

**LAW JOURNAL**  
**FOR SOCIAL JUSTICE**  
SANDRA DAY O’CONNOR COLLEGE OF LAW  
ARIZONA STATE UNIVERSITY

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**Volume 5** **Spring** **2015**

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*Law Journal for Social Justice* is supported by the Sandra Day O'Connor College of Law at Arizona State University. The *Law Journal for Social Justice* mailing address is: Law Journal for Social Justice, P.O. Box 877906, 1100 S. McAllister Ave., Tempe, AZ 85287. The *Law Journal for Social Justice* email address is: lawjournalforsocialjustice@gmail.com.

**Subscription:** *Law Journal for Social Justice* is an online journal. Editions are accessible through the URL: <http://www.law.asu.edu/ljsj/>, and <http://www.ljsj.wordpress.com/journal>

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Cite as 5 L.J. Soc. Justice \_\_ (2015).

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## EDITOR INTRODUCTION

The 2015 Law Journal for Social Justice Symposium, “Contemporary Discrimination” focused on current concerns regarding civil rights and civil liberty. Discussions ranged from the political legislative process, resistance in enforcement of civil rights judgments, and sexual orientation employment discrimination. Panelists included politicians, scholars from diverse backgrounds, practicing attorneys and community organizers.

Drawing on broader considerations, this issue features articles analyzing an array of concerns in the criminal, civil and international tribunals. The first article, *You Have Your Whole Life in Front of You...Behind Bars*, written by Rachel Forman, begins this issue by discussing a need to ban life without parole sentences for juvenile non-homicide offenders. Inalvis M. Zubiaur, in *Death Row: Mentally Impaired Inmates and the Appeal Process*, continues the focus on sentencing by engaging concerns regarding capital punishment. Next, in *Injection and the Right of Access*, Timothy F. Brown argues for increased access to lethal injection procedures to understand its constitutionality. Shifting consideration to the civil sphere, Victor D. Lopez & Eugene T. Maccarrone raise issues about privacy, due process, public policy and the basic fairness of traffic enforcement by camera, in *Traffic Enforcement by Camera*. Beginning the focus on international concerns, *Fictitious Labeling*, by Efe Ukala, discusses “recommendations that may help curb constitutional issues resulting from deportation.” Brittany Fink, in *Increase Quota, Invite Opportunities, Improve Economy*, proposes amendments to the DREAM Act that extend the path to citizenship.” Katharine Villalobos then focuses on the sociology of immigration in *The Crucible*, using historical examples to discuss the War on Terror. *Falling Through the Cracks* by Marissa N. Goldberg changes the focus to international law and unique considerations of women in the drug trade industry. Finally, *Seeking Truth in the Balkans* by Erin K. Lovall and June E. Vutrano concludes the issue by discussing the role of international law in seeking justice following the wars in the Balkans. Together these articles analyze issues that raise important questions about fairness and civil rights in the domestic and international contexts.

Special thanks to the entire staff of the Law Journal for Social Justice, who helped create this edition.

Kristyne Schaaf-Olson  
2014-2015 Editor-in-Chief  
The Law Journal for Social Justice

# TRAFFIC ENFORCEMENT BY CAMERA: PRIVACY AND DUE PROCESS IN THE AGE OF BIG BROTHER

By Victor D. López, J.D.\* and  
Eugene T. Maccarrone, J.D., CPA\*\*

## Introduction

States are increasingly turning to automated camera systems as a means of enforcing traffic regulations. According to the Insurance Institute for Highway Safety, 24 states and the District of Columbia had some form of camera enforcement program as of February 2015.<sup>1</sup> Only eight states (AR, ME, MS, MT, NV, NH, SC, and WV) specifically prohibit most forms of unattended photo enforcement (e.g., enforcement when a police officer is not present and operating the equipment that records the violation).<sup>2</sup> The extent to which jurisdictions use photo enforcement varies, as do the fines assessed for violations resulting therefrom. Most states use one or more of the following types of photo enforcement: red light cameras (19 states), speed enforcement (8 states), rail crossings (5 states).<sup>3</sup> Some jurisdictions are also using photo enforcement to ticket drivers for failing to make a complete stop at a stop sign<sup>4</sup> or for passing a stopped school bus.<sup>5</sup> On its face, camera enforcement of traffic laws seems like a reasonable tool for police to ensure public safety. However, the

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<sup>1</sup> See *Automated Enforcement*, INS. INST. HIGHWAY SAFETY & HIGHWAY LOSS DATA INST., [http://www.iihs.org/iihs/topics/laws/automated\\_enforcement](http://www.iihs.org/iihs/topics/laws/automated_enforcement) (last visited March 5, 2015); See generally, Paul McNaughton, *Photo Enforcement Programs: Are They Permissible Under the United States Constitution?*, 43 J. MARSHALL L. REV. 463 (Winter 2010).

<sup>2</sup> *Automated Enforcement*, *supra* note 1.

<sup>3</sup> *Id.*

<sup>4</sup> See e.g., Michael Goldstein, *Stop Sign Camera Tickets in L.A. Lead to Demands to See Drivers' Bank Accounts*, LA WKLY. (AUG. 9, 2012), available at <https://secure.laweekly.com/news/stop-sign-camera-tickets-in-la-lead-to-demands-to-see-drivers-bank-accounts-2175939> (last visited Feb. 15, 2015).

<sup>5</sup> See e.g., Zach Harold, *Cameras Nab Drivers Who Pass Illegally; Sixty of the County's School Buses Now Have the Security System*, CHARLESTON DAILY MAIL, Mar. 30, 2010, at 2A.

technology is not without controversy and raises serious issues about privacy, due process, public policy, basic fairness and the overarching danger of allowing cash strapped municipalities to embrace the technologies for their economic value.

## **I. PUBLIC SAFETY OR REVENUE GENERATION**

Before exploring the more controversial aspects related to camera enforcement of traffic regulations such as privacy and due process, it is useful to examine the factors that motivate municipalities to implement such programs. If they are primarily motivated to protect drivers and pedestrians, and if there is clear evidence that public safety is significantly improved by the use of these devices, then perhaps a compelling argument can be made in favor of camera enforcement. On the other hand, if the state interest in using cameras to enforce traffic regulations is primarily to raise revenue, then the permissibility of encroachments on Constitutionally protected rights to privacy and due process are harder to justify.

### **A. Public Safety Consideration**

According to the most recent statistics compiled by the National Highway Traffic Safety Administration (NHTSA), traffic fatalities have shown a general decrease from 1994 through 2012.<sup>6</sup> (See Table 1 for details). These data show a modest overall decrease in the total number of fatal crashes from 36,254 in 1994 to 30,800 in 2012.<sup>7</sup> The total number of fatalities involved also decreased during the period from 40,716 in 1994 to 33,561 in 2012.<sup>8</sup> Although the numbers are still high, that the incidence of traffic fatalities and death resulting from these has been decreasing over a period of 17 years is noteworthy. There does not appear to be an increased incidence of fatalities that law enforcement is attempting to address through the extraordinary means of red light cameras and related camera based traffic enforcement. Nor does there seem to be much evidence that camera enforcement can significantly reduce traffic accidents or fatalities. The available data on the impact of red light cameras, for example, are inconclusive.<sup>9</sup> A 2005 report by the Federal

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<sup>6</sup> See *Fars Data Tables: National Statistics*, NAT'L HIGHWAY TRAFFIC SAFETY ADMIN., available at <http://www-fars.nhtsa.dot.gov/Main/index.aspx> (last visited June 8, 2015).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> See, e.g., NAT. HIGHWAY TRAFFIC SAFETY ADMIN., *Automated Enforcement: A Compendium of Worldwide Evaluations of Results*, SEPTEMBER 2007, at 40, available at

Highway Administration (“FHA”) examined before and after data from seven jurisdictions across the United States that had implemented red light cameras.<sup>10</sup> The FHA found that the incidence of right-angle crashes in fact decreased by 379 in these jurisdictions but the incidence of rear-end crashes actually increased by 375 during the test period.<sup>11</sup>

The lack of conclusive evidence that the use of red light cameras and similar camera-based traffic enforcement significantly reduces traffic accidents has not stopped municipalities across the country from implementing these types of automated traffic enforcement devices, even in instances where they have been proven to cause more accidents than they prevent. The reason is simple. According to reports by a number of media sources, there is tremendous revenue generating potential for these municipalities.<sup>12</sup> For example, an investigative report by television station KCAL in Los Angeles disproved the city’s claims of a 34% reduction in accidents after the installation of red light cameras. The report, obtained by the station only after a public records request at a cost of \$500, went on to show that 20 of 32 intersections using red light cameras had an increase in accidents in the six months following the installation of the cameras in comparison to the six months preceding their installation. During the same period, the accident rates at three intersections remained the same

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<http://www.nhtsa.gov/DOT/NHTSA/Traffic%20Injury%20Control/Articles/Associated%20Files/HS810763.pdf> (last visited March 5, 2015) (noting after an evaluation of all key studies including national and international data on red light cameras that “General findings across the key studies were consistent with those found in earlier studies. That is, a decrease in right-angle crashes occurred; with a concomitant increase in rear-end crashes”).

<sup>10</sup> FED. HIGHWAY ADMIN., *Safety Evaluation of Red Light Cameras -- Executive Summary* (2005), available at <http://www.fhwa.dot.gov/publications/research/safety/05049/05049.pdf>.

<sup>11</sup> U.S. DEP’T OF TRANSP., FHWA-HRT-05-049, FEDERAL HIGHWAY ADMINISTRATION, *Safety Evaluation of Red Light Cameras—Executive Summary* (2005), available at <http://www.fhwa.dot.gov/publications/research/safety/05049/05049.pdf> (last visited Jun. 8, 2015).

<sup>12</sup> See, e.g., James. C. Walker, *Stop the Red-Light Cameras: They Raise Money But Do Not Improve Traffic Safety*, PITTSBURGH POST-GAZETTE, June 25 2012, at B7, available at <http://www.post-gazette.com/opinion/Op-Ed/2012/06/25/Stop-the-red-light-cameras-They-raise-money-but-do-not-improve-traffic-safety/stories/201206250138>; Tom McIlroy, *City’s Most Lucrative Speed Camera Nets \$1.54m, 6408 drivers*, CANBERRA TIMES (Australia), Mar. 22, 2014, § A, at A001; Maggie Clark, *Red-light Cameras Generate Revenue, Controversy*, USA TODAY, Oct. 15, 2013, available at <http://www.usatoday.com/story/news/nation/2013/10/15/stateline-red-light-cameras/2986577/>; John J. Miller, *The Red-Light District – At Too Many Intersections, There Are Cameras of Ill Repute*, NAT’L REVIEW, Dec. 31, 2014, <https://www.nationalreview.com/nrd/articles/394966/red-light-district>; 18 *Does the Road to Hell Have Red Light Cameras?*, THE WKLY STANDARD, No. 37, June 10, 2013, [http://www.weeklystandard.com/articles/does-road-hell-have-red-light-cameras\\_732080.html](http://www.weeklystandard.com/articles/does-road-hell-have-red-light-cameras_732080.html).

and only nine intersections showed an improvement.<sup>13</sup> A 2010 audit of the Los Angeles County Photo Red Light Program concluded that the data presented by the Los Angeles Police Department (“LAPD”) in their evaluation of the Photo Red Light Program was “inadequate to show a significant increase in public safety.”<sup>14</sup> Reports about increased accidents after the implementation of red light cameras are available from a wide range of sources.<sup>15</sup>

Table 1: NHTSA Statistics on traffic fatalities from 1994-2012.<sup>16</sup>

National Statistics																			
	2012	2011	2010	2009	2008	2007	2006	2005	2004	2003	2002	2001	2000	1999	1998	1997	1996	1995	1994
<b>Motor Vehicle Traffic Crashes</b>																			
Fatal Crashes	30,800	29,867	30,296	30,862	34,172	37,435	38,648	39,252	38,444	38,477	38,491	37,862	37,526	37,140	37,107	37,324	37,494	37,241	36,254
<b>Traffic Crash Fatalities</b>																			
<b>Vehicle Occupants</b>																			
Drivers	16,769	16,474	16,864	17,670	19,279	21,717	22,831	23,237	23,158	23,352	23,625	22,914	22,914	22,971	22,654	22,730	22,572	22,370	21,596
Passengers	6,061	5,972	6,451	6,793	7,441	8,716	9,187	9,750	10,042	10,171	10,370	10,227	10,451	10,325	10,327	10,765	10,860	10,576	10,294
Unknown	82	64	56	63	71	94	101	83	76	104	110	102	88	93	88	168	118	108	
<b>Sub Total†</b>	22,912	22,508	23,371	24,526	26,791	30,527	32,119	33,070	33,276	33,627	34,105	33,243	33,451	33,392	33,088	33,609	33,534	33,064	31,998
<b>Motorcyclists</b>	4,957	4,630	4,518	4,469	5,312	5,174	4,837	4,576	4,028	3,714	3,270	3,197	2,897	2,483	2,294	2,116	2,161	2,227	2,320
<b>Nonmotorist</b>																			
Pedestrians	4,743	4,457	4,302	4,109	4,414	4,699	4,795	4,892	4,675	4,774	4,851	4,901	4,763	4,939	5,228	5,321	5,449	5,584	5,489
Pedalcyclists	726	682	623	628	718	701	772	786	727	629	665	732	693	754	760	814	765	833	802
Other/Unknown	223	200	185	151	188	158	185	186	130	140	114	123	141	149	131	153	154	109	107
<b>Sub Total‡</b>	5,692	5,339	5,110	4,888	5,320	5,558	5,752	5,864	5,532	5,543	5,630	5,756	5,597	5,842	6,119	6,288	6,368	6,526	6,398
<b>Total**</b>	33,561	32,479	32,999	33,883	37,423	41,259	42,708	43,510	42,836	42,884	43,005	42,196	41,945	41,717	41,501	42,013	42,065	41,817	40,716

## B. Revenue Considerations

While there seems to be no definitive evidence that red light cameras or similar camera-based traffic enforcement improves safety, and in fact

<sup>13</sup> See *Red Light Cameras Increase Accidents*, NAT'L MOTORISTS ASSOC., <http://www.motorists.org/red-light-cameras/increase-accidents> (last visited June 8, 2015).

<sup>14</sup> CITY OF L.A. OFF. OF THE CONTROLLER, AUDIT OF THE RED LIGHT PROGRAM, at 26 (2010), available at [http://controller.lacity.org/stellent/groups/electedofficials/@ctr\\_contributor/documents/contributor\\_web\\_content/lacityp\\_011808.pdf](http://controller.lacity.org/stellent/groups/electedofficials/@ctr_contributor/documents/contributor_web_content/lacityp_011808.pdf).

<sup>15</sup> See e.g., NAT'L MOTORISTS ASSOC., *supra* note 13 (quoting a Washington Post article showing an increase of 107 percent in accidents at red light cameras in Washington D.C.; a report from KATU News in Portland, Oregon that found 140 percent increase in rear-end crashes at intersections with red light cameras; a report from Colorado's The Coloradoan noting an 83 percent increase in accidents in Fort Collins, Colorado since the implementation of red light cameras; a Philadelphia Weekly report noting a 10-21 percent increase in accidents at Philadelphia, PA intersections with red light cameras; a North County Times, Oceanside, CA report claiming up to 800 percent increases in accident rates at red light camera intersections; a report from The Newspaper.com in Corpus Christi, TX noting a 14 percent increase in accident, a 28 percent increase in accidents with injuries and a 33 percent increase in rear-end collisions since the installation of red light cameras; and a report from the Winnipeg Sun showing an 18 percent increase in accidents in Winnipeg, Ontario since cameras were installed in 2003, with accident rates increasing rather than decreasing over a period of six years since the installation of the cameras).

<sup>16</sup> *Fars Data Tables: National Statistics*, *supra* note 6.

may actually increase automobile accidents,<sup>17</sup> there is no question that there is a financial motivation behind implementing traffic cameras as a means of increasing a municipality's revenue through traffic fines. The proposed 2013 budget for Washington D.C., for example, included an additional \$90 million in new revenue, \$36 million of which is to come from enhanced compliance efforts for existing taxes, fees, and fines and \$31 million would come from expansion of automated traffic enforcement.<sup>18</sup> According to *The Washington Times*, traffic cameras generated a record \$80.4 million for the District of Columbia in fiscal 2010 and were on pace to exceed that total in fiscal 2011.<sup>19</sup> In the first quarter of 2012, Dayton Ohio had collected \$800,000 in red light and speed camera tickets.<sup>20</sup> According to a recent Tampa Bay editorial, cameras at five existing intersections produced nearly 9,700 citations in their first six months of operations, with 80 percent of the violations issued to vehicles registered to out-of-towners, and produced an average net monthly income to the city of \$54,000.<sup>21</sup>

Although data on camera enforcement revenue is not readily available, examples like the representative samples just cited make it clear that camera enforcement has the potential to provide significant new revenue to state and local governments. It is even more clear that camera enforcement can generate large revenue for the private companies that make services available to local municipalities on a revenue sharing arrangement.<sup>22</sup> Some have criticized this arrangement as emphasizing the generation of citations over public safety and for providing the lion's share of the ticket revenue to the vendor in some circumstances. In 2011, for example, the City Council of Los Angeles, California voted to allow its

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<sup>17</sup> *Id.*

<sup>18</sup> D.C. FISCAL POLICY INSTITUTE, TAX AND OTHER REVENUE INITIATIVES IN THE FISCAL YEAR 2013 BUDGET 1 (2012), available at <http://www.dcfpi.org/wp-content/uploads/2012/03/Tax-and-revenue-toolkit-final-budget.pdf> (last visited June 8, 2015).

<sup>19</sup> Tom Howell, Jr., 'Addicted to Revenue' from Booze, Tickets; AAA Pans D.C. Council Budget, WASH. TIMES, Mar. 27, 2012, at A1.

<sup>20</sup> Doug Page, *City's Fiscal Outlook Better; Income Tax, Traffic Cam Revenue Up. Key Fund's Surplus is \$1.9 Million for the First Quarter*, DAYTON DAILY NEWS, May 29, 2012, at B1, available at <http://www.daytondailynews.com/news/news/local/daytons-fiscal-outlook-better/nPShD/>.

<sup>21</sup> *Votes on Alcohol, Cameras Show New Port Richey Council Values Income Over Safety*, TAMPA BAY TIMES, Jan. 21, 2012, at 2, available at <http://www.tampabay.com/opinion/editorials/votes-on-alcohol-cameras-show-new-port-richey-council-values-income-over/1211602>.

<sup>22</sup> Gary Biller, *Red-Light Cameras About Revenue, Not Safety*, U.S. NEWS & WORLD REP. (May 14, 2012, 9:00 AM), <http://www.usnews.com/opinion/articles/2012/05/14/red-light-cameras-about-revenue-not-safety>.

initial contract with American Traffic Solutions to expire after installing 32 red light cameras around the city after a Police Commission concluded that the arrangement did not increase revenue for the city or improve safety after the city had paid \$2.7 million under the contract to the vendor.<sup>23</sup>

In jurisdictions that outsource installation and maintenance of the automated traffic ticketing systems, vendors can get up to half of the revenue from tickets.<sup>24</sup> According to a recent study, ticketing tends to be governed by contracts that focus more on profits than safety.<sup>25</sup> One telling example of profit over safety could be seen last year in Florida where camera vendors employed nearly 40 lobbyists “whose agenda included killing a bill that would have required communities to adopt longer yellow light times to increase intersection safety.”<sup>26</sup> This type of legislation has been shown to increase public safety. For example, Loma Linda, California realized an immediate 92% reduction in red light offenses after increasing yellow light duration by one second.<sup>27</sup>

The revenue generating motivation for photo enforcement is perhaps clearest in instances when such devices are installed at intersections or areas where few or no previous accidents were reported. A clear case in point is the seven stop sign cameras installed in parks in the Santa Monica Mountains, California, “along rustic roads, out-of-the-way parking lots and cul-de-sacs that serve trailheads and scenic outlooks.”<sup>28</sup> According to the *LA Weekly News*, the cameras produced revenue of \$2.4 million for the Mountains Recreation and Conservation Authority in 2010 and have produced 70,000 tickets since 2007 for motorists who failed to come to a complete stop at these stop signs.<sup>29</sup>

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<sup>23</sup> David Zahniser, *L.A. Council Gridlocked on Red-Light Cameras*, L.A. TIMES (June 22, 2011), <http://articles.latimes.com/2011/jun/22/local/la-me-red-light-cameras-20110622>.

<sup>24</sup> Joan Lowy, *Study Questions Outsourcing Traffic Camera Systems*, YAHOO! NEWS (Oct. 27, 2011, 9:33 AM), <http://news.yahoo.com/study-questions-outsourcing-traffic-camera-systems-041338036.html>.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> Biller, *supra* note 22.

<sup>28</sup> Michael Goldstein, *Stop Sign Cameras Ticket 70,000 in Los Angeles Parks*, L.A. WKLY NEWS (Mar. 15, 2012), <http://www.laweekly.com/news/stop-sign-cameras-ticket-70-000-in-los-angeles-parks-2174285>.

<sup>29</sup> *Id.*

## II. PRIVACY CONSIDERATIONS

Unlike traditional policing that requires a police officer to observe a traffic violation, and allows that officer to apply his/her discretion in issuing a citation, camera enforcement captures every instance of a technical violation and automatically issues a ticket based on the photographic evidence. This removes officer discretion for circumstances that justify minor violations of the traffic laws. Thus, someone who stopped two inches after an arbitrary line that triggers the photograph will be issued a ticket whereas that person may not be cited by a police officer.

The same is true for a stop sign photo that requires a car to both come to a complete stop and to do so at a specific line that triggers the photograph. An automobile which stops a few inches after the line and one that fails to come to a complete stop will both be ticketed, whereas such technical violations are not often enforced by police officers. Likewise, someone taking their foot off the brake and rolling a few feet into an intersection after coming to a complete stop in order to avoid being rear-ended by someone screeching to a halt behind them will also be ticketed, whereas they may not be if a police officer on the scene observed the infraction. Someone who runs a light after waiting twenty minutes for it to change due to its obvious malfunction would also be ticketed, whereas a police officer on the scene who observed that the light was not working may either wave the motorist through the light or would not issue a citation under the same circumstances.

Police officers use their discretion to make such judgments, as justice and their common sense dictate; cameras do not. Of course, a police officer might escort a car that ran a red light to the nearest hospital because of a pregnant occupant who is in labor rather than ticketing the driver after learning of the circumstances as to why the driver ran the red light, but the same driver might instead be issued numerous citations on the way to the hospital.

Camera enforcement in essence turns traffic violations into strict liability offenses and denies the accused the right to cross examine the primary witness against him or her. Commentators who support the use of cameras in traffic enforcement often rely on the fact that occupants in an automobile on a public road have no reasonable expectation of privacy under the Fourth Amendment.<sup>30</sup> However, camera enforcement and camera surveillance raise qualitative and quantitative issues of privacy that go beyond the traditional analysis of search and seizure of items in plain sight. As one commentator noted, “[t]he sheer number of cameras

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<sup>30</sup> See generally Mary Lehman, Comment, *Are Red Light Cameras Snapping Privacy Rights?*, 33 U. Tol. L. Rev. 815 (2002).



monitoring public spaces today makes it difficult to go into public without exposing oneself to continuous and permanent image capture. Few of our actions in public spaces are protected from visual surveillance by current privacy law, either under the search and seizure protections of the Fourth Amendment or current tort law provisions.”<sup>31</sup>

The privacy issue is not dismissed by the fact that the driver of an automobile on a public street may not have a reasonable expectation of privacy. If a municipality possessed sufficient resources to hire a police officer to follow all citizens whenever they are in public places for the express purpose of issuing them citations for every technical violation of the law, such as jaywalking, driving violations, littering, spitting on the sidewalk, and the like, would such conduct be deemed permissible? And even if it were, and even if it could be shown to lower crime and not just increase the revenue to municipalities’ coffers, would such policing be permissible under our Constitution and tolerated in a free society? Limited resources makes this extensive policing system impossible. The same, however, cannot be said of the same level of monitoring being accomplished with cameras or other monitoring devices. There is the potential for these devices to be deployed on every lamppost and traffic signal, ATM machine, and mounted on unmanned drones, satellites and any number of yet to be discovered techniques for inexpensively, effectively and discreetly looking over the shoulder of all citizens as they go about their daily lives.

### **III. CONSTITUTIONAL CONSIDERATIONS**

#### **A. Right to Privacy**

Challenges to the use of cameras to enforce traffic laws on the grounds that such enforcement violates the constitutionally guaranteed right to privacy have not generally met with success in federal courts. “While the Supreme Court has read the Fourteenth Amendment’s guarantee of liberty as creating broad rights to privacy in many areas including child rearing, procreation, and termination of medical treatment, it has never held that driving is a protected area.”<sup>32</sup> The U.S. Supreme Court has held that “[o]ne has a lesser expectation of privacy in a motor vehicle because its function is transportation and it seldom serves as one’s

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<sup>31</sup> Carla Scherr, Note, *You Better Watch Out, You Better Not Frown, New Video Surveillance Techniques are Already in Town (and Other Public Spaces)*, 3 I/S: J. L. & POL’Y FOR INFO. SOC’Y 499, 500 (2008).

<sup>32</sup> *Young v. City of Kansas City*, No. 4:11-CV-00095-W-DGK, 2011 WL 5983351, at 6 (W.D. Mo. Nov. 29, 2011).

residence or as the repository of personal effects. A car has little capacity for escaping public scrutiny. It travels public thoroughfares where both its occupants and its contents are in plain view."<sup>33</sup>

The Constitutional right to privacy is limited by an objective expectation of privacy.<sup>34</sup> Drivers cannot successfully claim a violation of a right to privacy under the U.S. Constitution when a red light camera captures them running a red light since they have no reasonable expectation of privacy when driving on a public road. Compelling arguments to date about the need to place limits on video surveillance to protect privacy rights have failed to convince Congress or the U.S. Supreme Court to limit the use of video and photo surveillance.<sup>35</sup> As technological advances and lower cost make photo and video surveillance an increasingly attractive tool for law enforcement, the traditional rule articulated by the U.S. Supreme Court in *Katz* will need to evolve as courts face the reality of increased encroachment on privacy by red light cameras and other forms of video surveillance. Neither the drafters of the U.S. Constitution nor the U.S. Supreme Court in its 1967 *Katz* decision could have foreseen the technology today that makes video surveillance possible at every traffic light, to say nothing of satellites, surveillance drones and the myriad other devices available to law enforcement.

A privacy theory forged under traditional community policing standards that involved a limited number of police officers on foot, motorcycles or cruisers patrolling the streets has little relevance when viewed from the modern reality. Add facial recognition technology which can be used to identify individuals captured by video surveillance cameras on the public streets and sidewalks<sup>36</sup> and the specter of an Orwellian dystopia looms large indeed.

## B. Due Process

Courts have consistently held that camera-enforced traffic control devices are not violative of due process.<sup>37</sup> A vehicle owner who challenges

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<sup>33</sup> *Cardwell v. Lewis*, 417 U.S. 583, 590 (1974).

<sup>34</sup> *Katz v. United States*, 389 U.S. 347, 361 (1967) (Harlan, J., concurring).

<sup>35</sup> See generally Quentin Burrows, *Scowl Because You're on Candid Camera: Privacy and Video Surveillance*, 31 VAL. U.L. REV. 1079 (1997); Lehman, *supra* note 30; Steven Tafoya Naumchik, *Review of Selected 1998 California Legislation: Transportation and Motor Vehicles: Stop! Photographic Enforcement of Red Lights*, 30 MCGEORGE L. REV. 833 (1999).

<sup>36</sup> See Joyce W. Luk, *Identifying Terrorists: Privacy Rights in the United States and United Kingdom*, 25 HASTINGS INT'L & COMP. L. REV. 223, 229 (2002).

<sup>37</sup> *Young*, *supra* note 32, at 7 (referencing *Agomo v. Fenty*, 916 A.2d 181 (D.C. 2007); *McNeill v. Town of Paradise Valley*, 44 Fed. Appx. 871, 871 (9th Cir. 2002)); see

a citation issued by photo radar is given all the process to which he or she is due when he or she has the opportunity to challenge the citation in municipal court.<sup>38</sup> Courts evaluating automated traffic ordinances have found that an administrative scheme provides constitutionally adequate procedural due process.<sup>39</sup> A driver who receives a citation generated by an automated photo-enforcement system, and is given a reasonable period of time to contest it at an administrative hearing, therefore, will not likely succeed in a Fourteenth Amendment procedural due process challenge.<sup>40</sup>

Challenges to photo-enforcement of traffic laws alleging substantive due process violations have also failed when raised in federal courts.<sup>41</sup> This is the case even when municipalities ticket the owner of an automobile for a red light violation without proof that the owner was actually driving the vehicle, essentially presuming guilt and turning the presumption of innocence on its head.<sup>42</sup> Municipalities employing automated traffic enforcement systems can successfully avoid substantive due process challenges by making camera-enforced traffic citations civil penalties rather than criminal penalties. As long as there are no punitive measures beyond a fine, such as potential incarceration or points added to a license that could result in its suspension, for such violations substantive and procedural due process are satisfied.<sup>43</sup>

#### IV. PUBLIC POLICY CONSIDERATIONS

Although federal courts are unlikely to hold photo enforcement of traffic laws unconstitutional, there are, nonetheless, serious questions that

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*also, e.g.*, *Mendenhall v. City of Akron*, 374 Fed. Appx. 598 (6th Cir. 2010); *Ware v. Lafayette City-Parish Consol. Gov't*, No. CIV.A. 08-0218, 2009 WL 5876275, at \*6-11 (W.D. La. Jan. 6, 2009).

<sup>38</sup> *McNeil*, 44 Fed. Appx. at 600.

<sup>39</sup> *Mills v. City of Springfield, Mo.*, No. 2:10-CV-04036-NKL, 2010 WL 3526208 at \*4 (W.D. Mo. Sept. 3, 2010) (referencing *Mendenhall v. City of Akron*, 374 Fed. Appx. 598 (6th Cir. 2010); *Ware*, No. CIV.A. 08-0218, at 6-11 (W.D. La. 2009)).

<sup>40</sup> *Id.*

<sup>41</sup> *Id.* at 6 (Noting that under *Washington v. Glucksberg*, 521 U.S. 702, 721, 117 S. Ct. 2258, 138 L. Ed. 2d 772 (2003) only fundamental rights qualify for heightened scrutiny and that there is no fundamental right to run a red light).

<sup>42</sup> *See, e.g.*, *Kilper v. City of Arnold, Mo.*, No. 4:08CV0267 TCM, 2009 WL 2208404 (E.D. Mo. July 23, 2009) (finding that due process is not violated when a car owner is presumed to be the driver of a car cited through a red-light camera if the citation is a civil rather than criminal violation); *see also Idris v. City of Chicago, Ill.*, 552 F.3d 564, 565-66 (7th Cir. 2009) (holding that vicarious liability of a vehicle owner for a red-light ticket issued to a third-party driver does not offend substantive due process).

<sup>43</sup> *Idris*, 552 F.3d at 566 (noting that “[t]he interest at stake is a \$90 fine for a traffic infraction, and the Supreme Court has never held that a property interest so modest is a fundamental right”).

arise from the use of these programs as they become increasingly attractive to cash strapped municipalities who can realize high revenues from high volumes of relatively small fines.<sup>44</sup> In Maryland, for example, where the maximum fine for camera enforced traffic violations is \$40,<sup>45</sup> five vendors, including several which are large multinational companies, vied for the chance to run the City of Bowie's automated speed monitoring enforcement program.<sup>46</sup> The winning vendor, a joint venture between Cisco systems, Inc. and Xerox Corporation, retains \$16.25 from each \$40 fine with no up-front costs to the City of Bowie and also provides all of the processing and customer services required by the program.<sup>47</sup> In the first year of operation, the speed camera program netted the City of Bowie \$2 million in revenue and captured more than 86,000 violations.<sup>48</sup> These cameras are required by law to be calibrated once a year and operators are also required to self-test the devices daily.<sup>49</sup>

For equipment that operates autonomously and is exposed to the elements, such tests provide little guarantee as to the accuracy of any given speeding citation it issues.<sup>50</sup> This fact should be particularly troubling when private contractors are entrusted to install, run, maintain and issue citations from which they directly profit, and against which citizens have no effective protection, given that even the presumption of innocence is denied them by municipalities who treat the fines issued for alleged camera-enforced traffic infractions as civil penalties.<sup>51</sup> Making matters worse, some municipalities have purposely shortened yellow light intervals for the express purpose of increasing fines and their attendant revenue at the expense of public safety.<sup>52</sup>

Another troubling aspect of camera-enforced traffic regulations in many states relates to the vicarious liability of automobile owners for traffic citations issued to other drivers of their vehicles. For example, Knoxville, Tennessee's red light enforcement program holds the owner of a vehicle photographed illegally running a red light liable for the \$50 civil

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<sup>44</sup> Steven A. Glazer, *Those Speed Cameras are Everywhere: Automated Speed Monitoring Law, Enforcement, and Physics in Maryland*, 7 J. Bus. & Tech. L. 1, 1-2 (2011).

<sup>45</sup> *Id.* at n.3 (citing MD. CODE ANN., TRANSP. § 21-809(c), (h) (West 2010)).

<sup>46</sup> *Id.* at 10.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.* at 13.

<sup>49</sup> *Id.* at 16.

<sup>50</sup> *Id.*

<sup>51</sup> See *McNeil*, 44 Fed. Appx. at 871.

<sup>52</sup> See, e.g., Christopher K. Walker, *Red-Light Cameras: How States Jeopardize Safety by Manipulating Yellow-Light Intervals to Earn a Quick Buck*, 7 J. Legal Tech. Risk Mgmt. 222, 246-47 (2014).

penalty.<sup>53</sup> Under the ordinance, an owner can escape responsibility if, on the designated court date, the owner furnishes to the city court "the name and address of the person or entity who leased, rented, or otherwise had care, custody, and control of the vehicle at the time of the violation" or swears "the vehicle involved was stolen or was in the care, custody, or control of some person who did not have his permission to use the vehicle."<sup>54</sup>

In Chicago, Illinois, the red light camera ordinance places vicarious liability on the owners of motor vehicles for a \$90 citation when their vehicles are photographed illegally running a red light.<sup>55</sup> While liability can be avoided if the vehicle or its plates were stolen, the fact that someone other than the owner was driving the vehicle when the citation was issued is not a valid defense.<sup>56</sup> In Cleveland, Ohio, owners of vehicles cited for speeding through red lights are also vicariously liable for fines that can exceed \$100.<sup>57</sup> However, in Cleveland as in Knoxville, Tennessee, the owner can avoid liability if someone other than the owner was the driver when the citation was issued, the owner names that person in an affidavit, and the alleged driver does not deny being the driver.<sup>58</sup>

Nassau County, New York, also imposes vicarious liability on motor vehicle owners for violations of the county's photo-enforced traffic regulations issued to drivers who operate vehicles owned by others with their express or implied consent.<sup>59</sup> The maximum penalty is \$50 per violation with another \$25 permitted to be added if the owner fails to respond on a timely basis to a notice of liability.<sup>60</sup> Liability may be avoided if the owner forwards a copy of a police report showing that the vehicle was stolen and not recovered before the date of the violation.<sup>61</sup> The statute provides that an owner is not liable for fines when their vehicles are operated without their consent, but a presumption of consent

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<sup>53</sup> See Jeffrey A. Parness, *Beyond Red Light Enforcement Against the Guilty But Innocent: Local Regulations of Secondary Culprits*, 47 WILLAMETTE L. REV. 259, 262 (2011) (referencing Knoxville, Tenn., Code of Ordinances, ch. 17, art. V, div. 1, § 17-210(c)(3)).

<sup>54</sup> *Id.* (referencing Knoxville, Tenn., Code of Ordinances, ch. 17, art. V, div. 1, § 17-210(c)(4)).

<sup>55</sup> *Id.* at 263-64 (referencing Chi., Ill., Mun. Code § 9-102-020(a)).

<sup>56</sup> *Id.* (referencing *Idris v. City of Chicago*, Ill., 552 F.3d 564, 565-67 (7th Cir. 2009)).

<sup>57</sup> *Id.* at 263-65 (referencing Cleveland, Ohio, Traffic Code § 413.031(o); *Gardner v. City of Cleveland*, 656 F. Supp. 2d 751, 762 (N.D. Ohio 2009)).

<sup>58</sup> *Id.* at 265 (citing Cleveland, Ohio, Traffic Code § 413.031(k)).

<sup>59</sup> N.Y. VEH. & TRAF. LAW § 1111-b(a)-(b) (McKinney 2012).

<sup>60</sup> N.Y. VEH. & TRAF. LAW § 1111-b(e) (McKinney 2012).

<sup>61</sup> N.Y. VEH. & TRAF. LAW § 1111-b(i) (McKinney 2012).

is implied.<sup>62</sup> The statute also provides for the rather obvious fact that the owner may maintain an action for indemnification against the operator of the vehicle when the citation was issued.<sup>63</sup> Given the inconvenience and fees associated with filing small claims actions for the recovery of such fees, this should prove of little comfort to vehicle owners when those whom they allow to drive their vehicles commit infractions that they are unwilling to pay for voluntarily. The path of least resistance and least cost for vehicle owners faced with taking a day off from work in such circumstances, may well be to simply pay the fine and let the municipality reap the benefit of an unjustified fine--at the expense of justice.

A third troubling effect of using automated systems to enforce traffic regulations is their disparate impact on automobile and motorcycle drivers over pedestrians, bicyclists and others who are also subject to traffic laws but who are not ticketed by automated systems for the reason that, without a license plate, the current technology is unable to issue citations for their infractions. In a similar vein, these programs can have a disparate impact on out of town drivers who, unlike local residents, will be unlikely to know where traffic cameras are located. Municipalities may be able to avoid the Constitutional substantive due process issues by penalizing such infractions as civil penalties and assessing relatively small fines for such violations.<sup>64</sup> But questions of fairness in implementing selective enforcement schemes that by design single out one class of violators while ignoring others and subjects out of town residents to a greater likelihood of being ticketed by red light cameras, stop sign cameras, speed enforcement cameras-and similar automated devices of which they are unaware-leaves unanswered the question of whether these legally permissible traffic enforcement schemes violate the spirit of the 14<sup>th</sup> Amendment's guarantee of due process.

## V. CONSTITUTIONAL AND PUBLIC POLICY CONSIDERATIONS

In a free society, people often become fed up with a political system that permits intrusive legislation which interferes with everyday activities that have customarily been expected by that society. This is especially true where the legislation is becoming increasingly pervasive, and whose legitimacy thrives on technicalities that fly in the face of the spirit of society's traditional and historically founded expectations and values.

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<sup>62</sup> N.Y. VEH. & TRAF. Law § 1111-b (k)(2) (McKinney 2012).

<sup>63</sup> N.Y. VEH. & TRAF. Law § 1111-b (k)(1) (McKinney 2012).

<sup>64</sup> See Scherr, *supra* note 31.

Every reasonable person values safety, particularly in inherently dangerous instrumentalities such as automobiles traveling on open roadways. However, modern automobiles and roadways together with reasonable traffic law enforcement have combined to make driving safer without camera technology (which, as shown, can be counter-productive as regards safety.) Factor in the deterrent effects of reasonable fines for violations, increasing auto insurance rates for careless drivers, and lawsuits and even jail for extreme cases of driver misbehavior, and it would appear that safety concerns regarding driving are adequately addressed without problematic camera enforcement.<sup>65</sup> This is especially reasonable when balanced against citizens' expectations of being able to travel where they wish freely, without undue tension, and without undue fear that otherwise reasonable behavior will result in their government penalizing them; such expectations being, in a word, that of freedom.

In short, the basic balancing is articulated as between reasonable concerns for safety and freedom. Regrettably, it is clear that the safety motivation and effects, as claimed by the government, are fallacious. The motivation is revenue raising.<sup>66</sup> The effect is decreasing society's freedoms. Constitutionally, the basic authority for revenue raising is the authority to tax. User fees are also permissible, and fines, if not excessive,<sup>67</sup> are as well. Additionally, taking by eminent domain is allowed, but only with just compensation.<sup>68</sup> As such, non-tax revenue and resource raising are legitimate activities of government. But the fact remains that the primary authority for and nexus to revenue raising is the power to tax, not the power to police. The effect of being photographed by a red light or other traffic enforcement camera is a fine, whose customary, primary, and legitimate purposes are to deter and punish wrongful behavior. It is clear that in some cases the primary purpose and effect of red light camera fines is to raise revenue, not police in a manner that alleviates safety concerns.<sup>69</sup> What legislators are apparently unable to

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<sup>65</sup> See *Fars Data Tables: National Statistics*, *supra* note 6; AUDIT OF THE RED LIGHT PROGRAM, *supra* note 14; NAT'L MOTORISTS ASSOC., *supra* note 13.

<sup>66</sup> See D.C. FISCAL POLICY INSTITUTE, *supra* note 18.

<sup>67</sup> U.S. CONST. amend. VIII, XIV.

<sup>68</sup> U.S. CONST. amend. V, XIV.

<sup>69</sup> See, e.g., Walker, *supra* note 52 at 282 (concluding "[i]f states retain the power to regulate yellow-light intervals, they will perpetuate the perverse use of red-light camera technology to earn a quick buck at the expense of public safety"); see also Biller, *supra* note 22 (quoting Mr. Biller, President of the National Motorist Association:

Red-light cameras are a money-making enterprise for the cities that deploy them and for the camera vendors that build their business profitability around the ticketing machines. Proponents claim that cameras improve intersection safety by deterring red-light running and by ticketing rolling-right-turn-on-red drivers. Yet numerous studies,

accomplish by way of fair taxation to support reasonable governmental spending, they try to accomplish in the name of safety by punishing allegedly dangerous behavior. Ironically, red light cameras can change otherwise careful driving behavior into dangerous behavior, such as where a driver, fearful of being caught by the camera, suddenly stops short at a yellow light causing a rear end collision that would not have occurred otherwise.

Government employment of this scheme seriously compromises many fundamental rights of citizens, including those historically considered among the most basic natural rights of human beings, the spirit of which has been attained and maintained by much blood and treasure since this country's founding. These rights are thus relegated to the trash heap on technical grounds. This approach of governing indicates that the rights involved are relatively unimportant as opposed to those involved in higher level crimes. In essence, however, the approach regulates in ways that seriously compromise fundamental rights by the use of technology and administrative governmental rules and court facilities.<sup>70</sup> The basic rights so compromised and related considerations include:

<u>Right</u>	<u>Derivation</u>	<u>Deprivation</u>	<u>Offsetting Consideration</u>
Privacy	4 <sup>th</sup> and 14 <sup>th</sup> Amendments	No expectation of privacy while in public.	Proliferation of cameras in public areas.
Due process	5 <sup>th</sup> and 14 <sup>th</sup> Amendments	Administrative hearing opportunity is sufficient.	Courtroom setting where Prosecutor v. Defendant Citizen where defendant needs to testify and thereby risk self-incrimination.
Confront witness	6 <sup>th</sup> & 14 <sup>th</sup> Amendments	Violation not a "crime" and so the right is inapplicable.	Conviction is "guilty" for which fines are increasing.

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including an investigative report by the *Washington Post*, have shown accident rates increasing by double-digit percentages after the introduction of cameras.

Red-light cameras do not improve intersection safety, they degrade it. If the cameras significantly reduced infractions, they would eventually vanish from the landscape. But cameras only disappear when they aren't making a profit. A recent example is the demise of the Los Angeles red-light camera program. Another is the elimination of red-light cameras by several North Carolina cities in the mid to late 2000s after a higher court ruled that 90 percent of ticket camera revenue in the state had to be applied to public education programs).

<sup>70</sup> See generally *Mills*, 2010 WL 3526208.



No excessive fines	8 <sup>th</sup> and 14 <sup>th</sup> Amendments	Fining a non-driver any amount is excessive.	Only violators themselves should account for any wrongful conduct.
Privileges & immunities	14 <sup>th</sup> Amendment	No "list" exists, so states assume powers under the 10 <sup>th</sup> Amendment	Rights and powers reserved "to the people" (9 <sup>th</sup> and 10 <sup>th</sup> Amendments) should be liberally construed in a free society.

No reasonable citizen would or should consider these rights unimportant. While no rights are absolute, the sacrifice of these rights for mere revenue raising, as important as funding government may be, is simply unreasonable. The loss of due process rights by way of the impracticality of the average citizen to take the time to fight a red light ticket, or hire an attorney to do so, is nothing short of the compromise of a guarantee provided for twice in constitutional amendments<sup>71</sup>. Even if such citizen went through the time and expense of doing so, he or she would still find himself or herself unable to examine the accuser-camera and the people behind it in court.<sup>72</sup> This alone should make the courts take notice that while individual technical considerations can rule the day in favor of these laws, when the considerations are taken in total, they should not.

In this context, the U.S. Constitution should be society's ultimate guide. The Constitution does not purport to list all rights of the people, with a very strong implication being that the rights of the people should be very liberally construed.<sup>73</sup> The Constitution does enumerate the legislative powers granted to the federal government,<sup>74</sup> but it does not do so as to the individual states or their subdivisions. Such state legislative powers are acknowledged by exception, that is, if legislative powers are "not delegated to the United States by the Constitution, nor prohibited by it to the states, [they] are reserved to the states respectively, *or to the people*."<sup>75</sup> While this arguably provides some facial justification for the camera laws for states and their subdivisions, the overwhelming weight regarding the rights of members of American society clearly demand the opposite conclusion: the attendant rights should be construed to inhere in the *people* to the greatest extent reasonably possible, and the government should not be permitted to infringe on the many important civil and constitutionally

<sup>71</sup> U.S. CONST. amend. V, XIV.

<sup>72</sup> *Id.*

<sup>73</sup> U.S. CONST. amend. IX, X.

<sup>74</sup> U.S. CONST. art. I § 8.

<sup>75</sup> U.S. CONST. amend. X (emphasis added).

protected rights by way of traffic camera regulatory schemes.<sup>76</sup> It is clear that these laws are insidious in their sacrifice of cherished rights, with no reasonable nexus to police powers reasonably necessary to help assure traffic safety. The nexus is to revenue raising, an area best left to taxation, not police powers.

Indeed, regarding Red Lights, some courts and judges have begun to see the light. In December 2013, the Missouri Court of Appeals - Eastern District, ruled that the city of Arnold, Missouri red light camera law violates the Missouri Constitution by creating a rebuttable presumption of guilt.<sup>77</sup> Meanwhile, in May 2013, Hernando County, Florida Judge Donald E. Scaglione issued an order stating that he would begin dismissing camera right turn on red violation cases calling that law “vague (and) arbitrary and capricious.”<sup>78</sup> If the courts ultimately cannot find their way to invalidate these pernicious laws, it is likely only a matter of time until society rises up and demands its legislators do the right and courageous thing and repeal red light enforcement and similar laws.

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<sup>76</sup> See Randy E. Barnett, *The Proper Scope of the Police Power*, 79 NOTRE DAME L. REV. 429, 430-31 (2004) (wherein the author succinctly states: “. . . it is wise to be aware of an irony lurking behind debates among legal scholars on the proper scope of the police power of states. These powers are unwritten and, as a result, lack all specificity associated with the rule of law. In response to this, some argue that the powers are for most intents and purposes unlimited, meaning that state legislature have the power to enact what they will, free of any constitutional constraints imposed by the federal judiciary. In contrast, . . . both the Ninth and Fourteenth Amendments provide an express recognition of unenumerated rights, privileges or immunities retained by the people, while the Tenth Amendment expressly states that the powers not delegated to the federal government are reserved to the states or to the people-without specifying which. Confronted with this text, however, many of the very same scholars object that because the content of these rights are unwritten or unspecified, these textual provisions should generally be ignored and forgotten (as well they have been). The objection is that recognizing unwritten rights provides no rule-like constraints on the powers of judges to strike down legislation. But they are not similarly bothered by giving a blank check to legislatures in the form of an unlimited construction of their entirely unwritten police power. The irony of this approach is that unwritten powers become unlimited, in contrast to unenumerated rights expressly recognized by the Constitution, which are made to vanish”).

<sup>77</sup> *Brunner v. City of Arnold*, 427 S.W.3d 201 (E.D. Mo., 2013). A similar result was reached in *Damon v. City of Kansas City*, 419 S.W.3d 162, Mo.App. W.D. (W.D. Mo. 2013).

<sup>78</sup> Tony Marrero, *Pam Bondi Wants a Say in Dismissed Brooksville Red-Light Camera Cases*, TAMPA BAY TIMES (May 30, 2013), available at <http://www.tampabay.com/news/courts/attorney-general-wants-a-say-in-dismissed-brooksville-red-light-camera/2123935>.

## CONCLUSION

Red light cameras, stop sign cameras, speed enforcement cameras-and similar automated devices-are only a first step down the slippery slope towards a police state wherein every citizen's public acts are closely monitored for the express purpose of ensuring compliance with the law—and raising revenue. Municipalities and the private companies that receive a large percentage of every fine paid for infractions recorded, processed and verified by the equipment they provide, maintain and calibrate, clearly benefit. The benefit for drivers and motorcycle riders is decidedly less clear. For the time being, it is automobile and motorcycle drivers who are singled out for scrutiny as they are easy targets for camera-based enforcement since their vehicles must be registered and bear license plates that are easily traceable to their owners.

Facial recognition, voice recognition, and related technologies that are already in use to screen people, can easily be adapted to monitor every citizen as they go about their business in public. Their actions recorded by video and still cameras ready, willing and able to record every infraction from littering, to jaywalking, to spitting on the sidewalk among many others, and issue citations for those violations. And, unlike a beat cop, automated surveillance cameras can capture everything, forget nothing, never get tired, and can record images both by day and at night under low light conditions, capturing images not visible to the naked eye.<sup>79</sup> Would a free society tolerate police officers being assigned to follow every citizen as they go about their business in public for the express purpose of issuing citations to them for every infraction they commit? Would the substantive due process and equal protection guarantees of the Fourteenth Amendment tolerate police officers following behind every motorist for the express purpose of recording citations for every infraction they commit every time they drive on public roads (while turning a blind eye to every other infraction committed by non-drivers around them)?

Even assuming *arguendo* that there are no substantive due process or privacy issues whatsoever raised by automated camera-enforcement programs, Congress and state legislatures should not allow localities to allow the seeds of an Orwellian dystopia to continue to be sown by state and local governments seeking to balance their budgets on the backs of motorists through the use of cheap, ubiquitous technology, to record and collect civil penalties for every possible transgression, thereby sacrificing privacy rights and the spirit of Constitutional Due Process guarantees to death by a thousand cuts on the altar of expediency.

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<sup>79</sup> Scherr, *supra* note 31, at 506-07.

