IN THE CHANCERY COURT FOR KNOX COUNTY, TENNESSEE

AMERICAN TRAFFIC SOLUTIONS, INC.,

Plaintiff,

v. No. 181657-3

CONSOLIDATED
THE CITY OF KNOXVILLE, TENNESSEE, ET AL.,

Defendants,

REDFLEX TRAFFIC SYSTEMS, INC.

Plaintiff,

v. No. 181694-1

TOWN OF FARRAGUT, TENNESSEE, ET AL.,

Defendants.

MEMORANDUM OPINION AND ORDER

Pending before this Court are competing Motions for Summary Judgment respecting the issue in this cause, to wit: the applicability and/or constitutionality of Public Chapter 425 of the Acts of 2011, specifically the provisions therein which affect the use of automated traffic enforcement cameras to enforce state laws and municipal ordinances regulating right turns at controlled intersections. Because this Court finds that there are no material facts at issue, this case is appropriate for a summary resolution.

The History

Defendant City of Knoxville began its experiment with the use of automated traffic enforcement cameras by the enactment of Ordinance O-36-05 in February, 2005. ATS' Motion for Summary Judgment, Exhibit 2(A). This Ordinance provided for the use of automated traffic enforcement cameras to enforce certain traffic laws within the City, including the procedures by which such automated camera evidence could be used to issue and prove citations. The City's Ordinance was challenged in the case City of Knoxville v. Brown. Our Court of Appeals upheld the City Ordinance in a decision styled City of Knoxville v. Brown, 284 S.W.3d 330 (Tenn. App. 2008, *cert denied*, 2009).

Contemporaneously with the litigation in Brown, the Tennessee Legislature enacted Public Chapter 962 of the Acts of 2008 (codified as TCA §55-8-198), a

bill which authorized the use and procedures for use of automated traffic enforcement cameras. This Chapter took effect July 1, 2008.

Subsequently, the City of Knoxville entered into a contract with Lasercraft, Inc., to provide automated traffic enforcement cameras for the City's traffic control program. Lasercraft, Inc., was later acquired by American Traffic Solutions, Inc., (hereafter "ATS"). This contract was executed on February 2, 2009. The contract has an original five (5) year term, with options for renewal.

In May of 2009, the Town of Farragut entered into a similar agreement with Plaintiff Redflex Traffic Systems, Inc., (hereafter "Redflex") to provide automated traffic enforcement cameras for the Town of Farragut. This contract also provided for an initial five (5) year term with options to renew.

In 2011, the Legislature enacted Public Chapter 425 of the Acts of 2011. This Chapter amends TCA §55-8-198 in several significant respects. Germaine to these proceedings is Section 1, which amends TCA §55-8-198 by adding a new Subsection (i). This new subsection provides as follows:

> (i) A traffic enforcement camera system may be used to issue a traffic citation for an unlawful right turn on a red signal at an intersection that is clearly marked by a "No Turn on Red" sign erected by the responsible municipal or county government in the interest of traffic safety in accordance with §55-8-110 (a)(3)(A). **Any other traffic citation for failure to make a complete stop at a red signal before making a permitted right turn as provided by §55-8-110(a)(3)(A) that is based solely upon evidence obtained from an unmanned traffic enforcement camera shall be deemed invalid.(**Emphasis added.)

The Plaintiffs contend that this provision is inapplicable to their current contracts with the City of Knoxville and the Town of Farragut, relying primarily upon citations to the legislative history of the Act. In the alternative, they argue that the application of this section of Public Chapter 425 unconstitutionally impairs their contracts with their respective government partners in violation of Tennessee Constitution Article I, Section 20. Additionally, it is urged that the Act violates the Separation of Powers doctrine and equal protection.

I. CHAPTER 425 IS NEITHER VAGUE NOR AMBIGUOUS, AND IT IS BEYOND THE AUTHORITY OF THIS COURT TO MAKE SUBSTANTIVE CHANGES TO THE LEGISLATION BASED ON SELECTED STATEMENTS IN THE LEGISLATIVE HISTORY

The Plaintiffs urge upon the Court a finding that, although Public Chapter 425 is silent with regard to its effect upon currently existing contracts for the provision of automated traffic control cameras, a reading of the legislative history would indicate that the legislature did not intend for the Chapter to affect such pre-existing contracts. This Court concludes that this argument is controlled by the decision of our Court of Appeals in the case of BellSouth Telecommunications, Inc., v. Greer, 972 S.W.2d 663 (Tenn. App. 1997). The Court in BellSouth exhaustively covers the use of legislative history in the search for meaning in a legislative enactment, and the relevant portion is reproduced in full here:

> The search for the meaning of statutory language is a judicial function. *Roseman v.*

Roseman, 890 S.W.2d 27, 29 (Tenn.1994); *State ex rel. Weldon v. Thomason,* 142 Tenn. 527, 540, 221 S.W. 491, 495 (1920). Courts must ascertain and give the fullest possible effect to the statute without unduly restricting it or expanding it beyond its intended scope. *673 *Perry v. Sentry Ins. Co.,* 938 S.W.2d 404, 406 (Tenn.1996); *Kultura, Inc. v. Southern Leasing Corp.,* 923 S.W.2d 536, 539 (Tenn.1996). At the same time, courts must avoid inquiring into the reasonableness of the statute or substituting their own policy judgments for those of the legislature. *State v. Grosvenor,* 149 Tenn. 158, 167, 258 S.W. 140, 142 (1924); *State v. Henley,* 98 Tenn. 665, 679–81, 41 S.W. 352, 354–55 (1897); *Hamblen County Educ. Ass'n v. Hamblen County Bd. of Educ.,* 892 S.W.2d 428, 432 (Tenn.Ct.App.1994).

When approaching statutory text, courts must also presume that the legislature says in a statute what it means and means in a statute what it says there. *Connecticut Nat'l Bank v. Germain,* 503 U.S. 249, 253–54, 112 S.Ct. 1146, 1149, 117 L.Ed.2d 391 (1992); *Worley v. Weigel's, Inc.,* 919 S.W.2d 589, 593 (Tenn.1996). Accordingly, we must construe statutes as they are written, *Jackson v. Jackson,* 186 Tenn. 337, 342, 210 S.W.2d 332, 334 (1948), and our search for the meaning of statutory language must always begin with the statute itself. *Neff v. Cherokee Ins. Co.,* 704 S.W.2d 1, 3 (Tenn.1986); *Pless v. Franks,* 202 Tenn. 630, 635, 308 S.W.2d 402, 404 (1957); *City of Nashville v. Kizer,* 194 Tenn. 357, 364, 250 S.W.2d 562, 564–65 (1952).

Statutory terms draw their meaning from the context of the entire statute, *Lyons v. Rasar,* 872 S.W.2d 895, 897 (Tenn.1994); *Knox County ex rel. Kessel v. Lenoir City,* 837 S.W.2d 382, 387 (Tenn.1992), and from the statute's general purpose. *City of Lenoir City v. State ex rel. City of Loudon,* 571 S.W.2d

297, 299 (Tenn.1978); *Loftin v. Langsdon,* 813 S.W.2d 475, 478 (Tenn.Ct.App.1991). We give these words their natural and ordinary meaning, *State ex rel. Metropolitan Gov't v. Spicewood Creek Watershed Dist.,* 848 S.W.2d 60, 62 (Tenn.1993), unless the legislature used them in a specialized, technical sense. *Cordis Corp. v. Taylor,* 762 S.W.2d 138, 139–40 (Tenn.1988).

The legislative process does not always produce precisely drawn laws. When the words of a statute are ambiguous or when it is just not clear what the Legislature had in mind, courts may look beyond a statute's text for reliable guides to the statute's meaning. We consider the statute's historical background, the conditions giving rise to the statute, and the circumstances contemporaneous with the statute's enactment. *Still v. First Tenn. Bank, N.A.,* 900 S.W.2d 282, 284 (Tenn.1995); *Mascari v. Raines,* 220 Tenn. 234, 239, 415 S.W.2d 874, 876 (1967); *Davis v. Aluminum Co. of Am.,* 204 Tenn. 135, 143, 316 S.W.2d 24, 27 (1958). We also resort to legislative history. *Storey v. Bradford Furniture Co. (In re Storey),* 910 S.W.2d 857, 859 (Tenn.1995); *University Computing Co. v. Olsen,* 677 S.W.2d 445, 447 (Tenn.1984); *Chapman v. Sullivan County,* 608 S.W.2d 580, 582 (Tenn.1980).[FN23]

FN23. Some courts have even cited a statute's legislative history to buttress their interpretation when a statute is not ambiguous. *See, e.g., Worley v. Weigel's, Inc.,* 919 S.W.2d at 593; *VanArsdall v. State,* 919 S.W.2d 626, 632 (Tenn.Crim.App.1995).

Courts consult legislative history not to delve into the personal, subjective motives of individual legislators, but rather to ascertain the meaning of the words in the statute. The subjective beliefs of legislators

can never substitute for what was, in fact, enacted. There is a distinction between what the Legislature intended to say in the law and what various legislators, as individuals, expected or hoped the consequences of the law would be. The answer to the former question is what courts pursue when they consult legislative history; the latter question is not within the courts' domain.

Relying on legislative history is a step to be taken cautiously. *Piper v. Chris–Craft Indus., Inc.,* 430 U.S. 1, 26, 97 S.Ct. 926, 941, 51 L.Ed.2d 124 (1977); *North & South Rivers Watershed Ass'n, Inc. v. Town of Scituate,* 949 F.2d 552, 556 n. 6 (1st Cir.1991).Legislative records are not always distinguished for their candor and accuracy, *Schwegmann Bros. v. Calvert Distillers Corp.,* 341 U.S. 384, 396, 71 S. Ct. 745, 751, 95 L.Ed. 1035 (1951) (Jackson, J., concurring), and the more that courts have come to rely on legislative history, the less reliable it has become. Rather than reflecting the issues*674 actually debated by the Legislature, legislative history frequently consists of self-serving statements favorable to particular interest groups prepared and included in the legislative record solely to influence the courts' interpretation of the statute. *National Small Shipments Traffic Conf., Inc. v. Civil Aeronautics Bd.,* 618 F.2d 819, 828 (D.C.Cir.1980); ANTONIN SCALIA, A MATTER OF INTERPRETATION: FEDERAL COURTS AND THE LAW 34 (1997); W. David Slawson, *Legislative History and the Need to Bring Statutory Interpretation Under the Rule of Law,* 44 Stan.L.Rev. 383, 397–98 (1992); Kenneth W. Starr, *Observations About the Use of Legislative History,* 1987 Duke L.J. 371, 377; Note, *Why Learned Hand Would Never Consult Legislative History Today,* 105 Harv.L.Rev. 1005, 1018–19 (1992).

> Even the statements of sponsors during legislative debate should be evaluated cautiously. 2A Norman J. Singer, *Statutes and Statutory Construction* § 48:15 (rev. 5th ed.1992). These comments cannot alter the plain meaning of a statute, *D. Canale& Co. v. Celauro,* 765 S.W.2d 736, 738 (Tenn.1989); *Elliott Crane Serv., Inc. v. H.G. Hill Stores, Inc.,* 840 S.W.2d 376, 379 (Tenn.Ct.App.1992), because to do so would be to open the door to the inadvertent, or perhaps planned, undermining of statutory language. *Regan v. Wald,* 468 U.S. 222, 237, 104 S. Ct. 3026, 3035, 82 L.Ed.2d 171 (1984). Courts have no authority to adopt interpretations of statutes gleaned solely from legislative history that have no statutory reference points. *Shannon v. United States,* 512 U.S. 573, 583, 114 S. Ct. 2419, 2426, 129 L.Ed.2d 459 (1994). Accordingly, when a statute's text and legislative history disagree, the text controls. *Stromberg Metal Works, Inc. v. Press Mechanical,* 77 F.3d 928, 931 (7th Cir.1996).
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> BellSouth Telecommunications, Inc. v. Greer, 972 S.W.2d 663, 672 -674 (Tenn.App.,1997)

This Court finds nothing remotely ambiguous or vague about Public Chapter 425. This being the case, under the ruling of BellSouth it is inappropriate and unnecessary for this Court to review or rely upon the legislative history to provide for the Plaintiffs the "grandfather clause" they seek to impose upon the statute. The Legislature was free to include such language within the bill; it chose not to do so. The failure to include such language does not render the bill vague or ambiguous. Additionally, relying upon selected statements made by some of the bill's sponsors is dangerous, as the BellSouth Court instructs, "because to do

so would be to open the door to the inadvertent, or perhaps planned, undermining of statutory language." As an example, ATS has included as an exhibit to its Motion a newspaper article citing one of the bill's sponsors, Representative Ryan Haynes. (Ex. 2(G)). Within the article Representative Haynes is quoted as saying that he thought the bill contained a "grandfather clause" when he voted on it, but that he would have voted for it anyway even if he had known the clause didn't exist. This Court believes it to be entirely beyond the province of the Judicial Branch to add substantive terms to otherwise clear and unambiguous legislation based solely upon selected statements made by members of the Legislature during the debate upon this bill. Accordingly, this Court finds that Chapter 425 does not exempt from its provisions contracts currently in effect relating to the operation of automated traffic control cameras.

II. THE COURT FINDS THAT THE CHALLENGED PROVISION OF CHAPTER 425 IS REMEDIAL IN NATURE

In analyzing the Plaintiffs' arguments in this regard, it is important to note what Chapter 425 does NOT do:

It does not ban the use of automated traffic cameras.

It does not prohibit the use of evidence obtained by use of automated traffic cameras.

It does not ban the use of evidence obtained through these cameras in prosecuting citations for illegal right turns at a red light.

It does not ban the use of such evidence as the sole supporting evidence for such a citation if the municipality prohibits right turns on red at monitored intersections.

The sole effect of the challenged provision of Chapter 425 is to require some other evidence besides traffic camera evidence standing alone to support a citation for an illegal right turn at a red light at intersections where such turns are allowed.

In Doe v. Sundquist, 2 S.W.3d 919 (Tenn. 1999), our Supreme Court addressed the issue of whether an Act of the Legislature with retrospective application would unconstitutionally impair a vested right. In addressing the question, the Court first noted that remedial or procedural acts are generally not found to impair vested rights:

> In considering whether a statute impairs a vested right under Article I, Section 20, we frequently have observed that statutes which are procedural or remedial in nature may be applied retrospectively. *Saylors v. Riggsbee,* 544 S.W.2d 609, 610 (Tenn.1976). In general, a statute is procedural "if it defines the ... proceeding by which a legal right is enforced, as distinguished from the law which gives or defines the right." *Kuykendall v. Wheeler,* 890 S.W.2d 785, 787 (Tenn.1994) (citation omitted). A statute is remedial if it provides the means by which a cause of action may be effectuated, wrongs addressed, and relief obtained. *Dowlen v. Fitch,* 196 Tenn. 206, 211–12, 264 S.W.2d 824, 826 (1954). We have clarified, however, that even a procedural or remedial statute may not be applied retrospectively if it impairs *924 a vested right or contractual obligation in violation of Article I, Section 20. *Kee v. Shelter Ins.,* 852 S.W.2d 226, 228

(Tenn.1993).

Doe v. Sundquist, 2 S.W.3d 919, 923 -924 (Tenn.,1999)

To begin, much of the discussion between the Plaintiffs and the Attorney General regarding whether Chapter 425 is "retrospective" or "prospective" in application may be misplaced. The Act regulates the relationship between the motorist and the State or its political subdivisions. Its provisions address themselves to the use of automated traffic cameras by municipalities, and to the rights, expectations, defenses and duties of both the enforcing authorities and the travelling public regarding compliance with traffic laws. Nothing in the Act suggests that the rights, liabilities or means of enforcement of citations issued prior to July 1, 2011, are affected by Chapter 425. The Act could only be considered "retrospective" in nature if it were applied to citations issued before that date, and in that case the parties which might have standing to challenge such retrospective application would be the municipalities and/or the cited motorists.

Plaintiffs, however, argue that the Act is "retrospective" as concerns them, as it lessens the revenues they might otherwise realize had the law not been amended. They reason that as the Act contains no explicit "grandfather clause" that would operate to shield their contracts from the effect of the legislation, the Court should find that the challenged provision is "substantive," and thus presumptively prospective in application so that their contracts would be exempted from its operation, while the Attorney General argues that the provision in question is "remedial" or 'procedural" in nature, and thus amenable to retrospective application as regards to the Plaintiffs' contracts.

This Court finds, based on the definitions relied upon by the Supreme Court in Doe v. Sundquist, that the challenged provision of Chapter 425 is remedial in nature. New Section (i) of TCA §55-8-198 does not change the underlying law regarding the legality or illegality of right turns on red or the rules regarding such turns. As between the motorist and the State, the rights and obligations of the illegal act itself are unchanged. Instead, the effect of the new section is evidentiary; the Legislature has chosen to specify what level of evidence is necessary for the State or municipality to prove and enforce a citation issued for illegal right turns. In other words, the challenged provision "defines the proceeding by which a legal right is enforced" (the means by which the government may enforce laws governing the making of right turns at red lights), "as distinguished from the law which gives or defines the right" (statutes and ordinances that define whether and when one may make a right turn at a red light.) As such, this Court finds that the challenged provision of Chapter 425 is "remedial" or "procedural" in nature, and thus amenable to retrospective application, if indeed it is being applied retrospectively.

III. UNDER THE FOUR PART TEST SET FORTH IN DOE V. SUNDQUIST, 2 S.W.3D 919 (TENN. 1999), CHAPTER 425 DOES NOT UNCONSTITUTIONALLY IMPAIR THE OBLIGATIONS OF THE PLAINTIFFS' CONTRACTS

The Court in Doe v. Sundquist, in analyzing whether a newly enacted adoption statute deprived adopting parents of vested rights acquired under prior law, adopted a four-prong test as announced in Ficarra v. Department of

Regulatory Agencies, 849 P.2d 6 (Colo. 1993). The elements of the test as announced by the Court are as follows:

1. Does the challenged legislation advance the public interest;

2. Does the retroactive provision give effect to or defeat the *bone fide* intentions or reasonable expectations of affected persons;

3. Does the statute surprise persons who have long relied on a contrary state of the law; and

4. To what extent is the statute procedural or remedial?

The Court emphasizes that none of these factors is dispositive. Instead, the duty of the Court is to consider and weigh these factors in making its determination.

A. THE CHALLENGED PROVISION OF CHAPTER 425 ADVANCES THE PUBLIC INTEREST AND IS REASONABLY RELATED TO A VALID PUBLIC PURPOSE

The Tennessee Courts have long recognized that the role of the Judicial Branch in determining whether a legislative enactment advances the public interest is limited, and that primary body entrusted with determining and advancing the public interest is the Legislature itself. Thus, in Taylor v. Beard, 104 S.W.3d 507 (Tenn. 2003), in a case wherein it was urged upon our Supreme Court to create a new common law cause of action, the Court wrote:

> This Court has long recognized that it has a limited role in declaring public policy and

> has consistently stated that "[t]he determination of public policy is primarily a function of the legislature," but that the judiciary may determine "public policy in the absence of any constitutional or statutory declaration." *Alcazar v. Hayes,* 982 S.W.2d 845, 851 (Tenn.1998).
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> Our concern about our limited role is particularly relevant in this case where we are being asked to further develop the law of consortium by adopting a common law cause of action for loss of parental consortium in personal injury cases that presently does not exist. To do so would require us to create a cause of action with potentially far-reaching social and legal consequences in an area that we have consistently left to legislative discretion. This is an issue of public policy and interest balancing in which the legislature has involved itself before, *i.e.,* loss of spousal consortium, Tenn.Code Ann. §25–1–106, and we believe it is particularly appropriate for this Court to defer and leave this issue to the discretion of the legislature.
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> Taylor v. Beard, 104 S.W.3d 507, 511 (Tenn. 2003)

Similarly, and even more persuasively, traffic regulation is an area of law that is traditionally within the province of legislation. *See generally* Title 55, Tennessee Code, wherein an entire volume of the Code is dedicated to the ownership and operation of motor vehicles in Tennessee.

The Legislature has not only sought to exhaustively regulate motor traffic, it has stepped in to authorize and regulate the use of automated traffic enforcement cameras by the enactment of TCA §55-8-198. By Chapter 425 of the Acts of 2011, the Legislature sought to refine and further regulate the use of these

devices, and chose to do so just three (3) years after its initial enactment. It is important to note that Chapter 425 does not simply seek to modify the evidence required to support a citation for illegal right turns; it provides a fairly comprehensive set of regulations regarding the placement, engineering and use of automated traffic enforcement cameras, along with specific guidelines governing the manner in which citations may be prosecuted using evidence obtained from these devices. Given the broad regulatory nature of Chapter 425, this Court cannot say that the legislation does not reasonably advance a public purpose.

Even considering new Section (i) of TCA §55-8-198 apart from the other provisions of the bill does not mandate a finding that its language advances no public purpose. The Legislature is not merely concerned with enhancing and advancing the powers of the State. It may also consider and advance the rights, concerns and interests of the citizenry that it serves. By allowing right turns on red throughout the State in 1976 (Chapter 401, Acts of 1976), left turns on red in 1982 (Chapter 684, Acts of 1982), and designating in 2008 that illegal right turn citations based solely on evidence obtained by automated traffic enforcement cameras be considered "non-moving violations" (TCA §55-8-198(a)), the Legislature may be seen to be evolving in the direction of liberality and leniency as regards turns made at controlled intersections. If the Legislature has determined that it is in the public interest to equate such turns with parking violations (a finding central to the viability of the Plaintiffs' contracts with their respective municipalities), this Court cannot say that it is unreasonable or not in the advancement of the public interest for the Legislature to restrict the number of

citations issued for such minor offenses. The Legislature could well have reasoned that the fact that these violations represent such large portion of the citation volume generated by cities that utilize these devices[1], that overall the price that the public was paying for this violation was disproportionate to the seriousness of the offense and acted accordingly.[2] Raising the evidentiary bar for the issuance of such citations might (and may well have) address that disproportionality.

In sum, this Court will follow the holding in Taylor v. Beard and defer to the Legislature the question of whether the provisions of Chapter 425 advance the public interest. Even if this Court were disinclined to do so, this Court can conceive of a rational basis for the legislation, and therefore must find that it advances the public interest.

B. CHAPTER 425 DOES NOT IMPAIR THE BONA FIDE INTENTIONS OR REASONABLE EXPECTATIONS OF THE PLAINTIFFS

In examining this question it is again important to note what Chapter 425 does not do: it does not prohibit the use of automated traffic control devices, it does not ban evidence obtained from such cameras from being used in the

1 ATS' CFO testifies by affidavit that revenues from these violations constitutes from 30-50% of monthly ATS revenues; a newspaper article attached to ATS' Motion as Exhibit 2(g) indicates that total Knoxville traffic citations fell 73% within the first month that Chapter 425 took effect.

2 Inherent in the Plaintiffs' argument that Chapter 425 has impinged upon Plaintiffs' vested right to receive a predictable revenue stream, (*see, e.g.*, Affidavit of John P. Goldsberry, ATS Motion for Summary Judgment Exhibit 1) is an assumption that the placement and operation of the automated traffic cameras at issue has not had and will not have a significant impact upon motorists' actual behavior, bolstering the Attorney General's argument that Chapter 425 was enacted in part because of the Legislature's conclusion that the use of Traffic Cameras to regulate illegal right turns is a measure directed more toward revenue generation than enhancing traffic safety.

prosecution of citations and it does not prohibit cities from enforcing laws regarding improper right turns on red. Nothing in Chapter 425 changes the contractual relationship between ATS and Knoxville and Redflex and Farragut respectively. The cameras that ATS and Redflex operate in Knoxville and Farragut are still operating, still providing traffic enforcement (if ATS for example has lost 30-50% of its revenue because of Chapter 425, it still realizes 50%-70% of the revenue it expected even in the face of Chapter 425's provisions.) In short, nothing in Chapter 425 has impaired the obligations of the Plaintiffs or the Defendants. Instead, what Plaintiffs have demonstrated is that the provisions of Chapter 425 have affected their expectations of revenue.

It is beyond cavil that legislation affecting the regulation of motor vehicle traffic is a valid expression of the Legislature's inherent police powers. *See, e.g.,* State v. Goodson, 77 S.W.3d 240 (Tenn.Crim.App 2001). TCA §55-8-198 is then clearly an expression of the Legislature's police powers. As such, the Plaintiffs could have no reasonable expectation in law that their expectations of revenues could not be affected by subsequent expressions of the Legislature's police power. As the Court of Appeals found in Profill Development Inc. v. Dills:

> Profill asserts that the contract it executed with the City of Gallaway derived its force from the laws in effect at the time the contract was made in 1992. Those laws did not require county approval, and neither Profill nor the City of Gallaway recognized that Profill would have to obtain approval from the county. Therefore, the adoption of Part Seven violated both the United States and Tennessee Constitutions by imposing an unanticipated step in the permit review

> process which ultimately invalidated the contract.
>
> As this Court stated in *Sherwin Williams Co. v. Morris,* 25 Tenn. App. 272, 156 S.W.2d 350, 352 (1941), "[a]ll contracts are subject to be interfered with, or otherwise affected by, subsequent statutes and ordinances enacted in the bona fide exercise of police power." As previously noted, the Court finds that Part Seven is a bona fide exercise of police power that specifically addresses the public health, safety and welfare. Accordingly, Part Seven does not unlawfully impair Profill's contractual rights.
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> Profill Development, Inc. v. Dills, 960 S.W.2d 17, 33 (Tenn. App.,1997)

The Plaintiffs' contracts are founded, at least in part, on the exercise of the Legislature's police powers which finds expression in TCA §55-8-198. Although the City of Knoxville did have an automated traffic camera program in place shortly before TCA §55-8-198 was enacted, when the State Legislature acted it preempted the field. Had the Legislature chosen to ban such cameras in 2008 rather than authorize them, the Plaintiffs' 2009 contracts would likely never have been executed. Their existence, therefore, is owed to the decision of the Legislature to exercise its police powers in favor of their use. This Court finds that a subsequent expression of that police power on the same subject, even though it may have lessened the Plaintiffs' expectations of revenues, nonetheless does not support a finding that any "vested rights" of the Plaintiffs have been violated or impaired in a manner repugnant to the Constitution.

C. PLAINTIFFS HAVE NOT LONG RELIED ON A CONTRARY STATE OF THE LAW SUCH THAT THEY CAN BE SAID TO HAVE BEEN SURPRISED

As has been detailed above, the legislation authorizing and regulating the use of automated traffic control devices has a very short history, and Plaintiffs acted quite quickly in response to that legislation. TCA §55-8-198 took effect on July 1, 2008. Shortly before that date the Court of Appeals decided City of Knoxville v. Brown, 284 S.W.3d 330 (Tenn. App. 2008, *cert denied*, 2009), which, as the citation demonstrates, was not finally litigated until certiorari was denied by the Supreme Court in 2009. ATS's predecessor in interest entered into its contract with the City of Knoxville in February 2009. Redflex entered into its contract with the Town of Farragut in May of 2009. At the point at which they executed their respective contracts, TCA §55-8-198 had been in effect for less than one (1) year, and City of Knoxville v. Brown had similarly been decided less than a year before the execution of these contracts. It therefore cannot reasonably be argued that these parties had "long relied" on a contrary state of the law.

The fact that these Plaintiffs were cognizant that the Legislature was at liberty to reenter this field and add to or modify the regulations governing the use of these devices is evident in their respective contracts. §4.1 of the ATS contract provides in pertinent part as follows:

> a. Termination for Cause. Either party shall have the right to terminate this Agreement immediately by written notice to the other if (i) federal or state statutes are amended to prohibit or substantially change the operation of photo red light enforcement systems…

The Redflex contract contains essentially identical language at §6.1. Because these contracts were executed less than a year after a significant court case regarding the permissibility of their use was decided and less than a year after the Legislature decided to authorize their use, and because the Plaintiffs demonstrated their understanding that the law in this area was subject to change and provided a route for cancellation of the contracts in that event, this Court finds that the Plaintiffs cannot be said to have long relied on a contrary state of the law regarding the use of these devices.

D. AS STATED ABOVE, THE COURT FINDS THAT THE CHALLENGED PROVISION OF CHAPTER 425 OF THE ACTS OF 2011 IS PROCEDURAL OR REMEDIAL IN NATURE

The fourth prong of the Doe v. Sundquist case tasks the reviewing Court with determining the extent to which the challenged legislation is procedural or remedial in nature. As discussed above, this Court finds that new Paragraph (i) of TCA §55-8-198 is procedural and/or remedial in nature. The challenged provision does not in any way amend or modify the rules regarding making right turns at a red light. It does not prohibit the use of automated cameras to provide evidence of illegal turns at red lights. Its only effect is to provide that some other evidence besides the camera footage standing alone is necessary to prosecute a violation for making an illegal right turn at intersections where right turns on red

are otherwise allowed. Because the challenged provision "defines the proceeding by which a legal right is enforced" (the means by which the government may enforce laws governing the making of right turns at red lights), "as distinguished from the law which gives or defines the right" (statutes and ordinances that define whether and when one may make a right turn at a red light), the Court finds that the Act is procedural and/or remedial in nature.

CONCLUSION

This Court has analyzed the four-prong test established by our Supreme Court in Doe v. Sundquist and finds that the Plaintiffs have failed under this test to establish that they have any "vested rights" that have been or will be unconstitutionally impaired by the enactment of Chapter 425 of the Acts of 2011. Therefore, this Court concludes that Chapter 425 is constitutional and does not impair the obligations of the Plaintiffs' contracts in violation of Article I, Section 20 of the Tennessee Constitution. The same finding shall pertain to any claims that Chapter 425 violates Article I, Section 10 of the Federal Constitution.

IV. CHAPTER 425 DOES NOT VIOLATE THE CONSTITUTIONAL SEPARATION OF POWERS

Redflex argues that the challenged provision of Chapter 425 unconstitutionally violates the Separation of Powers doctrine by impermissibly intruding upon the judiciary's role regarding the admissibility and weight of evidence. However, not every such intrusion, if that is what Chapter 425 is, is necessarily impermissible. In State v. Mallard, 40 S.W.3d 473 (Tenn. 2001) our Supreme Court examined this question thus:

The authority of the General Assembly to enact rules of evidence in many circumstances is not questioned by this Court. Its power in this regard, however, is not unlimited, and any exercise of that power by the Legislature must inevitably yield when it seeks to govern the practice and procedure of the courts. Only the *481 Supreme Court has the inherent power to promulgate rules governing the practice and procedure of the courts of this state, *see, e.g., State v. Reid,* 981 S.W.2d 166, 170 (Tenn.1998) ("It is well settled that Tennessee courts have inherent power to make and enforce reasonable rules of procedure."); *see also* Tenn. Code Ann. §§ 16–3–401, –402 (1994), and this inherent power "exists by virtue of the establishment of a Court and not by largess of the legislature," *Haynes v. McKenzie Mem'l Hosp.,* 667 S.W.2d 497, 498 (Tenn.Ct.App.1984). Furthermore, because the power to control the practice and procedure of the courts is inherent in the judiciary and necessary "to engage in the complete performance of the judicial function," *cf. Anderson County Quarterly Court v. Judges of the 28th Judicial Cir.,* 579 S.W.2d 875, 877 (Tenn.Ct.App.1978), this power cannot be constitutionally exercised by any other branch of government, *see* Tenn. Const. art. II, § 2 ("No person or persons belonging to one of these departments shall exercise any of the powers properly belonging to either of the others, except in the cases herein directed or permitted."). In this area, "[t]he court is supreme in fact as well as in name." *See Barger v. Brock,*535 S.W.2d 337, 341 (Tenn.1976).

Despite the clear expression of the separation of powers doctrine in Article II and elsewhere, however, "it is impossible to preserve perfectly the 'theoretical lines of demarcation between the executive,

legislative and judicial branches of government.' Indeed there is, by necessity, a certain amount of overlap because the three branches of government are interdependent." *Petition of Burson,* 909 S.W.2d 768, 774 (Tenn.1995). In recognition of this important principle, we have frequently acknowledged the broad power of the General Assembly to establish rules of evidence in furtherance of its ability to enact substantive law. *See Daugherty v. State,* 216 Tenn. 666, 393 S.W.2d 739, 743 (1965). But as the General Assembly can constitutionally exercise only the legislative power of the state, its broad ability to enact rules for use in the courts must necessarily be confined to those areas that are appropriate to the exercise of that power. Although any discussion of the precise contours of this legislative power is not appropriate in this case, it is sufficient to acknowledge that such power exists and that it is necessarily limited by the very nature of the power itself.

Notwithstanding the constitutional limits of legislative power in this regard, the courts of this state have, from time to time, consented to the application of procedural or evidentiary rules promulgated by the legislature. Indeed, such occasional acquiescence can be expected in the natural course of events, as this practice is sometimes necessary to foster a workable model of government. When legislative enactments (1) are reasonable and workable within the framework already adopted by the judiciary, and (2) work to supplement the rules already promulgated by the Supreme Court, then considerations of comity amongst the coequal branches of government counsel that the courts not turn a blind eye. *See Newton v. Cox,* 878 S.W.2d 105, 112 (Tenn.1994) (upholding legislative regulation of attorneys when the regulation (1) did not "directly conflict with the

> Supreme Court's authority," and (2) was merely "designed to declare" public policy). This Court has long held the view that comity and cooperation among the branches of government are beneficial to all, and consistent with constitutional principles, such practices are desired and ought to be nurtured and maintained. While it is sometimes difficult to practically ascertain where Article II, Section 2 draws the line, the distinction may be simply stated as that between cooperation and *482 coercion. *See Phoenix Newspapers, Inc. v. Superior Court,* 180 Ariz. 159, 882 P.2d 1285, 1290 (Ct.App.1993).[FN7]
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> State v. Mallard, 40 S.W.3d 473, 480 -482 (Tenn.,2001)

This Court finds that the challenged provision of Chapter 425 does not unreasonably or unconstitutionally intrude upon the province of the Courts. As found above, Chapter 425 represents a valid expression of the police powers inherent in the Legislature. The Legislature, in this Court's opinion, would have been free had it so desired to have banned the use of automated traffic cameras outright. Having authorized their use, the Legislature was free to determine *how* they would be used. This Court finds that such an exercise of the Legislature's inherent authority does not impermissibly intrude on the prerogatives of the Judiciary, and thus does not find that Chapter 425 violates the Separation of Powers doctrine.

V. CHAPTER 425 DOES NOT VIOLATE PRINCIPALS OF EQUAL PROTECTION OF LAWS

It is apparent from the language of TCA §55-8-198 and of Chapter 425 of the Acts of 2011 that the Legislature intended to preempt the field of legislation regarding the use of automated traffic cameras and to create a series of regulations regarding their use that would apply state-wide. Nothing in either bill reflects the intent of the legislature that local regulations which might be in conflict with the State legislation would be exempted. Therefore, the Court finds that all persons similarly situated within the State will have equal burdens, obligations and protections under these regulations. As such, this Court cannot find that the challenged provision of Chapter 425 violates the equal protection clauses of the Federal or Tennessee Constitution.

In fact, exempting the Plaintiffs from the operation of Chapter 425 as they have urged would present a much clearer argument for an equal protection violation. Under the results urged by the Plaintiffs, citizens and travelers within the state would have a reasonable expectation for the use of such cameras based on state law, except in those jurisdictions which fortuitously entered into contracts for the use of such cameras before the 2011 legislation went into effect. Because both of these contracts contain provisions allowing for multiple five (5) year renewal periods, such a situation could well continue for over a decade. This Court perceives that the intention of the Legislature was to create a single set of rules and expectations regarding the use of these devices for all travelers in the State. Thus considerations of equal protection are actually promoted by allowing the regulations promulgated by the legislature to apply as enacted with immediate effect.

FINAL CONCLUSION AND ORDER

For all of the foregoing reasons, this Court finds that Chapter 425 of the Acts of 2011 is a constitutional expression of the Legislature's police powers, that it does not impair the Plaintiffs' obligations of contract or impermissibly deprive them of any vested rights, does not exempt from its operation their current contracts with the City of Knoxville and the Town of Farragut, and does not violate the Separation of Powers Doctrine or the Equal Protection clauses of the State or Federal Constitutions. Therefore, the Court finds that the Summary Judgment Motions of the Plaintiffs are not well taken. This Court grants the Motion for Summary Judgment filed by the Attorney General and dismisses this case. Costs shall be taxed against the Plaintiffs American Traffic Solutions, Inc., and Redlfex Traffic Systems, Inc.

IT IS SO ORDERED.

Entered this _____ day of May 2012.

_____
CHANCELLOR MICHAEL W. MOYERS

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and accurate copy of the Memorandum Opinion and Order has been forwarded by U.S. Mail to the following parties of record this _____ day of _____, 2012.

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