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# Seeing Red: The Legal Backlash Against Red-Light Cameras in Florida

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NOTE

SEEING RED: THE LEGAL BACKLASH AGAINST RED-LIGHT  
CAMERAS IN FLORIDA

*Nicole Kuncl\**

Abstract

This Note will examine Florida's Mark Wandall Traffic Safety Act, which authorizes the use of traffic infraction detectors (red-light cameras) to enforce traffic laws. Florida, like many other states, currently finds itself in the midst of a heated debate over the use of red-light cameras to issue traffic citations. Strong arguments can be made both for and against this policy, but there are some who absolutely refuse to accept it, for both constitutional and practical reasons. If opponents hope to end all use of red-light cameras in the state, however, they will need to acknowledge that judicial opinion is overwhelmingly against them, both in Florida and beyond. This Note will argue that the proper (and perhaps only) venue for change in this instance is the Florida legislature.

After presenting the essential components of the Act, Part I of this Note provides a brief overview of the use of red-light cameras in Florida, and the debate over its legality prior to legislative sanction. Part I will conclude by considering the success of and popular response to the Act and to red-light cameras generally. Part II examines some of the specific challenges that have been raised against the Act in Florida in an attempt to discover why some have succeeded but most have failed. To that end, Part III looks beyond Florida to consider similar policies enacted in other states, and the judicial, legislative, and popular responses to these policies across the nation. Viewing the fight against red-light cameras in Florida within the broader context of the ongoing debate throughout the country, this Note will argue that those who oppose the Act must learn from others' mistakes. Finally, Part IV considers the most recent and ongoing attempts to defeat red-light cameras in Florida, suggesting that ultimate victory will be achieved (if at all) in Florida's legislature, not its courts. This Note concludes by offering a few of the arguments opponents must make on the floors of the Florida House and Senate if they want to stop red-light cameras once and for all.

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\* J.D. expected, 2013, University of Florida Levin College of Law. Much thanks to my family, and to the members and staff of the Florida Law Review.

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INTRODUCTION

Mark Wandall, a passenger in his brother-in-law’s car, was killed in October 2003 when another motorist ran a red light and collided with his vehicle.<sup>1</sup> The driver who caused the crash was distracted, talking to a child in the backseat, when the traffic violation occurred.<sup>2</sup> Nineteen days after his death, Wandall’s wife, Melissa, gave birth to a daughter, Madison.<sup>3</sup> Tragic as this story is, Wandall’s was but one of 109 fatal

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1. Josh Orr, *Death Inspires Traffic Activism*, SARASOTA HERALD-TRIB., Oct. 20, 2006, at BS4, available at <http://www.heraldtribune.com/article/20061020/COMMUNITY/610200315?p=1&tc=pg>.

2. *Id.*

3. *Id.*

crashes and over 8,000 total collisions caused by a driver's failure to stop at a traffic signal in Florida that year alone.<sup>4</sup>

Inspired by her personal tragedy, Melissa Wandall established the Mark Wandall Foundation<sup>5</sup> and led lobbying efforts in the Florida Legislature to pass a law named for her late husband.<sup>6</sup> For several years she actively promoted the proposed Mark Wandall Traffic Safety Act (the Act) that would legalize the installation of cameras at traffic intersections throughout the state of Florida.<sup>7</sup> This proposed legislation would authorize local governments to use these traffic infraction detectors (red-light cameras) to issue traffic citations in an effort to stop red-light runners once and for all.<sup>8</sup>

Prior to consideration of this Act, no state law expressly permitted or prohibited the use of such cameras by local governments in Florida.<sup>9</sup> Nevertheless, under dubious legal authority, approximately thirty Florida cities and counties had already enacted local ordinances allowing the installation and use of such cameras to cite drivers for traffic violations.<sup>10</sup> Approving the Act would therefore do no more than legalize an existing practice widely employed by local governments throughout the state.<sup>11</sup>

Despite its prevalence, however, Florida legislators were initially unwilling to rubber-stamp the use of cameras to enforce traffic laws.<sup>12</sup> Over the course of several years, lawmakers repeatedly rejected the proposed legislation that would authorize the practice.<sup>13</sup> According to opponents of the Act, the use of these cameras was merely an attempt to raise local revenues at the expense of drivers' privacy rights and individual liberties.<sup>14</sup>

When the Act finally passed in both houses of the Florida Legislature in 2010, opponents urged the Governor to veto the bill.<sup>15</sup>

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4. Fred O. Dickinson, *Traffic Crash Statistics Report 2003*, FLA. DEP'T HIGHWAY SAFETY & MOTOR VEHICLES, 28 (Aug. 2004), <http://www.flhsmv.gov/hsmvdocs/cf2003.pdf>.

5. Orr, *supra* note 1; *see also Our Mission*, THE MARK WANDALL FOUNDATION, <http://www.themarkwandallfoundation.org/ourmission.html> (last visited May 28, 2012).

6. Elysa Batista, *Crist Signs Fla. Bill Legalizing Red Light Cameras*, NAPLES DAILY NEWS, May 13, 2010, *available at* <http://www.naplesnews.com/news/2010/may/13/crist-signs-fla-bill-legalizing-red-light-cameras/>.

7. Orr, *supra* note 1.

8. *Id.*

9. Batista, *supra* note 6.

10. *Crist Signs Florida Bill Legalizing Red Light Cameras*, PALM BEACH POST, May 13, 2010, *available at* <http://www.palmbeachpost.com/news/state/crist-signs-florida-bill-legalizing-red-light-cameras-687354.html>.

11. Batista, *supra* note 6.

12. *Id.*

13. *Crist Signs Florida Bill Legalizing Red Light Cameras*, *supra* note 10.

14. Batista, *supra* note 6.

15. *Id.*

AAA (formerly the American Automobile Association) argued that the bill “was more about raising money for state and local government coffers than it was about safety.”<sup>16</sup> Florida Representative Tom Grady, who questioned the constitutionality of traffic cameras, wrote a letter to Governor Charlie Crist urging a veto.<sup>17</sup> When the Governor signed the Mark Wandall Traffic Safety Act into law on May 13, 2010, over these objections,<sup>18</sup> Representative Grady publicly expressed his disappointment.<sup>19</sup> Calling the cameras intrusive, Representative Grady warned: “We are going to see a lot of litigation over red light cameras.”<sup>20</sup>

Florida’s Mark Wandall Traffic Safety Act<sup>21</sup> has become the center of a heated debate between those who believe our streets are now safer and those who contend that the law is both unconstitutional and counterproductive.<sup>22</sup> Without arguing against red-light cameras, this Note will suggest to those who oppose them that some of their favorite arguments are falling on deaf ears, and it might be time to adjust their strategy.

After presenting the essential components of the Act, Part I provides a brief overview of the use of red-light cameras in Florida and the debate over its legality prior to legislative sanction. Part I concludes by considering the success of and popular response to the Act and to red-light cameras generally. Part II examines some of the specific challenges that have been raised against the Act in an attempt to discover why some have succeeded but most have failed. To that end, Part III looks beyond Florida to consider similar policies enacted in other states, and the judicial, legislative, and popular responses to these policies across the nation. Viewing the fight against red-light cameras in Florida within the broader context of the ongoing debate throughout the country, this Note will argue that those who oppose the Act must learn

16. *Id.*

17. *Id.*

18. See Memorandum: Governor Crist Signs Legislation Creating the Mark Wandall Traffic Safety Act, THE MARK WANDALL FOUND. (May 13, 2010), <http://www.themarkwandallfoundation.org/MEMORANDUM.pdf>. In addition to thanking bill sponsors Senator Thad Altman and Representative Ron Reagan for their efforts to get the legislation approved by both the house and the senate, Governor Crist commended Melissa Wandall, “whose determination and perseverance, along with the strong support of the law enforcement community, was instrumental in the passage of this law.” *Id.*

19. Batista, *supra* note 6.

20. *Id.*

21. Ch. 2010-80, Laws of Fla., available at <http://laws.flrules.org/2010/80>.

22. See, e.g., Nathan Koppel, *One Lawyer’s Crusade Against Red Light Cameras*, WALL ST. J. LAW BLOG (Aug. 29, 2011, 1:18 PM), <http://blogs.wsj.com/law/2011/08/29/one-lawyers-crusade-against-red-light-cameras/> (“Supporters say cameras are an efficient way to enforce traffic laws and ensure public safety. But critics contend that the cameras violate due-process rights, in part because alleged violators are automatically ticketed and don’t have the right to argue their innocence.”); see also *infra* Section I.C.

from others' mistakes. Finally, Part IV considers the most recent and ongoing attempts to defeat red-light cameras in Florida, suggesting that ultimate victory will be achieved (if at all) in Florida's legislature, not its courts. This Note concludes by offering a few of the arguments opponents must make on the floors of the Florida House and Senate if they want to stop red-light cameras once and for all.

#### I. AUTHORIZATION AND USE OF RED-LIGHT CAMERAS IN FLORIDA

To frame this discussion, it will be helpful to start with a brief explanation of how red-light cameras work, and then to provide an overview of the Act's essential elements authorizing their use. Following that, this Part takes up the debate over red-light cameras in Florida from the very beginning. Before implementation of the Act, local governments throughout Florida began to install and use red-light cameras without permission from the Florida Legislature. Amid doubt concerning whether an express grant of authority was necessary to make this practice lawful, local governments fielded challenges from two Florida attorneys general and from countless citizens who questioned the constitutionality of such a policy. Finally, this Part examines the Act's success, and the popular opinion surrounding red-light cameras.

##### A. *An Overview of the Act's Parameters*

Before delving into the law, consider one example of how red-light cameras operate: The current state of the art, according to the red-light camera provider American Traffic Solutions, is a single high-resolution camera mounted to the overhead pole from which traffic lights are suspended.<sup>23</sup> From there, the camera can simultaneously view all lanes of the intersection beneath it and can record "all the information needed to prosecute a red-light violation."<sup>24</sup> The camera captures two images from the rear of any vehicle that passes through the intersection under a steady red light.<sup>25</sup> The first is an image of the vehicle before it enters the intersection, with its front wheels behind the line at which it is supposed to stop, and a red light illuminated in the traffic signal above it.<sup>26</sup> The second is an image of the vehicle after it has entered the intersection, with its rear wheels beyond the line at which it should have stopped, and the red light still illuminated overhead.<sup>27</sup> From either of these two images capturing the violation, American Traffic Solutions makes it

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23. *Red-Light Safety*, AM. TRAFFIC SOLUTIONS, <http://www.atsol.com/solutions/red-light-safety/> (last visited Sept. 14, 2012).

24. *Id.*

25. *Id.*

26. *Id.*

27. *Id.*

possible to extract a picture of the vehicle's license plate.<sup>28</sup> "In addition to the two violation images, the [camera] system captures a 12-second video clip confirming the violation as the vehicle runs the red light. This feature provides law enforcement with further evidence of the violation."<sup>29</sup>

Florida's Mark Wandall Traffic Safety Act gives the state all regulatory power over the use of red-light cameras to enforce traffic control laws.<sup>30</sup> The Act permits counties and municipalities to use red-light cameras to enforce certain traffic laws, specifically where a driver fails to stop at a red light on any street or highway within its jurisdiction.<sup>31</sup> The Act explicitly authorizes Florida counties and municipalities to permit traffic officers to issue citations for such violations upon review of information captured by red-light cameras.<sup>32</sup> However, the Act is intended not to replace but to supplement the regular enforcement of traffic laws by officers.<sup>33</sup> Thus, it does not preclude a law enforcement officer from issuing a citation to a driver for failing to stop at a red light, in accordance with traditional traffic enforcement.<sup>34</sup>

Within thirty days following the capture of the violation on camera, the Act requires the county or municipality to send notification by first-class mail to the registered owner of the vehicle involved in the traffic infraction.<sup>35</sup> That notification must specify the statutory remedies available to the vehicle owner.<sup>36</sup> It must also notify the vehicle owner of his obligation to pay a fine of \$158 or to provide an affidavit within thirty days establishing why he should avoid court fees, costs, and the issuance of a traffic citation.<sup>37</sup> The Act further requires notification to the owner of the vehicle of his right to review the photographic or video evidence, which constitutes a rebuttable presumption against him.<sup>38</sup> If the owner does not pay within thirty days, the Act authorizes the issuance of a uniform traffic citation sent by certified mail to the owner of the vehicle involved in the traffic violation.<sup>39</sup>

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28. *See id.*

29. *Id.*

30. FLA. STAT. § 316.0076 (2012).

31. *Id.* § 316.008.

32. *Id.* § 316.0083.

33. *Id.*

34. *Id.*

35. *Id.*

36. *Id.*

37. *Id.*

38. *Id.*

39. *Id.*

The registered owner of the vehicle involved in the traffic infraction can potentially escape liability under the Act's terms.<sup>40</sup> The owner of the vehicle will not be held liable for payment of the citation if he can establish one of four circumstances: (1) the vehicle passed through the red light to yield to an emergency vehicle or as part of a funeral procession; (2) the vehicle passed through the intersection at the direction of a law enforcement officer; (3) the vehicle was in the "care, custody, or control of another person" at the time of the infraction; or (4) a uniform traffic citation for the violation was issued to the driver by a law enforcement officer.<sup>41</sup> The owner must submit an affidavit to establish that one of these four circumstances exists.<sup>42</sup> The Act makes the submission of a false affidavit a second-degree misdemeanor.<sup>43</sup>

Under the Act, no individual may receive a commission from the revenue collected in conjunction with red-light camera citations.<sup>44</sup> No manufacturer or vendor may receive a fee or remuneration based on the number of violations detected by red-light cameras.<sup>45</sup> All fines collected and assessed must be paid weekly to the Florida Department of Revenue.<sup>46</sup> Of the \$158 collected for each infraction, the Act directs that \$100 be remitted for deposit in the General Revenue Fund; \$45 goes to the municipality in which the violation occurred; \$10 for deposit in the Department of Health Administrative Trust Fund; and \$3 for deposit in the Brain and Spinal Cord Injury Trust Fund.<sup>47</sup> In addition, automobile insurance companies cannot use violations caught on camera to raise the insurance rates of a vehicle's owner.<sup>48</sup> And points cannot be assessed against the vehicle owner's driver's license as a result of any camera-enforced violation.<sup>49</sup>

#### B. *The Use of Red-Light Cameras and the Debate over its Legality Prior to Passage of the Act*

The current debate over whether local governments ought to be allowed to use red-light cameras to issue citations for traffic infractions is not new. More than two dozen cities and counties throughout Florida had local ordinances permitting red-light cameras before Governor Crist signed the bill officially legalizing their use.<sup>50</sup> Not surprisingly, questions concerning the constitutionality and wisdom of enacting such policies

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40. *Id.*

41. *Id.*

42. *Id.*

43. *Id.*

44. *Id.*

45. *Id.*

46. *Id.*

47. *Id.*

48. Batista, *supra* note 6.

49. *Id.*

50. *Crist Signs Florida Bill Legalizing Red Light Cameras*, *supra* note 10.



were raised then, as they are now. However, without an explicit legislative grant of authority, a large part of the debate centered on whether local governments could lawfully enact such policies at all.

### 1. Questioning the Legality of Red-Light Cameras

Two recent Florida Attorney General Advisory Legal Opinions addressed the issue of red-light cameras. Florida Attorney General Robert A. Butterworth issued the first in response to the Palm Beach County Commission's request for information on the legality of using unmanned cameras to issue traffic citations.<sup>51</sup> The opinion conceded that the use of cameras to capture images of vehicles that failed to stop at red lights was not precluded by law, but advised that the images taken by these cameras could not serve as the sole basis for issuing citations; citations based on such recorded images were simply illegal.<sup>52</sup>

The opinion reached this result after considering Florida Statutes section 316.002,<sup>53</sup> which prohibited counties from enacting ordinances in conflict with any section of Florida Statutes Chapter 316.<sup>54</sup> According to the attorney general, the language used in several sections of Chapter 316 suggested that in order to issue a traffic citation, Florida law required the personal knowledge of, or observation or investigation by, a law enforcement officer of the particular traffic violation at issue.<sup>55</sup> While the statutes explicitly authorized the local use of electronic security devices to monitor traffic, moving beyond mere monitoring to actually issuing citations for traffic violations on the basis of electronic observations was thus in direct conflict with several sections of Chapter 316.<sup>56</sup> Specifically, it conflicted with those sections requiring that citations be issued only upon personal knowledge, observation, or investigation of the infraction by an officer.<sup>57</sup> Therefore, the practice was illegal.<sup>58</sup> Interestingly, the attorney general rationalized

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51. Op. Att'y Gen. Fla. 97-26 (1997); *see also* Op. Att'y Gen. Fla. 2005-41 (2005).

52. Op. Att'y Gen. Fla. 97-26 (1997).

53. FLA. STAT. § 316.002 (1997). in relevant part:

It is the legislative intent in the adoption of this chapter to make uniform traffic laws to apply throughout the state and its several counties and uniform traffic ordinances to apply in all municipalities. . . . It is unlawful for any local authority to pass or to attempt to enforce any ordinance in conflict with the provisions of this chapter.

*Id.*

54. Chapter 316 is commonly called the "Florida Uniform Traffic Control Law." *Id.* § 316.001.

55. Op. Att'y Gen. Fla. 97-26 (1997).

56. *Id.*

57. *Id.*

58. *Id.*

this outcome by comparing the use of unmanned cameras to the use of electronic speed measuring devices, which under Florida law required that an officer make an independent visual determination that a vehicle was moving in excess of the speed limit.<sup>59</sup>

In 2005, Florida Attorney General Charlie Crist (who would sign the Act into law as governor five years later) reaffirmed this position in a second Advisory Legal Opinion. The opinion was issued in response to a request by the attorney for the City of Pembroke Pines for information regarding the use of unmanned cameras to monitor traffic violations.<sup>60</sup> Again, the opinion conceded that Chapter 316 authorized the use of cameras to record violations of traffic laws, but advised that these cameras could not legally be used to issue citations.<sup>61</sup> Relying heavily on the reasoning set out in the earlier opinion, Attorney General Crist explained that the issuance of citations upon electronic recording of violations conflicted with the requirement of an officer's personal knowledge, observation, or investigation of the infraction. It also conflicted with a Florida statutory provision regulating the enforcement of traffic control laws and the penalization of those who violated them.<sup>62</sup> Clearly, legislative action was required before local governments could lawfully issue citations for traffic violations observed solely by an unmanned camera.<sup>63</sup>

## 2. Judicial Involvement and the Use of Red-Light Cameras Despite Illegality

But this conclusion was *not* so clear as far as many cities and counties throughout Florida were concerned. That these advisory opinions were issued at all reflected the importance of, and disagreement over, this issue statewide. And, as noted above, between twenty and thirty local ordinances authorizing the installation and use of red-light cameras were on the books by early 2010, despite the apparent

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59. *Id.* The relevant statutory section provided as follows:

Evidence of the speed of a vehicle measured by any radar speed-measuring device shall be inadmissible in any proceeding with respect to an alleged violation of provisions of law regulating the lawful speed of vehicles, unless such evidence of speed is obtained by an officer who . . . (b) [h]as made an independent visual determination that the vehicle is operating in excess of the applicable speed limit.

FLA. STAT. § 316.1906(2) (1997). This provision remains unchanged today. *See id.* § 316.1906(2).

60. Op. Att'y Gen. Fla. 2005-41 (2005).

61. *Id.*

62. *Id.*

63. *Id.*

illegality of such policies.<sup>64</sup> In response, citizens throughout the state turned to the courts for protection against red-light camera citations, arguing the illegality and unconstitutionality of local ordinances allowing them.

One such case, *Udowychenko v. City of Orlando*, was initiated before the Act became effective but concluded after its adoption.<sup>65</sup> At issue in that case was whether the City of Orlando could lawfully use cameras to fine drivers whose vehicles were observed running red lights.<sup>66</sup> Plaintiffs argued that it could not, and further that the ordinance violated the constitutional guarantee of due process, insofar as it impermissibly shifted the burden of proof from the city to the drivers.<sup>67</sup>

Ultimately, the circuit court held the challenged ordinance unlawful. Because it was adopted in 2007—several years before the Act's adoption—the ordinance's provisions were preempted by the conflicting standardized requirements for red-light camera use recently established by the state.<sup>68</sup> The court cited Attorney General Crist's 2005 nonbinding Advisory Legal Opinion as one reason behind the conclusion that the city could not lawfully use red-light cameras to issue traffic citations prior to legislative action.<sup>69</sup> In its holding, the court rejected the arguments that nearly thirty municipalities had adopted red-light camera ordinances, that the practice was implicitly legal, and that the legislature had created the Act only to preempt regulation of red-light camera use exclusively to the state.<sup>70</sup> According to the court, regulation of such policies had always been preempted by the state, and the recent legislation was merely a clarification of that already-existing rule.<sup>71</sup>

### C. *Success of and Popular Response to the Act*

Whether or not one agrees with that analysis, local governments in Florida are now legally authorized to use red-light cameras, both to monitor traffic and to issue citations for traffic infractions, as long as they follow the specific provisions outlined in the Act.<sup>72</sup> As of May 2012, seventy-two Florida communities were either operating red-light camera programs or had begun the process of installing red-light camera

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64. *Crist Signs Florida Bill Legalizing Red Light Cameras*, *supra* note 10.

65. *Udowychenko v. City of Orlando*, No. 2009-CA-26741, 2010 WL 3393118 (Fla. 9th Cir. Ct. Aug. 9, 2010).

66. *Id.*

67. *Id.*

68. *Id.*

69. *Id.*

70. *Id.*

71. *Id.*

72. *See supra* Section I.A.

technology pursuant to this legislative grant of authority.<sup>73</sup> It is unclear, however, whether or to what extent the Act has achieved what its proponents hoped it would. Moreover, while popular sentiment about the cameras is mixed, those who dislike the Act are making their opposition heard loud and clear.

### 1. Revenues, Health, and Safety

As of January 2012, the Red Light Camera Remittance System has resulted in a total of \$25,650,568 remitted to the Department of Revenue.<sup>74</sup> Of this amount, \$21,632,822 has gone to the General Revenue Fund; \$3,090,463 to the Department of Health Administrative Trust Fund; and \$927,282 to the Brain and Spinal Cord Injury Trust Fund.<sup>75</sup> This distribution of funds, explicitly prescribed in the Act,<sup>76</sup> was the reason why AAA urged Governor Crist to veto the Act entirely.<sup>77</sup> The organization “contended that too little of the money will go to health care and too much to general government spending.”<sup>78</sup> Moreover, the total revenue generated in the first year, while substantial,<sup>79</sup> fell far short of the \$29 million figure projected by state economists.<sup>80</sup> It is unlikely that revenue will reach the \$95 million projected for 2013–2014.<sup>81</sup>

Furthermore, while there is some evidence suggesting that red-light cameras reduce the number and severity of traffic fatalities and collisions, there are also studies tending to prove otherwise.<sup>82</sup> American Traffic Solutions, a nationwide provider of red-light cameras, reports that after Apopka, Florida, installed its cameras in 2007 (becoming the first jurisdiction in Central Florida to install cameras and the second in the entire state to do so), the number of traffic signal violations dropped by 88% in a single year, and crashes decreased at two intersections by

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73. *Communities Using Red Light and/or Speed Cameras*, INS. INST. HIGHWAY SAFETY, [http://www.iihs.org/laws/auto\\_enforce\\_cities.aspx](http://www.iihs.org/laws/auto_enforce_cities.aspx) (last visited May 28, 2012).

74. *Red Light Camera State Portion Collection by Jurisdiction*, FLA. DEP’T REVENUE, available at [http://dor.myflorida.com/dor/taxes/red\\_light\\_camera\\_coll/rclr\\_fy12.xls](http://dor.myflorida.com/dor/taxes/red_light_camera_coll/rclr_fy12.xls).

75. *Id.*

76. See FLA. STAT. § 316.0083 (2012).

77. Batista, *supra* note 6.

78. *Id.*

79. As of July 2011, slightly over a year after the Act became effective, a total of \$19,774,851 had been remitted to the Department of Revenue through the Red Light Camera Remittance System. *Red Light Camera State Portion Collection by Jurisdiction*, FLA. DEP’T REVENUE, available at [http://dor.myflorida.com/dor/taxes/red\\_light\\_camera\\_coll/rclr\\_fy11.xls](http://dor.myflorida.com/dor/taxes/red_light_camera_coll/rclr_fy11.xls).

80. Batista, *supra* note 6.

81. *Id.*

82. Several of the studies discussed in this section predate the implementation of the Act itself, but coincide with the early use of red-light cameras by local governments in Florida. This Note assumes that these findings are representative of the effect red-light cameras have had on traffic collisions and fatalities since the Act became law.

64% and 72% respectively.<sup>83</sup> Another study, conducted by the Insurance Institute for Highway Safety (IIHS), found that between 2004 and 2008, red-light cameras in the fourteen largest U.S. cities saved 159 lives and reduced fatal red-light running collisions by 24%.<sup>84</sup>

But it is not all good news. An independent evaluation by the Institute of Transportation Engineers found that “[s]tudies conducted using appropriate methods generally show that [red-light camera] enforcement is associated with large reductions in red light violations and significant reductions in injury crashes, and in some cases, *increases* in rear-end crashes.”<sup>85</sup> A study conducted by the Urban Transit Institute for the U.S. Department of Transportation did not support the conclusion that red-light cameras resulted in fewer automobile crashes.<sup>86</sup> On the contrary, these researchers found that red-light cameras may actually decrease overall traffic safety.<sup>87</sup>

## 2. Popular Opinion

Like the research concerning how effective red-light cameras are, signs of popular support for their use in traffic enforcement are mixed. According to American Traffic Solutions, an opinion poll conducted by Telephone Contacts, Inc. in 2007 found that 85% of Floridians support the installation of red-light cameras.<sup>88</sup> An IIHS survey of residents of fourteen large U.S. cities with established red-light camera programs reported that two-thirds of respondents supported red-light cameras, and 42% strongly supported them.<sup>89</sup> Another poll, conducted by Public

83. *Case Study: Apopka, Florida*, AM. TRAFFIC SOLUTIONS, <http://www.atsol.com/results-case-studies-apopka.html> (last visited Feb. 16, 2012).

84. *Camera Enforcement in 14 Large Cities Reduces Rate of Fatal Red Light Running Crashes By 24 Percent*, INS. INST. FOR HIGHWAY SAFETY, 1 (Feb. 1, 2011), [http://www.iihs.org/news/2011/iihs\\_news\\_020111.pdf](http://www.iihs.org/news/2011/iihs_news_020111.pdf).

85. Richard A. Retting, *Two Decades of Photo Enforcement in the United States: A Brief Summary of Experience and Lessons Learned*, ITE J., Nov. 2010, at 20, 22 (emphasis added).

86. MARK BURKEY & KOFI OBENG, URBAN TRANSIT INST., A DETAILED INVESTIGATION OF CRASH RISK REDUCTION RESULTING FROM RED LIGHT CAMERAS IN SMALL URBAN AREAS 46 (2004), available at <http://www.motorists.org/red-light-cameras/Burkey-Obeng-2004.pdf>.

87. *Id.* “Our findings are more pessimistic, finding no change in angle accidents and large increases in rear-end crashes and many other types of crashes relative to other intersections . . . . In many ways, the evidence points toward the installation of [red-light cameras] as a detriment to safety.” *Id.*

88. *Floridians Support Red Light Cameras*, PR NEWSWIRE, <http://www.prnewswire.com/news-releases/floridians-support-red-light-cameras-57829247.html> (last visited Sept. 15, 2012).

89. ANNE T. MCCARTT & ANGELA EICHELBERGER, INS. INST. FOR HIGHWAY SAFETY, *Attitudes Toward Red Light Camera Enforcement in Cities with Camera Programs* 10 (2011), available at <http://www.iihs.org/research/topics/pdf/r1161.pdf>. This same study reported that among the approximately 25% of respondents who did not support red-light cameras, many believed “that cameras can make mistakes, are used to generate revenue rather than for safety, lead to more crashes, and are an invasion of privacy.” *Id.* at 11.

Opinion Strategies, found that 69% of Americans supported installing red-light cameras at the most dangerous intersections in their states, while only 29% opposed the idea.<sup>90</sup> Interestingly, despite this apparent support for camera installation, the poll also found that by a 41% to 47% margin, voters were more likely to believe that most residents in their state opposed red-light cameras.<sup>91</sup>

Perhaps this is because those who object to red-light cameras are so vocal about it. There is strong evidence that at least a portion of the population in Florida is adamantly opposed to red-light cameras. The National Motorists Association, an organization founded in 1982 to promote motorists' rights generally,<sup>92</sup> has taken a firm stance against red-light cameras.<sup>93</sup> This group is not alone. The Internet is rife with websites dedicated to fighting red-light cameras in Florida and beyond.<sup>94</sup> These sites compile links to relevant news stories, research studies, and other websites—all of which oppose the use of red-light cameras—in an effort to provide information to the public at large. These sites present arguments, among others, that red-light cameras are unsafe, a violation of constitutional rights, instituted solely to generate revenue, and an invasion of privacy.<sup>95</sup> Many individuals, after receiving notice of a violation caught on camera, have mounted attacks against the red-light cameras in court.<sup>96</sup> And Florida legislators have joined the cause, attempting to repeal the Act beginning just one year after it was passed.<sup>97</sup>

## II. LEGAL CHALLENGES TO THE ACT

With so many opponents before the Act ever came into existence, it is no surprise that the legislation became the subject of legal attacks from every direction as soon as it was signed. But so far, the Act has survived every challenge.

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90. *Poll Shows Strong National Support for "Red-Light Cameras,"* PUB. OPINION STRATEGIES (May 19, 2009), <http://blog.pos.org/wp-content/uploads/news-release-for-red-light-national-draft-3.pdf>.

91. *Poll Shows Strong National Support for "Red-Light Cameras,"* *supra* note 91.

92. NAT'L MOTORISTS ASS'N, <http://www.motorists.org/> (last visited Feb. 16, 2012).

93. *See Red Light Cameras*, NAT'L MOTORISTS ASS'N, <http://www.motorists.org/red-light-cameras/> (last visited Feb. 16, 2012).

94. *See, e.g., BAN THE CAMS.ORG*, <http://www.banthecams.org> (last visited Feb. 16, 2012); *CAMERA FRAUD*, <http://www.camerafraud.wordpress.com> (last visited Feb. 16, 2012).

95. *See We are Camera FRAUD*, *CAMERA FRAUD*, <http://www.camerafraud.wordpress.com/why> (last visited Feb. 16, 2012); *NMA Objections to Red Light Cameras*, NAT'L MOTORISTS ASS'N, <http://www.motorists.org/red-light-cameras/objections> (last visited Feb. 16, 2012).

96. *See infra* Section II.A.

97. *See infra* Section II.B.

### A. Judicial Responses to Legal Challenges in Florida's Courts

Opponents of the Act, consisting largely of those who have received traffic citations under its authority, have thrown a variety of arguments at the judiciary in a desperate attempt to see what sticks. Most of their efforts have been met with strong resistance from Florida's trial judges,<sup>98</sup> who often reject opponents' contentions with little or no explanation. What follows is a consideration of several cases heard in Miami-Dade and Broward Counties, including a look at specific challenges representative of those launched against the Act statewide, and the typical judicial responses to those challenges.

#### 1. Miami-Dade County

In July 2011, a Miami-Dade County Court rejected several challenges to the Act and ultimately denied a defendant vehicle owner's motion to exclude video evidence.<sup>99</sup> Just over a month earlier, the court had "held an evidentiary hearing to resolve challenges which have been raised in numerous cases to evidence presented to prove the red light camera violations, using Defendant's case as a vehicle to resolve these recurring issues."<sup>100</sup> The defendant in that case was charged with failing to obey a traffic control device.<sup>101</sup> The violation had been detected by a red-light camera.<sup>102</sup>

The defendant first argued that the city was obligated under the mailing requirements laid out in Florida Statutes section 316.0083 to provide proof that notice of the violation was timely mailed, that is, within thirty days of the violation.<sup>103</sup> If a uniform traffic citation was later issued, proof of the timely mailing of the citation would also be

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98. See, e.g., Stephen Nohlgren, *Legal Challenges to Red-Light Cameras Failing Around Tampa Bay*, TAMPA BAY TIMES, Nov. 3, 2011, available at <http://www.tampabay.com/news/courts/civil/legal-challenges-to-red-light-cameras-failing-around-tampa-bay/1199745> (remarking on Tampa Bay judges' general approval of red-light cameras as a valid method of enforcing traffic laws, issuing citations, and collecting fines, and comparing one Tampa Bay judge's demand to hear all objections to the Act in a single hearing to the judicial approach taken in South Florida, where "drawn out and conflicting rulings . . . have led to dozens of court hearings and mass dismissal of tickets"). But see Rick Neale, *Many Who Challenge Red Light Camera Tickets Win in Brevard*, FLA. TODAY, Feb. 6, 2012, available at <http://www.floridatoday.com/article/20120206/NEWS01/302060020/Many-who-challenge-red-light-camera-tickets-win-Brevard> (suggesting that because photo evidence is impossible to cross-examine in court, about two-thirds of the 300 cases contesting red-light cameras were dismissed or resulted in the driver's being found not guilty, and adjudication was withheld in most of the remaining one-third).

99. Trial Order, *State v. Vanderpool*, No. 8751 LAH, 2011 WL 2742641 (Fla. Miami-Dade County Ct. July 6, 2011).

100. *Id.*

101. *Id.*

102. *Id.*

103. *Id.*; see also FLA. STAT. § 316.0083 (2012).

required.<sup>104</sup> Moreover, the defendant argued that if a traffic citation had been mailed, the city was required to prove that it was *delivered* to the registered owner of the vehicle involved in the traffic infraction.<sup>105</sup> The court rejected each of these arguments, finding that there was no requirement under Florida law for evidence establishing that the statutory mailing requirements had actually been met in a particular case.<sup>106</sup>

Rather, the court pointed out the long-standing rule that stamped, properly addressed mail is presumed to have been received.<sup>107</sup> The court concluded further that a business (such as the one that owned and operated the red-light cameras involved in the case at hand) need only prove its general office procedure to satisfy the requirements of due mailing and to create a presumption that this ordinary procedure was followed in any particular case.<sup>108</sup> Moreover, the court found that this rule had been codified by Florida's evidence statutes, which admit a business's routine practices without corroboration or testimony by witnesses as proof that the business's conduct in a particular case conformed with routine practices.<sup>109</sup> This presumption required only that the mail be correctly addressed to the registered owner of the vehicle, as recorded by the Florida Department of Motor Vehicles (DMV), and that testimony be presented regarding the office's general business practices with respect to mailing.<sup>110</sup> After testimony by several individuals as to the customary practices followed in mailing notices of violations and traffic citations, the court found sufficient proof of satisfactory routine practices to raise a presumption that the statute's mailing and notice requirements had been met in that particular instance.<sup>111</sup>

Second, the defendant argued that the city bore the burden of proving that the defendant was the true owner of the vehicle committing the violation for which the citation was issued.<sup>112</sup> The defendant contended that the city was required to prove ownership through presentation of a certified copy of DMV records, because the statute held the vehicle's registered owner liable for the violation.<sup>113</sup> At the hearing, substantial evidence showed the process used to obtain

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104. Trial Order, *Vanderpool*, 2011 WL 2742641; *see also* FLA. STAT. § 316.0083 (2012).

105. Trial Order, *Vanderpool*, 2011 WL 2742641.

106. *Id.* (citing *Brown v. Giffen Indus., Inc.*, 281 So. 2d 897 (Fla. 1973)).

107. *Id.* (citing *Brown*, 281 So. 2d 897).

108. *Id.* (citing *Brown*, 281 So. 2d 897).

109. *Id.* (citing FLA. STAT. § 90.406 (2010)).

110. *Id.*

111. *Id.*

112. *Id.*

113. *Id.*



ownership records electronically.<sup>114</sup> The court found that such means produced reliable information sufficient to show ownership.<sup>115</sup> The court rejected the suggestion that the city was required to produce a certified copy of the DMV records in court as “an excessive burden.”<sup>116</sup> Rather, the court stated that the defendant could easily present his vehicle registration to establish an error in the citation.<sup>117</sup>

Third, the defendant objected to the fact that the officer who reviewed the red-light camera video and issued the traffic citation did not appear in court.<sup>118</sup> Rather, due to the high volume of cases, the issuing officer prepared an evidence packet for each hearing, including video and photographic evidence relevant to the citation, which was uploaded onto a laptop computer for presentation in court by a records custodian.<sup>119</sup> The court rejected the suggestion that the officer’s presence was required.<sup>120</sup> Rather, the court found that the charging document was the citation itself, which was based solely on information contained in the video or photographic evidence.<sup>121</sup> Thus, as long as the records custodian presented in court the evidence packet prepared by the officer, the officer’s presence was not required.<sup>122</sup> Nor was the city required to present affirmative proof of the issuing officer’s actual training.<sup>123</sup> The officer only needed to testify that he was qualified to issue the citation, or, in the case of an absent officer, the city was required to include in evidence an affidavit that the person who issued the citation was certified to do so.<sup>124</sup>

Fourth, the defendant objected to the admission of the red-light camera video as evidence.<sup>125</sup> The court rejected this last argument as contrary to the Florida Legislature’s clear intent as indicated by the express language of the statute.<sup>126</sup> The court pointed out, however, that while video evidence was admissible under the statute, the red-light cameras were required to meet certain specifications established by the Department of Transportation (DOT) and to be tested at regular intervals according to those specifications.<sup>127</sup> Standards established by

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114. *Id.*

115. *Id.*

116. *Id.*

117. *Id.*

118. *Id.*

119. *Id.*

120. *Id.*

121. *Id.*

122. *Id.*

123. *Id.*

124. *Id.*

125. *Id.*

126. *Id.*

127. *Id.*

the DOT had become effective on July 1, 2011.<sup>128</sup> The court therefore found that, as a precondition for the admission of video evidence to support any citation issued on or after July 1, 2011, the city was required to present proof that the red-light cameras met DOT specifications at the time the violation was captured on film.<sup>129</sup>

## 2. Broward County

One month after the decision in Miami-Dade, a Broward County Court denied a defendant's motion to dismiss his citation on three separate grounds.<sup>130</sup> Citing to the Florida Supreme Court case *Levitz v. State* (but offering no explanation for its reasoning), the court rejected the defendant's first argument that the statutory scheme authorizing the use of red-light cameras was "impermissibly coercive and [a] violation of Equal Protection."<sup>131</sup> In *Levitz*, the defendant had been issued a citation for driving at an unlawful speed, and was notified that he could either pay a \$25 fine or request a hearing, which subjected the defendant to the possibility of receiving the maximum fine of \$500.<sup>132</sup> The defendant in that case filed a motion for declaration of the unconstitutionality of the relevant statute, arguing "that it subjected him to a greater penalty when he exercised his right to confront witnesses against him."<sup>133</sup>

The county court rejected that argument, and the Florida Supreme Court affirmed its decision. The supreme court found that the Act—allowing individuals to pay a civil penalty for committing certain traffic infractions, or in the alternative to request a hearing to contest the citation—deprived no one of the right to a full and fair hearing.<sup>134</sup> Rather, the statute offered a quicker, more convenient way to comply with the law through payment of a statutorily determined fine—similar to the widely accepted and encouraged practice of plea bargaining.<sup>135</sup> The defendant was in essence merely offered a settlement by the statute, which he could freely reject and instead choose to contest the citation.<sup>136</sup> All due process guarantees would then be provided to

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128. *Id.*

129. *Id.*

130. *State v. S. E. Fla. Zimmer*, No. 11-005631TI20A, slip op. (Fla. Broward County Ct. Aug. 17, 2011).

131. *S. E. Fla. Zimmer*, No. 11-005631TI20A (citing *Levitz v. State*, 339 So. 2d 655 (Fla. 1976)).

132. *Levitz*, 339 So. 2d at 656–57.

133. *Id.* at 657.

134. *Id.*

135. *Id.*

136. *Id.* at 658.

him.<sup>137</sup> Therefore, the Florida Supreme Court held that the statute complied with due process and equal protection guarantees.<sup>138</sup>

Having dispensed with the defendant's first claim through comparison to *Levitz*, the Broward County Court rejected the defendant's second argument that the Act did not specifically authorize the issuance of citations to the vehicle's owner.<sup>139</sup> Without explanation, the court found that such authorization was "implicit and contemplated in the statute as a whole."<sup>140</sup>

Finally, the county court rejected the argument that the Act impermissibly shifted the burden of proof to the defendant.<sup>141</sup> In doing so, the court relied on a Tennessee case as persuasive authority.<sup>142</sup> In that case, the Tennessee Court of Appeals had addressed the argument that a statute authorizing the use of red-light cameras violated the defendant's right to due process.<sup>143</sup> According to that argument, the Tennessee statute had created an impermissible presumption of guilt against the registered owner of the vehicle observed violating traffic control laws.<sup>144</sup> This impermissible presumption, so the argument went, could then be rebutted by a showing that the owner had not been in control of the vehicle when it passed through a red light.<sup>145</sup>

The Tennessee court found no violation of due process in that case.<sup>146</sup> It found instead: (1) that the statute held the vehicle's registered owner liable for the violation, regardless of who actually ran the red light; (2) that the city bore the burden of proving its case; and (3) that the vehicle's owner was statutorily accorded the opportunity under some circumstances to shift responsibility to the actual driver of the car at the time of the violation.<sup>147</sup> Thus, the statute was constitutional, as it held the vehicle's owner liable, and the burden of proving that the vehicle involved in a traffic infraction was registered to a particular individual was at no time shifted away from the city.<sup>148</sup>

Just two months earlier, however, a different Broward County Court had ruled that citations issued by law enforcement officers for failure to stop at red lights violated the constitutional guarantee to equal

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137. *Id.*

138. *Id.*

139. *State v. S. E. Fla. Zimmer*, No. 11-005631TI20A (Fla. Broward County Ct. Aug. 17, 2011).

140. *Id.*

141. *Id.*

142. *Id.* (citing *City of Knoxville v. Brown*, 284 S.W.3d 330 (Tenn. App. Ct. 2008)).

143. *Brown*, 284 S.W.3d at 338.

144. *Id.*

145. *Id.*

146. *Id.*

147. *Id.*

148. *Id.* at 338–39.

protection.<sup>149</sup> The court based this conclusion on the fact that fines imposed for such offenses were higher than those imposed in conjunction with red-light camera citations.<sup>150</sup> The court noted in its ruling that “[a] driver who is observed by an officer committing the violation [in the traditional manner] is subjected to more severe penalties and ramifications than a driver who is fortunate enough to have committed the infraction at a ‘red light camera’ intersection.”<sup>151</sup> Ted Hollander, the driver’s attorney in that case, stated that if the ruling were appealed and upheld at the highest level in Florida, the legislature would finally be forced to eliminate one of the means of issuing citations for running red lights.<sup>152</sup> He predicted that this was likely “the beginning of the end” for red-light cameras in Florida.<sup>153</sup>

### B. Stalled Attempts to Repeal the Act Legislatively

Attorneys like Ted Hollander were likely paying close attention to the near-repeal of the Act by the Florida Legislature earlier that year.<sup>154</sup> Florida House Bill 4087, introduced early in 2011, was an attempt to repeal the authorization to install and use red-light cameras to enforce traffic laws less than a year after the practice had been approved.<sup>155</sup> Representative Richard Corcoran, a future house speaker who sponsored the bill, “argued that studies showing lower crash rates have been debunked and the cameras have resulted in tickets that judges have thrown out.”<sup>156</sup> But a number of lawmakers from Representative Corcoran’s own Republican Party opposed the bill, urging fellow lawmakers to wait and give red-light cameras a chance to reduce accidents in Florida.<sup>157</sup> In May 2011, the bill passed in the Florida House of Representatives by a narrow margin of 59–57.<sup>158</sup> The companion Florida Senate Bill 672<sup>159</sup> was approved by the Senate Transportation Committee before dying in the Senate Committee on

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149. Ariel Barkhurst, *Cops Can’t Write Red-Light Tickets, Broward Judge Rules*, S. FLA. SUN SENTINEL, June 8, 2011, available at [http://articles.sun-sentinel.com/2011-06-08/news/fl-red-light-cameras-unconstitutional20110608\\_1\\_red-light-cameras-red-light-tickets-red-lights](http://articles.sun-sentinel.com/2011-06-08/news/fl-red-light-cameras-unconstitutional20110608_1_red-light-cameras-red-light-tickets-red-lights).

150. *Id.*

151. *Id.* (internal citation omitted) (alteration in original).

152. *Id.*

153. *Id.*

154. See Dave Heller, *Red Light Cameras Survive Repeal Effort in Florida*, FIRST COAST NEWS, May 11, 2011, available at <http://www.firstcoastnews.com/news/article/203851/4/Red-Light-Cameras-Survive-Repeal-Effort-in-Florida>.

155. H.B. 4087, 2011 Leg. (Fla. 2011).

156. Aaron Deslatte, *House Votes to Deep-Six Red-Light Cameras*, S. FLA. SUN SENTINEL (May 2, 2011, 4:41 PM), available at [http://weblogs.sun-sentinel.com/news/politics/dcblog/2011/05/house\\_votes\\_to\\_deepsix\\_redligh.html](http://weblogs.sun-sentinel.com/news/politics/dcblog/2011/05/house_votes_to_deepsix_redligh.html).

157. *Id.*

158. *Id.*

159. S.B. 672, 2011 Leg. (Fla. 2011).

Community Affairs on May 7, 2011.<sup>160</sup> The legislative attempt to repeal the Act was then indefinitely postponed and withdrawn from consideration.<sup>161</sup>

But Florida Representative Scott Plakon subsequently renewed the effort, filing another measure to repeal the law in December 2011.<sup>162</sup> For a time it seemed that Florida House Bill 4177<sup>163</sup> and its companion Senate Bill 1542<sup>164</sup> might succeed where all other efforts to eliminate red-light cameras had failed. Both, however, died in committee in early March 2012.<sup>165</sup>

### III. BEYOND FLORIDA

Florida is not the only jurisdiction that has addressed the issue of red-light cameras. In *Idris v. City of Chicago*,<sup>166</sup> the United States Court of Appeals for the Seventh Circuit upheld the red-light camera program outlined in the Chicago Code against a due process challenge.<sup>167</sup> In that case, Chief Judge Frank H. Easterbrook, writing for the court, rejected the idea “that vicarious liability offends the substantive component of the due process clause,” calling that argument “a dud.”<sup>168</sup> The Seventh Circuit explained that “[s]ubstantive due process depends on the existence of a fundamental liberty interest . . . and no one has a fundamental right to run a red light or avoid being seen by a camera on a public street.”<sup>169</sup>

Finding that state action must impinge on some substantive right (lacking in that particular case) before it will be evaluated under substantive due process standards, the court went on to determine whether the program was nevertheless completely arbitrary and therefore failed the rational basis test.<sup>170</sup> On that count, the court upheld the program as rationally related to the legitimate goals of the City of Chicago, finding that “[a] system that simultaneously raises money and improves compliance with traffic laws has much to recommend it and

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160. *SB 672: Uniform Traffic Control*, THE FLORIDA SENATE, <http://www.flsenate.gov/Session/Bill/2011/0672> (last visited May 29, 2012).

161. *Id.*

162. Katherine Albers, *Lawmakers to Consider Repealing Red-Light Cameras*, NAPLES DAILY NEWS, Dec. 28, 2011, available at <http://www.naplesnews.com/news/2011/dec/28/lawmakers-to-consider-repealing-red-light/>.

163. H.B. 4177, 2012 Leg. (Fla. 2012).

164. S.B. 1542, 2012 Leg. (Fla. 2012).

165. *HB 4177: Traffic Infraction Detectors*, THE FLORIDA SENATE, <http://flsenate.gov/Session/Bill/2012/4177> (last visited May 28, 2012); *SB 1542: Traffic Infraction Detectors*, THE FLORIDA SENATE, <http://flsenate.gov/Session/Bill/2012/1542> (last visited May 28, 2012).

166. 552 F.3d 564 (7th Cir. 2009).

167. *Id.* at 568.

168. *Id.* at 565–66.

169. *Id.* at 566.

170. *Id.*

cannot be called unconstitutionally whimsical.”<sup>171</sup>

Finally, the court rejected the argument that the courtroom procedures the city used to adjudicate citations violated the Due Process Clause.<sup>172</sup> That argument was based in large part on the contention that any defenses besides those specifically enumerated in the relevant section of the Chicago Code were unavailable to defendants contesting red-light camera citations.<sup>173</sup> The City of Chicago responded, and the court agreed, that all defenses available under state law, including but not limited to those specifically related to red-light camera citations, were available to the defendant contesting a red-light camera citation.<sup>174</sup> Therefore, the program did not run afoul of the constitutional guarantee of substantive and procedural due process.<sup>175</sup>

In *Bell v. Redflex Traffic Systems, Inc.*,<sup>176</sup> the United States Court of Appeals for the Fifth Circuit was no more sympathetic to opponents of red-light cameras. In that case, appellants argued that Redflex—a company that had installed its cameras in multiple Texas cities—had been operating without a proper license when its cameras captured their traffic violations.<sup>177</sup> The court first denied that appellants had standing to allege as injury the fact that their traffic violations would never have been detected had it not been for the cameras installed and operated by Redflex; the interest in evading the law, wrote the court, cannot create standing, because it is not legally protected.<sup>178</sup> The court next refused to recognize an alleged injury caused by the admission in court of “illegally obtained” video evidence as proof of the traffic violation, stating that such evidence had always been permitted in civil traffic violation proceedings.<sup>179</sup> Finally, the Court found insufficient evidence to establish a link between Redflex’s operation without the proper license and the alleged injury to the privacy interest of appellants.<sup>180</sup> In so deciding, however, the court allowed that electronically recording images of a vehicle moving through a public intersection may implicate valid privacy concerns.<sup>181</sup>

Outside of Florida, it seems, red-light camera opponents have been more successful when focusing on issues like revenue generation and traffic safety, rather than arguing constitutional violations in court. For

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171. *Id.*

172. *Id.* at 567.

173. *Id.*

174. *Id.*

175. *Id.*

176. 374 F. App’x 518 (5th Cir. 2010).

177. *Id.* at 520.

178. *Id.*

179. *Id.*

180. *Id.* at 521.

181. *Id.* at 521 n.2.

example, the City of Los Angeles recently decided to stop using red-light cameras because the program was losing \$1.5 million each year.<sup>182</sup> Questions about whether using the cameras actually reduced traffic fatalities also contributed to the decision.<sup>183</sup> It would be wise of red-light camera opponents in Florida to take a lesson.

#### IV. THE CASE AGAINST RED-LIGHT CAMERAS IN FLORIDA

Opponents of the Act, and of red-light cameras generally, are unlikely to accomplish its demise in Florida's courts. Rather, those actively fighting against the legislation ought to consider going straight to the source—the Florida Legislature. By focusing attention on the Act's policy failures, opponents might be able to turn the tide against it.

##### A. Prospects for Success in Florida's Courts

In light of cases like *Idris* and *Bell*, and the rejection by many Florida trial court judges of the various challenges lodged against the Act and against red-light cameras generally, it may be difficult to argue successfully that red-light camera citations ought to be eliminated on constitutional grounds.<sup>184</sup> However, there are those who continue to try. One author, for example, contends that “red-light cameras dangerously reverse the presumption of innocence and deprive cited motorists of the fundamental right to confront their accusers.”<sup>185</sup> Another has argued that state action in the form of red-light camera citations “will have lasting repercussions on an individual's right to interstate travel and personal privacy.”<sup>186</sup>

But those who hope to see the Act stricken from Florida's books on constitutional grounds have recently been dealt some serious blows. In July 2012, Florida's Fourth District Court of Appeal<sup>187</sup> reversed a Broward County trial court order holding Florida Statutes section 316.075 unconstitutional on equal protection grounds.<sup>188</sup> While section

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182. *Los Angeles Red Light Cameras to Shut Off*, HUFFINGTON POST, July 27, 2011, available at [http://www.huffingtonpost.com/2011/07/27/los-angeles-red-light-cameras\\_n\\_911577.html?view=screen](http://www.huffingtonpost.com/2011/07/27/los-angeles-red-light-cameras_n_911577.html?view=screen).

183. *Id.*

184. See, e.g., Cooper J. Strickland, *Lights, Camera . . . Ticket: Red Light Cameras After Idris v. City of Chicago*, 10 N.C. J. L. & TECH. ONLINE ED. 119, 121 (2009) (noting that “[t]he *Idris* Court's analysis will likely have a negative impact on future Fourteenth Amendment challenges of red light camera technology and owner liability presumptions.”).

185. Joel O. Christensen, Note, *Wrong on Red: The Constitutional Case Against Red-Light Cameras*, 32 WASH. U. J. L. & POL'Y 443, 446 (2010).

186. Paul McNaughton, Comment, *Photo Enforcement Programs: Are They Admissible Under the United States Constitution?*, 43 J. MARSHALL L. REV. 463, 463 (2010).

187. State v. Arrington, 95 So. 3d 324 (Fla. 4th Dist. Ct. App. 2012).

188. *Id.* at 325; see also *supra* notes 149–53 and accompanying text. Section 316.075 provides that “[v]ehicular traffic facing a steady red signal shall stop before entering the

316.075 prohibits the exact same conduct as does the Act, the trial court had concluded that “a driver who is observed by an officer committing the violation (in the traditional manner) is subjected to more severe penalties and ramifications than a driver who is fortunate enough to have committed the infraction at a ‘red light camera’ intersection.”<sup>189</sup> However, “[a]n equal protection analysis is appropriate only if similarly situated individuals are treated differently.”<sup>190</sup> According to the appellate court, individuals ticketed under section 316.075 are not similarly situated to those ticketed under the Act.<sup>191</sup> Even if they were, the statute would not be unconstitutional, because there is a rational basis for not assessing points against the driver’s licenses of those ticketed under the Act.<sup>192</sup> Points are personal; they are assessed against the individual, rather than the vehicle.<sup>193</sup> Because the Act focuses on the vehicle’s owner, rather than its actual driver—and because violations of the Act are caught on camera, rather than through observation of the driver by a law enforcement officer—the legislature had a rational basis for choosing not to impose points on those ticketed under the Act.<sup>194</sup> Thus, “[s]ection 316.075 is not unconstitutional because of the enforceability of section 316.0083.”<sup>195</sup>

In November 2011, Florida’s Third District Court of Appeal<sup>196</sup> upheld a city ordinance authorizing the use of cameras to observe and penalize drivers who run red lights.<sup>197</sup> That decision resulted from the appellate court’s review of a trial court order declaring a City of Aventura ordinance invalid and unenforceable.<sup>198</sup> The ordinance at issue authorized the city to use cameras installed at traffic lights to record images of drivers who ran red lights.<sup>199</sup> After a traffic control review officer appointed by the city reviewed the images for accuracy, the ordinance authorized the city to issue notices of traffic violations caught on camera.<sup>200</sup>

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crosswalk on the near side of the intersection or, if none, then before entering the intersection and shall remain standing until a green indication is shown.” FLA. STAT. § 316.075(1)(c) (2012). “A violation of [section 316.075] is a noncriminal traffic infraction.” *Id.* § 316.075(4).

189. *Arrington*, 95 So. 3d at 325.

190. *Id.* at 326 (quoting *Fredman v. Fredman*, 960 So. 2d 52, 59 (Fla. 2d Dist. Ct. App. 2007)).

191. *Id.* at 327.

192. *Id.*

193. *Id.*

194. *Id.*

195. *Id.*

196. *City of Aventura v. Masone*, 89 So.3d 233 (Fla. 3d Dist. Ct. App. 2011).

197. *Florida Appeals Court Upholds City Red Light Cameras*, CBS MIAMI (Nov. 30, 2011, 2:01 PM), <http://miami.cbslocal.com/2011/11/30/fla-appeals-court-upholds-city-red-light-cameras/>.

198. *Masone*, 89 So.3d at 234.

199. *Id.* at 234–35.

200. *Id.* at 235.



The ordinance had been created in 2007,<sup>201</sup> well before the Act was signed into law in 2010.<sup>202</sup> The trial court had thus declared the ordinance “an invalid exercise of municipal power without express authority from the Florida Legislature allowing the City to legislate the subject.”<sup>203</sup> The trial court employed reasoning strikingly similar to that expressed in the two Florida Attorney General Advisory Legal Opinions that had cautioned against issuing citations solely on the basis of photographic evidence.<sup>204</sup> More specifically, the trial court reasoned that the city ordinance conflicted with a requirement in the Florida Statutes that an officer observe the commission of a traffic infraction in order for a citation to be issued.<sup>205</sup> According to the trial court, the ordinance was therefore invalid.<sup>206</sup>

The Third District Court of Appeal disagreed and reversed the trial court.<sup>207</sup> In doing so, it upheld a city ordinance enacted prior to the Act, without the express authorization of the Florida legislature.<sup>208</sup> The court grounded this result partly in the broad police powers and home rule granted to municipalities by the Florida constitution.<sup>209</sup> Reasoning that the ordinance in question was not clearly in conflict with any section of the Florida Statutes, and that every reasonable presumption in favor of its constitutionality ought to be indulged, the appellate court found the ordinance valid.<sup>210</sup>

If Florida appellate courts are unwilling to strike down the use of red-light cameras on constitutional or statutory grounds, even in the absence of express legislative authorization, it is far less likely that they will do so with the Act on the books. Those hoping to eliminate red-light cameras in Florida would be wise, therefore, to turn their attention away from the courts. Most judges—in Florida and beyond—are not buying the constitutional case against red-light cameras.

### B. Prospects for Success in Florida’s Legislature

The same cannot be said of Florida’s legislators, some of whom have already tried twice to eliminate red-light cameras. The first attempt to repeal the Act—initiated less than a year after the Act was signed into law—passed by a narrow margin in the Florida House before dying in

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201. *Id.* at 234.

202. *Memorandum: Governor Crist Signs Legislation Creating the Mark Wandall Traffic Safety Act*, *supra* note 18.

203. *Masone*, 89 So. 3d at 235.

204. *Id.*; *see also supra* notes 52–63 and accompanying text.

205. *Masone*, 89 So. 3d at 235.

206. *Id.*

207. *Id.*

208. *Id.* at 236.

209. *Id.* at 235 (quoting FLA. CONST. art. VIII, § 2(b)).

210. *Id.* at 237.

the senate.<sup>211</sup> Florida Representative Scott Plakon later renewed the effort, filing another measure to repeal the law in December 2011.<sup>212</sup> While Florida House Bill 4177<sup>213</sup> and its companion Senate Bill 1542<sup>214</sup> ultimately died in early March 2012, the fact that this second attempt came so swiftly on the heels of the first shows the strength of opposition to red-light cameras among some in Florida's legislature. It is not unlikely, therefore, that there will be another attempt to repeal the Act. Perhaps the third time will indeed be the charm, but that is unlikely unless opponents of the Act have learned from their own previous failures and those of like-minded citizens throughout the nation. Practically speaking, while the constitutional case against red-light cameras in Florida has had little success in court, plenty of convincing arguments against the cameras can be made on the house and senate floors.

First of all, uncertainty remains about whether, and to what extent, red-light cameras actually reduce traffic violations and collisions.<sup>215</sup> Rather, some argue that “[a]ttempts to generate revenue through traffic citations are directly contrary to public safety since infractions are increased by improper roadway engineering, creating hazards and expense for the public.”<sup>216</sup> A critique of multiple studies of red-light camera intersections found that red-light cameras are associated with higher rates of fatal traffic accidents and have not reduced the total number of angle and rear-end crashes.<sup>217</sup> This might be explained by the fact that most red-light running collisions result from *unintentional* red-light running;<sup>218</sup> indeed, the driver who caused the accident that killed Mark Wandall was distracted by a child in the backseat.<sup>219</sup> And rather than focusing on or mandating installation of red-light cameras, the Federal Highway Administration and the National Highway Traffic Safety Association have recommended intersection engineering analyses and improvements such as lengthening yellow-light timings.<sup>220</sup>

Secondly, while the Act has generated some revenue for the state, it has fallen far short of expectations.<sup>221</sup> And there are some who object to

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211. *See supra* Section II.B.

212. Albers, *supra* note 163.

213. H.B. 4177, 2012 Leg. (Fla. 2012).

214. S.B. 1542, 2012 Leg. (Fla. 2012).

215. *See supra* text accompanying notes 83–88.

216. Barbara Langland-Orban et al., *An Update on Red Light Camera Research: The Need for Federal Standards in the Interest of Public Safety*, 8 FLA. PUB. HEALTH REV. 1, 7 (2011).

217. *Id.* at 2.

218. *Id.* at 5.

219. Orr, *supra* note 1.

220. Langland-Orban et al., *supra* note 216, at 7.

221. *See supra* text accompanying notes 75–82.

the statutorily prescribed allocation of the funds generated.<sup>222</sup> Even worse, American Traffic Solutions, the company operating most of the red-light cameras in Florida, has been unable to handle the volume of violations captured by its cameras and has fallen behind in processing citations.<sup>223</sup> Consequently, thousands of red-light runners caught on camera can escape their fines. “Florida law says both a traffic ticket, and a second ticket that will go out if the first is not paid, have to be processed within 60 days of a traffic violation. If both tickets aren’t processed, the initial fine is still sent. But it can never be enforced.”<sup>224</sup> Pembroke Pines will lose an expected \$200,000 in fines as a result, and other cities expect similar losses.<sup>225</sup>

Though often unsuccessful, numerous challenges in court to red-light camera citations and to the Act itself have convinced some local governments to suspend red-light camera programs, at least for the time being. Several cities in South Florida are contemplating or have recently decided to stop using red-light cameras; the village of Royal Palm Beach, for example, has indefinitely put off financial penalties from red-light cameras because police officers “concluded that more than 90 percent of the evidence sent for their review during a warning period did not deserve a \$125 sock in the wallet.”<sup>226</sup> Pembroke Pines leaders are furious about their financial losses and claim they will terminate or not renew their contract with the red-light camera company if it does not compensate them for all past and future costs sustained in the city’s red-light camera program.<sup>227</sup> Were red-light programs having the effect intended, it seems unlikely that local governments would give them up or consider giving them up so easily. Clearly, at least for these communities, any revenue generated or potential increase in traffic safety may not be large enough to justify the red-light camera programs.

Finally, as one scholar recently noted, “[t]he proliferation of public surveillance raises serious privacy concerns.”<sup>228</sup> Recently, red-light

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222. See *supra* text accompanying notes 75–79.

223. Ariel Barkhurst, *5,000 Broward and Palm Beach County Red-Light Camera Ticket Recipients Don’t Have to Pay*, S. FLA. SUN SENTINEL, Feb. 10, 2012, available at [http://articles.sun-sentinel.com/2012-02-10/news/fl-red-light-camera-ticket-delay-20120209\\_1\\_american-traffic-solutions-red-light-runners-red-light-camera](http://articles.sun-sentinel.com/2012-02-10/news/fl-red-light-camera-ticket-delay-20120209_1_american-traffic-solutions-red-light-runners-red-light-camera).

224. *Id.*; see FLA. STAT. § 316.0083 (2011).

225. Barkhurst, *supra* note 223 (“Based on the number of tickets that weren’t processed within the time limit, Pembroke Pines will lose about \$200,000. Margate will lose more than \$74,000, and Fort Lauderdale will lose about \$40,000. Sunrise will lose \$20,000. Boynton Beach will lose \$18,000.”).

226. Charles Elmore, *Royal Palm pulls back on fines from red-light cameras*, THE PALM BEACH POST (Feb. 9, 2010, 6:34 PM), available at <http://www.palmbeachpost.com/news/news/traffic/royal-palm-pulls-back-on-fines-from-red-light-came/nL4XH/>.

227. Barkhurst, *supra* note 223.

228. Timothy Zick, *Clouds, Cameras, and Computers: The First Amendment and Networked Public Places*, 59 FLA. L. REV. 1, 14–18 (2007) (discussing the development of

camera footage resulted in the arrests of two men for stealing over a dozen cows in Auburndale, Florida.<sup>229</sup> While few would argue that these men did not deserve to be caught, this story is a reminder that cameras are everywhere, watching everything that we do, and no violation of the law is certain to go unseen. But neither is any innocent, law-abiding behavior likely to escape notice as the presence of public surveillance technology increases. And in light of their questionable benefits, red-light cameras' intrusiveness rankles all the more, whether it rises to the level of a constitutional violation or not.

### CONCLUSION

Without joining either side, this Note acknowledges that there is a current and heated debate within Florida concerning the use of red-light cameras to issue traffic citations, as authorized by the Mark Wandall Traffic Safety Act. Strong arguments can be made both for and against this policy, but there are some who simply refuse to accept it. If they hope to end all use of red-light cameras in the state, however, they will need to acknowledge that judicial opinion is overwhelmingly against them, both in Florida and beyond. Instead of contesting the application of the statute and its effects on constitutional protections, opponents will need to focus more on the policy behind it. If the Act was intended to improve traffic safety, there is evidence that red-light cameras may have the opposite effect. If the Act was intended to generate revenue, it is falling short of its goals. It does not hurt to continue making constitutional arguments in court, particularly on privacy interest grounds, if only to discourage local governments from continuing to use red-light cameras in the face of legal controversy. Ultimately, however, these arguments need to be made on the floors of the Florida House and Senate if opponents of red-light cameras want them stopped once and for all.

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modern surveillance technology, including red-light cameras, and its effects on public expression, and concluding that because “[o]fficials will no longer be limited to policing expression that they happen to witness on the scene and in real time,” citizens may alter their expressive behavior in public).

229. Matthew Pleasant, *Two Arrested in Cattle Theft, Caught on Red-Light Camera Footage*, LEDGER, Feb. 1, 2012, <http://www.theledger.com/article/20120201/NEWS/120209965?p=1&tc=pg>. Commenting on the cattle-rustling arrests, Sheriff Grady Judd remarked: “Isn’t it interesting that one of the oldest theft schemes was stopped by one of the most modern tools?” *Id.*