

FILED
LUCAS COUNTY

2015 MAR 22 P 3:48

IN THE COURT OF COMMON PLEAS OF LUCAS COUNTY, OHIO

COMMON PLEAS OF LUCAS COUNTY
BENJAMIN D. WILSON
CLERK OF COURTS

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

This cause is before the Court upon Plaintiff's Motion for Preliminary Injunction to maintain the status quo regarding its automated traffic photo enforcement program and to prohibit the enforcement of S.B. 342, which would alter that program, until the Court rules on the merits of the case. For the reasons that follow, the Court finds Plaintiff's Motion well-taken and it is granted in part as to R.C. 4511.093(B)(1), 4511.095(A)(1), and 4511.0912 as specified in S.B. 342.

I. FACTS AND PROCEDURAL BACKGROUND

Automated traffic photo enforcement programs are used in cities to regulate speeding and red light violations without requiring the physical presence of a law enforcement officer. The creation and use of such automatic systems by municipalities for enforcement of local civil traffic laws have been approved by the Ohio Supreme Court.¹

¹*Mendenhall v. City of Akron*, 117 Ohio St.3d 33, 2008-Ohio-270, 881 N.E.2d 375 (2008).

E-JOURNALIZED

MAR 22 2015

The Toledo City Council unanimously passed Ordinance 125-99 providing for civil penalties for automated red light system violations on March 16, 1999 ("Ordinance"). The Ordinance was approved and signed by the Mayor of the City of Toledo ("City") on March 21, 1999. The Ordinance was codified as Section 313.12 of the Toledo Municipal Code "TMC 313.12"). It has been amended from time to time and presently also provides for photo enforcement of speed as well.

The stated purpose of the Ordinance was set forth as follows:

WHEREAS, the frequency of red light running within the city of Toledo continues to increase as the number of vehicles on our roads increases; and

WHEREAS, an automated red light camera system will assist the Toledo Police Department by alleviating the necessity for conducting extensive conventional traffic enforcement at heavily traveled, high risk intersections; and

WHEREAS, the adoption of an automated red light camera system will result in a significant reduction in the number of red light violations and/or accidents within the city of Toledo * * *.

TMC 313.12 provides for civil enforcement imposing monetary liability upon the owner of a vehicle for the vehicle's failure to comply with traffic signals at intersections and posted speed limits. The criminal justice system is not involved with the City's Photo Enforcement Program, the offender is not issued a criminal traffic citation by a police officer, the offender is not summoned to the traffic court in the Municipal Court, and points are not assessed against the driver or owner's driving record by the Bureau of Motor Vehicles.

Under the Ordinance and the City Photo Enforcement Program, if a vehicle passes through a red light at an intersection or exceeds the posted speed limit, the owner of the vehicle is issued a "notice of liability." The notice of liability includes photographs of the vehicle, the vehicle's speed (if applicable), and the amount of the civil penalty. If the owner of the vehicle receiving a notice of

liability wishes to challenge his or her notice of liability, the owner may complete and mail a notice of appeal within 21 days of the date listed on the notice of liability. In such cases, an independent hearing officer is assigned and conducts a review. Persons dissatisfied with the finding of the independent hearing officer may file an administrative appeal pursuant to R.C. Chapter 2506.

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

S.B. 342 includes R.C. 4511.093(B)(1) which now requires that a local authority "may utilize a traffic law photo-monitoring device for the purpose of detecting traffic law violations * * * only if a law enforcement officer is present at the location of the device at all times during the operation of the device and if the local authority complies with sections 4511.094 and 4511.095 of the Revised Code." By the express provisions of R.C. 4511.093(B)(1), the officer is required only to be "at the location of the device."

S.B. 342 also includes R.C. 4511.095(A)(1) which provides that cities must "conduct a safety study of intersections or locations under consideration for placement of fixed traffic law photo-monitoring devices." The safety study "shall include an accounting of incidents that have occurred in the designated area over the previous three-year period and shall be made available to the public upon request." Pursuant to R.C. 4511.095(A)(1), if there is a confluence of several deaths and injuries in a short period of time at a new intersection comprised of new streets in a new development, and the City wants to install new photo-enforcement equipment at that intersection, it has to wait three years to study that new intersection before it can install photo-enforcement devices, even if there is overwhelming evidence that the intersection is dangerous.

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

Also on March 13, 2015, the City filed a Motion for Temporary Restraining Order, Preliminary Injunction, and Permanent Injunction. Defendants filed an Opposition Brief on March 17, 2015, and Plaintiff filed its Reply on March 19, 2015.

A hearing was held on March 20, 2015. Since all parties had notice of, were present at, and participated in the hearing, it was treated as a combined hearing of both the temporary restraining order and the preliminary injunction.²

Lieutenant Jeff Sulewski, commander of the Toledo Police Traffic Section and Project Director of the Total Enforcement Program for the City of Toledo, testified at the hearing on behalf of the City. The Traffic Section oversees the investigations of all fatal and serious injury accidents that occur in the City of Toledo as well as participates in general traffic enforcement when possible. Currently, 11 patrol officers, 1 sergeant, and Lieutenant Sulewski are assigned to the day shift on the

²See *Turoff v. Stefanac*, 16 Ohio App.3d 227, 475 N.E.2d 189 (8th Dist. 1984).

Traffic Section but only 4 of the traffic officers can be committed to street duties at any one time. Eight patrol officers and one sergeant are assigned to the second shift. These 19 officers are assigned city-wide which covers approximately 85 square miles.

The Total Enforcement Program deals with the City's automated traffic photo enforcement of speeding and red light violations. According to Lieutenant Sulewski, the program allows them to specify and target problem areas within the City of Toledo where cameras are then installed along with signage notifying drivers that the program is being enforced in that area. The program started in 2001 with 10 cameras and has now expanded to 44 cameras. There are 28 fixed locations and 1 mobile speed van which is currently deployed in school zones.

The factors considered by the Enforcement Program when deciding where to install the cameras include citizen complaints, police officer observations, a study completed by the City of Toledo's Transportation Department - Traffic Engineering, and a test by the photo vendor using equipment that gathers data regarding the number of violations in a given area. The higher the number of violations, the higher the number of accidents and the greater chance for a serious accident.

Studies have also been done in some areas after a camera has been installed. For example, a pre- and post-camera study was performed at the Anthony Wayne Trail which is the only fixed location in the City of Toledo that is not an intersection. The Anthony Wayne Trail had a long history of speeding violations, drag racing, and critical traffic accidents. The pre-camera test showed 2,000 speeding violations in excess of 11 miles over the posted speed limit in one 12-hour period. The Enforcement Program's goal was to slow down the traffic pattern in that area. According to Lieutenant Sulewski, unless a police officer was there at all times, the speeding would continue; so

a camera was installed on the Anthony Wayne Trail. A post-camera study was performed once the camera was installed and operational which revealed that just under 5,000 speeding tickets were issued in about a 4-month period. Thus the presence of the camera totally altered that traffic pattern resulting in a much safer stretch of roadway today.

Lieutenant Sulewski stressed that the camera has the same effect of having a police officer sitting on the road in a police car - people automatically think about their driving, check their speed, and stop for red lights because they don't want to pay a fine. The presence of cameras has resulted in a decrease of 50 to 60 percent of the overall number of violations. In 2012 alone, 11 new cameras were installed at 6 locations which decreased the number of violations in those areas that year by an average of 70 percent. The downward trend in violations has continued at camera locations throughout the City of Toledo. In addition, another study showed that over a 10-year period the number of accidents has decreased from as low as 2 percent to as much as 17 percent average overall.

Lieutenant Sulewski further emphasized that the Toledo Police Department absolutely did not have the manpower to provide a police officer at every one of the 44 camera locations as would be required under S.B. 342. Moreover, in some camera locations there is no place to park the police car; the officer would either have to park on the sidewalk or stand on the sidewalk which would be unrealistic. The fixed camera locations would be rendered inoperable once S.B. 342 goes into effect. Based on Lieutenant Sulewski's 30 years of experience as a police officer and training in traffic enforcement, he opined that once the cameras are turned off, the speeding and red light violations will climb back up.

The City argues that it is entitled to a preliminary injunction because S.B. 342 plainly violates the City's right to Home Rule, as guaranteed by the Ohio Constitution, in that it is an impermissible attempt by the State to limit the powers of municipalities to adopt or enforce their own local police regulations. Defendants counter that the Plaintiff's request for injunctive relief is barred by the Doctrine of Laches and that Plaintiff's Motion fails to plead the elements necessary for an injunction.

II. DOCTRINE OF LACHES

Defendants initially argue that the City of Toledo's request for a preliminary injunction is barred by the doctrine of laches. The doctrine of laches is an equitable doctrine and is defined as "an omission to assert a right for an unreasonable and unexplained length of time, under circumstances prejudicial to the adverse party." *Jenkins v. Spinnaker Bay Condominium Association*, 6th Dist. Nos. OT-01-007, OT-01-006, 2002-Ohio-872, at *19-*20, citing *State ex rel. Meyers v. Columbus*, 71 Ohio St.3d 603, 605, 646 N.E.2d 173 (1995).

The party invoking the doctrine of laches "must establish, by a preponderance of the evidence, the following four elements: (1) unreasonable delay or lapse of time in asserting a right; (2) absence of an excuse for the delay; (3) knowledge, actual or constructive, of the injury or wrong; and (4) prejudice to the other party." *State ex rel. Doran v. Preble County Board of Commissioners*, 12th Dist. No. CA2012-11-015, 2013-Ohio-3579, ¶29, 995 N.E.2d 239, citing *State ex rel. Meyers v. Columbus*, 71 Ohio St.3d 603, 605, 646 N.E.2d 173 (1995).

While generally laches cannot be used to prevent claims by a governmental entity, "the doctrine of laches may be imputed upon a unit of government serving one public constituency which is suing another unit of government serving a different public constituency, as both parties have a

duty to enforce the law and preserve the public rights, revenues, and property from injury and loss."

Id. at ¶¶20-22.

Defendants argue that Plaintiff has failed to assert its right to injunctive relief in a timely manner. Defendants note that S.B. 342 was signed into law on December 19, 2014. It is scheduled to take effect on March 23, 2015. The Defendants contend that the City of Toledo's filing of March 13, 2015, leaves only 9 days for the State to respond to the 21-page motion, for both sides to argue their case at a hearing, and for this Court to issue a decision. Defendants additionally argue that their ability to meaningfully respond to the Plaintiff's pleading has been curtailed. In support, Defendants cite to *Foster v. Cuyahoga County Board of Elections*, 53 Ohio App.2d 213, 373 N.E.2d 1274 (8th Dist. 1977), wherein an injunctive relief action was filed which would impact the placement of a candidate for elective office on a ballot.

The City of Toledo has cited numerous cases wherein delays exceeding the one in this matter were found to be acceptable. The City of Toledo also noted that there was an unanticipated leadership transition in city government during this period of time. This Court does not find Defendants' cited case persuasive on this point. The enjoinder as to the placement of a candidate on an election ballot requires heightened scrutiny as "extreme diligence and the promptest of action" are required when a ballot is at issue. *State ex rel. Schwartz v. Brown*, 176 Ohio St. 91, 197 N.E.2d 801 (1964).

S.B. 342 was signed into law on December 19, 2014, and made the following modifications to Ohio law: amended sections 1901.20, 1907.02, 4511.094, 4511.093; enacted sections 3937.411, 4511.095, 4511.096, 4511.097, 4511.098, 4511.099, 4511.0910, 4511.0911, 4511.0912, 4511.0913; enacted new sections 4511.092, 4511.093; and repealed section 4511.092 of the Ohio Revised Code.

In light of the number of changes that S.B. 342 made to Ohio law, in light of the time it would take the City of Toledo to do its due diligence to assess how it could reasonably comply with the changes that S.B. 342 made to Ohio law, and considering the unexpected change in leadership in the mayor's office and the significance of a legal action requesting that a law be declared unconstitutional, this Court does not find that the 83-day period between the passage of S.B. 342 and the City of Toledo's filing for injunctive relief can fairly be considered "unreasonable and unexplained." *Junkin, supra*.

Additionally, the Defendants acknowledged that the general issues presented in the case sub judice were not new to the Defendant as a very similar action was filed by the City of Akron in the Summit County Common Pleas Court on February 20, 2015. In the present matter, the Defendants filed a 9-page memoranda contra to Plaintiff's Motion, citing some 20 cases in support of its positions. At the hearing on this matter, the Defendants were represented by four attorneys from the Ohio Attorney General's Office and fully argued their position. Moreover, at no time did the Defendants request additional time to marshal additional evidence needed to fully respond.

In order to successfully invoke the doctrine of laches, all four of the above-referenced elements must be demonstrated. To again quote the Sixth District Court of Appeals in *Junkins, supra*: "Moreover, in order to prevail on the affirmative defense of laches, the asserting party must also demonstrate, among other things, material prejudice," citing *State ex rel. Roadway Express v. Indus. Comm.*, 82 Ohio St. 3d 510, 514, 696 N.E.2d 1064 (1998). Unexplained or unreasonable delay in asserting a right is not enough. *Id.* Generally, there are two types of material prejudice, either of which necessitate the application of laches: (1) the loss of evidence helpful to defendant's case; and (2) a change in the defendant's position that would not have occurred had the plaintiff not delayed in asserting its rights. *State ex rel. Donovan v. Zajac*, 125 Ohio App.3d 245, 250, 708 N.E.2d 254.

In this regard, Defendants argue that they will undoubtedly be harmed if this Court orders the enjoining of this statute, stating that the granting of an injunction would create confusion and a lack of uniformity for motorists and municipalities across Ohio. Defendants' argument in this regard ignores certain realities. The City of Toledo has utilized traffic control cameras to one extent or another for 16 years. They have publicized this usage and placed signage at all appropriate locales. Were this Court to grant the requested injunction, the result would be to maintain a longstanding status quo for local drivers. Further, there is already a lack of uniformity for motorists in Ohio as not every municipality utilizes such a traffic control camera system. Every driver across the state has to deal with each jurisdiction's decisions as to differing speed limits, stop sign placements, yield sign placements, and all other legitimate regulations affecting motorists. Were this Court to enjoin implementation of S.B. 342, it would not result in material prejudice to the State of Ohio. Clearly, it would not constitute the loss of evidence helpful to the Defendants' case, nor would it result in a change in Defendants' position that would not have occurred had the Plaintiff not delayed in asserting its rights. S.B. 342 has yet to go into implementation and, therefore, does not result in any change in the position of the Defendants.

Each of the above-noted elements as to the doctrine of laches must be established by Defendants for laches to apply. *In re Estate of Rife*, 2nd Dist. No. 26072, 2014-Ohio-3644, ¶8. This Court holds that Defendants have failed in their burden to establish that there was an unreasonable delay in the filing of this action, failed to establish that there was an absence of an excuse for any purported delay, and failed to establish material prejudice. Therefore, this Court finds that the defense as to the doctrine of laches is not applicable in this proceeding.

III. PRELIMINARY INJUNCTION

The purpose of a preliminary injunction is to preserve the status quo in a case pending final adjudication of the case upon the merits. *Yudin v. Knight Industries Corporation*, 109 Ohio App.3d 437, 439, 672 N.E.2d 265 (6th Dist. 1996). To obtain the equitable remedy of a preliminary injunction, a party must show, by clear and convincing evidence: (1) a substantial likelihood of success on the merits; (2) the existence of irreparable harm if an injunction is not issued; (3) that third parties will not be unjustifiably harmed if an injunction is issued; and (4) that granting an injunction will serve the public interest. *Neal v. Regina Manor*, 6th Dist. No. L-07-1055, 2008-Ohio-257, ¶11. While no one factor is dispositive, if there is a strong likelihood of success on the merits, an injunction may be granted even though there is little evidence of irreparable harm. *Fischer Development Co. v. Union Township*, 12th Dist. No. CA99-10-100, 2000 Ohio App. LEXIS 1873, at *8 (May 1, 2000). As a general rule, an application for an injunction is addressed to the sound discretion of the trial court. *Restivo v. Fifth Third Bank of Northwestern Ohio*, 113 Ohio App.3d 516, 520, 681 N.E.2d 484, (6th Dist. 1996), citing *Garono v. State*, 37 Ohio St.3d 171, 173, 524 N.E.2d 496 (1988).

A. The City Has a Substantial Likelihood of Demonstrating that S.B. 342 Violates the Home Rule Amendment

Under the Home Rule Amendment to the Ohio Constitution, "[m]unicipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws." Article XVII, Section 3. The Ohio Supreme Court has ruled that municipalities have Home Rule authority under the Amendment to impose civil liability on traffic violators through an administrative

enforcement system and to establish administrative proceedings related to civil enforcement of traffic ordinances. *Walker v. City of Toledo*, Slip Op., 2014-Ohio-5461 (Dec. 18, 2014). The decision in *Walker* reaffirmed the Ohio Supreme Court's prior holding in *Mendenhall v. City of Akron*, 117 Ohio St.3d 33, 2008-Ohio-270, 881 N.E.2d 255, that "[a]n Ohio municipality does not exceed its home rule authority when it creates an automated system for enforcement of traffic laws that imposes civil liability upon violators, provided that the municipality does not alter statewide traffic regulations." *Id.* at syllabus. Thus, the City's adoption of its automated traffic photo enforcement program under TMC 313.12 was a proper exercise of the City's Home Rule powers.

The City asserts that S.B. 342 violates the Home Rule Amendment by placing numerous limitations upon municipalities that use automated photo traffic enforcement to promote public safety, including, among other things, requiring a police officer to be present at the location of the camera at all times during its operation and requiring a three-year study of a designated area before a camera can be installed.

"A state statute takes precedence over a local ordinance when (1) the ordinance is an exercise of the police power, rather than of local self-government, (2) the statute is a general law, and (3) the ordinance is in conflict with the statute." *Mendenhall, supra*, at ¶ 17. Here, the parties stipulated at the March 20, 2015, hearing, for the purposes of the Court's ruling on the preliminary injunction only, that the first and third prongs of the three-part test are met. Consequently, if S.B. 342 is not a general law, it does not take precedence over TMC 313.12 and it constitutes an unconstitutional attempt to limit the legislative Home-Rule powers of the City of Toledo.

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

To constitute a general law for purposes of home-rule analysis, a statute must (1) be part of a statewide and comprehensive legislative enactment, (2) apply to all parts of the state alike and operate uniformly throughout the state, (3) set forth police, sanitary, or similar regulations, rather than purport only to grant or limit legislative power of a municipal corporation to set forth police, sanitary, or similar regulations, and (4) prescribe a rule of conduct upon citizens generally." *Id.* at syllabus.

The Court will concentrate on the third and fourth requirements only.

Establishment of Police Regulations. In *Linndale v. State*, 85 Ohio St.3d 52, 706 N.E.2d 1227 (1999), the Ohio Supreme Court analyzed a statute which prohibited local law enforcement officers, including those employed by municipal corporations, from enforcing certain traffic violations within specified areas. The court held it was not a general law because it was "simply a limit on the legislative powers of municipal corporations to adopt and enforce specific police regulations." *Id.* at 55.

Similarly, here S.B. 342 is limiting the powers of municipalities to adopt and enforce specific traffic regulations to protect the safety of its citizens. The statute is telling the municipality how to staff and allocate its personnel by mandating an officer be present at each camera location. In Toledo, that would involve 44 officers. According to Lieutenant Sulewski, the Toledo Police Department does not have that kind of manpower to reassign to traffic enforcement. It would force the City to divert precious and limited police resources from other important tasks, force the City to incur extraordinary expenses to pay potentially thousands of hours of officer time to perform a function that does nothing to benefit the citizenry, or the fixed camera locations would be rendered inoperable once S.B. 342 goes into effect thereby increasing the speeding and red light violations throughout the City.

In addition, S.B. 342 is telling municipalities when they can install cameras by requiring a three-year study of the location prior to installation. Consequently, even if it is patently obvious that an intersection is dangerous, the City must wait three years to install a camera which would have reduced speeding, red light violations, and probably traffic accidents.

The Court concludes that by enacting S.B. 342, the legislature did not establish police regulations but instead merely limited municipal legislative power. Therefore, the third element of *Canton* has not been met.

Establishment of Rule of Conduct Upon Citizens Generally. A general law must "prescribe a rule of conduct upon citizens generally." *American Financial Services Association v. City of Cleveland*, 112 Ohio St.3d 170, 2006 Ohio 6043, ¶36, 2006-Ohio-6043, 858 N.E.2d 776. Statutes that go beyond merely limiting municipal authority and establish a rule of conduct for those who are subject of the legislation have satisfied the fourth element of the *Canton* test. *Cleveland v. State*, 8th Dist. No. 98616, 2013-Ohio-1186, ¶33.

S.B. 342 is directed solely at municipalities, not at citizens generally. The preamble of S.B. 342 states that the purpose of the Act is "to establish conditions for the use by local authorities of traffic law photo-monitoring devices to detect certain traffic law violations." As stated above, S.B. 342 merely limits municipal legislative power regarding the use of cameras to police their streets. It does not prescribe a rule of conduct upon all citizens generally. *See, Linndale, supra*, at 55 (statute that prohibited municipalities from enforcing its local traffic laws under certain conditions did not prescribe a rule of conduct upon citizens generally, but rather was directed solely at municipalities); *City of Canton, supra* at ¶36 ("we hold that R.C. 3781.184(C) does not prescribe a rule of conduct upon citizens generally, because just as in *Youngstown* and *Linndale*, the statute applies to municipal

legislative bodies, not to citizens generally."). Therefore, the fourth element of the *Canton* test has also not been met.

Since S.B. 342 does not meet the test set forth in *Canton*, the Court concludes that it is not a general law. Further, because S.B. 342 is not a general law, it unconstitutionally attempts to limit municipal Home-Rule authority. Accordingly, the City has established substantial likelihood of success on the merits by clear and convincing evidence.

B. The City Will Suffer Irreparable Injury If the Injunction Is Not Granted

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

The City of Toledo asserts that it will suffer immediate and irreparable injury in the absence of the requested injunctive relief. The Plaintiff argues that the impact of S.B. 342 has the result of the State of Ohio dictating how the City allocates its personnel which is a function of self-government. Plaintiff argues that if S.B. 342 goes into effect and the City wants to maintain the full operation of its 44 traffic control cameras, it would be required to have a police officer on the sight of every traffic control camera 24 hours a day, 7 days a week. The City maintains that it does not have the manpower to personally man all these traffic control cameras, at least not without a significant negative impact on its other law enforcement responsibilities.

The testimony of Lieutenant Jeff Sulewski established, without contradiction, that the City does not have the requisite number of police officers to monitor the traffic control cameras consistent with S.B. 342. The Lieutenant's testimony also established that these traffic control cameras have

resulted in the desired effect of substantially reducing the number of speeding violations. The Lieutenant described the impact of a camera placement on the Anthony Wayne Trail in great detail. In one 12-hour test period the police recorded over 2000 speeding violations in excess of 11 miles per hour over the posted speed limit. After the placement of a camera on the Anthony Wayne Trail, there were fewer than 5000 speeding tickets issued in an approximate 4-month period. This is an estimated average of 333 violations per day with camera placement versus thousands of violations daily without cameras. Lieutenant Sulewski's description of this as a drastic decrease is obvious. The Lieutenant testified that the success of the cameras was not the issuing of speeding citations, but the fact that the traffic pattern was altered by slowing traffic down. The Lieutenant testified that the data from these camera placements established that there is an approximate 50 to 70 percent decrease in speeding violations once the cameras go into effect. Additionally, Toledo police testing data established that the rate of traffic accidents at locations where cameras were placed decreased as well with rates ranging from 2 to 17 percent. The Lieutenant concluded his testimony by stating that if S.B. 342 goes in effect, the cameras at the fixed locations will be rendered inoperable and that, based on his training, education, and experience, it is his opinion that the number of traffic violations will climb back up.

Thus, the City of Toledo is forced into either forgoing a traffic control system whose legitimacy was most recently reaffirmed by the Ohio Supreme Court on December 18, 2014, or to reassign its limited personnel to the detriment of the rest of its other law enforcement responsibilities which Lieutenant Sulewski testified will not happen. A proverbial Hobson's choice. The Lieutenant testified that if S.B. 342 goes into effect the City intends to render the fixed cameras inoperable. The testimony established that the end result would mean more speeding vehicles on the city streets,

more red light violations, and more accidents with the appendant injuries to persons. This Court finds that the City of Toledo has met its burden of proving by clear and convincing evidence that it will suffer irreparable injury if the injunction is not granted. The evidence established that the injury would be material and is one that cannot be adequately compensated through monetary damages.

C. Injunctive Relief Will Not Inflict Greater Injury on Others

There must be a showing that no third parties will be unjustifiably harmed if the injunction were granted. *Village of Ottawa Hills v. Boice*, 6th Dist. No. L-12-1301, 2014-Ohio-1992, ¶14. The Defendants offered no evidence during the hearing held on March 20, 2015, as to how the State or third parties would be unjustifiably harmed if the injunction were granted. Defendants did argue that the granting of an injunction would create confusion and a lack of uniformity for motorists and municipalities across Ohio. As previously articulated, this Court finds that there would not be any confusion for motorists in Toledo as the allowance of an injunction would only maintain the 16-year status quo regarding the utilization of this photo-enforcement program. Further, any purported lack of uniformity for motorists already exists throughout the State as every municipality has local traffic ordinances that differ from neighboring communities. That no third party will be unjustifiably harmed by the granting of an injunction has been clearly and convincingly established.

D. The Public Interest Will Be Served By the Injunction

This Court further finds that the public interest will be served by granting the requested injunction. The evidence was uncontroverted that the camera placements resulted in fewer moving violations by local motorists. Slower moving traffic and fewer red light violators results in greater safety for fellow drivers and pedestrians alike. Permitting the continued use of these traffic control cameras allows the City of Toledo to dedicate and direct its limited manpower to other areas relating

to public safety concerns. The City "has a duty to enforce the law and preserve the public rights, revenues and property from injury and loss." *State ex rel. Doran, supra*, at ¶ 22. Clearly the public interest will be served by the issuance of this preliminary injunction.

In summary, the City has established by clear and convincing evidence the four requirements necessary to obtain the equitable remedy of a preliminary injunction.

As previously noted, S.B. 342 amends certain sections of the Ohio Revised Code, enacts new sections to the Code, as well as repeals Section 4511.092. The City of Toledo in its Verified Complaint Seeking Declaratory Judgment, Temporary Restraining Order, Preliminary and Permanent Injunction, and in its Motion for Temporary Restraining Order, Preliminary and Permanent Injunction, makes a general assertion purporting to seek injunctive relief enjoining Defendants from enforcing Amended Senate Bill 342 in its entirety. A particularized reading of the City of Toledo's filings demonstrates that they do not, in fact, take issue with S.B. 342 in toto.

The introductory paragraph of Plaintiff's Motion for Preliminary and Permanent Injunction states "Plaintiff seeks a temporary restraining order and preliminary injunction enjoining the State of Ohio (State) and the Attorney General from enforcing the nonsensical provisions of S.B. 342, which place conditions on municipalities that seek to use automated photo traffic enforcement to promote public safety." The conclusion of Plaintiff's Motion for an Injunction states that it "respectfully requests the Court issue an order for preserving the status quo and enjoining the State of Ohio from enforcing S.B. 342 and the new versions of R.C. Section 4511.093(B)(1) and 4511.095(A)(1)"

Plaintiff's Verified Complaint specifically challenges the constitutionality of R.C. 4511.093(B)(1) at paragraphs 28-42; R.C. 4511.095(A)(1) at paragraphs 43-51, and challenges R.C.

4511.0912 in its Motion for Preliminary and Permanent Injunction.

Section 4511.093(B)(1) mandates the presence of a law enforcement officer at the location of all photo monitoring devices used to detect traffic law violations. Section 4511.095(A)(1) mandates a three-year safety study before the deploying of any traffic law photo-monitoring devices. Section 4511.0912 prohibits the issuance of a speeding ticket based on photo-monitoring devices unless the vehicle in question exceeds the posted speed limit by not less than six miles per hour in a school zone, park or recreation area, and for any other location the vehicle must exceed the posted speed limit by at least ten miles per hour.

The Court finds that the above-referenced Sections violate the City of Toledo's authority under the Home Rule Amendment to the Ohio Constitution. Therefore, the Court grants Plaintiff's petition for a preliminary injunction enjoining the Defendants from enforcing Ohio Revised Code Sections 4511.093(B)(1), 4511.095(A)(1), and 4511.0912 as specified in S.B. 342.

JOURNAL ENTRY

It is **ORDERED** that Plaintiff City of Toledo's Motion for Preliminary Injunction is **GRANTED** in part. Defendants are enjoined from enforcing Ohio Revised Code Sections 4511.093(B)(1), 4511.095(A)(1), and 4511.0912 as specified in S.B. 342, which is scheduled to go into effect on March 23, 2015.

Date: 3-22-15


Dean Mandros, Judge