

Filed April 16, 2021

Appendix A

NOT RECOMMENDED FOR PUBLICATION

No. 20-3894

PATRICK J. DOWNEY,)
)
)
Plaintiff, Appellant,)
)
) ON APPEAL FROM
v.)
) THE UNITED
) STATES DISTRICT
) COURT FOR THE
) NORTHERN
CITY OF TOLEDO, OH) DISTRICT)
Defendant-Appellee.)

O R D E R

Before: MOORE, GIBBONS, and MURPHY,
Circuit Judges.

Patrick J. Downey, proceeding pro se, appeals the district court's order and judgment granting summary judgment in favor of the defendant in his action brought under the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202, and 42 U.S.C. § 1983. This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a).

On June 4, 2018, an officer with the Toledo Police Department operating a mobile speed camera clocked a car owned by Downey driving seventy-one miles per hour in a sixty-miles-per-hour speed-limit zone. Pursuant to the City of Toledo's "automated red light and speeding system," *see* Toledo Municipal Code § 313.12, Downey's speeding car was photographed, and a "Handheld Speed Violation Notice of Liability" was sent to Downey. Downey appeared at an administrative hearing on July 19, 2018, and moved to dismiss the notice of violation. The administrative hearing officer denied the motion. Downey did not appeal to the Toledo Municipal Court or to the Lucas County Court of Common Pleas. *See* Ohio Rev. Code § 4511.099(G) (2015) ("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.") When Downey refused to pay the \$120 fine, the city sent Downey a notice of default, imposing a \$25 penalty and notifying him that failure to pay could result in a civil action against him in the Toledo Municipal Court and that failure to respond to the notice immediately could result in the towing or immobilization of his vehicle.

Downey filed a complaint in the district court seeking a declaratory judgment that section 313.12 violates his rights under the Fifth and Fourteenth Amendments. Specifically, Downey alleged that, because section 313.12 allows the City of Toledo to pursue both civil and criminal charges against an individual and provides that the only way by which

an owner can contest liability is to provide an affidavit or give testimony, it forces the individual charged to choose between asserting his Fifth Amendment right against self-incrimination or his right to contest the seizure of his property. Downey alleged four additional due process violations: (1) the police officer's use of a mobile speed camera was not authorized by the City's automated red-light and speeding system, and thus the attempt to collect a civil penalty violated his right to due process; (2) the assessment of a \$25 penalty violated his due process rights because he timely appealed the notice of liability; (3) any attempt to immobilize or tow his vehicle, as indicated on the notice of default, would violate his right to due process because the City opted to assess an additional penalty; and (4) section 313.12(c)(3) "unfairly shifted the burden of proof" to him, and the administrative hearing did not provide him with an opportunity to dispute whether a violation had actually occurred.

Downey moved for summary judgment. The City moved for judgment on the pleadings, pursuant to Federal Rule of Civil Procedure 12(c). Because Downey relied on matters outside the pleadings in opposing the City's motion and the City moved in the alternative for summary judgment, the district court applied the summary-judgment standard to both Downey's and the City's motions. The court granted summary judgment in favor of the City on Downey's claim that section 313.12 forced him to choose between asserting his Fifth Amendment privilege against self-incrimination and providing testimony to oppose the taking of his property. The court explained

that, because Ohio law prohibited the use of such testimony as evidence in other judicial proceedings, *see* Ohio Rev. Code § 4511.099(H) (2015), Downey was not faced with an unconstitutional choice between his Fifth Amendment rights and his Fourteenth Amendment rights. With respect to Downey's remaining claims concerning the application of section 313.12 in his case, the court concluded, "[T]he City's administrative procedures provided a mechanism by which Downey could challenge the citation he received, including by challenging the manner in which the administrative hearing was conducted. Thus, Downey fails to establish the City's procedures violated his Fourteenth Amendment rights."

On appeal, Downey argues that the City's automated red-light and speeding system violates its "home rule" authority under the Ohio Constitution by "decriminaliz[ing] speeding offenses." He further argues that section 4511.099(H), which the district court relied on to hold that section 313.12 did not compel a choice between the exercise of one's Fifth Amendment privilege against self-incrimination and due process rights, did not apply to his case because "a mobile camera operated by a uniformed police officer does not fit with the [statutory] definition of 'traffic law photo-monitoring device.'" He argues that the use of mobile cameras by uniformed police officers in the city's civil traffic program violated the home rule provision because a motorist could face both criminal and civil penalties for violating the State's traffic laws. Downey also contends that the district court improperly failed to rule on the four other

claims he presented in his complaint alleging violations of his right to due process.

We review a district court's grant of summary judgment de novo, viewing the facts in the light most favorable to the non-moving party. *Flagg v. City of Detroit*, 715 F.3d 165, 178 (6th Cir. 2013). Summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); see *Estate of Smithers ex rel. Norris v. City of Flint*, 602 F.3d 758, 761 (6th Cir. 2010). A party opposing a motion for summary judgment may not rest upon its pleadings but must set forth specific facts demonstrating that there are genuine issues of material fact. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). The party must provide such evidence in the form of affidavits, depositions, and other admissible evidence. Fed. R. Civ. P. 56(c)(1). Under Rule 12(d), "[i]f, on a motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56." Fed. R. Civ. P. 12(d).

There is no factual dispute in this case. Rather, both Downey and the City contend that they are entitled to judgment as a matter of law. The crux of Downey's challenge to section 313.12 of the Toledo Municipal Code is that it exceeds the City's home rule authority under the Ohio Constitution and subjects motorists to civil penalties for traffic violations for which they could also be criminally liable. He argues that a motorist charged under this provision is thus

faced with an unconstitutional dilemma of having to choose between offering testimony to defend the seizure of his property and exercising his privilege against self-incrimination under the Fifth Amendment. *See Simmons v. United States*, 390 U.S. 377, 393-94 (1968). As the district court explained, however, such a dilemma is cured by a rule prohibiting the State from using testimony offered in that proceeding in a future criminal prosecution. *See id.* at 394.

At the time Downey appeared for his administrative proceeding, Ohio had such a rule. Section 4511.099 of the Ohio Revised Code, which governed the administrative hearing procedures for violations recorded by a “traffic law photo-monitoring device,” provided that “[n]o decision rendered under this section, and no admission of liability under this section or section 4511.098 of the Revised Code, is admissible as evidence in any other judicial proceeding in this state.” Ohio Rev. Code § 4511.099(H) (2015). Downey argues that this section did not apply to his case because the officer recorded the alleged violation using a mobile speed camera, which “does not fit with[in] the definition of ‘traffic law photo-monitoring device.’” But he cites no authority to support this assertion. “Traffic law photo-monitoring device” was defined as “an electronic system consisting of a photographic, video, or electronic camera and a means of sensing the presence of a motor vehicle that automatically produces recorded images.” Ohio Rev. Code § 4511.092(K) (2015). Section 313.12 of the Toledo Municipal Code empowered the Toledo Division of

Transportation and the Toledo Police Department “to install and operate red light and speeding camera systems within the city of Toledo.” § 313.12(a)(2). “Automated red light and speeding system” is defined as “a system consisting of a photographic, video, or electronic camera and a vehicle sensor that works alone or in conjunction with an official traffic control that produces a photograph, video, or digital image of traffic law violations.” § 313.12(b)(1). These definitions do not exclude mobile or handheld cameras.

In support of his argument, Downey relies on *Mendenhall v. City of Akron*, 881 N.E.2d 255 (Ohio 2008). In that case, the Ohio Supreme Court analyzed Akron’s “automated mobile speed enforcement system,” which authorized the use of cameras in mobile units to identify speed-limit violators in school zones, and considered “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 258. The court held that “an Ohio municipality does not exceed its home rule authority when it creates an automated system for enforcement of traffic laws that imposes civil liability upon violators, provided that the municipality does not alter statewide traffic regulations.” *Id.* at 265. *Mendenhall* said nothing about whether a municipal speed-enforcement program that allows for the use of mobile or handheld cameras violates home rule authority. The case does not support Downey’s argument that, because his vehicle’s speed was recorded with a mobile camera,

the safeguard of § 4511.099(H) did not apply. The district court properly granted summary judgment to the City on Downey's claim that section 313.12 violated his rights under the Fifth and Fourteenth Amendments.

Downey further argues that the district court failed to rule on his remaining four due process claims. The court did not discuss these claims but summarily rejected them, finding that "the City's administrative procedures provided a mechanism by which Downey could challenge the citation he received including by challenging the manner in which the administrative hearing was conducted." To establish a procedural due process violation, a plaintiff "must show that the state deprived him or her of a constitutionally protected interest in life, liberty, or property without due process of law." *Michael v. Ghee*, 498 F.3d 372, 377 (6th Cir. 2007) (quoting *Swihart v. Wilkinson*, 209 F. App'x 456, 458 (6th Cir. 2006)). Procedural due process requires the State to provide notice and the opportunity to be heard before depriving a person of a property or liberty interest. *Thompson v. Ashe*, 250 F.3d 399, 407 (6th Cir. 2001). Even where the State failed to comply with procedural due process requirements, a due process claim is barred if the State provides an adequate post-deprivation remedy. *Parratt v. Taylor*, 451 U.S. 527, 543-44 (1981), *overruled on other grounds by Daniels v. Williams*, 451 U.S. 327 (1986).

Downey first argued that the police officer's use of a mobile speed camera was not authorized by the city's automated red-light and speeding system, and

thus the attempt to collect a civil penalty violated his right to due process. As discussed above, Downey offered no support for his assertion that the City's enforcement system did not allow for the use of a mobile speed camera. Moreover, as the district court noted, "tickets issued following the use of a handheld camera remain subject to the same administrative hearing procedure." Indeed, Downey had an appeal process available to him through which he could have contested the officer's use of a mobile camera. He did not avail himself of this process, however, and therefore has not shown that the State failed to offer an adequate post-deprivation remedy. *See Parratt*, 451 U.S. at 543-44.

To the extent Downey argued that the use of a mobile camera amounted to a substantive due process violation, any such claim is unavailing. The City's automated red-light and speeding system neither implicated Downey's fundamental rights and liberties, *see Washington v. Glucksberg* 521 U.S. 702, 720-21 (1997), nor involved "arbitrary and capricious government action that 'shocks the conscience and violates the decencies of civilized conduct,'" *Guertin v. Michigan*, 912 F.3d 907, 918 (6th Cir. 2019) (quoting *County of Sacramento v. Lewis*, 523 U.S. 833, 846-47 (1998)). Accordingly, the district court properly held that the city was entitled to judgment as a matter of law on this claim.

Downey next argued that the assessment of a \$25 penalty violated his due process rights because he timely appealed the notice of liability. But again, Downey had an appeal process available to him by

which he could have contested the assessment of this penalty in Toledo Municipal Court or the Court of Common Pleas. *See* Ohio Rev. Code § 4511.099(G) (2015). Downey's failure to avail himself of this process does not render the assessment of the \$25 penalty a violation of his right to due process.

Downey's next due process claim asserted that any attempt to immobilize or tow his vehicle, as indicated on the notice of default, would violate his right to due process because the City opted to assess an additional penalty. But such an attempt never came to pass. As Downey explained in his complaint, the City assessed a \$25 penalty under section 313.12(d)(5); his vehicle was never immobilized or towed. And under the City's ordinance, the City would have been precluded from any such towing or immobilization because it opted to assess a penalty. *See* Toledo Municipal Code § 313.12(d)(6) ("*In lieu of assessing an additional penalty*, pursuant to subsection (d)(5) above, the City of Toledo may (i) immobilize the vehicle by placing an immobilization device (e.g. a boot) on the tires of the vehicle pending the owners compliance with the Notice of Liability, or (ii) impound the vehicle...." (emphasis added)). The City was therefore entitled to summary judgment on this claim.

Finally, Downey argued that section 313.12(c)(3) unfairly shifted the burden of proof to him and that the administrative hearing did not provide him with an opportunity to dispute whether a violation had actually occurred. Section 313.12 gave Downey notice, a hearing, and an opportunity to be

heard. Downey, however, did not present any evidence at the hearing to rebut the City's evidence. Nor did he appeal to the Toledo Municipal Court or the Court of Common Pleas. Downey's due process claim is therefore barred by *Parratt*, 451 U.S. at 543-44. See *Gardner v. City of Cleveland*, 656 F. Supp.2d 751, 759-60 (N.D. Ohio 2009) (rejecting plaintiff's procedural due process challenge to the imposition of a civil fine based on photographs of two traffic violations involving owner's vehicle where plaintiff failed to demonstrate that the city's and the state's post-deprivation remedies were inadequate).

Accordingly, we **AFFIRM** the district court's judgment.

ENTERED BY ORDER OF
THE COURT

s/s Deborah S. Hunt
Deborah S. Hunt, Clerk

Filed 08/10/20

Appendix B

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

Patrick J. Downey, Case No. 3:18-cv-2403

Plaintiffs,

v.

MEMORANDUM
OPINION AND ORDER

City of Toledo,

Defendant.

I. Introduction and Background

On June 4, 2018, an officer with the Toledo, Ohio Police Department, using a mobile speed camera, clocked a car owned by Plaintiff Patrick Downey at 71 mph in a 60-mph speed limit zone. (Doc. No. 16-1 at 1). Downey attended an administrative hearing on July 19, 2018. The hearing officer denied Downey's motion to dismiss, which alleged violations of his constitutional rights, and upheld the notice of violation. Downey refused to pay the \$120 fine, or the subsequent \$25 penalty assessed after his refusal to pay the fine. (See Doc. No. 16-1 at 5).

Downey filed suit, seeking a declaratory judgment that Toledo Municipal Code § 313.12 violated his due-process rights under the Fourteenth

Amendment to the United States Constitution. (See Doc. No. 16). Downey filed a motion for summary judgment, (Doc. No. 19), while Defendant filed a motion for judgment on the pleadings or, in the alternative, for summary judgment. (Doc. No. 26).

While the parties were briefing these motions, Ohio House Bill 62 took effect. See 2019 Am. Sub. H.B. No. 62 (effective July 3, 2019). House Bill 62, among other things, amended Ohio Revised Code § 1901.20 to vest “exclusive jurisdiction over every civil action concerning a violation of a state traffic law or a municipal traffic ordinance” in the municipal courts. Ohio Rev. Code § 1901.20(A)(1).

Subsequently, the Supreme Court of Ohio granted a writ of prohibition brought by another motorist who received a notice of liability generated by the City of Toledo’s automated traffic enforcement system. *State ex rel. Magsig v. Toledo*, --- N.E.3d ---, 2020-Ohio-3416, 2020WL 3444420 (Ohio 2020). The Supreme Court concluded the City of Toledo lacked the authority to permit an administrative hearing officer to exercise quasi-judicial power in carrying out the City’s red-light and speeding-camera civil enforcement system, codified in Toledo Municipal Code § 313.12. *Id.* at *2. The Supreme Court prohibited the City of Toledo from conducting further administrative hearings because Toledo Municipal Code § 313.12 contravened the plain language of Ohio Revised Code § 1901.20(A)(1), which assigned exclusive jurisdiction over violations of municipal traffic ordinances to the municipal courts. *Id.*

Toledo Municipal Code § 313.12(d) permits the owner of the vehicle for which a citation was issued to appeal the citation and to have a hearing before an administrative officer, through a process established by the City of Toledo Police Department. T.M.C. § 313.12(d)(4). The vehicle owner may appeal the hearing officer's decision to the municipal court or court of common pleas. Ohio Rev. Code § 4511.099(G). Downey appealed the citation and attended a hearing but did not appeal the outcome of his administrative hearing to the Toledo Municipal Court or the Lucas County Court of Common Pleas.

Though the legal framework under which Downey allegedly suffered harm is no longer in place, the change in law does not eliminate Downey's alleged harm. Therefore, I proceed to consider the parties' arguments.

II. Standard

Summary judgment is appropriate if the movant demonstrates there is no genuine dispute of material fact and that the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a).¹ All evidence must be viewed in the light most favorable to the nonmovant, *White v. Baxter*

¹ While Defendant moved for judgment on the pleadings pursuant to Rule 12(c), Downey relied on matters outside the pleadings in opposing Defendant's motion. Further, Defendant presented its motion in the alternative as one under Rule 56. (Doc. No. 26). Therefore, I will apply the Rule 56 standard to both motions. *Max Arnold & Sons, LLC v. W.L. Haley & Co.*, 452 F.3d 494, 503 (6th Cir. 2006).

Healthcare Corp., 533 F.3d 381, 390 (6th Cir. 2008), and all reasonable inferences are drawn in the nonmovant's favor. *Rose v. State Farm Fire & Cas. Co.*, 766 F.3d 532, 535 (6th Cir. 2014). A factual dispute is genuine if a reasonable jury could resolve the dispute and return a verdict in the nonmovant's favor. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A disputed fact is material only if its resolution might affect the outcome of the case under the governing substantive law. *Rogers v. O'Donnell*, 737 F.3d 1026, 1030 (6th Cir. 2013).

III. Analysis

A. Exhaustion of Remedies

The City claims Downey is prohibited from pursuing his claims in federal court because he did not exhaust available administrative remedies, including by appealing the hearing officer's decision to the Toledo Municipal Court or to the Lucas County Court of Common Pleas. (Doc. No. 26 at 5-6). The City's argument lacks merit. Prior § 4511.099(G), since repealed by House Bill 62, described a permissive appeal process, not a mandatory one. *See* Ohio Rev. Code § 4511.099(G) ("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.") (eff. Mar. 23, 2015; repealed July 2, 2019)(emphasis added).

Further, federal law does not require that a plaintiff, other than a plaintiff who is an adult

prisoner, exhaust state remedies prior to bringing § 1983 claims asserting violations of plaintiff's constitutional rights. *See, e.g., Patsy v. Bd. of Regents of State of Fla.*, 457 U.S. 496 (1982). Therefore, I deny this portion of Defendant's motion.

B. Declaratory Judgment

Downey seeks a declaratory judgment that Toledo Municipal Code § 313.12 violated his Fourteenth Amendment due-process rights by forcing him to choose between asserting his Fifth Amendment privilege against self-incrimination and challenging Defendant's taking of his property through the administrative procedure for adjudicating citations issued through the City's speed-camera enforcement system. (Doc. No. 16 at 6). He further argues that, because he did not receive due process at the administrative stage, the City cannot collect any fines or penalties or tow his vehicle if he refuses to pay. (*Id.*)

The Fifth Amendment permits an individual to refuse "to answer official questions put to him in any...proceeding, civil or criminal, formal or informal, where the answers might incriminate him in future criminal proceedings." *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973).

First, the City contends Downey could not have been compelled to offer testimony against himself because Ohio law only permitted it to proceed with an administrative hearing and prohibited it from bringing criminal proceedings against Downey. (Doc.

No. 26 at 10 (“[T]he only available avenue for Defendant to proceed with a violation [was] through the administrative process...[and] Plaintiff’s claim that his testimony would be used in a future criminal proceeding is wrong and runs in the face of the language of [Ohio Revised Code section] 4511.093.”)).

At best, the City’s argument lacks any merit, as barely two months prior to making that argument, the City had successfully convinced the Sixth District Court of Appeals that § 4511.093(B)(3) violated its home-rule authority and therefore was unenforceable. *City of Toledo v. State of Ohio*, 130 N.E.3d 341, 350 (Ohio Ct. App. 2019). The City’s argument therefore is wholly unpersuasive. *Cf. New Hampshire v. Maine*, 532 U.S. 742, 750 (2001) (The doctrine of judicial estoppel prohibits “parties from deliberately changing positions according to the exigencies of the moment.”)(citation omitted).

This does not mean that Downey may prevail. As he notes, the Supreme Court has recognized there is “an undeniable tension” created if an individual must choose between asserting his Fifth Amendment privilege against self-incrimination and providing testimony in pursuit of another right secured by the Constitution. *Simmons v. United States*, 390 U.S. 377, 393-94 (1968). The remedy for that tension, however, is not the abolition of the proceeding in which the individual is compelled to choose to invoke the privilege, but a rule prohibiting the government from using testimony offered in that proceeding against the individual in a future criminal proceeding. *Id.*

Ohio had such a rule at the time Downey appeared for his administrative hearing. Ohio law expressly provided that “[n]o decision rendered under this section, and no admission of liability under this section or section 4511.098 of the [Ohio] Revised Code, is admissible as evidence in any other judicial proceeding in this state.” Ohio Rev. Code § 4511.099(H)((eff. Mar. 23, 2015; repealed July 2, 2019)(emphasis added). That prohibition was an appropriate exercise of the State of Ohio’s power to regulate the jurisdiction of the state courts. *City of Toledo v. State of Ohio*, 130 N.E.3d at 354. Therefore, Downey did not have to choose between his Fifth Amendment rights and his Fourteenth Amendment rights, because Ohio law provided sufficient safeguards for his Fifth Amendment rights to permit him to fully vindicate his Fourteenth Amendment right to due process.

Downey argues this jurisdictional limitation did not extend to his case because he received a citation following the officer’s use of a mobile speed camera, rather than through a stationary automated camera. (Doc. No. 19-2 at 7). I need not answer the question of whether Toledo Municipal Code § 313.12 permitted the use of handheld speed cameras because tickets issued following the use of a handheld camera remain subject to the same administrative hearing procedure, and Ohio law prohibited the future use of allegedly-incriminating statements made during the administrative process, without regard to the validity or invalidity of the underlying citation. *See* former Ohio Rev. Code § 4511.099(H). That is, the City’s administrative procedures provided a mechanism by

which Downey could challenge the citation he received, including by challenging the manner in which the administrative hearing was conducted. Thus, Downey fails to establish the City's procedures violated his Fourteenth Amendment rights.

IV. Conclusion

For the reasons stated above, I deny Downey's motion for summary judgment, (Doc. No. 19), and grant Defendant's motion for summary judgment. (Doc. No. 26).

So Ordered.

s/ Jeffrey J. Helmick
United States District Judge

Filed June 10, 2021

Appendix C

No. 20-3894

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH DISTRICT**

PATRICK J. DOWNEY,)	
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Plaintiff-Appellant,)	
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v.)	ORDER
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CITY OF TOLEDO, OH,)	
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Defendant-Appellee.)	
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**BEFORE: MOORE, GIBBONS, and
MURPHY, Circuit Judges.**

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. The petition then was circulated to the full court. No judge has

requested a vote on the suggestion for rehearing en banc.

Therefore, the petition is denied.

**ENTERED BY ORDER OF
THE COURT**

s/ Deborah S. Hunt
Deborah S. Hunt, Clerk

Appendix D

U.S. Const. art. I, § 8 provides:

The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

To borrow Money on the credit of the United States;

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

To Establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

To establish Post Offices and post Roads;

To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the

exclusive Right to their respective Writings and Discoveries;

To constitute Tribunals inferior to the supreme Court;

To define and punish Piracies and Felonies committed on the high Seas, and Offenses against the Law of Nations;

To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

To provide and maintain a Navy;

To make Rules for the Government and Regulation of the land and naval Forces;

To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training

the Militia according to the discipline prescribed by Congress;

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards and other needful Buildings; - And

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

28 USC § 2201(a) provides in part:

In a case of actual controversy within its jurisdiction... any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and

effect of a final judgment or decree and shall be reviewable as such.

28 USC § 2202 provides:

Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment.

42 USC § 1983 provides:

Every person who, under the color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia

shall be considered to be a statute of the District of Columbia.

ORC § 1.47 provides in part:

In enacting a statute, it is presumed that:

(A) Compliance with the constitutions of the state and of the United States in intended....

Former Ohio Revised Code (ORC") ORC § 4511.092 provided in part:

As used in sections 4511.092 to 4511.0914 of the Revised Code: ...

(I) "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.

(J) "Ticket" 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.

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

(L) "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 control signal;
- (2) A violation of section 4511.21 or 4511.211 of the Revised Code or a substantially equivalent municipal ordinance due to failure to observe the applicable speed limit.

Former ORC § 4511.093 provided:

(A) A local authority may utilize a traffic law photo-monitoring device for the purpose of detecting traffic law violations. If the local authority is a county or township, the board of county commissioners or the township board of trustees may adopt such resolutions as may be necessary to enable the county or township to utilize traffic law photo-monitoring devices.

(B) The use of a traffic law photo-monitoring device is subject to the following conditions:

- (1) A local authority shall use a traffic law photo-monitoring device to detect and enforce traffic law violations only if a law enforcement officer is present at the location of the device at all times during the operation of the device and if the local authority complies with sections 4511.094 and 4511.095 of the Revised Code.
- (2) A law enforcement officer who is present at the location of any traffic law photo-monitoring device and who personally witnesses a traffic law violation may issue a ticket for the violation. Such a ticket shall be issued in accordance with section 2935.25 of the Revised Code and is not subject to sections 4511.096 to 4511.0910 and section 4511.912 of the Revised Code.
- (3) If a traffic law photo-monitoring device records a traffic law violation and the law enforcement officer who was present at the location of the traffic law photo-monitoring device does not issue a ticket as provided under division (B)(2) of this section, the local authority may only issue a ticket in accordance with sections 4511.096 to 4511.0912 of the Revised Code.

Former ORC § 4511.097 provided in part:

(A) A traffic law violation for which a ticket is issued by a local authority pursuant to division (B)(3) of section 4511.0093 of the Revised Code is a civil violation. If a local authority issues a ticket for such a violation, the ticket shall comply with the requirements of this section and the fine for such a ticket shall not exceed the amount of the fine that may be imposed for a substantially equivalent criminal traffic law violation....

Former ORC § 4511.098 provided in part:

(A) A person or entity who receives a ticket for a civil violation sent in compliance with section 4511.097 of the Revised Code shall elect to do one of the following:

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

(2)(a) Within thirty days after receipt of the ticket, provide the law enforcement agency of the local authority with either of the following affidavits; ...

(5) Contest the ticket by filing a written request for an administrative hearing to review the ticket. The person or entity shall file the written

request not later than thirty days after receipt of the ticket. The failure to request a hearing within this time period constitutes a waiver of the right to contest the violation and ticket, and is deemed to constitute an admission of liability and waiver of the opportunity to contest the violation....

Former ORC § 4511.099 provided in part:

(A) When a person or entity named in a ticket for a civil violation under division (A) of section 4511.097 of the Revised Code elects to contest the ticket and completes the requirements prescribed in division (A)(5) of section 4511.098 of the Revised Code in a timely manner, all of the following apply:

(1) A hearing officer appointed by the local authority shall hear the case. The hearing officer shall conduct a hearing not sooner than twenty-one but not later than forty-five days after the written request for the hearing. The hearing officer may extend the time period by which a hearing must be conducted upon a request for additional time by the person or entity who requested the hearing.

(2) The hearing officer shall ensure that the hearing is open to the public.

The hearing officer shall post a docket in a conspicuous place near the entrance to the hearing room. The hearing officer shall identify on the docket, by respondent, the hearings scheduled for that day and the time of each hearing. The hearing officer may schedule multiple hearings for the same time to allow for occurrences such as nonappearances or admissions of liability.

(3) The person who requested the administrative hearing or a representative of the entity that requested the hearing shall appear for the hearing and may present evidence at the hearing.

(4) The hearing officer shall determine whether a preponderance of the evidence establishes that the violation alleged in the ticket did in fact occur and that the person or entity requesting the review is the person who was operating the vehicle at the time of the violation....

(H) No decision rendered under this section, and no admission of liability under this section or section 4511.098 of the Revised Code, is admissible as evidence in any other judicial proceeding in this state.

ORC § 4511.21 provides in part:

(A) No person shall operate a motor vehicle, trackless trolley, or streetcar at a speed greater or less than is reasonable or proper, having due regard to the traffic, surface, and width of the street or highway and any other conditions, and no person shall drive any motor vehicle, trackless trolley, or streetcar in and upon any street or highway at a greater speed than will permit the person to bring it to a stop within the assured clear distance ahead.....

(P) A violation of any provision of this section is one of the following:

(a) Except as otherwise provided in divisions (P)(1)(b), (1)(c), (2), and (3) of this section, a minor misdemeanor;....

TMC § 303.98 provides in part:

Civil penalties for traffic law photo-monitoring device violations.

(a) Traffic law photo-monitoring device civil violations – General.

(1) Notwithstanding any other provision of this Traffic Code, the City of Toledo hereby adopts a civil enforcement system for traffic law photo-monitoring device violations as outlined in this Section. Said system imposes monetary liability on the owner of a vehicle for failure of an operator to comply with traffic control

indications in the City of Toledo in accordance with the provisions of this Section.

(2) The City of Toledo Division of Transportation, the Toledo Police Department, and the Toledo Department of Law shall be responsible for administering the traffic law photo-monitoring device program. Specifically, the Toledo Division of Transportation and the Toledo Police Department shall be empowered to install and operate traffic law photo-monitoring devices, which include stationary and hand-held devices that monitor and record red light violations and speeding violations within the City of Toledo. The Toledo Division of Transportation and the Toledo Police Department shall maintain a list of device locations where traffic law photo-monitoring devices are installed. Said departments will make the determination as to which locations will be utilized....

(b) Definitions.

(1) "Traffic law photo-monitoring device" is the equivalent of "Traffic control signal monitoring device" or "Traffic control photographic system." Said system or device is a system consisting of a photographic, video, or

electronic camera and a vehicle sensor that works alone or in conjunction with an official traffic control device that produces a photograph, video, or digital image of traffic law violations.

(2) Hand-held speed cameras are the equivalent of a "traffic law photo-monitoring device" or similar system. Said device consists of photographic, video, or electronic camera operated by a Toledo Police Officer, and produces a photograph, video, or digital image of traffic violations....

(c) Offense.

(1) The owner of the vehicle, or the party named per TMC Subsection 303.98(c)(5)(A), shall be liable for the 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 for that vehicle's direction is emitting a steady red light.

(2) The owner of the vehicle, or the party named per TMC Subsection 303.98(c)(5)(A), 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 TMC Section 333.03....

(4) A certified copy of the Notice of Liability alleging a traffic law

violation, sworn to or affirmed by a law enforcement officer employed by the local authority, including by electronic means, and the recorded images produced by the traffic law photo-monitoring device, is *prima facie* evidence of the facts contained therein and is admissible in a civil action or proceeding concerning the Notice of Liability issued under this Section....

(7) A Notice of Liability for a violation of subsection (c)(1) or (c)(2) herein shall preclude a criminal charge of the owner for a Red Light or Speeding violation....

Former TMC § 313.12 provided:

(a) Automated red light and speeding system/civil violation

- General.

(1) Notwithstanding any other provision of this Traffic Code, the City of Toledo hereby adopts a civil enforcement system for red light and speeding camera system violations as outlined in this Section. Said system imposes monetary liability on the owner of a vehicle for failure of an operator thereof to comply with traffic control indications in the City of Toledo in accordance with the provisions of this Section.

(2) The City of Toledo Division of Transportation, the Toledo Police

Department, and the Toledo Department of Law shall be responsible for administering the Automated Red Light and Speeding System. Specifically, the Toledo Division of Transportation and the Toledo Police Department shall be empowered to install and operate red light and speeding camera systems within the City of Toledo. And, the Toledo Division of Transportation and the Toledo Police Department shall maintain a list of system locations where red light and speeding camera systems are installed. Said departments will make the determination as to which locations will be utilized.

(3) Any citation for an automated red light and speeding system violation pursuant to this Section, known as a "Notice of Liability" shall:

- A. Be processed by officials or agents of the City of Toledo;
- 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 red light and speeding system: is the equivalent of "Traffic control signal monitoring device" or "Traffic control photographic system." Said system/device is a system consisting of a photographic, video, or electronic camera and a vehicle sensor that works alone or in conjunction with an official traffic control that produces a photograph, video, or digital image of traffic law violations.

(2) "In operation" means operating in good working condition.

(3) "System location" is the approach to an intersection or a street toward which a photographic, video or electronic is directed and in operation. It is the location where the automated camera system is installed or otherwise being used to monitor offenses under this Section.

(4) "Vehicle owner" is the person or entity identified by the Ohio Bureau of Motor Vehicles, or registered with any other State vehicle registration office, as the registered owner of a vehicle.

(5) "Responsible party" is the person or entity named per TMC Subsection (c)(4)(A).

(c) Offense.

(1) The owner of a vehicle, or the party named per TMC Subsection

313.12(c)(4)(A), shall be liable for the 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 for that vehicle's direction is emitting a steady red light.

(2) The owner of a vehicle, or the party named per TMC Subsection 313.12(c)(4)(A), 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 TMC Section 333.03.

(3) 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 State vehicle registration office) was operating the vehicle at the time of the offense set out in subsection (c)(1) or (c)(2) above.

(4) Notwithstanding subsection (c)(3) above, the owner of the vehicle shall not be responsible for the violation if, within twenty-one (21) days from the date listed on the "Notice of Liability", as set forth in subsection (d)(4) below, the owner of the vehicle furnishes the Hearing Officer:

A. An affidavit by him, 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 as 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 upon 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 subsection (c)(1) or (c)(2) herein.

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

(d) Penalty; Administrative Appeal.

(1) Any violation of subsection (c)(1) herein shall be deemed a noncriminal violation for which a civil penalty of \$120.00 shall be assessed and for which no points authorized by Ohio R.C. 4507.021 ("Point system for license suspension") shall be assigned to the owner or driver of the vehicle.

(2) Any violation of subsection (c)(2) herein shall be deemed a noncriminal

violation for which a civil penalty of \$120.00 shall be assessed and for which no points authorized by Ohio R.C. 4507.021 ("Point system for license suspension") shall be assigned to the owner or driver of the vehicle.

(3) The City of Toledo, via its Division of Transportation, Police Department, Law Department and Municipal Court Clerk 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 twenty-one (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 of Toledo Police Department. A decision in favor of the City of Toledo may be enforced by means of a civil action or any other means provided by the Ohio Revised Code.

(5) The failure to respond to a Notice of Liability in a timely fashion as set forth in subsection (d)(4) of this section shall

result in an additional penalty of twenty-five dollars (\$25.00).

(6) In lieu of assessing an additional penalty, pursuant to subsection (d)(5) above, the City of Toledo may (i) immobilize the vehicle by placing an immobilization device (e.g. a "boot") on the tires of the vehicle pending the owners compliance with the Notice of Liability, or (ii) impound the vehicle, pursuant to TMC Section 303.08(a)(12). Furthermore, the owner of the vehicle shall be responsible for any outstanding fines, the fee for removal of the immobilization device, and any costs associated with the impoundment of the vehicle.