

**IN THE SUPREME COURT OF OHIO**

VILLAGE OF NEWBURGH HEIGHTS :  
and CITY OF EAST CLEVELAND : Case No. 2021-0247  
:  
Plaintiffs-Appellees, : On appeal from the Cuyahoga County  
:  
v. : Court of Appeals, Eighth Appellate  
:  
STATE OF OHIO, : District  
:  
Defendant-Appellant. : Court of Appeals  
:  
Case Nos. CA-19-109106, CA-19-109114  
:

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**BRIEF OF AMICI CURIAE THE OHIO MUNICIPAL LEAGUE, THE OHIO MUNICIPAL ATTORNEYS ASSOCIATION, THE CITY OF DAYTON, AND THE CITY OF TOLEDO IN SUPPORT OF PLAINTIFFS-APPELLEES VILLAGE OF NEWBURGH HEIGHTS AND CITY OF EAST CLEVELAND**

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## INTRODUCTION

The challenged statute at issue, H.B. 62, involves the legislature’s latest in a long line of unconstitutional attempts to violate municipal home rule authority and to establish a *de facto* ban on traffic photo enforcement. Just as with the legislature’s prior attempts, the trial and intermediate courts of this state have, with one exception, struck down this latest attempt. *See Dayton v. Ohio*, 2d Dist. No. 28818, 2021-Ohio-967, 170 N.E.3d 502 (March 26, 2021); *Toledo v. State*, Lucas C.P. No. CI-0-2018-02922 (Jan. 22, 2021); *Akron v. State*, Summit C.P. No. CV 2015-07-3666 (June 18, 2020); *Newburgh Heights, et al.*, 8th Dist. Cuyahoga, No. CA-19-109114, 2021-Ohio-61. This Court should do the same.

In putting forward erroneous propositions of law, the State invites the Court to decide that the legislature may, under the guise of “spending authority,” punish municipalities for exercising their constitutional rights, which have been affirmed numerous times by this Court’s prior decisions. This Court should instead strike down H.B. 62 and reaffirm municipalities’ home rule authority to implement traffic camera programs, which have long been proven to reduce accidents, save lives, and make the streets of this state safer for its residents.

## STATEMENT OF AMICI INTERESTS

Amici the Ohio Municipal League (“OML” or the “League”), the Ohio Municipal Attorneys Association (“OMAA”), the City of Dayton (“Dayton”), and the City of Toledo (“Toledo”) join to urge the Court to affirm the Eighth District Court of Appeals’ decision in *Newburgh Heights, et al.*, 8th Dist. Cuyahoga, No. CA-19-109114, 2021-Ohio-61. Each of the Amici has related interests all stemming from the impacts that H.B. 62 could have on local governments’ abilities to govern local affairs under Ohio’s Home Rule Amendment.

### Ohio Municipal League

The Ohio Municipal League was incorporated as an Ohio non-profit corporation in 1952 by city and village officials who saw the need for a statewide association to serve the interests of Ohio municipal government. Currently, the OML represents 730 of Ohio's 931 cities and villages. The OML has six affiliated organizations: the Ohio Municipal Attorneys Association, the Municipal Finance Officers Association, the Ohio Mayors Association, the Ohio Association of Public Safety Directors, the Ohio City/County Management Associations, and the Ohio Municipal Clerks Association. On a national basis, the OML is affiliated with the National League of Cities, the International Municipal Lawyers Association, the U.S. Conference of Mayors, and the International City/County Managers Association.

The OML represents the collective interest of Ohio cities and villages before the Ohio General Assembly and the state elected and administrative offices. In 1984 the OML established a Legal Advocacy Program funded by voluntary contributions of the members. This program allows the OML to serve as the voice of cities and villages before the Supreme Court of Ohio and the United States Courts of Appeals and Supreme Court by filing briefs *amicus curiae* on cases of special concern to municipal governments. The Ohio Municipal League has been accredited by the Supreme Court of Ohio as a sponsor of both Continuing Legal Education Programs for attorneys and the required Mayors Court training for Mayors hearing all types of cases.

### Ohio Municipal Attorneys Association

The Ohio Municipal Attorneys Association was incorporated as an Ohio non-profit corporation in 1953 by city and village attorneys who saw the need for a statewide attorney's association to serve the interests of Ohio municipal government. Currently, the OMAA represents a majority of Ohio's cities including Columbus, Cleveland, and Cincinnati. The OMAA is closely

aligned with the Ohio Municipal League. On a national basis, the OMAA is affiliated with the National League of Cities, and the International Municipal Lawyers Association. The Executive Director of the OMAA is a registered lobbyist and works with the Ohio legislature on matters of concern to municipalities. The Ohio Municipal Attorneys Association has been accredited by the Ohio Supreme Court as a sponsor for Continuing Legal Education Programs for municipal attorneys.

*The Cities of Dayton and Toledo*

The Cities of Toledo and Dayton, Ohio have a direct interest in this Court’s interpretation of the contested provisions of H.B. 62, because they have both successfully challenged the legislation and had the contested provisions found to be unconstitutional in the common pleas courts as well as the Second District Court of Appeals. *Dayton v. Ohio*, 2d Dist. No. 28818, 2021-Ohio-967, 170 N.E.3d 502 (March 26, 2021); *Toledo v. State*, Lucas C.P. No. CI-0-2018-02922 (Jan. 22, 2021). As charter municipalities, both Dayton and Toledo established photo enforcement programs under Article XVIII of the Ohio Constitution. If upheld, the challenged provisions of H.B. 62 would eliminate both Dayton and Toledo’s photo enforcement programs by making them prohibitively expensive to run. This, in turn, would negatively impact both Dayton and Toledo’s ability to provide safety services to their citizens.

**STATEMENT OF THE CASE AND FACTS**

The OML, OMAA, Dayton, and Toledo adopt, in its entirety, and incorporate by reference, the statement of the case and facts contained within the Brief of Plaintiffs-Appellees Village of Newburgh Heights and City of East Cleveland.

**ARGUMENT**

As this Court noted long ago, “[t]he streets and alleys of a municipality are what the arteries and veins are to a man. Control must be placed somewhere, and, if there is any virtue

whatsoever in a democracy, why should not that control be placed in the community which . . . best understands their needs for durability and safety?” *Village of Perrysburg v. Ridgeway*, 108 Ohio St. 245, 255 (1923).

But over the past seven years, the legislature has made three attempts to prohibit local governments from operating traffic camera programs, such as those utilized by Newburgh Heights, East Cleveland, Dayton, and Toledo. These attempts – including the challenged provisions of H.B. 62 before the Court – are an unconstitutional usurpation of authority that this Court and the Ohio Constitution has long delegated to the state’s municipalities. The legislature’s third attempt, via H.B. 62 should be held unconstitutional, just as the legislature’s first two attempts.

The OML, OMAA, Dayton, and Toledo adopt and incorporate, to the extent applicable, the well-reasoned arguments and authorities contained in the Brief of Plaintiffs-Appellants Village of Newburgh Heights and City of East Cleveland. The Amici write separately to urge the Court to reaffirm in the strongest possible terms the Home Rule Amendment and the authority that it grants local governments to regulate for the safety and welfare of their residents.

**Proposition of Law No. 1:**

**H.B. 62 is an implicit limitation on the legislative power of a municipal corporation to set forth police regulations. The challenged portions of H.B. 62 are therefore unconstitutional infringements upon a municipality’s right under the Home Rule Amendment to regulate for the safety and welfare of its inhabitants.**

As a Justice of this Honorable Court wrote some thirty years ago, “the adoption of home rule in Ohio was as important a step in government to this state as the federal Constitution was to the United States as a whole.” *Fondessy Enterprises, Inc. v. City of Oregon*, 23 Ohio St.3d 213, 220 (1986) (Locher, J. concurring). And yet, over the past seven years, the legislature has been relentless in its attempts to wrest power away from the local governments of this state by explicitly



– and now, implicitly – precluding local governments from deciding how best to police their own streets.

Indeed, H.B. 62 is a bare attempt to make it financially unfeasible for local governments to operate traffic camera programs, regardless of the safety and welfare benefits that such programs provide to cities and towns across the state, and regardless of this state’s long history of permitting local governance over local affairs. It is local governments that are in the best position to know what is best for their constituents. In other words, how Newburgh Heights polices its roads is a decision best reserved to Newburgh Heights – not legislators in Columbus.

This is the entire purpose of the Home Rule Amendment. The State of Ohio has long had a policy of permitting local governments to handle local affairs – including, notably, the regulation of traffic. *Mendenhall v. Akron*, 117 Ohio St.3d 33, 37 (2008). Here, then, the Court should take note of two separate issues that demonstrate how this case will impact local governments. First, a decision in favor of the State in this case would lead to a complete erosion of the Home Rule Amendment and would enable the State to interfere in local affairs whenever the legislature decides it does not like how a particular municipality is exercising its police powers. Second, there are legitimate health and safety benefits to the local communities where traffic camera programs are run, and which demonstrate the value of permitting local control over traffic regulation.

**A. H.B. 62 Would Hollow Out the Home Rule Amendment if Upheld**

Local governments across the state rely upon the Home Rule Amendment for their ability to govern, whether that be through local legislative and executive bodies, or by popular referendums. These governments rely upon that ability to govern for everything from public utility regulations to local taxation to traffic citations. *See, e.g., Dublin v. State*, 118 Ohio Misc.2d 18, 54 (Ct. Com. Pl. 2002) (regulation of power lines); *State/Village of Put-in-Bay v. Mathys*, 2019-Ohio-

162, ¶¶ 16-17 (6th Dist. 2019) (local taxation); *Linndale v. State*, 85 Ohio St.3d 52, 52-53 (1999) (speeding and excess weight citations on roadways). As is relevant here, this Court has also explicitly held that a city exercises valid home rule authority when it establishes traffic programs: “[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.” *Mendenhall*, 117 Ohio St.3d 33, at syllabus.

As a Cuyahoga County delegate argued at the constitutional convention where the Home Rule Amendment was adopted, the municipalities of the state simply sought to “be allowed to solve their own problems and control their own affairs, independent of outside authority, whether that authority be a monarchy, an oligarchy, or the people of a whole state. *In short, the cities merely ask that the principle of self-government be extended to them.*” *Fondessy Enterprises, Inc. v. City of Oregon*, 23 Ohio St.3d at 220 (1986) (Locher, J. concurring) (emphasis added).

It is that principle of self-government that the legislature seeks to abrogate here, by targeting a local policy that it does not like and making it financially unfeasible to continue. Nowhere is this intrusion into local affairs more egregious than for Plaintiff-Appellee, the City of East Cleveland. In 2011, East Cleveland voters approved the use of traffic cameras, following a campaign that discussed their value to the community. *See, e.g., East Cleveland sold doubting residents on traffic cameras: Road Rant*, John Horton, [The Plain Dealer](http://www.cleveland.com/roadrant/2011/11/east_cleveland_sold_doubting_r.html), available at [www.cleveland.com/roadrant/2011/11/east\\_cleveland\\_sold\\_doubting\\_r.html](http://www.cleveland.com/roadrant/2011/11/east_cleveland_sold_doubting_r.html) (last accessed Aug. 22, 2021). That is, the *people* of East Cleveland decided by popular vote that traffic cameras were the best way to keep their city safe. This is democracy at its finest: voters exercising control granted them under the state constitution, to decide whether a particular policy makes sense for their

community. Indeed, on the same day that East Cleveland voters approved traffic cameras in their city, voters in South Euclid, Garfield Heights, and Ashtabula all *rejected* the use of traffic cameras in their cities.

Put more simply, under the authority to regulate traffic that this Court and the Constitution have long granted Ohio's municipalities, different municipalities have chosen different policies, based on what makes sense for their communities. The Home Rule Amendment was intended for just this purpose: as Justice Locher stated, the Home Rule Amendment represents Ohio's "constitutional commitment to the people of this state to control their own destinies." *Fondessy*, 23 Ohio St.3d at 220.

But, at least with respect to traffic cameras, the legislature has consistently ignored that commitment. The way it does so now, though, has the potential to be particularly catastrophic to communities seeking to regulate their own affairs in the years to come. That is, the legislature has pinned its ability to implicitly regulate traffic cameras to its own power to spend.

Should this Court uphold that justification, then the legislature could presumably tie *any* type of regulation to its power to spend. In other words, while today's target might be traffic cameras, tomorrow's target could be any number of the myriad policies for which local governments generally presume they have authority to govern. In short, the legislature's justification here would represent a future end run around the Home Rule Amendment if upheld.

Despite the state's continued attempt to peel away constitutional rights granted under the Home Rule Amendment, it is this Court which is "the final arbiter of interpreting the Ohio Constitution." *Dublin v. State*, 181 Ohio App.3d 384, 393 (10th Dist. 2009). Here, the Court should use its role as the final arbiter of the Constitution to reaffirm that the Home Rule Amendment still has force, particularly in light of the legislature's continued attempts to infringe upon it. This is all

the municipalities here seek: for the Court to uphold their rights under the Home Rule Amendment and permit them to make decisions for policing their streets that make the most sense for their communities' needs.

**B. The State's Municipalities Are Best Positioned to Know the Safety and Welfare Benefits of Traffic Camera Programs.**

Lost in the debate as to the legal tests for the constitutionality of H.B. 62 are the valid safety, welfare, and policy data to demonstrate the great benefits that some communities see in their traffic camera programs. Particularly during the pandemic, and as the state's governments continue to grapple with its effects, it is the municipalities of the state that are best positioned to use their home rule authority to identify the safest ways to police their streets.

The City of Dayton, for example, has data to demonstrate the impacts that its own photo enforcement program has had on traffic safety in that city. Its data proves that the photo enforcement program it runs has dramatically reduced accidents, saved lives, and made the streets safer for residents of Dayton. For example, after installing photo enforcement cameras, Dayton experienced a 45% decrease in red light violation related accidents at the intersections where the cameras were installed. [Affidavit of Det. Eric Brown, Dayton Motion for Summary Judgment in Montgomery County Court of Common Pleas Case No. 2019-CV-3464, ¶ 9]. In addition, Dayton experienced a 30% decrease in speed related accidents at locations where the cameras were installed. [*Id.*] Perhaps even more instructive is that when Dayton stopped issuing photo enforcement citations during litigation of earlier unconstitutional state legislation, there was a dramatic increase in dangerous driving at these intersections. While Dayton stopped issuing photo enforcement citations, it kept the cameras on to log violations to see the impact of non-enforcement. [*Id.*, ¶ 16]. During the first month of non-enforcement there was a 218% increase in red light violations and a 66% increase in speed violations at intersections that previously had

operational cameras. [*Id.*]. In addition, during the two-year period that the cameras were off, there was a 31% increase in injury crashes at the same intersections. [*Id.*]

Dayton's experience is consistent with the experience of both Plaintiffs-Appellees here. Both Newburgh Heights and East Cleveland report that their streets are markedly safer, as proven by data, since they began their traffic camera programs. [*See* Brief of Plaintiffs-Appellees, at 4-5.] East Cleveland, for example, has noted that in 2010 it issued an average of 324 red-light camera violations per month, but that its average by 2019 was below 200 per month. It similarly noted a change in the number of average daily speed violations from 87 in 2011 to less than 30 now. It is this type of data – available to local governments, responsible for traffic safety within their borders – which enables them to make more informed decisions about policing and safety than our representatives in Columbus.

Moreover, in the context of the pandemic and social unrest that began in 2020 and continue through this day, it may make eminent sense for a municipality to choose civil traffic fines issued by traffic cameras over enforcement by uniformed officers. First, traffic cameras eliminate the need for officers to have face-to-face interactions with offending motorists, and have the dual benefit of lessening both officers' and motorists' potential exposure to COVID-19, as well as lessening the opportunity for any confrontations between police and motorists. In fact, this is one of the recommendations that the International Association of Chiefs of Police made for enforcing traffic laws during the COVID-19 pandemic: using “automated enforcement,” such as the traffic cameras used by Newburgh Heights, East Cleveland, Dayton, and Toledo. *See, e.g.*, Traffic Enforcement During the COVID-19 Pandemic, International Association of Chiefs of Police, available at <https://theiacp.org/resources/document/traffic-enforcement-during-the-covid-19-pandemic> (last accessed August 22, 2021).

Second, cities and states nationwide have noted a massive increase in traffic violations since the pandemic began. *See, e.g., D. Sharp, Pandemic set off deadly rise in speeding that hasn't stopped*, Associated Press, Aug. 8, 2021 (noting that 2020 was the deadliest year on highways since 2007, even though there was a 13.2% reduction in the number of miles traveled). This is consistent with what municipalities around Ohio are seeing, as well: in Mayfield Village, Ohio, the local government is considering traffic cameras to curb speeding on I-271, where the chief of police has seen “over a 100% increase in the number of cars that were traveling at 85 [mph] or above,” when compared to 2019. C. Justice, *Mayfield Village police seeking addition of photo-enforcement program*, News 5 Cleveland, July 20, 2021, available at <https://www.news5cleveland.com/new/local-new/oh-cuyahoga/mayfield-village-police-seeking-addition-of-photo-enforcement-program> (last accessed August 22, 2021). Municipalities are finding these speeds dangerous not only for motorists, but for officers as well. With police forces stretched thin, and with evidence that traffic camera enforcement programs reduce traffic infractions in the long term, municipalities should be permitted to use them to keep their streets safe, if they choose to do so.

In short, this information – the relative danger to uniformed officers, the particular streets in a town or city and the infractions that occur on them, the danger of particular intersections – is all information available to local governments, who are tasked with keeping their streets safe. And this local knowledge and insight is not unique to traffic cameras. All matters of purely local issues should remain under the authority of the local government; that is the very essence and purpose of the Home Rule Amendment. Should H.B. 62 be upheld, local municipalities will not have the option to use this local information if the way they choose to keep their streets safe is through the

use of traffic cameras. The state legislature would have made that decision for them, through the *de facto* prohibition on such programs via H.B. 62.

The Court should find the contested sections of H.B. 62 unconstitutional and reaffirm the strength of the Home Rule Amendment so that local governments can make local decisions based on local needs.

### **CONCLUSION**

The legislature has now tried three times to unconstitutionally infringe upon the Home Rule rights of this state's local governments. This time, as with the previous two, the Court should hold that a municipality retains the right to operate a traffic camera enforcement program if it so chooses, without coercion from the State. This Court should affirm the decision of the Eighth District and hold the challenged portions of H.B. 62 unconstitutional.

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing *Amicus Brief of the Ohio Municipal League, the Ohio Municipal Attorneys Association, the City of Dayton, Ohio, and the City of Toledo, Ohio* was electronically filed with the Court on this August 23, 2021, and that through the Court's electronic notification system a notice of such filing is provided to all registered parties.

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