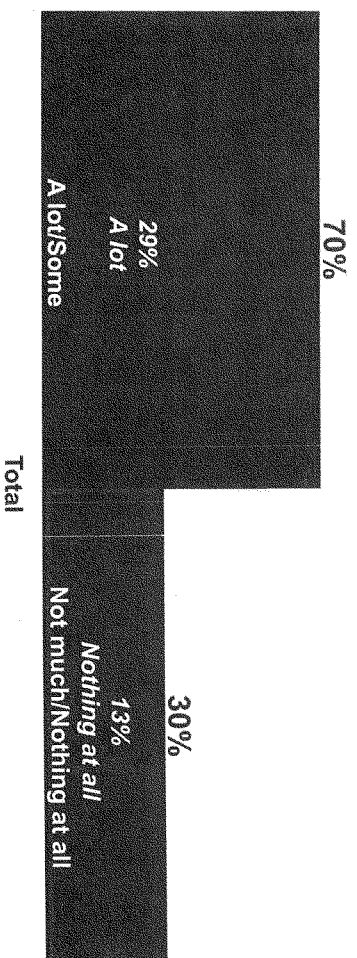
Margin of Error = $\pm 4.0\%$



NEIL NEWHOUSE
partner • neil@pos.org

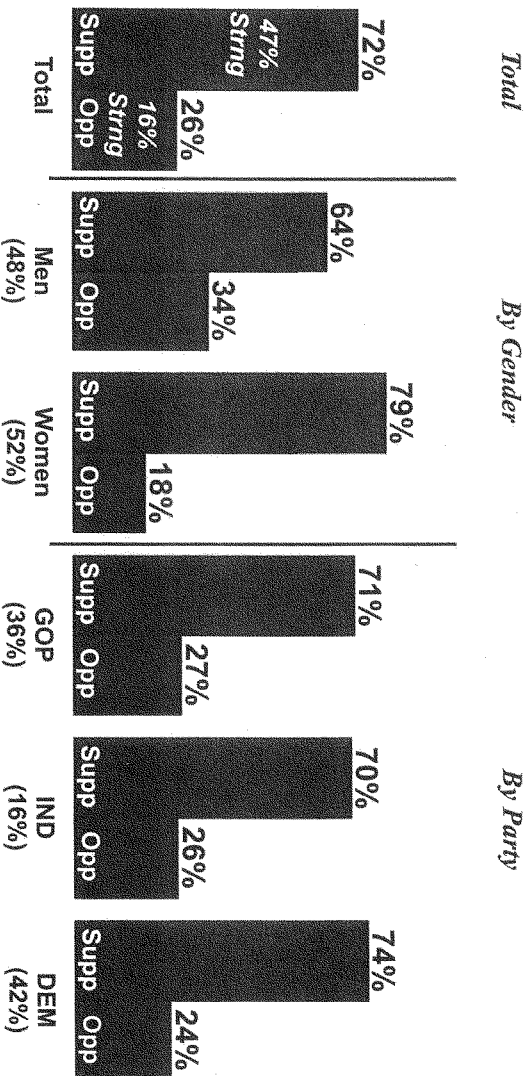
Over two-thirds of Floridians have heard “a lot” or “some” about red light cameras.

Now, changing topics for a minute, how much have you recently seen, read or heard about the issue of red light cameras being used for enforcement of local traffic safety laws?



And, support for the use of cameras at high volume intersections cuts across gender and party lines.

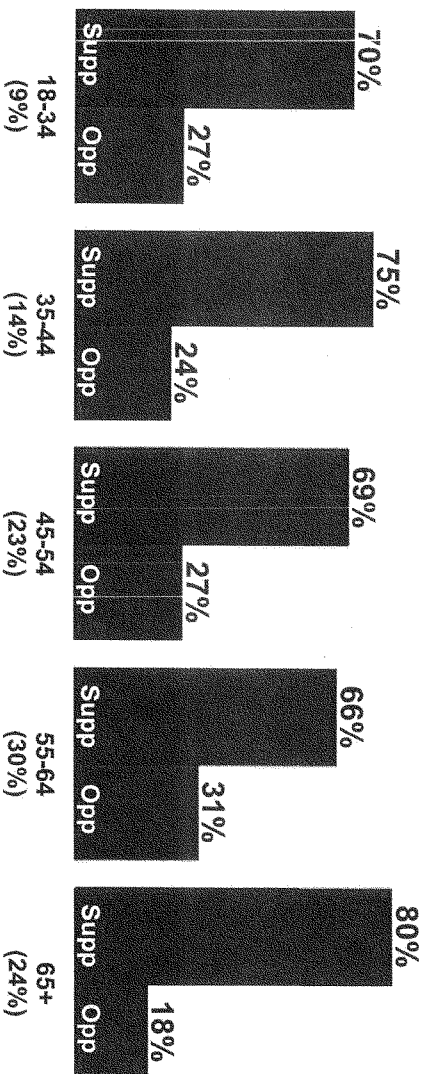
And, do you support or oppose the use of red light cameras at high traffic volume intersections in your community to detect vehicles that run red lights?



Voters of all ages support the cameras' use...

And, do you support or oppose the use of red light cameras at high traffic volume intersections in your community to detect vehicles that run red lights?

By Age

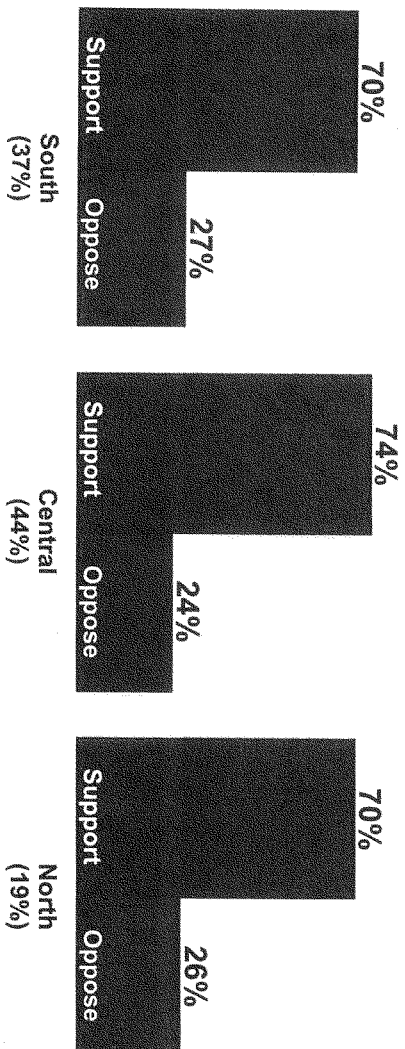


Florida Red Light Survey – February, 2010

As do 70% or more from each region of the state.

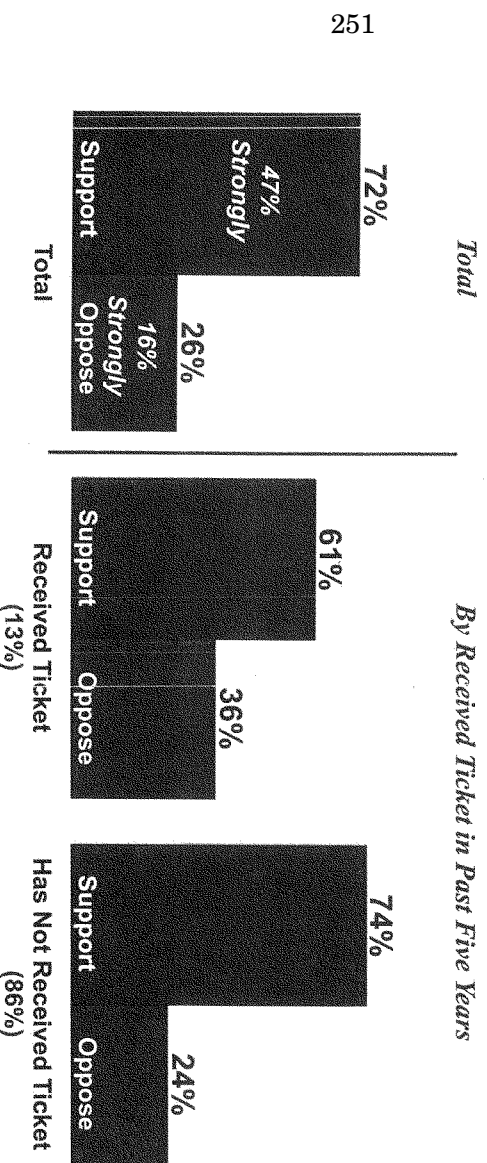
And, do you support or oppose the use of red light cameras at high traffic volume intersections in your community to detect vehicles that run red lights?

By Region



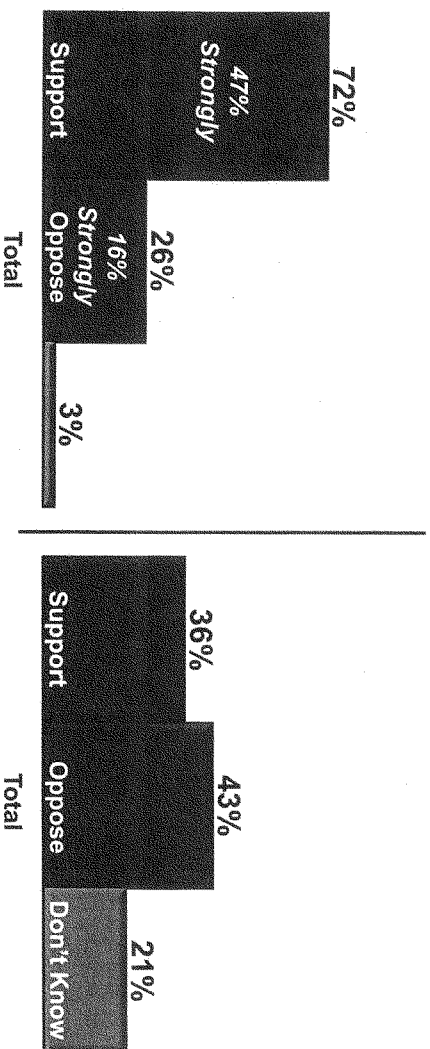
Even a majority of those who have personally received red light or speeding tickets support using the cameras.

And, do you support or oppose the use of red light cameras at high traffic volume intersections in your community to detect vehicles that run red lights?



However, despite their own support, Floridians are unsure about their neighbors' feelings on the issue.

And, do you support or oppose the use of red light cameras at high traffic volume intersections in your community to detect vehicles that run red lights?

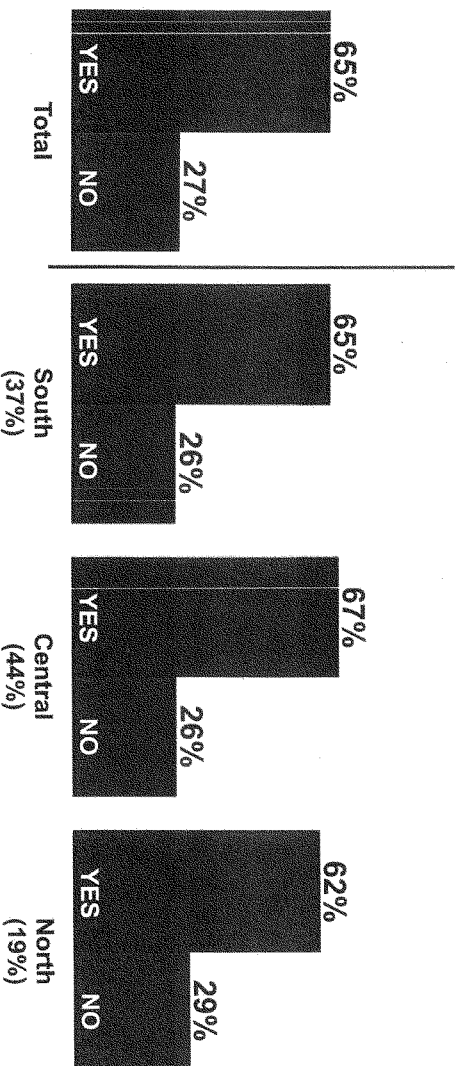


Over 60% of voters across the state believe red light cameras improve safety.

And, do you think red light cameras improve traffic safety?

Total

By Region



253

And, when voters are read arguments from both sides of the issue...

Now, I'd like to read you arguments on both sides of this issue...

Those in support of red light cameras say... Installing red light cameras at the most dangerous intersections has been shown to reduce accidents and save lives, and the program is paid for by red light runners, not taxpayers. Violators do NOT receive points on their licenses, and tickets are issued only after the violation images have been viewed and approved by trained police officers or city employees.

...while...

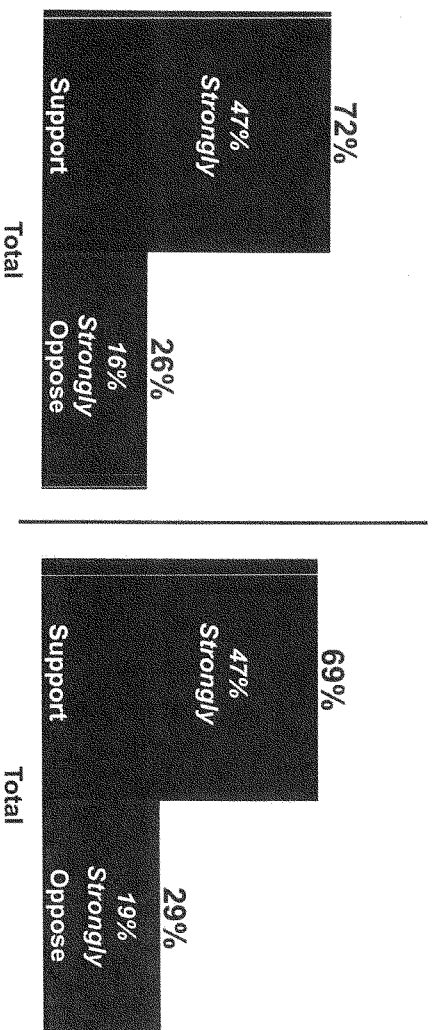
Those in opposition to red light cameras say... Using red light cameras is not only a violation of motorists' privacy rights, but they have been shown to cause rear end accidents by forcing people to hit the brakes out of fear of a ticket. Increasing the yellow light phase by a few seconds will eliminate red light violations and reduce crashes more effectively. Red light cameras are just a money grab for local communities and should be stopped.

Support remains strong.

Now, having heard arguments on both sides of this issue, do you support or oppose the use of red light cameras at high traffic volume intersections in your community to detect vehicles that run red lights?

Initial

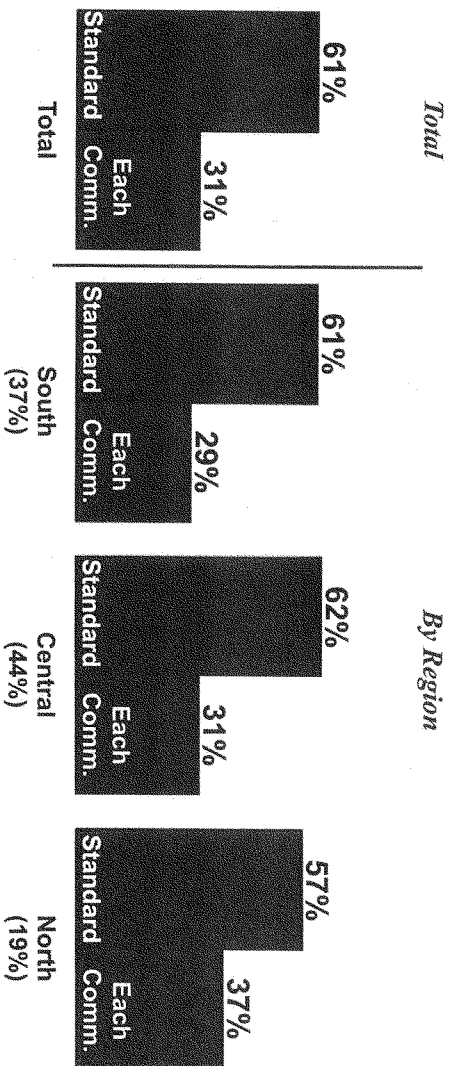
Informed



And, there is strong support for standardizing red light camera fines in the state.

As you may know, there is a proposal in the state legislature to bring consistency to the red light camera programs running in the state, setting standardized fines for red light camera violations.

*Do you support standardizing red light camera fines in the state? ...or...
Should each community be allowed to make its own laws?*



BOTTOM LINE

- ✓ These poll results indicate that Florida voters share similar support for red light cameras as we've seen nationally. Fully 72% of Florida voters support using these cameras in their community to detect red light runners.
- ✓ This support cuts across gender, party, generational, and regional lines in the state.
- ✓ Even those voters who have received tickets for speeding or running red lights support red light cameras.

BOTTOM LINE

- ✓ Nearly two-thirds of Floridians believe red light cameras improve traffic safety.
- ✓ Similar to what we found in our national polling, Floridians underestimate the level of support for red light cameras in the state.
- ✓ There is also strong support (61%) for standardizing red light camera fines across the state.

BOTTOM LINE

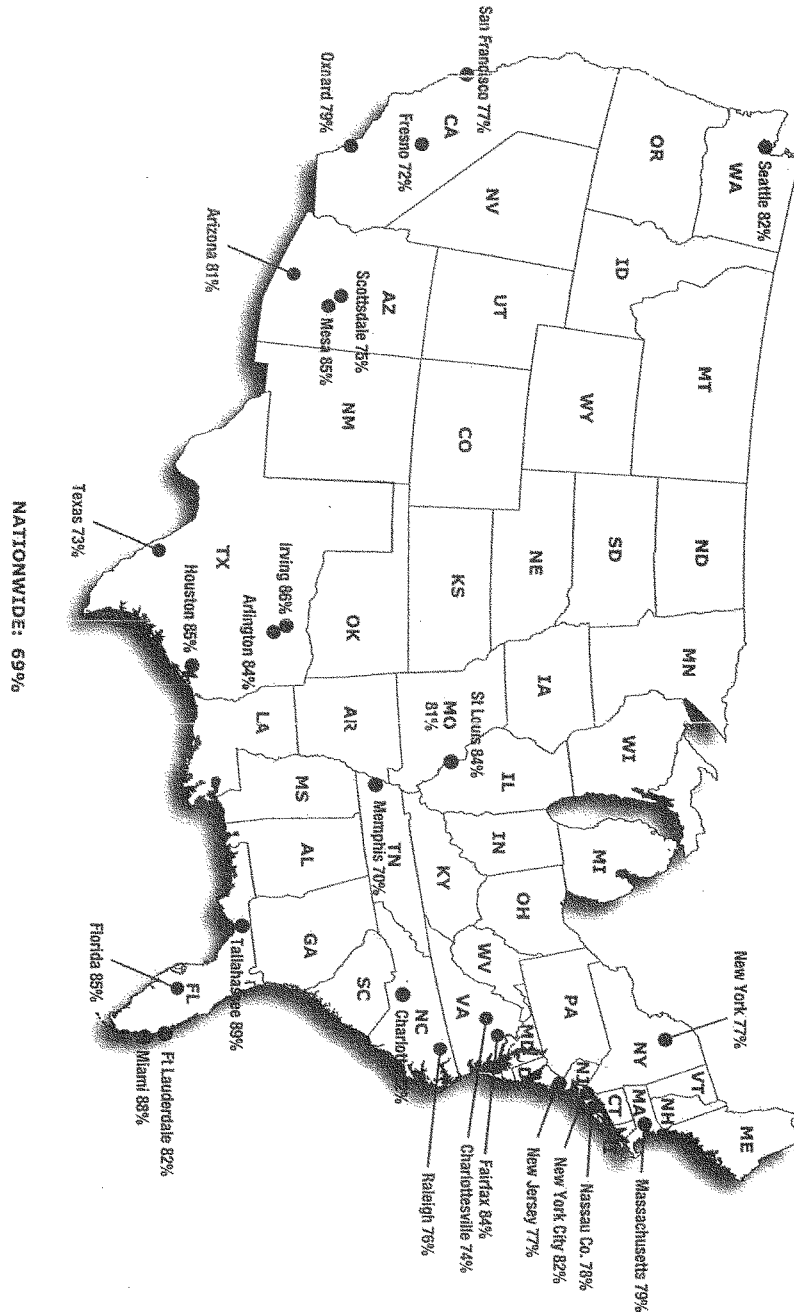
Quote from Neil Newhouse:

“On this issue, Floridians have a lot in common with the rest of the country. They support red light cameras and they believe these cameras improve traffic safety. Support for red light cameras in Florida cuts across partisan, generational, gender and regional lines.”

Neil Newhouse
partner • neil@pos.org

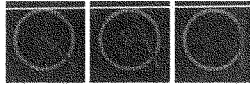


214 North Fayette Street
Alexandria, Virginia 22314
Phone: (703) 836-7655 • Fax: (703) 836-8117
Web: www.pos.org



A 2009 National Poll completed by Public Opinion Strategies concluded:

- o 69% of Americans support the use of red light cameras at the most dangerous intersections in their states, while only 29% oppose the use of cameras to enforce traffic laws.
- o Those surveyed incorrectly believe most people oppose road safety programs to improve traffic safety by a margin of 47-41%, illustrating a strong disconnect as voters think their neighbors do not share support for photo-enforcement programs, when in fact, they do.
- o Neil Newhouse, a well-respected national pollster noted that "support for these red-light cameras is not only very strong nationally, but cuts across all demographic and attitudinal groups, including men and women, young and old, Republicans and Democrats, and conservatives and liberals."



PUBLIC OPINION
STRATEGIES

FOR IMMEDIATE RELEASE

CONTACT: NEIL NEWHOUSE

Neil@POS.org / 703-836-7655

POLL SHOWS STRONG NATIONAL SUPPORT FOR "RED-LIGHT CAMERAS"

May 19, 2009, Alexandria, VA – In a recent national survey of voters, Public Opinion Strategies found that fully 69% of Americans support the use of "red-light cameras" at the most dangerous intersections in their states, while just 29% oppose them.

Those voters "strongly" supporting red-light cameras outnumber those who strongly oppose them by a wide 45%-18% margin.

Neil Newhouse, one of the founding partners of Public Opinion Strategies, noted that "support for these red-light cameras is not only very strong nationally, but cuts across all demographic and attitudinal groups, including men and women, young and old, Republicans and Democrats, and conservatives and liberals."

The survey also showed that while support for red-light cameras is very high, voters believe that their support is not shared by others. By a 47%-41% margin, voters believe that most residents in their state *oppose* red-light cameras, providing evidence of a "disconnect" between voters' actual attitudes on the issue and their perception of how other voters feel.

"This is a stunning result. Rarely in public opinion research do you find voter attitudes so at odds with what they believe others think. These red-light camera supporters are truly the 'silent majority,' while opponents might be described as a vocal minority."

The national survey was based on telephone interviews with 800 likely voters, conducted April 19-22, 2009. The results are subject to a margin of sampling error of approximately plus or minus 3.46 percent.

Public Opinion Strategies (POS) is a national political and public affairs research firm. Headquartered in Alexandria, Virginia, POS is the Republican partner for the NBC/WSJ Poll and was named "Pollster of the Year" by the trade publication "Campaigns and Elections."

###

N1. Do you support or oppose the use of red-light cameras to detect red-light runners and enforce traffic laws in your state's most dangerous intersections?

45% STRONGLY SUPPORT
 24% SOMEWHAT SUPPORT
 11% SOMEWHAT OPPOSE
 18% STRONGLY OPPOSE

2% DON'T KNOW
 * REFUSED

69% TOTAL SUPPORT
 29% TOTAL OPPOSE

N2. And, setting aside your personal opinion of red-light cameras, do you think that most residents in your state support or oppose the use of red-light cameras to ensure traffic safety?

41% MOST SUPPORT
 47% MOST OPPOSE

12% DON'T KNOW
 * REFUSED

Public Opinion from around the country

- A 2010 poll of Houstonians found that 65% of highly likely voters support the use of intersection safety cameras. 77% of voters believe that intersection safety cameras are a reasonable response to red-light running.
- A 2009 poll of Arizonans found that 7 in 10 people strongly support the use of intersection safety cameras.
 - o 97% of voters say it is very important to reduce the number of drivers that run red lights.
 - o 97% of voters agree that it is important to improve safety at intersections.
 - o 84% of respondents feel that there needs to be a reduction in the number of drivers that exceed the speed limit.
- A 2009 poll of Missourians showed:
 - o Two-thirds (66%) of Missourians support red-light cameras and believe police should continue using them to enforce traffic safety laws.
- A 2008 poll of 800 Arizonans concluded:
 - o Support for red-light cameras is overwhelming. 84% of Arizona voters believe city police departments should continue to use cameras to issue tickets to red-light runners. Most of Arizona's major cities deploy red-light camera systems.
 - o 63% support Arizona's statewide speed photo enforcement program.
- In 2007, polls conducted by the cities of Arlington and Irving Texas found that 87% and 88%, respectively, of the residents support red-light cameras and 83% of the respondents believe intersection safety cameras reduce the number of people running red lights.
- An April 2006 survey found that 82% of those interviewed support installing red-light cameras in Seattle, Washington.
- 79% of Massachusetts' residents favor road safety camera systems, knowing that they are paid for by violators and not tax dollars.

F L O R I D A H O U S E O F R E P R E S E N T A T I V E S

ENROLLED

CS/CS/HB 325, Engrossed 2

2010 Legislature

1 A bill to be entitled

2 An act relating to uniform traffic control; providing a

3 short title; amending s. 316.003, F.S.; defining the term

4 "traffic infraction detector"; creating s. 316.0076, F.S.;

5 preempting to the state the use of cameras to enforce

6 traffic laws; amending s. 316.008, F.S.; authorizing

7 counties and municipalities to use traffic infraction

8 detectors under certain circumstances; creating s.

9 316.0083, F.S.; creating the Mark Wandall Traffic Safety

10 Program; authorizing the Department of Highway Safety and

11 Motor Vehicles, a county, or a municipality to use a

12 traffic infraction detector to identify a motor vehicle

13 that fails to stop at a traffic control signal steady red

14 light; requiring authorization of a traffic infraction

15 enforcement officer to issue and enforce a citation for

16 such violation; requiring notification to be sent to the

17 registered owner of the motor vehicle involved in the

18 violation; requiring the notification to include certain

19 information about the owner's right to review evidence;

20 providing requirements for the notification; providing for

21 collection of penalties; providing for distribution of

22 penalties collected; providing that an individual may not

23 receive a commission or per-ticket fee from any revenue

24 collected from violations detected through the use of a

25 traffic infraction detector and a manufacturer or vendor

26 may not receive a fee or remuneration based upon the

27 number of violations detected through the use of a traffic

28 infraction detector; providing procedures for issuance,

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F L O R I D A H O U S E O F R E P R E S E N T A T I V E S

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CS/CS/HB 325, Engrossed 2

2010 Legislature

29 disposition, and enforcement of citations; providing for
 30 exemptions; providing that certain evidence is admissible
 31 for enforcement; providing penalties for submission of a
 32 false affidavit; prohibiting the use of such detectors to
 33 enforce a violation when a driver fails to stop prior to
 34 making a right or left turn; providing that the act does
 35 not preclude the issuance of citations by law enforcement
 36 officers; requiring reports from participating
 37 municipalities and counties to the department; requiring
 38 the department to make reports to the Governor and
 39 Legislature; amending s. 316.0745, F.S.; revising a
 40 provision that requires certain remotely operated traffic
 41 control devices to meet certain specifications; creating
 42 s. 316.07456, F.S.; requiring traffic infraction detectors
 43 to meet specifications established by the Department of
 44 Transportation; providing that a traffic infraction
 45 detector acquired by purchase, lease, or other arrangement
 46 under an agreement entered into by a county or
 47 municipality on or before a specified date is not required
 48 to meet the established specifications until a specified
 49 date; creating s. 316.0776, F.S.; providing for the
 50 placement and installation of detectors on certain roads
 51 when permitted by and under the specifications of the
 52 department; requiring that if the state, county, or
 53 municipality installs a traffic infraction detector at an
 54 intersection, the state, county, or municipality shall
 55 notify the public that a traffic infraction device may be
 56 in use at that intersection; requiring that such signage

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F L O R I D A H O U S E O F R E P R E S E N T A T I V E S

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2010 Legislature

57 posted at the intersection meet the specifications for
 58 uniform signals and devices adopted by the Department of
 59 Transportation; requiring that traffic infraction
 60 detectors meet specifications established by the
 61 Department of Transportation; requiring a public awareness
 62 campaign if such detectors are to be used; amending s.
 63 316.640, F.S.; requiring the Department of Transportation
 64 to develop training and qualification standards for
 65 traffic infraction enforcement officers; authorizing
 66 counties and municipalities to use independent contractors
 67 as traffic infraction enforcement officers; amending s.
 68 316.650, F.S.; requiring a traffic enforcement officer to
 69 provide to the court a replica of the citation data by
 70 electronic transmission under certain conditions; amending
 71 s. 318.14, F.S.; providing an exception from provisions
 72 requiring a person cited for an infraction for failing to
 73 stop at a traffic control signal steady red light to sign
 74 and accept a citation indicating a promise to appear;
 75 amending s. 318.18, F.S.; increasing certain fines;
 76 providing for penalties for infractions enforced by a
 77 traffic infraction enforcement officer; providing for
 78 distribution of fines; allowing the clerk of court to
 79 dismiss certain cases upon receiving documentation that
 80 the uniform traffic citation was issued in error;
 81 providing that an individual may not receive a commission
 82 or per-ticket fee from any revenue collected from
 83 violations detected through the use of a traffic
 84 infraction detector and a manufacturer or vendor may not

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F L O R I D A H O U S E O F R E P R E S E N T A T I V E S

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2010 Legislature

85 receive a fee or remuneration based upon the number of
 86 violations detected through the use of a traffic
 87 infraction detector; creating s. 321.50, F.S.; authorizing
 88 the Department of Highway Safety and Motor Vehicles to use
 89 traffic infraction detectors under certain circumstances;
 90 amending s. 322.27, F.S.; providing that no points may be
 91 assessed against the driver's license for infractions
 92 enforced by a traffic infraction enforcement officer;
 93 providing that infractions enforced by a traffic
 94 infraction enforcement officer may not be used for
 95 purposes of setting motor vehicle insurance rates;
 96 requiring the retention of certain penalty proceeds
 97 collected prior to the Department of Revenue's ability to
 98 receive and distribute such funds; providing an
 99 appropriation and for carryforward of any unexpended
 100 balance; providing for severability; providing effective
 101 dates.

102
 103 Be It Enacted by the Legislature of the State of Florida:

104
 105 Section 1. This act may be cited as the "Mark Wandall
 106 Traffic Safety Act."

107 Section 2. Subsection (86) is added to section 316.003,
 108 Florida Statutes, to read:

109 316.003 Definitions.—The following words and phrases, when
 110 used in this chapter, shall have the meanings respectively
 111 ascribed to them in this section, except where the context
 112 otherwise requires:

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113 (86) TRAFFIC INFRACTION DETECTOR.—A vehicle sensor
 114 installed to work in conjunction with a traffic control signal
 115 and a camera or cameras synchronized to automatically record two
 116 or more sequenced photographic or electronic images or streaming
 117 video of only the rear of a motor vehicle at the time the
 118 vehicle fails to stop behind the stop bar or clearly marked stop
 119 line when facing a traffic control signal steady red light. Any
 120 notification under s. 316.0083(1)(b) or traffic citation issued
 121 by the use of a traffic infraction detector must include a
 122 photograph or other recorded image showing both the license tag
 123 of the offending vehicle and the traffic control device being
 124 violated.

125 Section 3. Section 316.0076, Florida Statutes, is created
 126 to read:

127 316.0076 Regulation and use of cameras.—Regulation of the
 128 use of cameras for enforcing the provisions of this chapter is
 129 expressly preempted to the state. The regulation of the use of
 130 cameras for enforcing the provisions of this chapter is not
 131 required to comply with provisions of chapter 493.

132 Section 4. Subsection (7) is added to section 316.008,
 133 Florida Statutes, to read:

134 316.008 Powers of local authorities.—

135 (7)(a) A county or municipality may use traffic infraction
 136 detectors to enforce s. 316.074(1) or s. 316.075(1)(c)1. when a
 137 driver fails to stop at a traffic signal on streets and highways
 138 under their jurisdiction under s. 316.0083. Only a municipality
 139 may install or authorize the installation of any such detectors
 140 within the incorporated area of the municipality. Only a county

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141 may install or authorize the installation of any such detectors
 142 within the unincorporated area of the county.

143 (b) Pursuant to paragraph (a), a municipality may install
 144 or, by contract or interlocal agreement, authorize the
 145 installation of any such detectors only within the incorporated
 146 area of the municipality, and a county may install or, by
 147 contract or interlocal agreement, authorize the installation of
 148 any such detectors only within the unincorporated area of the
 149 county. A county may authorize installation of any such
 150 detectors by interlocal agreement on roads under its
 151 jurisdiction.

152 Section 5. Section 316.0083, Florida Statutes, is created
 153 to read:

154 316.0083 Mark Wandall Traffic Safety Program;
 155 administration; report.-

156 (1)(a) For purposes of administering this section, the
 157 department, a county, or a municipality may authorize a traffic
 158 infraction enforcement officer under s. 316.640 to issue a
 159 traffic citation for a violation of s. 316.074(1) or s.
 160 316.075(1)(c)1. A notice of violation and a traffic citation may
 161 not be issued for failure to stop at a red light if the driver
 162 is making a right-hand turn in a careful and prudent manner at
 163 an intersection where right-hand turns are permissible. This
 164 paragraph does not prohibit a review of information from a
 165 traffic infraction detector by an authorized employee or agent
 166 of the department, a county, or a municipality before issuance
 167 of the traffic citation by the traffic infraction enforcement
 168 officer. This paragraph does not prohibit the department, a

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169 county, or a municipality from issuing notification as provided
 170 in paragraph (b) to the registered owner of the motor vehicle
 171 involved in the violation of s. 316.074(1) or s. 316.075(1)(c)1.
 172 (b)1.a. Within 30 days after a violation, notification
 173 must be sent to the registered owner of the motor vehicle
 174 involved in the violation specifying the remedies available
 175 under s. 318.14 and that the violator must pay the penalty of
 176 \$158 to the department, county, or municipality, or furnish an
 177 affidavit in accordance with paragraph (d), within 30 days
 178 following the date of the notification in order to avoid court
 179 fees, costs, and the issuance of a traffic citation. The
 180 notification shall be sent by first-class mail.
 181 b. Included with the notification to the registered owner
 182 of the motor vehicle involved in the infraction must be a notice
 183 that the owner has the right to review the photographic or
 184 electronic images or the streaming video evidence that
 185 constitutes a rebuttable presumption against the owner of the
 186 vehicle. The notice must state the time and place or Internet
 187 location where the evidence may be examined and observed.
 188 2. Penalties assessed and collected by the department,
 189 county, or municipality authorized to collect the funds provided
 190 for in this paragraph, less the amount retained by the county or
 191 municipality pursuant to subparagraph 3., shall be paid to the
 192 Department of Revenue weekly. Payment by the department, county,
 193 or municipality to the state shall be made by means of
 194 electronic funds transfers. In addition to the payment, summary
 195 detail of the penalties remitted shall be reported to the
 196 Department of Revenue.

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197 3. Penalties to be assessed and collected by the
 198 department, county, or municipality are as follows:
 199 a. One hundred fifty-eight dollars for a violation of s.
 200 316.074(1) or s. 316.075(1)(c)1. when a driver has failed to
 201 stop at a traffic signal if enforcement is by the department's
 202 traffic infraction enforcement officer. One hundred dollars
 203 shall be remitted to the Department of Revenue for deposit into
 204 the General Revenue Fund, \$10 shall be remitted to the
 205 Department of Revenue for deposit into the Department of Health
 206 Administrative Trust Fund, \$3 shall be remitted to the
 207 Department of Revenue for deposit into the Brain and Spinal Cord
 208 Injury Trust Fund, and \$45 shall be distributed to the
 209 municipality in which the violation occurred, or, if the
 210 violation occurred in an unincorporated area, to the county in
 211 which the violation occurred. Funds deposited into the
 212 Department of Health Administrative Trust Fund under this sub-
 213 paragraph shall be distributed as provided in s. 395.4036(1).
 214 Proceeds of the infractions in the Brain and Spinal Cord Injury
 215 Trust Fund shall be distributed quarterly to the Miami Project
 216 to Cure Paralysis and shall be used for brain and spinal cord
 217 research.
 218 b. One hundred fifty-eight dollars for a violation of s.
 219 316.074(1) or s. 316.075(1)(c)1. when a driver has failed to
 220 stop at a traffic signal if enforcement is by a county or
 221 municipal traffic infraction enforcement officer. Seventy
 222 dollars shall be remitted by the county or municipality to the
 223 Department of Revenue for deposit into the General Revenue Fund,
 224 \$10 shall be remitted to the Department of Revenue for deposit

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225 into the Department of Health Administrative Trust Fund, \$3
 226 shall be remitted to the Department of Revenue for deposit into
 227 the Brain and Spinal Cord Injury Trust Fund, and \$75 shall be
 228 retained by the county or municipality enforcing the ordinance
 229 enacted pursuant to this section. Funds deposited into the
 230 Department of Health Administrative Trust Fund under this sub-
 231 subparagraph shall be distributed as provided in s. 395.4036(1).
 232 Proceeds of the infractions in the Brain and Spinal Cord Injury
 233 Trust Fund shall be distributed quarterly to the Miami Project
 234 to Cure Paralysis and shall be used for brain and spinal cord
 235 research.

236 4. An individual may not receive a commission from any
 237 revenue collected from violations detected through the use of a
 238 traffic infraction detector. A manufacturer or vendor may not
 239 receive a fee or remuneration based upon the number of
 240 violations detected through the use of a traffic infraction
 241 detector.

242 (c)1.a. A traffic citation issued under this section shall
 243 be issued by mailing the traffic citation by certified mail to
 244 the address of the registered owner of the motor vehicle
 245 involved in the violation when payment has not been made within
 246 30 days after notification under subparagraph (b)1.

247 b. Delivery of the traffic citation constitutes
 248 notification under this paragraph.

249 c. In the case of joint ownership of a motor vehicle, the
 250 traffic citation shall be mailed to the first name appearing on
 251 the registration, unless the first name appearing on the
 252 registration is a business organization, in which case the

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2010 Legislature

253 second name appearing on the registration may be used.

254 d. The traffic citation shall be mailed to the registered

255 owner of the motor vehicle involved in the violation no later

256 than 60 days after the date of the violation.

257 2. Included with the notification to the registered owner

258 of the motor vehicle involved in the infraction shall be a

259 notice that the owner has the right to review, either in person

260 or remotely, the photographic or electronic images or the

261 streaming video evidence that constitutes a rebuttable

262 presumption against the owner of the vehicle. The notice must

263 state the time and place or Internet location where the evidence

264 may be examined and observed.

265 (d)1. The owner of the motor vehicle involved in the

266 violation is responsible and liable for paying the uniform

267 traffic citation issued for a violation of s. 316.074(1) or s.

268 316.075(1)(c)1. when the driver failed to stop at a traffic

269 signal, unless the owner can establish that:

270 a. The motor vehicle passed through the intersection in

271 order to yield right-of-way to an emergency vehicle or as part

272 of a funeral procession;

273 b. The motor vehicle passed through the intersection at

274 the direction of a law enforcement officer;

275 c. The motor vehicle was, at the time of the violation, in

276 the care, custody, or control of another person; or

277 d. A uniform traffic citation was issued by a law

278 enforcement officer to the driver of the motor vehicle for the

279 alleged violation of s. 316.074(1) or s. 316.075(1)(c)1.

280 2. In order to establish such facts, the owner of the

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2010 Legislature

281 motor vehicle shall, within 30 days after the date of issuance
 282 of the traffic citation, furnish to the appropriate governmental
 283 entity an affidavit setting forth detailed information
 284 supporting an exemption as provided in this paragraph.
 285 a. An affidavit supporting an exemption under sub-
 286 paragraph 1.c. must include the name, address, date of birth,
 287 and, if known, the driver's license number of the person who
 288 leased, rented, or otherwise had care, custody, or control of
 289 the motor vehicle at the time of the alleged violation. If the
 290 vehicle was stolen at the time of the alleged offense, the
 291 affidavit must include the police report indicating that the
 292 vehicle was stolen.
 293 b. If a traffic citation for a violation of s. 316.074(1)
 294 or s. 316.075(1)(c)1. was issued at the location of the
 295 violation by a law enforcement officer, the affidavit must
 296 include the serial number of the uniform traffic citation.
 297 3. Upon receipt of an affidavit, the person designated as
 298 having care, custody, and control of the motor vehicle at the
 299 time of the violation may be issued a traffic citation for a
 300 violation of s. 316.074(1) or s. 316.075(1)(c)1. when the driver
 301 failed to stop at a traffic signal. The affidavit is admissible
 302 in a proceeding pursuant to this section for the purpose of
 303 providing proof that the person identified in the affidavit was
 304 in actual care, custody, or control of the motor vehicle. The
 305 owner of a leased vehicle for which a traffic citation is issued
 306 for a violation of s. 316.074(1) or s. 316.075(1)(c)1. when the
 307 driver failed to stop at a traffic signal is not responsible for
 308 paying the traffic citation and is not required to submit an

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309 affidavit as specified in this subsection if the motor vehicle
 310 involved in the violation is registered in the name of the
 311 lessee of such motor vehicle.

312 4. The submission of a false affidavit is a misdemeanor of
 313 the second degree, punishable as provided in s. 775.082 or s.
 314 775.083.

315 (e) The photographic or electronic images or streaming
 316 video attached to or referenced in the traffic citation is
 317 evidence that a violation of s. 316.074(1) or s. 316.075(1)(c)1.
 318 when the driver failed to stop at a traffic signal has occurred
 319 and is admissible in any proceeding to enforce this section and
 320 raises a rebuttable presumption that the motor vehicle named in
 321 the report or shown in the photographic or electronic images or
 322 streaming video evidence was used in violation of s. 316.074(1)
 323 or s. 316.075(1)(c)1. when the driver failed to stop at a
 324 traffic signal.

325 (2) A notice of violation and a traffic citation may not
 326 be issued for failure to stop at a red light if the driver is
 327 making a right-hand turn in a careful and prudent manner at an
 328 intersection where right-hand turns are permissible.

329 (3) This section supplements the enforcement of s.
 330 316.074(1) or s. 316.075(1)(c)1. by law enforcement officers
 331 when a driver fails to stop at a traffic signal and does not
 332 prohibit a law enforcement officer from issuing a traffic
 333 citation for a violation of s. 316.074(1) or s. 316.075(1)(c)1.
 334 when a driver fails to stop at a traffic signal in accordance
 335 with normal traffic enforcement techniques.

336 (4) (a) Each county or municipality that operates a traffic

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337 infraction detector shall submit a report by October 1, 2012,
 338 and annually thereafter, to the department which details the
 339 results of using the traffic infraction detector and the
 340 procedures for enforcement for the preceding state fiscal year.
 341 The information submitted by the counties and municipalities
 342 must include statistical data and information required by the
 343 department to complete the report required under paragraph (b).
 344 (b) On or before December 31, 2012, and annually
 345 thereafter, the department shall provide a summary report to the
 346 Governor, the President of the Senate, and the Speaker of the
 347 House of Representatives regarding the use and operation of
 348 traffic infraction detectors under this section, along with the
 349 department's recommendations and any necessary legislation. The
 350 summary report must include a review of the information
 351 submitted to the department by the counties and municipalities
 352 and must describe the enhancement of the traffic safety and
 353 enforcement programs.

354 Section 6. Subsection (6) of section 316.0745, Florida
 355 Statutes, is amended to read:

356 316.0745 Uniform signals and devices.—

357 (6) Any system of traffic control devices controlled and
 358 operated from a remote location by electronic computers or
 359 similar devices must ~~shall~~ meet all requirements established for
 360 the uniform system, and, if where ~~where~~ such a system affects ~~systems~~
 361 ~~affect~~ the movement of traffic on state roads, the design of the
 362 system shall be reviewed and approved by the Department of
 363 Transportation.

364 Section 7. Section 316.07456, Florida Statutes, is created

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365 to read:

366 316.07456 Transitional implementation.--Any traffic
 367 infraction detector deployed on the highways, streets, and roads
 368 of this state must meet specifications established by the
 369 Department of Transportation, and must be tested at regular
 370 intervals according to specifications prescribed by the
 371 Department of Transportation. The Department of Transportation
 372 must establish such specifications on or before December 31,
 373 2010. However, any such equipment acquired by purchase, lease,
 374 or other arrangement under an agreement entered into by a county
 375 or municipality on or before July 1, 2011, or equipment used to
 376 enforce an ordinance enacted by a county or municipality on or
 377 before July 1, 2011, is not required to meet the specifications
 378 established by the Department of Transportation until July 1,
 379 2011.

380 Section 8. Section 316.0776, Florida Statutes, is created
 381 to read:

382 316.0776 Traffic infraction detectors; placement and
 383 installation.--

384 (1) Traffic infraction detectors are allowed on state
 385 roads when permitted by the Department of Transportation and
 386 under placement and installation specifications developed by the
 387 Department of Transportation. Traffic infraction detectors are
 388 allowed on streets and highways under the jurisdiction of
 389 counties or municipalities in accordance with placement and
 390 installation specifications developed by the Department of
 391 Transportation.

392 (2)(a) If the department, county, or municipality installs

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393 a traffic infraction detector at an intersection, the
 394 department, county, or municipality shall notify the public that
 395 a traffic infraction device may be in use at that intersection
 396 and must specifically include notification of camera enforcement
 397 of violations concerning right turns. Such signage used to
 398 notify the public must meet the specifications for uniform
 399 signals and devices adopted by the Department of Transportation
 400 pursuant to s. 316.0745.

401 (b) If the department, county, or municipality begins a
 402 traffic infraction detector program in a county or municipality
 403 that has never conducted such a program, the respective
 404 department, county, or municipality shall also make a public
 405 announcement and conduct a public awareness campaign of the
 406 proposed use of traffic infraction detectors at least 30 days
 407 before commencing the enforcement program.

408 Section 9. Paragraph (b) of subsection (1) and subsection
 409 (5) of section 316.640, Florida Statutes, are amended to read:
 410 316.640 Enforcement.—The enforcement of the traffic laws
 411 of this state is vested as follows:

412 (1) STATE.—

413 (b)1. The Department of Transportation has authority to
 414 enforce on all the streets and highways of this state all laws
 415 applicable within its authority.

416 2.a. The Department of Transportation shall develop
 417 training and qualifications standards for toll enforcement
 418 officers whose sole authority is to enforce the payment of tolls
 419 pursuant to s. 316.1001. Nothing in this subparagraph shall be
 420 construed to permit the carrying of firearms or other weapons,

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421 nor shall a toll enforcement officer have arrest authority.

422 b. For the purpose of enforcing s. 316.1001, governmental

423 entities, as defined in s. 334.03, which own or operate a toll

424 facility may employ independent contractors or designate

425 employees as toll enforcement officers; however, any such toll

426 enforcement officer must successfully meet the training and

427 qualifications standards for toll enforcement officers

428 established by the Department of Transportation.

429 3. For the purpose of enforcing s. 316.0083, the

430 department may designate employees as traffic infraction

431 enforcement officers. A traffic infraction enforcement officer

432 must successfully complete instruction in traffic enforcement

433 procedures and court presentation through the Selective Traffic

434 Enforcement Program as approved by the Division of Criminal

435 Justice Standards and Training of the Department of Law

436 Enforcement, or through a similar program, but may not

437 necessarily otherwise meet the uniform minimum standards

438 established by the Criminal Justice Standards and Training

439 Commission for law enforcement officers or auxiliary law

440 enforcement officers under s. 943.13. This subparagraph does not

441 authorize the carrying of firearms or other weapons by a traffic

442 infraction enforcement officer and does not authorize a traffic

443 infraction enforcement officer to make arrests. The department's

444 traffic infraction enforcement officers must be physically

445 located in the state.

446 (5)(a) Any sheriff's department or police department of a

447 municipality may employ, as a traffic infraction enforcement

448 officer, any individual who successfully completes instruction

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449 in traffic enforcement procedures and court presentation through
 450 the Selective Traffic Enforcement Program as approved by the
 451 Division of Criminal Justice Standards and Training of the
 452 Department of Law Enforcement, or through a similar program, but
 453 who does not necessarily otherwise meet the uniform minimum
 454 standards established by the Criminal Justice Standards and
 455 Training Commission for law enforcement officers or auxiliary
 456 law enforcement officers under s. 943.13. Any such traffic
 457 infraction enforcement officer who observes the commission of a
 458 traffic infraction or, in the case of a parking infraction, who
 459 observes an illegally parked vehicle may issue a traffic
 460 citation for the infraction when, based upon personal
 461 investigation, he or she has reasonable and probable grounds to
 462 believe that an offense has been committed which constitutes a
 463 noncriminal traffic infraction as defined in s. 318.14. In
 464 addition, any such traffic infraction enforcement officer may
 465 issue a traffic citation under s. 316.0083. For purposes of
 466 enforcing s. 316.0083, any sheriff's department or police
 467 department of a municipality may designate employees as traffic
 468 infraction enforcement officers. The traffic infraction
 469 enforcement officers must be physically located in the county of
 470 the respective sheriff's or police department.

471 (b) The traffic infraction enforcement officer shall be
 472 employed in relationship to a selective traffic enforcement
 473 program at a fixed location or as part of a crash investigation
 474 team at the scene of a vehicle crash or in other types of
 475 traffic infraction enforcement under the direction of a fully
 476 qualified law enforcement officer; however, it is not necessary

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477 that the traffic infraction enforcement officer's duties be
 478 performed under the immediate supervision of a fully qualified
 479 law enforcement officer.

480 (c) This subsection does not permit the carrying of
 481 firearms or other weapons, nor do traffic infraction enforcement
 482 officers have arrest authority other than the authority to issue
 483 a traffic citation as provided in this subsection.

484 Section 10. Subsection (3) of section 316.650, Florida
 485 Statutes, is amended to read:

486 316.650 Traffic citations.—

487 (3)(a) Except for a traffic citation issued pursuant to s.
 488 316.1001 or s. 316.0083, each traffic enforcement officer, upon
 489 issuing a traffic citation to an alleged violator of any
 490 provision of the motor vehicle laws of this state or of any
 491 traffic ordinance of any municipality or town, shall deposit the
 492 original traffic citation or, in the case of a traffic
 493 enforcement agency that has an automated citation issuance
 494 system, the chief administrative officer shall provide by an
 495 electronic transmission a replica of the citation data to a
 496 court having jurisdiction over the alleged offense or with its
 497 traffic violations bureau within 5 days after issuance to the
 498 violator.

499 (b) If a traffic citation is issued pursuant to s.
 500 316.1001, a traffic enforcement officer may deposit the original
 501 traffic citation or, in the case of a traffic enforcement agency
 502 that has an automated citation system, may provide by an
 503 electronic transmission a replica of the citation data to a
 504 court having jurisdiction over the alleged offense or with its

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505 traffic violations bureau within 45 days after the date of
 506 issuance of the citation to the violator. If the person cited
 507 for the violation of s. 316.1001 makes the election provided by
 508 s. 318.14(12) and pays the \$25 fine, or such other amount as
 509 imposed by the governmental entity owning the applicable toll
 510 facility, plus the amount of the unpaid toll that is shown on
 511 the traffic citation directly to the governmental entity that
 512 issued the citation, or on whose behalf the citation was issued,
 513 in accordance with s. 318.14(12), the traffic citation will not
 514 be submitted to the court, the disposition will be reported to
 515 the department by the governmental entity that issued the
 516 citation, or on whose behalf the citation was issued, and no
 517 points will be assessed against the person's driver's license.

518 (c) If a traffic citation is issued under s. 316.0083, the
 519 traffic infraction enforcement officer shall provide by
 520 electronic transmission a replica of the traffic citation data
 521 to the court having jurisdiction over the alleged offense or its
 522 traffic violations bureau within 5 days after the date of
 523 issuance of the traffic citation to the violator.

524 Section 11. Subsection (2) of section 318.14, Florida
 525 Statutes, is amended to read:

526 318.14 Noncriminal traffic infractions; exception;
 527 procedures.—

528 (2) Except as provided in ss. ~~s.~~ 316.1001(2) and 316.0083,
 529 any person cited for an infraction under this section must sign
 530 and accept a citation indicating a promise to appear. The
 531 officer may indicate on the traffic citation the time and
 532 location of the scheduled hearing and must indicate the

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533 applicable civil penalty established in s. 318.18.

534 Section 12. Subsection (15) of section 318.18, Florida
535 Statutes, is amended to read:

536 318.18 Amount of penalties.—The penalties required for a
537 noncriminal disposition pursuant to s. 318.14 or a criminal
538 offense listed in s. 318.17 are as follows:

539 (15)(a)1. One hundred fifty-eight ~~twenty-five~~ dollars for
540 a violation of s. 316.074(1) or s. 316.075(1)(c)1. when a driver
541 has failed to stop at a traffic signal and when enforced by a
542 law enforcement officer. Sixty dollars shall be distributed as
543 provided in s. 318.21, \$30 shall be distributed to the General
544 Revenue Fund, \$3 shall be remitted to the Department of Revenue
545 for deposit into the Brain and Spinal Cord Injury Trust Fund,
546 and the remaining \$65 shall be remitted to the Department of
547 Revenue for deposit into the Administrative Trust Fund of the
548 Department of Health.

549 2. One hundred and fifty-eight dollars for a violation of
550 s. 316.074(1) or s. 316.075(1)(c)1. when a driver has failed to
551 stop at a traffic signal and when enforced by the department's
552 traffic infraction enforcement officer. One hundred dollars
553 shall be remitted to the Department of Revenue for deposit into
554 the General Revenue Fund, \$45 shall be distributed to the county
555 for any violations occurring in any unincorporated areas of the
556 county or to the municipality for any violations occurring in
557 the incorporated boundaries of the municipality in which the
558 infraction occurred, \$10 shall be remitted to the Department of
559 Revenue for deposit into the Department of Health Administrative
560 Trust Fund for distribution as provided in s. 395.4036(1), and

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561 \$3 shall be remitted to the Department of Revenue for deposit
 562 into the Brain and Spinal Cord Injury Trust Fund.

563 3. One hundred and fifty-eight dollars for a violation of
 564 s. 316.074(1) or s. 316.075(1)(c)1. when a driver has failed to
 565 stop at a traffic signal and when enforced by a county's or
 566 municipality's traffic infraction enforcement officer. Seventy
 567 five dollars shall be distributed to the county or municipality
 568 issuing the traffic citation, \$70 shall be remitted to the
 569 Department of Revenue for deposit into the General Revenue Fund,
 570 \$10 shall be remitted to the Department of Revenue for deposit
 571 into the Department of Health Administrative Trust Fund for
 572 distribution as provided in s. 395.4036(1), and \$3 shall be
 573 remitted to the Department of Revenue for deposit into the Brain
 574 and Spinal Cord Injury Trust Fund.

575 (b) Amounts deposited into the Brain and Spinal Cord
 576 Injury Trust Fund pursuant to this subsection shall be
 577 distributed quarterly to the Miami Project to Cure Paralysis and
 578 shall be used for brain and spinal cord research.

579 (c) If a person who is cited for a violation of s.
 580 316.074(1) or s. 316.075(1)(c)1., as enforced by a traffic
 581 infraction enforcement officer under s. 316.0083, presents
 582 documentation from the appropriate governmental entity that the
 583 traffic citation was in error, the clerk of court may dismiss
 584 the case. The clerk of court shall not charge for this service.

585 (d) An individual may not receive a commission or per-
 586 ticket fee from any revenue collected from violations detected
 587 through the use of a traffic infraction detector. A manufacturer
 588 or vendor may not receive a fee or remuneration based upon the

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589 number of violations detected through the use of a traffic
 590 infraction detector.

591 (e) Funds deposited into the Department of Health
 592 Administrative Trust Fund under this subsection shall be
 593 distributed as provided in s. 395.4036(1).

594 Section 13. Section 321.50, Florida Statutes, is created
 595 to read:

596 321.50 Authorization to use traffic infraction detectors.-
 597 The Department of Highway Safety and Motor Vehicles is
 598 authorized to use traffic infraction detectors to enforce s.
 599 316.074(1) or s. 316.075(1)(c)1. when a driver fails to stop on
 600 state roads as defined in chapter 316 which are under the
 601 original jurisdiction of the Department of Transportation, when
 602 permitted by the Department of Transportation, and under s.
 603 316.0083.

604 Section 14. Paragraph (d) of subsection (3) of section
 605 322.27, Florida Statutes, is amended to read:

606 322.27 Authority of department to suspend or revoke
 607 license.-

608 (3) There is established a point system for evaluation of
 609 convictions of violations of motor vehicle laws or ordinances,
 610 and violations of applicable provisions of s. 403.413(6)(b) when
 611 such violations involve the use of motor vehicles, for the
 612 determination of the continuing qualification of any person to
 613 operate a motor vehicle. The department is authorized to suspend
 614 the license of any person upon showing of its records or other
 615 good and sufficient evidence that the licensee has been
 616 convicted of violation of motor vehicle laws or ordinances, or

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617 applicable provisions of s. 403.413(6)(b), amounting to 12 or
 618 more points as determined by the point system. The suspension
 619 shall be for a period of not more than 1 year.

620 (d) The point system shall have as its basic element a
 621 graduated scale of points assigning relative values to
 622 convictions of the following violations:

- 623 1. Reckless driving, willful and wanton—4 points.
- 624 2. Leaving the scene of a crash resulting in property
 625 damage of more than \$50—6 points.
- 626 3. Unlawful speed resulting in a crash—6 points.
- 627 4. Passing a stopped school bus—4 points.
- 628 5. Unlawful speed:
- 629 a. Not in excess of 15 miles per hour of lawful or posted
 630 speed—3 points.
- 631 b. In excess of 15 miles per hour of lawful or posted
 632 speed—4 points.
- 633 6. A violation of a traffic control signal device as
 634 provided in s. 316.074(1) or s. 316.075(1)(c)1.—4 points.
- 635 However, no points shall be imposed for a violation of s.
 636 316.074(1) or s. 316.075(1)(c)1. when a driver has failed to
 637 stop at a traffic signal and when enforced by a traffic
 638 infraction enforcement officer. In addition, a violation of s.
 639 316.074(1) or s. 316.075(1)(c)1. when a driver has failed to
 640 stop at a traffic signal and when enforced by a traffic
 641 infraction enforcement officer may not be used for purposes of
 642 setting motor vehicle insurance rates.
- 643 7. All other moving violations (including parking on a
 644 highway outside the limits of a municipality)—3 points. However,

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645 no points shall be imposed for a violation of s. 316.0741 or s.
646 316.2065(12).

647 8. Any moving violation covered above, excluding unlawful
648 speed, resulting in a crash--4 points.

649 9. Any conviction under s. 403.413(6)(b)--3 points.

650 10. Any conviction under s. 316.0775(2)--4 points.

651 Section 15. The Department of Highway Safety and Motor
652 Vehicles or any county or municipality authorized to issue a
653 notification and impose a penalty under s. 316.0083(1)(b),
654 Florida Statutes, that collects any such penalty after the
655 effective date of this act, but prior to notification by the
656 Department of Revenue of its ability to receive and distribute
657 the penalties collected, must retain the portion of the penalty
658 required to be remitted to the Department of Revenue until the
659 Department of Highway Safety and Motor Vehicles, county, or
660 municipality is notified by the Department of Revenue that it is
661 able to receive and distribute the retained funds. The portion
662 of the penalty required to be remitted to the Department of
663 Revenue for any penalty collected after such notification is
664 provided to the Department of Highway Safety and Motor Vehicles,
665 county, or municipality must be remitted to the Department of
666 Revenue as provided in s. 316.0083, Florida Statutes. This
667 section shall take effect upon this act becoming a law.

668 Section 16. For the 2009-2010 state fiscal year, the sum
669 of \$100,000 in nonrecurring funds from the General Revenue Fund
670 is appropriated to the Department of Revenue for the purpose of
671 implementing the provisions of this act. Any unexpended funds
672 from this appropriation shall be reappropriated for fiscal year

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673 2010-2011. This section shall take effect upon this act becoming
674 a law.

675 Section 17. If any provision of this act or its
676 application to any person or circumstance is held invalid, the
677 invalidity does not affect other provisions or applications of
678 this act which can be given effect without the invalid provision
679 or application, and to this end the provisions of this act are
680 severable.

681 Section 18. Except as otherwise expressly provided in this
682 act, and except for this section which shall take effect upon
683 this act becoming a law, this act shall take effect July 1,
684 2010.

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Letters to the editor: March 15, 2010

Sunday, March 14, 2010
Staff Reports

Here are letters to the editor for Daily News editions of March 15, 2010:
Letter of the Day: The lady in the grey SUV

Editor, Daily News:

It was Friday, Feb. 26, at approximately 6:10 p.m.

We had enjoyed a great meal with some wonderful friends when out of nowhere we saw our lives flash before our eyes in the form of a grey SUV.

There she was, driving at approximately 50 mph on U.S. 41 heading west, crossing the intersection at 10th Street.

She wove her way between two cars parked at the red light and if I hadn't said "Watch it" to our driver that would have been the end.

In a flash your life can change and obviously this woman while speeding through a red light and talking on her cell phone didn't give a damn.

You showed total disregard for human life, including your own. Maybe the setting sun was in your eyes, but that does not excuse the excessive speed and cell phone use while operating a lethal weapon.

We are all still very shaken by this near catastrophe, and I guess my purpose in writing is that maybe the lady in the grey SUV will recognize herself and mend her dangerous ways. She probably has no idea how close she came to meeting her maker and taking five innocent people with her.

Also, let this be a warning to all you drivers out there. Please take a second if you are first at a green light before you accelerate, because she is out there talking on her cell phone, speeding and driving recklessly, so please — "Watch it."

Joanne L. Zacchini
Naples

<http://www.naplesnews.com/news/2010/mar/14/letters-editor-march-15-2010/?print=1>

Letter: Law enforcement should 'Goforth', install red light cameras

Thursday, March 11, 2010

Michael Goforth sees "red" over installation of red light cameras. I see "green." I see revenue and balanced budgets from the collection of fines. I see increased safety for all. I see road rage lessening as we who wait at the light, watching the red light runners sail through with that "I gotcha grin," finally knowing they will face the consequences of this dangerous practice.

I always thought, erroneously, that aggressive drivers were men. But I'm surprised to see just as many women run red lights, many with children in the car. So I'm asking the Sheriff's Office to "Goforth" and please install those red light cameras.

Mary Oliver
Nettles Island
Jensen Beach

<http://www.tcpalm.com/news/2010/mar/11/letter-law-enforcement-should-goforth-install/?...>

Near miss at red light with boy in peril

March 11, 2010

It is hard for me to believe that anyone in their right mind would be against red-light cameras. Of all the traffic rules that can be ignored, I believe this one is the worst. And yet there are people out there who believe the cameras should be removed! For what reason? All a person needs to do in order to avoid getting a ticket is to not drive through a red light.

I empathize with Carol Carico (Letters, March 7) in the tragic loss of her son to a red-light runner, especially in light of the "judge" refusing to punish the red-light runner who killed him.

Here's another case in point: The other day, I was stopped at the intersection of 26th Street West and 57th Avenue West. As my light turned green, I (and the car in the lane next to me) proceeded south about to enter the intersection. Suddenly, a red pick-up truck came barreling across the intersection (on 57th Avenue) from east to west, and if I had been a second sooner, I would have been T-boned by an idiot. I looked after him in amazement, and there, huddled in the corner of the bed of his pick-up, was a boy. So, this driver had the distinct chance of killing not only me and myself, but also his son, or whoever it was in the back of his truck.

I don't really think that red-light cameras will completely stop these people who think they are too important to stop at a red light so that others may safely cross the intersection, but it might slow them down a little if they think they might get caught and have to pay a big fine. Cameras would certainly help where they are installed. The police can't be everywhere, and they certainly have more urgent things to do than sit at intersections.

Florris Bly Bradenton

<http://www.bradenton.com/2010/03/11/v-print/2120895/near-miss-at-red-light-with-boy.html...>

Opinion wrong

March 10, 2010
Hernando Today

Re: "Schneck gives green light to red light camera debate" in the March 7 edition of HernandoToday.

In my humble opinion, your view is the wrong view. Mr. Schneck's view, now that he has a view on something, is also wrong.

Let us start with your view that "tourists and other unsuspecting travelers who haven't been to Brooksville before are most likely to get snagged in the city's 'trap' of red light cameras. They probably won't be back." According to the Insurance Institute for Highway Safety cameras are used for law enforcement in Albuquerque, Atlanta, Baltimore, Chicago, Denver, Houston, Los Angeles, New Orleans, New York City, Philadelphia, Phoenix, San Diego, San Francisco, Seattle and Washington, D.C., plus many smaller communities. I am not aware of tourists avoiding these listed cities because of red light cameras.

I have not checked the laws of the states or respective cities listed, but I am quite confident that in those states drivers are required to stop for red lights. I believe that their laws would be much like our own FSS 316.075(1)c1 which states in part, "Vehicular traffic facing a steady red signal shall stop before entering the crosswalk on the near side of the intersection or, if none, then before entering the intersection and shall remain standing." At least when I travel to other states I follow these rules and have not received a ticket yet.

You are quick to point out the money part of this. Why is that? There would be no money if there were no violations. Just like fuel-efficient cars are causing the loss of revenue in fuel tax dollars, and water conservation efforts are causing a loss of money in water usage fees, so the mere fact of obeying the law would cause a loss of money due to these tickets. Obey the law, what a concept!

Now your statement, "Another drawback to the fine is that it is attached to the vehicle, not the driver." So what? If you lend someone your car and that someone parks it illegally the car gets the ticket. If the car is towed because you friend, relative or whatever parks it illegally who pays? If you want your car back, you do. Then you go after whomever to get your money back. OK, if you are dumb enough to allow your car to be driven by someone who does not obey the law, you pay and go after the driver to get your money back! You don't have any points on your license, your insurance company doesn't know you let your car be driven by an idiot, you just need to get your money back. What is the problem? It is just like a parking ticket, an expensive parking ticket I'll grant you, but parking usually does not kill people.

Your opinion - "Schneck is right when he claims local governments like Brooksville are using cameras as revenue producers" - is calling the Brooksville chief of police and their entire council liars. The police are surely tired of cleaning up the injured and the dead from traffic accidents. I firmly believe they would just as soon have their patrol force doing some proactive work in the community rather than cleaning up after some goof that can't take the time to stop for a light and having to tell some next of kin of an injury or death. Besides, and I repeat myself, if the law is obeyed the city gets nothing!

As for your comment about the "hidden tax," where is that? Income tax I have to pay or go to jail, sales tax I have to pay, it is already on the bill, fuel tax I have to pay, it is at the pumps, so where is it that I have to pay this "hidden tax?" There is no hidden tax; there is a fine for violating the law. Don't violate the law, no fine - what could be simpler?

In the end you do admit "Red light cameras may protect us from an accident" then go on to say it takes away a measure of freedom. Now let's weigh this out, a picture of a car at an intersection against someone you love being hit or killed by someone running a light. I'll take the picture at the intersection every time.

In conclusion you end with "Schneck is right: The cameras must go," well you and Schneck are both totally wrong and not only do the cameras need to stay, the statutes need to make it possible for every city and every county in this state to protect their citizens by installing the cameras.

By the way, I retired after 36 years as a law enforcement officer who has had to deal with the results of red light violations. It was not the high point of my career.

John Stansbury
Brooksville

<http://www2.hernandotoday.com/content/2010/mar/10/ha-opinion-wrong/news-opinion-let...>

South Florida Sun-Sentinel.com

March 8, 2010

Allow red light cameras

I ended up with a concussion and a totaled car because of a person who ran a red light. I also saw the person driving behind me killed because of another person who ran a red light.

It is time for our Legislature to enact a law allowing prosecution based on red light cameras and reduce the senseless slaughter that happens every day on our roadways.

Gary Hainline, Sunrise

<http://www.sun-sentinel.com/news/opinion/letters/fl-run-red-light-letter-20100308,0,372644...>

Red-light cameras like parking fine

Posted on Mon, Mar. 08, 2010

I find Rowland Shannon's March 1 letter to the editor, "Warn drivers of red light cameras," amusing to say the least.

If a person ignores and runs a red light, what makes anyone think that same person would pay attention to a "red light camera warning sign?"

I say "bring 'em on." If you over-park your time in a paid parking spot, you are subject to a parking ticket and fine. In that case you didn't even come close to causing an accident.

If by paying a red-light fine, perhaps you won't be in such a hurry next time. The life you save just might be your own.

A parking violation ticket is issued to the car's owner, regardless of the driver. What would make the running of a red light any different?

Beezie Bale
Bradenton

<http://www.bradenton.com/2010/03/08/v-print/2112139/red-light-cameras-like-parking.html>

Mom grieves over loss in red-light case

Posted on Sun, Mar. 07, 2010

i have been reading all the articles on the red light cameras, and would like to comment on them all. I lost my oldest son Michael in 2002 to a girl who ran a red light. He was killed.

The girl walks free to this day as the judge that handled the case said he couldn't rule on it. We had two witnesses to the wreck and he still let her go. She didn't even get a ticket. Nothing!

I thank all who agree with this. To the ones who don't, you will never know what the pain is like losing a child by a red-light runner ... or any family member. But a child? This is a pain that never goes away and never gets easier. I have only memories of Michael now.

He left behind a son and two daughters that he was never able to see grow up as they were 16, 11 and 6 when he was killed. He now has a beautiful granddaughter who will never know what a wonderful man her grandfather was. He also left a wife, his father, two sisters and a brother who miss him so much!

And me, his mother. We are not supposed to bury a child. At least not by someone who is in a hurry to get nowhere and to just disregard everyone else on the road. The pain of losing a child is something no one understands till they have to deal with it, and I pray that no one ever has to. I have a memorial garden for my son and this is how I keep his memory alive, along with a Web site — www.myangelsonmichael.com. A car is a weapon when not being driven right and following the laws. It's not money over cameras, it is lives that can be saved.

Carol Carico
Bradenton

Save a life, stop at red, make cameras unnecessary

For crying out loud! Why all the fuss and whining? It is a "red" light! It is the "law!" We should not need cameras, we should not need warning signs and we should not need lawyers. It is the law. If it is RED ... STOP! The life you save may be your own.

Sandy Crain
Bradenton

<http://www.bradenton.com/2010/03/07/v-print/2108950/mom-grieves-over-loss-in-red-light...>

Red-light cameras vital for our safety

Posted on Thu, Feb. 25, 2010

Next month's legislative session will once again be addressing the issue of red-light running in both the House and the Senate. I commend Rep. Ron Reagan for his perseverance over the past five years. I only hope that this time common sense will prevail, and our lawmakers will do the right thing. I can't understand why anyone would be opposed to a bill that protects our citizens from injury or death, cuts down on the enormous costs associated with these senseless crashes and enforces the law. What defense can there possibly be for running through a red light? To me it's such a simple issue; if you don't want to pay the fine, just stop on red!

One person is killed every three days in the state of Florida by a motorist running a red light or stop sign. If the Legislature approves a red-light camera measure and establishes uniform standards, particularly for state roads (which is where most of the violations occur), maybe then we can reverse these deadly statistics.

As a survivor of a violent crash in which a red light runner, with no regard for human life, nearly killed my husband and myself, I ask that next time you're in a rush or running late that you really think about the consequences of running through that red light or stop sign. It can forever change lives, including yours!

Tina West, Board Member, STOP ON RED Coalition of Florida Bradenton

<http://www.bradenton.com/2010/02/25/v-print/2083763/red-light-cameras-vital-for-our.html> 2/26/2010

Make red light fines onerous

Posted on Fri, Feb. 12, 2010

Red lights and cameras. Has any local issue garnered as much attention lately? A lot of letters to the editor. Various articles in the Herald. Pros and cons. Fines, the length of yellow caution lights. And an article on Jan. 31 stating that Bradenton was looking for a magistrate to hear appeals from people accused of running a red light.

Does anyone else see how utterly ridiculous this situation has become? After all, folks, we are not dealing with a discussion on quantum physics or a debate about Einstein's theory of relativity. This is a simple problem with a simple solution. If all the stupid, careless, inconsiderate, late-for-work, talking-on-the-phone drivers would stop running red lights, then there would be no need for cameras, no fines to pay, no court cases and, most importantly, a lot fewer lives endangered.

However, if deciding to obey the law and/or apply common sense to one's driving habits continues to be rejected by the aforementioned idiots, then I would suggest fines so large that even they would be forced to reconsider red light running as an option to losing a week's pay.

David Altenbach
Bradenton

<http://www.bradenton.com/letters/v-print/story/2050640.html> 2/12/2010

Red-light cameras catch readers' eyes

February 10, 2010
The Tampa Tribune

Readers at TBO.com put the pedal to the metal last week on a story about Hillsborough red-light cameras catching 1,056 violators in a month.

Cameras have been installed at Dale Mabry Highway and Waters Avenue, Bruce B. Downs Boulevard and Fletcher Avenue, Bloomingdale Avenue and Bell Shoals Road, Sligh and Habana avenues, and Waters Avenue and Anderson Road.

Hillsborough officials have said they expect to generate more than \$200,000 a month from traffic fines.

Below is a selection of comments from our online readers:

The whiners will be out in full force claiming it is just a revenue producer. Well, if you don't break the law, you have nothing to worry about. Stop all the way, use directionals and don't try to fly through red lights.
Posted by Cottonhill

(Cameras at) Mabry and Waters. Big surprise! I think not. It certainly is good to see these arrogant and "I can do what I want" drivers caught. If you are going west on Waters, the ones coming east and turning north just keep coming and the ones with the little "go faster cars" going west and turning left, well, no one is going to tell them what to do. Hurray for the cameras.
Posted by Ad

Finally, some good news for a change. Keep it coming. And to those who worry about them causing more rear-end collisions: I'd be willing to bet that there are more accidents (and fatalities) due to redlight runners than those who slam on their brakes to avoid getting a red light runner ticket.
Posted by Denmar

I would like to see how many accidents have occurred at these intersections before and after the cameras. I'd be willing to bet there are less after. No excuse for running a red light.
Posted by Homersimpson

If you can't pay the fine, don't do the crime. For those of you who have gotten caught, tough. I think that every car should have a device in it that reports to cops every time you speed or if you change lanes too often, too. Want to change the way some of these idiots drive? Hit them hard in the pocket. Maybe we should have laws like they do in Germany - fines based on the ability to pay. The more you make, the more your fine. Hurray for the cameras
Posted by Pwg

Driving is a privilege; if you can't follow the rules then don't drive. Besides, what a great way to keep money rolling in so that people who work for the county/government don't lose their jobs. Maybe officers will start to get raises and can focus on more important things like drug users, child abusers and crimes of the same severity. About time county officials do something right for Hillsborough.
Posted by Cmoneydin

If it saves one life it's worth it. I'm tired of seeing idiots putting other lives at risk just so they can make it to the store two minutes sooner. I would love to see all the crying at traffic court when these special people, who think traffic laws don't apply to them, get hit with a \$500 ticket.
Posted by Valricotapout

I am glad to see the cameras and while I am sure they will cause some rear-end accidents, if everyone remembered the two-second rule that would not happen either! Now if we can get the most dangerous of our driving community (senior citizens) to retest bi-yearly it might be safe to drive in Florida again. Bring on the cameras!
Posted by Islingerems

<http://brandonnews2.tbo.com/content/2010/feb/10/br-red-light-cameras-catch-readers-eyes...>

LETTERS TO THE EDITOR FOR WEDNESDAY, FEB. 10

Posted: 6:49 p.m. Tuesday, Feb. 9, 2010

Camera-issued ticket same as parking ticket; car gets it, owner pays

I'm trying to understand all the moaning and groaning about the tickets issued by the speeding van in Juno Beach and red-light cameras that the town will install and are in use elsewhere.

Once it has been established that the camera is accurately calibrated, what is then the difference between a camera-issued ticket and a parking ticket? It is the car that was caught and is guilty of the violation. As the registered owner, the ticket is mine, but with no points to my license. True, my wife, son, daughter, and/or friend may have been driving the car at the time, but the fine would go to me as the car's registered owner. It's the same as a parking ticket, given regardless of who was driving.

If money is the issue, I can collect it from whoever was driving or not lend that person my car in the future. And if a city does decide to make money off of this revenue stream, better this way than raising the taxes on us all.

SCOTT CADMUS
Palm Beach Gardens

Red-light camera opponents should walk a mile in grieving mom's shoes

I read the letter about how red-light cameras are unconstitutional. That is easy to say if you have never had state troopers parked outside of your house waiting to tell you that your daughter was just killed.

She was 50 and in the prime of her life. She left me, her mom, and two daughters, ages 20 and 25. She left two brothers and her boyfriend, who keeps the "Drive Safely" sign up to date. This happened in Orlando, she had just left me and some friends at a mall. We were supposed to meet later at a restaurant. It was Aug. 17. She was waiting to make a left turn when the other driver, who was in the wrong lane and was clocked at 83 mph, ran the red light. He hit the driver's side and she died instantly. We will always miss her.

The driver was arrested and charged with vehicular homicide. He was granted no bail. He had been out of jail for only three hours before this happened.

MARTHA BULLOCK
Royal Palm Beach

<http://www.palmbeachpost.com/opinion/letters/hot-topic-red-light-cameras-224195.html>

Letters to the editor: Feb. 1, 2010

Posted January 31, 2010 at 5:03 p.m.

Wrong turn on red

Editor, Daily News:

I have read many letters to the editor in the Daily News as well as back home.

The complaint seems to be that the red-light cameras are just a money-making venture for the towns, catching those who run red lights or (far greater numbers) commit right-turn-on-red violations.

Yet, this money-making is a direct result of drivers' refusal to obey the traffic laws; i.e., do not run red lights and make a complete stop before turning right on red.

Perhaps one or two fines will re-educate drivers that obeying the traffic laws is cheaper than adding to the coffers of the towns.

Stan Grace
Naples and Winnetka, Ill.

<http://www.marconews.com/news/2010/jan/31/letters-editor-feb-1-2010/>

Drivers can't decide which laws to obey

Posted on Tue, Jan. 19, 2010

Reflecting on Thurston Lamberson's calling a duck a duck and dismissing traffic surveillance cameras as tax collection devices "Period." In Bradenton and elsewhere in our great country, we have more individual freedoms under law than anywhere else on earth and yet some among us arrogantly decide the law doesn't apply to them while driving. These drivers using Bradenton's streets are distracted because while driving they read books or road maps, eat messy food, use cell phones and computers, or play musical instruments. More aggressive drivers use turning lanes to cut in and out of traffic, hang on rear bumpers to intimidate slower drivers to move aside, drive faster than everyone, bounce in time to fast music in ear phones, and speed up when facing traffic lights turning yellow.

Surveillance cameras have proven their worth, considering the hundreds of tickets already issued to red-light violators. A reduction in intersection collisions is sure to follow.

Those who use their voice and our court system to obstruct or prevent safe regulation of street traffic in our town aren't interested in public safety.

Their actions reflect disdain for the rights of others and have the potential for decreasing public safety by encouraging others to also ignore the rules.

I'm glad to have Police Chief Michael Radzilowski and his troops on duty, aided by the red-light cameras, because they are determined to protect my friends and family from those who ignore the rules and compromise public safety.

I'll count on Mayor and Police Commissioner Wayne Poston to fully exercise his authority to regulate our street traffic, and impose the stiffest fines on drivers who ignore or break the rules. It's a matter of life and death.

Dick Evanson
Palmetto

<http://www.bradenton.com/letters/v-print/story/1984978.html>

Enforce all traffic laws, reduce speed

January 14, 2010

Keep the red-light cameras working! Not only will this help save lives but might help change the mentality of the aggressive Florida driver.

Keeping the red-light cameras is just the first step. Florida needs to reduce the speed limit, increase the number of traffic lights and enforce traffic violations.

For example, leaving Greenbrook Boulevard in Lakewood Ranch and merging onto S.R. 70 west is a disaster waiting to happen. The speed limit at this crossing is 60 mph but people are actually going 75 mph.

This is ridiculous in a residential area and will probably cost a life or a serious injury. Drivers just can't stop at traffic lights going at this speed.

Increase the Florida revenue. Ticket the red-light runners, the speeders, tailgaters and the aggressive, obnoxious drivers.

Vicki Joshpe
Lakewood Ranch

<http://www.bradenton.com/letters/v-print/story/1974700.html>

Red-Light Runners

Published: Sunday, December 27, 2009 at 6:29 a.m.

It has been a long time since I read the Florida Drivers Handbook, so just to be sure nothing has changed, I looked up the section dealing with traffic signals. The following is taken directly from the handbook. If the light is red, "Come to a complete stop at the marked stop line or before moving into the crosswalk or intersection. At most intersections, after stopping, you may turn right on red if the way is clear."

I could find nothing that said it's okay to slow down to 3 mph or that it's okay to break the law as long as you don't endanger anyone. Most of the letters printed by The Ledger on the subject of red light cameras have been from people whining because they were caught on camera breaking the law. Just because they were caught on camera instead being stopped by a police officer does not change the fact that they broke the law.

To the red light runners I say this. Man-up, accept responsibility for your actions, and move on. The courts have plenty to do without hearing frivolous lawsuits from people who either don't know or choose to ignore Florida traffic laws.

GEORGE McQUAIG
Lakeland

<http://www.theledger.com/apps/pbcs.dll/article?AID=/20091227/EDIT02/912279987/100...>

Red-Light Cameras

Published: Tuesday, December 22, 2009 at 3:41 a.m.

Last Modified: Tuesday, December 22, 2009 at 3:41 a.m.

Today there was another letter in the paper whining about the red-light cameras. Anyone who doesn't know by now that you are supposed to stop at stop lights and stop signs must either live in a hole in the ground or have some sort of deficiency. This situation has repeatedly been in the newspapers and on television for months. Today the writer complained that he wasn't endangering anyone.

Well, maybe not that particular time, but the time will come when he will. Again today, as a pedestrian, I was nearly struck by someone running a stop. This time it was a United States Postal Service mail-lady who rolled her vehicle through a stop without ever looking to her right. That is where the endangerment factor lies ... the people running the stops invariably never look to the right. I have personally witnessed a lady pedestrian being struck by a driver who then continued on. He knew he hit her, but took off to avoid any chance of getting ticketed. After all, he hadn't really endangered her.

Anybody who continues to roll through the stops is most definitely willfully violating the law. They deserve tickets. Since the state legislators are too gutless to approve the cameras to be used for traffic violations, the violators should thank their lucky stars that they aren't also getting the points on their driver's license, which they certainly deserve. What gives you the right to decide which laws you will obey?

The "right on red" law means: Come to a complete stop, look, and then proceed when everything is clear. If the writer has to wait an extra minute at the light before proceeding the other two or three minutes to his home at Sandpiper, I doubt his world will come to an end. If you are one of the people who are too self-important to take the many warnings that have been issued, then man up, pay the ticket and be thankful you avoided the points. If you can't, then you should turn in your driver's license.

The officials of the city of Lakeland who are in charge of this camera situation have shown themselves to be weaklings with their continued molycoddling of the violators. If a robber shoots a victim in the leg instead of the abdomen, will he be released because "he wasn't really endangering anyone?" The writer mentioned that he was joining the class action lawsuit against the cameras. Any judge who would be willing to even consider the proposed or pending lawsuit pertaining to these tickets, should be removed from the bench for condoning the violations.

JAMES S. BOND
Lakeland

<http://www.theledger.com/article/20091222/EDIT02/912229982?Title=Red-Light-Cameras> 12/22/2009

Letters to the editor: Dec. 22, 2009

Monday, December 21, 2009
By Staff Reports

Here are letters to the editor for Daily News editions of Dec. 22, 2009:

Letter of the Day: Why stop there?

Editor, Daily News:

I will never understand those who oppose the red-light cameras installed at select intersections in our county.

They are there to catch the drivers who put others in danger by choosing to ignore the law by not stopping on red.

Is it so bad that they are making money for the county? Not in my book, since they are making money off lawbreakers who probably should not be driving to begin with.

They won't make a penny off me, since I do not speed and, brace yourselves, always come to a complete stop at red lights and stop signs.

I do have one complaint. I think they should be installed at every single intersection. It is a shame they are not required to be installed in cars. Imagine the money the county could make off the fools who text, drink, eat, read, put on makeup, etc.?

For those concerned about privacy, my safety will always trump your "right" to privacy. And if you let your friend drive your car and he got you a ticket, you need smarter friends. So there you have it. I just love the red-light cameras!

Monica Rodriguez
Naples

<http://www.naplesnews.com/news/2009/dec/21/letters-editor-dec-22-2009/>

Red light running: Cameras would be positive step

Home Opinion

STORY UPDATED AT 11:17 PM ON WEDNESDAY, DEC. 9, 2009

The article about red light cameras referenced a 2008 study released by Barbara Langland Orban, an associate professor in the College of Public Health at the University of South Florida. She argues against the installation of cameras to curb red light running.

Regrettably, much of the press coverage has identified her report as a study by USF, which implies that it reflects the university's collective wisdom. Actually, these were the views of Langland-Orban.

As director of the USF Center for Urban Transportation Research, I feel compelled to offer some contrary evidence.

In her latest paper, Langland-Orban cites the National Motorists Association as a source. Check out the group's website and you'll find it would be better named as the National Scofflaw Association.

It sells books like *Speeding Excuses That Work, Beat Your Ticket: Go to Court and Win*, a full range of radar detectors, and their *Guerilla Ticket Fighter CD*. Not exactly a credible source.

Her article reports the results of a year-long study, but really it was a synthesis of other studies.

Her article correctly notes there are many engineering countermeasures that can affect crashes at signalized intersections, including assuring signal head visibility, selecting appropriate yellow time intervals and use of an all-red clearance interval.

While focusing on a couple of contrary studies and citing the aforementioned association, she neglects to include in her synthesis the many studies that support red light running cameras.

A recent Iowa State University study showed dramatic reductions in violations and crashes after camera installations for rear end crashes and for right-angle crashes.

She also omits discussion of the National Academy's Transportation Research Board report on the Impact of Red Light Camera Enforcement on Crash Experience, which did a comprehensive review of many studies nationally.

They concluded that a majority of jurisdictions with camera enforcement reported downward trends in red light running violations and crashes, especially the more severe types.

The U.S. Department of Transportation Federal Highway Administration and the 15,000-member Institute of Transportation Engineers endorse the proper implementation of photo enforcement, which includes site-by-site studies and implementation of other engineering countermeasures, oversight of photo enforcement by public agencies and a strong public education program.

Driving on our roads is a privilege, and we shouldn't hesitate to ticket those who violate basic rules of the road, notably failure to stop at a red traffic light.

EDWARD A. MIERZEJEWSKI, director,
Center for Urban Transportation Research,
University of South Florida

http://jacksonville.com/opinion/letters_from_readers/2009-12-10/story/red_light_running... 12/10/2009

Vehicle's owner ultimately Responsible

Published: Monday, September 28, 2009 at 1:00 a.m.

I would also comment on Eric Ernst's column of Wednesday, but from a different perspective. Driving an automobile is a privilege given to a person by one of the 50 states. To obtain a license, one must pass both written and driving tests. And one's license can be suspended or revoked for a variety of reasons. Thus the owner of an automobile has the obligation to have a valid title, drive safely, carry adequate insurance, and maintain the vehicle in good condition (though the latter is a joke in Florida, which has no vehicle inspection).

In addition, he or she has the responsibility to ensure that it driven safely, no matter who is driving, and that the driver is obeying all traffic limits, including not running red lights. Now the cry we hear is: "It isn't fair that I should receive a citation for running a red light, as I wasn't driving the car."

I say to those people: It's your car; own up to your responsibilities! If it's one of your children, ground them or make them work off the fine or both. If you lend your car to relatives, friends or business associates, and they refuse to reimburse you for a ticket, tell them that your car is no longer available to use. Even if they do reimburse you, you may not want to let them borrow the vehicle again.

It would be nice if our cities and counties didn't make a dime from red-light cameras.

William Graham
Bradenton

Vehicle's owner ultimately responsible | HeraldTribune.com | Sarasota Florida | Southwes...

Don't lose focus on red-light violations; it's more than revenue, it's a safety issue

Letters to the editor

Published Friday, September 25, 2009

Red light cameras a reason to pause

Sept. 23, editorial

Don't lose focus on red light violations; it's more than revenue, it's a safety issue.

This editorial comments on how the cities are using red light cameras as an income source. In fact, the vast majority of cities are using these devices to fine and punish drivers who break the law.

Our community has the badge of dishonor of being one of the worst communities in the United States for red light violators. Our traffic conditions and, therefore, frustrations are no worse than in other similar-size cities.

We must do something. We don't have enough police to enforce these infractions, which result in enormous amounts of property and physical damage, not to mention personal suffering and loss of lives.

If there is a better way to stop this carnage, let's hear it objectively.

In the isolated cases where some cities are rigging the devices, they are subjecting themselves to huge lawsuits, and they should pay the price for breaking the law.

In the meantime, let's keep the focus where it belongs: If you run a red light and, therefore, break the law, you should be fined. Once lawbreakers learn that they will be caught, many, if not most of them, will stop endangering the rest of our citizens. This will make our community safer. I have no sympathy for these lawbreakers.

John E. Stross,
St. Petersburg

<http://www.tampabay.com/opinion/letters/dont-lose-focus-on-red-light-violations-its-more...>

Red Light Cameras

Published: Tuesday, September 22, 2009 at 2:31 a.m.

Red Light Cameras Are Just Another Tool

If there was never another violation witnessed by the cameras and they collected not another dime, they would have 100 percent done their job which is to cut down on violations. The money that they generate is just a result of a violation that the driver could have prevented.

A lot of people don't like the cameras because number one, they say that you are guilty until proven innocent and that you can't face the accuser because it's a camera. The camera is a witness to the violation just as a one can be a witness to a murder. The camera is just a tool being used by the accuser, the city of Lakeland.

This leads me to my next point. If you don't agree with the registered owner being automatically charged with the violation, there are always facial cameras. The driver pictures would be the best defense for the owner. Some owners may ask why they would have to prove their innocence if they believe that is the accuser's job. It's because the owner made the decision to loan the vehicle and the person they loaned it to may have made the decision not to pay therefore placing the burden on the owner.

One more thing, the rumors about yellow lights being shortened in Lakeland are not true because FDOT mandates the length of the yellow lights based on the speed limits leading up to the signals. For example, the mandate for a 3.5 second yellow light is only on an approach that is 30 mph or less and 4.0 seconds for 35 to 40 mph such as with Cleveland Heights Boulevard.

SIR FRANCIS J. MCKINNON JR.
Winter Haven

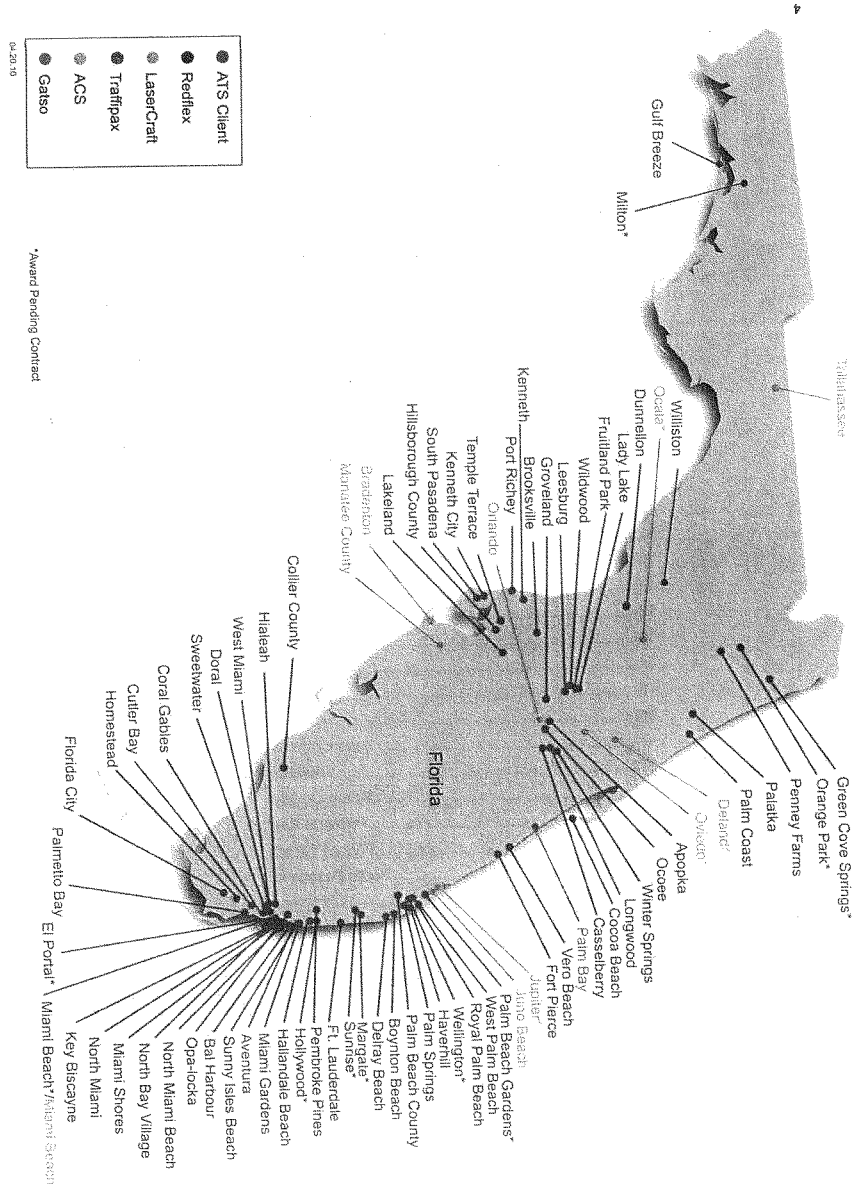
<http://www.theledger.com/apps/pbcs.dll/article?AID=/20090922/NEWS/909229988&Title...>

**Current Programs and
Public Advocacy**

Florida Cities Operating Intersection Safety Cameras

	City	*
1).....	Apopka:	2
2).....	Aventura:	8
3).....	Bal Harbour:	3
4).....	Bradenton:	3
5).....	Brooksville:	5
6).....	Casselberry:	1
7).....	Cocoa Beach:	1
8).....	Collier County:	31
9).....	Coral Gables:	3
10).....	Florida City:	1
11).....	Gulf Breeze:	2
12).....	Hallandale Beach:	1
13).....	Hialeah:	2
14).....	Hillsborough County:	10
15).....	Homestead:	4
16).....	Lakeland:	9
17).....	Miami Beach:	8
18).....	Miami Gardens:	8
19).....	New Port Richey:	2
20).....	North Bay Village:	3
21).....	North Miami:	5
22).....	North Miami Beach:	2
23).....	Ocoee:	5
24).....	Opa-locka	3
25).....	Orlando:	15
26).....	Palm Bay:	1
27).....	Palm Coast:	10
28).....	Palm Springs:	4
29).....	Pembroke Pines:	1
30).....	Royal Palm Beach:	3
31).....	Sunny Isles Beach:	2
32).....	Sweetwater:	2
33).....	Temple Terrace:	3
34).....	West Miami:	2
35).....	West Palm Beach:	5
36).....	Williston:	1
37).....	Winter Springs:	2

(* = Number of approaches with intersection safety cameras)



Florida Cities Awaiting Legislation

City

- 1)..... Boynton beach
- 2)..... Campbellton
- 3)..... Cutler Bay
- 4)..... Delray Beach
- 5)..... Doral
- 6)..... Dunellon
- 7)..... Fort Lauderdale
- 8)..... Fort Pierce
- 9)..... Fruitland Park
- 10)..... Juno Beach
- 11)..... Kenneth City
- 12)..... Key Biscayne
- 13)..... Lady Lake
- 14)..... Leesburg
- 15)..... Longwood
- 16)..... Manatee
- 17)..... Miami Shores
- 18)..... Palatka
- 19)..... Palm Beach County
- 20)..... Palmetto Bay
- 21)..... Penney Farms
- 22)..... South Pasadena
- 23)..... Tallahassee
- 24)..... Vero Beach
- 25)..... Wildwood
- 26)..... Winter Park

URGENT SAFETY NOTICE

from Florida Law Enforcement Officials

April 21, 2010

Florida State House and Senate Delegation
The State Capitol
Tallahassee, Florida 32399

Dear Elected Official:

On behalf of the various local counties and municipalities we represent, we write to call your attention to a situation that needs to be immediately addressed. Along with many others, we stand united *in support of passage of a bill which will bring a uniform law governing red-light cameras to the citizens of Florida*. This life saving technology is vital to our efforts to make our communities safer.

However, on April 14th, HB325 sponsored by Speaker Pro Tem Ron Reagan was amended in a devastating way - - - drastically inhibiting the potential use of this life saving technology. *Specifically, we refer to the amendment adopted to ban law enforcement agencies from the enforcement of running a red light on a right turn at photo enforced intersections. If this amendment were to become law, it would actually allow a violator to run a red light, break the law and prohibit our law enforcement agencies to utilize technology to enforce an illegal and dangerous behavior that is putting our pedestrians, bicyclists, sight-impaired citizens, visitors and vacationers at risk at our intersections.*

Florida is the deadliest state in the nation for pedestrians and bicyclists, by far. In 2008, collisions between vehicles and people left a greater percentage of Floridians dead than anywhere else in the country. According to the National Highway Traffic Safety Administration, more than 11 percent of all pedestrian deaths and at least 17 percent of all bicyclist fatalities across the entire United States occurred right here in Florida. Orlando, Tampa, Miami and Jacksonville led the nation as the most dangerous metro areas for pedestrians. In fact, since 2001, Florida has been in the top three states for pedestrian and bicyclist fatalities, with the latest numbers showing 502 pedestrians and 118 bicyclists were killed, according to the Florida Department of Highway Safety and Motor Vehicles.

As leaders in law enforcement who see the devastating effects of these collisions and fatalities first-hand, we express our support for automated traffic enforcement technology to be utilized in the important work of reducing red light runners - whether they are going left, straight or right. Running a red light is dangerous, regardless of the direction - because someone is counting on you to obey the law and stop.

We respectfully ask that Florida's elected lawmakers remove the prohibition against law enforcement enforcing the law of running a red light on a right turn in HB325, and urge your strong support for such language to be replaced with the language proposed in SB2166. Only then can we continue to work to make pedestrians, bicyclists, pedestrians, bicyclists, sight-impaired citizens, visitors, vacationers and your constituents in your respective districts safer.

Your support for public safety is appreciated.

Chief Charles Press, Key Biscayne
Chief Bryan Holmes, Cocoa Beach
Chief Gary Knowles, West Miami
Chief Gary Getchell, City Of Palatka
Sheriff Kevin J. Rambosk, Collier County
Chief Kevin Lystad, Miami Shores Village
Chief Sean Baldwin, Fort Pierce
Chief T.R. Merrill, Groveland
Chief Ed Nathanson, Lady Lake
Chief Donald A. Dappen, Vero Beach

Chief Kevin Bunelle, Winter Springs
Chief Douglas Pasley, Kenneth City
Chief Joanne Black, Dunnellon
Chief Charles Brown, Ocoee
Chief Steve Steinberg, Aventura
Chief Rick Gomez, Doral
Chief George Turner, Brooksville
Chief Charles Vavrek, Apopka
Chief Kenneth Albano, Temple Terrace

Industry Resources



Partnership For Advancing Road Safety (PARS):

The partnership for Advancing Road Safety (PARS) represents more than 500 communities and its law enforcement agencies that are using automated road safety systems to calm traffic and make their communities safer. PARS is committed to working with municipalities, government officials, public and private organizations, and concerned citizens to develop and share best practices in traffic safety and raise awareness of the important role

technology plays in enforcing the traffic laws set by communities.

<http://www.advancingroadsafety.com/>

Insurance Institute for Highway Safety (IIHS):

The insurance Institute for Highway Safety is an independent, nonprofit, scientific, and educational organization dedicated to reducing the losses—death, injuries, and property damage—from crashes on the nation's highways.

<http://www.iihs.org/research/topics/rlr.html>



National Campaign to Stop Red Light Running

National Campaign to Stop Red Light Running:

The National Campaign to Stop Red Light Running is dedicated to reducing the incidence of red light running in the United States and the fatalities and injuries it causes. The Campaign has assembled a team of leaders from the fields of law enforcement, transportation engineering, healthcare and emergency medicine, and traffic safety,

to tackle this crucial safety issue.

<http://www.stopredlightrunning.com/>

Federal Highway Administration (FHWA):

FHWA is charged with the broad responsibility of ensuring that America's roads and highways continue to be the safest and most technologically up-to-date.

<http://www.fhwa.dot.gov/>

United States Department of Transportation (DOT):

The mission of the DOT is to serve the United States by ensuring a fast, safe, efficient, accessible and convenient transportation system that meets our vital national interests and enhances the quality of life of the American people, today and into the future.

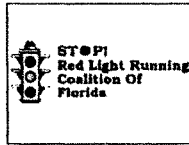
<http://www.dot.gov/about.html>



Missouri Families for Safer Roads:

Missouri police chiefs and advocates for safe driving from across the Show-Me State have joined with survivors of red light running crashes to create the nonpartisan coalition Missouri Families for Safer Roads.

<http://www.mosaferroads.com/index.asp>



STOP! Red Light Running Coalition of Florida:

In an effort to generate additional legislative support for enactment of a uniform state law on intersection safety and red light cameras, the STOP Running Red Lights Coalition of Florida is sharing important research reflecting that Floridians indeed want these red light camera safety programs in place.

<http://www.orgsites.com/fl/floridastops/>



Red Means Stop Traffic Safety Alliance:

The mission of Red Means Stop Traffic Safety Alliance is to increase the public awareness of the consequences of motor vehicle crashes that injure and kill drivers, passengers and pedestrians.

<http://www.redmeansstop.org>

- *The Following is a letter sent by our founder, Melissa Wandall to the Orlando Sentinel in December of 2008.*

I am proud of the little girl that she has become. I am blessed. My heart is filled with love as my daughter Madison Grace sings her little heart out at her Christmas program with her Pre-Kindergarten class. For a brief moment I am lost in her sheer happiness. At this moment life seems untouchable – I am complete in her bliss. In the next moment I am reminded of the deep loss and to savor every moment. My heart aches for the hole in her heart that her mommy can never fill. Where is the love that my daughter deserves but will physically never know?

A quite tear, once again, rolls down my cheek, another reminder that he is gone. I want to share my pride and my admiration for this angel that we were given. Where is my beautiful, caring and loving young husband that deserves to be here with me sharing our daughters "moments?" I flinch. **I am there again; lights, sirens, chaos and the cries of complete devastation by family members and friends. Today, five years later I am still haunted by that life-altering evening. In less than a moment, two weeks before the birth of Madison Grace her daddy's life was senselessly taken by a RED LIGHT RUNNER.**

Briefly taking one back to that evening of October, 24, 2003 Life was full of love, hope and laughter. Just five days prior my husband Mark and I had celebrated our one year wedding anniversary and in less than 3 weeks we would know the gender of our unborn child. The anticipation of meeting our love child filled our days. Life was good. It was a Friday night – my brother and husband decided to go out for a quick bite to eat. My husband and I said our good-byes. Our usual rituals of "love you, love you too, miss you, will miss you too- but will see you soon" took on a whole new meaning. On their way home my brother the driver and my husband the passenger were laughing and talking about plans of buying a boat together. In one second that simple exciting adventure turned to tragedy. Just 1 and ¼ miles from our home my brother stopped at a red light- when the arrow turned green my brother proceeded through the intersection, out of nowhere a vehicle came plowing through the intersection at 48-51 miles per hour and struck my brothers vehicle KILLING my husband immediately and SERIOUSLY injuring my brother. As I stated earlier, life would never be the same again. The light had been red for ½ of a mile when a motorist with their child in the back seat of their vehicle blatantly ran that light. No skid marks were to be found they did not even apply their brakes! This motorist's gross negligence would alter our family for a life-time. In less than an instant my husband was gone! I would never physically feel his touch again. From that moment on I would have to hold my husbands smile, laughter and love in my heart forever.

How does one go on and make sense of it all? I had to replace the whys? I could not go on in my life knowing that Mark was just another statistic. I value his life way more than that. I had to make sure that my husband's life would go on in a meaningful way. Mark left me with this little gift of life; Madison Grace. I would take our heartache, that painful energy of losing our loved one and turn it into a life-saving gift for others as well as my daughter. It was now up to me to point our daughter in the right direction. I had to show her that when things happen in our lives, they are not "stumbling blocks" or a reason to give in and let our circumstances destroy who we are – but a time to live, a time to step forward and rise above the situation. I had to find that one true "device" that would put my heart to rest. We all have the power to love, to let go and to live on. This does not mean forgetting about what has happened – this means having the power to embrace our tragedy, to rise above it and utilize the negative energy by turning it into a positive experience for others to learn and grow.

I had accepted the fact that my husband was not coming home again but I could not accept sitting back and doing nothing about it. From the moment of his physical death life would never be the same again. **MARKS DEATH WAS PREVENTABLE. I had to take action! The STOP! Red Light Running Coalition of Florida was born.**

Our purpose is to make Floridians knowledgeable of the red light running problem and to provide ways to improve upon it through legislation, enforcement and education.

The motorist who ran the red light that killed my husband and seriously injured my brother had 10 points on their license and 7 violations. One of their last offences was for running a red light and being ticketed for it. This time they not only took a ticket - but took a life! For killing Madison's daddy, they received a \$500.00 fine and community service. If their violation, and others like it, had been taken more seriously, perhaps they would have learned their lesson before they took my young husband's life.

My greatest cause is finding a way to prevent motorist from running red lights. The Mark Wandall Safety Act was born. Each year (for the past four years) during session I am in Tallahassee with the rest of the advocates pleading with our State Senators and Representatives to enact this law.

The Mark Wandall Safety Act would allow cameras to be put up at the MOST DANGEROUS intersections in our state. These cameras will only take a picture after one has blatantly run the red light- not the yellow light. Ones back tires have to be over the white cross-walk when the light is ALREADY RED in order for the camera to "snap" a picture of the back license plate. One more picture is taken of the back of the license plate AFTER one has gone through the intersection on RED.

This is an issue of prevention and safety. This is not a violation of privacy. We all have a RIGHT to be safe on our highways. My personal opinion is that driving is a privilege and not a right. I do not think that motorists set out each day to run red lights, I do however believe that motorists are too busy multi-tasking in their "loaded weapons" to pay attention and lives are being tragically altered due to red light running crashes. We have to change the mentality on our highways. This dangerous cycle needs to be curbed. This is the year 2008 if there is life-saving technology available for our state to utilize then what are we waiting for?

This is an important issue and I am asking for public support. I am also asking all of our state representatives and senators to "step up to plate." The Mark Wandall Safety Act needs to be passed. Going forward with this bill this year our cities and counties need to be able to implement the systems. We need to put it on the violators and not the tax payers. With this law a ticket is issued in the mail and the violator pays for the ticket. No points are assessed and it is not sent into ones insurance company. We are just simply trying to curb these dangerous behaviors and save lives. These cameras have proven over and over to cut down on intersection crashes, especially the right-angle crashes, like the one that killed Mark. As a society we need to stop worrying about penalizing the violator "too much." What about the innocent lives that are "caught in the crossfire" due to the violators negligence? Their lives are taken, gone without a moments notice leaving their family members to "pick up the pieces."

We need to give cities what they need to make this program work. We need to stop making everything so complicated and so political and get back to basics. Red light Running crashes are preventable. The Mark Wandall Safety Act needs to be passed in 2009 it is vital in making our highways safer.

i am not what some might call a vigil-anti. I am a woman whose heart has been broken and knows first hand what a Red Light Runner can do to ones family. I am a woman who loves her beloved husband and daughter just that much. I am Marked by Grace. For them, and all of the innocent lives that are yet to be touched, I just want to educate and raise awareness of this deadly epidemic. I want to pass a law in my husbands name so that innocent lives can be saved. Please drive as if you're most beloved is in the other vehicle. We all deserve to come home at the end of the day, to see our families and friends. It is simple, if we work together to change behaviors there will be less devastation on our highways and lives will be saved in a beautiful way. Won't you join me? Be a leader and not a follower; please....stop on red.....life depends on it!

If you would like to read more about the STOP! Red Light Running Coalition and what you can do to help please visit www.floridastopsonred.org. For any questions or comments or misconceptions concerning the cameras Melissa can be reached at www.themarkwandallfoundation.com.

**Questions for the Honorable Ron Reagan
Florida State Representative**

**Highways and Transit Subcommittee Hearing
June 30, 2010**

Questions from Chairman DeFazio

1. Your testimony highlighted some of the public protections in place now that Florida's red-light law has been enacted. Do you have any evidence of safety benefits that might come from these cameras?
2. Prior to the enactment of the new law, Florida communities were allowed to operate red-light cameras without any oversight from the State. Did problems arise from this method that lead to support of a uniform Statewide law?
3. Revenue generated under the new Florida red-light camera law will be split between the State, the local jurisdiction, and several public health funds. Can you provide further background on how Florida agreed upon this particular revenue distribution? How much of this revenue is likely to be purposed towards roadway safety improvements?

**Responses to Questions for the Honorable Ron Reagan
Florida State Representative**

**Highways and Transit Subcommittee Hearing
June 30, 2010**

Questions from Chairman DeFazio

1. *Your testimony highlighted some of the public protections in place now that Florida's red-light law has been enacted. Do you have any evidence of safety benefits that might come from these cameras?*

During a trial phase using 3 intersections, it was noted that when the cameras were installed, and proper signage erected, there were no incidents of rear-end collisions. In addition, there was a reduction of almost 90% in right angle or T-bone type accidents. In addition, incidents of red light running have been reduced between 40 and 60 percent. This seems to be the same data collected in most jurisdictions when red-light cameras are installed.

Beginning in 2012, each county or municipality that operates a traffic infraction detector is required to submit an annual report to DHSMV (Division of Highway Safety and Motor Vehicles) containing the following:

- The results of using the traffic infraction detector,
- The procedures for enforcement, and
- Statistical data and information required by DHSMV.

By December 31, 2012, and annually thereafter, DSHMV must submit a summary report to the Governor and Legislature which must contain:

- A review of the information, described above, received from the counties and municipalities,
- A description of the enhancement of the traffic safety and enforcement programs, and
- Recommendations, including any necessary legislation.

2. *Prior to the enactment of the new law, Florida communities were allowed to operate red-light cameras without any oversight from the State. Did problems arise from this method that lead to support of a uniform Statewide law?*

The problems that occurred with allowing Florida communities to operate red-light camera programs, without State oversight, revealed that no uniform standards were being followed. HB 325 mandates uniformity in the jurisdiction, the installation, and in the public awareness campaign.

3. *Revenue generated under the new Florida red-light camera law will be split between the State, the local jurisdiction, and several public health funds. Can you provide further background on how Florida agreed upon this particular revenue distribution? How much of this revenue is likely to be purposed towards roadway safety improvements?*

The revenue generated from the red-light camera program will be distributed toward public safety. The amount of the fine and distribution are exclusively the authority of the Legislature.

While it is proven that traumatic accidents will be reduced by the use of red-light cameras, it is acknowledged that trauma centers in the State should benefit from the fines collected by red light violators. With this in mind, a portion of the collected fine will be distributed to trauma centers and to the Miami Center to Cure Paralysis.



July 20, 2010

Honorable Peter DeFazio
Transit and Highways Subcommittee
House Transportation and Infrastructure Committee
B 370A Rayburn House Office Building
Washington DC 20515

Dear Chairman DeFazio:

In response to the June 30 Subcommittee hearing on the effectiveness of automated enforcement, the Governors Highway Safety Association (GHSA) would like to submit comments. GHSA is the non-profit association that represents state highway safety agencies. Its members administer federal behavioral highway safety grant funds.

GHSA strongly supports automated enforcement and believes that it is an important tool in any state or local effort to reduce motor vehicle-related crashes, fatalities and injuries. We concur with the National Highway Traffic Safety Administration (NHTSA) and the Insurance Institute for Highway Safety (IIHS) that the preponderance of research shows that automated enforcement is effective. Some studies, such as the one conducted by the Federal Highway Administration, indicate that while side impact collisions are reduced, rear end collisions increase. It is important to note that the rear end collisions may increase because the second vehicle is likely following too closely. In other words, the red light cameras are not necessarily the cause of increased rear end crashes; rather, the poor driver behavior of following too closely may be.

Automated enforcement has been implemented broadly in Europe and Australia with favorable results. GHSA strongly believes that automated enforcement, along with many other types of technology, will be a key countermeasure in the effort to halve fatalities by 2030 and ultimately move toward zero deaths.

We also concur with NHTSA and the Partnership for Advancing Road Safety (PARS) that automated enforcement is not the panacea for solving the problems of speeding and red light running – both extremely serious driver behavior problems. Automated enforcement is intended to supplement engineering solutions and traditional enforcement of speeding and red light running laws. Law enforcement agencies are downsizing, enforcement personnel are retiring at rapid rates and many are being deployed for homeland security purposes. Automated enforcement helps fill the gaps by providing 24/7 coverage, often at high risk locations for traditional law enforcement.

GHSA strongly supports automated enforcement programs that maximize safety. Our current policy addresses the implementation of red light running programs and recommends that:

Cameras should be used at high crash sites or in situations where traffic law enforcement personnel cannot be deployed safely. There should be a traffic engineering analysis of each site before traffic cameras are installed and citations issued.

Cameras are not to replace traditional law enforcement personnel or to mitigate safety problems caused by deficient road design, construction or maintenance.

Use of red light cameras should be preceded by a public information campaign. The campaign should continue throughout the life of the automated enforcement program.

Cameras should not be used as a revenue generator. Compensation paid for an automated traffic law system should be based on its value and not on the amount of revenue it generates nor the number of tickets issued. Revenues derived from the automated enforcement program should be used solely to fund highway safety functions.

The implementing jurisdiction should undertake an evaluation of the red light enforcement program within three years of the program's initiation. If reductions in red light running do not occur, then the program should be terminated.

These same principles could easily be applied to automated speed enforcement programs.

Since automated enforcement programs are local and self-supporting, few federal funds are used to implement them. In Maryland, for example, which has an extensive program of red light and speed cameras in Montgomery and Howard Counties and the City of Baltimore, no federal behavioral funds and \$100,000 in Sec. 148 Highway Safety Improvement Program (HSIP) funds were used for startup purposes. In California, in which an extensive number of local jurisdictions have red light programs, no federal behavioral or safety infrastructure funds were used for automated enforcement programs. Hence, your proposal to condition federal funds on the implementation of "appropriate" automated enforcement programs may not be feasible or yield the desired results.

A more suitable federal role would be to support further federal research on automated enforcement, including updating the U.S. Department of Transportation (DOT) best practice implementation guidelines, identifying and documenting best practice state and local programs and further evaluating program effectiveness.

In addition, GHSA recommends that DOT, in cooperation with organizations such as GHSA and the American Association of State Highway, Transportation Officials (AASHTO), the National Association of County Engineers (NACE) and the National Local Technical Assistance Program Association (NLTA), PARS, the Campaign to Stop Red Light Running and others, more aggressively market the best practice guidelines and other research findings to states and local communities.

DOT could also develop model state laws. As part of that effort, DOT should examine state legislation such as that recently enacted by the Florida legislature and highlighted at the June 30 hearing.

As the Howard County representative indicated, DOT is currently working with the International Association of Chiefs of Police (IACP) to develop technical standards for implementing an automated enforcement program once a state or locality has made decisions about the policy parameters of the program. The federal government could test those standards, document state and local best practices and support an ongoing effort to periodically review and update the standards. Further, training could be developed for law enforcement to ensure that the standards are being administered appropriately.

Finally, DOT could develop template public education programs (as has been done on the topic of speeding) that state and local governments could customize as needed. Federal funding would be necessary to support the development and dissemination of such public education programs.

GHSA applauds the Subcommittee for raising the visibility of this important issue and encourages members to incorporate the ideas delineated herein into the next reauthorization proposal. Barbara Harsha, the GHSA Executive Director and I would be glad to discuss them with you at your convenience. Thank you for the opportunity to submit GHSA's recommendations on issues of importance to the Association.

Sincerely,

A handwritten signature in black ink, appearing to read "Vernon F. Betkey Jr.", with a stylized flourish at the end.

Vernon F. Betkey Jr.
Chairman
Governors Highway Safety Association

Cc: Rep. James Oberstar, Chairman, House Transportation and Infrastructure Committee
Rep. John J. Duncan Jr., Transit and Highways Subcommittee, House Transportation
and Infrastructure Committee
David Strickland, Administrator, National Highway Traffic Safety Administration



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National Campaign to Stop Red Light Running

Testimony of Leslie Blakey, Executive Director National Campaign to Stop Red Light Running "Utilization and Impacts of Automated Traffic Enforcement" Subcommittee on Highways and Transit

June 30, 2010

Chairman DeFazio, Ranking Member Duncan and Distinguished Members of the Subcommittee:

My name is Leslie Blakey and I serve as the Executive Director of the National Campaign to Stop Red Light Running, a 501 (c)(3) advocacy organization based in Washington, DC comprised of grassroots members and crash survivors who care deeply about traffic safety, promoting responsible driving behavior and fostering effective, accountable traffic safety photo enforcement programs to help meet that goal. I appreciate the opportunity to submit this testimony for the record.

Photo enforcement is a proven technology that can greatly improve road safety when properly implemented as a supplement to traditional law enforcement, along with sound engineering and public education. Since its inception in 2001, the National Campaign to Stop Red Light Running has worked to increase understanding among public officials, law enforcement, traffic safety professionals and the general public about the safety merits of well-designed automated traffic enforcement initiatives to combat red light running and speeding and the steps necessary to implement a successful program.

As the incidences of red light running and speeding increase along with congestion, heavily used roadways across the country are becoming prime crash locations. Rather than obey legal limits, many drivers carelessly race through red lights and speed to their destinations on a daily basis without regard for their own safety or that of others on the road. This sense of entitlement — *my time is more valuable than your safety* — combined with a low expectation of being caught is responsible for rampant disrespect for the rules of the road and an upward trend in all forms of aggressive driving, not only red light running.

The need to increase safety on our roadways is glaringly obvious: according to the FHWA, in 2008, 762 people were killed and an estimated 137,000 were injured in crashes that involved red light running, while speeding is critical factor in at least one-third of all crashes in the United States. These tragic statistics are a product an increase in vehicles miles traveled (VMT) and a stagnant level of staffing for law enforcement in many communities. Drivers are able to exceed speed limits and run through red lights frequently without being detected by police.

The growth of automated photo enforcement has prompted some backlash in public opinion, often spurred by a small, but outspoken minority of the public who misrepresent the effectiveness of photo enforcement. Automated enforcement technology continues to be favorably received by the majority of traffic engineers, law enforcement authorities and the public because its use, when applied properly and judiciously, has reduced both the human and financial toll of crashes caused by aggressive, distracted and careless driving.

Photo enforcement has offered an effective deterrent in the struggle to end irresponsible driving. Scientific study after study shows that photo enforcement reduces crashes, injuries and saves lives. And, a majority of the public believes those who choose to disregard traffic laws deserve the penalties and fines they incur as a result of this behavior. Communities across our nation have experienced a reduction in red light running following the implementation of a photo enforcement program and here are a few of many examples:

- In New Orleans, LA, red light cameras have led to an 85% drop in red light running;
- In Council Bluffs, IA, red light cameras led to a 90% reduction in red light running crashes. Cameras led to a 40% reduction in red light running crashes in Davenport;
- A Texas A&M Texas Transportation Institute study found traffic crashes at red light camera locations across Texas decreased by approximately 30%. Right angle crashes, which usually produce the most deaths and injuries, dropped by 43%; and
- An Insurance Institute for Highway Safety study of the Philadelphia, PA, red light camera program tracked signal violation rates at intersections before and after extending the yellow light sequence, and again after red light camera enforcement had been in effect for about a year. Lengthening the yellow light reduced signal violations by 36%. The cameras reduced the remaining violations by 96%.

While the issue of photo enforcement's effectiveness has been resolved to the satisfaction of all but the most entrenched opponents, there is one issue that has not: regulation. Many communities have jeopardized the future of photo enforcement by failing to adhere to recommended practices or by unwittingly following the easiest path to implementation or by embracing photo enforcement to solve a financial rather than a safety problem. Often new photo enforcement programs are started by communities with very little in the way of outside references, other than the advice of private sector vendors who are competing for contracts to provide equipment and services. It has become common practice for private sector interests to promote the use of photo enforcement as a means of raising revenue for local governments, and simultaneously urging practices that undermine the integrity of traffic safety enforcement programs, such as:

- Skipping an engineering review to determine if there is an actual safety problem;
- Vendor selection of enforcement sites, which can prioritize high-citation volume over high-risk locations;
- Using per-citation rather than flat-fee compensation schemes; and
- Encouraging localities to adopt photo enforcement technologies for non-safety related purposes, such as nuisance properties, over-due library books and parking violations.

In recent years, there have been several efforts to provide guidance to states and localities looking to establish photo enforcement programs. The National Campaign to Stop Red Light Running published guidebooks in 2002 and 2007. The National Highway Traffic Safety Administration published guidance in 2003 (red light cameras) and 2008 (speed cameras) as well as the Federal Highway Administration's *Red Light Camera Systems Operational Guidelines* published in 2005. Furthermore, in 2007 the International Association of Chiefs of Police released their own guide, named *Red Light Camera System Minimum Performance Specifications*.

Among these different sources, there is great overlap in advice and agreement on the characteristics of successful programs, where success is defined as increasing safety and protecting the public interest. Furthermore, technology changes notwithstanding, there are universal elements shared by programs of the highest caliber, which reflect integrity of purpose and good governance principles that can be shared to the benefit of programs everywhere, whether well established or in early inception.