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## Speeding Towards Disaster: How Cleveland's Traffic Cameras Violate the Ohio Constitution

Kevin P. Shannon

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# SPEEDING TOWARDS DISASTER: HOW CLEVELAND'S TRAFFIC CAMERAS VIOLATE THE OHIO CONSTITUTION\*

KEVIN P. SHANNON<sup>†</sup>

I.	INTRODUCTION .....	608
II.	HISTORY OF CAMERAS AND HOW THEY WORK .....	610
	A. <i>Red-light Cameras</i> .....	610
	B. <i>Speed Cameras</i> .....	611
	C. <i>Relationship between Municipalities and Camera Vendors</i> .....	613
III.	LEGAL BACKGROUND OF TRAFFIC CAMERAS .....	614
	A. <i>Arguments against Cameras and Litigation Summary</i> .....	614
	B. <i>Scholarly Literature Overview</i> .....	617
IV.	TRAFFIC LAW BACKGROUND AND CURRENT SITUATION IN OHIO.....	619
	A. <i>Traffic Offenses under the Ohio Revised Code</i> .....	619
	B. <i>Traffic Violations under Cleveland's Ordinance</i> .....	620
	C. <i>Ohio House Bill 241</i> .....	621
	D. <i>Ohio House Bill 56</i> .....	622
	E. <i>The Current Situation in the Ohio Courts</i> .....	625
V.	HOME RULE ARGUMENT.....	627
	A. <i>Home Rule Under the Ohio Constitution</i> .....	627
	B. <i>How Cleveland's Traffic Cameras Violate Home Rule</i> .....	628
	1. <i>Cleveland's Ordinance Conflicts with the Traffic Statutes of the Ohio Revised Code</i> .....	629
	2. <i>Red-light Camera ordinances are an Exercise</i>	

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\*Editor's Note: On January 31, 2008, the Supreme Court of Ohio ruled on the issue of whether municipal installation of red-light cameras violates the Ohio Constitution, holding that such lights are permissible. *Mendenhall v. Akron*, slip op. no. 2008-Ohio-270. The *Mendenhall* decision was made too late in our publication process to allow the author further commentary.

<sup>†</sup>Kevin is a third-year student at Cleveland-Marshall College of Law with an expected graduation date of May, 2008. This Note is dedicated to the author's parents, Jim and Mary Ellen Shannon. Without their love and support this Note would not have been possible. The author also thanks his brothers, Mike, Pat and Tommy Shannon for all that they have done over the years. The author is extremely grateful to Professor Christopher Sagers for his invaluable advice and helpful comments. Finally, the author thanks Professor Barbara Tyler for her help on early versions of this Note.

of the Police Power by Municipalities.....	632
3. State Traffic Statutes are General Laws .....	633
VI. CONCLUSION.....	635

#### I. INTRODUCTION

Driving to see her boyfriend one clear October day, Carla Correa approached a Baltimore intersection in her Honda Civic. As she approached, the light turned yellow, and Correa quickly slammed on her brakes. Moments later, a large truck rear-ended her, completely wrecking her Civic. Why would Correa choose to stop so quickly instead of simply coasting through the yellow light? The answer lies in a tiny box perched on a post above the intersection. Inside the box is the dark omnipresent lens of a red-light camera, watching over the intersection like the proverbial “Big Brother.” Correa explained that the intersection had a “quick yellow light” and “when [she] saw the yellow, [she] freaked out.”<sup>1</sup> She stated, “Everytime I see the red-light camera, I’m terrified by it.”<sup>2</sup>

It appears that attitudes and fears like Ms. Correa’s are prevalent among the nation’s drivers. A *Washington Post* study reported that the amount of traffic accidents increased at red-light intersections in the nation’s capital.<sup>3</sup> The study also found that crashes resulting in injuries and fatalities had increased by 81% after installing red-light cameras at an intersection.<sup>4</sup> Although camera proponents tout their safety benefits, the real purpose is often revenue based. When a municipality chooses to issue tickets with the goal of generating revenue, what stops municipalities and the companies they contract with from issuing as many tickets as possible without safeguarding the rights of citizens?

While the example above took place in Maryland, the same types of traffic cameras are being used in the City of Cleveland. In fact, when former Mayor Jane Campbell proposed that the City of Cleveland install red-light cameras, she saw them as a way to close a serious budget gap.<sup>5</sup> In 2004, Cleveland was confronted with the largest general fund deficit in over twenty years.<sup>6</sup> While some measures were made to decrease spending, new sources of revenue were needed to close the deficit.<sup>7</sup> It was in response to this deficit, that Mayor Campbell proposed the use of red-light

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<sup>1</sup>Jonathan Miller, *With Cameras on the Corner, Your Ticket is in the Mail*, N.Y. TIMES, Jan. 6, 2005, at G1.

<sup>2</sup>*Id.*

<sup>3</sup>Del Quentin Wilber & Derek Willis, *D.C. Red-Light Cameras Fail to Reduce Accidents*, WASH. POST, Oct. 4, 2005, at A1.

<sup>4</sup>*Id.*

<sup>5</sup>*Id.*

<sup>6</sup>CITY OF CLEVELAND, 2005 BUDGET BOOK 1 (2005) (noting that a lagging economy, utility increases, soaring health care costs, and increase in the wages paid to labor contributed to this deficit). In response, the mayor took an \$11,000 reduction in salary and greatly reduced general fund spending. *Id.* However, the city’s finances remained strained and new sources of revenue were needed. *Id.*

<sup>7</sup>*See generally id.*

and speeding cameras.<sup>8</sup> As Campbell noted in the city's 2005 budget, "[t]hroughout the country, cities with red-light cameras raised significant dollars even in the first year of operation."<sup>9</sup> She predicted that in the first year of operation, the cameras would net the city \$6.5 million.<sup>10</sup> However, the proposal was met with skepticism by both city council members and residents.<sup>11</sup> Councilman Kevin Conwell suggested that the mayor was more concerned about raising revenue than making the streets safer for drivers.<sup>12</sup> Councilman Joe Cimperman harshly criticized the camera plan, stating "[m]aybe we should worry about real economic development rather than nickel and diming commuters."<sup>13</sup>

The Ohio Constitution establishes the principle of home rule, which allows municipalities to "exercise all powers of local self-government."<sup>14</sup> Under this power, municipalities have the power to pass ordinances that regulate citizens' behavior.<sup>15</sup> However, as the Ohio Supreme Court has established, home rule is violated when a municipal ordinance conflicts with a general law of the Ohio Revised Code.<sup>16</sup> The Ohio Revised Code contains a comprehensive system of traffic laws and establishes that violations of those laws are *criminal* offenses.<sup>17</sup> Cleveland's ordinance enforces speeding and red-light violations as *civil* offenses.<sup>18</sup> Therefore, under the body of law established by the Supreme Court, Cleveland's ordinance conflicts with the Ohio Revised Code.<sup>19</sup> This Note argues that Cleveland's traffic cameras violate the Home Rule Amendment to the Ohio Constitution, because they enforce traffic violations civilly while the Ohio Revised Code treats the violations as crimes.

Part II of this paper describes the history and development of traffic cameras. It includes a discussion of how the two systems used by Cleveland (red-light and speeding cameras) operate. It also gives a general background of the relationship between cities and camera vendors. Part III provides the legal background of traffic cameras. It begins by examining the various arguments that have been leveled against cameras and then examines the litigation to date challenging traffic cameras. Next, this Note discusses the scholarly literature on the subject and explains how this argument situates itself in the debate. Part IV gives traffic law background by examining the Ohio Revised Code's traffic law and the City of Cleveland's traffic

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<sup>8</sup>*Id.* at 3.

<sup>9</sup>*Id.*

<sup>10</sup>Mike Tobin, *Controversy Flashes over Red-light Cameras: Q&A on Campbell's Plan for Cleveland*, PLAIN DEALER (Cleveland), Feb. 4, 2005, at A1.

<sup>11</sup>*Id.*

<sup>12</sup>*Id.* Conwell stated that "[i]t sounds like they have a quota to meet for the budget." *Id.*

<sup>13</sup>*Id.*

<sup>14</sup>OHIO CONST. art. XVIII, § 3.

<sup>15</sup>*Id.*

<sup>16</sup>*See* discussion *infra* Part V.B1.

<sup>17</sup>*See* discussion *infra* Part IV.A.

<sup>18</sup>*See* discussion *infra* Part IV.B.

<sup>19</sup>*See* discussion *infra* Part V.

camera ordinance. It then discusses the Ohio Legislature's involvement with traffic cameras and explains the recent passage and veto of House Bill 56. Next, this Note explains the current situation in the Ohio courts and the recent certification of the constitutionality of traffic cameras to the Ohio Supreme Court. Part V discusses Ohio's Home Rule law. It examines the key cases decided by the Ohio Supreme Court and explains the test for conflict between a municipal ordinance and state law. It then advances the argument that Cleveland's traffic cameras violate the Ohio Constitution. Finally, Part VI concludes and calls for the Ohio Supreme Court to find traffic cameras in conflict with the Ohio Revised Code.

## II. HISTORY OF CAMERAS AND HOW THEY WORK

### A. Red-light Cameras

One type of traffic camera used by the City of Cleveland is commonly referred to as a red-light camera. While red-light cameras are relatively new to the United States, other countries have used them for more than thirty-five years and they currently operate in more than forty-five countries.<sup>20</sup> Red-light cameras first appeared in the United States in New York City in 1993.<sup>21</sup> The cameras immediately generated a great deal of citations.<sup>22</sup> Amazingly, New York City has issued 1.4 million citations with only 7,000 of these citations resulting in a finding of not guilty.<sup>23</sup> Today, the cameras are used in more than one hundred cities and do not appear to be going away soon, given their tremendous revenue potential.<sup>24</sup>

Red-light cameras require the integration of three separate mechanisms: a camera, a trigger, and a computer. At a typical red-light camera intersection, the cameras are mounted a few yards above the ground at each corner of the intersection. The triggers are buried below the asphalt and utilize induction loop technology. One trigger is located at the stop bar, while the other trigger is typically located in the middle of the intersection. The induction loop triggers create a magnetic field that determines when a vehicle has entered the intersection. The computer is wired to both the triggers and the cameras. When the traffic light is green or yellow, the computer ignores cars passing over the triggers. Once the light turns red, the system photographs vehicles passing through the triggers at a given speed. Vehicles must reach a pre-programmed speed so that the cameras do not photograph cars that are

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<sup>20</sup>THE NATIONAL CAMPAIGN TO STOP RED LIGHT RUNNING, A GUIDE TO RED LIGHT CAMERA PROGRAMS: STOP ON RED = SAFE ON GREEN 9 (2002), <http://www.stopredlightrunning.com/pdfs/StopOnRedSafeOnGreen.pdf> [hereinafter NATIONAL CAMPAIGN].

<sup>21</sup>*Id.*

<sup>22</sup>*Id.* (explaining that New York City issued 168,479 tickets from just fifteen cameras in the year following their introduction).

<sup>23</sup>*Id.*

<sup>24</sup>Laura Parker, *Some Seeing Red over Red-Light Tickets*, U.S.A. TODAY, Oct. 18, 2006, at 3A.

slowly inching through the intersection in order to make a valid right turn on the red light.<sup>25</sup>

Once the system is activated, the camera takes two pictures.<sup>26</sup> The first picture shows the vehicle before it enters the intersection and includes the stop bar or crosswalk.<sup>27</sup> The second picture shows the vehicle in the intersection while the light is red.<sup>28</sup> Most jurisdictions simply require that the cameras photograph the rear of the vehicle and must include the license plate. Other jurisdictions require that a third picture be taken showing the face of the driver. The cameras record the date of the incident, time of the infraction and speed of the vehicle. Next, the photographs are reviewed by police officers and tickets are mailed out to the vehicle's registered owner.<sup>29</sup>

### B. Speed Cameras

The second type of camera enforcement technology used by the City of Cleveland is photo speed enforcement systems or speed cameras.<sup>30</sup> The first reported use of this technology was in Germany in May 1973 on the Autobahn.<sup>31</sup> By 2005, speed enforcement systems were being used in at least seventy-five countries.<sup>32</sup> Although their use in America is relatively limited compared to other countries, the cameras are currently employed by a number of communities in several states and in Washington D.C.<sup>33</sup> However, the use of speed cameras in the United States is rapidly increasing due to their ability to raise large amounts of revenue for communities.<sup>34</sup>

Automated speed enforcement systems require the interaction of three elements: a Vehicle Speed Subsystem, a Vehicle/Driver Photo Subsystem, and a Speeding Violation Subsystem. Two common varieties of Vehicle Speed Subsystems are in use. One type of system uses a Lidar sensor, relying on radar technology. The system emits energy to create an electromagnetic field that is able to sense a vehicle's

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<sup>25</sup>See Tom Harris, *How Red-Light Cameras Work*, <http://auto.howstuffworks.com/red-light-camera.htm> (last visited Dec. 2, 2006).

<sup>26</sup>NATIONAL CAMPAIGN, *supra* note 20, at 11.

<sup>27</sup>*Id.*

<sup>28</sup>*Id.* at 12.

<sup>29</sup>*Id.*

<sup>30</sup>See generally ARIZONA DEPARTMENT OF TRANSPORTATION, FINAL REPORT 596, TECHNICAL EVALUATION OF PHOTO SPEED ENFORCEMENT FOR FREEWAYS 11 (2005), available at <http://www.thenewspaper.com/rlc/docs/05-scottsdale.pdf> [hereinafter ADOT REPORT].

<sup>31</sup>*Id.* (stating that speed cameras were installed between Cologne and Frankfurt on Autobahn A3).

<sup>32</sup>*Id.* (including Australia, Austria, Canada, Germany, Greece, Italy, the Netherlands, Norway, South Africa, Spain, Switzerland, and Taiwan).

<sup>33</sup>*Id.* (including Arizona, California, Colorado, North Carolina, Ohio, Oregon, and the District of Columbia).

<sup>34</sup>*Id.*

speed.<sup>35</sup> Other vendors utilize Piezo sensors, which are buried under the pavement and require a vehicle to pass over them in order to determine the vehicle's speed.<sup>36</sup> Two sensors are located a short distance apart and a vehicle's speed is calculated based on the time it takes to travel between them.<sup>37</sup>

Once a sensor determines the vehicle's speed, the system must then compare this speed to the threshold speed set by the camera operator.<sup>38</sup> The threshold speed is the speed at which a violation occurs and is determined by the municipality using the camera.<sup>39</sup> For instance, if the speed limit is thirty-five miles per hour, a municipality might set the threshold speed at forty or forty-five miles per hour.<sup>40</sup> Once the threshold speed is met, the vehicle is determined to be speeding, and the Vehicle/Driver Photo Subsystem is activated and a photograph is taken.<sup>41</sup>

While early systems used film cameras, today, photo enforcement technology utilizes digital cameras to record a speeding infraction.<sup>42</sup> Typically, a photograph is only taken if a vehicle is determined to be speeding.<sup>43</sup> Like red-light cameras, the photograph records important information such as the date of the incident and the speed of the vehicle.<sup>44</sup> In order to protect against privacy and tampering concerns, most vendors encrypt the data once it has been recorded.<sup>45</sup> The laws of the municipality or state in which the system is located dictate the number of photographs taken. While some areas require that only the license plate of the vehicle is taken, others require both a picture of the license plate and of the driver of the vehicle.<sup>46</sup> In order to obtain the best images, the cameras require illumination.<sup>47</sup> These flash systems must provide sufficient illumination to ensure that a clear photograph is produced in rainy weather or at night.<sup>48</sup> Since the flash must be

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<sup>35</sup>*Id.*

<sup>36</sup>*Id.* at 12-13.

<sup>37</sup>*Id.* at 13.

<sup>38</sup>*Id.* at 14.

<sup>39</sup>*Id.*

<sup>40</sup>*See generally id.*

<sup>41</sup>*Id.*

<sup>42</sup>*Id.*

<sup>43</sup>*Id.*

<sup>44</sup>*Id.*

<sup>45</sup>*Id.*

<sup>46</sup>*See supra* note 29 and accompanying text.

<sup>47</sup>ADOT REPORT, *supra* note 30, at 15 (stating that the illumination is typically provided by "a flash tube and optimized lamp reflector").

<sup>48</sup>*Id.* (explaining that the flash system must be able to provide sufficient illumination in any light or weather condition).

sufficiently bright and located close to the vehicle or driver, many citizens are concerned that they may result in a temporary loss of control over the vehicle.<sup>49</sup>

The final component, the Speeding Violation Subsystem, is the administrative component and varies widely depending on the jurisdiction that the speed camera is located in.<sup>50</sup> It is also the system that is subject to the greatest amount of criticism, as discussed later in this Note.<sup>51</sup> Very generally, it requires a reviewing officer to identify the driver or vehicle owner and issue a citation, and affords defendants some judicial or administrative review.<sup>52</sup>

### C. Relationship between Municipalities and Camera Vendors

Perhaps the biggest problem with traffic cameras is the relationship between the cities and the companies that install and maintain the cameras and issue the citations.<sup>53</sup> While camera proponents often tout the safety benefits of cameras,<sup>54</sup> the evidence strongly suggests that many municipalities use them to generate revenue.<sup>55</sup> One commentator noted that a North Carolina red-light statute “sought to generate revenue rather than to promote public safety because the standard for issuing a ticket has been effectively lowered, making it easier to collect money.”<sup>56</sup> In fact, studies show that red-light cameras may actually increase accidents.<sup>57</sup> Municipalities are publicly promoting the supposed safety benefits of cameras, while obscuring their real goal of revenue generation.

Contracts between camera vendors and municipalities are usually fee based, paying vendors per ticket issued. In Toledo, the vendor Redflex keeps 75% of the money generated by the tickets.<sup>58</sup> The per-ticket fee arrangement benefits both the municipality and the vendor. According to the city manager of Berkeley, California, the city would not be able to afford the red-light cameras if it were required to lease

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<sup>49</sup>*Id.* (“Many citizens are concerned about frontal flash and may claim that it is unsafe to expose a driver to such a bright light.”).

<sup>50</sup>*See generally id.* at 16.

<sup>51</sup>*See* discussion *infra* Part III.A.

<sup>52</sup>ADOT REPORT, *supra* note 30, at 16 (stating that the vehicle's owner is identified through the state's license plate records and issued a citation).

<sup>53</sup>*See, e.g.,* Jim Provance, *Taft to Consider Red-light Camera Bill: New Law would Place Restrictions on the Traffic Enforcement Devices*, TOLEDO BLADE, Dec. 13, 2006.

<sup>54</sup>*See, e.g.,* Wilber & Willis, *supra* note 3, at A1 (stating that Washington D.C. officials credit red-light cameras for making roads safer).

<sup>55</sup>Editorial, *When Revenue Trumps Safety in D.C.*, WASH. TIMES, Jan. 15, 2005, at A12 (explaining that Washington D.C. Mayor Tony Williams sought renewal of the city's red-light contract to maintain the collection of revenue, and made no mention of increasing road safety).

<sup>56</sup>Andrew W.J. Tarr, *Recent Development, Picture It: Red Light Cameras Abide by the Law of the Land*, 80 N.C. L. REV. 1879, 1886 (2002).

<sup>57</sup>Wilber & Willis, *supra* note 3, at A1.

<sup>58</sup>Provance, *supra* note 53, at A1.



or buy the cameras and operate them.<sup>59</sup> In St. Louis, the city receives two-thirds of each ticket issued and “can easily generate tens of thousands of dollars a year, all without having to put up any money.”<sup>60</sup> Given the large amount of money to be gained, it is not surprising that competition for these contracts is fierce among red-light camera vendors.<sup>61</sup> This competition has the potential to corrupt government officials as evidenced by the forced resignation of the mayor of St. Peters, Missouri, who attempted to solicit a bribe from a camera vendor in exchange for the city’s business.<sup>62</sup> The potential for corruption in the current process raises valid concerns.

The City of Cleveland enacted its red-light camera ordinance on June 22, 2005.<sup>63</sup> The ordinance required that “[t]he program [] include a fair and sound ticket-evaluation by the vendor and a police officer.”<sup>64</sup> However, an article published shortly after the program went into effect found that in a two-week period, police officers had reviewed only 230 of the 700 photographs taken by the city’s red-light cameras.<sup>65</sup> Common sense dictates that a fee based contract between city and vendor would tend to encourage the vendor to issue as many tickets as possible without ensuring due process and equal rights protections.<sup>66</sup> While this proposition seems logical, as demonstrated below, the courts have not always agreed.<sup>67</sup> While these types of relationships appear suspicious on their face, in order to have Cleveland’s cameras invalidated, it is necessary to demonstrate, as this Note does, that the cameras violate the Ohio Constitution.

### III. LEGAL BACKGROUND OF TRAFFIC CAMERAS

#### A. *Arguments against Cameras and Litigation Summary*

Red-light camera critics have asserted a variety of constitutional problems with automated enforcement programs.<sup>68</sup> Some critics contend that the cameras violate equal protection because punishments differ between automated enforcement

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<sup>59</sup>See Matthew Artz, *Camera Company Gets Cut From Red Light Fees*, BERKELEY DAILY PLANET, Apr. 22, 2005.

<sup>60</sup>Jake Wagman, *Lights, Camera, Traffic Ticket*, ST. LOUIS POST-DISPATCH, Nov. 25, 2006, at A1.

<sup>61</sup>See *id.* (explaining how camera vendors employ lobbyists and former government officials in order to win contracts).

<sup>62</sup>*Id.*

<sup>63</sup>Cleveland, Ohio, Ordinance 1183-05 (June 22, 2005).

<sup>64</sup>*Id.*

<sup>65</sup>See [thenewspaper.com](http://www.thenewspaper.com), *Cleveland, Ohio Police Do Not Review Camera Tickets*, <http://www.thenewspaper.com/news/08/818.asp> (last visited Oct. 23, 2006) (stating that “more than one-half of the notices went out without any police review.”).

<sup>66</sup>*Id.*

<sup>67</sup>See *infra* Part III.A.

<sup>68</sup>See, e.g., SHARI T. KENDALL, INSURANCE INSTITUTE FOR HIGHWAY SAFETY, IS AUTOMATED ENFORCEMENT CONSTITUTIONAL 1 (2004), [http://www.iihs.org/laws/state\\_laws/pdf/auto\\_enforce\\_paper.pdf](http://www.iihs.org/laws/state_laws/pdf/auto_enforce_paper.pdf).

violations and violations enforced by “on-the-spot” police officers.<sup>69</sup> Others assert that municipal programs that boot vehicles when the owners fail to pay automated enforcement tickets constitute a taking under the Fifth Amendment.<sup>70</sup> Critics who consider the violations an illegal search and seizure implicate the Fourth Amendment.<sup>71</sup> Still others contend that automated enforcement programs are an unjustified invasion of privacy.<sup>72</sup> However, the problems with this argument have been examined<sup>73</sup> and one judge explained “[a]lthough cameras operated by the Government are a concern regarding privacy issues, those concerns are outweighed by the legitimate concerns of safety on our public streets.”<sup>74</sup>

Other arguments against cameras raise due process concerns by examining the hearing process. Since the vehicle’s owner is presumed guilty, challenging the ticket is extremely difficult.<sup>75</sup> In Chicago, ninety percent of challenges fail because the city will accept only a handful of defenses.<sup>76</sup> In explaining the difference between a camera violation and a ticket by a police officer, a commentator explained that “[a] camera-monitored violation may be proved by a mere preponderance of the evidence, but the State must prove beyond a reasonable doubt that a[] [police officer cited] infraction was committed.”<sup>77</sup> The evidence demonstrates that red-light tickets are extremely difficult to challenge and therefore critics contend that they violate due process because they do not ensure a fair and impartial hearing.<sup>78</sup> Another argument against the use of red-light cameras is that the statutes authorizing them place the burden of proof on the defendant.<sup>79</sup> For example, Cleveland’s ordinance states that

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<sup>69</sup>*Id.* (noting that the County Court of Denver, Colorado has found the different punishments reasonable).

<sup>70</sup>*Id.* at 2.

<sup>71</sup>*Id.* (explaining that a court upheld the practice of booting because it did not constitute a taking of the vehicle).

<sup>72</sup>*Id.* at 2-3 (noting that the issue has never been raised in court because the Supreme Court has noted limited privacy in automobiles).

<sup>73</sup>See Mary Lehman, Comment, *Are Red Light Cameras Snapping Privacy Rights?*, 33 U. TOL. L. REV. 815 (2002). A person has a “lesser expectation of privacy in an automobile.” *Id.* at 818. Also, if an automobile is considered to be in plain view, it will fall under the plain view exception for warrantless searches. *Id.* at 820. Since automobiles rarely serve as an individual’s residence, they are subject to a lesser degree of privacy protection. *Id.* at 828. Although the Supreme Court has not directly ruled on this issue, red light cameras seem to fall outside of the Fourth Amendment’s reach. *Id.* at 828-29.

<sup>74</sup>See *Agomo v. Williams*, No. 02-0006520, 2003 D.C. Super. LEXIS 31, 17 (D.C. Super. 2003).

<sup>75</sup>Monifa Thomas, *Just Shut Up and Pay*, CHI. SUN TIMES, Oct. 30, 2006, at 3.

<sup>76</sup>*Id.* (stating that the registered owner must prove that the vehicle was leased to another person or stolen in order to win a challenge).

<sup>77</sup>Tarr, *supra* note 56, at 1886.

<sup>78</sup>*Id.*

<sup>79</sup>See *Riley v. City of Cleveland*, No. 1:06CV619, 2006 U.S. Dist. LEXIS 36127, 3-4 (N.D. Ohio June 2, 2006).

“[t]he contents of the ticket shall constitute prima facie evidence of the facts it contains.”<sup>80</sup> Plaintiffs around the country have alleged that red-light camera programs are unconstitutional because vehicle owners are ticketed whether or not it can be proved that they are driving.<sup>81</sup>

In recent years there has been a wide expansion of traffic camera litigation.<sup>82</sup> Of the existing cases, very few have examined the constitutionality of cameras as this Note does. For example, one case challenged the District of Columbia statute on the grounds that the “provision on its face presumes that the owner of a vehicle was its driver at the time of the infraction.”<sup>83</sup> The plaintiff alleged that he did not know who was driving his car at the time of the violation, and that because the driver could not be identified, the District of Columbia “impermissibly shifted the burden of proving the violation to him.”<sup>84</sup> However, the court upheld the statute and granted the District’s motion for summary judgment.<sup>85</sup>

The federal courts have skirted the question for the most part and avoided deciding the constitutionality of the cameras.<sup>86</sup> In *Dajani v. Maryland*, the district court dismissed the case for lack of federal jurisdiction, and did not reach the merits of the plaintiff’s constitutional claims.<sup>87</sup> An Oregon appellate court also dismissed a case in which the plaintiff alleged a violation of his constitutional right to due process.<sup>88</sup> In affirming the dismissal, the Ninth Circuit stated that “the district court properly concluded that it lacked jurisdiction to declare the defendant’s speeding conviction unconstitutional, grant him a new hearing, or compel the State of Oregon to refund his fine.”<sup>89</sup> However, a North Carolina District Court did reach some of the constitutional issues of red-light cameras but held that the appellant lacked standing to challenge the statute.<sup>90</sup> In addition, a lawsuit is currently pending in an Ohio federal court alleging “constitutional violations with respect to the burden of proof,

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<sup>80</sup>Cleveland, Ohio, Ordinance 1183-05 (June 22, 2005).

<sup>81</sup>Parker, *supra* note 24, at 3A.

<sup>82</sup>See Parker, *supra* note 24, at 3A.

<sup>83</sup>Agomo v. Williams, No. 02-0006520, 2003 D.C. Super. LEXIS 31, 17 (D.C. Super. June 12, 2003).

<sup>84</sup>*Id.* at 17-18.

<sup>85</sup>*Id.* at 23.

<sup>86</sup>See generally *Dajani v. Maryland*, No. Civ.CCB-00-713, 2001 WL 85181 (D. Md. Jan. 24, 2001).

<sup>87</sup>*Id.*

<sup>88</sup>Holst v. City of Portland, No. CV-03-1330-ST, 2004 U.S. Dist. LEXIS 9076, 19 (D. Or. May 14, 2004) (“Holst has identified no practice by the City of Portland regarding the procedures employed for processing photo radar speed violations that falls below constitutional due process minimums.”).

<sup>89</sup>Holst v. City of Portland, 152 Fed. App’x 588, 589 (9th Cir. 2005).

<sup>90</sup>See *Shavitz v. City of High Point*, 270 F. Supp. 2d 702 (M.D.N.C. 2003).

the presentation of evidence, . . . and the Excessive Fine Clause of the Eighth Amendment.”<sup>91</sup>

Litigants challenging red-light cameras have had more success in state courts. Recently, a Minnesota appellate court held that the state’s photo-enforcement ordinance was “in conflict” with the Minnesota Highway Traffic Regulation Act.<sup>92</sup> While emphasizing that its decision “does not determine the general validity or invalidity of photo-enforcement of traffic violations,”<sup>93</sup> the court interestingly noted a trend in legal challenges to red-light cameras.<sup>94</sup> It stated that “the automated-traffic-enforcement systems that have been upheld against legal challenges by vehicle owners are cases in which the state, rather than a local unit of government, enacted the vehicle-owner-liability legislation.”<sup>95</sup> The question was appealed to the Minnesota Supreme Court, which affirmed the appellate court on April 5, 2007.<sup>96</sup> Other courts have dismissed convictions by determining that the evidence was insufficient to sustain a conviction.<sup>97</sup> The Oregon Supreme Court dismissed a red-light camera conviction because there was no witness available to identify the driver of the car and no evidence that the defendant owned the car.<sup>98</sup> In addition, an Oregon appellate court recently held that the state’s speedy trial statute applied to camera citations, because the state law mandated that traffic violations were crimes and thus subject to the rules of criminal procedure.<sup>99</sup> Since courts are reluctant to discuss the federal constitutionality of cameras, a challenge to Cleveland’s system will likely have to rely on state law as the preceding successful challenges have.

#### B. Scholarly Literature Overview

The scholarly literature to date has found traffic cameras to be constitutional. A law review article written by Mary Lehman focuses on the question of whether red-light cameras constitute an invasion of privacy or a valid restriction on liberty because running red lights is illegal and dangerous.<sup>100</sup> Lehman argues that cameras only record information that is in plain view and that there is no expectation of privacy on a public street, and therefore, the cameras do not constitute an invasion of

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<sup>91</sup>Riley v. City of Cleveland, No. 1:06 CV 619, 2006 U.S. Dist. LEXIS 36127, 3-4 (N.D. Ohio June 2, 2006).

<sup>92</sup>Minnesota v. Kuhlman, 722 N.W.2d 1, 8 (Minn. Ct. App. 2006).

<sup>93</sup>*Id.*

<sup>94</sup>*Id.*

<sup>95</sup>*Id.*

<sup>96</sup>See State v. Kuhlman, 729 N.W.2d 577, 584 (Minn. 2007) (holding that the Minneapolis local ordinance conflicted with the state’s traffic laws).

<sup>97</sup>See State v. Clay, 332 P.3d 1101, 1104 (Or. 2001).

<sup>98</sup>*Id.*

<sup>99</sup>State v. Greenlick, A127374, 2007 Ore. App. LEXIS 212, 10 (Or. Ct. App. Feb. 7, 2007) (dismissing appellant’s camera citation because the state violated his right to a speedy trial). *Id.* at 10-11.

<sup>100</sup>Lehman, *supra* note 73, at 815.

privacy.<sup>101</sup> She contends that when offenders run a red light, they forego their right to privacy.<sup>102</sup> Lehman discusses proposed alternatives to red-light cameras but refutes them and argues that the cameras are at least comparable but in most cases better solutions.<sup>103</sup> She believes that opponents are too quick to condemn cameras by overlooking benefits because they are focused on their fear of too much government control.<sup>104</sup>

An article by Steven Naumchik makes an argument in support of cameras based on safety.<sup>105</sup> Naumchik says that “positive statistical results are undisputed” with respect to the efficiency of red-light cameras in ensuring safety.<sup>106</sup> The article’s focus is on camera enforcement legislation in California, specifically a “three year demonstration program” enacted between 1995 and 1998.<sup>107</sup> He also argues that California’s cameras do not violate “autonomy privacy” or “informational privacy,” which are components of the California state constitution.<sup>108</sup> The author adds that a constitutional issue could arise if private information were improperly disseminated.<sup>109</sup> He concludes the argument by insisting that the government has a valid interest in ensuring public welfare through enforcement of red lights and camera legislation will save more lives than it harms.<sup>110</sup>

Since this debate is a relatively new one, the scholarly literature is somewhat limited. All the law review articles written on the subject have argued that traffic cameras are constitutional. No article has discussed the validity of Cleveland’s traffic cameras or of the home rule argument advanced by this Note. The published literature tends to stress the safety benefits of traffic cameras.<sup>111</sup> While the literature argues that cameras are important for ensuring safety, studies have shown that this is not always the case.<sup>112</sup> Mainly, the debate has centered on the expectation of privacy under the U.S. Constitution.<sup>113</sup> The articles have argued that the use of traffic

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<sup>101</sup>*Id.*

<sup>102</sup>*Id.* at 831.

<sup>103</sup>*Id.* at 845.

<sup>104</sup>*Id.*

<sup>105</sup>Steven Tafoya Naumchik, *Review of Selected 1998 California Legislation: Transportation and Motor Vehicles: Stop! Photographic Enforcement of Red Lights*, 30 MCGEORGE L. REV. 833, 834 (1999).

<sup>106</sup>*Id.* at 851.

<sup>107</sup>*Id.* at 833-34. The statute was enacted on a temporary basis as an experiment, reevaluated three years later, and ultimately put in place permanently. *Id.* at 838. No constitutional or policy flaws were determined during the reevaluation process. *Id.*

<sup>108</sup>*Id.* at 841.

<sup>109</sup>*Id.*

<sup>110</sup>*Id.*

<sup>111</sup>*See supra* notes 100-110 and accompanying text.

<sup>112</sup>*See, e.g., supra* notes 3-4 and accompanying text.

<sup>113</sup>*See supra* notes 100-110 and accompanying text.

cameras does not violate these constitutional provisions.<sup>114</sup> The way that camera operators circumvent these constitutional issues is by enforcing the violations as civil instead of criminal penalties.<sup>115</sup> However, this Note argues that the transformation of a criminal penalty at the state level to a civil penalty at the municipal level violates Article XVIII of the Ohio Constitution.<sup>116</sup>

#### IV. TRAFFIC LAW BACKGROUND AND CURRENT SITUATION IN OHIO

##### A. *Traffic Offenses under the Ohio Revised Code*

In order to show how Cleveland's photo enforcement ordinance violates the Home Rule Amendment to the Ohio Constitution, a logical starting point is the Ohio Revised Code's treatment of traffic offenses. Section 4511.21 of the Ohio Revised Code ("O.R.C.") defines speeding offenses under Ohio law.<sup>117</sup> Ohio Revised Code § 4511.21(A) provides, "[n]o person shall operate a motor vehicle . . . at a speed greater or less than is reasonable or proper . . . and . . . at a greater speed than will permit the person to bring it to a stop within the assured clear distance ahead."<sup>118</sup> The section then goes on to list the different speed limits allowed on various types of thoroughfares, and makes it prima facie lawful "in the absence of a *lower limit* declared pursuant to this section by . . . local authorities" to travel at the enumerated speeds.<sup>119</sup> The importance of this language is that although municipalities may under certain enumerated circumstances require vehicles to travel more slowly than mandated by statute, they may not allow vehicles in their localities to travel at speeds greater than the statute. This suggests that the Ohio Legislature sought to enact a general ceiling on speed limits in the State. Although they recognized that certain local conditions might require a slower speed of travel, they did not delegate to municipalities the police power to exceed these limits. This leads to the inference that the Legislature wanted to ensure that its citizens remained safe when traveling on the State's roads and did not trust municipalities with this important obligation.<sup>120</sup> The Ohio Supreme Court previously held as much with respect to Title 45 of the Ohio Revised Code.<sup>121</sup>

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<sup>114</sup>See *supra* notes 100-110 and accompanying text.

<sup>115</sup>See generally CLEVELAND, OHIO, TRAFFIC CODE 413.031 (2005) (stating that camera violations will be enforced civilly).

<sup>116</sup>See discussion *infra* Part V.

<sup>117</sup>OHIO REV. CODE ANN. § 4511.21 (LEXISNEXIS 2006).

<sup>118</sup>*Id.*

<sup>119</sup>*Id.* § 4511.21(B) (emphasis added). For instance, the statute sets a speed limit of twenty miles per hour in a school zone, twenty-five miles per hour in other portions of municipalities, thirty-five miles per hour on state routes, and sixty-five miles per hour on freeways.

<sup>120</sup>*Id.*

<sup>121</sup>*City of Cleveland Heights v. Woodle*, 198 N.E2d 68, 70 (Ohio 1964) (stating that section 4511.21 was enacted in order to provide uniform traffic rules throughout the state).

Ohio Revised Code § 4511.21(E) and (F) describe the procedures to be followed by police officers when charging a person with a violation of that section.<sup>122</sup> These sections are meant to ensure proper service and notice.<sup>123</sup> Notable in the language of the statute is the mention labeling of the alleged violator as the “defendant,” suggesting that these are criminal violations.<sup>124</sup> Section 4511.21(G) requires that points be assessed for a violation of the statute according to the procedure outlined in section 4510.036.<sup>125</sup> This requirement is aimed at keeping the roads safe by suspending the license of motorists who exhibit extremely reckless and unsafe driving habits.<sup>126</sup>

Finally, O.R.C. § 4511.21(P) sets forth the criminal penalties for violations of the state’s traffic laws.<sup>127</sup> A motorist’s first violation of the section results in a minor misdemeanor. However, with each additional offense within a one-year period, the gravity of the crime increases. Two violations result within a year result in a misdemeanor of the fourth degree, and so on.<sup>128</sup> These statutes make clear the Legislature’s specific intention to treat speeding violations as criminal acts. Nowhere do the State’s extensive traffic statutes treat these violations as civil offense, and there is no delegation to municipalities of the power to decriminalize speeding offenses.

### B. Traffic Violations under Cleveland’s Ordinance

To illustrate just how great the conflict is between Cleveland’s traffic cameras and the Ohio Revised Code, it is useful to examine the Cleveland ordinance that allows photo enforcement. The City of Cleveland’s traffic code permits civil enforcement of red-light and speeding violations.<sup>129</sup> The city amended its traffic code on July 20, 2005 to allow for a “civil enforcement system for red-light and speeding offenders photographed by means of an ‘automated traffic enforcement camera system.’”<sup>130</sup> Chapters 413.031(b) and 413.031(c) explain that the *owner* of the vehicle shall be liable for the penalty resulting from a red-light or speeding

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<sup>122</sup>OHIO REV. CODE ANN. § 4511.21(E) (LEXISNEXIS 2006) (“In every charge of violation of this section the affidavit and warrant shall specify the time, place, and speed at which the defendant is alleged to have driven.”). *See also id.* § 4511.21(F) (stating that when a speed in excess of the limit is charged, the “defendant” must be charged in a “single affidavit, alleging a single act” with a violation of the law).

<sup>123</sup>*Id.* § 4511.21(E)-(F).

<sup>124</sup>*Id.* § 4511.21(E).

<sup>125</sup>*Id.* § 4511.21(G).

<sup>126</sup>*See generally* OHIO REV. CODE ANN. § 4510.036 (LEXISNEXIS 2006) (explaining the points system and when a driver’s license will be suspended). *See also infra* notes 265-67 and accompanying text.

<sup>127</sup>OHIO REV. CODE ANN. § 4511.21(P) (LEXISNEXIS 2006).

<sup>128</sup>*Id.*

<sup>129</sup>CLEVELAND, OHIO, TRAFFIC CODE 413.031 (2005) (“Use of Automated Cameras to Impose Civil Penalties upon Red Light and Speeding Violators.”).

<sup>130</sup>*Id.* 413.031(a) (imposing monetary liability on red light running and speeding).

offense, respectively.<sup>131</sup> Chapter 413.031(d) of the traffic code then states that “[t]he imposition of liability under this section shall not be deemed a conviction for any purpose and shall not be made part of the operating record of any person on whom the liability is imposed.”<sup>132</sup>

Chapter 413.031(i) explains that a violation of the ordinance is a “noncriminal violation for which a civil penalty shall be assessed and for which no points . . . shall be assigned.”<sup>133</sup> Finally, the ordinance states that it is prima facie evidence that the registered owner of the vehicle was the driver at the time of the incident.<sup>134</sup> The face of the ordinance represents a direct contrast with the traffic statutes of the Ohio Revised Code.<sup>135</sup> The ordinance does nothing to ensure that unsafe drivers will be kept off the road.<sup>136</sup> It has no procedural safeguards ensuring legitimate notice and service, and it places the burden on the vehicle’s owner to prove he did not commit the violation.<sup>137</sup> The ordinance represents a complete departure from the treatment the Ohio Legislature decided to give traffic offenses in the Ohio Revised Code.<sup>138</sup>

### C. Ohio House Bill 241

The Ohio Revised Code is silent on the issue of whether municipalities may use red-light or speed cameras to enforce municipal traffic laws.<sup>139</sup> The Ohio Legislature has attempted to address the issue twice, once by attempting to pass legislation allowing municipalities to use these cameras,<sup>140</sup> and more recently, by passing legislation, later vetoed, which would have severely restricted their effectiveness.<sup>141</sup> House Bill 241 was proposed by Representative Robert Latta and sought to amend certain sections of the Ohio Revised Code to establish a “non-criminal enforcement

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<sup>131</sup>*Id.* 413.031(b)-(c).

<sup>132</sup>*Id.* 413.031(d).

<sup>133</sup>*Id.* 413.031(i).

<sup>134</sup>*Id.* 413.031(l).

<sup>135</sup>*Compare* CLEVELAND, OHIO, TRAFFIC CODE 413.031 (2005), *with* OHIO REV. CODE ANN. § 4511.21 (LEXISNEXIS 2006).

<sup>136</sup>*See supra* note 132 and accompanying text.

<sup>137</sup>*See supra* notes 133 and accompanying text.

<sup>138</sup>*See supra* notes 117-28 and accompanying text.

<sup>139</sup>*See generally*, OHIO REV. CODE ANN. (LexisNexis 2006) (Red light or speed cameras are not mentioned at all in the entire Ohio Revised Code).

<sup>140</sup>*See* H.R. 241, 124th Gen. Assem., Reg. Sess. (Ohio 2001) (introduced on May 2, 2001, this law was never passed by the Ohio General Assembly).

<sup>141</sup>H.B. 56, 126th Gen. Assem., Reg. Sess. (Ohio 2005). This bill passed the Ohio House on December 12, 2006. *See* Joseph L. Wagner, *New Law Puts City’s Traffic Cameras in Jeopardy*, PLAIN DEALER (Cleveland), Dec. 13, 2006, at A1. However, just before leaving office, former Ohio Governor Bob Taft vetoed the legislation saying that it “unjustifiably eliminates the discretion of our locally elected and locally accountable officials in favor of a one-size-fits-all method with essentially unenforceable penalties. *See* Reginald Fields, *Taft Vetoes Bill to Stop Traffic Cameras; Cities Call it Victory for Home Rule*, PLAIN DEALER (Cleveland), Jan. 6, 2007, at B1.



mechanism” that would allow municipalities, counties, or townships to install red-light cameras and issue tickets to drivers that ran red lights.<sup>142</sup>

Under the bill, use of cameras would have been limited to counties with populations over 400,000. The proposed bill sought to decriminalize red-light violations that were captured by the cameras, making them civil offenses. It also would have allowed municipalities to set up traffic control signal violations bureaus that would hear appeals of tickets issued by the cameras. The bill would have prohibited municipalities from entering into fee-based contracts with vendors that were contingent on the number of citations issued.<sup>143</sup> However, the proposed bill never passed the Ohio House and did not become law.<sup>144</sup>

#### D. Ohio House Bill 56

Five years later, both chambers of the Ohio General Assembly did pass a bill that would have significantly curtailed the use of red-light and speed cameras in the state, only to have it vetoed by the outgoing governor.<sup>145</sup> House Bill 56 sought to amend the Ohio Revised Code by creating sections 4511.092, 4511.093, and 4511.094.<sup>146</sup> Section 4511.092 would have prohibited municipalities wishing to use camera enforcement from entering into fee-based contracts that were contingent “upon the number of tickets issued or the amount of fines levied or collected by the local authority.”<sup>147</sup> This would have insured that tickets were only issued for valid violations, because private companies would no longer enjoy monetary incentives to issue as many tickets as possible.<sup>148</sup> Representative Jim Raussen, the Bill’s chief proponent, stated “why not put in tougher restrictions . . . [i]t’s too easy to issue tickets.”<sup>149</sup>

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<sup>142</sup>H.R. 241, 124<sup>th</sup> Gen. Assem., Reg. Sess. (Ohio 2001).

<sup>143</sup>*Id.*

<sup>144</sup>Although no source exists explicitly stating that the bill never passed, the author is inferring this from the fact that the Ohio Revised Code was never amended to authorize red light cameras. The author also does not know the reasons why the bill did not pass, but he can speculate on a couple of possible reasons. The easiest explanation is that the Legislature simply did not want to give municipalities the authority to use red light cameras. Another plausible explanation is that camera vendors were extremely upset with the bill’s prohibition on contingency-based contracts. Knowing that the bill would cost them a great deal of potential profits, it is possible that red light vendors successfully lobbied to have the bill killed in the house.

<sup>145</sup>See James Cummings, *Veto keeps the red-light cameras rolling: Gov. Taft Says Cities should be able to Enforce Traffic Laws as they see fit*, DAYTON DAILY NEWS, Jan. 6, 2007 at A4.

<sup>146</sup>H.B. 56, 126<sup>th</sup> Gen. Assem., Reg. Sess. (Ohio 2005).

<sup>147</sup>*Id.*

<sup>148</sup>See generally *id.*; see also Matthew Artz, *Camera Company Gets Cut From Red Light Fees*, BERKELEY DAILY PLANET, Apr. 22, 2005 (explaining that contingency fee contracts might give vendors an incentive to maximize the number of citations issued).

<sup>149</sup>Provance, *supra* note 53 at A1.

The House Bill would still have allowed red-light violations, however it would have severely limited the ability of municipalities to issue speed violations.<sup>150</sup> In order to do so, a police officer would have to witness the violation and write the ticket.<sup>151</sup> It also protected against privacy concerns by forbidding the cameras from taking pictures of the automobile's driver.<sup>152</sup> In an effort to protect the due process rights of citizens, the law placed the burden of proving a violation on the state, a big change from the current system in which the burden is placed on the vehicle's owner to prove that he or she did not commit the offense.<sup>153</sup> The law required review of the photographs by a law enforcement officer and forbade municipalities from issuing tickets "in the name of a motor vehicle leasing dealer or motor vehicle renting dealer."<sup>154</sup> This was meant to insure that only the actual driver of the vehicle and not simply the registered owner of the vehicle would be cited.<sup>155</sup>

The bill also addressed the conflict between the Ohio Revised Code's criminal treatment of moving violations, and their civil treatment in traffic camera ordinances.<sup>156</sup> The new law would have permitted municipalities to enforce camera violations as civil violations, and thus there would be no conflict between the state and local laws.<sup>157</sup>

Section 4511.093 sought to establish "standards governing the use of traffic law photo-monitoring devices" in order to govern where the cameras could be installed and the necessary warning signs that would be erected.<sup>158</sup> Finally, the proposed law

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<sup>150</sup>H.B. 56, 126th Gen. Assem., Reg. Sess. (Ohio 2005). Section (B)(2) of the proposed code stated that a local authority "[s]hall use the devices for the enforcement of a qualified traffic violation and not for the purpose of enforcing other traffic laws, unless a law enforcement officer is present at the location of the device and issues the ticket at the time and location of the violation."

<sup>151</sup>*Id.*

<sup>152</sup>*Id.* Section (B)(9) prohibited the "use of any such device to photograph, videotape, or produce a digital image of a vehicle operator for the purpose of determining whether a qualified traffic violation has occurred." *Id.*

<sup>153</sup>*Id.* Section (F)(1) required that "[t]he local authority shall have the burden of proving a contested violation by a preponderance of evidence." *Id.*

<sup>154</sup>*Id.*

<sup>155</sup>*Id.*

<sup>156</sup>*See* Daniel Moadus, Jr., et al. v. City of Girard, No. 05-CV-1927, 6 (Ct. Com. Pl. Trumbull County July 6, 2006) ("[T]he Ordinance purports to simply override R.C. Sections 4510.036 and 4511.21(G) with respect to the point system. There is a public policy the State Legislature has implemented through the point system to take careless or reckless drivers off the roads."; *see also* OHIO REV. CODE ANN. § 4510.036 (LexisNexis 2006) (stating that a court shall assess points to an offender's driving record). A speeding offense requires four points if the speed is more than thirty miles over the speed limit and two points for any other speeding offense. *Id.*

<sup>157</sup>H.B. 56, 126th Gen. Assem., Reg. Sess. (Ohio 2005) (stating in section 4511.092 that these violations would not be considered a criminal offense and forbidding the assessment of points against an offender's driving record).

<sup>158</sup>*Id.* (stating that the standards should be set by the department of transportation and requiring consultation with the local governments).

established a “legislative traffic law photo-enforcement study committee” to consist of three members of the Ohio Senate and three members of the Ohio House.<sup>159</sup> The committee was charged with evaluating the use of photo-enforcement in Ohio and was to make recommendations as to the continued use of the technology in the state.<sup>160</sup>

A year and a half after its introduction, the final version of the bill passed the Senate by a vote of eighteen to thirteen on December 12, 2006.<sup>161</sup> In passing the bill, Senator Jeff Armbruster, the bill’s key advocate in the Senate called the cameras a “monstrous speed trap” and that their chief purpose was to raise revenue, not to improve safety.<sup>162</sup> The bill passed the House on December 12, 2006 by a vote of sixty-six to twenty-eight and was sent to the Governor for his review.<sup>163</sup> Cities around the State of Ohio immediately began lobbying the Governor to veto the bill.<sup>164</sup> Cleveland Mayor Frank Jackson stated that the bill demonstrated the Ohio Legislature’s “anti-urban agenda” and that it “discriminates against Cleveland, interferes with our right to enter into contracts and our right to self-governance.”<sup>165</sup> Conspicuously absent from the pleas of officials in several cities around the state, was any mention of the safety that the cameras bring to the communities.<sup>166</sup>

On January 5, 2007, his last day in office, Governor Taft vetoed the bill.<sup>167</sup> He argued that the bill “unjustifiably eliminates the discretion of our locally elected and locally accountable officials in favor of a one-size-fits-all method with essentially unenforceable penalties.”<sup>168</sup> Although the Ohio Constitution allows a governor’s

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<sup>159</sup>*Id.*

<sup>160</sup>*Id.* The committee was to make a report to the leaders of both the Senate and the House six months after the bill’s passage. *Id.*

<sup>161</sup>See [thenewspaper.com](http://www.thenewspaper.com/news/14/1484.asp), *Ohio Senate Votes to Ban Speed Cameras*, <http://www.thenewspaper.com/news/14/1484.asp> (calling the legislation an “effective ban” on speed cameras and noting that the bill would be sent to the House to approve the final version).

<sup>162</sup>Wagner, *supra* note 141, at A1.

<sup>163</sup>*Id.*

<sup>164</sup>See, e.g. Jodi Andes, *Taft Urged to put Stop to Red-light Camera Bill*, COLUMBUS DISPATCH, Dec. 13, 2006, at 1A (stating that Columbus Mayor Michael Coleman urged Taft to veto the bill).

<sup>165</sup>Wagner, *supra* note 141, at A1.

<sup>166</sup>See Provance, *supra* note 53 at A1 (“Officials in Toledo, Northwood, Columbus, Cleveland, and several other Ohio cities are hoping Gov. Bob Taft will stand up for the rights of local government when it comes to traffic enforcement cameras . . .”). Representative Jim Raussen, a major proponent of the bill stated, “[I]f we really want to make sure it’s about public safety, then let the study commission make recommendations to this body.” *Id.*

<sup>167</sup>Fields, *supra* note 141; see also Cummings, *supra* note 186.

<sup>168</sup>Cummings, *supra* note 145. Taft also stated, “I can discern no strong public policy that warrants this sweeping preemption of local control over our local streets.” Jim Siegel & Mark Niquette, *Taft Saves Red-light Cameras for Cities: Governor lets Ban on lead-paint lawsuits become Ohio Law*, COLUMBUS DISPATCH, Jan. 6, 2007, at 1A.

veto to be overridden by a three-fifths vote of both houses,<sup>169</sup> the current legislature cannot override the veto because the bill was approved during the previous session.<sup>170</sup> Representative Raussen stated that he would consider reintroducing the bill, however this is unlikely since a spokesman for incoming Governor Ted Strickland said that Strickland supported Taft's decision.<sup>171</sup> Therefore, it appears extremely unlikely that the Ohio Legislature will be able to ban the use of cameras, and opponents of the cameras will have to use different means to accomplish their goals.<sup>172</sup>

#### E. The Current Situation in The Ohio Courts

Despite Governor Taft's veto of House Bill 56, the fate of red-light and speeding cameras in Cleveland is still uncertain. The Ohio Supreme Court has decided one case involving automated-camera systems; however they did not reach the constitutional issues of interest in this Note.<sup>173</sup> In holding that the petitioners had not met the extraordinary requirements for a writ of prohibition, the court explained, "it is unclear whether [Cleveland's Municipal Ordinance] conflicts with R.C. 4521.05."<sup>174</sup> Another case, *Mendenhall v. City of Akron*, currently pending in the United States District Court for the Northern District of Ohio might force the Ohio Supreme Court to determine whether red-light cameras are legal under the Ohio Constitution.<sup>175</sup> The case involves a challenge to the city of Akron's Automated Mobile Speed Enforcement Systems.<sup>176</sup> The plaintiffs assert that the use of cameras by the city violate both the Ohio Constitution and the United States Constitution.<sup>177</sup> In a Memorandum Opinion published on May 17, 2006, Judge David Dowd, Jr. found that Akron's ordinance authorizing civil penalties for camera violations was

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<sup>169</sup>OHIO CONST. art. II, § 16.

<sup>170</sup>Siegel & Niquette, *supra* note 168.

<sup>171</sup>Fields, *supra* note 141 ("Strickland spokesman Keith Dailey said the new governor supports home rule and Taft's decision.").

<sup>172</sup>*See generally id.*

<sup>173</sup>*See State ex rel. Scott v. City of Cleveland*, 859 N.E.2d 923, 926 (Ohio 2006) (holding that a writ of prohibition against the city's traffic-camera programs was not warranted by the circumstances).

<sup>174</sup>*Id.* at 927.

<sup>175</sup>*See, e.g., John Higgins, Speed Cams are back in Court: Federal Judge asks Ohio Supreme Court to Rule on Correct Use*, AKRON BEACON J., Dec. 5, 2006 ("A federal judge has asked the Ohio Supreme Court to decide whether municipalities such as Akron can use automated cameras to issue civil fines for what Ohio law says are criminal traffic offenses).

<sup>176</sup>*Id.*

<sup>177</sup>*See, Mendenhall v. City of Akron*, No. 5:06CV139, No. 5:06CV154, 2006 U.S. Dist. LEXIS 30275, 9-10 (N.D. Ohio May 17, 2006). In the stipulations of facts, the Court explains that Mendenhall is asserting a violation of her due process rights under the Ohio and United States Constitutions. *Id.* She is also asserting a claim that Akron's ordinance allowing the use of these cameras violates the Home Rule Amendment to the Ohio Constitution. *Id.* This claim is premised on Mendenhall's assertion that Ohio Revised Code Section 4511.07 is a general law, and thus, the Akron ordinance conflicts with it. *Id.*

valid under the Ohio Constitution.<sup>178</sup> The court did not rule on the plaintiffs' federal claims and allowed the parties to move forward with discovery to resolve the issues.<sup>179</sup>

Two months after the Northern District's opinion, Judge John Straud of the Trumbull County Court of Common Pleas found that a Girard, Ohio ordinance allowing red-light cameras *did* conflict with certain state traffic statutes.<sup>180</sup> In light of the Trumbull County ruling, on November 30, 2006, Judge Dowd vacated the portion of his Memorandum Opinion that concluded that Akron's ordinance was valid under the Ohio Constitution.<sup>181</sup> Furthermore, the Judge certified the following question to the Ohio Supreme Court: "Whether a municipality has the power under home rule to enact civil penalties for the offense of violating a traffic signal light or for the offense of speeding, both of which are criminal offenses under the Ohio Revised Code."<sup>182</sup>

This answer to this question is will determine if Cleveland will continue to use photo enforcement cameras.<sup>183</sup> As the court notes in *Mendenhall*, there are several challenges currently being litigated statewide concerning the use of these cameras.<sup>184</sup> The defendant's preliminary memorandum on the certified question of law to the

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<sup>178</sup>*Id.* at 20 ("[T]he Court finds that the many pronouncements of the Ohio Supreme Court stand for the proposition that in determining whether a municipal ordinance . . . is in 'conflict' with the general laws of Ohio, the test whether [is] whether the [] ordinance permits or licenses that which the Ohio statutes forbid and prohibit and vice versa. In this case, the Court finds that the challenged ordinance neither permits or licenses that which the laws of the Ohio General Assembly either forbid or prohibit and vice versa.").

<sup>179</sup>*Id.* at 26-29 (stating that the court did have some concerns over possible federal due process and equal protection issues and therefore delayed ruling on defendants' motion for a judgment on the pleadings). The court also denied plaintiff Mendenhall's motion to remand the case back to Common Pleas Court of Summit County. *Id.* at 29.

<sup>180</sup>*Daniel Moadus, Jr. v. City of Girard*, No. 05-CV-1927, 5 (Ct. Com. Pl. Trumbull County July 6, 2006) (stating that the Ohio "Legislature has authorized civil, non-criminal penalties to be set by municipalities for parking tickets). The court noted that there had been no action by the State Legislature that would allow the extension of this policy to speeding. *Id.* at 7. The court held the challenged ordinance to violate Article XVIII, Section 3 of the Ohio Constitution. *Id.*

<sup>181</sup>*Mendenhall v. City of Akron*, No. 5:06CV139, No. 5:06CV154, 2006 U.S. Dist. LEXIS 86843, 9-10 (N.D. Ohio Nov. 30, 2006) ("The Court has also come to the conclusion that, in view of the ruling by the Trumbull County Court of Common Pleas in *Moadus v. City of Girard*, . . . it must VACATE that portion of the May 17, 2006 Memorandum Opinion wherein it concluded that the City of Akron has the power under Home Rule to adopt legislation calling for civil penalties for speeding violations detected by the automated system . . .").

<sup>182</sup>*Mendenhall v. City of Akron*, No. 5:06CV139, No. 5:06CV154, 2006 U.S. Dist. LEXIS 86839, 3 (N.D. Ohio Nov. 30, 2006) (The court noted that "[n]o controlling precedent of the Ohio Supreme Court answers this question, which is potentially dispositive of the two above-captioned cases).

<sup>183</sup>*See Id.*

<sup>184</sup>*Id.* at 3 (noting that at least three similar lawsuits are currently being litigated in different courts around Ohio).

Ohio Supreme Court notes that many of the lawsuits challenging camera enforcement have been stayed pending resolution of this question by the Ohio Supreme Court.<sup>185</sup> The question is not easy, and involves almost a century of Ohio Supreme Court jurisprudence that has followed the enactment of Amendment XVIII to the Ohio Constitution. This Paper urges the Ohio Supreme Court to conclude that municipal ordinances allowing speed and red-light cameras do conflict with the Home Rule Amendment.

## V. HOME RULE ARGUMENT

### A. Home Rule Under The Ohio Constitution

In its 200-year history, the state of Ohio has had only two constitutions, with the current Constitution being ratified in 1851.<sup>186</sup> In 1912, the people of Ohio amended their Constitution by adding article XVIII, commonly referred to as the Home Rule Amendment.<sup>187</sup> The amendment came about due to the efforts of Progressives during the 1912 constitutional convention.<sup>188</sup> Prior to the Amendment, municipalities could exercise only those powers that the Ohio General Assembly delegated to them.<sup>189</sup> The intention of those who drafted the Amendment was to accomplish three goals: 1) to allow municipalities the option to have different forms of municipal organization; 2) to give municipalities all the powers of local governance that did not conflict with the state's general laws; and 3) to define and expand municipal power in the operation of local utilities.<sup>190</sup>

The second goal, considered the most difficult objective, is found in section three of the Amendment, which outlines the powers that municipal corporations have. The section states: "Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws."<sup>191</sup> It

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<sup>185</sup>Memorandum of Defendants-Respondents The City of Akron and Nestor Traffic Systems, Inc. in Support of the Court's Jurisdiction to Answer the Certified Question of Law at 7, *Mendenhall v. City of Akron*, No. 2006-2265 (Ohio Dec. 28, 2006) ("Indeed, several judges have stayed proceedings until there is a decision on the certified question by this Court."). The brief quotes an order by Judge Timothy McMonagle of the Cuyahoga County Court of Common Pleas in *McNamara v. City of Cleveland*. *Id.* McMonagle stated: "The Court finds that the remaining issue in this case is identical to the question of law Certified to the Ohio Supreme Court on December 8, 2006, Case No. 06-2265. Therefore, this case is hereby placed on the inactive docket. The case may be reactivated only upon motion of a party after the Ohio Supreme Court issues a ruling in Case No. 06-2265." *Id.*

<sup>186</sup>STEVEN H. STEINGLASS & GINO J. SCARSELLI, *THE OHIO STATE CONSTITUTION: A REFERENCE GUIDE* 1 (2004).

<sup>187</sup>*Id.* at 327.

<sup>188</sup>*Id.*

<sup>189</sup>*Id.*

<sup>190</sup>GEORGE D. VAUBEL, *MUNICIPAL HOME RULE IN OHIO* 14-15 (1978) (stating that these goals resulted from a compromise between those wanting the state to remain superior and those desiring that municipalities have complete sovereignty).

<sup>191</sup>OHIO CONST. art. XVIII, § 3.

“defines the relationship between municipal and state power” and gives a municipality the power to exercise its powers of self-government.<sup>192</sup> This section is the most litigated of the Home Rule Amendment, and in the years following its adoption the Ohio Supreme Court has written many opinions explaining and applying the section.<sup>193</sup>

### B. How Cleveland’s Traffic Cameras Violate Home Rule

The Ohio Supreme Court in *City of Canton v. State* explained the three-part test used to determine when a local ordinance is void under the Home Rule Amendment.<sup>194</sup> The court explained that: “[a] state statute takes precedence over a local ordinance when (1) the ordinance is in with the statute, (2) the ordinance is an exercise of the police power, rather than of local self-government, and (3) the statute is a general law.”<sup>195</sup> In *Village of Struthers v. Sokol*, the Supreme Court explained the application of the first element, the “conflict” test.<sup>196</sup> According to *Sokol*, an ordinance conflicts with a statute when “the ordinance permits or licenses that which the statute forbids and prohibits and vice versa.”<sup>197</sup> This definition is the most widely cited; however, the Ohio Supreme Court has offered others.<sup>198</sup> Under the second prong of the test, if a municipal ordinance is not an exercise of the police power, it is valid under the delegated power of local self-government.<sup>199</sup> In order to constitute a

<sup>192</sup>*Id.*

<sup>193</sup>OHIO CONST. art. XVIII, § 3 (West 2006). The editor’s comments to this compilation of the Ohio Constitution states that “[t]his section is and has been productive of much litigation to define its parameters.” *Id.* Much of the litigation involves determinations of what the various terms actually mean. *Id.*

<sup>194</sup>766 N.E.2d 963, 966 (Ohio 2002). *Canton* involved a city code that prohibited the use of mobile homes as principal or accessory structures for residential use. *Id.* at 965. The city of Canton “amended its code to include ‘manufactured homes’ within the definition of ‘mobile homes,’” thus prohibiting manufactured homes within city limits. *Id.* However, the Ohio legislature had recently enacted a law that prohibited cities from banning manufactured homes. *Id.* The court held that the state law was not a general law, and struck it down for violating the home-rule provision of the Ohio Constitution. *Id.* at 969.

<sup>195</sup>*Id.* at 966.

<sup>196</sup>*Village of Struthers v. Sokol*, 140 N.E. 519, 521 (Ohio 1923). *Sokol* involved a municipal ordinance that prohibited the sale of intoxicating liquor. *Id.* at 520. The penalties provided by the state law were much more severe than those established by the ordinance. *Id.* at 521. Applying the test, the court held that the ordinances did not permit something that the state law prevented and vice versa, therefore the municipal ordinances were not in conflict with the state laws. *Id.* at 522.

<sup>197</sup>*Id.*

<sup>198</sup>*See, e.g., City of Cleveland v. Betts*, 154 N.E.2d 917, 919 (stating that the *Struthers* test is not exclusive). The Court found that although the ordinance did not meet the definition from *Struthers*, it did “contravene the expressed policy of the state with respect to crimes by deliberately changing an act which constitutes a felony under state law into a misdemeanor, and this creates the kind of conflict contemplated by the Constitution.” *Id.* at 919.

<sup>199</sup>*Village of Beachwood v. Bd. of Elections of Cuyahoga County*, 148 N.E.2d 921, 923 (Ohio 1958) (stating that if a local regulation affects only the municipality, it is within the municipality’s power of local self government).

general law under the third prong, the statute must “appl[y] to all parts of the state alike.”<sup>200</sup> The municipality may still adopt and enforce a local ordinance that covers the same subject as a general law; it simply cannot adopt an ordinance that conflicts with the general law.<sup>201</sup>

#### 1. Cleveland’s Ordinance Conflicts with the Traffic Statutes of the Ohio Revised Code

Under the *Sokol* test alone, Cleveland’s traffic cameras probably would not be found to conflict with the traffic statutes of the Ohio Revised Code.<sup>202</sup> On their face, both the statutes and ordinances prohibit speeding.<sup>203</sup> However, in a later case, the Ohio Supreme Court went beyond the *Sokol* test. In *Cleveland v. Betts* the Court struck down an ordinance that made conduct a misdemeanor that the state statute ruled was a felony.<sup>204</sup> The court began by reciting the *Sokol* test but then contended “surely this test is not exclusive.”<sup>205</sup> Although there was no conflict under *Sokol*, the court determined that the ordinance did “contravene the expressed policy of the state with respect to crimes by deliberately changing an act which constitutes a felony under state law into a misdemeanor.”<sup>206</sup> They then decided that this created the exact type of conflict that the Constitution forbids.<sup>207</sup> With Cleveland’s ordinance, the conflict is even greater. Cleveland takes action that the state says is criminal and turns it into a civil violation.<sup>208</sup>

A case decided by the Mahoning County Court of Appeals used the *Betts* test to find conflict between an ordinance that made conduct criminal that the state law classified as a civil violation.<sup>209</sup> It relied partly on the Supreme Court’s decision in *Niles v. Howard*, which restated the *Betts* proposition that a law that changed an offense classified as a misdemeanor at state law to a felony at the municipal level was unconstitutional.<sup>210</sup> Under *Niles*, a city ordinance that increased the penalty from a second to first-degree misdemeanor would be constitutional. The Ohio

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<sup>200</sup>*Schneiderman v. Sesanstein*, 167 N.E. 158, 159 (Ohio 1929).

<sup>201</sup>*Id.*

<sup>202</sup>*Sokol*, 140 N.E. at 521

<sup>203</sup>*Id.*

<sup>204</sup>*Betts*, 154 N.E.2d at 919

<sup>205</sup>*Id.*

<sup>206</sup>*Id.*

<sup>207</sup>*Id.*

<sup>208</sup>*See* discussion *supra* Part III.B.

<sup>209</sup>*State v. Rosa*, 128 Ohio App. 3d 556, 561 (Ohio Ct. App. 1998) (holding that Youngstown’s deceptive acts or practices ordinance was unconstitutional).

<sup>210</sup>466 N.E.2d 539, 541 (Ohio 1984). The court explained that “[I]f the *Niles* ordinance had altered the degree of punishment to a felony rather than a misdemeanor it would have been unconstitutional. However, since the ordinance only increased the penalty from a lesser misdemeanor to a first degree misdemeanor, it is not in conflict with the general laws of Ohio.” *Id.*



Supreme Court has followed this distinction in prior cases.<sup>211</sup> In *Toledo v. Best*, the court explained, “[w]here the only distinction between a state statute and a municipal ordinance, proscribing certain conduct and providing punishment therefore, is to the penalty only but not to the degree . . . of the offense, the ordinance is not in conflict with the general law of the state.”<sup>212</sup> Cleveland’s ordinances do not simply change the degree of the offense, they change the basic classification of an offense from criminal to civil.<sup>213</sup> If a court found conflict between classifying a civil offense at state law as a criminal offense at the municipal level,<sup>214</sup> the inverse should also be true and Cleveland’s ordinance conflicts with the Ohio Constitution.

The only traffic-related conduct that the State Legislature has authorized local authorities to penalize as civil infractions are parking violations under Chapter 4521 of the Revised Code.<sup>215</sup> The Legislature has not extended this practice to the enforcement of traffic violations, and in fact, the only bill to propose such an action failed to pass either house of the General Assembly.<sup>216</sup> The logical inference that can be drawn is that the Legislature did not want to give local authorities the ability to enforce traffic violations civilly.<sup>217</sup> Further support can be drawn from the fact that House Bill 56, which both houses did pass, did not allow for civil enforcement of moving traffic violations.<sup>218</sup> It would only have allowed camera enforcement if a police officer personally witnessed the event and wrote the ticket.<sup>219</sup>

The conflict appears very clear when considering the purpose behind the Ohio Revised Code’s regulation of speeding offenses.<sup>220</sup> The fact that the Ohio Revised Code makes speeding a criminal offense, and more importantly assesses points against an offender’s driving record, suggests that the purpose behind the statutes are to make the roads safer for Ohio drivers.<sup>221</sup> A speeding or red-light violation, under the Revised Code, typically results in the assessment of two points to a driver’s record.<sup>222</sup> If a person accumulates twelve points within a two-year

<sup>211</sup>See *Toledo v. Best*, 176 N.E.2d 520 (Ohio 1961).

<sup>212</sup>*Id.* at 521.

<sup>213</sup>See *supra* Part IV.B.

<sup>214</sup>See *Rosa*, 128 Ohio App. 3d at 561.

<sup>215</sup>See, e.g., OHIO REV. CODE ANN. §§ 4521.01-4521.10 (LEXISNEXIS 2006) (explaining the powers of local authorities in establishing parking ordinances). Section 4521.02 states that a local authority “may specify that a violation of the regulatory ordinance, resolution, or regulation shall not be considered a criminal offense for any purpose.” *Id.* at § 4521.02.

<sup>216</sup>See *supra* text accompanying Part IV C. (explaining that the General Assembly failed to pass Bill 241, which would have allowed municipalities to adopt civil enforcement of traffic violations).

<sup>217</sup>This is an inference that the author has drawn. There is no source indicating the reasons that House Bill did not pass.

<sup>218</sup>See *supra* Part IV.C.

<sup>219</sup>See *supra* Part IV.C.

<sup>220</sup>See, e.g., OHIO REV. CODE ANN. § 4511.21.

<sup>221</sup>*Id.*

<sup>222</sup>OHIO REV. CODE ANN. § 4510.036 (LEXISNEXIS 2006).

period, their license is suspended by the state<sup>223</sup> for a period of six months.<sup>224</sup> The obvious purpose of these statutes is to keep the roads safe from reckless drivers.<sup>225</sup> Civil enforcement of speeding or red-light offense by means of a camera system does little to make the roads safer, because it does not take violators off the road.<sup>226</sup>

An established canon of statutory interpretation is *expressio unius est exclusio alterius*. This rule of interpretation stands for the proposition that a statute “which provides that a thing shall be done in a certain way carries with it an implied prohibition against doing that thing in any other way.”<sup>227</sup> In the absence of evidence of contrary legislative intent or policy, the method of enforcement listed in the statute is presumed to be exclusive.<sup>228</sup> One treatise on statutory construction explains that “[l]egislative prescription of a specified sanction for noncompliance with statutory requirements has been held to exclude the application of other sanctions.”<sup>229</sup> The Ohio Supreme Court has applied this canon of statutory construction to home rule cases.<sup>230</sup> Therefore, the court has accepted this canon of construction, and it can be applied to the Ohio Revised Code’s treatment of traffic offenses.<sup>231</sup>

When this canon is applied to Ohio’s laws on speeding and red-light violations, it is clear that Cleveland’s traffic cameras conflict with the express will of the Ohio Legislature and violates the Ohio Constitution. The fact that House Bill 241 (which would have allowed the use of traffic cameras) was not passed by the Ohio Legislature implies that legislators did not want to give municipalities the right to

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<sup>223</sup>*Id.* § 4510.037 (stating that if a driver receives more than 12 points in a two year period, the registrar imposes a Class D suspension of his or her driver’s license).

<sup>224</sup>*Id.* § 4510.02(B) (4) (LEXISNEXIS 2006) (stating that the period of time for a Class D suspension is six months).

<sup>225</sup>*Id.*

<sup>226</sup>*Id.*

<sup>227</sup>NORMAN J. SINGER, STATUTES AND STATUTORY CONSTRUCTION ch. 46 (6th rev. ed., West 2000).

<sup>228</sup>*Id.* at 314-15 (explaining that this rule is subordinate to the primary rule that it is the intent of the legislature which governs a statute’s interpretation).

<sup>229</sup>*Id.* at 314.

<sup>230</sup>*See State ex rel. Paluf v. Feneli*, 630 N.E.2d 708, 712 (Ohio 1994). This case involved a challenge to the Highland Heights City council’s refusal to confirm the mayor’s appointment of Mr. Paluf to the position of city law director. *Id.* at 709. The court of appeals had relied on *expressio unius est exclusio alterius* in holding that since the city’s charter specified that the law director be admitted to the practice of law in Ohio, the citizens expressed an intent that admittance to the practice of law be the only qualification necessary. *Id.* The court of appeals further held that the city council could only refuse an appointment to law director if the candidate was not admitted in Ohio. *Id.* The supreme court overturned the lower court’s decision and held that the city council could refuse confirmation of Paluf for reasons beyond the one specific requirement in the charter. *Id.* at 712-13. Although this case does not mention red light cameras or conflict between a state law and a municipal ordinance, it nonetheless signals the supreme court’s acceptance of this canon of construction. *See generally id.*

<sup>231</sup>*See generally id.*

enforce traffic violations as a civil penalty.<sup>232</sup> Furthermore, the bill that the Ohio Legislature actually passed, only to have it vetoed by the outgoing governor, provides evidence that the use of these cameras runs contrary to the desire of the state's lawmakers.<sup>233</sup> The O.R.C. explicitly states that speeding and red-light offenses should be *criminal* violations, and makes no mention of civil penalties for these offenses.<sup>234</sup> The inclusion of these offenses as criminal violations for which points are to be assessed to an offender's driving record, necessarily excludes civil enforcement. In fact, the only offense for which the O.R.C. allows municipalities to enforce civilly, is parking violations.<sup>235</sup> Only parking violations are able to be enforced civilly, thus red-light and speeding violations must be enforced as criminal violations. Since Cleveland's ordinance attempts to enforce red-light and speeding violations as civil offenses, it violated the express and implied pronouncement of the Ohio Legislature on the subject. Thus, Cleveland's ordinance is in conflict with the Ohio Revised Code, and therefore violates Article XVIII of the Ohio Constitution.

## 2. Red-light Camera Ordinances are an Exercise of the Police Power by Municipalities.

An important step in any home rule analysis is determining "whether the matter in question involves an exercise of local self-government or an exercise of local police power."<sup>236</sup> In *Village of Linndale v. State*, the court noted that speeding laws were an exercise of the state's police power.<sup>237</sup> It is clear that Cleveland's traffic cameras are an attempt to exercise the police power retained by the legislature of the state.<sup>238</sup> Cleveland is attempting to regulate the safety of its citizens on the city's streets and highways.<sup>239</sup> This regulation of the police power would be valid if it did not conflict with the state's traffic laws because, as noted in *Linndale*, municipalities can exercise their police power as long as there is no conflict between the statute and the ordinance.<sup>240</sup> As explained above, there is conflict between the state laws and municipal ordinance.<sup>241</sup> Therefore, the Ohio Supreme Court should find Cleveland's ordinance to be an unlawful exercise of the police power.<sup>242</sup>

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<sup>232</sup>See *supra* notes 141-45 and accompanying text.

<sup>233</sup>See *supra* notes 145-63 and accompanying text.

<sup>234</sup>See *supra* notes 127-28.

<sup>235</sup>See, e.g., OHIO REV. CODE ANN. §§ 4521.01-4521.10 (LEXISNEXIS 2006)

<sup>236</sup>*Twinsburg v. State Emp. Relations Bd.*, 530 N.E.2d 26, 28 (Ohio 1988).

<sup>237</sup>706 N.E.2d 1227, 1229 (Ohio 1999) (holding that the state law and the municipal ordinance did not conflict, thus it was a valid exercise of the municipality's police power).

<sup>238</sup>See discussion *supra* Part IV.B.

<sup>239</sup>See discussion *supra* Part IV.B.

<sup>240</sup>706 N.E.2d at 1229.

<sup>241</sup>See *supra* text accompanying notes 202-26.

<sup>242</sup>See *supra* text accompanying notes 202-26.

### 3. State Traffic Statutes are General Laws

In *Schneideman v. Sesanstein*, the Ohio Supreme Court struck down a municipal speeding ordinance as conflicting with a section of the Ohio General Code.<sup>243</sup> The court explained that general laws were enacted by the state legislature “to safeguard the peace, health, morals, and safety, and to protect the property of the people of the state.”<sup>244</sup> The court explained that general laws apply uniformly to all parts of the state.<sup>245</sup> Most importantly, the court held that Ohio laws regulating speed limits were general laws for purposes of the Home Rule Amendment.<sup>246</sup> In a later case, the court held that as a rule of law

[t]he words ‘general laws’ as set forth in Section 3 of Article XVIII of the Ohio Constitution means statutes setting forth police, sanitary or similar regulations and not statutes which purport only to grant or to limit the legislative powers of a municipal corporation to adopt or enforce police, sanitary or other regulations.<sup>247</sup>

Under this definition, a state speeding law criminalizing speeding violations is a statute that sets forth police regulations.<sup>248</sup> The key fact in support of this argument is that speeding violations are a crime under the Revised Code.<sup>249</sup> Local authorities should be able to decide how to punish the crime, but should not be able to make speeding a civil offense.

As the Trumbull County Court of Pleas explained in *Moadus*, “among the ‘steadfast parameters’ [the Supreme Court] had established for determining when a law is a general law was that statutory schemes should be viewed ‘in their entirety, rather than a single statute in isolation,’ with an eye toward determining whether the statutes in question promoted ‘statewide uniformity.’”<sup>250</sup> Viewed in their entirety, the statutes in the Ohio Revised Code regulating the enforcement of traffic violations

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<sup>243</sup>167 N.E. 158, 161 (Ohio 1929) (holding that a municipal ordinance concerning speed limits was in conflict with a state law).

<sup>244</sup>*Id.* at 159.

<sup>245</sup>*Id.* (“They apply to all parts of the state alike. Municipalities may adopt and enforce local regulations covering the same subject so long and so far as the same are not in conflict with general laws.”).

<sup>246</sup>*Id.* The court noted that the speeding laws were “safety regulations enacted in the interest of, and for the protection of, the public, and they definitely fix and prescribe the standard of care that must be exercised in the operation of automobiles throughout the state.” *Id.*

<sup>247</sup>*West Jefferson v. Robinson*, 205 N.E.2d 382, paragraph three of the syllabus (Ohio 1965) (holding that a state law that prohibited municipalities from requiring licenses to sell products was not a general law).

<sup>248</sup>*See, e.g.*, OHIO REV. CODE ANN. § 4511.21 (LEXISNEXIS 2006) (setting forth the speed limits applicable to various highways and state routes and mandating that points be assessed whenever a violation is more than five miles over the applicable speed limit).

<sup>249</sup>*Id.* (explaining that a violation of this statute shall be classified as a misdemeanor).

<sup>250</sup>*Daniel Moadus, Jr. v. City of Girard*, No. 05-CV-1927, 3 (Ct. Com. Pl. Trumbull County July 6, 2006) (quoting *City of Canton v. State*, 766 N.E.2d 963, 966-67 (Ohio 2002)).

are without question a matter of statewide authority. They set up a uniform system of speed limits throughout the state and insist that violations of the statutes be punished as misdemeanors.<sup>251</sup> The statutes governing traffic violations do not authorize the civil penalties. Since the Code is so explicit about the regulation of traffic violations, it is difficult to make the argument that the City of Cleveland should be able to determine how they should be enforced.

Last year, the Ohio Supreme Court handed down two important decisions on home rule.<sup>252</sup> The first, *American Financial Services Association v. Cleveland*, found that a local ordinance that outlawed certain types of “predatory lending” violated the Ohio Constitution.<sup>253</sup> The second decision, *Cincinnati v. Baskin*, found no conflict between a local ordinance on semi-automatic rifle possession and the state statute on the same subject.<sup>254</sup> These decisions may help predict how the current court would handle a challenge to Cleveland’s traffic cameras. In *American Financial Services*, the court dealt with a Cleveland ordinance that was stricter on predatory lending than the state statute.<sup>255</sup> The court explained the rationale behind the statewide-concern doctrine and noted that a fundamental principle of Ohio law is that a municipality may not infringe on a matter of general statewide concern.<sup>256</sup> The court further noted that the statewide concern doctrine falls within the second prong of the *Canton* test.<sup>257</sup> The court concluded that the General Assembly had expressed its intent to preempt any municipal ordinances on predatory lending.<sup>258</sup> The state’s statutes were

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<sup>251</sup>*Id.*

<sup>252</sup>*Am. Fin. Servs. Ass’n v. Cleveland*, 858 N.E.2d 776 (Ohio 2006); *Cincinnati v. Baskin*, 859 N.E.2d 514 (Ohio 2006).

<sup>253</sup>858 N.E.2d at 790 (holding that the section of the Ohio Revised Code dealing with predatory lending expressly preempts local regulation of the practice).

<sup>254</sup>859 N.E.2d at 519.

<sup>255</sup>858 N.E.2d at 779. The court explained that Ohio passed a law (O.R.C. 1.63) in 2002 that required lenders to make certain disclosures to mortgagors on certain types of loans. *Id.* Loans covered by the law had interest rates ten percentage points greater than the yield on Treasury securities or had pints and fees that exceed eight percent of the loan or \$400. *Id.* The Cleveland ordinance prohibited loans with an interest rate between four and a half and eight percentage points over Treasury securities and required balloon payments, excessive financing, and increasing interest rates. *Id.* The eight district court of appeals certified two questions to the Ohio Supreme Court: “I: Whether R.C. 1.63 is a general law for purposes of Ohio’s home rule amendment. II: Under a home rule analysis, whether local predatory lending ordinances that impose stricter requirements on lending transactions conflict with the state’s predatory lending statutes. *Id.* at 780.

<sup>256</sup>*Id.* at 781. The court noted that state power is “retained in those areas where a municipality would in no way be affected or where state dominance seemed to be required.” *Id.* The question for Cleveland’s cameras is whether Ohio intended to retain this “exclusive state power.” *Id.*

<sup>257</sup>*Id.* at 782. “[C]ourts should consider the doctrine when deciding whether ‘the ordinance is an exercise of local self government.’” *Id.*

<sup>258</sup>*Id.*

found to be general laws, and Cleveland's ordinances were in conflict and struck down by the court.<sup>259</sup>

The court decided *Baskin* eighteen days later, upholding Cincinnati's ordinance and distinguishing its decision in *American Financial Services*.<sup>260</sup> The court began its analysis by noting that the ordinance was an exercise of the police power, not local self-government, and therefore could be struck down if it conflicted with a general law.<sup>261</sup> The court then established that the section of the O.R.C. in question was a general law because it "prescribes a rule of conduct upon citizens generally."<sup>262</sup> However, the court concluded that the statute was not in conflict under the *Sokol* test, because it did not prohibit what the state permits.<sup>263</sup> Interestingly, neither case mentioned the test set forth in *Betts*.<sup>264</sup> These cases will likely prove crucial to an Ohio Supreme Court decision on traffic cameras, because they are the court's most recent statement on home rule.

## VI. CONCLUSION

For the reasons set forth above, it is clear that the current use of traffic cameras by the City of Cleveland violates the Home Rule Amendment, and should therefore be struck down by the Ohio Supreme Court. The three-prong test from *Canton* makes clear that they are unconstitutional.<sup>265</sup> First, the ordinance conflicts with Ohio statutes because they change the entire nature of the offense.<sup>266</sup> Instead of being a crime, and affording the accused the necessary rights under the constitution, the Cleveland's ordinances turn an offense into a civil penalty.<sup>267</sup> Examining the history of the red-light camera litigation in the General Assembly makes it clear that the legislature has manifested an intent to keep traffic violations as a criminal offense.<sup>268</sup>

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<sup>259</sup>*Id.* at 784-86. Ultimately, the court struck the ordinances down using the *Sokol* test because the ordinances sought to prohibit loans which the General Assembly had allowed. *Id.* at 786.

<sup>260</sup>*Cincinnati v. Baskin*, 859 N.E.2d 514, 519 (Ohio 2006) (explaining that *Baskin* is distinguishable because the Cincinnati ordinance did not regulate or prohibit conduct authorized by the state statute. *Id.*

<sup>261</sup>*Id.* at 516-17.

<sup>262</sup>*Id.* at 517 (stating that the statute met the *Canton* definition of a general law).

<sup>263</sup>*Id.* at 519 ("In the absence of any limiting provision or declaration to the contrary, we conclude that the General Assembly intended to allow municipalities to regulate the possession of lower-capacity semiautomatic firearms in accordance with local conditions . . . ."). The court then state that the General Assembly only required that municipalities not allow possession of a semiautomatic firearm that could fire more than 31 rounds without reloading. *Id.*

<sup>264</sup>*See generally* *Am. Fin. Servs. Ass'n v. Cleveland*, 858 N.E.2d 776 (Ohio 2006); *Cincinnati v. Baskin*, 859 N.E.2d 514 (Ohio 2006) (nowhere in either opinion is the *Betts* test mentioned).

<sup>265</sup>*Canton*, 766 N.E.2d at 966.

<sup>266</sup>*See supra* text accompanying notes 202-26.

<sup>267</sup>*See supra* text accompanying notes 129-38.

<sup>268</sup>*See supra* text accompanying notes 139-72.

It decided against passing legislation that would have allowed for civil enforcement of traffic violation.<sup>269</sup> Furthermore, it has only allowed civil enforcement of motor vehicle laws in the area of parking laws.<sup>270</sup> Under the second prong from *Canton*, speed limits and traffic violations are clearly within the police power of the state.<sup>271</sup> Finally, under the third prong of *Canton*, the traffic statutes of the Ohio Revised Code are general laws.<sup>272</sup> For these reasons, the Ohio Supreme Court should find that municipal camera ordinances are unconstitutional in Ohio.

The City of Cleveland has a couple of options to deal with the problem raised by this Note. One option would be simply to rid the city of its traffic cameras. Instead of relying on cameras to generate revenue for the city's budget gap, the city's administration could focus on developing alternative ways to raise revenue. This is what Councilman Joe Cimperman originally suggested when the camera program was proposed.<sup>273</sup> This proactive approach would be the best option, because it would demonstrate to the citizens of Cleveland that the government is addressing their budgetary problems head-on and trying to find real solutions. Another option might be to allow Cleveland's voters to decide whether or not to retain the cameras in their municipality, as the City of Steubenville, Ohio did this past November.<sup>274</sup> An overwhelming 76.2% of the town's citizens voted to ban the use of red-light cameras in the town, following the trend of voters nationwide.<sup>275</sup> In fact, any time a municipality in the United States has been asked to vote on the use of camera enforcement, the bill has been defeated.<sup>276</sup> A final option would be simply to wait until the Ohio Supreme Court hands answers the certified question from *Mendenhall*. As this Note attempts to demonstrate, the relevant authority should lead the court to conclude that traffic cameras violate the Home Rule Amendment of the Ohio Constitution. This option would be the worst approach, because it would suggest an inflexible city government that is slow to react and unoriginal in solving its budgetary problems. Whichever option Cleveland takes, it is clear that its traffic cameras violate the Ohio Constitution and must be removed.

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<sup>269</sup>See *supra* text accompanying notes 139-44.

<sup>270</sup>See, e.g., OHIO REV. CODE ANN. §§ 4521.01-4521.10 (LEXISNEXIS 2006).

<sup>271</sup>See *supra* text accompanying notes 236-42.

<sup>272</sup>See *supra* text accompanying notes 243-64.

<sup>273</sup>See *supra* note 13 and accompanying text.

<sup>274</sup>See [thenewspaper.com](http://www.thenewspaper.com), *Steubenville, Ohio Voters to Decide Speed Camera Fate*, <http://www.thenewspaper.com/news/14/1411.asp> (last visited Dec. 1, 2006) (stating that "[a] 'Yes' vote on Measure Ten will allow speed cameras to continue ticketing motorists and a 'No' vote will cause the devices to be removed.>").

<sup>275</sup>See [thenewspaper.com](http://www.thenewspaper.com), *Steubenville, Ohio Voters Overwhelmingly Reject Speed Cameras: Steubenville, Ohio becomes the fourth US community that has voted on and rejected photo radar*, <http://www.thenewspaper.com/news/14/1433.asp> (last visited Feb. 1, 2007) (stating that the town's voters rejected against photo enforcement in a referendum on the city's camera program).

<sup>276</sup>*Id.* (stating that Steubenville is the fourth municipality nationwide to vote against camera enforcement). The other cities are Batavia, Illinois; Peoria, Arizona; and Anchorage, Alaska. *Id.*