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Wrong on Red: The Constitutional Case against Red-Light Cameras

Joel O. Christensen *

INTRODUCTION

Though the marriage of surveillance technology and law enforcement hardly is a new phenomenon, the twenty-first century has proven to be a brave new world in this realm. Through partnerships with MindCite,¹ police in Israel, Africa, and Southeast Asia² now expeditiously process public and private Internet communications for leads to potential inchoate criminal activity.³ Great Britain employs Automatic Number Plate Recognition (“ANPR”) technology,⁴ which allows police to capture digital images

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1. MindCite Home Page, <http://www.mindcite.com> (last visited Sept. 18, 2009). MindCite technology allows law enforcement personnel to “explore and unearth knowledge hidden in numerous diverse sources on the web in the sites and the blogs as well as in the organization in the various databases and turn their volumes of information into . . . Actionable Intelligence.” *Id.*

2. MindCite—Customers, <http://www.mindcite.com/customers> (last visited Sept. 18, 2009).

3. David Shamah, *The Next Best Thing to Jack*, JERUSALEM POST, Jan. 25, 2009, at 15. MindCite’s self-described “ontology-based platform,” Mindcite—About Us, <http://www.mindcite.com/about> (last visited Apr. 19, 2010), accumulates public and private communications from the Internet “to determine the hidden relationships between entities and cases.” Shamah, *supra*, at 15. Shamah describes MindCite technology as the real-world alternative to “24’s” Jack Bauer. *Id.*

4. Helen Wells, *The Techno-Fix Versus the Fair Cop: Procedural (In)Justice and Automated Speed Limit Enforcement*, 48 BRIT. J. CRIMINOLOGY 798, 799 (2008).

of passing vehicles' license plates and instantly verify compliance with registration and insurance requirements.⁵ In the United States, law enforcement departments increasingly have turned to a different form of surveillance technology: red-light cameras.⁶ Red-light cameras are affixed to traffic lights and are positioned to capture aerial photographs of offending vehicles as they pass through intersections.⁷ According to American Traffic Solutions, one of the nation's leading red-light camera providers, the license plate photographs "contain all the information needed to prosecute a red-light violation."⁸

At first blush, red-light cameras raise small-scale questions regarding the instrumentalities of traffic law, but closer inspection reveals that deeply substantive considerations underlie a municipality's decision to incorporate camera technology into its enforcement apparatus. Proponents of red-light cameras highlight their purported efficacy: red-light cameras are administratively convenient and arguably enhance safety,⁹ though the latter claim is far from universally accepted.¹⁰ Advocates claim that any incidental

5. *Id.*

6. *See generally* American Traffic Solutions Red-Light Camera Systems, <http://www.atsol.com/services-public-safety-red-light.html> (last visited Apr. 19, 2010).

7. *Id.* "The first image shows the vehicle with the front wheels behind the stop bar and the illuminated red light, and the second image shows the vehicle in the intersection with the rear wheels past the stop bar and an illuminated red light." *Id.* ATS cameras are not configured to capture images of drivers. *Id.* ATS's leading competitor, Reflex Traffic Systems, is the other company with whom American municipalities generally contract for red-light camera systems. Reflex boasts that it "has more contracts in more states than any other vendor." Reflex Traffic Systems—About Us, <http://www.reflex.com/html/usa/about> (last visited Apr. 19, 2010). For purposes of this Note, ATS technology and methodology is of greatest relevance, as Reflex services only five Missouri municipalities, whereas ATS services twenty-seven localities in the state. *Compare* Reflex Traffic Systems—North American Presence, <http://www.reflex.com/html/usa/index.php> (last visited Apr. 19, 2010), with American Traffic Solutions—ATS Contracts, <http://www.atsol.com/about-us-our-clients-contracts.html> (last visited Apr. 19, 2010).

8. American Traffic Solutions Red-Light Camera Systems, <http://www.atsol.com/services-public-safety-red-light.html> (last visited Apr. 19, 2010). Importantly, ATS cameras capture photographs only of the vehicle's license plate, not its driver. *Id.*

9. *See, e.g.*, Steven Tafoya Naumchik, *Stop! Photographic Enforcement of Red Lights*, 30 MCGEORGE L. REV. 833, 852 (1999) (maintaining, with regard to the safety benefits of red-light cameras in California, "positive statistical results . . . are undisputed.").

10. Numerous studies have indicated that, while red-light cameras reduce the incidence of certain accidents (i.e., frontal collisions), they increase rear-end collisions, sideswipes, and accidents involving vehicles turning left. *See, e.g.*, Del Quentin Wilber & Derek Willis, *D.C.*

legal implications of automated camera technology are part of life in the new millennium.¹¹ To red-light camera critics, however, the specter of Big Brother looms large.¹² In no other context have traditional, face-to-face enforcement methods been so thoroughly dispensed with in favor of automated technology. As one commentator noted, in municipalities with red-light cameras, “[t]he entire traffic enforcement process is almost untouched by human hands.”¹³ Despite growing resistance from scholars,¹⁴ politicians,¹⁵

Red-Light Cameras Fail to Reduce Accidents, WASH. POST, Oct. 4, 2005, at A1. Indeed, traffic-camera detractors argue zealously and persuasively that an overemphasis on the purported safety benefits of camera technology diverts attention from more pressing causes of roadway accidents. Holman W. Jenkins, Jr., *The War on Short Yellows*, WALL ST. J., Apr. 15, 2009, at A13. Jenkins notes:

Red-light running and speeding, the two main uses of traffic cameras, are implicated in fewer than 8% of accidents. A far more prevalent cause of nondrunken accidents is driver inattention—one study estimated, in a typical case the driver’s eyes are diverted from the road for a full three seconds or more, fidgeting with a cellphone, disciplining the kids in the back seat, snoozing, blotting up spilled coffee, etc.

Id.

11. See, e.g., Andrew W.J. Tarr, Recent Development, *Picture It: Red Light Cameras Abide by the Law of the Land*, 80 N.C. L. REV. 1879 (2002) (submitting that Charlotte, North Carolina’s “SafeLight” ordinance satisfies constitutional objections while augmenting roadway safety).

12. See, e.g., Bob Barr, *Are Police Wrong to Use Red-Light Cameras to Enforce Traffic Laws?*, INSIGHT ON THE NEWS, Sept. 10, 2001, at 40. Representative Barr frames the red-light camera issue as whether communities should “allow technology to trump the Bill of Rights by placing surveillance cameras on roadways and street corners to gather evidence to convict citizens in courts without the procedural safeguards heretofore available[.]” *Id.* He concludes that compelling “public-policy arguments against Big-Brother surveillance,” coupled with the lack of meaningful consideration given to less-intrusive alternatives, militates against the continued installation and operation of red-light cameras. *Id.* at 42.

13. Dorothy J. Glancy, *Privacy on the Open Road*, 30 OHIO N.U. L. REV. 295, 319 (2004).

14. Academics have raised manifold objections to the operation of red-light cameras in Missouri. Washington University School of Law Professor Peter Joy, for example, commented that the Arnold, Missouri, ordinance requires those issued automated red-light citations to “basically declare your innocence In essence, it compels you to finger your wife or child or someone else you loaned the car to.” Robert Patrick, *Suit Challenges Red-Light Cameras*, ST. LOUIS POST-DISPATCH, Feb. 27, 2008, at B1. Stephen Ryals, a local attorney and adjunct professor at Saint Louis University School of Law, describes citations generated from red-light cameras as “offensive to anyone who cares about the Constitution,” given their due process implications. Chad Garrison, *Red Alert: Everything They Really Don’t Want You to Know About Those Pesky Traffic-Light Cameras*, The Riverfront Times Online, Mar. 5, 2008, <http://www.riverfronttimes.com/2008-03-05/news/red-alert-st-louis-officials-really-don-t-want-you-to-know-too-much-about-those-pesky-traffic-light-cameras/>. Other local attorneys have decried the revenue stream generated by red-light cameras, alternatively describing them as “a great

and citizens' advocacy groups¹⁶ who are seeing red on account of red-light cameras, most courts have hesitated to award relief to plaintiffs challenging the cameras' legality.

This Note posits that red-light cameras dangerously reverse the presumption of innocence and deprive cited motorists of the fundamental right to confront their accusers. Cogent analysis of these weighty claims requires a narrowing of the field, both substantively and geographically. Though similar critiques may be mounted against other forms of automated enforcement technology,¹⁷ this Note focuses specifically on the constitutional implications of red-light cameras presently operating in Saint Louis, Missouri. Employing Saint Louis as an exemplar is useful in several ways. Unlike some communities throughout the region and nation, Saint Louis has not adopted other forms of automated traffic enforcement (e.g., photographic speed radar),¹⁸ rendering local law and commentary uniquely riveted on red-light cameras. Moreover, Saint Louis-area municipalities are the most active in Missouri—and among the most active in the nation—in adopting red-light camera ordinances.¹⁹ Though this Note views red-light cameras' legality through the lens of Missouri law, the analysis is capable of extrapolation to other states' red-light schemas to the extent that they parallel Missouri's system.

way to raise revenue for the city" and "part of [Saint Louis's] broader scheme to defraud plaintiffs . . . by collecting fines when they could never prove a violation." *Id.*

15. See Jo Mannies, *Lembke Takes on Red-Light Cameras, Also Continues Battle Against Lawyers*, ST. LOUIS POST-DISPATCH, Jan. 27, 2009, at D4 (quoting Missouri State Senator Jim Lembke's description of automated red-light enforcement systems as "an example of big government and 'Big Brother' at its worst.").

16. See *infra* note 71.

17. See, e.g., Kevin P. Shannon, Note, *Speeding towards [sic] Disaster: How Cleveland's Traffic Cameras Violate the Ohio Constitution*, 55 CLEV. ST. L. REV. 607, 611–13 (2007) (raising objections to automated speed cameras based on Ohio constitutional principles).

18. Insurance Institute for Highway Safety, *Communities Using Red Light and/or Speed Cameras as of September 2009*, http://www.iihs.org/research/topics/auto_enforce_cities.html (last visited Sept. 18, 2009) (revealing that no Saint Louis communities have turned to speed cameras to buffer their enforcement efforts).

19. *Id.*; POI Factory—Red Light & Speed Cameras, <http://www.poi-factory.com/poifiles/us/red-light-cameras> (last visited Feb. 24, 2010) (listing the "St. Louis Metro Area" as having the tenth-highest number of red-light cameras in the United States, trailing Los Angeles; Washington, D.C.; Chicago; New York City; Dallas; Phoenix; Baltimore; Houston; and San Francisco).

Part I.A reviews the historical origins and jurisprudential development of two due process claims upon which courts might invalidate red-light camera ordinances: the presumption of innocence and the right to confrontation. With this constitutional context in mind, Part I.B–D tracks the history of automated enforcement technology in the United States, including legal challenges to red-light cameras and their predecessors. Part II analyzes the due process implications of red-light cameras and proposes that Missouri courts should extend their own relevant precedents and adopt those of other state courts addressing red-light camera ordinances and related schemas. On due process principles, Missouri courts should refuse to enforce local ordinances authorizing the installation and operation of red-light cameras.

I. HISTORY

A. Due Process Foundations

As a fundamental precept of American law, all citizens are protected against deprivation of life, liberty, and property without due process of law²⁰—a principle that is deeply rooted in our legal culture.²¹ With phraseology mirroring that of Magna Carta,²² the Fifth Amendment’s due process protections were ratified by State legislatures for inclusion in the federal Constitution with relatively little controversy.²³ Reaffirming the over-arching importance of

20. U.S. CONST. amend. V (providing that “no person shall be . . . deprived of life, liberty, or property, without due process of law.”).

21. “[T]he existence of eight state bills of rights with constitutional status invigorated Anti-Federalist arguments that a bill of rights should be appended to the Constitution of 1787.” LEONARD W. LEVY, *ORIGINS OF THE BILL OF RIGHTS* 11 (1999).

22. Alfred H. Kelly, *Where Constitutional Liberty Came From*, in *FOUNDATIONS OF FREEDOM IN THE AMERICAN CONSTITUTION* 13, 46 (Alfred H. Kelly ed., 1958). Kelly notes that “[t]he provision in the Fifth Amendment that no person should be deprived of life, liberty, or property without due process of law was a variation of the ancient ‘law of the land’ phrase handed down through English and American charters from Magna Charta.” See also ALBERT H. PUTNEY, *UNITED STATES CONSTITUTIONAL HISTORY AND LAW* 371 (1908). Putney concludes that “[t]he provision that no person shall be deprived of life, liberty or property without due process of law, is . . . a reaffirmation of common law principles. The germ of this principle is found in the thirty-ninth chapter of the Magna Charta . . .” *Id.*

23. James Madison, then a member of the House of Representatives, “took the lead in coordinating the various state proposals and introducing a series of proposed amendments to the

protecting liberty against capricious deprivation,²⁴ the Reconstruction Congress expanded due process protections by including a matching clause, applicable to the States, in the Fourteenth Amendment.²⁵ Article I, section 10 of the Missouri Constitution echoes the command of the Fifth and Fourteenth Amendments by guaranteeing procedural fairness in Missouri proceedings.²⁶

Beyond the amorphous directives of the Fifth and Fourteenth Amendments and the Missouri Constitution, the precise dictates of due process are not spelled out in either Constitution's text.²⁷ Over time, federal courts have provided important insight on the ways in which due process is satisfied or offended in practice. The Supreme Court has reasoned that it is the province of the states to articulate and adhere to their own judicial processes, but such province ends where a given procedure "offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental."²⁸ Two principles that the Court has classified as fundamental under the umbrella of due process are the presumption of innocence²⁹ and the right to confront one's accuser.³⁰

Constitution based upon them." *Id.* at 44. Pursuant to Article V of the United States Constitution, Madison's proposal was ratified by Congress and submitted by President Washington to the State legislatures in the fall of 1789. *Id.* at 45. Buoyed by fear that, absent a Bill of Rights, the newly established government would abuse its power, the States acted quickly to ratify the proposed amendments. Within two years, the Bill of Rights was appended to the original Constitution. *Id.*

24. See *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974) (noting that "[t]he touchstone of due process is protection of the individual against arbitrary action of government.").

25. U.S. CONST. amend. XIV, § 1 ("No State shall . . . deprive any person of life, liberty, or property, without due process of law."). See also MICHAEL J. PERRY, *THE CONSTITUTION IN THE COURTS: LAW OR POLITICS?* 134 (1994) (stating that "[t]he presumption should surely be that the due process clause of the Fourteenth Amendment was meant to limit state prosecutorial/adjudicatory practices and procedures to the same extent the identically worded due process clause of the Fifth Amendment limits federal prosecutorial/adjudicatory practices and procedures.").

26. Article I, section 10 of the Missouri Constitution provides that "[n]o person shall be deprived of life, liberty, or property without due process of law." MO. CONST. art. I, § 10. Compare *id.* with U.S. CONST. amends. V and XIV, § 1.

27. See *Griffin v. Illinois*, 351 U.S. 12, 20–21 (1956) (Frankfurter, J., concurring) (noting that "[d]ue process' is, perhaps, the least frozen concept of our law—the least confined to history and the most absorptive of powerful social standards of a progressive society.").

28. *Speiser v. Randall*, 357 U.S. 513, 523 (1958).

29. *Tot v. United States*, 319 U.S. 463, 469 (1943) (concluding that a law would be impermissible were it to posit that "mere proof of the identity of the accused, should create a presumption of the existence of all the facts essential to guilt."); *McFarland v. Am. Sugar Ref.*

1. The Presumption of Innocence as a Feature of Due Process

Included among the bedrock guarantees of due process is the presumption of innocence favoring the accused.³¹ So fundamental is this presumption that the Supreme Court has described it as “the undoubted law, axiomatic and elementary”³² and “established beyond legislative contravention in the Due Process Clause.”³³ Steeped in Roman legal tradition,³⁴ the presumption of innocence applies to procedures governing traffic infractions just as it does to other classes of cases.³⁵ Though the presumption of innocence applies in judicial proceedings, legislatures are entitled to include statutory rebuttable presumptions to the opposite effect so long as such presumptions are not, in operation, conclusive.³⁶ The lawfulness of a rebuttable presumption is gauged according to the strength of the presumption’s

Co., 241 U.S. 79, 86 (1916) (holding that “it is not within the province of a legislature to declare an individual guilty or presumptively guilty of a crime.”).

30. *Pointer v. Texas*, 380 U.S. 400, 406 (1965) (holding that citizens accused of criminal wrongdoing in state courts are “entitled to be tried in accordance with the protection of the confrontation guarantee of the Sixth Amendment” and acknowledging that “that guarantee, like the right against compelled self-incrimination, is ‘to be enforced against the States under the Fourteenth Amendment according to the same standards that protect those personal rights against federal encroachment.’”).

31. *Estelle v. Williams*, 425 U.S. 501, 503 (1976) (warning that “courts must carefully guard against dilution of the principle that guilt is to be established by probative evidence and beyond a reasonable doubt”); Donald A. Gillies, Comment, *The Presumption of Innocence; Its Applicability to Prosecutions for Speeding Violations*, 47 J. CRIM. L. & CRIMINOLOGY 64, 64 (1956–57) (describing the presumption of innocence as “a keystone” in American law).

32. *Coffin v. United States*, 156 U.S. 432, 453 (1895). *Gideon v. Wainwright*, 372 U.S. 335 (1963), provides further support for this proposition. In describing why the constitutional promise of a right to counsel is applicable to the States, the *Gideon* Court reasoned that provisions of the Bill of Rights that are “fundamental and essential to a fair trial [are] made obligatory upon the States by the Fourteenth Amendment.” *Id.* at 342.

33. *United States v. Salerno*, 481 U.S. 739, 763 (1987) (Marshall, J., dissenting) (describing due process as the constitutional locus of “the invaluable guarantee afforded by the presumption of innocence”).

34. See *Coffin*, 156 U.S. at 454.

35. *City of Norfolk v. McFarland*, 145 F. Supp. 258, 260 (E.D. Va. 1956). See also *State v. Lloyd*, 63 S.E.2d 150, 150–51 (N.C. 1951), in which the Supreme Court of North Carolina reasoned that mere evidence of ownership was insufficient to prove that the owner was driving the vehicle at the time of a traffic violation. The highway patrolman’s failure to ascertain the identity of a speeding automobile “seem[ed] lacking,” and as such the court reversed the judgment below in favor of the State. *Id.*

36. See *Francis v. Franklin*, 471 U.S. 307, 333 (1985).

rationality,³⁷ with the caveat that “any fact presumed must, for due process, have a natural, not an unreasonable or an unnatural, connection with the facts proven.”³⁸ In the traffic enforcement context, numerous state courts have reasoned that mere evidence that one *owns* a vehicle is insufficient to support the presumption that that person was *driving* the vehicle at the time of an infraction.³⁹

2. The Right to Confrontation as a Feature of Due Process

The due process clauses of the Fifth and Fourteenth Amendments to the United States Constitution and Article I, section 10 of the Missouri Constitution are not the sole mechanisms through which the law promises procedural fairness. The Sixth Amendment’s confrontation clause grants an individual accused of criminal wrongdoing the right “to be confronted with the witnesses against him.”⁴⁰ The notion that one has a right to confront one’s accuser in a court of law was valued by the States even before the ratification of the Bill of Rights.⁴¹

As one manifestation of the procedural fairness carefully safeguarded by the Constitution, the right to confrontation long has

37. *Tot v. United States*, 319 U.S. 463, 467–68 (1943) (holding that “the due process clauses of the Fifth and Fourteenth Amendments set limits upon the power of Congress or that of a state legislature to make the proof of one fact . . . evidence of the existence of the ultimate fact on which guilt is predicated,” and that “where the inference is so strained as not to have a reasonable relation to the circumstances of life as we know them it is not competent for the legislature to create it as a rule governing the procedure of courts.”).

38. *People v. Hildebrandt*, 126 N.E.2d 377, 378 (N.Y. 1955).

39. *Id.* at 379. The Court of Appeals of New York commented that “it is going much too far to infer the driver’s identity from the fact of ownership. . . . [I]t is hardly a normal or ready inference or deduction that an automobile which speeds along a highway is being driven by its owner, and by no other person.” *Id.* See also *State v. Greenlick*, 152 P.3d 971, 973 (Or. Ct. App. 2007) (holding that Oregon’s criminal procedural assurance of a speedy trial applies to defendants cited for traffic infractions); *State v. Kuhlman*, 729 N.W.2d 577 (Minn. 2007) (invalidating Minnesota red-light camera ordinances as violative of state’s criminal procedural guarantee of presumption of innocence).

40. U.S. CONST. amend. VI.

41. Kelly, *supra* note 22, at 27. Traceable to the 1603 trial of Sir Walter Raleigh. Lindsay Hoopes, *The Right to a Fair Trial and the Confrontation Clause: Overruling Crawford to Rebalance the U.S. Criminal Justice Equilibrium*, 32 HASTINGS INT’L & COMP. L. REV. 305, 317–19 (2009) (noting that “[n]early every evaluation of the history and purpose of the Confrontation Clause starts with the infamous trial of Sir Walter Raleigh.”). See generally Allen D. Boyer, *The Trial of Sir Walter Raleigh [sic]: The Law of Treason, the Trial of Treason and the Origins of the Confrontation Clause*, 74 MISS. L.J. 869 (2005).

been recognized by the Supreme Court and constitutional scholars as an important element of due process.⁴² In 1965, the Court held that the due process clause of the Fourteenth Amendment incorporates the Sixth Amendment's confrontation clause and thereby requires States to afford the right to confrontation to citizens accused of criminal misconduct.⁴³ The Missouri Constitution includes a provision that mirrors the Sixth Amendment's confrontation clause.⁴⁴ Thus, Missouri defendants in federal and state tribunals alike enjoy the right to confrontation.

B. Early Automated Enforcement Technology

Law enforcement personnel for generations have complemented traditional enforcement of traffic laws with cutting-edge technology. Stealth traffic enforcement in the United States originated in Westchester County, New York, where in 1902 police began employing the "time-distance method" of speed measurement.⁴⁵ Trios of Westchester police officers concealed themselves in faux tree

42. Justice Douglas explicated the fundamental importance of the right to confrontation thusly: "confrontation and cross-examination under oath are essential, if the American ideal of due process is to remain a vital force in our public life." *Peters v. Hobby*, 349 U.S. 331, 351 (1955) (Douglas, J., concurring). *See also Kirby v. United States*, 174 U.S. 47, 55-56 (1899) (describing the right to confrontation of one's accuser as "essential for the due protection of life and liberty"). Professor Alfredo Garcia maintains that the right to confrontation is an indispensable element of a fair trial. ALFREDO GARCIA, *THE SIXTH AMENDMENT IN MODERN JURISPRUDENCE: A CRITICAL PERSPECTIVE* 71 (1992). Garcia contends that "the denial of effective confrontation, especially at trial, abridges significantly a defendant's rights under the Sixth Amendment and thereby casts doubt on the fairness of the proceeding." *Id.* Professor Peter Westen submits that the confrontation clause applies with particular fervor to witnesses who testify explicitly as to the defendant's guilt or innocence. Peter Westen, *Confrontation and Compulsory Process: A Unified Theory of Evidence for Criminal Cases*, 91 HARV. L. REV. 567, 572 (1978). According to Professor Westen, "the sixth amendment requires only that the defendant be allowed to confront those witnesses whose testimony is heard by the factfinder on the ultimate issue of guilt or innocence." *Id.*

43. *Pointer v. Texas*, 380 U.S. 400, 403 (holding "the Sixth Amendment's right of an accused to confront the witnesses against him is likewise a fundamental right and is made obligatory on the States by the Fourteenth Amendment.").

44. "[T]he accused shall have the right . . . to meet the witnesses against him face to face." MO. CONST. art. I, § 18(a). *Compare id.* with U.S. CONST. amend. VI.

45. *See Virginia Transportation Research Council, Final Report: Automated Speed Enforcement Pilot Project for the Capital Beltway: Feasibility of Photo-Radar* (1992), <http://ntl.bts.gov/DOCS/ase.html>.

trunks along well-traveled roadways:⁴⁶ the first two officers, positioned one mile apart from one another, used stop watches to chronicle the time at which the motorist passed each “trunk,” then telephoned that information to a third officer stationed further up the road, who apprehended speeding motorists.⁴⁷

In 1909, Massachusetts took the next step in covert traffic enforcement through its introduction of photo-speed recorders. These machines captured two images of passing locomotives—the latter image taken within seconds of the first.⁴⁸ Based on the size of the second image (i.e., the elapsed distance between the camera and the vehicle), reviewing officers discerned whether drivers had been speeding and issued citations accordingly.⁴⁹ The Commonwealth’s photo-speed recorders prompted the first American lawsuit challenging (unsuccessfully) the validity of technology-based traffic enforcement.⁵⁰

Technological innovation throughout the twentieth century induced additional developments in traffic law enforcement. By 1917, speedometers were commonplace, both in citizens’ automobiles and police patrol vehicles,⁵¹ and by the 1940s, nascent radar technology had arrived in the United States.⁵² In the 1950s, New York introduced “photo-traffic cameras”—advanced variants of Massachusetts’s photo-speed recorders capable of independent mathematical computation of an automobile’s speed.⁵³ Photo-traffic cameras were followed by modern photo-radar devices, which were first deployed stateside in Texas in 1986.⁵⁴ These sweeping field developments were met with myriad legal challenges.

46. *Id.*

47. *Id.*

48. 15 ENCYCLOPEDIA OF AUTOMOBILE LAW, *Admissibility of Evidence* § 185 (1931).

49. *Id.*

50. *Commonwealth v. Buxton*, 91 N.E. 128, 129 (Mass. 1910). The Supreme Judicial Court upheld the police’s use of photo-speed recorders against Buxton’s charge that they provided insufficient evidence and were inherently unreliable. *Id.*

51. EDWARD C. FISHER & ROBERT E. REEDER, *VEHICLE TRAFFIC LAW* 144 (1974).

52. See *Big Brother is Driving*, *TIME*, Nov. 23, 1953, at 28 (describing the mechanics of radar systems and referring to such systems as “the unseen traffic cop” whose invisibility is reminiscent of “the Thought Police in Orwell’s chiller”).

53. See *People v. Pett*, 178 N.Y.S.2d 550, 551 (N.Y. Crim. Ct. 1958) (describing the technical operation of the foto-patrol device).

54. Robin Miller, Annotation, *Automated Traffic Enforcement Systems*, 26 A.L.R.6th 179

In 1955, the Court of Appeals of New York entertained one such challenge in *People v. Hildebrandt*.⁵⁵ Hildebrandt, the owner of an automobile caught speeding via a photo-traffic camera, was issued a citation by Monroe County police two weeks after the date of his alleged infraction.⁵⁶ Hildebrandt maintained that the governing ordinance's rebuttable presumption—that an owner necessarily was operating his vehicle at the time of an infraction—was untenable legally.⁵⁷ The Court of Appeals agreed, reasoning that “it is hardly a normal or ready inference or deduction that an automobile which speeds along a highway is being driven by its owner, and by no other person.”⁵⁸

New York citizens were not alone in challenging technology's influence on traffic law; Missouri courts were called upon regularly throughout the twentieth century to resolve traffic law-based disputes. While recognizing radar as a scientifically reliable police tool beginning in 1959,⁵⁹ reviewing courts in Missouri consistently emphasized two caveats in reference to radar evidence: the radar device must be proven accurate at the time of the radar reading, and the proponent of the radar evidence bears the burden of proving such accuracy.⁶⁰ Missouri courts have characterized these caveats as duties borne by the state whose proof is necessary for a successful

(2007) (noting that La Marque and Friendswood, Texas, were the first American municipalities to use modern photo-radar equipment).

55. *People v. Hildebrandt*, 126 N.E.2d 377 (N.Y. 1955).

56. *Id.* Similar to the photo-speed recorder at issue in *Commonwealth v. Buxton*, 91 N.E. 128 (Mass. 1910), the device employed by the Monroe County police “[took] two photos, at a set time interval apart, of a moving vehicle. The distance traveled, by the car, in that interval, from a fixed point, was the basis for a mathematical computation of the rate of speed.” *Hildebrandt*, 126 N.E.2d at 378.

57. *Id.* at 378–79.

58. *Id.*

59. *State v. Graham*, 322 S.W.2d 188, 195 (Mo. Ct. App. 1959).

60. *See, e.g., State v. Calvert*, 682 S.W.2d 474, 477 (Mo. 1984). In applying these rules, Missouri courts repeatedly have found radar evidence inadmissible on account of the state's failure to prove—through officer testimony—that the radar unit had been checked for accuracy at the relevant time. *State v. Weatherwax*, 635 S.W.2d 34, 35–36 (Mo. Ct. App. W.D. 1982) (finding radar evidence inadmissible because state failed to prove that outside power lines and trooper's heater fan had not adversely affected the operation of trooper's radar unit); *City of St. Louis v. Martin*, 548 S.W.2d 622, 623 (Mo. Ct. App. 1977) (deeming radar evidence inadmissible where the proponent, a Saint Louis police officer, could not recall the last instance in which he had checked equipment's accuracy).

prosecution.⁶¹ Courts have explained that these caveats serve the important purpose of “protect[ing] the rights of motorists against the possibility of error,”⁶² at least in part because officers who test for radar accuracy on-site are able to distinguish correct from spurious readings.⁶³

C. Evolution of Red-Light Cameras

Photo-traffic cameras and radar devices proved to be the forerunners to yet another innovation in the field of traffic law enforcement: the red-light camera. Red-light cameras were introduced in Europe in the 1960s and 1970s.⁶⁴ By the early 1980s, their operation had expanded beyond European borders to intersections in disparate hemispheres and time zones, including Australia, Canada, and Israel, among others.⁶⁵ New York City became the first American municipality to operate automated stop-light enforcement systems when it launched a 1994 red-light camera initiative.⁶⁶ New York’s initiative proved to be the tip of the red-light camera iceberg. At present, legislatures in seventeen states either have enacted authorizing legislation explicitly permitting their

61. *City of Jackson v. Langford*, 648 S.W.2d 927, 929 (Mo. Ct. App. E.D. 1983) (noting that “the prosecution has a *prima facie* duty to establish that the radar unit was tested and found to be operating properly at the site of and reasonably close in time to the arrest.”).

62. *City of St. Louis v. Boecker*, 370 S.W.2d 731, 737 (Mo. Ct. App. 1963).

63. *Calvert*, 682 S.W.2d at 478.

64. See GEORGE E. FRANGOS, DEPARTMENT OF PUBLIC WORKS OF HOWARD COUNTY, MD, AUTOMATED ENFORCEMENT: 10-YEAR EVALUATION RED LIGHT RUNNING DETECTION: HOWARD COUNTY, MARYLAND 3 (2007), http://www.ite.org/meetcon/2007AM/Session_41_George%20Frangos.pdf (citing 1968 as Europe’s initial foray into red-light camera enforcement); Fridulv Sagberg, *Automatic Enforcement Technologies and Systems (European Comm’n Under the Transp. RTD Programme of the 4th Framework Programme*, Working Paper No. 7, 2000), http://virtual.vtt.fi/virtual/proj6/escape/escape_wp7.pdf (noting that Switzerland experimented with a red-light camera pilot program in the 1970s).

65. The Highway Safety Group, RLC: The Early Years 1930–1997, http://www.hwysafety.com/nma_rlc_timeline1.htm (last visited Apr. 19, 2010). In 1981, Australia installed red-light cameras for study purposes. *Id.* At present, more than twenty countries have incorporated red-light cameras as part of their traffic enforcement apparatuses. See Insurance Institute for Highway Safety, Q&As: Red Light Cameras, <http://www.iihs.org/research/qanda/rlr.html#cite23> (last visited Apr. 19, 2010). These countries include, among others, Austria, Belgium, Canada, Germany, Israel, the Netherlands, South Africa, and the United Kingdom. *Id.*

66. See Miller, *supra* note 54.

municipalities to implement red-light cameras or presently are contemplating such legislation.⁶⁷ While some legislatures are as yet undecided on the merits of statewide authorizing legislation, five states have expressly prohibited municipalities from enacting red-light camera ordinances.⁶⁸ Still other states have approved red-light camera programs in the past but have declined to renew the programs upon assessing their ineffectiveness.⁶⁹ Today, red-light cameras operate in more than four hundred American communities.⁷⁰

Despite many citizens' deep dissatisfaction with red-light cameras,⁷¹ municipalities continue to experiment with the

67. Insurance Institute for Highway Safety, Red Light Enforcement Camera Resources: Informational Briefs, Overview, http://www.iihs.org/laws/automated_enforcement.aspx (last visited Apr. 19, 2010).

68. *See id.* Nevada, for example, has prohibited the use of imaging equipment unless such equipment is hand-held by a police officer. *Id.* West Virginia disallows all forms of photographic law enforcement. *Id.*

69. *See, e.g.,* Rebecca Kimitch, *Cities Seeing Little Profit from Red Light Cameras*, WHITTIER DAILY NEWS, Oct. 25, 2008 (noting the El Monte City Council's decision to discontinue the city's red-light camera program on account of its general ineffectiveness). *See also* Barbara Langland-Orban et al., *Red Light Running Cameras: Would Crashes, Injuries and Automobile Insurance Rates Increase If They Are Used in Florida?*, 5 FLA. PUB. HEALTH REV. 1 (2008) (noting, *inter alia*, that "comprehensive studies conclude cameras actually increase crashes and injuries, providing a safety argument not to install them," and concluding, "the majority of the red light running safety issue can be resolved through inexpensive engineering remedies that address infractions in the first second after the light changes").

70. Insurance Institute for Highway Safety, Communities Using Red Light Cameras as of February 2010, http://www.iihs.org/research/topics/auto_enforce_list.html (last visited Apr. 19, 2010). Among the major American cities with fully operational red-light camera programs are: Atlanta, Chicago, Denver, Houston, Los Angeles, New York City, Philadelphia, San Diego, San Francisco, Seattle, and Washington, D.C. *Id.*

71. One frustrated group of citizens in Arnold, Missouri, has organized a political action committee under the moniker "Don't Tread on Me." The group's mission is to rid the city of red-light cameras. Christine Byers, *Arnold City Council Tables Discussion on Red Light Cameras*, ST. LOUIS POST-DISPATCH, Jan. 9, 2009, at B7. Despite the group's collection of nearly 1,000 signatures as a means of initiating a local referendum, the Arnold City Council tabled discussion of the issue for six months. *Id.* Don't Tread on Me is one among many groups of citizens embracing the ballot initiative process and other creative forms of civil disobedience as a means of communicating their dissatisfaction with red-light cameras. In response to the rapid expansion of red-light cameras in College Station, Texas, for example, aggravated citizen Jim Ash has endeavored to provide Garmin GPS updates to any interested motorist, apprising the driver any time he or she comes within 400 feet of a red-light camera. Civil Violation Home Page, <http://www.civilviolation.com> (last visited Sept. 18, 2009). *See also* Mark Toljagic, *World at Your Fingertips: You Don't Need a Pricey Car or On-Dash Unit to Own a GPS, Just a BlackBerry and a Plan*, TORONTO STAR, Feb. 7, 2009, at W23 ("The latest generation of GPS devices offers a mind-boggling array of information for the traveller, including live traffic warnings, gas station and bank locations, and identifying red-light cameras and radar traps").

technology.⁷² The prevalence of red-light cameras has prompted litigation in both state and federal courts. Litigants have sought relief from automated citations on a variety of legal theories,⁷³ including on due process grounds.⁷⁴ Generally, federal courts have avoided detailed consideration of the constitutional implications of red-light cameras, relying instead on narrow procedural grounds as the bases of their decisions.⁷⁵ State courts have shown a greater willingness to decide red-light camera cases on the merits but have split on their legality.⁷⁶ A recent decision from Minnesota exemplifies one side of this split.

Frustrated citizens elsewhere have resorted to such self-help measures as destroying red-light cameras with pick axes and blocking lenses' views with inflatable Santa Clauses. William M. Bulkeley, *Get the Feeling You're Being Watched? If You're Driving, You Just Might Be*, WALL ST. J., Mar. 27, 2009, at A1.

72. Julie Ann Grimm, *Red-Light Camera Deal Advances*, SANTA FE NEW MEXICAN, Jan. 21, 2009, at C1 (describing Santa Fe, New Mexico's, preparations for first automated traffic enforcement system); Lynn Horsley, *Red Light Cameras in KC Are Expected Next Year*, THE KANSAS CITY STAR, Dec. 2, 2008, at B2 (chronicling Kansas City, Missouri's, exploration and pending installation of red-light camera system).

73. Bradley Olson, *Critics Claim HPD Tried to Skew Red-Light Study*, HOU. CHRON, Jan. 29, 2009, at B1 (describing open records lawsuit filed against city of Houston, Texas, in which plaintiffs allege that the Houston Police Department purposefully skewed red-light camera data in order to encourage the city to retain the cameras).

74. *City of Duluth v. Morgan*, 651 S.E.2d 475, 476 (Ga. Ct. App. 2007); *Agomo v. Fenty*, 916 A.2d 181, 183 (D.C. 2007); *Shavitz v. City of High Point*, 270 F. Supp. 2d 702, 707 (M.D. N.C. 2003).

75. *Williams v. Redflex Traffic Systems, Inc.*, No. 3:06-CV-400, 2008 WL 782540, at *2 n.1 (E.D. Tenn. Mar. 20, 2008) (granting defendants' motions for summary judgment, given plaintiffs' lack of standing); *Holst v. City of Portland*, 152 Fed. Appx. 588 (9th Cir. 2005) (affirming District Court's conclusion that motorist alleging 42 U.S.C. § 1983 injury stemming from red-light camera citation failed to state a claim upon which relief could be granted); *Shavitz*, 270 F. Supp. 2d at 710 (finding, *inter alia*, that plaintiff challenging red-light camera schema lacked standing to litigate the claim); *Dajani v. Governor of Md.*, No. CCB-00-713, 2001 U.S. Dist. LEXIS 982 (D. Md. Jan. 24, 2001) (declining to review Maryland state courts' decisions on Sixth and Fourteenth Amendment questions for lack of federal jurisdiction). *But see* *Idris v. City of Chicago*, 552 F.3d 564, 566 (7th Cir. 2009). The Seventh Circuit disposed on the merits a challenge to Chicago's red-light camera ordinance by holding, in reference to the ordinance's \$90 citation fee, that "the Supreme Court has never held that a property interest so modest is a fundamental right." *Id.* at 566. Nonetheless, the Seventh Circuit acknowledged that State law might provide solace for aggrieved plaintiffs. *Id.* at 3.

76. *Compare* *City of Davenport v. Seymour*, 755 N.W.2d 533, 536 (Iowa 2008) (holding that Davenport's automated traffic enforcement ordinance is valid under Iowa law), *and* *State v. Dahl*, 87 P.3d 650 (Or. 2004) (upholding Oregon municipality's red-light camera ordinance, including civil statutory presumption that registered owners are drivers of vehicles at any given time), *with* *People v. Fischetti*, 89 Cal. Rptr. 3d 186 (Cal. App. Dep't Super. Ct. Dec. 18, 2008) (invalidating citations issued via automated red-light enforcement system on the grounds that

In 2007, the Minnesota Supreme Court broke jurisprudential ground when, in *State v. Kuhlman*,⁷⁷ it invalidated Minneapolis's red-light camera ordinance. Responding to his receipt of an automated citation, Kuhlman, a Minneapolis resident, raised a facial challenge to the authorizing ordinance, arguing that it conflicted with state law on traffic regulation and violated his due process rights.⁷⁸ Regarding the preemption claim, the court agreed that the local ordinance conflicted with state law.⁷⁹ On the due process question, the court held that Minnesota's rules of criminal procedure "specifically apply to petty misdemeanors. And those rules require that a defendant be 'presumed innocent until proven guilty beyond a reasonable doubt.'"⁸⁰ The court concluded that red-light cameras deprive motorists of this presumption, effectively forcing vehicle owners to work backward from the presumption of guilt.⁸¹ In light of its constitutional deficiencies, the Minneapolis ordinance was deemed invalid.⁸²

D. Red-Light Cameras in Saint Louis

Missouri has no statewide legislation authorizing or prohibiting municipal operation of red-light cameras.⁸³ Indeed, Missouri's statutory schema is silent as to red-light cameras.⁸⁴ The twenty-six Saint Louis-area communities with red-light cameras each have authorized their operation *sua sponte*.⁸⁵ Reviewing the constitutional

such citations failed to comply with statutory warning period), *and State v. Kuhlman*, 729 N.W.2d 577 (Minn. 2007) (holding that Minneapolis's automated photo-enforcement ordinance violates Minnesota law).

77. *Kuhlman*, 729 N.W.2d at 578 (Minn. 2007).

78. *Id.* at 578–79.

79. *Id.* at 583. The court noted that "taking the state's argument to its logical conclusion, a city could extend liability to owners for any number of traffic offenses as to which the Act places liability only on drivers." *Id.* This effectively allows municipalities to supersede the dictates of state law. *Id.*

80. *Id.* at 584.

81. *Id.*

82. *Id.*

83. See Insurance Institute for Highway Safety, *supra* note 67.

84. See MO. REV. STAT. § 304.001 (2008) (defining terms of art used in Chapter 304 such as "Traffic Regulations," but not indicating whether red-light cameras are contemplated as "traffic-control devices").

85. Saint Louis area communities with red-light camera ordinances include Arnold, Brentwood, Creve Coeur, Florissant, Hazelwood, Saint Charles, Saint Louis County,

principles and statutory commands to which Missouri red-light camera ordinances must conform illuminates the broader legal context within which they operate. As part of their inherent police powers, state and local governments retain the province to regulate public roadways,⁸⁶ but such province is not limitless. Just as federal law supersedes conflicting state and local laws,⁸⁷ a Missouri municipality's dominion exists only to the extent that its ordinances cohere with federal and state constitutional and statutory law.⁸⁸ Preemption principles apply with equal force to traffic ordinances as they do to other incidents of local law. Missouri courts have acknowledged, for example, that “the City of St. Louis does have the right to regulate and control by ordinance the use of its streets. But such ordinances must not be in conflict with the general laws of the state.”⁸⁹

Washington, and Wentzville. Insurance Institute for Highway Safety, *supra* note 70.

86. *Bibb v. Navajo Freight Lines, Inc.*, 359 U.S. 520, 523 (1959) (recognizing that “[t]he power of the State to regulate the use of its highways is broad and pervasive.”).

87. U.S. CONST. art. VI, cl. 2. The supremacy clause commands that “[t]his Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby . . .” *Id.* See also Paul Diller, *Intrastate Preemption*, 87 B.U. L. REV. 1113, 1114 (2007) (acknowledging that “city ordinances, like state laws, are subject to federal preemption . . .”).

88. MO. CONST. art. VI, § 19(a). The Missouri Constitution commands that local governments may exercise municipal authority “provided such powers are consistent with the constitution of this state and are not limited or denied . . . by statute.” *Id.* Missouri courts have acknowledged that local governments:

. . . may enact regulations that supplement or enlarge upon provisions of a state statute by requiring more than what is required in the statute. However, when the expressed or implied provisions of the local regulation and the state statute are inconsistent and irreconcilable conflict, then the local regulation is void.

St. Charles County Ambulance Dist. v. Town of Dardenne Prairie, 39 S.W.3d 67, 69 (Mo. Ct. App. E.D. 2001).

89. *City of St. Louis v. Stenson*, 333 S.W.2d 529, 536 (Mo. Ct. App. 1960). The Court of Criminal Correction below found a truck driver guilty under a Saint Louis ordinance stipulating the maximum length of commercial trucks and accordingly assessed a twenty-five dollar fine against the driver. *Id.* at 530–31. The Court of Appeals reversed, finding that the ordinance at issue was preempted by Missouri statutory law. *Id.* at 533–34 (“The ordinance just mentioned is in direct conflict with the acts of the Legislature mentioned, and is repealed by necessary implication.”).

1. Missouri's Statutory Framework for Traffic Regulation

By statute, Missouri grants local governments broad regulatory authority over traffic matters, subject to compliance with general statutory directives.⁹⁰ In reference to red-light violations, Missouri law requires drivers to completely stop at red lights and to remain stopped until an indication to proceed is shown.⁹¹ Missouri categorizes red-light violations as class C misdemeanors.⁹² Misdemeanors of all classes are governed by the Missouri Rules of Criminal Procedure,⁹³ under which citizens are afforded the full complement of procedural protections available in Missouri's criminal tribunals.⁹⁴

2. History and Content of Saint Louis Red-Light Camera Ordinances

Municipalities in the greater Saint Louis area have installed red-light cameras at a particularly high frequency.⁹⁵ Arnold, a southwest suburb of Saint Louis, was the first area municipality to install and operate red-light cameras, beginning in 2005.⁹⁶ Arnold's ordinance,

90. See generally MO. REV. STAT. § 304.010 (2008).

91. MO. REV. STAT. § 304.281.1(3)(a) (2000). See also *Newell v. Peters*, 406 S.W.2d 814, 818 (Mo. Ct. App. 1966), in which the Court of Appeals noted that “[t]he steady red light is not merely a warning, advising the motorist to be watchful and ever on the alert; it addresses itself to him in compelling language. Its command to him is imperious: ‘Do not proceed!’”

92. MO. REV. STAT. § 304.361 (2000) (“Any person who violates any of the provisions of sections 304.271 to 304.351 is guilty of a misdemeanor and shall be punished by a fine of not less than five dollars nor more than five hundred dollars *or by imprisonment in the county jail not exceeding one year or by both such fine and imprisonment.*”) (emphasis added). See also MO. REV. STAT. § 304.351 (2008). Each section of Chapter 304 pertaining to traffic signals provides that violation thereof is a class C misdemeanor. *Id.* § 304.

93. MO. REV. STAT. § 543.220.1 (2000). “All proceedings upon the trial of misdemeanors and infractions before associate circuit judges shall be governed by the practice in criminal cases before circuit judges . . .” *Id.*

94. MO. R. CRIM. P. 19.01, entitled “Misdemeanors or Felonies Rules When Applicable,” states that “[r]ules 19 to 36, inclusive, govern the procedure in all courts of this state having jurisdiction of criminal proceedings.” See also *State ex rel. Sanders v. Sauer*, 183 S.W.3d 238, 243 (Mo. 2006) (White, J., dissenting). Judge White, harkening to *Osborne v. Ohio*, 495 U.S. 103, 123 (1990), noted that a Missouri citizen charged with a misdemeanor enjoyed the full complement of criminal procedural protections. *Id.*

95. See *infra* note 104.

96. Lynn Horsley, *Caught Red Handed? Although Red-Light Cameras Haven't Gotten an OK in Kansas, Some Missouri Cities Are Installing Them*, THE KANSAS CITY STAR, Apr. 1,

after which other local governments have modeled their own red-light camera laws, provides that “[a] rebuttable presumption exists that the owner of a motor vehicle operated or used in violation of this division was the driver of the vehicle at the time and place the violation was captured by a recorded image.”⁹⁷ At present, over one hundred red-light cameras are operating in the Saint Louis metropolitan area.⁹⁸ The burgeoning incidence of camera-issued tickets has drawn the ire of many Saint Louis motorists,⁹⁹ but government officials generally have been non-responsive to their complaints.¹⁰⁰ Nonetheless, the influx of red-light ordinances has not garnered universal approval, even among lawmakers.

In 2006, when Missouri communities’ experimentation with red-light cameras was in its infancy, Missouri State Senator Jason

2006, at A1 (describing Arnold’s October 2005 introduction of red-light cameras and the looming prospect of Kansas City-area cities following suit). *See also* ARNOLD, MO., CODE § 23–183 (2006). The ordinance provides:

(a) If the city proves: (1) That a motor vehicle was being operated or used; (2) That the operation or use of the motor vehicle was in violation of section 23-173; and (3) That the defendant is the owner of the motor vehicle, then: (b) A rebuttable presumption exists that the owner of a motor vehicle operated or used in violation of this division was the driver of the vehicle at the time and place the violation was captured by a recorded image.

Id.

97. ARNOLD, MO., CODE § 23–183 (2006).

98. See PhotoEnforced.com, <http://www.photoenforced.com/us.html> (last visited Apr. 19, 2010), which provides locations of automated enforcement systems by type (e.g., automated radar, red-light camera) state, and locality.

99. One group, Missourians Against Red Light Cameras, has initiated a grassroots campaign specifically focused on ridding “the City of St. Louis—and eventually the entire state—of the monumental violation of our civil liberties that is the red light camera scheme.” *See* Missourians Against Red Light Cameras Facebook Group (local citizens’ advocacy group home page), <http://www.facebook.com/group.php?gid=63319253360> (last visited Apr. 19, 2010).

100. Jake Wagman, *City’s Red-Light Cameras Lacked Signs for Months*, ST. LOUIS POST-DISPATCH, July 19, 2009, at A14. Wagman notes:

... for months [after installation of red-light cameras], St. Louis officials did not follow the city’s own laws regarding proper notice for the traffic cameras. . . . In February, city aldermen approved a bill requiring a warning sign at every traffic light with a red-light camera. The proposal was signed into law shortly afterward by Mayor Francis Slay. City officials, however, did not follow through. The warnings were never posted. The Street Department did not even begin to create the signs until asked recently about their absence by the Post-Dispatch.

Id.

Crowell sponsored a bill that would have invalidated existing red-light camera ordinances and precluded future authorization.¹⁰¹ Though his endeavor was unsuccessful, Senator Crowell is not alone in his belief that red-light cameras are legally problematic. In his former capacity as the state's Attorney General, Missouri Governor Jay Nixon publicly opined that the photographic evidence produced by red-light cameras is inadmissible in court.¹⁰² On January 20, 2009, Missouri State Senator Jim Lembke introduced a bill that would revive Senator Crowell's proposal by amending the Missouri code to prohibit the use of automated red-light enforcement systems.¹⁰³ Public officials like Governor Nixon and Senators Crowell and Lembke have remained in the political minority, as area municipalities have continued to warm to the idea of red-light cameras.¹⁰⁴ As yet, Missouri courts have avoided ruling on the merits of a case challenging a red-light camera ordinance.¹⁰⁵ A 2009

101. See Jake Wagman, *Lights, Camera, Traffic Ticket*, ST. LOUIS POST-DISPATCH, Nov. 26, 2006, at A1 (describing Senator Crowell's proposed bill and citing the Senator's belief that motorists "should be ticketed for the way they drive, not what they own").

102. See Shane Graber, *Nixon Questions Use of Traffic Photographs*, ST. LOUIS POST-DISPATCH, Aug. 9, 2005, at B1. Then-Attorney General Nixon expressed skepticism whether "taking someone's picture rolling through a stop light is adequate evidence in and of itself to uphold a state traffic law." *Id.* He noted that "[a] picture may be worth a thousand words, but a picture in and of itself is not a conviction." *Id.*

103. See S.B. 211, 95th Gen. Assem., 1st Reg. Sess. (Mo. 2009), <http://www.senate.mo.gov/09info/pdf-bill/intro/SB211.pdf>. Saint Louis Board of Aldermen President Lewis Reed has joined Senator Lembke in calling for greater regulation of Missouri red-light cameras. The same week that Senator Lembke introduced his prohibitory legislation, President Reed submitted a local proposal that would require Saint Louis intersections with automated red-light enforcement systems to provide "conspicuous postings" that the intersection is camera-monitored. Jake Wagman, *Reed Wants Advanced Warning on Red-Light Traffic Cameras*, ST. LOUIS POST-DISPATCH, Jan. 28, 2009.

104. See Insurance Institute for Highway Safety, *supra* note 70. In addition to Arnold, Saint Louis-area municipalities Bel-Nor, Bellerive Acres, Beverly Hills, Brentwood, Bridgeton, Calverton Park, Clayton, Country Club Hills, Creve Coeur, Dellwood, Edmundson, Ellisville, Florissant, Hazelwood, Moline Acres, Northwoods, Oak Grove, Richmond Heights, Saint Ann, Saint Charles, Saint John, Saint Louis City, Sugar Creek, and Webster Groves have installed red-light camera systems. See Ray Hartmann, *Bad Photo Op*, ST. LOUIS MAG., May 2009, at 66, 68.

105. A Westlaw search of "red light camera" in the "MO-CS" database, which contains decisions from the Missouri Supreme Court since 1821 and decisions from the Missouri Courts of Appeals since 1876, yielded zero results. Westlaw, <http://www.westlaw.com> (last visited Sept. 18, 2009).

challenge to Arnold's red-light camera ordinance in federal district court was dismissed on procedural grounds.¹⁰⁶

II. ANALYSIS AND PROPOSAL

A. Analysis

Unlike comparable laws in other states,¹⁰⁷ Missouri municipalities' red-light camera ordinances have received neither official endorsement nor official rejection from state lawmakers.¹⁰⁸ Without legislative or judicial guidance as to whether red-light cameras are lawful, the legality of municipalities' authorizing ordinances remains an open question. Given the state's status both as a relative newcomer to the field and as a judicial clean slate, Missouri courts are well-positioned to review red-light cameras with a fresh perspective. This perspective should be informed by three considerations: the role of state law in preempting local ordinances; the presumption that one is innocent until otherwise proven; and the right to confrontation.

1. Missouri Statutory Law Preempts Red-Light Camera Ordinances

It is an unassailable principle that local ordinances may not contravene state statutory provisions addressing the same subject.¹⁰⁹ It follows that Missouri municipalities seeking to enforce red-light camera ordinances must ensure that such ordinances cohere with the state's existing regulation of traffic laws. In Missouri, such regulations include by incorporation criminal procedural safeguards. Though class C misdemeanors generally are considered minimal infractions, the Missouri legislature has dictated that all

106. *Hoekstra v. City of Arnold*, No. 4:08CV0267, 2009 WL 259857 (E.D. Mo. Feb. 3, 2009).

107. *Supra* notes 67–68 and accompanying text.

108. See MO. REV. STAT. § 304.001 (describing Missouri statutory silence regarding red-light cameras). *See also supra* note 105 (demonstrating that Missouri courts have yet to entertain a suit on the merits of red-light cameras).

109. *Supra* note 88 and accompanying text.

misdemeanors are treated as criminal for procedural purposes.¹¹⁰ Mirroring the nexus between local ordinances and superseding state law, state rules of criminal procedure must be consistent with federal criminal procedural safeguards, lest they be preempted.¹¹¹ By syllogism, valid municipal ordinances in Missouri may not impinge federal criminal procedural safeguards, including the presumption of innocence and the right to confrontation.

2. Red-Light Cameras Reverse the Presumption of Innocence

The majority of red-light cameras operating in Saint Louis intentionally are positioned to photograph an offending vehicle's rear license plate—not the offending vehicle's driver.¹¹² The ensuing digital evidence constitutes the entirety of the state's case against ticketed vehicle owners.¹¹³ Compounding this mechanical concern, Saint Louis-area camera ordinances explicitly presume that ownership of a vehicle is conflatable with driving the vehicle at a given time.¹¹⁴ Though rebuttable in name, this presumption is conclusive in practice. Vehicle owners are forced to reconstruct history and disprove the preordained conclusion that they are guilty of the cited offense. In other words, upon mere issuance of an automated red-light citation, the state's burden to prove beyond a reasonable doubt the driver's culpability is extinguished. With red-light camera citations, the burden shifts to the driver to prove that he is *not* guilty of the offense.¹¹⁵

Shell games of this sort flagrantly contravene due process and are constitutionally untenable. Rebuttable presumptions have a place in

110. *Supra* notes 92–94 and accompanying text.

111. See *Williams v. Redflex Traffic Systems, Inc.*, No. 3:06-cv-400, 2008 WL 782540 (E.D. Tenn. Mar. 20, 2008). The court noted that, “[i]f the penalty is indeed criminal, then a panoply of federal constitutional rights, including rights to confrontation and rights against self-incrimination, arise.” *Id.* at 4.

112. *Supra* note 8.

113. *Id.*

114. *Supra* notes 96–97 and accompanying text.

115. To borrow from a familiar refrain in individual rights jurisprudence, one might characterize the “rebuttable” presumption in red-light camera ordinances as “rebuttable in theory, conclusive in fact.” See *Fullilove v. Klutznick*, 448 U.S. 448, 519 (1980) (Marshall, J., concurring) (quoting the conventional wisdom that strict scrutiny review is “strict in theory, but fatal in fact.”).

criminal law, but such presumptions in red-light camera ordinances exceed their proper scope. As the Minnesota Supreme Court aptly noted in *Kuhlman*, “in any prosecution under the [Minneapolis ordinance], the state has the burden to prove beyond a reasonable doubt that the owner was driving at the time of the red-light offense, and the owner has no obligation to prove anything.”¹¹⁶ Missouri law, like that of Minnesota, mandates that individuals accused of traffic offenses be afforded criminal due process protections, including the presumption of innocence.¹¹⁷ Red-light camera ordinances cannot, consistently with federal and state constitutional law, presume vehicle owners’ guilt.

The state’s interest in enforcing traffic laws should be to punish and deter individual wrongdoing.¹¹⁸ Red-light camera ordinances punish indeed, but there is no assurance that such punishment accrues to the guilty party, nor is there conclusive proof that red-light cameras in fact enhance community safety.¹¹⁹ As the New York Court of Appeals eloquently noted in *Hildebrandt*, automated enforcement technology “may be efficient and scientifically trustworthy, its use may make pursuit and immediate arrest inconvenient or unnecessary, and highway safety may be promoted by eliminating such pursuits. But it takes more than necessity to validate a presumption in a criminal case.”¹²⁰

3. Red-Light Cameras Deprive Motorists of the Right to Confrontation

Among the principal virtues of red-light cameras, from the perspective of law enforcement personnel, is the administrative facility with which the cameras operate. Be that as it may, due process commands that individuals accused of criminal wrongdoing have the right to confront their accusers. This is problematic when the accuser is a camera, whose digital testimony is the sole evidentiary

116. *State v. Kuhlman*, 729 N.W.2d 577, 584 (Minn. 2007). *See also supra* notes 77–81 and accompanying text.

117. *Supra* notes 110–11 and accompanying text.

118. *See generally* *People v. Hildebrandt*, 126 N.E.2d 377 (N.Y. 1955).

119. *Id.*

120. *Hildebrandt*, 126 N.E.2d at 379.

basis of a red-light prosecution.¹²¹ Decades before red-light cameras infiltrated the United States, the New York Court of Appeals identified a peculiar externality of automated enforcement technology. The *Hildebrandt* court noted that “speeders are usually pursued and arrested after pursuit, whereas this identity question arises because of the use of a photographic speed recorded, *without pursuit or arrest*.”¹²²

Missouri courts need look no further than their own jurisprudence to find a longstanding reverence for personal interaction between the accused motorist and the arresting law enforcement officer. Missouri courts long have held that radar devices must be proven accurate at the time of the radar reading, and the proponent of the radar evidence bears the burden of proving such accuracy.¹²³ This logic should apply with equal force to contemporary forms of automated technology.

B. Proposal

Faithfulness to foundational constitutional promises militates against continued enforcement of red-light camera ordinances. Courts reviewing legal challenges to automated citations are well served to review both the red-light camera precedents established by other state courts and Missouri courts’ disposition of analogous cases involving radar detectors and other forms of automated enforcement technology. Such precedents provide an analytical template for processing red-light ordinances consistent with constitutional principle. Missouri courts need not blaze new trails; on principles of due process, preemption, and *stare decisis*, Missouri courts can and should conclude that red-light cameras do not satisfy constitutional scrutiny. Extending their own jurisprudence in analogous cases and

121. See Valerie Alvord, *Motorists Race to Court to Challenge Red-Light Cameras*, USA TODAY, July 6, 2001, at 3A.

122. *Hildebrandt*, 126 N.E.2d at 379 (emphasis added). Likewise, other state courts have recognized the importance of on-site monitoring to ensure the accuracy and fairness of citation-issuance. See, e.g., *State v. Lloyd*, 63 S.E.2d 150, 150–51 (N.C. 1951) (reversing reckless driving conviction in light of police officers’ failure to visually ascertain the identity of the driver of vehicle registered to defendant vehicle-owner).

123. *Supra* note 60 and accompanying text.

following the emerging precedents from other jurisdictions, Missouri courts should refuse to enforce red-light camera ordinances.

CONCLUSION

Municipalities' burgeoning reliance on red-light camera technology in lieu of traditional patrolling elicits practical and legal questions worthy of careful scrutiny. Absent legislative or judicial intervention, red-light cameras' continued presence seems assured. Automated enforcement of this sort raises significant constitutional red flags; red-light cameras' validity is questionable under both general constitutional principles and the expanding jurisprudential frameworks established by state courts assessing similar schemas. Red-light cameras unduly impede constitutional liberty by depriving motorists of their Fifth Amendment presumption of innocence and Sixth Amendment right to confrontation, and as such should not enjoy protection from Missouri courts.