

CAUSE NO. CV1307627

KEEP CLEVELAND SAFE § IN THE DISTRICT COURT
v. § LIBERTY COUNTY, TEXAS
THE CITY OF CLEVELAND, §
TEXAS, NIKI COATS, MAYOR, §
AND KELLY MCDONALD, CITY § 253RD JUDICIAL DISTRICT
SECRETARY §

ORDER ON TEMPORARY INJUNCTION

On February 19, 2014, the Court conducted an oral hearing on Defendants' Plea to the Jurisdiction and on Plaintiff's Request for Temporary Injunctive Relief. The Parties received notice and appeared at the hearing. The Court considered the Parties' briefing, attached exhibits, and their arguments. Plaintiff's Exhibits A thru J were admitted into evidence at the hearing. The Court holds that it has subject matter jurisdiction over all of the parties and all of the Plaintiff's claims. The Court further holds that the Defendants are not immune from this suit, and that Plaintiff is entitled to injunctive relief. Accordingly, the Court denies Defendants' Plea to the Jurisdiction and grants Plaintiff's request for injunctive relief as set forth below.

The Court issues a temporary injunction because the Court finds that the Plaintiff is likely to prevail on the merits of the case based on the following:

1. A document entitled, "The Petition to Ban Red Light Cameras" was

submitted to the Cleveland City Secretary on August 19, 2013 (the "Petition"). The Petition seeks to mandate the City Council of the City of Cleveland, Texas, pursuant to Section 9.004 of the Texas Local Government Code, to call an election for the purpose of amending the Charter of the City of Cleveland (the "Cleveland Charter"). The Petition does not comply with Section 8.05 of the Cleveland Charter. Specifically, Section 8.05 of the Cleveland Charter sets forth the exclusive procedures under which the Charter may be amended. That provision is valid and enforceable as a matter of law. Section 9.004 of the Texas Local Government Code does not preempt Section 8.05 of the Cleveland Charter.

2. The Petition does not comply with any other provision of the Cleveland Charter, including Sections 9.01 and 9.02, which define the initiative and referendum powers of the citizens of Cleveland. The Petition does not constitute an initiative. The Petition does not constitute a referendum.

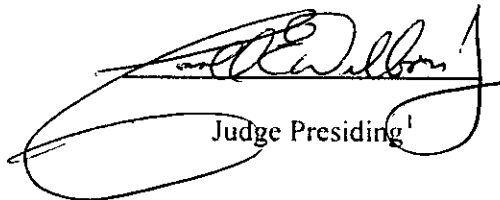
3. Because the Petition was not in compliance with the Cleveland Charter, the Cleveland City Council lacked the authority to call an election on it. Accordingly, Ordinance 1029, passed by the Cleveland City Council on August 29, 2013, and calling for an election on the Petition (the "First Ordinance") is void and unenforceable as a matter of law. Likewise, Proposition (or measure) 4 of Section 4 of Ordinance 1043, which calls for an election on the Petition, and which passed by the Cleveland City Council on February 11, 2014 (the "Second Ordinance"), is

also void and unenforceable as a matter of law.

4. The First Ordinance and Proposition 4 of the Second Ordinance are also void and unenforceable as a matter of law because the Texas Legislature has expressly delegated the exclusive authority to implement red-light-camera enforcement programs to the governing body of a local government, in this instance, the Cleveland City Council. TEX. TRANSP. CODE § 707.002. That exclusive grant of power removes the subject of red-light-camera enforcement programs from the field in which citizen petitions can operate. The subject matter of the Petition, therefore, falls outside the field for which the initiatory process exists. Accordingly, the Petition did not authorize the Cleveland City Council to call for an election and the First Ordinance and Proposition 4 of the Second Ordinance are void and unenforceable as a matter of law.

5. The Petition also seeks to render inoperative and to temporarily prevent the adoption of any subsequent City Council ordinance that seeks to ban by charter amendment any red-light-camera enforcement program. Initiative, referendum and charter amendment powers do not permit the repeal or prohibition of a measure that protects the health, safety and welfare of all citizens at the behest of individual voters. For this reason, the Cleveland City Council was not authorized to call for an election on the Petition. Accordingly, the First Ordinance and Proposition 4 of the Second Ordinance, calling for an election on the Petition,

Signed and entered on this 6th day of March, 2014.



Judge Presiding¹

**Judge Carroll Wilborn, Jr
Sitting by Assignment**

AGREED AS TO BOTH FORM AND SUBSTANCE:

ANDY TAYLOR & ASSOCIATES, P.C.

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¹ Judge Welborn sat pursuant to assignment order issued by Regional Presiding Judge Olen Underwood, and without objection by any party.

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FILED
at 2:12 o'clock P M

MAR 11 2014

DONNA G. BROWN 6
Clerk, District Court, Liberty, TX
BY [Signature] DEPUTY