In the
Supreme Court of Ohio

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

MERIT BRIEF OF APPELLANT STATE OF OHIO

MICHAEL E. CICERO
LUKE McCONVILLE
Nicola, Gudbrandson & Cooper, LLC
25 West Prospect Avenue
1400 Republic Building
Cleveland, OH 44115
cicero@nicola.com

Counsel for Plaintiff-Appellee, Village of Newburgh Heights

WILLA HEMMONS
HEATHER MCCOLLOUGH
City of E. Cleveland Law Dept.
14340 Euclid Avenue
East Cleveland, OH 44112
whemmons@eastcleveland. org

Counsel for Plaintiff-Appellee, City of East Cleveland

DAVE YOST (0056290)
Ohio Attorney General
BENJAMIN M. FLOWERS* (0095284)
Solicitor General
**Counsel of Record*
STEPHEN P. CARNEY (0063460)
Deputy Solicitor General
CAITLYN NESTLEROTH JOHNSON (0087724)
IRIS JIN (0092561)
Assistant Attorneys General
30 East Broad Street, 17th Floor
Columbus, Ohio 43215
614-466-8980; 614-466-5087 fax
benjamin.flowers
@OhioAGO.gov

Counsel for Defendant-Appellant, State of Ohio

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INTRODUCTION

This might seem to be just another case about traffic cameras. The municipal plaintiffs argue that two state laws—a "Spending Setoff" that withholds state funds from municipalities that adopt traffic-camera programs, and a "Deposit Requirement" that regulates the procedures by which traffic-camera citations are adjudicated—violate the Home Rule Amendment. *See* Ohio Const. art. XVIII, §3. But really, this is a case about the most important issue in every constitutional democracy: the distribution of power. The Ohio Constitution vests the General Assembly with broad "legislative power." *See* Ohio Const. art. II. Unlike Congress, which may exercise its legislative power only in expressly enumerated ways, "the General Assembly of Ohio may enact any law which is not prohibited by the Constitution." *Angell v. Toledo*, 153 Ohio St. 179, 181 (1950). This case presents two questions concerning that broad grant of legislative authority. And the answer to those questions will have a sweeping impact on the General Assembly's power to control the expenditure of state funds and guarantee the fairness of judicial proceedings.

The first question presented is this: May the General Assembly discourage municipalities from adopting policies it dislikes by withholding state funds from municipalities that adopt those policies? The answer is "yes." With exceptions not relevant here, *see* Ohio Const. art. XII, §9; art. XV, §6(C)(3)(c), the Ohio Constitution leaves the General Assembly with complete discretion to decide whether and how to fund munic-

ipalities. And nothing in the Constitution "prohibit[s]" the General Assembly, *Angell*, 153 Ohio St. at 181, from exercising its discretionary power to fund municipalities so as to encourage or discourage the adoption of particular policies. True, under the Home Rule Amendment, municipalities possess the "powers of local self-government" and may "adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws." Ohio Const. art. XVIII, §3. But neither that Amendment nor anything else bars the General Assembly from exercising *its* exclusive power to appropriate funds in a manner that encourages municipalities to exercise *their* home-rule powers in a particular way.

These principles establish the constitutionality of the Spending Setoff. R.C. 5747.502. That law leaves municipalities free to issue traffic tickets using traffic cameras. But if municipalities exercise their right to issue traffic tickets using traffic cameras, the State reduces the money they receive from the State's local-government fund in an amount equal to the revenue gained through the use of traffic cameras. (The withheld money is reallocated to a different fund that enhances public safety on public roads and highways.) *Id*. All of that passes constitutional muster: the General Assembly is free to withhold state funds—funds that it has no obligation to give municipalities—in order to discourage municipalities from adopting traffic-camera programs. The Eighth District held otherwise and enjoined the Spending Setoff, ordering the State to

distribute funds without regard to that law. In other words, it ordered appropriations that state law prohibits. It erred. This Court should reverse.

The second question presented is this: Do state laws that regulate matters entirely within the General Assembly's purview violate the Home Rule Amendment? The answer is "no." Again, the Home Rule Amendment empowers municipalities 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." Ohio Const. art. XVIII, §3. The General Assembly does not violate this Amendment when it regulates matters beyond the scope of the municipalities' home-rule powers—in other words, matters beyond the scope of the "powers of local self-government" and the power to adopt "local police, sanitary and other similar regulations." Because matters left to the General Assembly alone fall outside the scope of those powers, state laws regulating such matters do not violate the Home Rule Amendment.

That resolves this case. The municipalities argue, and the Eighth District held, that the Spending Setoff and the Deposit Requirement both violate the Home Rule Amendment. But neither does. The Spending Setoff regulates the question of whether and how to appropriate *the State's* money. Because the General Assembly alone may decide whether and how to spend money, *see* Ohio Const. art. II, §22, the Spending Setoff does not infringe the "powers of local self-government" or the power to enact "local

police, sanitary and other similar regulations." The same goes for the Deposit Requirement, which requires that municipalities, when enforcing a traffic-camera ticket in state court, "provide an advance deposit for the filing of the civil action." R.C. 4511.099(A). Because the Deposit Requirement governs proceedings in state courts, and because none of the municipalities' home-rule powers entitle them to regulate state-court procedures, the Requirement does not interfere with the municipalities' home-rule powers and thus does not violate the Home Rule Amendment. This Court should hold that neither the Spending Setoff nor the Deposit Requirement violates the Home Rule Amendment and reverse the Eighth District.

STATEMENT OF THE CASE AND FACTS

1. This case concerns the traffic-camera programs in the Village of Newburgh Heights and the City of East Cleveland. The Village, for its part, began operating its program to enforce speed limits using traffic cameras in 2013. Prelim. Inj. Hr'g Tr. ("Tr.") at 130. It administers that program pursuant to Ordinance No. 2014-66, codified in Chapter 315 of the Village of Newburgh Heights Codified Ordinances. Compl. ¶26. The ordinance states that a "notice of liability" shall issue to any driver caught speeding by a traffic camera. *Id.* at ¶30. This notice of liability threatens a civil fine rather than a criminal traffic citation. A finding of liability does not result in points being assessed against the driver's driving record. *Id.* at ¶29.

The Village earns substantial revenue from its traffic-camera program. In 2018 alone, for example, it earned $2.4 million. Tr. at 142–44. It made all that money despite operating traffic cameras in just two locations: one on Harvard Avenue, and another on a three-quarter mile stretch of I-77 that runs through the Village. Tr. at 131–32, 175–76. The program is also lucrative for the Village's private vendor, Sensys Gatso: Gatso received about $764,000 from the Village in 2018. *See* Tr. at 141–42. To put the size of these bounties in perspective, the Village received only about $60,000 in state funding from the local-government fund—a State-run fund that pays monthly distributions to political subdivisions, including municipalities, R.C. 5747.502. Compl. ¶61.

The City of East Cleveland began operating its photo-enforcement program to enforce speeding and red-light violations in 2006. Intervening Compl. ¶5. The City administers its program under Ordinance No. 07-06, codified in East Cleveland Municipal Code Section 313.011. *Id.* That ordinance requires that the City issue a "notice of liability" to drivers caught on camera speeding or running a red light. *Id.* at ¶7. These notices of liability, just like the Village's, threaten civil fines rather than criminal traffic citations. And, as is true of the Village's program, a driver found liable does not have points assessed on his driving record. *Id.* at ¶6.

The City earns about $1.2 million each year from its traffic-camera program. *See* Aff. of Charles Iyahen (Ex. D. to the City's Mot. for TRO & Prelim. Inj.), ¶6. The City's

traffic-camera program uses seven red-light cameras and three mobile speed cameras. Aff. of Michael Cardilli (Ex. C. to the City's Mot. for TRO & Prelim. Inj.), ¶5.

2. In April 2019, the General Assembly enacted H.B. 62, the Transportation Budget for the then-upcoming biennium. H.B. 62 included several provisions relating to the operation of traffic cameras by municipalities. These provisions, which this brief refers to collectively as the "Traffic Camera Law," became effective July 3, 2019. *See* 2019 Am.Sub.H.B. No. 62. Three specific provisions—the Spending Setoff, the Jurisdiction Provisions, and the Deposit Requirement—are relevant here.

Spending Setoff. Under the Spending Setoff, a municipality that operates a traffic-camera program must file an annual report with the Tax Commissioner disclosing the amount of the civil fines collected through its program during the preceding year. R.C. 5747.502(B)(1). This report affects municipalities that operate traffic-camera programs in two important ways. First, under R.C. 5747.502(D), municipalities are not entitled to distributions from the State's local-government fund until they file the annual report. Second, under R.C. 5747.502(C), the amount that municipalities would otherwise receive through the local-government fund is reduced by the amount of camera-based civil fines reported. *See also* R.C. 5747.502(A)(6).

The money withheld pursuant to the Spending Setoff does not go to waste. Instead, the Tax Commissioner reallocates the money to the highway-and-transportation-safety fund. The State credits the reallocated funds to the transportation district (the

State has twelve) that comprises the municipality to which the funds would otherwise have gone. R.C. 5747.502(F). The Ohio Department of Transportation uses these funds "exclusively to enhance public safety on public roads and highways within that transportation district." *Id.*

Jurisdiction Provisions. The Jurisdiction Provisions vest municipal or county courts with exclusive jurisdiction over all civil actions concerning traffic-law violations, including traffic-camera tickets. *See* R.C. 1901.18(A)(14) & 1901.20(A)(1).

Deposit Requirement. The Deposit Requirement requires municipalities that operate traffic-camera programs to "provide an advance deposit for the filing of the civil action" when they file the traffic-camera ticket with the relevant municipal or county court. R.C. 4511.099(A). The deposit covers court costs and fees. It is non-refundable, unless the ticket was issued in a school zone. R.C. 4511.099(A)–(B) But since neither the Village nor the City has school-zone cameras, that exception is irrelevant here.

3. In June 2019, the Village sued the State alleging, among other things, that the Spending Setoff, Deposit Requirement, and Jurisdiction Provisions violate the Home Rule Amendment. The Village sought preliminary and permanent injunctions. The City later intervened, siding with the Village and bringing an identical constitutional challenge to the same laws.

The trial court held a hearing and denied the preliminary injunction as to the Spending Setoff, the Deposit Requirement, and the Jurisdiction Provisions. It purported

to grant relief only as to a separate provision—one that was part of a prior legislative enactment and that is not part of the Traffic Camera Law. That provision required that a police officer be present when a traffic camera captures a violation. *See* Prelim. Inj. Decision at 9 (Oct. 10, 2019). Because this Court had already invalidated that provision in *City of Dayton v. State*, 151 Ohio St. 3d 168, 2017-Ohio-6909, the State did not appeal. But the Village and the City did appeal, arguing that the trial could should have preliminarily enjoined every challenged provision.

4. On appeal, the Eighth District upheld the constitutionality of the Jurisdiction Provisions, relying largely on this Court's opinion in *State ex rel. Magsig v. City of Toledo*, 160 Ohio St. 3d 342, 2020-Ohio-3416. *See Vill. of Newburgh Heights v. State*, 2021-Ohio-61 ("App. Op."), ¶¶43–53. It also upheld the Spending Setoff's requirement that municipalities file reports disclosing the revenue they collected through traffic cameras. *Id.* at ¶42 n.2. But it held that all other aspects of the Spending Setoff, including the provisions allowing the State to enforce the reporting requirement by withholding funds from non-compliant municipalities, violated the Home Rule Amendment. *Id*. at ¶42. And it held that the Deposit Requirement violated the Home Rule Amendment, too. It went on to preliminarily enjoin (1) the Deposit Requirement and (2) the Spending Setoff in all respects *except* the reporting requirement.

5. The State appealed, and this Court granted discretionary review. Neither the City nor the Village cross-appealed the Eighth District's refusal to enjoin the Jurisdiction Provisions or the Spending Setoff's reporting requirement.

ARGUMENT

Appellant State of Ohio's Proposition of Law No. 1:

> *Because the General Assembly's discretionary spending power can be limited only by an express constitutional limit on the spending itself, not by objections to goals indirectly achieved by the spending, the Spending Setoff does not violate a city's home-rule power.*

A. The General Assembly properly exercised its constitutional authority when it enacted the Spending Setoff.

This case asks whether the General Assembly may discourage municipalities from adopting certain traffic-enforcement policies by withholding state funds from municipalities that adopt those policies. The answer is "yes." And the Spending Setoff is precisely such a law.

1. The General Assembly's broad "legislative power" includes the power to influence local policymaking through conditional expenditures.

a. The Ohio Constitution vests the General Assembly with "[t]he legislative power of the state." Art. II, §1. The power to legislate includes the power of the General Assembly to appropriate money for public purposes. *Id.*, §22 (no money may be appropriated other than by a command of the General Assembly); *accord Grandle v. Rhodes*, 169 Ohio St. 77 (1959), syl. ¶2. The *power* to legislate, however, is not a *duty* to legislate. And so, except where the Constitution provides otherwise, the power to appropriate money is not a duty to do so.

To be sure, the Ohio Constitution *does* sometimes require appropriations. For example, certain institutions for the blind and for others "shall" be "supported," Ohio Const. art. VII, §1; and this Court has found that Article VI, Section 2 of the Ohio Constitution "expressly" requires the General Assembly to "create" a "school financing system." *DeRolph v. State*, 78 Ohio St. 3d 193, 213 (1997). Other constitutional provisions dictate the manner in which the General Assembly must spend money *if* it chooses to spend. For example, spending laws, like all other laws, must be uniform, *see* Ohio Const. art. II, §26, and may not be retroactive. *Id.*, §28. Then there are provisions requiring that revenue raised from certain sources be dedicated to specific purposes or recipients. For example, the General Assembly can use revenue raised from fuel taxes only to support specific types of projects. Ohio Const. art. XII, §5a; *see also, e.g.*, Ohio Const., art. XII, §9; art. XV, §6(C)(3)(c). Finally, there are provisions that outright forbid the General Assembly from appropriating money for certain purposes. The legislature may not, for example, appropriate funds to provide extra compensation to public contractors, Ohio Const. art. II, §29, or to confer perquisites on its own members, *Id.*, §31.

As these examples illustrate, the power to appropriate funds is broad but not unbounded. The General Assembly can spend as it wishes provided that it does not violate any express limit on its legislative authority.

b. Critically for present purposes, nothing in the Ohio Constitution forbids the General Assembly from using appropriations to encourage (or discourage) activity that

the legislature lacks authority to command (or prohibit). To take a mundane example, while the General Assembly may not command individuals to buy health care, *see* Ohio Const. art. I, §21, it may encourage them to do so by appropriating money to those who do. This follows from the structure of the Ohio Constitution, under which the General Assembly can enact any legislation not forbidden by the Constitution or federal law. In sharp contrast to Congress, whose legislative acts are "not valid unless the federal Constitution authorizes" them, "the General Assembly of Ohio may enact any law which is not prohibited by the Constitution." *Angell v. Toledo*, 153 Ohio St. 179, 181 (1950); *accord State ex rel. Bryant v. Akron Metro. Park Dist. for Summit Cnty.*, 120 Ohio St. 464, 473 (1929) (op. of Marshall, C.J.). Since nothing *prohibits* the General Assembly from using the carrot of appropriations even when the Constitution prohibits it from using the stick of direct regulations, the General Assembly may wield its spending power to influence the development of municipal policies.

This Court's cases, in other contexts, recognize that the General Assembly may achieve through constitutional means that which might be unconstitutional if pursued in other ways. In one case, this Court held that Article IV of the Ohio Constitution, which speaks to judicial term limits, barred the General Assembly from replacing one court with another by setting one-year terms for the court's first judges. *State ex rel. Whitehead v. Sandusky Cnty. Bd. of Commrs.*, 133 Ohio St. 3d 561, 2012-Ohio-4837, ¶¶21–23 (*per curiam*). But in issuing that ruling, the Court observed that the General Assem-

bly remained "free to revisit this issue and to enact a new act to validly abolish the county court and to replace it with the municipal court," provided that the new court would be staffed with judges elected to terms permitted by Article IV. *Id*. at ¶41. In another case, this Court held that the Single Subject Clause of the Ohio Constitution barred the General Assembly from enacting a school-voucher program in a budget bill. *See Simmons-Harris v. Goff*, 86 Ohio St. 3d 1, 17 (1999) (lead op.); *id*. (Douglas, Resnick, and F.E. Sweeney, JJ., concurring in judgment only). But the Court acknowledged that the General Assembly could enact such a program in a standalone bill. *See id.* at 9, 11, 14 (lead op.). (The General Assembly did just that. *See Zelman v. Simmons-Harris*, 536 U.S. 639, 643 (2002).) Or take this example from the home-rule context: while the General Assembly cannot simply override local regulations of for-hire towing, it *may* directly regulate towing and thereby preempt conflicting local regulations. *See City of Cleveland v. State*, 138 Ohio St. 3d 232, 2014-Ohio-86, ¶16.

All this supports the view that the General Assembly may grant or withhold discretionary appropriations to influence municipal policymaking. So does the fact that Congress, under Supreme Court precedent, may "grant federal funds to the States, and may condition such a grant upon the States' taking certain actions that Congress could not require them to take." *Nat'l Fed'n of Indep. Bus. v. Sebelius* ("*NFIB*"), 567 U.S. 519, 576 (2012) (op. of Roberts, C.J.) (quotation omitted). Using such conditions, Congress can "encourage a State to regulate in a particular way, and influence a State's policy choic-

es." *Id*. (quoting *New York v. United States*, 505 U.S. 144, 166 (1992)) (alterations adopted). And Congress can do so notwithstanding the fact that it lacks any authority to *mandate* that the States regulate in a particular way or enact particular policies. *Id*.; *accord South Dakota v. Dole*, 483 U.S. 203, 206–07 (1987); *Cutter v. Wilkinson*, 423 F.3d 579, 584–90 (6th Cir. 2005).

These cases are meaningful because Congress's powers are far more limited than the General Assembly's. As alluded to above, the "Federal Government" has only those "limited powers" expressly conferred upon it by the Constitution. *Gregory v. Ashcroft*, 501 U.S. 452, 457 (1991); *accord Bond v. United States,* 572 U.S. 844, 854 (2014). All powers "not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." U.S. Const. amend. X. And the States reserved the power to govern themselves—to decide what and how to regulate, for example. As a result, Congress *lacks* the power to issue orders to, or to regulate directly, state governments. *Murphy v. NCAA*, 138 S. Ct. 1461, 1476 (2018). But as explained above, the Ohio Constitution works the other way: the General Assembly may enact any law that neither the Ohio Constitution nor federal law prohibits. *Angell*, 153 Ohio St. at 181. Given the relative breadth of Congress's power in comparison to the General Assembly's, it is quite significant that Congress may wield its enumerated spending power—its power to "provide for … the general Welfare," U.S. Const. art. I, §8, cl.1—to condition the grant of federal funds "upon the States' taking certain actions

that Congress could not require them to take." *NFIB*, 567 U.S. at 576 (op. of Roberts, C.J.) (quotation omitted). That Congress may impose such conditions strongly implies that the General Assembly's broader spending power enables it to condition the grant of state funds on localities' taking certain actions the General Assembly could not require them to take.

To be sure, Congress's power to impose conditions on the States has limits. Most relevant here, it cannot attach conditions to "coercive" offers of funding. But it is doubtful whether this coercion analysis has any role to play under Ohio's Constitution. The coercion test grows out of the fact that Congress lacks any authority to regulate the States directly; "the Constitution has never been understood to confer upon Congress the ability to require the States to govern according to Congress' instructions." *New York*, 505 U.S. at 162 (citing *Coyle v. Smith*, 221 U.S. 559, 565 (1911)). To keep Congress from evading the limits on its power to regulate the States, the Supreme Court has held that Congress may not coerce the States into accepting Spending Clause conditions. Such coercive offers, the thinking goes, amount to impermissible direct regulations of the States. Thus, Congress exceeds the scope of its Spending Clause authority if it attaches conditions to offers of funding that States have no "legitimate choice" but to "accept." *NFIB*, 567 U.S. at 578 (op. of Roberts, C.J.). In *NFIB*, for example, the Court held that Congress impermissibly coerced the States when it threatened to withdraw *all* Medicaid funding—funding equal to about 10 percent of an average State's budget—

unless they agreed to expand their Medicaid coverage. *Id*. at 582 (op. of Roberts, C.J., joined by Breyer and Kagan, JJ.); *accord id*. at 681 (Scalia, Kennedy, Thomas, and Alito, JJ., dissenting).

This test makes sense as applied to Congress: the States retained all the sovereignty they did not surrender to the federal government; they did not surrender their right to govern themselves; and conditions attached to the coercive "offer" have the effect of commandeering the States' sovereign power. *Id*. at 577–78 (op. of Roberts, C.J.). This reasoning does not neatly translate to Ohio's Constitution, however, because the General Assembly *can* compel municipalities to take actions. *See City of Athens v. McClain*, 163 Ohio St. 3d 61, 2020-Ohio-5146, ¶51; *In re Complaint of City of Reynoldsburg*, 134 Ohio St. 3d 29, 2012-Ohio-5270, ¶¶2–3, 42–51. Thus, whereas Congress lacks any "power to issue direct orders to the governments of the States," *Murphy*, 138 S. Ct. at 1476, the General Assembly *may* issue such orders to municipalities, at least in some circumstances. And if the General Assembly can order municipalities to take certain actions, there is nothing clearly concerning about "offers" that coerce them into taking those actions.

Regardless, *even if* this coercion analysis applied to state appropriations laws, it would mean only that the State may not, by attaching conditions to offers of funding that municipalities have no "legitimate choice" but to "accept," *NFIB*, 567 U.S. at 578

(op. of Roberts, C.J.), coerce municipalities into surrendering authority vested in them by the Home Rule Amendment or something else in the Ohio Constitution.

In sum, the General Assembly can spend money (or refrain from spending money) however it wishes, as long as the expenditure does not violate the Ohio Constitution or federal law. Nothing in the Ohio Constitution or federal law forbids the General Assembly from granting or withholding discretionary appropriations so as to influence local policymaking. The General Assembly may therefore use its spending power to encourage municipalities to adopt (or to refrain from adopting) policies that they have discretion to adopt.

2. The Spending Setoff is a permissible exercise of the General Assembly's spending power.

These principles establish the constitutionality of the Spending Setoff. Recall what that law does. The Spending Setoff requires every municipality that runs a traffic-camera program to file, every year, a report disclosing the amount of the civil fines it collected through that program. R.C. 5747.502(B)(1). The General Assembly withholds distributions from the local-government fund to any municipality that fails to file this report. R.C. 5747.502(D). And, with respect to every municipality that submits the report, the General Assembly reduces local-government-fund distributions by the amount reported. R.C. 5747.502(C). The General Assembly reallocates any money withheld to the highway-and-transportation-safety fund, and the money must be used to enhance public safety. R.C. 5747.502(F).

Now return to the legal principles discussed above. Two such principles matter here. The first is that the General Assembly may appropriate funds as it sees fit, *unless* something in the Ohio Constitution mandates expenditure. The second is that the General Assembly may use appropriations to encourage municipalities to adopt particular policies that the General Assembly lacks authority to mandate. Those principles prove the Spending Setoff's constitutionality.

a. Principle 1: The Assembly need not spend at all. The first principle establishes that the General Assembly is free not to make distributions out of the local-government fund *at all*. Indeed, with two exceptions (addressed below), nothing in the Ohio Constitution requires the General Assembly to fund municipalities. As far as the Ohio Constitution is concerned, the General Assembly need not provide for a local-government fund. Thus, the question of whether and how to fund municipalities is a policy question left to the General Assembly's discretion. It follows that the Spending Setoff's withholding of local-government funds cannot, by itself, violate the Ohio Constitution.

Now the exceptions. The first appears in Article XII, Section 9 of the Ohio Constitution, which provides:

> Not less than fifty per cent of the income, estate, and inheritance taxes that may be collected by the state shall be returned to the county, school district, city, village, or township in which said income, estate, or inheritance tax originates, or to any of the same, as may be provided by law.

The second exception appears in Article XV, Section 6(C)(3)(c), which states:

> Five percent of the tax on gross casino revenue shall be distributed to the host city where the casino facility that generated such gross casino revenue is located.

These provisions do not impose any *general* requirement to fund municipalities. They do, however, dedicate to municipalities (and other local governments) percentages of revenue gained from certain taxes. This imposes, in some sense, a duty to ensure that specific funds go to municipalities. But that bolsters the conclusion that the General Assembly has no general duty to fund municipalities: by expressly guaranteeing municipalities funding in these limited contexts, the Ohio Constitution implicitly leaves the General Assembly free *in other contexts* to fund municipalities as it sees fit. *See State ex rel. LetOhioVote.org v. Brunner*, 123 Ohio St. 3d 322, 2009-Ohio-4900, ¶39. Further, these provisions establish that the People of Ohio know how to obligate some minimum degree of municipal funding when that is what they wish to do. The Ohio Constitution's silence on the existence of any general duty to fund municipalities should thus be read to imply the absence of any such duty. And, for what it is worth, the decision not to impose any such duty makes sense: the architects of our Constitution had no reason to fear that legislators accountable to voters who live in municipalities would leave those municipalities without funding.

The Home Rule Amendment does not alter this analysis. It does not, in other words, require the General Assembly to fund municipalities. That Amendment says:

> 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.

Ohio Const. art. XVIII, §3. Nothing in this provision entitles municipalities to funding—it simply entitles them to govern themselves. Indeed, reading the Amendment to guarantee municipal funding would contradict its purpose. The People ratified this amendment to make localities *less* dependent on the General Assembly. Before the Home Rule Amendment, "our cities exercised only such powers as were granted to them by statute." *Fitzgerald v. Cleveland*, 88 Ohio St. 338, 360 (1913). "Therefore municipalities of the state, especially the larger ones, were continually at the door of Ohio's General Assembly asking for additional political power for municipalities, or modifications in some form of previous delegations of such power." *Perrysburg v. Ridgway*, 108 Ohio St. 245, 255 (1923). Thanks to the Home Rule Amendment, municipalities are no longer governmental mendicants—they do not have to beg the General Assembly for power. It would be strange to read an amendment designed to free municipalities from State control as entitling those same municipalities to become dependent upon the General Assembly's largesse.

The strangeness of this interpretation is bolstered by the fact that the People, at precisely the same time they adopted the Home Rule Amendment, *also* adopted the just-discussed Article XII, Section 9. That provision makes clear that the People considered, and acted upon, the issue of funding for municipalities. And it makes that much

more significant their failure to impose some general guarantee of state funding; again, the express inclusion of the specific right to funding under Article XII, Section 9, implies that municipalities *lack* any general right to funding. *See LetOhioVote.org*, 123 Ohio St. 3d 322, 2009-Ohio-4900, ¶39. What is more, the People *also* adopted, *also* at the same time as the Home Rule Amendment, Article XVIII, Section 11. That provision empowers municipalities to raise funds themselves—it says that they may levy assessments to pay for appropriations. *See also Gesler v. City of Worthington Income Tax Bd. of Appeals*, 138 Ohio St. 3d 76, 2013-Ohio-4986, ¶19. Once again, this suggests that the People specifically considered the sources of revenue available to municipalities. And once again, the fact that they considered this issue *without* giving municipalities a general right to state funds implies that municipalities have no such right.

This Court's precedents confirm the absence of any general constitutional command to fund municipalities. For example, in *Reynoldsburg*, the Court concluded that the Home Rule Amendment was no barrier to a state law that effectively required a municipality to pay for relocating electric lines, even though local law put that cost on the utility. 134 Ohio St. 3d 29, 2012-Ohio-5270, ¶¶2–3, 42–51. Many other cases have reached the same result. *See, e.g.*, *Marich v. Bob Bennett Constr. Co.*, 116 Ohio St. 3d 553, 2008-Ohio-92, ¶¶3, 24, 27 (cost of mandated licensing system); *City of Canton v. Whitman*, 44 Ohio St. 2d 62, 63 n.1(1975) (cost of mandated water fluoridation); *Niehaus v. State ex rel. Bd. of Educ. of City Sch. Dist.*, 111 Ohio St. 47, 50–52 (1924) (cost of local build-

ing-inspection regime). If home-rule principles do not shield municipalities from state laws that require them to spend money, it is hard to see why the Home Rule Amendment would entitle municipalities to receive state money. After all, the withholding of state funds constitutes, if anything, a far lesser intrusion into local affairs than a state-imposed obligation to spend local funds.

b. Principle 2: The Assembly may offer financial incentives to municipalities. The preceding discussion shows that the General Assembly has no freestanding duty to fund local governments. Thus, the fact that the Spending Setoff withholds funds is not, in and of itself, a problem. That leaves the following question: Does the Spending Setoff, by providing municipalities with a financial incentive not to operate a traffic-camera program, violate the Ohio Constitution? The answer, as the second of the key legal principles makes clear, is "no."

As an initial matter, the Ohio Constitution expressly permits at least part of the Spending Setoff—namely, the subsection that withholds all local-government funds from municipalities that fail to submit a report of the revenue collected through their traffic-camera programs. R.C 5747.502(D). The reason is Article XVIII, Section 13, which empowers the General Assembly to pass laws that "require reports from municipalities" regarding their "financial … transactions." If the General Assembly is to have the power to "require" reports, it must have some means of enforcing these requirements. And one way to enforce compliance is through the withholding of funds for

which localities are otherwise eligible. It follows that the Spending Setoff is constitutional, at least with respect to the provision withholding local-government funds from municipalities that fail to submit a report regarding the revenue collected through their traffic-camera program. *See* R.C. 5747.502(B)(1), (D). (As a reminder, neither the Village nor the City cross-appealed the Eighth District's refusal to enjoin the Spending Setoff's reporting requirement. So the question whether the State can require such a report—as opposed to the question whether the State can withhold funds from municipalities that fail to provide a report—is not before the Court.)

In any event, the Spending Setoff would be constitutional even without Article XVIII, Section 13. The reason is that, as explained above, the General Assembly can use its spending power to encourage the adoption of local policies that it could not require directly. *See above* 10–16. So even if the General Assembly cannot forbid traffic-camera programs, *see City of Dayton v. State*, 151 Ohio St. 3d 168, 2017-Ohio-6909, ¶4, it can use its spending power to disincentivize the use of such programs. That is all the Spending Setoff does: municipalities must report the revenue collected through their traffic-camera programs if they want local-government funds, and their distributions are reduced by an amount equal to that revenue. This one-for-one reduction in local-government funds, no doubt, reduces the incentive to create such a program. But the Ohio Constitution allows the General Assembly to create such incentives. More precise-

ly, nothing in the Constitution *prohibits* the General Assembly from doing so. Therefore, the legislation passes constitutional muster.

The "coercion" analysis that applies to Congress's Spending Clause authority, even if it applied here, would not change this analysis. For one thing, and as detailed further below, the Spending Setoff does not interfere with any power that Ohio's constitution vests in municipalities. *See below* 28–30. Thus, it necessarily does not coerce the municipalities into surrendering any such power. But more fundamentally, the Spending Setoff is not even arguably coercive. The Spending Setoff withholds from municipalities funds equal to the amount of revenue earned through their traffic-camera programs. This leaves every municipality with a choice. Either they can receive *all* of their local-government funds or they can run a traffic-camera program and receive the same distributions minus whatever revenue they collected through the program. No evidence supports the conclusion that this is coercive—no evidence suggests that it constitutes a metaphorical "gun to the head." *NFIB*, 567 U.S. at 581 (op. of Roberts, C.J.). To the contrary, the evidence shows that the Village made much more through its traffic-camera program ($2.4 million in 2018) than it received through local-government-fund distributions ($60,000). Given these numbers, the threatened withholding of local-government-fund distributions could not possibly coerce the Village into abandoning its traffic-camera program. And there is no reason to suspect the withholding is coercive with respect to other municipalities. At the very least, the threat of losing local-

government funds *only* in an amount equal to the revenue collected elsewhere is nowhere near as coercive as the Medicaid expansion at issue in *NFIB*. That law, the *only* federal law that the U.S. Supreme Court has ever found unconstitutionally coercive, threatened to withhold *all* Medicaid funding from the States unless they surrendered to otherwise-impermissible federal commands. *Id*. The Spending Setoff is not remotely comparable.

In sum, the question whether to operate a traffic-camera program "remains the prerogative of the [municipalities] not merely in theory but in fact." *Dole*, 483 U.S. at 211–12. So the Spending Setoff offers a financial incentive and does not coerce municipalities into doing anything. The Spending Setoff is therefore constitutional.

B. The Eighth District's contrary decision was wrong, and its injunction wrongly *requires* the State to spend money.

The Eighth District misapprehended all of the above principles. It reasoned that, since the Court had already rejected the State's power to *prohibit* traffic-camera programs, the General Assembly must fund municipalities without regard to whether they have adopted such programs. App. Op. ¶40. That is a *non sequitur*. The fact that municipalities may create these programs hardly implies that the General Assembly must fund municipalities without regard to whether they have created such programs. And as the foregoing shows, the General Assembly's broad legislative power entitles it to use its spending power to discourage the use of traffic cameras.

Moreover, the appeals court here did not grapple fully with the implication of its ruling. The Eighth District's ruling amounts to an affirmative injunction. By barring the State from withholding distributions from the local-government fund, the court required the State to fund those municipalities. That is a serious problem. The Ohio Constitution expressly requires that "[n]o money shall be drawn from the treasury, except in pursuance of a specific appropriation, made by law." Art. II, §22. Accordingly, this Court has long recognized that "[t]he *sole power* of making appropriations of the public revenue is vested in the General Assembly." *State v. Medbery*, 7 Ohio St. 522, 528 (1857) (emphasis added); *accord Grandle*, 169 Ohio St. 77, syl. ¶2. The Eighth District's injunction, by appropriating money in a manner forbidden by state law, thus creates a separation-of-powers problem.

That separation-of-powers problem bolsters the State's argument that the General Assembly may place conditions on appropriations to municipalities. To hold otherwise would empower the judiciary to enjoin such conditions, which amounts to ordering expenditures that the General Assembly never approved. That outcome cannot be squared with our system of government. "It is not the role of the courts to question the public policy values of a legislatively enacted statutory scheme." *Skilton v. Perry Local Sch. Dist. Bd. of Educ.*, 102 Ohio St. 3d 173, 2004-Ohio-2239, ¶14. Rather, courts are limited to applying the law and enforcing the Constitution. *Id*. Empowering the judiciary to mandate the expenditure of money gives the judiciary control over policy deci-

sions that our Constitution vests in the legislature. (And here, the policy-infused nature of the task is especially stark: by ordering appropriations to municipalities, the General Assembly effectively blocks appropriations that would otherwise go to the highway-and-transportation-safety fund. The question where money should go is the classic example of a policy question left to the General Assembly.) It is one thing for the judiciary to effectively order such spending when the Constitution's text requires it to do so. *See DeRolph*, 78 Ohio St. 3d at 213. It is quite another for the courts to seize such power by announcing that municipalities have an *implicit* right to condition-free money from the State.

*

Because neither the Home Rule Amendment nor anything else in the Ohio Constitution forbids the General Assembly from enacting the Spending Setoff, the General Assembly validly exercised its spending power when it passed that law. This Court should reverse the Eighth District's contrary conclusion.

Appellant State of Ohio's Proposition of Law No. 2:

> *None of the Traffic Camera Law's provisions at issue, including the Spending Setoff and the Deposit Requirement, violate the Ohio Constitution's Home Rule Amendment.*

The foregoing shows that the Spending Setoff does not even implicate the Home Rule Amendment—the Spending Setoff is a permissible use of the General Assembly's spending power in part *because* the law does not run afoul of the Home Rule Amendment or any other constitutional provision. But even putting the foregoing analysis

aside and viewing this case through the lens of the Home Rule Amendment, both the Spending Setoff and the Deposit Requirement are constitutional. The Eighth District erred in holding otherwise.

A. Neither the Spending Setoff nor the Deposit Requirement violates the Home Rule Amendment.

The Home Rule Amendment provides:

> 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.

Ohio Const. art. XVIII, §3. The Amendment authorizes municipalities to exercise two types of powers, one absolute and one qualified. On the one hand, they have complete authority to exercise "all powers of local self-government." On the other hand, they have a qualified right "to adopt and enforce … local police, sanitary and other similar regulations." The right is qualified because municipalities may enact such regulations only if they create no "conflict with general laws."

For three reasons, neither the Spending Setoff nor the Deposit Requirement violates the Home Rule Amendment. First, neither provision interferes with the powers the Amendment reserves to municipalities. Second, and even assuming the Spending Setoff and the Deposit Requirement interfere with the local police power, both constitute "general laws" that may validly override a local ordinance. Third, even putting all

this aside, the home-rule challenge still fails because neither the Spending Setoff nor the Deposit Requirement conflicts with any municipal regulation.

1. The challenged provisions do not interfere with any powers reserved to municipalities.

No one has ever disputed—and the State does not dispute here—that the operation of a traffic-camera program constitutes the exercise of local police power. But neither the Spending Setoff nor the Deposit Requirement interferes with the operation of such a program, or with any other power the Home Rule Amendment reserves to municipalities. In other words, neither of the two challenged laws interferes with the "powers of local self-government" or the power "to adopt and enforce within their limits such local police, sanitary and other similar regulations." And because the municipalities have failed to explain how a law that does not impinge on municipal authority could violate the Home Rule Amendment, their home-rule claims die aborning.

Spending Setoff. The challenged portion of the Spending Setoff governs the distribution of state funds—it determines whether they go to municipalities or to the highway-and-transportation-safety fund. The power to dictate the terms of appropriations is emphatically the province of the General Assembly. Indeed, it is *unconstitutional* to draw money "from the treasury, except" pursuant to a law passed by the General Assembly. Ohio Const. art. II, §22. So the Spending Setoff does not interfere with any "powers of local self-government." Nor does it keep them from adopting or enforcing any "local police, sanitary and other similar" regulation. While the threatened reduc-

tion of local-government funds might discourage municipalities from adopting traffic-camera programs, they remain completely free to do so.

In sum, the challenged portions of the Spending Setoff constitute an exercise of the General Assembly's power to appropriate funds. Nothing less, nothing more. As such, the provision does not interfere with any powers reserved to municipalities and does not violate the Home Rule Amendment.

Deposit Requirement. The same goes for the Deposit Requirement. The Jurisdiction Provisions, which are no longer a part of this appeal, require municipalities with traffic-camera programs to enforce their traffic tickets by filing civil actions in municipal and common-pleas courts. The Deposit Requirement relates to these proceedings. It requires that municipalities "provide an advance deposit for the filing of the civil action" when they file traffic-camera tickets with the relevant court. R.C. 4511.099(A). The deposit is non-refundable except in narrow circumstances not relevant here. *See* R.C. 4511.099(B). It thus functions as a case-initiation fee.

From this description, it is easy to see why the Deposit Requirement creates no home-rule problem. Common-pleas and municipal courts are established and regulated by the State, not by local governments. *See, e.g.*, R.C. 1901.01 (organization of municipal courts); R.C. 1901.02 (jurisdiction); R.C. 1901.024 (costs, fees and receipts of county municipal courts); R.C. 1901.026 (current operating costs). And a municipality's home-rule powers—the powers of local self-government, along with the power to enact police,

sanitary, and other similar regulations—do not include the authority to dictate procedures in these courts. *See State ex rel. Ramey v. Davis*, 119 Ohio St. 596 (1929), syl. ¶2. It follows that the Deposit Requirement, which regulates matters beyond the scope of the municipalities' home-rule powers, does not interfere with any powers reserved to municipalities and does not violate the Home Rule Amendment.

2. The Spending Setoff and the Deposit Requirement are "general laws."

The Home Rule Amendment empowers municipalities "to adopt and enforce within their limits such local police, sanitary and other similar regulations, *as are not in conflict with general laws*." Ohio Const. art. XVIII, §3 (emphasis added). Thus, notwithstanding the Home Rule Amendment, *general* state laws prevail over municipal police-power regulations with which they conflict. Again, the State concedes for purposes of this case that traffic-camera programs constitute an exercise of local police power. Thus, even if the Court concludes that the Spending Setoff or the Deposit Requirement interferes with powers reserved to municipalities, *but see* 28–30, it still must reject the home-rule challenge if the challenged provisions are "general laws." They are.

a. This Court determines whether a law is "general" through the application of a four-prong test. Under that test, announced in *City of Canton v. State*, 95 Ohio St. 3d 149, 2002-Ohio-2005, ¶21, a state law is "general" only if it: (1) is "part of a statewide and comprehensive legislative enactment"; (2) applies "to all parts of the state alike and operate[s] uniformly throughout the state"; (3) "set[s] forth police, sanitary, or similar reg-

ulations, 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[s] a rule of conduct upon citizens generally."

Although the Court has applied the *Canton* test to define "general laws" in myriad contexts, *Canton* should not govern the question whether a law passed pursuant to the General Assembly's spending power is "general" in nature. The problem with applying the *Canton* test in this context is the test's fourth requirement limiting "general laws" to those that "prescribe a rule of conduct upon citizens generally." *Id.* Laws that appropriate money, even if they appropriate money contingent on the recipient's agreeing to do something, do not "prescribe a rule of conduct" at all. And insofar as these laws fund local governments, they are by definition inapplicable to "citizens generally." Thus, a rote application of the *Canton* test would keep all laws appropriating money to political subdivisions from qualifying as general laws.

There are at least two solutions to this problem. The first is to hold that *Canton* does not apply in this context and to restore, in this narrow context, the original meaning of "general laws." The phrase "general laws" was originally understood to encompass all laws "framed in general terms, restricted to no locality, and operating equally upon all of a group of objects." *Dayton*, 151 Ohio St. 3d 168, 2017-Ohio-6909, ¶93 (DeWine, J., dissenting) (quoting *Cincinnati St. Ry. Co. v. Horstman*, 72 Ohio St. 93, 109 (1905)). No doubt, this Court long ago departed from the Ohio Constitution's original

meaning when it adopted the *Canton* test. And *stare decisis* may well require retaining the test in its application to contexts it governs already. *Id*. at ¶¶30–31 (op. of Fischer, J.). But *stare decisis* cannot justify applying *Canton* to new contexts. After all, in a system (like ours) governed by a written constitution and the principle of *stare decisis*, courts must "decide every case faithful to the text and original understanding of the Constitution, to the maximum extent permitted by a faithful reading of binding precedent." *Texas v. Rettig*, 993 F.3d 408, 409 (5th Cir. 2021) (Ho, J., dissenting from denial of rehearing *en banc*). Thus, "if a faithful reading of precedent shows it is not directly controlling, the rule of law may dictate confining the precedent, rather than extending it further." *NLRB v. Int'l Ass'n of Bridge, Structural, Ornamental, & Reinforcing Iron Workers, Local 229*, 974 F.3d 1106, 1117 (9th Cir. 2020) (Bumatay, J., dissenting from denial of rehearing *en banc*).

A faithful reading of the *Canton* test does not require its extension to a context where the test leads to absurd results. And the *Canton* test leads to precisely such results in the context of appropriations laws because it would, at least if applied inflexibly, require courts to find that nearly all laws appropriating funds to municipalities are not "general laws." Rather than extending *Canton* into this context, the Court should apply the original meaning of "general laws" when it analyzes spending legislation under the Home Rule Amendment.

The second option for resolving this puzzle would entail a modification of the *Canton* test in its application to spending legislation. Specifically, the Court could simply drop the fourth prong in this one context. While this modified *Canton* test would remain inconsistent with the Home Rule Amendment's original meaning, the modified test would at least be susceptible of a reasoned application in the context of spending legislation.

b. Both the Spending Setoff and the Deposit Requirement are general laws. That is certainly true under either of the State's proposed tests. Both laws satisfy the original-meaning test because both apply uniformly throughout the State and apply equally to all municipalities. *See Dayton*, 151 Ohio St. 3d at 191, ¶93 (DeWine, J., dissenting). And both satisfy the second test because, as explained in just a moment, both satisfy the first three prongs of the *Canton* test.

Assuming *Canton* applies, however, the State still prevails. It is undisputed that both the Spending Setoff and the Deposit Requirement satisfy *Canton*'s first two prongs: they are "part of a statewide and comprehensive legislative enactment," and they "apply to all parts of the state alike and operate uniformly throughout the state." *Canton*, 95 Ohio St. 3d 149, ¶21. That leaves only the third and fourth prongs. Both provisions satisfy the third prong. And while it is difficult to apply the fourth prong to spending laws for the reasons just discussed, both provisions should still be interpreted to satisfy that prong as well.

Begin with prong three, which requires that general laws "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." *Id*. The Spending Setoff and the Deposit Requirement both satisfy this requirement because neither law grants or limits municipal legislative power *at all*. At the risk of repetition, the Spending Setoff details municipal eligibility for funds that the General Assembly has no obligation to appropriate. The Deposit Requirement, for its part, dictates the process for initiating, in state courts, a civil action to enforce a traffic-camera ticket. Neither law prohibits, or limits the permissibility of, traffic-camera programs. Nor does either law dictate the operation of traffic-camera programs—they leave municipalities completely free to decide how many cameras to install, how many tickets to issue, and so forth. So both laws satisfy *Canton*'s third prong.

That leaves only the fourth prong, which asks whether the law "prescribe[s] a rule of conduct upon citizens generally." *Id.* While this prong cannot easily be applied to spending legislation, this Court's cases ameliorate that difficulty in one respect: they require that, in considering whether a state law satisfies prong four, courts must examine the challenged law *as a whole*. Courts should not analyze the challenged provisions in isolation, but rather as part of their legislative scheme. *See, e.g.*, *City of Cleveland v. State*, 128 Ohio St. 3d 135, 2010-Ohio-6318, ¶29; *Ohio Ass'n of Private Detective Agencies v. City of N. Olmsted*, 65 Ohio St. 3d 242, 245 (1992); *Clermont Env't Reclamation Co. v.*

Wiederhold, 2 Ohio St. 3d 44, 48 (1982). To illustrate, consider *American Financial Services Association v. City of Cleveland*. In that case, this Court concluded that the State's predatory-lending statutes satisfied the fourth prong because they "establishe[d] rules of conduct for all lenders in Ohio" and "remedies for all consumers subject to predatory loans." 112 Ohio St. 3d 170, 2006-Ohio-6043, ¶36. And it did so notwithstanding the fact that some aspects of the law, standing alone, limited municipal power instead of governing citizen behavior. Most notably, the law "preempt[ed] municipal regulation … of predatory lending." *Id*. at ¶31. Because the scheme *as a whole* governed the interactions of borrowers and lenders, however, the law satisfied *Canton*'s fourth prong. *Id*. at ¶34.

Here, the Traffic Camera Law, viewed as a whole, prescribes a rule of conduct upon citizens generally. It tells all parties how their disputes over traffic-camera tickets will be resolved—in what courts, with what procedures, and so on. To be sure, entitling a citizen to her day in municipal court also means, as a corollary, telling municipalities to file in that court. But that is inherent and unavoidable in giving the citizen the right to judicial review. While discrete provisions (such as the Spending Setoff) do not relate to private conduct, the law as a whole does.

Because both provisions are "general laws," the municipalities' home-rule challenges fail.

3. No municipal ordinance "conflicts" with the Spending Setoff or the Deposit Requirement.

Even if the Spending Setoff and the Deposit Requirement are not general laws, they do not "conflict" with either of the municipalities' ordinances. That should independently defeat the municipalities' claim. Although this Court does not appear to have ever addressed this issue directly, it is hard to see how a state law that allegedly bears on "local police, sanitary and other similar regulations" could cause a home rule violation absent a *conflict* between the state law and the local regulation. After all, the Home Rule Amendment empowers municipalities "to adopt and enforce local police, sanitary and other similar regulations, *as are not in conflict with general laws*." Ohio Const. art. XVIII, §3 (emphasis added). Absent some conflict between a local regulation and a state law, the state law has not deprived the municipality of that power. And without a deprivation, there can be no home-rule violation.

If that is right, the home-rule challenge here fails because the Spending Setoff and the Deposit Requirement do not—and cannot—conflict with either of the municipalities' regulations. A municipal regulation "conflicts" with state law, for purposes of the Home Rule Amendment, if it "permits or licenses that which the [state] statute forbids and prohibits, and vice versa." *Struthers v. Sokol*, 108 Ohio St. 263, 263 (1923), syl. ¶2; *accord Ohioans for Concealed Carry, Inc. v. City of Clyde*, 120 Ohio St. 3d 96, 2008-Ohio-4605, ¶26. Again, both state laws regulate matters that municipalities lack the power to regulate—namely, the expenditure of state funds and the procedures in state courts.

Perhaps because municipalities cannot regulate these matters, their traffic-camera programs do not purport to do so. And as a result, their programs do not conflict with the Spending Setoff or the Deposit Requirement: the programs do not forbid what the state laws require or require what the state laws forbid. The absence of any conflict provides a third and final basis for rejecting the municipalities' home-rule challenge.

B. The Eighth District's contrary analysis fails.

The Eighth District offered no sound reason for invalidating the Spending Setoff and the Deposit Requirement.

1. The Eighth District rejected, without much analysis, the State's argument that both provisions regulate matters left to the State exclusively, and thus do not implicate the Home Rule Amendment. App. Op. ¶¶39, 56. For all the reasons laid out above, that conclusion was incorrect. Saying so provides the easiest route to reversal.

2. The Eighth District's application of *Canton* was equally flawed. With respect to the Spending Setoff, the Eighth District held that the State failed to satisfy the third prong because it had no "overriding state interest" that would justify limiting the municipalities' legislative authority. App. Op. ¶40. This analysis confuses the relevant test. It is true that, as "long as a statute serves an overriding state interest with respect to police, sanitary, or similar regulations, then the third prong of the *Canton* general-law test is satisfied, even if the statute limits the legislative authority of municipalities." *Dayton*, 151 Ohio St. 3d 168, ¶20 (op. of Fischer, J.). But this is merely a safety valve—it exists to

save some laws that would violate the strict terms of the third *Canton* prong. And the safety valve has no role to play here, because the Spending Setoff *does not* limit the municipalities' legislative authority and thus does not violate the third prong at all. As a result, the State did not need to identify any overriding state interest.

The Eighth District further erred in holding that neither the Spending Setoff nor the Deposit Requirement satisfied the fourth *Canton* prong. App. Op. ¶¶41, 57. In both cases, it went wrong by examining these provisions in isolation instead of looking to the operation of the Traffic Camera Law as a whole. As explained above, a fair assessment of that law *as a whole* shows that it governs private conduct by conferring a right to a day in court before being punished for a traffic-camera ticket.

3. Finally, the Eighth District erred in finding a conflict between the state laws and the municipalities' ordinances. Its analysis rested primarily on this Court's decision in *Mendenhall v. Akron*, 117 Ohio St. 3d 33, 2008-Ohio-270 (2008). In *Mendenhall*, this Court explained that "conflict by implication" arises when "a municipal ordinance … indirectly prohibit[s] what a state statute permits or vice versa." *Id*. at ¶31. It illustrated with an example, explaining that an indirect conflict would arise if "a city ordinance" set a 15 miles-per-hour speed limit while a state statute set a statewide limit of 25 miles per hour. *Id*. The Eighth District relied on this discussion of "conflict by implication." App. Op. ¶26. But it is hard to understand why, because this case involves no such conflict by implication. As discussed above, the Spending Setoff appropriates funds to

which municipalities are not constitutionally entitled, while the Deposit Requirement governs proceedings in state courts. The municipalities' traffic-camera programs do not permit anything that the Spending Setoff or the Deposit Requirement prohibit. Nor do the programs prohibit something that the Spending Setoff or the Deposit Requirement require. So they present no conflict, direct or indirect.

CONCLUSION

For the above reasons, the Court should reverse the judgment of the Eighth District Court of Appeals.

Respectfully submitted,

DAVE YOST (0056290)
Attorney General of Ohio

/s/ Benjamin M. Flowers
BENJAMIN M. FLOWERS* (0095284)
Solicitor General
**Counsel of Record*
STEPHEN P. CARNEY (0063460)
Deputy Solicitor General
CAITLYN NESTLEROTH JOHNSON (0087724)
IRIS JIN (0092561)
Assistant Attorneys General
30 East Broad Street, 17th Floor
Columbus, Ohio 43215
614-466-8980; 614-466-5087 fax
benjamin.flowers@OhioAGO.gov

Counsel for Defendant-Appellant, State of Ohio

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Merit Brief of Appellant State of Ohio was served by e-mail on July 2, 2021, upon the following counsel:

Michael E. Cicero
Nicola, Gudbrandson & Cooper, LLC
25 West Prospect Avenue
1400 Republic Building
Cleveland, OH 44115
cicero@nicola.com

Counsel for Plaintiff-Appellee,
Village of Newburgh Heights

Willa Hemmons
City of E. Cleveland Law Dept.
14340 Euclid Avenue
East Cleveland, OH 44112
whemmons@eastcleveland. org

Counsel for Plaintiff-Appellee,
City of East Cleveland

/s/ Benjamin M. Flowers
Benjamin M. Flowers
Solicitor General

APPENDIX

COURT OF APPEALS OF OHIO

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

VILLAGE OF NEWBURGH HEIGHTS, ET AL., :

Plaintiffs-Appellants, :

Nos. 109106 and 109114

v. :

STATE OF OHIO, :

Defendant-Appellee. :

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED IN PART, REVERSED IN PART, AND REMANDED
RELEASED AND JOURNALIZED: January 14, 2021

Civil Appeal from the Cuyahoga County Court of Common Pleas
Case No. CV-19-917408

Appearances:

Willa M. Hemmons, City of East Cleveland Director of Law, *for appellant* City of East Cleveland.

Nicola, Gudbranson & Cooper, L.L.C., Luke F. McConville, and Michael E. Cicero, *for appellant* Newburgh Heights.

Dave Yost, Ohio Attorney General, and Halli Brownfield Watson, and Renata Y. Staff, Assistant Attorneys General, *for appellee.*

MARY J. BOYLE, A.J.:

{¶ 1} Plaintiffs-appellants, Village of Newburgh Heights ("Newburgh Heights") and the city of East Cleveland ("East Cleveland"), appeal from a trial court judgment denying their motion for a preliminary injunction. Newburgh Heights raises the following three assignments of error:

> 1. The trial court abused its discretion when it denied Newburgh Heights' motion for preliminary injunction based on its finding that Newburgh Heights had not established immediate irreparable injury.
>
> 2. The trial court erred by failing to conclude that * * * Newburgh Heights was likely to succeed on the merits of its argument that Amended House Bill 62 violates the Home Rule Amendment of the Ohio Constitution.
>
> 3. The trial court erred in failing to grant the preliminary injunction, because there was no possibility of substantial harm to the State of Ohio or other third parties, and granting of the preliminary injunction was clearly in the public interest.

{¶ 2} East Cleveland raises the following four assignments of error:

> 1. The trial court abused its discretion when it denied East Cleveland's motion for preliminary injunction based on its finding that East Cleveland had not established immediate irreparable injury, despite East Cleveland's uncontested evidence establishing irreparable harm to the public safety of its citizens.
>
> 2. The trial court erred by failing to conclude that the City was likely to succeed on the merits of its argument that Amended House Bill 62 violates the Home Rule Amendment of the Ohio Constitution even though the Ohio Supreme Court precedent establishes that municipalities' Home Rule authority to implement photo enforcement programs cannot be unconstitutionally burdened or penalized by the State.
>
> 3. The trial court erred by failing to conclude that the City was likely to succeed on the merits of its argument that Amended House Bill 62 violates the separation of powers doctrine of the Ohio Constitution where the State improperly circumvented the Ohio Supreme Court's

decisions holding that municipalities' Home Rule authority to implement photo enforcement programs cannot be unconstitutionally burdened or penalized by the State.

4. The trial court erred by failing to conclude that the City was likely to succeed on the merits of its argument that Amended House Bill 62 violates the one-subject rule of the Ohio Constitution where the contested provisions of H.B. 62 were inserted as amendments to an appropriations bill on the eve of its passage.

{¶ 3} After review, we agree with the cities that the trial court erred when it denied their motion for a preliminary injunction with respect to their second and fourth contested provisions (reduction of local government funds and paying advance court costs). We therefore reverse the trial court's decision with respect to these two provisions. Regarding the cities' third contested provision (exclusive jurisdiction of municipal courts), however, we affirm the trial court's decision denying the preliminary injunction. We therefore affirm in part, reverse in part, and remand for further proceedings.

I. Procedural History

A. Trial Court

{¶ 4} On June 27, 2019, Newburgh Heights filed a complaint in the Cuyahoga County Court of Common Pleas, seeking a declaratory judgment and a motion for preliminary and permanent injunction against defendant-appellee, the state of Ohio, asking the court to enjoin the enforcement of certain provisions of 2019 Am.Sub.H.B. No. 62 ("H.B. 62"), which was set to become effective on July 3, 2019. Newburgh Heights alleged that the challenged provisions impermissibly

infringed upon Ohio municipalities' home rule authority to enact and operate traffic photo enforcement programs.

{¶ 5} On August 14, 2019, East Cleveland filed a motion to intervene, a complaint, and a motion for preliminary and permanent injunction, also challenging provisions of H.B. 62. The state did not object to East Cleveland intervening, and the trial court granted East Cleveland's motion to intervene.

{¶ 6} The plaintiffs challenged the following provisions of H.B. 62: (1) the requirement that a law enforcement officer be present at every photo enforcement device location at all times during operation, (2) reducing the local government fund allocation by amounts collected from drivers who paid their traffic photo citation and eliminating local government funds for local authorities that fail to report revenues from a photo enforcement program, (3) conferring "exclusive jurisdiction" over such actions to municipal and county courts that eliminated a local authority's ability to appoint administrative hearing officers to adjudicate photo enforcement tickets, and (4) requiring local authorities to provide advance and non-recoverable court deposits to cover "all applicable court costs and fees" for civil actions related to the photo enforcement programs.

{¶ 7} After a hearing on the parties' motions for preliminary injunction, the trial court denied them in part and granted them in part in October 2019. The trial court granted the motions with respect to the first contested provision, i.e., the requirement that a law enforcement officer be present at every photo enforcement

device location at all times during operation. The trial court denied the motions regarding the remaining contested provisions.

B. Appellate Background

{¶ 8} The cities appealed the trial court's decision denying their motions for preliminary injunction with respect to their second, third, and fourth contested provisions. This court consolidated the cases. The cities requested a stay in the trial court, which the trial court denied. The cities also requested this court to issue an injunction pending appeal. On December 4, 2019, this court issued the following order:

> Motion by appellant City of East Cleveland for injunction pending appeal is granted in part. The state of Ohio is enjoined, pending the resolution of this appeal, from enforcing the contested provisions in H.B. 62 concerning (1) conferring exclusive jurisdiction over traffic camera tickets to municipal and county courts and (2) requiring local authorities to provide advance and non-recoverable court deposits to cover all applicable costs and fees pertaining to the tickets. The provision reducing the local government fund allocation does not become effective until July 25, 2020; therefore, there is no immediate irreparable harm as to that provision. The trial court has already granted an injunction regarding the requirement that a law enforcement officer be present at every traffic camera location. Once briefing is complete, the appeal shall be set for hearing at the earliest feasible date.

{¶ 9} In early July 2020, plaintiffs requested that this court reconsider the "irreparable harm determination" with respect to the second contested provision (a reduction in the local government fund allocation by the amounts collected from drivers who paid their traffic photo citation and eliminating local government funds

for local authorities that fail to report revenues from a photo enforcement program) because the state would act on the provision on July 25, 2020.

{¶ 10} This court granted plaintiffs' motions on July 22, 2020, treating them as renewed motions for an injunction pending appeal due to new circumstances that existed.

{¶ 11} We will discuss the cities' assigned errors and arguments out of order where necessary for ease of discussion.

II. Preliminary Injunction

{¶ 12} The purpose of a preliminary injunction ordinarily is to preserve the status quo pending a trial on the merits. *Mears v. Zeppe's Franchise Dev.*, 8th Dist. Cuyahoga No. 90312, 2009-Ohio-27, ¶ 23. "An injunction is an extraordinary remedy in equity where there is no adequate remedy available at law. It is not available as a right but may be granted by a court if it is necessary to prevent a future wrong that the law cannot." *Garono v. State*, 37 Ohio St.3d 171, 173, 524 N.E.2d 496 (1988). Because an injunction is an extraordinary remedy, "'the moving party has a substantial burden to meet in order to be entitled'" to a preliminary injunction. *KLN Logistics Corp. v. Norton*, 174 Ohio App.3d 712, 2008-Ohio-212, 884 N.E.2d 631, ¶ 11 (8th Dist.), quoting *Ormond v. Solon*, 8th Dist. Cuyahoga No. 79223, 2001 Ohio App. LEXIS 4654, 4 (Oct. 18, 2001). The party seeking the preliminary injunction must establish a right to the preliminary injunction by showing clear and convincing evidence of each element of the claim. *Id.*, citing *Vanguard Transp. Sys., Inc. v.*

Edwards Transfer & Storage Co., Gen. Commodities Div., 109 Ohio App.3d 786, 790, 673 N.E.2d 182 (10th Dist.1996).

{¶ 13} When ruling on a motion for a preliminary injunction, the trial court must consider whether: (1) the movant has shown a strong or substantial likelihood or probability of success on the merits, (2) the movant has shown irreparable injury, (3) third parties will be harmed if the injunction is granted, and (4) the public interest would be served by issuing the preliminary injunction. *KLN Logistics Corp.* at ¶ 12, citing *Vanguard Transp. Sys.* at 790. No one factor is dispositive. *Cleveland v. Cleveland Elec. Illum. Co.*, 115 Ohio App.3d 1, 14, 684 N.E.2d 343 (8th Dist.1996). When there is a strong likelihood of success on the merits, preliminary injunctive relief may be justified even though a plaintiff's case of irreparable injury may be weak. *Id.* Conversely, where a party's likelihood of success on the merits is low, there must be a high likelihood of irreparable harm to justify injunctive relief. *Aids Taskforce of Greater Cleveland v. Ohio Dept. of Health*, 2018-Ohio-2727, 116 N.E.3d 874, ¶ 23 (8th Dist.).

{¶ 14} In Ohio, a statute cannot be invalidated or enjoined unless it is unconstitutional. This is because Article II, Section 1 of the Ohio Constitution confers all legislative power of the state on the General Assembly. "The General Assembly has plenary power to enact legislation[.]" *Tobacco Use Prevention & Control Found. Bd. of Trustees v. Boyce*, 127 Ohio St.3d 511, 2010-Ohio-6207, 941 N.E.2d 745, ¶ 10. Therefore, it may "enact any law that does not conflict with the Ohio or United States Constitution." *Kaminski v. Metal & Wire Prods. Co.*, 125 Ohio

St.3d 250, 2010-Ohio-1027, 927 N.E.2d 1066, ¶ 60. For this reason, "'[b]efore any legislative power, as expressed in a statute, can be held invalid, it must appear that such power is clearly denied by some constitutional provision.'" *Boyce* at ¶ 10, quoting *Williams v. Scudder*, 102 Ohio St. 305, 307, 131 N.E. 481 (1921).

{¶ 15} The power to invalidate and enjoin a statute is further "circumscribed by the rule[s] that laws are entitled to a strong presumption of constitutionality and that a party challenging the constitutionality of a law bears the burden of proving that the law is unconstitutional beyond a reasonable doubt." *Yajnik v. Akron Dept. of Health, Hous. Div.*, 101 Ohio St.3d 106, 2004-Ohio-357, 802 N.E.2d 632, ¶ 16.

{¶ 16} The decision as to whether such an injunction should be issued rests in the sound discretion of the court and will not be reversed absent an abuse of that discretion. *Garono*, 37 Ohio St.3d at 173, 524 N.E.2d 496. "Essentially, 'abuse of discretion' describes a judgment neither comporting with the record, nor reason." *In re S.E.*, 8th Dist. Cuyahoga No. 96031, 2011-Ohio-2042, ¶ 13, citing *In re Wiley*, 11th Dist. Lake No. 2007-P-0013, 2007-Ohio-7123, ¶ 17.

A. Likelihood of Success on the Merits

{¶ 17} We will address the cities' second assignment of error first, i.e., whether the cities were likely to succeed on the merits of their motion with respect to the three contested provisions that are before us on appeal. In their motions for preliminary injunction, the cities raised several constitutional arguments. But their first argument was that the contested provisions of H.B. 62 violate the Home Rule

Amendment. The trial court, however, largely ignored these arguments.[1] Nonetheless, the trial court stated that any arguments not addressed in its opinion "are not well taken by this [c]ourt for purposes of these motions."

1. Home Rule Amendment

{¶ 18} The Home Rule Amendment, set forth in the Ohio Constitution, Section 3, Article XVIII, empowers municipalities 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."

{¶ 19} The phrase "as are not in conflict with general laws" in Section 3, Article XVIII of the Ohio Constitution, has been universally construed to place a limitation on a municipality's power to "adopt and enforce * * * local police, sanitary and other similar regulations," but not on the power of local self-government. *Hills & Dales, Inc. v. Wooster*, 4 Ohio App.3d 240, 242, 448 N.E.2d 163 (9th Dist.1982), citing *State ex rel. Canada v. Phillips*, 168 Ohio St. 191, 151 N.E.2d 722 (1958). "Police powers" encompass the areas of public health, safety, morals, and general welfare. *Hills & Dales* at *id.*

{¶ 20} In *Mendenhall v. Akron*, 117 Ohio St.3d 33, 2008-Ohio-270, 881 N.E.2d 255, the Ohio Supreme Court explained that courts use a three-part test to evaluate claims that a municipality has exceeded its powers under the Home Rule

[1] The trial court only addressed the cities' home-rule argument with respect to the first contested provision, which requires a police officer to be present at every automated traffic camera. This provision is not before us on appeal because the trial court granted the cities' motions with respect to this provision.

Amendment. First, courts must determine if the ordinance at issue is an exercise of the city's "police power," rather than of local self-government. *Id.* at ¶ 17, citing *Canton v. State*, 95 Ohio St.3d 149, 2002-Ohio-2005, 766 N.E.2d 963, ¶ 9. "If an allegedly conflicting city ordinance relates solely to self-government, the analysis stops, because the Constitution authorizes a municipality to exercise all powers of local self-government within its jurisdiction." *Id.* at ¶ 18, quoting *Am. Fin. Servs. Assn. v. Cleveland*, 112 Ohio St.3d 170, 2006-Ohio-6043, 858 N.E.2d 776, ¶ 23.

{¶ 21} The second step of the *Mendenhall* test is necessary only if the city ordinance involves an exercise of police power. This step requires a court to determine whether the state law is a general law under the four-part test set forth in *Canton*. *Mendenhall* at ¶ 17, citing *Canton* at ¶ 9.

{¶ 22} The final step of the *Mendenhall* test is to determine whether the ordinance conflicts with the statute, i.e., whether the ordinance permits that which the statute forbids, and vice versa. If the ordinance conflicts with the general law, it will be held unconstitutional. *Id.* at ¶ 28. If there is no conflict, the municipal action is permissible even though the statute is a general law. *Id.*

{¶ 23} To qualify as a general law under the *Canton* test, 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. If a statute meets the *Canton* general-law test, then the statute takes precedence over any conflicting municipal ordinances. *Dayton v. State*, 151 Ohio St.3d 168, 2017-Ohio-6909, 87 N.E.3d 176, ¶ 15. If, however, "the general-law test is not satisfied, then the statute is 'an unconstitutional attempt to limit the legislative home-rule powers' of municipalities." *Id.*, quoting *Canton*, 95 Ohio St.3d 149, 2002-Ohio-2005, 7676 N.E.2d 963, at ¶ 10.

{¶ 24} The Supreme Court of Ohio has found that photo enforcement programs do not exceed an Ohio municipality's home rule authority provided the municipality does not alter statewide traffic regulations. *See Mendenhall*, 117 Ohio St.3d 33, 2008-Ohio-270, 881 N.E.2d 255, at the syllabus. The Supreme Court reaffirmed the holding of *Mendenhall* in *Walker v. Toledo*, 143 Ohio St.3d 420, 2014-Ohio-5461, 39 N.E.3d 474, explaining that "Ohio municipalities have home-rule authority to establish administrative proceedings, including administrative hearings, related to civil enforcement of traffic ordinances, and that these administrative proceedings must be exhausted before offenders or the municipality can pursue judicial remedies." *Walker* at ¶ 3.

{¶ 25} There is no question that under the *Mendenhall* test, the local ordinances encompass the police power. "[T]he regulation of traffic is an exercise of police power that relates to public health and safety, as well as to the general welfare of the public." *Mendenhall* at ¶ 19, citing *Linndale v. State*, 85 Ohio St.3d 52, 54, 706 N.E.2d 1227 (1999).

{¶ 26} With respect to whether a conflict exists between the cities' local ordinances setting forth their photo enforcement programs and the contested provisions of H.B. 62, the state contends that the cities did not and cannot show that a conflict exists. We disagree. The state statutes in this case indirectly prohibit what the local ordinances permit. The Supreme Court of Ohio has recognized conflict by implication. *See Mendenhall* at ¶ 31-32. In *Mendhall*, the Supreme Court found no conflict by implication because the issue was whether the state "had exclusivity in the area of speed enforcement," which the court held it did not. *Id.* at ¶ 33. Here, however, the state is attempting to exclusively control (1) the funds local authorities receive from photo enforcement programs, (2) where citizens can challenge a photo enforcement citation, and (3) who pays the court costs with respect to challenges to a photo enforcement citation. We therefore find that a conflict exists between the contested provisions of H.B. 62 and the local ordinances.

{¶ 27} Thus, the only question remaining is whether the state statutes qualify as a general law under the four-part test in *Canton*. The first two criteria are easily met. The contested provisions of H.B. 62 (1) are part of a statewide and comprehensive legislative enactment and (2) apply to all parts of the state alike (if a local ordinance enacts a photo enforcement program).

{¶ 28} Therefore, with respect to the contested provisions of H.B. 62, we must determine only the last two *Canton* factors: (3) do the state statutes at issue set forth police, sanitary, or similar regulations or do they grant or limit the legislative power of a municipal corporation to set forth its own police, sanitary, or

similar regulations, and (4) do the state statutes prescribe a rule of conduct upon citizens generally.

a. *Dayton v. State*

{¶ 29} The Ohio Supreme Court's opinion in *Dayton*, 151 Ohio St.3d 168, 2017-Ohio-6909, 87 N.E.3d 176, is instructive here despite being a plurality opinion. Three justices found the traffic-camera laws at issue were not general laws (and therefore unconstitutional) because they violated the third prong of the *Canton* test. Two justices found the camera laws at issue were not general laws (and therefore unconstitutional) because they violated the fourth prong of the *Canton* test. We therefore find *Dayton* to be instructive to our analysis.

{¶ 30} The lead opinion in *Dayton* analyzed several Revised Code provisions that were passed by the General Assembly in 2014 Am.Sub.S.B. No. 342 ("S.B. 342"). These provisions regulated "local authorities' use of automated traffic-enforcement programs." *Id.* at ¶ 4. The three contested provisions of S.B. 342 were set forth in R.C. 4511.093(B)(1), 4511.0912, and 4511.095. R.C. 4511.093(B)(1) required the presence of a full-time law-enforcement officer at each traffic camera. R.C. 4511.0912 provided that local authorities shall not issue a ticket for a speeding violation unless "the vehicle involved in the violation is traveling at a speed that exceeds the posted speed limit by not less than" 6 m.p.h. in a school zone or park area or 10 m.p.h. in other locations. And R.C. 4511.095 required local authorities to conduct safety studies and a public information campaign, educating and notifying the public about the location of the cameras. The "sole issue" in *Dayton* was

"whether the contested provisions of S.B. 343 qualif[ied] as general laws" under the *Canton* test. *Dayton* at ¶ 15. In doing so, the lead opinion focused only on the third prong of the *Canton* test because it found it to be dispositive. *Id.* at ¶ 15.

{¶ 31} Regarding the third prong of the *Canton* test, the general-law test, the lead opinion in *Dayton* explained that it had to consider "whether the statute sets forth police regulations or whether it merely grants or limits municipalities' legislative power to set forth police regulations." *Dayton* at ¶ 16, citing *Canton*, 95 Ohio St.3d 149, 2002-Ohio-2005, 766 N.E.2d 963, at ¶ 33. The Supreme Court explained:

> Under this court's precedent, so long as a statute serves an overriding state interest with respect to police, sanitary, or similar regulations, then the third prong of the *Canton* general-law test is satisfied, even if the statute limits the legislative authority of municipalities. However, when a statute expressly grants or limits the legislative power of a municipal corporation to set forth police, sanitary, or similar regulations, without serving an overriding statewide interest, then the statute, or a portion of it, violates the Home Rule Amendment.

Id. at ¶ 20.

{¶ 32} The lead opinion reviewed previous cases where the Supreme Court had analyzed the third prong of the *Canton* test:

> In *Canton*, the court considered whether R.C. 3781.184, which related to the zoning of property for manufactured homes, violated the Home Rule Amendment. R.C. 3781.184(C) provided that political subdivisions must allow manufactured homes to be placed in areas where single-family residences were permitted. R.C. 3781.184(D) created an exception to division (C) that allowed private-property owners to prohibit manufactured homes on their land by way of restrictive covenants in deeds. The court determined that "R.C. 3781.184(C), on its face, appears to serve an overriding state interest in providing more affordable housing options across the state." *Canton*

at ¶ 33. It then determined, however, that "the exception contained in R.C. 3781.184(D) defeats this purpose." *Id.* According to the court, R.C. 3781.184(C) would have "very little, if any, impact in areas of development having effective deed restrictions or active homeowner associations. Instead, the statute [would] effectively apply only in older areas of the state, i.e., cities where residential areas no longer have effective deed restrictions or no longer have active homeowner associations." *Id.* at ¶ 30. Because the statute did not serve an overriding state interest, the *Canton* court determined that R.C. 3781.184(C) "purports only to grant or limit the legislative power of a municipal corporation to set forth police, sanitary, or similar regulations." *Id.* at ¶ 33.

This court confronted the third prong of the *Canton* test in *Ohioans for Concealed Carry, Inc. v. Clyde*, 120 Ohio St.3d 96, 2008-Ohio-4605, 896 N.E.2d 967. In *Ohioans for Concealed Carry*, the court considered whether a municipal ordinance that prohibited licensed gun owners from carrying a concealed gun within a city's parks was constitutional under the Home Rule Amendment. The municipal ordinance conflicted with a state statute that allowed a licensed gun owner to carry a gun anywhere in the state, subject to several exceptions that did not include municipal parks. In analyzing the third prong of the Canton general-law test, the court determined that the statute went beyond preventing cities from enacting conflicting legislation because the statute "provide[d] a program to foster proper, legal handgun ownership in this state." *Id.* at ¶ 50. The court determined that "[t]he statute therefore represents both an exercise of the state's police power and an attempt to limit legislative power of a municipal corporation to set forth police, sanitary, or similar regulations." *Id.*; *see also Mendenhall*, 117 Ohio St. 3d 33, 2008-Ohio-270, at ¶ 24, 881 N.E.2d 255 (determining that R.C. 4511.21 "has extensive scope and does more than grant or limit state powers").

This court confronted the third prong of the *Canton* test again in *Cleveland v. State*, 138 Ohio St.3d 232, 2014-Ohio-86, 5 N.E.3d 644. The city of Cleveland sought a declaration that former R.C. 4921.25, 2012 Am.Sub.H.B. No. 487, was unconstitutional under the Home Rule Amendment. Former R.C. 4921.25 vested the Public Utilities Commission of Ohio ("PUCO") with the authority to regulate towing entities as for-hire motor carriers, but the second sentence of the statute provided that "[s]uch an entity is not subject to any ordinance, rule, or resolution of a municipal corporation, county, or township that provides for the licensing, registering, or regulation of entities that tow motor vehicles." Cleveland challenged the second sentence of the

> statute as unconstitutionally infringing on local authorities' abilities to regulate towing companies. This court determined that the statute, when read as a whole, did not merely limit the legislative power of municipalities to set forth police, sanitary, or similar regulations, *Cleveland* at ¶ 13; nevertheless, the court isolated the second sentence of the statute, analyzed it separately, and determined that it was unconstitutional, *id.* at ¶ 16-17. According to the court, "[u]nlike the first sentence of R.C. 4921.25, which subjects towing entities to PUCO regulation, the second sentence fails to set forth any police, sanitary, or similar regulations." *Id.* at ¶ 16.

Dayton at ¶ 17-19.

{¶ 33} After applying the reasoning of those three cases to the contested provisions of S.B. 342, the lead opinion of *Dayton* held that the three traffic-camera statutes failed the third prong of the *Canton* test and improperly infringed upon municipal power. *Id.* at ¶ 21-27. The lead opinion found that the three contested provisions of S.B. 342, R.C. 4511.093(B)(1) (required police presence at the location of a traffic camera), R.C. 4511.0912 (prohibited a municipality from issuing a fine for speeding based on a traffic camera unless the driver's speed exceeded the speed limit by six or ten miles per hour), and R.C. 4511.095 (required a municipality to perform a study and public-information campaign before using the cameras) did not serve an overriding statewide interest. *Id.*

{¶ 34} Two justices in *Dayton* agreed with the lead opinion that the three contested provisions of S.B. 342 were unconstitutional, but for a different reason. *See id.* at ¶ 40-41 (French, J., concurring in judgment only ("CJO opinion")). The CJO opinion found the three contested provisions to be unconstitutional under the

fourth prong of the *Canton* test. The CJO opinion reviewed previous cases where the Supreme Court had analyzed the fourth prong:

> Under the fourth prong of the *Canton* test, a statute must "prescribe a rule of conduct upon citizens generally" to qualify as a general law. *Id.* at ¶ 21. The statute at issue in *Canton* — forbidding political subdivisions from prohibiting or restricting the location of permanently sited manufactured homes in any zone or district in which a single-family home was permitted — did not satisfy that requirement because it "applie[d] to municipal legislative bodies, not to citizens generally." *Id.* at ¶ 2, 36. In contrast, a statute that established speed limits and stated, "'No person shall operate a motor vehicle * * * at a speed greater or less than is reasonable or proper,'" prescribed a rule of conduct upon citizens and satisfied the fourth prong of the *Canton* test. *Mendenhall v. Akron*, 117 Ohio St.3d 33, 2008-Ohio-270, 881 N.E.2d 255, ¶ 25, quoting R.C. 4511.21.
>
> In *Linndale v. State*, 85 Ohio St.3d 52, 1999 Ohio 434, 706 N.E.2d 1227 (1999), this court considered a home-rule challenge to former R.C. 4549.17, which prohibited local law-enforcement officers from issuing speeding and excess-weight citations on interstate freeways when (1) less than 880 yards of the freeway were within the locality's jurisdiction, (2) local officers had to travel outside their jurisdiction to enter onto the freeway, and (3) local officers entered the freeway with the primary purpose of issuing the citations. *Linndale* predates *Canton*, but the court nevertheless addressed factors that it would later incorporate into the *Canton* general-law test. *Linndale* at 55. The court held that R.C. 4549.17 was not a general law but was simply a limit on the legislative powers of municipalities to adopt and enforce police regulations. *Id.* As relevant here, the court stated that the statute did "not prescribe a rule of conduct upon citizens generally." *Id.*
>
> We reached a similar conclusion in *Youngstown v. Evans*, 121 Ohio St. 342, 7 Ohio Law Abs. 703, 168 N.E. 844 (1929). The statute at issue there limited municipalities' authority to set punishments for misdemeanor violations of a municipal ordinance. This court stated that the statute was "not a general law in the sense of prescribing a rule of conduct upon citizens generally. It is a limitation upon law making by municipal legislative bodies." *Id.* at 345.

{¶ 35} The CJO opinion found that unlike the speed-limit statute in *Mendenhall*, the contested traffic-camera provisions at issue in *Dayton* did "not

dictate a rule of conduct applicable to the citizens of the state." *Id.* at ¶ 44. The CJO opinion explained:

> Indeed, nothing in S.B. 342 directs citizens' conduct with respect to the operation of a motor vehicle. Driving in excess of the speed limit and running a red light are violations of the law, whether or not a traffic camera exists to record the violation and whether or not a law-enforcement officer has authority to issue a citation. The contested provisions are phrased in terms of what a local authority shall or shall not do. They apply not to citizens but to municipalities. Like the statute in *Linndale*, the contested provisions of S.B. 342 merely limit municipal authority to enforce other substantive laws.

Id.

b. Analysis

{¶ 36} We now turn to the three contested provisions under H.B. 62 to apply the third and fourth prong of the *Canton* test to determine if the contested provisions are general laws.

i. The Second Contested Provision — Reduction of Funds

{¶ 37} The second contested provision, reduction of the local government funds from the state, is set forth in R.C. 5747.502. Under H.B. 62, this provision states that any local authority "that operated, directly or indirectly, a traffic law photo-monitoring device during the preceding fiscal year" must annually "file a report with the tax commissioner that includes a detailed statement of the civil fines the local authority * * * collected from drivers for any violation of any local ordinance or resolution during that period that are based upon evidence recorded by a traffic law photo-monitoring device." R.C. 5747.502(B). A local authority's payments from the state local government fund are then reduced by an amount equal to one-twelfth

of the gross amount of all fines indicated on the report. R.C. 5747.502(C)(1). If the fines exceed the amount of state funds the local authority would otherwise receive, its future funds are reduced as well. *Id.* If the local authority does not file a report as required, all payments of local government funds to the locality will cease until a report is filed. R.C. 5747.502(D). An amount equal to the payments withheld (except for fines incurred in school zones) are then deposited into an Ohio highway and transportation safety fund and used in the transportation district in which the local authority is located. R.C. 5747.502(F).

{¶ 38} The cities contend that there is no overriding state interest in R.C. 5747.502 and that it "serves merely to penalize municipalities that operate photo enforcement programs without any overriding state interest, as the [s]tate simply reallocates the local government funds that it takes away from offending cities." R.C. 5747.502(F). The cities further maintain that R.C. 5747.502 does not prescribe a rule of conduct applicable to the citizens of the state.

{¶ 39} The state maintains that the Ohio Constitution provides that state spending lies within the General Assembly's exclusive power. It argues that nowhere in the Constitution is a mandate that the state even have a local government fund, nor does the Constitution impose a duty on the state to appropriate funds to municipalities. The state further contends that although the Home Rule Amendment "protects municipalities' 'authority to exercise' the 'powers of local self-government,' and to enforce 'local police * * * regulations[,] * * * it does not confer a right to receive state money.' " According to the state, the Ohio Constitution

expressly authorizes the General Assembly to pass laws "requir[ing] reports from municipalities as to their financial condition and transactions," which the General Assembly has done on "other occasions." Therefore, the state argues that this power "implies a power to withhold funding based on what is reported when the General Assembly exercises its authority to pass laws appropriating funds."

{¶ 40} After review, we agree with the cities. Indeed, we see no overriding state interest in R.C. 5747.502, and the state has failed to set forth viable one. Just because the state has the power to control state spending does not mean that it has the power to penalize local authorities who are operating traffic-camera programs, something the Supreme Court stated local authorities had the authority to do under the Home Rule Amendment. *See Mendenhall*, 117 Ohio St.3d 33, 2008-Ohio-270, 881 N.E.2d 255; *Walker*, 143 Ohio St.3d 420, 2014-Ohio-5461, 39 N.E.3d 474.

{¶ 41} We further find that R.C. 5747.502 fails the fourth prong of the *Canton* test because it fails to prescribe a rule of conduct applicable to the citizens of this state. Rather, the provisions are directed solely at the local authorities.

{¶ 42} Therefore, R.C. 5747.502(C), (D), and (F) fail to satisfy the third and fourth prongs of the *Canton* test.[2] Accordingly, they are not general laws and are unconstitutional attempts to limit the legislative home-rule powers of municipalities.

ii. The Third Contested Provision — Exclusive Jurisdiction

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[2] We note, however, that R.C. 5747.502(B) is permissible because the state is merely requesting reports from the municipalities, which it is authorized to do under the Constitution.

{¶ 43} The third contested provision, conferring "exclusive jurisdiction" over such traffic-camera actions to municipal and county courts and eliminating a local authority's ability to appoint administrative hearing officers to adjudicate photo enforcement tickets, is set forth in R.C. 1901.20(A)(1) and 1907.02(C).

{¶ 44} R.C. 1901.20(A)(1) as enacted by H.B. 62 sets forth criminal and traffic jurisdiction in relevant part, stating:

> The municipal court has jurisdiction to hear misdemeanor cases committed within its territory and has jurisdiction over the violation of any ordinance of any municipal corporation within its territory, including exclusive jurisdiction over every civil action concerning a violation of a state traffic law or a municipal traffic ordinance. The municipal court does not have jurisdiction over a violation that is required to be handled by a parking violations bureau or joint parking violations bureau pursuant to Chapter 4521. of the Revised Code. However, the municipal court has jurisdiction over the violation of a vehicle parking or standing resolution or regulation if a local authority, as defined in division (D) of section 4521.01 of the Revised Code, has specified that it is not to be considered a criminal offense, if the violation is committed within the limits of the court's territory, and if the violation is not required to be handled by a parking violations bureau or joint parking violations bureau pursuant to Chapter 4521. of the Revised Code.

{¶ 45} R.C. 1907.02(C) as enacted by H.B. 62 sets forth jurisdiction for criminal cases and parking violations. It provides, "A county court has exclusive jurisdiction over every civil action concerning a violation of a state traffic law or a municipal traffic ordinance, if the violation is committed within the limits of the court's territory."

{¶ 46} The cities make the same arguments with respect to the third contested provisions, i.e., that R.C. 1901.20(A)(1) and 1907.02(C) do not serve any

overriding state interest and do not prescribe rules of conduct for the citizens of Ohio.

{¶ 47} The state contends that the General Assembly has the exclusive power to define the jurisdiction of the lower courts and to provide for their maintenance. It maintains that the Home Rule Amendment does not limit the plenary powers of the General Assembly over inferior courts. The state cites to, inter alia, *Cupps v. Toledo*, 170 Ohio St. 144, 163 N.E.2d 384 (1959), in support of its argument. In *Cupps*, Toledo sought to deprive a lower court of its jurisdiction through a charter provision that made decisions of the city's civil service commission final. State law, however, made such decisions appealable to the common pleas courts. The Ohio Supreme Court held that "the authority granted to municipalities by [the Home Rule Amendment] * * * does not include the power to regulate the jurisdiction of courts established by the Constitution or by the General Assembly thereunder." *Id.* at 149-150.

{¶ 48} *Mendenhall*, 117 Ohio St.3d 33, 2008-Ohio-270, 881 N.E.2d 255, *Walker*, 143 Ohio St.3d 420, 2014-Ohio-5461, 39 N.E.3d 474, and *State ex rel. Magsig v. Toledo*, 160 Ohio St.3d 899, 2020-Ohio-3416, 156 N.E.3d 899, are instructive. Mendenhall hit and killed a child in a hit-and-run accident in a school crosswalk. Akron subsequently passed an ordinance implementing an "automated mobile speed enforcement system." *Mendenhall* at ¶ 4. The ordinance created a system that was purely civil in nature and did not modify any state speed limits. Violators received notices of civil liability and could pay the civil fines or pursue an

administrative appeal. Mendenhall received a notice of liability for speeding, which was dismissed on administrative appeal. Mendenhall filed a class-action suit against the municipality for a declaratory judgment, an injunction, and a monetary award. Mendenhall asserted that the Akron ordinance conflicted with Ohio's general laws regulating traffic, thereby exceeding Akron's home-rule authority and violating due process.

{¶ 49} The Ohio Supreme Court examined the following question in *Mendenhall*: "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." *Id.* at ¶ 2. The Supreme Court concluded: "[Akron's] ordinance provides for a complementary system of civil enforcement that, rather than decriminalizing behavior, allows for the administrative citation of vehicle owners under specific circumstances. Akron has acted within its home rule authority granted by the Constitution of Ohio." *Id.* at ¶ 42.

{¶ 50} In *Walker*, the Ohio Supreme Court cited to *Cupps* and "acknowledge[d] that home-rule authority does not include the power to regulate the jurisdiction of courts." *Id.* at ¶ 20, citing *Cupps* at paragraph one of the syllabus. But the Supreme Court reaffirmed its holding in *Mendenhall* "that municipalities have home-rule authority under Article XVIII of the Ohio Constitution to impose civil liability on traffic violators through an administrative enforcement system." *Id.* at ¶ 3. It further held that the "Ohio Constitution, Article IV, Section 1, which

authorizes the legislature to create municipal courts, and R.C. 1901.20, which sets the jurisdiction of municipal courts, do not endow municipal courts with exclusive authority over civil administrative enforcement of traffic-law violations" and that "Ohio municipalities have home-rule authority to establish administrative proceedings, including administrative hearings, related to civil enforcement of traffic ordinances, and that these administrative proceedings must be exhausted before offenders or the municipality can pursue judicial remedies." *Id.*

{¶ 51} Recently, however, in *State ex rel Magsig v. Toledo*, 160 Ohio St.3d 899, 2020-Ohio-3416, 156 N.E.3d 899, the Ohio Supreme Court addressed its holding in *Walker* as well as the application of *Walker* to the exclusive-jurisdiction provision in H.B. 62. The Supreme Court explained:

> The version of R.C. 1901.20(A)(1) that was in effect at the time of our *Walker* decision did not give municipal courts exclusive jurisdiction over cases involving traffic-camera citations. *Id.* at ¶ 1-3. The previous version of R.C. 1901.20(A)(1) stated: "The municipal court has jurisdiction of the violation of any ordinance of any municipal corporation within its territory[.]" Am.Sub.S.B. No. 98, 147 Ohio Laws, Part IV, 7357. We held that "any" did not mean the same thing as "exclusive," and that the statute could therefore not be read as conferring exclusive jurisdiction over civil traffic-law violations on municipal courts. *Id.* at ¶ 25. But as amended by H.B. 62 in 2019, R.C. 1901.20(A)(1) now states that municipal courts have "*exclusive* jurisdiction over every civil action concerning a violation of a state traffic law or a municipal traffic ordinance." (Emphasis added). The current version of R.C. 1901.20(A)(1) clearly and unambiguously reserves for municipal courts exclusive authority to adjudicate every civil traffic-law violation. And that statutory grant of jurisdiction "cannot be impaired or restricted by any municipal charter or ordinance provision." *Cupps v. Toledo*, 170 Ohio St. 144, 151, 163 N.E.2d 384 (1959).

Id. at ¶ 11.

{¶ 52} The Supreme Court explicitly noted in *Magsig* that Toledo did not challenge the constitutionality of the exclusive-jurisdiction clause of R.C. 1901.20(A) as enacted by H.B. 62. *Id.* at ¶ 16. Nonetheless, the Supreme Court stated that although Toledo did not do so, "the authority of the General Assembly to set the jurisdiction of the municipal courts is undisputed." *Id.*

{¶ 53} After review, we agree with the state that the exclusive-jurisdiction provision in H.B. 62 does not violate the Home Rule Amendment or any other section of the Ohio Constitution. The cities' authority under the Home Rule Amendment to regulate local police, sanitary, and other similar regulations does not include the power to regulate the jurisdiction of courts. The power to regulate the jurisdiction of courts is established by the Constitution or by the General Assembly, and, thus, the Home Rule Amendment does not apply to R.C. 1901.20(A)(1) and 1907.02(C). *But see Akron v. Ohio*, Summit C.P. No. CV-2015-07-3666 (found that these provisions failed the third prong of the *Canton* test because they limited the city's police power without serving an overriding state interest).

iii. The Fourth Contested Provision — Advance Court Deposit

{¶ 54} The fourth contested provision, requiring local authorities to provide advance and nonrecoverable court deposits to cover "all applicable court costs and fees" for civil actions related to the photo enforcement programs, is set forth in R.C. 4511.099(A). This deposit is not required in a school zone and is nonrefundable. R.C. 4511.099(A) and (B). R.C. 4511.099(A) states:

> [W]hen a certified copy of a ticket issued by a local authority based on evidence recorded by a traffic law photo-monitoring device is filed with the municipal court or county court with jurisdiction over the civil action, the court shall require the local authority to provide an advance deposit for the filing of the civil action. The advance deposit shall consist of all applicable court costs and fees for the civil action. The court shall retain the advance deposit regardless of which party prevails in the civil action and shall not charge to the registered owner or designated party any court costs and fees for the civil action.

{¶ 55} The cities again argue that this provision does not have an overriding state interest and does not prescribe a rule upon the citizens of the state.

{¶ 56} The state contends that it has an overriding state interest in making sure that municipal courts are properly funded. The state further maintains that because "R.C. 1901.026(A) has long made cities responsible for contributing to the 'operating costs' of municipal courts whose jurisdictions include more than one city," the advance-deposit requirement of R.C. 4511.099(A) "prevents other cities from having to share the costs associated with one city's traffic-camera program."

{¶ 57} After review, we agree with the cities that R.C. 4511.099(A) is not a general law and is therefore, unconstitutional. Even if we assume that the state's interest satisfies the third prong of the *Canton* test, R.C. 4511.099(A) still only prescribes rules for the local municipalities and not citizens of the state. Therefore, R.C. 4511.099(A) is not a general law and is an unconstitutional attempt to limit the legislative home-rule powers of municipalities.

{¶ 58} After review, we sustain the cities' second assignments of error in part (because the cities are likely to succeed on the merits of their claims that the second and fourth contested provisions of H.B. 62 violate the Home Rule Amendment) and

overrule them in part (because the cities are not likely to succeed on their claim that the third contested provision violates the Home Rule Amendment).

2. Other Constitutional Challenges

{¶ 59} Because we found that the second and fourth contested provisions (reduction of funds and advance court deposit) violate the Home Rule Amendment, we will address only the likelihood of success of the cities' other constitutional arguments with respect to the third contested provision, i.e., the exclusive-jurisdiction provision. We will also address only the other constitutional arguments that the cities raise on appeal.

a. Separation-of-Powers

{¶ 60} East Cleveland contends in its third assignment of error that the exclusive-jurisdiction provision is unconstitutional because it violates the separation-of-powers doctrine. It claims that H.B. 62 is an unconstitutional "attempt to circumvent the [Ohio Supreme] Court's holding" in *Mendenhall*, 117 Ohio St.3d 33, 2008-Ohio-270, 881 N.E.2d 255, and *Walker*, 143 Ohio St.3d 420, 2014-Ohio-5461, 39 N.E.3d 474, that "Ohio municipalities have home-rule authority to establish administrative proceedings, including administrative hearings, related to civil enforcement of traffic ordinances[.]"

{¶ 61} As we already explained, however, the Ohio Supreme Court recently stated in *Magsig* that the statute at issue in *Walker* did not grant exclusive jurisdiction over civil traffic-law violations to municipal courts. *Magsig*, 160 Ohio St.3d 899, 2020-Ohio-3416, 156 N.E.3d 899, at ¶ 11. Now, however, the General

Assembly has amended the statute to do so. Therefore, because these cases addressed a different version of the statute, they do not support East Cleveland's argument that the exclusive-jurisdiction provision as enacted in H.B. 62 violates the separation-of-powers doctrine. East Cleveland's third assignment of error is overruled because it is not likely to succeed on the merits of this claim.

b. One-Subject Rule

{¶ 62} East Cleveland further argues in its fourth assignment of error that the exclusive-jurisdiction provision violates the one-subject rule of the Ohio Constitution. East Cleveland asserts H.B. is an appropriations bill with a stated purpose to "increase the rate of and modify the distribution of revenue from motor fuel excise taxes, to make appropriations for programs related to transportation and public safety for the biennium beginning July 1, 2019, and ending June 30, 2021, and to provide authorization and conditions for the operation of those programs." East Cleveland maintains that the contested provisions (although the exclusive-jurisdiction provision is the only one at issue now) of H.B. 62 "attempt to regulate photo enforcement programs funded by municipalities." Specific to the exclusive-jurisdiction provision, East Cleveland argues that this provision "does not belong in a budget bill as the adjudication process for photo-enforcement cases does not impact the state's budget."

{¶ 63} The one-subject rule is contained in Section 15(D), Article II of the Ohio Constitution, which provides, "No bill shall contain more than one subject, which shall be clearly expressed in its title." This provision exists to prevent the

legislature from engaging in "logrolling," i.e., ""the practice of several minorities combining their several proposals as different provisions of a single bill and thus consolidating their votes so that a majority is obtained for the omnibus bill where perhaps no single proposal of each minority could have obtained majority approval separately."" *State v. Bloomer*, 122 Ohio St.3d 200, 2009-Ohio-2462, 909 N.E.2d 1254, ¶ 47, quoting *State ex rel. Dix v. Celeste*, 11 Ohio St.3d 141, 142-143, 464 N.E.2d 153 (1984).

{¶ 64} A reviewing court's role in the enforcement of the one-subject provision is limited. As explained by the Ohio Supreme Court:

> To avoid interfering with the legislative process, we must afford the General Assembly "great latitude in enacting comprehensive legislation by not construing the one-subject provision so as to unnecessarily restrict the scope and operation of laws, or to multiply their number excessively, or to prevent legislation from embracing in one act all matters properly connected with one general subject."

State ex rel. Ohio Civ. Serv. Emps. Assn., AFSCME, Local 11, AFL-CIO v. State Emp. Relations Bd., 104 Ohio St.3d 122, 2004-Ohio-6363, 818 N.E.2d 688, ¶ 27, quoting *Dix*, 11 Ohio St.3d at 145, 464 N.E.2d 153. Every presumption in favor of the enactment's validity should be indulged. *Hoover v. Franklin Cty. Bd. of Commrs.*, 19 Ohio St.3d 1, 6, 482 N.E.2d 575 (1985).

{¶ 65} Only "[a] manifestly gross and fraudulent violation of the one-subjection provision contained in Section 15(D), Article II of the Ohio Constitution will cause an enactment to be invalidated." *Bloomer*, at ¶ 49, citing *In re Nowak*, 104 Ohio St.3d 466, 2004-Ohio-6777, 820 N.E.2d 335, paragraph one of the

syllabus. As long as common purpose or relationship exists between the topics, the mere fact that a bill embraces more than one topic will not be fatal. *Id.* It is the disunity of subject matter, rather than the aggregation of topics, that cause a bill to violate the one-subject rule. *Id.* The one-subject rule is not directed at plurality but at disunity in subject matter. *Ohio Civ. Serv. Emps. Assn.* at ¶ 28.

{¶ 66} In this case, we must determine whether there is an alleged violation of the one-subject rule within the context of an appropriations bill. "[T]he analysis of the one-subject rule with respect to appropriation bills can be complicated because appropriations bills 'encompass many items, all bound by the thread of appropriations.'" *Rumpke Sanitary Landfill, Inc. v. Ohio*, 184 Ohio App.3d 135, 2009-Ohio-4888, 919 N.E.2d 826, ¶ 16 (1st Dist.2009), quoting *Simmons-Harris v. Goff*, 86 Ohio St.3d 1, 16, 711 N.E.2d 203 (1999).

{¶ 67} After review, we find that the exclusive-jurisdiction provision directly relates to the authorization and conditions of the operation of photo-enforcement programs. Moreover, East Cleveland's photo-enforcement program is explicitly related to transportation safety, which is also directly related to the stated purpose of the appropriations bill set forth in H.B. 62. Therefore, East Cleveland was not likely to succeed on the merits of this claim, and its fourth assignment of error is overruled.

{¶ 68} The cities do not raise any other constitutional arguments on appeal.

B. Irreparable Harm

{¶ 69} The second factor a trial court must consider is whether the movant has shown irreparable harm. *KLN Logistics Corp.*, 174 Ohio App.3d 712, 2008-Ohio-212, 884 N.E.2d 631, at ¶ 12, citing *Vanguard Transp. Sys.*, 109 Ohio App.3d at 790, 673 N.E.2d 182. In their first assignments of error, the cities argue that the trial court erred when it determined that they would not suffer irreparable harm if the court did not enjoin the enforcement of the contested provisions.

{¶ 70} The trial court found that the cities' evidence was not sufficient because "[e]conomic harm is not sufficient to satisfy the element of irreparable harm." The trial court further found that the cities did not establish that the denial of the injunction would adversely affect driver safety.

{¶ 71} First, as we stated earlier, the trial court failed to analyze whether the cities were likely to succeed on the merits of their Home Rule Amendment claims (except with respect to the first contested provision, i.e., requiring an officer to be present). Had it done so, it would have presumably recognized that the cities' preliminary injunction could still be justified even if their evidence of irreparable harm was weak. *See Cleveland Elec. Illum. Co.*, 115 Ohio App.3d at 14, 684 N.E.2d 343. Because we have already determined that the cities were likely to succeed on the merits of their claims that the reduction-of-funds provision and the advance-deposit provision violated the Home Rule Amendment, we find that their evidence of irreparable harm (even if we assume, for the sake argument, is weak) was sufficient to justify a preliminary injunction.

{¶ 72} The cities presented evidence through testimony or affidavit that since having photo enforcement programs, there have been significantly less red-light and speeding violations per camera. They also presented evidence that their cameras have generated significant funds for the city, which helps fund city services including the police and fire departments. Further, they presented evidence establishing that complying with H.B. 62 would make it difficult for them to continue to operate their photo enforcement programs.

{¶ 73} After review, we conclude that the cities established that they would suffer irreparable harm if the second (reduction of funds) and fourth (advance-court deposit) contested provisions of H.B. 62 were not enjoined. Again, if they established that they were likely to succeed on the merits of their claims, their showing of irreparable harm did not have to be as strong. Accordingly, we sustain the cities' first assignments of error.

C. Harm to Third Parties and Public Interest

{¶ 74} The third and fourth factors that a trial court must consider when deciding whether to grant a preliminary injunction motion are whether third parties will be harmed if the injunction is granted and whether the public interest would be served by issuing a preliminary injunction. *KLN Logistics Corp.*, 174 Ohio App.3d 712, 2008-Ohio-212, 884 N.E.2d 631, at ¶ 12, citing *Vanguard Transp. Sys.*, 109 Ohio App.3d at 790, 673 N.E.2d 182. In its third assignment of error, Newburgh Heights maintains that the trial court erred because there was "no possibility of

substantial harm to the state of Ohio or other third parties" and that "granting of the preliminary injunction was clearly in the public interest."

{¶ 75} The state counters that anytime "its duly enacted laws do not go into effect," it is harmed. It further contends that only the General Assembly "has the authority to determine what the public interest is."

{¶ 76} After review, we agree with Newburgh Heights. First, the state cannot be harmed when an unconstitutional law does not go into effect. We previously found that the second (reduction of funds) and fourth (advance court deposit) provisions of H.B. 62 are unconstitutional because they violate the Home Rule Amendment. Therefore, the state cannot be harmed by the preliminary injunction enjoining enforcement of those provisions. We further agree with Newburgh Heights that there is no evidence that any other third party will be harmed by the preliminary injunction.

{¶ 77} Second, Newburgh Heights and East Cleveland presented evidence showing that if they had to follow the mandates of H.B. 62, the cost of complying would curtail their ability to maintain their photo-enforcement programs, which would, in turn, make their roadways less safe. The state did not counter this evidence. Accordingly, we agree that granting the preliminary injunction benefited the public's interest.

{¶ 78} Newburgh Heights' third assignment of error is sustained.

{¶ 79} Judgment affirmed in part, reversed in part, and remanded. The trial court's judgment denying the cities' motion for preliminary injunction with respect

to the third contested provision giving municipal courts exclusive jurisdiction is affirmed. The trial court's judgment denying the cities' motion for preliminary injunction regarding the second contested provision reducing the cities' funds and fourth contested provision requiring the cities to pay advance court deposits is reversed. This case is remanded for further proceedings.

It is ordered that appellee and appellants share costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

MARY J. BOYLE, ADMINISTRATIVE JUDGE

PATRICIA ANN BLACKMON, J., and
KATHLEEN ANN KEOUGH, J., CONCUR

FILED AND JOURNALIZED
PER APP.R. 22(C)

JAN 14 2021

CUYAHOGA COUNTY CLERK
OF THE COURT OF APPEALS
By Greg Heick Deputy

Exhibit B

CUYAHOGA COUNTY COMMON PLEAS COURT

VILLAGE OF NEWBURGH HEIGHTS, et al.

Plaintiffs,

CASE NO.: CV 19- 917408

JUDGE WANDA C. JONES

vs.

Decision on Motions for Preliminary Injunction

STATE OF OHIO,

Defendant

The Plaintiff Village of Newburgh Heights (hereinafter "Newburgh") and the Intervening Plaintiff City of East Cleveland (hereinafter "East Cleveland") seek preliminary injunctions enjoining the Defendant the State of Ohio (hereinafter "the State") from enforcing the contested provisions of recently adopted H.B. 62 (signed into law by Ohio Governor DeWine on April 3, 2019). A hearing was held on the record in this matter on Newburgh's Motion for Preliminary Injunction on August 23, 2019 and August 27, 2019. East Cleveland waived a hearing and rested on its briefs.

The Contested Provisions at issue are as follows: (1) reinstating the S.B. 342 requirement that a law enforcement officer be present at every Photo Enforcement Program device location at all times during operation; (2) reducing Newburgh Heights' Local Government Fund allocation by the amounts collected from drivers for Photo Enforcement Program violations not committed in school zones, and eliminating Local Government Funds altogether for local authorities that fail to report Photo Enforcement Program revenues to the State; (3) eliminating local authorities' ability to appoint administrative hearing officers to adjudicate Photo Enforcement Program

tickets and conferring "exclusive jurisdiction" over such actions to municipal and county courts; and (4) requiring local authorities to provide advance and non-recoverable court deposits to cover "all applicable court costs and fees" for civil actions relating to Photo Enforcement Programs. Newburgh Heights argues in their Motion that these Contested Provisions of H.B. 62 impermissibly limit the City's Home Rule authority to implement Photo Enforcement Programs.[1]

In its Motion, Newburgh argues that the Contested Provisions of H.B. 62 violate multiple provisions of the Ohio Constitution: the Home Rule Amendment (Ohio Constitution, Section 3, Article XVIII); the separation of powers doctrine (Ohio Constitution, Section 1, Article IV and Section 32, Article II); the One Subject Rule (Ohio Constitution, Section 15(D), Article II); the Uniformity Clause (Ohio Constitution, Section 26, Article II); the prohibition against retroactive laws (Ohio Constitution, Section 28, Article II); and the prohibition against unconstitutionally vague laws.[2] East Cleveland's Motion requests Preliminary injunction on the same Contested Provisions. East Cleveland does not raise any new claims in its Motion. The main difference between the two Motions pending before this Court is that Newburgh makes an unconstitutional conditions claim. Those provisions relevant to this Court's analysis will be addressed. Those arguments not addressed, are not well-taken by this Court for purposes of these Motions.

As noted by the Ohio Supreme Court in *City of Toledo v. State*, 154 Ohio St.3d 41:

> [i]n Ohio, a statute cannot be invalidated or enjoined unless it is unconstitutional. This is so because Article II, Section 1 of the Ohio Constitution confers all legislative power of the state on the General Assembly. ... "'[b]efore any legislative power, as expressed in a statute, can be held invalid, it must appear that such power is clearly denied by some constitutional provision. ... The power to invalidate and enjoin a statute is further "circumscribed by the rule[s] that laws are entitled to a strong presumption of constitutionality and that a party challenging the

[1] Newburgh's Motion for Preliminary Injunction and Brief in support, p. 3.
[2] Newburgh's Motion for Preliminary Injunction and Brief in support, pp. 3-4.

> constitutionality of a law bears the burden of proving that the law is unconstitutional beyond a reasonable doubt.

Id. at ¶ 17-18.

Ohio municipalities' Home Rule authority to enact Photo Enforcement Programs has been affirmed squarely by the Ohio Supreme Court. *Walker v. Newburgh Heights,* 143 Ohio St. 3d 420 (2014). However, "[e]ach home-rule case involves unique facts because no two statutes are exactly alike". *City of Dayton v. State*, 151 Ohio St.3d 168, ¶ 32. A municipal ordinance will not yield to a statewide statute unless: "(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 v. Akron*, 117 Ohio St. 3d 33 (2008).

As stated in *City of Dayton v. State*, 151 Ohio St.3d 168 at ¶ 29:

> Home-rule disputes require us to reconcile two competing constitutional provisions. First, Article II of the Ohio Constitution vests legislative power in the General Assembly. Second, the Home Rule Amendment, Article XVIII, Section 3 of the Ohio Constitution, grants municipalities the authority to exercise certain powers of local self-government. The *Canton* test is the means by which this court reconciles those two provisions and determines whether a statute is a general law pursuant to Article XVIII, Section 3.

To constitute a general law, a statute must: (1) be a 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. *Canton v. State*, 95 Ohio St. 3d 149; 153 (2002).

Although decided on different and varying grounds, several courts throughout the State have already held that similar provisions in S.B. 342 violated the Home Rule Amendment of the Ohio Constitution. *Dayton v. State*, Montgomery C.P. No. 2015-CV- 1457; *Akron v. State*, Summit C.P. No. 2015-02-0955; *Toledo v. State*, Lucas C.P No. CI0201501828.

Ohio Rule of Civil Procedure 65(B) vests this Court with the power to enjoin a party's illegal and unconstitutional conduct when warranted by the following factors: (1) The plaintiff has a substantial likelihood of success on the merits; (2) The plaintiff will suffer immediate and irreparable injury in the absence of injunctive relief; (3) injunctive relief will not inflict greater injury on others; and (4) The issuance of injunctive relief is in the public interest. *Neal v. Regina Manor*, 2008- Ohio-257, 11, 2008 Ohio App. LEXIS 225 (6th Dist. Jan. 25, 2008). "In determining whether to grant injunctive relief, no one of the four preliminary injunction factors is dispositive; rather, a balancing should be applied." *Intralot, Inc. v. Blair*, 2018-Ohio-3873, 'll 31, 2018 Ohio App. LEXIS 4200 (10th Dist. Sept. 25, 2018) (citation omitted); *Try Hours, Inc. v. Douville*, 2013-Ohio-53, fl 20,985 N.E.2d 955 (6th Dist. 2013).

As to the **first Contested Provision**, the requirement that a law enforcement officer be present at every Photo Enforcement Program device location at all times during operation, the Court finds that both Newburgh and East Cleveland's Motions are **GRANTED**. Here, the third prong of the "general-law test" from *Canton* is not satisfied because this provision is an impermissible limitation on the legislative power of the municipal corporation to set forth police, sanitary or similar regulations. *City of Dayton v. State*, at ¶ 15. Further, applying the Civ.R. 65(B) factors, the Court finds that Plaintiffs have a substantial likelihood of success on the merits, as

the Ohio Supreme Court previously struck down a similar requirement in S.B. 342[3]. There was evidence submitted as to the hardships placed on the respective police departments if made to comply[4] and this injunctive relief will not inflict any greater injury on others. Given the impact to the police departments and public safety, issuance of the injunctive relief is in the public interest.

As for the **second Contested Provision** at issue, reducing the Local Government Fund allocation, the Motions are **DENIED**. On August 8, 2019, the State filed a "Notice Regarding Enforcement of Challenged Statute", which indicated that "the set-offs will not be applied until the next certification of LGF funds to the county auditors on July 25, 2020". As such, no immediate irreparable injury will occur.

As to the **third Contested Provision**, conferring "exclusive jurisdiction" over such actions to municipal and county courts, this Court looks to the holding in *Cupps v. Toledo*, 170 Ohio St. 144, 149-150, 163 N.E.2d 384 (1959):

> It is now settled by the decisions of this court that the authority granted to municipalities by Section 3 of Article XVIII, Ohio Constitution, 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" and, by Section 7 of Article XVIII, to "frame and adopt or amend a charter for its government and * * * exercise thereunder all powers of local self-government" **does not include the power to regulate the jurisdiction of courts** established by the Constitution or by the General Assembly thereunder.

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[3] In the Brief in Opposition, the State argues that this HB 62 provision is different from the language struck down in *City of Dayton v. State*, but the State fails to offer any analysis as to how the language is distinguishable or how this Contested Provision serves an overriding statewide interest.

[4] *See City of Dayton v. State*, 151 Ohio St.3d 168, 2017-Ohio-6909, 87 N.E.3d 176, ¶ 22, (holding that "requiring an officer's presence at a traffic camera directly contradicts the purpose of a traffic camera—to conserve police resources").

(Emphasis added). Further, a court should exercise great caution regarding the granting of an injunction "which would interfere with another branch of government... a court 'cannot employ equitable principles to circumvent valid legislative enactments'." *City of Toledo v. State*, 154 Ohio St.3d 41 at ¶ 16, citing *Lake Hosp. Sys. v. Ohio Ins. Guar. Ass'n*, 69 Ohio St. 3d 521, 526, 1994-Ohio-330, 634 N.E.2d 611 (1994).

HB 62 is distinguishable from previous legislative enactments that did not endow municipal courts with exclusive jurisdiction over Photo Enforcement Programs. HB 62 explicitly vests exclusive jurisdiction of these programs in municipal courts and through the amendment to Ohio Revised Code § 1901.20 Criminal and traffic jurisdiction.[5] As noted by the Ohio Supreme Court in *Walker*: "[w]hen the General Assembly intends to vest exclusive jurisdiction in a court or agency, it provides it by appropriate statutory language." 143 Ohio St.3d 420 at ¶ 25. With these changes from HB 62, the general assembly has enacted the exclusive jurisdiction through the appropriate language:

> Article IV, Section 1 of the Ohio Constitution vests the "judicial power" of the state in the Supreme Court and the other inferior courts that are "established by law." Thus, the General Assembly has the exclusive power to create courts, and '[t]he power to create a court carries with it the power to define its jurisdiction.' *Cupps v. Toledo*, 170 Ohio St. 144, 150.

Jodka v. City of Cleveland, 2014-Ohio-208, 6 N.E.3d 1208, ¶ 23 (8th Dist.). Further, "[a] conflicting municipal ordinance or municipal charter provision, notwithstanding the 'home rule' provision of Article XVIII of the Constitution, cannot stand as against an act of the Legislature, passed under its special power to pass laws creating courts inferior to the Courts of Appeals reserved by Article

[5] Granting "exclusive jurisdiction over every civil action concerning a violation of a state traffic law or a municipal traffic ordinance". R.C. 1901.20(A)(1).

IV of the Constitution." *State ex rel. Welsh v. Hoffman*, 68 Ohio App. 171, 179, 40 N.E.2d 204 (7th Dist. 1941). This Court does not find Newburgh's argument, that HB 62 violates the Separation of Powers doctrine, to be well-taken. Accordingly, both Motions are **DENIED** as to the third Contested Provision.

As to the **fourth Contested Provision,** requiring local authorities to provide advance and non-recoverable court deposits to cover "all applicable court costs and fees" items of the Contested Provisions. Movants challenge this provision on vagueness grounds. The Court weighed the testimony of Garfield Heights Administrative and Presiding Judge Deborah Nicastro. Judge Nicastro testified as to the harm to Garfield Heights Municipal Court should Newburgh Heights be forced to comply with this provision. She cited the lack of clarity in the law as to where such advanced deposits would be posted. She also offered credible testimony that this provision, if implemented, would cause staffing issues and negatively impact the Court's ability to handle other cases that directly impact the safety of litigants in Garfield Heights Municipal Court. She testified that the court lacked the capacity to handle and process the increased number of filings that will necessarily occur in the absence of an injunction. Judge Nicastro further testified that the provisions imposing exclusive jurisdiction of photo enforcement tickets on Municipal Courts and requiring the cities to advance non-refundable filing deposits fails to provide the Court with guidance on how to process these tickets or advanced deposits.

A law is void for vagueness unless it survives the three-part test set forth in *Groyned v. City of Rockford*, 408 U.S. 104 (1972): It must (1) provide fair warning of what conduct is proscribed; (2) preclude arbitrary, capricious, and discriminatory enforcement; and (3) not impinge on constitutionally protected rights. *Id.* at 108-109. Further, "[i]t is a basic principle of

due process that an enactment is void for vagueness if its prohibitions are not clearly defined". *Id.*

While this Court found Judge Nicastro's testimony as to the lack of clarity of what is required or prohibited under the law to be persuasive, Garfield Heights Municipal Court is not a party to this case. Since this Court must consider whether the ***movants*** will suffer irreparable injury if the injunction is not granted, the analysis of irreparable injury under the second prong is limited to irreparable injury to Newburgh Heights and East Cleveland in the absence of injunction. Newburgh Heights offered evidence of the harm that would occur to its city budget, which depends heavily on the revenue generated by the Photo Enforcement programs. It is well settled that a loss of money does not constitute irreparable harm. *Overstreet v. Lexington-Fayette Urban County Gov't. 305 F.3d 566, 578* (6th Cir. 2002) Newburgh Heights Mayor Trevor Elkins testified that the entire service department and several city employee positions are dependent on the revenue generated from the program. Economic harm is not sufficient to satisfy the element of irreparable harm. Both movants alleged in their Motions that the Photo Enforcement program was enacted to protect the public from unsafe drivers, but neither offered sufficient evidence that denial of the injunction would adversely impact driver safety. As to this fourth Contested Provision, these Motions are **Denied**.

CONCLUSION:

The Village of Newburgh Heights' Motion for Preliminary Injunction, filed 06/27/2019, is granted and denied in part. Intervening Plaintiff East Cleveland's Motion for Preliminary Injunction, filed 08/14/2019, is granted and denied in part.

The Motions are **GRANTED** as to: the first Contested Provision (the requirement that a law enforcement officer be present at every Photo Enforcement Program device location at all times during operation).

These Motions are **DENIED** as to: the second Contested Provision (reducing the Local Government Fund allocation); the third Contested Provision (conferring "exclusive jurisdiction" over such actions to municipal and county courts and the fourth Contested Provision (requiring local authorities to provide advance and non-recoverable court deposits to cover "all applicable court costs and fees" items).

IT IS SO ORDERED.

JUDGE WANDA C. JONES

Ohio Revised Code

Section 4511.099 Advance deposit for filing civil action.

Effective: July 3, 2019
Legislation: House Bill 62 - 133rd General Assembly

(A) Subject to division (B) of this section and notwithstanding any other provision in the Revised Code to the contrary, when a certified copy of a ticket issued by a local authority based on evidence recorded by a traffic law photo-monitoring device is filed with the municipal court or county court with jurisdiction over the civil action, the court shall require the local authority to provide an advance deposit for the filing of the civil action. The advance deposit shall consist of all applicable court costs and fees for the civil action. The court shall retain the advance deposit regardless of which party prevails in the civil action and shall not charge to the registered owner or designated party any court costs and fees for the civil action.

(B) Division (A) of this section does not apply to any civil action related to a ticket issued by a local authority based on evidence recorded by a traffic law photo-monitoring device when the traffic law photo-monitoring device was located in a school zone. The court shall charge the applicable court costs and fees for such a civil action to the party that does not prevail in the action.

As used in this division, "school zone" has the same meaning as in section 4511.21 of the Revised Code.

Ohio Revised Code

Section 5747.50 Apportioning local government fund to political subdivision or eligible taxing district.

Effective: July 18, 2019
Legislation: House Bill 166 - 133rd General Assembly

(A) As used in this section:

(1) "County's proportionate share of the calendar year 2007 LGF and LGRAF distributions" means the percentage computed for the county under division (B)(1)(a) of section 5747.501 of the Revised Code.

(2) "County's proportionate share of the total amount of the local government fund additional revenue formula" means each county's proportionate share of the state's population as determined for and certified to the county for distributions to be made during the current calendar year under division (B)(2)(a) of section 5747.501 of the Revised Code. If prior to the first day of January of the current calendar year the federal government has issued a revision to the population figures reflected in the estimate produced pursuant to division (B)(2)(a) of section 5747.501 of the Revised Code, such revised population figures shall be used for making the distributions during the current calendar year.

(3) "2007 LGF and LGRAF county distribution base available in that month" means the lesser of the amounts described in division (A)(3)(a) and (b) of this section, provided that the amount shall not be less than zero:

(a) The total amount available for distribution to counties from the local government fund during the current month.

(b) The total amount distributed to counties from the local government fund and the local government revenue assistance fund to counties in calendar year 2007 less the total amount distributed to counties under division (B)(1) of this section during previous months of the current calendar year.

(4) "Local government fund additional revenue distribution base available during that month" means the total amount available for distribution to counties during the month from the local government fund, less any amounts to be distributed in that month from the local government fund under division (B)(1) of this section, provided that the local government fund additional revenue distribution base available during that month shall not be less than zero.

(5) "Total amount available for distribution to counties" means the total amount available for distribution from the local government fund during the current month less the total amount available for distribution to municipal corporations during the current month under division (C) of this section.

(B) On or before the tenth day of each month, the tax commissioner shall provide for payment to each county an amount equal to the sum of:

(1) The county's proportionate share of the calendar year 2007 LGF and LGRAF distributions multiplied by the 2007 LGF and LGRAF county distribution base available in that month, provided that if the 2007 LGF and LGRAF county distribution base available in that month is zero, no payment shall be made under division (B)(1) of this section for the month or the remainder of the calendar year; and

(2) The county's proportionate share of the total amount of the local government fund additional revenue formula multiplied by the local government fund additional revenue distribution base available during that month.

Money received into the treasury of a county under this division shall be credited to the undivided local government fund in the treasury of the county on or before the fifteenth day of each month. On or before the twentieth day of each month, the county auditor shall issue warrants against all of the undivided local government fund in the county treasury in the respective amounts allowed as provided in section 5747.51 of the Revised Code, and the treasurer shall distribute and pay such sums to the subdivision therein.

(C)(1) As used in division (C) of this section:

(a) "Total amount available for distribution to municipalities during the current month" means the difference obtained by subtracting one million dollars from the product obtained by multiplying the total amount available for distribution from the local government fund during the current month by the aggregate municipal share.

(b) "Aggregate municipal share" means the quotient obtained by dividing the total amount distributed directly from the local government fund to municipal corporations during calendar year 2007 by the total distributions from the local government fund and local government revenue assistance fund during calendar year 2007.

(c) A municipal corporation's "distribution share" equals one of the following:

(i) For municipal corporations with a population of more than fifty thousand, fifty thousand;

(ii) For municipal corporations with a population of less than one thousand, zero;

(iii) For all other municipal corporations, the municipal corporation's population.

(d) A municipal corporation's "distribution percentage" equals the percentage that a municipal corporation's distribution share is of the total of all municipal corporations' distribution shares.

(2) On or before the tenth day of each month, the tax commissioner shall provide for payment from the local government fund to each municipal corporation an amount equal to the product derived by multiplying the municipal corporation's distribution percentage by the total amount available for distribution to municipal corporations during the current month.

(3) Payments received by a municipal corporation under this division shall be paid into its general fund and may be used for any lawful purpose.

(4) The amount distributed to municipal corporations under this division during any calendar year shall not exceed the amount distributed directly from the local government fund to municipal corporations during calendar year 2007. If that maximum amount is reached during any month, distributions to municipal corporations in that month shall be as provided in divisions (C)(1) and (2)

of this section, but no further distributions shall be made to municipal corporations under division (C) of this section during the remainder of the calendar year.

(5) Upon being informed of a municipal corporation's dissolution, the tax commissioner shall cease providing for payments to that municipal corporation under division (C) of this section. The proportionate shares of the total amount available for distribution to each of the remaining municipal corporations under this division shall be increased on a pro rata basis.

The tax commissioner shall reduce payments under division (C) of this section to municipal corporations for which reduced payments are required under section 5747.502 of the Revised Code.

(D) Each municipal corporation which has in effect a tax imposed under Chapter 718. of the Revised Code shall, no later than the thirty-first day of August of each year, certify to the tax commissioner, on a form prescribed by the commissioner, the amount of income tax revenue collected and refunded by such municipal corporation pursuant to such chapter during the preceding calendar year, arranged, when possible, by the type of income from which the revenue was collected or the refund was issued. The municipal corporation shall also report the amount of income tax revenue collected and refunded on behalf of a joint economic development district or a joint economic development zone that levies an income tax administered by the municipal corporation and the amount of such revenue distributed to contracting parties during the preceding calendar year. The tax commissioner may withhold payment of local government fund moneys pursuant to division (C) of this section from any municipal corporation for failure to comply with this reporting requirement.

(E)(1) For the purposes of division (E) of this section:

(a) "Eligible taxing district" means a township, township fire district, or joint fire district for which the total taxable value of eligible power plants for tax year 2017 is at least thirty per cent less than the total taxable value of eligible power plants for tax year 2016.

(b) "Eligible power plant" means a power plant that is subject to the requirements of 10 C.F.R. part 73.

(c) "Total taxable value of eligible power plants" of an eligible taxing district means the total taxable

value of the taxable property of eligible power plants apportioned to the district as shown in a preliminary assessment or amended preliminary assessment and listed on the tax list of real and public utility property.

(d) "Taxable property" has the same meaning as in section 5727.01 of the Revised Code.

(e) "Tax rate" of an eligible taxing district means one of the following:

(i) For townships, the sum of the rates of levies imposed under section 505.39, 505.51, or division (I), (J), (U), or (JJ) of section 5705.19 of the Revised Code and extended on the tax list of real and public utility property for tax year 2017, excluding any levy imposed at whatever rate is required to raise a fixed sum of money;

(ii) For township fire districts and joint fire districts, the sum of the rates of levies extended on the tax list of real and public utility property for tax year 2017, excluding any levy imposed at whatever rate is required to raise a fixed sum of money.

(2) Each fiscal year from fiscal year 2018 through fiscal year 2028, the tax commissioner shall compute the following amount for each eligible taxing district:

(a) For fiscal years 2018 and 2019, the amount obtained by multiplying the eligible taxing district's tax rate by the difference obtained by subtracting (i) the total taxable value of eligible power plants of the district for tax year 2017 from (ii) the total taxable value of eligible power plants of the district for tax year 2016;

(b) For fiscal years 2020 through 2028, ninety per cent of the amount calculated for the district under division (E)(2)(a) or (b) of this section for the preceding fiscal year.

The commissioner shall certify the sum of the amounts calculated for all eligible taxing districts under this division for a fiscal year to the director of budget and management who, on or before the seventh day of each month of that fiscal year, shall transfer from the general revenue fund to the local government fund one-twelfth of the amount certified.

(3) On or before the tenth day of each month, the tax commissioner shall provide for payment to each county treasury in which an eligible taxing district is located an amount equal to one-twelfth of the amount computed for the district for that fiscal year under division (E)(2) of this section.

Money received into the treasury of a county under division (E) of this section shall be credited to the undivided local government fund in the treasury of the county on or before the fifteenth day of each month. On or before the twentieth day of each month, the county auditor shall issue warrants against the undivided local government fund for the amounts attributable to each eligible taxing district, and the treasurer shall distribute and pay such amounts to each eligible taxing district. Money received by a township fire district or joint fire district under this division shall be credited to the district's general fund and may be used for any lawful purpose of the district. Money received by a township under this division shall be credited to the township's general fund and shall be used for the purpose of funding fire, police, emergency medical, or ambulance services.

Ohio Revised Code

Section 5747.502 Reports on fines resulting from traffic law photo-monitoring devices.

Effective: October 22, 2020
Legislation: Senate Bill 163 - 133rd General Assembly

(A) As used in this section:

(1) "Local authority" and "traffic law photo-monitoring device" have the same meanings as in section 4511.092 of the Revised Code.

(2) "School zone" has the same meaning as in section 4511.21 of the Revised Code.

(3) "Transportation district" means a territorial district established by the director of transportation under section 5501.14 of the Revised Code.

(4) "District deputy director" means the person appointed and assigned by the director of transportation under section 5501.14 of the Revised Code to administer the activities of a transportation district.

(5) "Gross amount" means the entire amount of traffic camera fines and fees paid by a driver.

(6) "Local government fund adjustment" or "LGF adjustment" means the sum of:

(a) The gross amount of all traffic camera fines collected by a local authority during the preceding fiscal year, as reported under division (B)(1) of this section, if such a report is required; plus

(b) The residual adjustment computed for the local authority under division (B)(4) of this section, if such an adjustment applies.

(7) "Local government fund payments" or "LGF payments" means the payments a local authority would receive under sections 5747.502, 5747.51, and 5747.53, and division (C) of section 5747.50 of the Revised Code, as applicable, if not for the reductions required by divisions (C) and (D) of this

section.

(8) "Residual adjustment" means the most recent LGF adjustment computed for a local authority under division (B)(2) or (3) of this section minus the sum of the reductions applied after that computation under division (C) of this section to the local authority's LGF payments.

(9) "Traffic camera fines" means civil fines for any violation of any local ordinance or resolution that are based upon evidence recorded by a traffic law photo-monitoring device.

(10) "Qualifying village" has the same meaning as in section 5747.503 of the Revised Code.

(B)(1) Annually, on or before the thirty-first day of July, any local authority that directly or indirectly collected traffic camera fines during the preceding fiscal year shall file a report with the tax commissioner that includes a detailed statement of the gross amount of all traffic camera fines the local authority collected during that period and the gross amount of such fines that the local authority collected for violations that occurred within a school zone.

(2) Annually, on or before the tenth day of August, the commissioner shall compute a local government fund adjustment for each local authority that files a report under division (B)(1) of this section or with respect to which a residual adjustment applies. Subject to division (B)(3) of this section, the LGF adjustment shall be used by the commissioner to determine the amount of the reductions required under division (C) of this section for each of the next twelve months, starting with the month in which the LGF adjustment is computed. After those twelve months, the LGF adjustment ceases to apply and, if an LGF adjustment continues to be required, the amount of the reductions required under division (C) of this section shall be determined based on an updated LGF adjustment computed under this division.

(3) Upon receipt of a report described by division (B)(1) of this section that is not timely filed, the commissioner shall do both of the following:

(a) If one or more payments to the local authority has been withheld under division (D) of this section because of the local authority's failure to file the report, notify the county auditor and county treasurer of the appropriate county that the report has been received and that, subject to division (C)

of this section, payments to the local authority from the undivided local government fund are to resume.

(b) Compute the local authority's LGF adjustment using the information in the report. An LGF adjustment computed under this division shall be used by the commissioner to determine the amount of the reductions required under division (C) of this section starting with the next required reduction. The LGF adjustment ceases to apply on the thirty-first day of the ensuing July, following which, if an LGF adjustment continues to be required, the amount of the reductions required under division (C) of this section shall be determined based on an updated LGF adjustment computed under division (B)(2) of this section.

(4) Annually, on or before the tenth day of August, the commissioner shall compute a residual adjustment for each local authority whose LGF adjustment for the preceding year exceeds the amount by which the local authority's LGF payments were reduced during that year under division (C) of this section. The residual adjustment shall be used to compute the LGF adjustment for the ensuing year under division (B)(2) of this section.

(C) The commissioner shall do the following, as applicable, respecting any local authority to which an LGF adjustment computed under division (B) of this section applies:

(1) If the local authority is a municipal corporation with a population of one thousand or more, reduce payments to the municipal corporation under division (C) of section 5747.50 of the Revised Code by one-twelfth of the LGF adjustment. If one-twelfth of the LGF adjustment exceeds the amount of money the municipal corporation would otherwise receive under division (C) of section 5747.50 of the Revised Code, the commissioner also shall reduce payments to the appropriate county undivided local government fund under division (B) of section 5747.50 of the Revised Code by an amount equal to the lesser of (a) one-twelfth of the excess, or (b) the amount of the payment the municipal corporation would otherwise receive from the fund under section 5747.51 or 5747.53 of the Revised Code.

(2) If the local authority is a township or qualifying village, reduce the supplemental payments to the appropriate county undivided local government fund under section 5747.503 of the Revised Code by the lesser of one-twelfth of the LGF adjustment, or the amount of money the township or qualifying

village would otherwise receive under that section. If one-twelfth of the LGF adjustment exceeds the amount of money the township or qualifying village would otherwise receive under section 5747.503 of the Revised Code, the commissioner also shall reduce payments to the appropriate county undivided local government fund under division (B) of section 5747.50 of the Revised Code by an amount equal to the lesser of (a) one-twelfth of the excess, or (b) the amount of the payment the township or qualifying village would otherwise receive from the fund under section 5747.51 or 5747.53 of the Revised Code.

(3) If the local authority is a county, reduce payments to the appropriate county undivided local government fund under division (B) of section 5747.50 of the Revised Code by an amount equal to the lesser of (a) one-twelfth of the LGF adjustment, or (b) the amount of the payment the county would otherwise receive from the fund under section 5747.51 or 5747.53 of the Revised Code.

(4) For any local authority, on or before the tenth day of each month a reduction is made under division (C)(1), (2), or (3) of this section, make a payment to the local authority in an amount equal to the lesser of (a) one-twelfth of the gross amount of traffic camera fines the local authority collected in the preceding fiscal year for violations that occurred within a school zone, as indicated on the report filed by the local authority pursuant to division (B)(1) of this section, or (b) the amount by which the local authority's LGF payments were reduced that month pursuant to division (C)(1), (2), or (3) of this section. Payments received by a local authority under this division shall be used by the local authority for school safety purposes.

(D) Upon discovery, based on information in the commissioner's possession, that a local authority required to file a report under division (B)(1) of this section has failed to do so, the commissioner shall do the following, as applicable:

(1) If the local authority is a municipal corporation with a population of one thousand or more, cease providing for payments to the municipal corporation under section 5747.50 of the Revised Code beginning with the next required payment and until such time as the report is received by the commissioner;

(2) If the local authority is a township or qualifying village, reduce the supplemental payments to the appropriate county undivided local government fund under section 5747.503 of the Revised Code by

an amount equal to the amount of such payments the local authority would otherwise receive under that section, beginning with the next required payment and until such time as the report is received by the commissioner;

(3) For any local authority, reduce payments to the appropriate county undivided local government fund under division (B) of section 5747.50 of the Revised Code by an amount equal to the amount of such payments the local authority would otherwise receive under section 5747.51 or 5747.53 of the Revised Code, beginning with the next required payment and until such time as the report is received by the commissioner;

(4) For any local authority, notify the county auditor and county treasurer that such payments are to cease until the commissioner notifies the auditor and treasurer under division (E) of this section that the payments are to resume.

(E) The commissioner shall notify the county auditor and county treasurer on or before the day the commissioner first reduces a county undivided local government fund payment to that county under division (C) of this section. The notice shall include the full amount of the reduction, a list of the local authorities to which the reduction applies, and the amount of reduction attributed to each such local authority. The commissioner shall send an updated notice to the county auditor and county treasurer any time the amount the reduction attributed to any local authority changes.

A county treasurer that receives a notice from the commissioner under this division or division (B)(3)(a) or (D)(4) of this section shall reduce, cease, or resume payments from the undivided local government fund to the local authority that is the subject of the notice as specified by the commissioner in the notice. Unless otherwise specified in the notice, the payments shall be reduced, ceased, or resumed beginning with the next required payment.

(F) There is hereby created in the state treasury the Ohio highway and transportation safety fund. On or before the tenth day of each month, the commissioner shall deposit in the fund an amount equal to the total amount by which payments to local authorities were reduced or ceased under division (C) or (D) of this section minus the total amount of payments made under division (C)(4) of this section. The amount deposited with respect to a local authority shall be credited to an account to be created in the fund for the transportation district in which that local authority is located. If the local authority is

located within more than one transportation district, the amount credited to the account of each such transportation district shall be prorated on the basis of the number of centerline miles of public roads and highways in both the local authority and the respective districts. Amounts credited to a transportation district's account shall be used by the department of transportation and the district deputy director exclusively to enhance public safety on public roads and highways within that transportation district.

§ 313.011 CIVIL PENALTIES FOR AUTOMATED TRAFFIC-CONTROL VIOLATION SYSTEMS.

(a) *Automated traffic-control violation system - civil violation.*

(1) Notwithstanding any other provision of this Chapter 313, Traffic-Control Devices, and Chapter 333, DUI; Willful Misconduct; Speed, the city hereby adopts a civil enforcement system for traffic signal, sign and speeding violations as outlined in this section. Said system imposes monetary liability on the owner of a vehicle for failure of the vehicle operator to comply with traffic control indications and speed limits in the city in accordance with the provisions of this section. This section shall be enforceable as an alternative to enforcement of criminal sanctions under Chapters 313 and 333 of the codified ordinances, and the Ohio Revised Code.

(2) The Police Department, assisted by the Service Department and the Department of Law, shall be responsible for administering the Automated Traffic-Control Violation System. Specifically, the city shall be empowered to install video and electronic traffic control and speeding detection systems within the city. The Police Department shall also maintain a list of system locations where traffic control and speeding detection systems are installed, and shall make the determination as to which locations will be utilized.

(3) Any citation for an automated traffic control violation system violation pursuant to this section, known as a "notice of liability" shall:

A. Be processed by officials or agents of the Police Department;

B. Be forwarded by first-class mail or personal service to the vehicle's registered owner's address as given on the state's motor vehicle registration; and

C. Clearly state the manner in which the violation may be appealed.

(b) Definitions.

(1) ***AUTOMATED TRAFFIC- CONTROL VIOLATION SYSTEM***. The equivalent of ***TRAFFIC-CONTROL SIGNAL MONITORING DEVICE*** or ***TRAFFIC-CONTROL PHOTOGRAPHIC SYSTEM***. Said system/device is an electronic system consisting of a photographic, video or electronic camera and a vehicle sensor installed to work alone or in conjunction with an official traffic controller and to automatically produce photographs, video or digital images of each vehicle violating a traffic-control signal device or speed limit.

(2) ***IN OPERATION.*** Operating in good working condition.

(3) ***SYSTEM LOCATION.*** The approach to an intersection or a street toward which a photographic, video or electronic camera is directed and is in operation. It is the ***LOCATION*** where the automated camera system is installed to monitor offenses under this section.

(4) ***VEHICLE OWNER.*** The person or entity identified by the state's Bureau of Motor Vehicles, or registered with any other state vehicle registration office, as the registered owner of a vehicle.

(c) *Offense.*

(1) The owner of a vehicle shall be liable for a civil monetary penalty imposed pursuant to this section if such vehicle crosses a marked stop line or the intersection plane at a system location when the traffic signal facing that vehicle's direction is emitting a steady red light.

(2) The owner of a vehicle shall be liable for a civil monetary penalty imposed pursuant to this section if such vehicle is operated at a speed in excess of those set forth in § 333.03 of this city's codified ordinances or by the R.C. § 4511.21.

(3) It is prima facie evidence that the person registered as owner of the vehicle with the state's Bureau of Motor Vehicles (or with any other state or county vehicle registration office) was operating the vehicle at the time of the offense set out in division (c)(1) above.

(4) Notwithstanding above (c)(3) above, the owner of the vehicle shall not be responsible for the violation if, within 21 days from the date listed on the "notice of liability", as set forth in division (a)(3) above, the owner furnishes the Hearing Officer:

A. An affidavit stating the name and address of the person or entity who leased, rented or otherwise had the care, custody and control of the vehicle at the time of the violation; or

B. A law enforcement incident report/general offense report from any state or local law enforcement agency/record bureau stating that the vehicle involved was reported stolen before the time of the violation.

(5) An imposition of liability under the section shall not be deemed a conviction as an operator and shall not be made part of the operating record of whom such liability is imposed.

(6) Nothing in this section shall be construed to limit the liability of an operator of a vehicle for any violation of divisions (c)(1) or (c)(2) above.

(7) This section shall not apply to violations involving vehicle collisions.

(d) *Penalty; administrative appeal.*

(1) Any violation of division (c)(1) above shall be deemed a noncriminal violation for which a civil penalty of $105 shall be assessed and for which no points authorized by R.C. § 4510.036 (point system for license suspension) shall be assigned to the owner or driver of the vehicle.

(2) Any violation of division (c)(2) above shall be deemed a noncriminal violation for which a civil penalty of $95 shall be assessed and for which no points authorized by R.C. § 4510.036 (point system for license suspension) shall be assigned to the owner or driver of the vehicle.

(3) The city may establish procedures for the collection of the civil penalties imposed herein, and may enforce the penalties by a civil action in the nature of a debt.

(4) A notice of appeal shall be filed with the Hearing Officer within 21 days from the date listed on the “notice of liability”. The failure to give notice of appeal or pay the civil penalty within this time period shall constitute a waiver of the right to contest the citation and will be considered an admission. Appeals shall be heard through an administrative process established by the city. A decision in favor of the city may be enforced by means of a civil action or any other means provided by the Ohio Revised Code.

(Ord. 07-06, passed 2-8-2006; Ord. 07-18, passed 5-31-2018)

CODIFIED ORDINANCES OF NEWBURGH HEIGHTS, OH

CHAPTER 315

Automated Speed and Traffic Enforcement Program

CROSS REFERENCES

Aggravated speeding - see TRAF. 333.035
Construction zones - see GEN. OFF. 537.021

315.01 DEFINITIONS.

As used in this Chapter, words and phrases are defined as follows:

(a) "Automated speed enforcement program" is a program intended to reduce speeding violations using an automated speed enforcement system.

(b) "Automated speed enforcement system" is a system with one or more sensors working in conjunction with a traffic law photo-monitoring device to produce recorded images of motor vehicles traveling at a prohibited rate of speed.

(c) "Hearing Officer" is the independent third party hearing officer appointed by the Mayor and who is an active, registered attorney in good standing with the Ohio Supreme Court, other than a person who is employed by a law enforcement agency as defined in Section 109.573 of the Ohio Revised Code. The Hearing Officer is appointed to conduct administrative hearings on violations recorded by traffic law photo-monitoring devices.

(d) "Vehicle owner" shall mean a "registered owner as such term is hereafter defined in this Section 315.01.

(e) "Motor vehicle" has the same definition as in Village of Newburgh Heights Codified Ordinance Section 301.20, as amended from time to time.

(f) "Motor vehicle leasing dealer" has the same meaning as in Section 4517.01 of the Ohio Revised Code.

(g) "Motor vehicle renting dealer" has the same meaning as in Section 4549.65 of the Ohio Revised Code.

(h) "Recorded images" means images recorded by an automated speed enforcement system traffic law photo-monitoring device that show, on at least one image or on a portion of the videotape, the rear of a motor vehicle and the letters and numerals on the rear license plate of the vehicle, on any of the following:

(1) Two or more photographs; or
(2) Two or more microphotographs; or
(3) Two or more electronic images; or
(4) Two or more digital images; or
(5) Videotape or video recording.

(i) "Date of issuance of notice of liability" shall be the date printed on the notice of liability immediately prior to its mailing.

(j) "Traffic law photo-monitoring device" means an electronic system consisting of photographic, video or electronic camera and a means of sensing the presence of a motor vehicle that automatically produces recorded images.

(k) "Traffic law violation" means either of the following:

(1) A violation of Section 4511.12 of the Revised Code based on the failure to comply with Section 4511.13 of the Revised Code or a substantially equivalent municipal ordinance that occurs at an intersection due to failure to obey a traffic signal;

(2) A violation of Section 4511.21 or 4511.211 of the Revised Code or Village of Newburgh Heights Codified Ordinance Section 333.03 due to failure to observe the applicable speed limit.

(l) "Registered owner" means all of the following:

(1) Any person or entity identified by the Ohio bureau of motor vehicles or any other state motor vehicle registration bureau, department, or office as the owner of a motor vehicle;

(2) The lessee of a motor vehicle under a lease of six months or longer;

(3) The renter of a motor vehicle pursuant to a written rental agreement with a motor vehicle renting dealer.

(m) "System location" means the approach to an intersection or area of roadway toward which a traffic law photo-monitoring device is directed and is in operation.

(Ord. 2014-66. Passed 12-30-14.)

(n) "Law enforcement officer" means a sheriff, marshal, deputy marshal, police officer of a police department of any municipal corporation, police constable of any township, or police officer of a township or joint police district, who is employed or an auxiliary of the Village of Newburgh Heights Police Department.

(Ord. 2017-31. Passed 8-7-17.)

(o) "Ticket" or "notice of liability" means any traffic ticket, citation, summons, or other ticket issued in response to an alleged traffic law violation detected by a traffic law photo monitoring device, that represents a civil violation.

(p) "Chapter" refers to Chapter 315 of the Codified Ordinances of the Village of Newburgh Heights and includes and encompasses each of the codified ordinances set forth therein as amended. (Ord. 2014-66. Passed 12-30-14.)

315.02 GENERAL PROVISIONS.

(a) Notwithstanding any other provision of the traffic code ordinances of the Village of Newburgh Heights, the Village hereby adopts a civil enforcement program for automated speed enforcement system violations as outlined in this Chapter. This program imposes monetary liability on the registered owner of a vehicle for failure of an operator thereof to strictly comply with the posted speed limit in school zones or streets or highways within the Village of Newburgh Heights. The imposition of liability under this Chapter shall not be

deemed a conviction for any purpose and shall not be made part of the operating record of any person upon whom the liability is imposed.

(b) The Chief of Police shall be responsible for administering the automated speed enforcement program. Specifically, the Chief of Police shall be empowered to deploy and operate the automated speed enforcement system within the Village of Newburgh Heights.

(c) Any citation for an automated speed system violation pursuant to this section, known as a "notice of liability" shall:

(1) Be approved by a law enforcement officer of the Village of Newburgh Heights Police Department who shall (a) examine evidence of an alleged violation recorded by the automated speed enforcement system to determine whether a speeding infraction has occurred, and (b) determine whether the recorded images in connection with an alleged violation shows an infraction, contains a date and time of the alleged violation, shows the letters and numerals on the vehicle's license plate and shows the state in which the license plate was issued.

(2) Be forwarded by first-class mail or personal service to the registered owner's address as given on the state's motor vehicle registration.

(3) Clearly state the manner in which the violation may be appealed.

(Ord. 2014-66. Passed 12-30-14.)

(4) Comply with the applicable requirements of state law.

(Ord. 2015-39. Passed 6-16-15.)

315.03 OFFENSE.

(a) The vehicle owner shall be liable for a penalty imposed pursuant to this section if such vehicle is operated at a speed in excess of those set forth in Section 333.03 of the Codified Ordinances of the Village of Newburgh Heights, Ohio or Ohio Revised Section 4511.21, as each may be amended from time to time. (Ord. 2017-31. Passed 8-7-17.)

(1) For a system location that is located within a school zone or within the boundaries of a state or local park or recreation area, the Village shall not issue a violation as described in this Chapter using an automated speed enforcement system unless the vehicle involved in the violation is traveling at least six miles per hour over the posted speed limit.

(2) For a system location that is located within any other location than those described in Section 315.03(a)(1) above, the Village shall not issue a violation as described in this Chapter using an automated speed enforcement system unless the vehicle involved in the violation is traveling at least ten miles per hour over the posted speed limit.

(b) A person or entity who receives a notice of liability or ticket for a civil violation shall elect to do one of the following:

(1) In accordance with the instructions on the notice of liability, pay the civil penalty, thereby failing to contest liability and waiving the opportunity to contest the violation;

(2) (i) Within thirty days after receipt of the notice of liability, provide the Village of Newburgh Heights Police Department with either of the following affidavits:

(A) An affidavit executed by the registered owner stating that another person was operating the vehicle of the registered owner at the time of the violation, identifying that person as a designated party who may be held liable for the violation, and containing at a minimum the name and address of the designated party; or

(B) An affidavit by the vehicle owner stating that at the time of the violation, the motor vehicle or the license plates of the motor vehicle involved were stolen or were in the care, custody, and control of some person who did not have the owner's permission to use the motor vehicle, or that the motor vehicle or license plates of the motor vehicle were stolen before the violation occurred and were not under the control or possession of the owner at the time of the violation. In order to demonstrate that the motor vehicle or license plates were stolen before the violation occurred and were not under the control or possession of the vehicle owner at the time of the violation, the vehicle owner must submit proof that a police report, incident report/general offense report about the stolen motor vehicle or license plates was filed prior to the violation or within 48 hours after the violation occurred.

(ii) A registered owner is not responsible for a traffic law violation if, within thirty days after the date of mailing of the notice of liability, the registered owner furnishes an affidavit specified in Section 315.03(b)(2)(i)(A) or (B) to the Village in a form established by the Village and the following conditions are met:

(A) If the registered owner submits an affidavit as specified in Section 315.03(b)(2)(i)(A) of this section, the designated party either accepts liability for the violation by paying the civil penalty or failing to request an administrative hearing within thirty days or is determined liable in an administrative hearing;

(B) If the registered owner submits an affidavit as specified in section 315.03(b)(2)(i)(B) of this section, the affidavit is supported by a stolen vehicle or stolen license plate report as required in that division;

(C) If the registered owner is a motor vehicle leasing dealer or a motor vehicle renting dealer, notify the Village of Newburgh Heights Police Department of the name and address of the lessee or renter of the motor vehicle at the time of the traffic law violation. A motor vehicle leasing dealer or motor vehicle renting dealer who receives a ticket for an alleged traffic law violation detected by a traffic law photo-monitoring device is not liable for a ticket issued for a motor vehicle that was in the care, custody, or control of a lessee or renter at the time of the alleged violation. The dealer shall not pay such a ticket or notice of liability and subsequently attempt to collect a fee or assess the lessee or renter a charge for any payment of such a ticket made on behalf of the lessee or renter.

(D) If the vehicle involved in the traffic law violation is a commercial motor vehicle and the notice of liability is issued to a corporate entity, provide to the Village of Newburgh Heights Police Department an affidavit, sworn to or affirmed by an agent of the corporate entity, that provides the name and address of the employee who was operating the motor vehicle at the time of the alleged violation and who is the designated party.

(E) Contest the ticket by filing a written request for an administrative hearing to review the notice of liability. The person or entity shall file the written request not later than thirty days after receipt of the notice of liability. The failure to request a hearing within this time period constitutes a waiver of the right to contest

the violation and notice of liability, and is deemed to constitute an admission of liability and waiver of the opportunity to contest the violation.

(c) In the event that the Village and/or the Village of Newburgh Heights Police Department receives from a registered owner an affidavit described in Section 315.03(b)(2)(i)(A) or (B) or a notice described in Section 315.03(b)(2)(i)(D) hereof, the Village may proceed to send a notice of liability that conforms with Section 315.04 to the designated party. The Village shall send the notice of liability to the designated party not later than twenty-one days after receipt of the affidavit or notification.

(d) A certified copy of the notice of liability alleging the violation of this chapter occurred, sworn to or affirmed by a law enforcement officer of the Village of Newburgh Heights Police Department, with the recorded images produced by an automated speed enforcement system photographic system shall be prima facie evidence of the facts contained therein and shall be admissible in a proceeding alleging a violation under this chapter.

(e) Exception for emergency or public safety vehicles:
The provisions of this chapter shall not apply to emergency vehicles or public safety vehicles when those vehicles are responding to emergency or call for emergency service.
(Ord. 2014-66. Passed 12-30-14.)

315.04 NOTICE OF LIABILITY.

(a) The notice of liability shall be processed by the Village of Newburgh Heights or its designee and shall be served by ordinary mail to the owner's address as given on the motor vehicle registration from the Bureau of Motor Vehicles, or its equivalent, of the state in which it is registered. The notice of liability shall include:

(1) The name and address of the registered owner;
(2) The letters and numerals appearing on the license plate issued to the motor vehicle;
(3) The traffic law violation charged;
(4) The system location;
(5) The date and time of the violation;
(6) A copy of the recorded image(s);
(7) The amount of the civil penalty imposed and the date by which the civil penalty should be paid and the address to which payment is to be sent;
(8) Information advising the person alleged to be liable of the options as provided in Section 315.03(b);
(9) Information advising the person or entity alleged to be liable of the options prescribed in Ohio Revised Code Section 4511.098 and Village of Newburgh Heights Codified Ordinances Sections 315.03 and 315.07, specifically to include the time, place and manner in which an administrative appeal may be initiated and the procedure for disclaiming liability by submitting an affidavit as prescribed in any of those sections;;
(10) The date of issuance of the notice of liability;
(11) A statement signed by a law enforcement officer employed by the Village of Newburgh Heights indicating that, based on an inspection of recorded images, the motor vehicle was involved in a traffic law violation, and a statement indicating that the recorded images are prima facie evidence of that traffic law violation, both of which may be signed electronically;
(12) A warning that failure to exercise one of the options prescribed in Ohio Revised Code Section 4511.098 or Village of Newburgh Heights Codified Ordinances Sections 315.03 or 315.07 is deemed to be an admission of liability and waiver of the opportunity to contest the violation.

(Ord. 2017-31. Passed 8-7-17.)

(b) A notice of liability issued under this chapter shall be mailed no later than thirty (30) calendar days after the alleged violation.

(c) Except as provided under Section 315.03(b) of this chapter, the Village of Newburgh Heights or its designee may not mail a notice of liability to a person who is not the registered owner.

(d) It is prima facie evidence that the person registered as the owner of the vehicle with the Ohio Bureau of Motor Vehicles (or with any other applicable state vehicle registration office) was operating the vehicle at the time of the offense set out in Section 315.03(a) of this chapter. This evidence and presumption may be rebutted in accordance with Section 315.03(b) or 315.07 of this Chapter of the Codified Ordinances of the Village of Newburgh Heights.

(e) Nothing in this Section shall be construed to limit the liability of an owner of a vehicle for any violation of Section 315.03. (Ord. 2014-66. Passed 12-30-14.)

315.05 CIVIL PENALTIES.

(a) Unless the driver of the motor vehicle received a citation from a police officer at the time of the violation, or unless the exception or defense to liability set forth in Section 315.03(d) applies, the registered owner or designated party for the motor vehicle is subject to a civil penalty if the motor vehicle is recorded by an automated speed enforcement system while being operated in violation of this Chapter. (Ord. 2014-66. Passed 12-30-14.)

(b) The civil penalty under this Chapter shall be in accordance with the following schedule:

(1) Penalties for traffic law violations occurring within any other location than those described in Section 315.03(a)(1) shall be assessed as follows, according to the degree of the traffic law violation:

Miles per Hour Over Speed Limit	Amount of Penalty
1-19	$150.00
20-29	$200.00
30 or more	$300.00
within a school zone or within the boundaries of a state or local park or recreation area	
1-19	$150.00
20-29	$200.00

30 or more	$300.00

(Ord. 2017-31. Passed 8-7-17.)

(2) If the civil penalty is paid more than thirty (30) calendar days, but within forty five (45) calendar days after date of issuance of the notice of liability, an additional late fee of twenty-five dollars ($25.00) shall be added to the amount of the civil penalty;

(3) If the civil penalty is paid more than forty five (45) calendar days of the date of issuance of the notice of liability, an additional late fee of eighty dollars ($80.00) shall be added to the amount of the civil penalty;

(4) In addition to any civil penalty and any additional late fee, any and all costs or expenses incurred by the Village in connection with the placement of a traffic law violation ticket or notice of liability issued hereunder with outside counsel for litigation or collection thereof shall be assessed against the person or entity found to be liable hereunder.

(Ord. 2014-66. Passed 12-30-14.)

(5) In addition to any civil penalty and any additional late fee, any and all costs or expenses incurred by the Village in collecting any amount owed hereunder shall be assessed against the person or entity found to be liable hereunder. Amounts owed hereunder may be referred to a collection agency or other service provider for collection. In the event that the Village makes a referral to any such collection agency or service provider for collection of the civil penalty and any additional amounts owed hereunder, the costs or expenses incurred by the Village in collecting said amounts will be thirty five percent (35%) of the amount due and owing. Said thirty five percent (35%) collection fee shall not preclude any other charge, expense or fee allocable under this chapter to a registered owner of designated party of a motor vehicle.

(Ord. 2016-66. Passed 11-15-16.)

(6) The failure to respond to a notice of liability in a timely fashion as set forth in this ordinance shall constitute a waiver of the right to contest liability for the violation under Section 315.03(b) of this Chapter.

(7) Persons who choose to pay the civil penalty without appearing before a Hearing Examiner as set forth in Codified Ordinance Section 315.07 may do so in the manner indicated on the notice of liability.

(8) A violation for which a civil penalty is imposed under this chapter is not a moving violation for the purpose of assessing points under Ohio Revised Code Section 4507.021 for minor misdemeanor moving traffic offenses and may not be recorded on the driving record of the owner or operator of the motor vehicle and shall not be reported to Bureau of Motor Vehicles, nor shall such a violation be recorded on the driving record of the owner or operator of the vehicle involved in the violation.

(Ord. 2014-66. Passed 12-30-14.)

315.06 COLLECTION OF CIVIL PENALTY.

If the civil penalty is not paid, the civil penalty imposed under the provisions of this chapter shall be collectable, together with any placement fee, interest and penalties thereon, in any manner authorized by law including but not limited to administrative hearings or civil suit. In addition to any other fees or charges authorized by this chapter in relation to the commission of a violation of this chapter, a person liable for the penalties established under this chapter will be assessed fees under this chapter in an amount equal to the costs of collection of the debt and/or the costs of placement with any such citation or case with outside counsel hired or retained by the Village for litigation or collection of any citation or debt hereunder, as set forth in Section 315.05 hereof. (Ord. 2014-66. Passed 12-30-14.)

315.07 ADMINISTRATIVE APPEAL HEARING PROCESS.

(a) A registered owner or designated party may contest the notice of liability by filing a written request for an administrative hearing to review the notice of liability with the Village police department or its designee. A written notice of request for an administrative hearing must be received by the Village police department, or its designee, within thirty (30) calendar days after the date of issuance of the notice of liability. The failure to give notice of request for an administrative hearing within this time period shall constitute a waiver of the right to contest the notice of liability. A hearing officer shall conduct administrative hearings. Administrative hearings shall be held within forty-five (45) business days of the date that timely request for a hearing is received by the Village or its designee, but not sooner than twenty-one days from receipt by the Village of such request; this time may be extended upon a reasonable written request for additional time or upon reasonable notification of the hearing officer or Village with notice to all parties. The administrative hearing shall be open to the public, and a hearing schedule shall be posted in a conspicuous place near the entrance to the hearing room that shall identify, by alleged violator, the administrative hearings scheduled for that day and the time of each hearing. More than one hearing may be scheduled for the same time to allow for such things as non-appearances or admissions of liability.

(1) The Hearing Officer shall determine whether a preponderance of evidence establishes that a traffic law violation occurred and the person requesting the administrative hearing is the party operating the vehicle at the time of the violation. The hearing officer shall advise the person or entity on the day of the hearing of the Hearing Officer's decision.

(i) If the hearing officer finds by a preponderance of the evidence that the alleged traffic law violation did in fact occur and that the person or entity named in the notice of liability is the person who was operating the vehicle at the time of the violation, the hearing officer shall issue a written decision imposing liability for the violation upon the individual or entity and submit it to the Village of Newburgh Heights or its designee and the person or entity named in the notice of liability.

(ii) If the hearing officer finds by a preponderance of the evidence that the alleged traffic law violation did not occur or did in fact occur but the person or entity named in the notice of liability is not the person who was operating the vehicle at the time of the violation, the hearing officer shall issue a written decision finding that the individual or entity is not liable for the violation and submit it to the Village of Newburgh Heights or its designee and the person or entity named in the notice of liability.

(iii) If the person who requested the administrative hearing or a representative of the entity that requested the hearing fails to appear at the hearing, the hearing officer shall determine that the person or entity is liable for the violation. In such a case, the hearing officer shall issue a written decision imposing liability for the

violation upon the individual or entity and submit it to the local authority or its designee and the person or entity named in the notice of liability.

(b) If the registered owner or designated party chooses to contest the notice of liability, the Hearing Officer may consider any of the following as an affirmative defense to a violation upon the defense being established by a preponderance of the evidence by the registered owner or responsible party:

(1) That the motor vehicle or license plates of the motor vehicle were stolen before the violation occurred and were not under control or possession of the registered owner at the time of the traffic law violation. In order to demonstrate that the motor vehicle or license plates were stolen before the traffic law violation occurred and were not under the control or possession of the registered owner at the time of the traffic law violation, the owner must submit proof that a police report about the stolen motor vehicle or license plates was filed prior to the traffic law violation or within 48 hours after the traffic law violation occurred.

(2) That the motor vehicle was under the custody and/or control of another person at the time of the violation. In order to establish this, the owner or responsible person must provide the name and address of the person who had custody and/or control of the motor vehicle at the time of the traffic law violation.

(3) That this section is unenforceable because the recorded image is not legible enough to determine the information needed.

(4) Evidence, other than that adduced pursuant to Section 315.07(b)(1), that the registered owner or person named in the notice of liability was not operating the motor vehicle at the time of the violation. To satisfy the evidentiary burden under this subsection, the owner or person named in the notice of liability shall provide to the Hearing Officer evidence showing the identity of the person who was operating the motor vehicle at the time of the traffic law violation, including, but not limited to, the operator's name and current address, and any other evidence the Hearing Officer deems pertinent.

(5) That the motor vehicle operator was yielding the right-of-way to an emergency vehicle in accordance with Ohio law, or to a funeral procession.

(6) That the vehicle passed through the intersection in order to yield the right-of-way to either of the following: (i) a public safety vehicle or coroner's vehicle in accordance with section 4511.45 of the Ohio Revised Code; or (ii) a funeral procession in accordance with Section 4511.451 of the Ohio Revised Code.

(7) At the time and place of the alleged traffic law violation, the traffic control signal was not operating properly or the traffic law photo-monitoring device was not in proper position and the recorded image is not of sufficient legibility to enable an accurate determination of the information necessary to impose liability.

(8) That under consideration of the totality of the circumstances the person or entity named in the notice of liability is not liable.

(c) If the Hearing Officer finds that the person or entity named in the notice of liability was not operating the motor vehicle at the time of the violation or receives evidence under Section 315.07(b)(4) identifying the designated party, the Hearing Officer shall provide it to the Village of Newburgh Heights or its designee within five (5) calendar days, along with a copy of any evidence substantiating who was operating the motor vehicle at the time of the traffic law violation.

(1) Upon receipt of evidence of the responsible party pursuant to this Section or pursuant to Section 315.03(b), the Village of Newburgh Heights or its designee may issue a notice of liability, with the name and address of the designated party and the information required by Section 315.04 of this Chapter, to the person that the evidence indicates was operating the motor vehicle at the time of the violation.

(2) A notice of liability issued under this Section 315.07(c), shall be sent by the Village of Newburgh Heights or its designee by ordinary mail no later than twenty-one (21) business days after the receipt of the evidence from the Hearing Officer. The content of a notice of liability issued under this subsection shall be the same as set forth in division (a) of Section 315.04 of this Chapter.

(3) If a designated party who was issued a notice of liability under Section 315.07(c) hereof contests the ticket by filing a written request for an administrative hearing to review the notice of liability not later than thirty days after receipt of the notice of liability, the Village of Newburgh Heights shall require the registered owner of the motor vehicle also to attend the hearing. If at the hearing involving the designated party the hearing officer cannot determine the identity of the operator of the vehicle at the time of the violation, the registered owner is liable for the violation. The hearing officer then shall issue a written decision imposing liability for the violation on the registered owner and submit it to the local authority or its designee and to the registered owner. If the designated party also is a registered owner of the vehicle, liability for the violation shall follow the order of registered owners as listed on the title to the vehicle.

(d) A person who is named in a notice of liability for a civil violation may assert a testimonial privilege in accordance with division (D) of Section 2317.02 of the Ohio Revised Code.

(e) A person or entity may appeal a written decision rendered by a hearing officer under this section to the municipal court or county court with jurisdiction over the location where the violation occurred. (Ord. 2014-66. Passed 12-30-14.)

315.08 CALIBRATION.

The manufacturer or operator of the automated speed enforcement system used by the Village, or an independent calibration laboratory, shall calibrate said device before it is used by the Village. The manufacturer or operator of the automated speed enforcement system shall certify to the accuracy of each traffic law photo-monitoring device in accordance with applicable federal law, if any. For each traffic law photo-monitoring device that is considered mobile or portable, meaning it is attached to a trailer, vehicle, or other apparatus that is easily transported to different system locations, the Village shall perform or cause to be performed a system self-test and calibration verification of said traffic law photo-monitoring device in accordance with the manufacturer's specifications prior to its use at each system location. For each device that is considered mobile or portable, meaning it is attached to a trailer, vehicle or other apparatus that is easily transported to different system locations, the Village police department or its designee shall clearly and conspicuously mark on the outside of the trailer, vehicle, or apparatus that contains the traffic law photo-monitoring device that the device is the property or under the control of the Village. (Ord. 2014-66. Passed 12-30-14.)

315.09 SIGNS.

The Village Service Department shall erect signs on every highway, which is not a freeway, that is part of the state highway system and that enters into the Village and at each fixed system location. The signs shall inform inbound traffic that the Village utilizes traffic law photo-monitoring devices to enforce traffic laws. The signs shall be erected within the first three hundred feet of the boundary of the Village and any fixed system location or, if the signs cannot be located within the first three hundred feet of the boundary of the Village or a fixed system location, as close to that distance as possible, in accordance with Ohio Revised Code Chapter 4511.094.

(Ord. 2014-66. Passed 12-30-14.)