



**Arrowhead Justice Court
14264 West Tierra Buena Lane, Surprise, Arizona 85374
(602) 372-2000**

Judge John C. Keegan

**In the matter of:
TRAFFIC CITATIONS ISSUED
PURSUANT TO ARS § 41-1722**

COURT ORDER

In June 2008 the Arizona legislature passed and the governor signed into law, as part of the state budget, ARS § 41-1722 which states:

41-1722. State photo enforcement system; penalties; fund

A. Notwithstanding any other law, the department shall enter into a contract or contracts with a private vendor or vendors pursuant to chapter 23 of this title to establish a state photo enforcement system consisting of cameras placed throughout this state as determined by the director to enforce the provisions of title 28, chapter 3, articles 3 and 6 relating to vehicle traffic and speed.

B. Notwithstanding any other law, the civil penalty or fine for a citation or a notice of violation issued pursuant to this section is one hundred sixty-five dollars and is not subject to any surcharge except the surcharge imposed by section 16-954. State photo enforcement citations shall not be included in judicial productivity credit calculations for fiscal year 2008-2009.

....

D. Notwithstanding any other law, if a person is found responsible for a civil traffic violation or a notice of violation pursuant to a citation issued pursuant to this section, the department of transportation shall not consider the violation for the purpose of determining whether the person's driver license should be suspended or revoked. A court shall not transmit abstracts of records of these violations to the department of transportation.

Paragraph A. creates a statewide photo radar system. Paragraph B sets the penalties for violations of Title 28, chapter 3, articles 3 and 6. Specifically Paragraph B refers to a "civil penalty or fine" of "one hundred sixty-five dollars and is not subject to any surcharge except the surcharge imposed by section 16-954" as the only penalty for a

violation of any citations issues pursuant to this law. This amounts to a net fine or penalty of \$181.50. Fines are penalties for criminal violations per Title 13, chapter 8; therefore this is the proscribed penalty for any violation, either civil or criminal in nature.

Paragraph D creates further exemptions for photo enforcement tickets to the point system established by the Motor Vehicle Division of the Department of Transportation for determination of suspending driving licenses.

Citations issued pursuant to ARS Title 28, chapter 3, articles 3 and 6 but not by the photo radar system typically are fined upon a determination of guilt or responsibility according to a county-wide bond schedule prepared annually by the presiding limited court judges in the county. For speeding cases the civil penalties and fines vary according to the statute cited and the defendant's speed relative to the posted speed. The bond schedule lists amounts only in whole dollars. Consequently a fine or civil penalty of \$181.50 would never be imposed, except if the citation was issued per ARS § 41-1722.

The Fourteenth Amendment to the Constitution of the United States states, in part:

1: ... nor shall any State deprive any person of life, liberty, or property, without due process of law; *nor deny to any person within its jurisdiction the equal protection of the laws.* (emphasis added)

Further, Article 2 of the Arizona State Constitution states:

13. Equal privileges and immunities: *No law shall be enacted granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which, upon the same terms, shall not equally belong to all citizens or corporations.* (emphasis added)

The clear meaning of these provisions of the Arizona and United States constitutions is that it is unconstitutional to create one set of laws that applies only to a particular class of defendant and not to other defendants based solely on the mechanism employed by the government. Given the not uncommon set of circumstances where two drivers are traveling on the same highway, at the same speed in excess of the speed limit, at the same time, in essentially the same location and are cited by the same agency into the same court, ARS § 41-1722 creates a distinction whereby one class of defendant is subjected to a significantly different array of penalties than another class of defendant based solely on the use of photo enforcement.

Now, therefore, it is the determination of this court that the provisions of ARS § 41-1722 are unconstitutional and unenforceable within the jurisdiction of this court.

December 9, 2008

((seal))

(original signed) _____

The Honorable John C. Keegan