IN THE SUPREME COURT OF FLORIDA

CASE NO. SC15-359

L.T. CASE NO. 4D13-1187

CITY OF FORT LAUDERDALE
(STATE OF FLORIDA),

Appellant,

v.

JUNE DHAR

Appellee.

INITIAL BRIEF OF APPELLANT, CITY OF FORT LAUDERDALE

ON APPEAL AS OF RIGHT FROM A DECISION OF THE
FOURTH DISTRICT COURT OF APPEAL

Edward G. Guedes, Esq.
Florida Bar No. 768103
Alicia H. Welch, Esq.
Florida Bar No. 100431
Weiss Serota Helfman
Cole & Bierman, P.L.
2525 Ponce de Leon Blvd., Ste. 700
Coral Gables, Florida 33134
Telephone: (305) 854-0800
Facsimile: (305) 854-2323

Counsel for City of Fort Lauderdale

TABLE OF CONTENTS

TABLE OF CITATIONS

Page

Cases

TABLE OF CITATIONS
(Continued)

Page

Statutes

TABLE OF CITATIONS
(Continued)

Page

Other Authorities

Rules

ABBREVIATIONS USED IN THIS BRIEF

Appellant, City of Fort Lauderdale, shall be referred to as "City."

Appellee, June Dhar, shall be referred to as "Dhar."

Dollar Rent A Car Systems, Inc. shall be referred to as "Dollar."

The City's red light camera vendor, American Traffic Solutions, Inc., shall be referred to as "ATS."

The Mark Wandall Traffic Safety Program, section 316.0083, Florida Statutes, shall be referred to as the "Wandall Act" or "Act".

References to the Department of Motor Vehicles shall appear as "DMV."

A Notice of Violation shall be referred to as an "NOV," while a Uniform Traffic Citation shall be referred to as a "UTC."

References to the record on appeal shall appear as "R." followed by the appropriate pagination.

References to the transcript from the August 15, 2012 county court hearing shall be referred to as "T." followed by the appropriate pagination.

INTRODUCTION

This appeal arises from the Fourth District Court of Appeal's decision in *City of Fort Lauderdale v. Dhar*, 154 So. 3d 366 (4th DCA 2014).

STATEMENT OF THE CASE AND FACTS

A. Issuance of the NOV and UTC.

A vehicle registered to Dollar was recorded by one of the City's red light cameras running a red light on February 20, 2012. R. 1. Dollar received an NOV from the City at the address reflected on the vehicle's registration. *Id*. The NOV described the year, make and license plate number of the vehicle, as well as the date, time and location of the alleged violation. *Id*. The NOV, in addition to supplying photographs of the violation, stated where a video of the violations could be viewed. *Id*. Further, the NOV states that the offense alleged to have been committed was a "failure to comply with a steady red signal" in violation of sections 316.0083, 316.074(1), 316.075(1)(c)1., Florida Statutes. *Id*.

Upon receipt of the NOV, and as contemplated by the Wandall Act, Dollar sent the City an affidavit identifying Dhar as the person having care, custody, or control of the vehicle at the time of the violation. R. 9-10. Thereafter, on May 6, 2012, the City issued a UTC to Dhar. R. 3.

B. The county court proceeding.

Dhar filed a motion to dismiss the UTC in the County Court in Broward County, Florida. R. 22-25. She asserted that as a short-term renter of the vehicle, the Wandall Act treated her unequally as compared to the vehicle's registered

owner (Dollar) in violation of her equal protection and due process rights. *Id*. Specifically, Dhar argued that because she was not issued an NOV before the UTC, she could not avoid paying court costs by only paying the statutory penalty of $158.00. *Id*. In her motion to dismiss, Dhar did not mention, much less negate, the reasonably conceivable bases for the statutory distinction between owners and drivers (renters). *Id*. The City opposed the motion to dismiss and asserted numerous rational bases for the statutory distinction. R. 26-34.

On March 6, 2013, the county court entered an order granting Dhar's motion to dismiss. R. 66-69. Thereafter, on May 23, 2013, the Court issued an amended order granting Dhar's motion to dismiss. R. 103-107. In concluding that the Act violated Dhar's equal protection and due process rights, the county court stated:

> There are significant advantages to having a NOV issued in one's name, as opposed to a UTC. The cost of a NOV is $158.00, whereas the cost of a UTC is $263.00. More importantly, the payment of a $158.00 NOV buys anonymity. If the NOV is paid timely, there will be no record of the infraction on one's driving record. Consequently, once a UTC is issued, one's driving record will be permanently tarnished, unless the UTC is dismissed in court. This distinct difference is to the detriment of the Defendant; the option of paying the $158.00 NOV does not exist.

R. 104. The City timely appealed the county court's ruling to the Fourth District Court of Appeal pursuant to Fla. R. App. P. 9.030(b)(1)(A) because the ruling invalidated a state statute on equal protection grounds.

C. Decision of the Fourth District Court of Appeal.

On appeal, the Fourth District of Appeal affirmed the County Court's ruling. The Fourth District held:

> We find the City's attempt to justify the disparate treatment given to short-term renters to be wholly unpersuasive. Whether the person owns a vehicle, leases a vehicle, or enters into a short-term rental agreement, the circumstances surrounding the infraction remain the same. The activity that is being addressed (either poor driving, or ensuring that people are responsible when loaning their vehicle to others) is the same. Therefore, short-term automobile renters are similarly situated to registered owners and lessees, and no rational basis exists for the unequal treatment given to Defendant by the City in applying this statute. *Cf. City of Fort Lauderdale v. Gonzalez*, 134 So. 3d 1119, 1120 (Fla. 4th DCA 2014) (holding that "section 316.0083(1)(c)1.c, Florida Statutes (2011), did not violate equal protection or due process by providing that, in the case of a jointly owned vehicle, the traffic citation shall be mailed only to the first name appearing on the registration," because "the statute's distinction between a vehicle's first listed owner and its subsequent owners is rationally related to the state's legitimate interest in administrative efficiency.").

Dhar, 154 So. 3d at 367.

Thereafter, the City sought rehearing and/or rehearing *en banc*. R. ___. The City asserted that the panel had improperly shifted the legal burden to justify the Legislature's decision for the distinction between renters and owners/lessees from Dhar to the City. Additionally, the City contended that contrary to the law, the panel examined the actual reasons and subjective motivations of the Legislature. Finally, the City asserted that the panel's analysis conflicted with *City of Fort Lauderdale v. Gonzalez*, 134 So. 3d 1119 (Fla. 4th DCA 2014) and *State v.*

Arrington, 95 So. 3d 324 (Fla. 4th DCA 2012). The Fourth District denied the City's motions for rehearing and rehearing *en banc*. This appeal timely ensued.

SUMMARY OF ARGUMENT

The lower courts erred in holding that the pre-2013 version of the Wandall Act is unconstitutional. The provision at issue, which permitted the City to issue a UTC (without the prerequisite of an NOV) to a renter who was driving the vehicle when the violation occurred, does not run afoul of either equal protection or due process protections. In concluding that the Act's provision is unconstitutional, the lower courts improperly placed the burden on the City to justify the distinction in the statute between a renter, whom an affidavit has established was in control of the vehicle when the law was violated, and an owner, who receives an NOV before the issuance of a UTC. It is well-settled that statutes are clothed with a presumption of constitutionality and the burden of demonstrating an equal protection violation is on the party challenging the statute to negate every reasonably conceivable rationale for the alleged disparate treatment. However, as is evident from the lower courts' rulings, the onus to establish a rational basis for the distinction and to "justify" the statutory provision was erroneously placed on the City. This improper burden-shifting alone warrants reversal.

Moreover, upon examination of the bases for the statutory distinction between owners and renters in the custody, care, or control of vehicles when violations occur, it is apparent that reasonably conceivable bases exist to warrant the issuance of UTCs to renters without also providing them with a preceding

NOV. These bases are grounded in considerations concerning culpability, deterrence, and efficient administration of red light camera programs.

Red light cameras – just like police officers on the ground – are utilized to detect and enforce red light signal violations and to penalize those who violate the law. While a camera provides sufficient information to identify the registered *owner* of a vehicle, the camera's limitations preclude identification of the actual driver of the vehicle. Accordingly, when the owner of a rented vehicle establishes by affidavit that a renter was, in fact, driving the vehicle at the time of the violation, the evidence of the renter's culpability is analogous to that of a driver whom a police officer actually observes running a red light and pulls over. The law permits a police officer in that instance to issue immediately to the driver a UTC, *without* the prerequisite of an NOV. It would be reasonable for the Legislature to conclude that a renter – unlike a registered owner who is afforded the opportunity (through the NOV) to disavow having been in control of the vehicle – should immediately be issued a UTC without first receiving an NOV, where there is evidence in the form of an affidavit establishing that the renter was, in fact, driving the vehicle at the time of the violation.

In addition to culpability, deterrence also supports a rational basis for the distinction in the statute. Owners of vehicles must respond to NOVs that are issued as result of renters violating the law. If an owner inadvertently fails to respond, a UTC is issued to the owner in connection with a violation for which the owner is not personally responsible. Moreover, should the renter cause an accident, or even a fatality by running a red light, the owner may be required to

defend against a lawsuit, and may ultimately be held liable or partially liable for the accident even though the owner was not driving the vehicle at the time. Accordingly, the Legislature could have reasonably concluded that issuance of a UTC to a renter, without the prerequisite of an NOV, fosters deterrence and compliance with red light camera laws.

Lastly, a rational basis for the statutory distinction between owners and renters arises from administrative considerations. Red light camera programs have materially increased the number of citations issued for violations of the law. Essentially, the program has resulted in greater enforcement of the law and, thus, has fostered deterrence and reduced the number of accidents and fatalities. However, due to the volume of red light camera citations, the Legislature could have reasonably concluded that owners should be given the option to pay a fine after receiving an NOV in order to avoid challenging the violation in county court. When owners choose this option, there is no subsequent burden on the court system. Because of to the additional rational bases of culpability and deterrence, though, there is no requirement that the Legislature provide this option to renters or even to all drivers.

Accordingly, because reasonably conceivable rational bases exist for the distinction between owners and renters in the pre-2013 Act, the statutory provision is constitutional. Therefore, the Court should reverse the Fourth District's decision, reinstate Dhar's citation, and remand this case for further proceedings.

ARGUMENT

I. STANDARD OF REVIEW.

"Determination of whether a statute is constitutional is a pure question of law which is reviewed *de novo*." *Scott v. Williams*, 107 So. 3d 379, 384 (Fla. 2013). However, "[s]tatutes come to the Court 'clothed with a presumption of constitutionality and must be construed whenever possible to effect a constitutional outcome.'" *Id*. (quoting *Crist v. Fla. Ass'n of Criminal Def. Lawyers, Inc*., 978 So. 2d 134, 139 (Fla. 2008)). "[E]very reasonable doubt should be resolved in favor of a law's constitutionality." *Franklin v. State*, 887 So. 2d 1063, 1080 (Fla. 2004).

II. ARGUMENT.

A. The Wandall Act and relevant statutory provisions.

On May 13, 2010, Governor Charlie Crist signed into law the Wandall Act. The Wandall Act is named after the deceased victim of a collision caused by a red light signal violator[1] and seeks to increase the enforcement of red light violations through the use of unmanned cameras. There were 76 such fatalities in 2008 representing approximately 3% of all fatal accidents that year. *See* House of Representatives Staff Analysis, at p. 2, CS/CS/HB 325 (March 9, 2010).[2] Noting

---

[1] *City of Orlando v. Udowychenko*, 98 So. 3d 589, 597 n. 10 (Fla. 5th DCA 2012), *approved sub nom, Masone v. City of Aventura*, 147 So. 3d 192 (Fla. 2014) ("The Act was named in honor of Mark Wandall, who was killed by a red-light runner when his wife was nine months pregnant.").

[2] The House of Representatives Staff Analysis cited official state statistics. *See* DHCMV, *Traffic Safety Statistics Report, 2008:* A Compilation of Motor Vehicle Crash Data From the Florida Crash Records Database, at 37, available at http://www.flhsmv.gov/hsmvdocs/CS2008.pdf.

that cameras reduce red light violations by 40-50% and reduce injury crashes by 25-30%, the Legislature authorized local governments to use and continue to use red light cameras. *Id.*

The Legislature's goal of enhancing safety is being realized. Red light cameras change driver behavior and save lives. During Florida's 2013 fiscal year, 95% of motorists that received a notice of a red light camera violation were not captured on camera again committing a red light camera violation. *See* DHSMV Red-light Camera Summary Report at 3 (Dec. 17, 2013 as amended Jan. 8, 2014), available at www.flhsmv.gov/reports/redlightcameraanalysis2013.pdf. Florida's Department of Highway Safety and Motor Vehicles reports that 56.2% of the local agencies that it surveyed reported a reduction in crashes at intersections where red light cameras were installed. DHSMV, *Red Light Camera Summary* Report at 3 (Feb. 27, 2015), available at www.flhsmv.gov/html/2014redlightcamerareportrevisedfebruary 2015.pdf.

The Wandall Act provides that "[a] county or municipality may use traffic infraction detectors [*i.e.*, cameras] to enforce" red light infractions. § 316.008(8)(a), Fla. Stat. (2011). If a local government does so, it must use enforcement and adjudication procedures established by state law. *Id.*; *see also* §§ 316.0076, 316.0083, Fla. Stat. Enforcement proceeds in two steps. Initially, an NOV is sent to the registered vehicle owner. § 316.0083(1)(b)1.a., Fla. Stat. The notice provides access to the photographs and video taken by the camera and explains the owner's rights. §§ 316.0083(1)(b)1.a, b, Fla. Stat. At the time the NOV was issued to Dollar, the owner had 60 days in which to (1) pay the fine, or

(2) submit an affidavit establishing one of five statutory exemptions from liability – the owner was deceased at the time of the infraction; ***someone else was driving***; the vehicle was yielding the right of way to an emergency vehicle or funeral procession; the driver was issued a traffic citation at the scene; or a law enforcement officer directed the vehicle to pass through the intersection. §§ 316.0083(1)(b)1.a, (d)(1), Fla. Stat. (2012).[3]

At the time Dhar was issued a UTC, the Act provided that if the owner submits an affidavit establishing that someone other than the owner was driving the vehicle when the violation occurred, a UTC would be issued to the driver. § 316.0083(1)(d)3, Fla. Stat. (2012).[4] Following the issuance of a UTC, the driver may either pay the fine or submit an affidavit establishing an exemption. § 316.0083(1)(d), Fla. Stat. Or, the driver may choose to dispute the infraction at a hearing in county court. *See generally* § 318.14, Fla. Stat.

A driver who elects to contest a UTC has robust procedural rights and protections. She is entitled to retain counsel to represent her. Fla. R. Traf. Ct.

---

[3] In 2013, the Act was amended to provide the registered owner with the option to request an administrative hearing after issuance of an NOV. §§ 316.0083(1)(b)1.a (2013).

[4] Subsequently, in 2013, the Act was also amended to provide that the person having care, custody, or control of the vehicle will be issued an NOV. § 316.0083(1)(d)3, Fla. Stat. (2013). Given that the constitutionality of the pre-2013 legislation is dependent solely on *conceivable* rational bases for the owner/renter distinctions drawn therein – *see infra* at 13-14 – the fact that the Legislature amended the statute thereafter has no bearing on the original legislation's constitutionality. And yet, the Fourth District focused on this after-the-fact amendment to conclude that the original legislation was unconstitutional by "mere oversight." *Dhar*, 154 So. 3d at 368.

6.340(c). She has a right to a speedy trial within 180 days of the citation. *Id.* at 6.325(a). She has the right to make motions, to call and compel the attendance of witnesses, to present a closing argument, and to have the hearing in open court. *Id.* at 6.140, 6.150, 6.450(d), (f). The rules of evidence apply generally at UTC hearings. *Id.* at 6.460(a). As such, constitutional and statutory objections to the proceedings are permitted.

Under the Wandall Act, "[t]he photographic or electronic images" or streaming video taken by the camera "is admissible … and raises a rebuttable presumption" that the motor vehicle ran a red light. § 316.0083(1)(e), Fla. Stat. Although the government gets the benefit of a *rebuttable* presumption, the Legislature provided by statute that the government's burden – in all traffic infraction cases – is proof "beyond a reasonable doubt." § 318.14(6), Fla. Stat.

B. The pre-2013 Act is constitutional.

The pre-2013 version of the Act, which provided for the issuance of a UTC without the prerequisite of an NOV to a driver, such as a renter, whom an owner establishes was in the care, custody, or control of the vehicle at the time of the red light camera violation, does not contravene equal protection or due process rights. "[A] classification neither involving fundamental rights nor proceeding along suspect lines … cannot run afoul of the Equal Protection Clause if there is a rational relationship between the disparity of treatment and some legitimate governmental purpose." *Heller v. Doe*, 509 U.S. 312, 319-20 (1993).

"Under a rational basis standard of review, a court should inquire only whether it is conceivable that the regulatory classification bears some rational relationship to a legitimate state purpose. The burden is on the party challenging the statute or regulation to show that there is *no* conceivable factual predicate which would rationally support the classification under attack." *Fla. High Sch. Activities Ass'n, Inc. v. Thomas*, 434 So. 2d 306, 308 (Fla. 1983) (citation omitted) (emphasis in original). *Gonzalez*, 134 So. 3d at 1121 ("Under rational basis review, a statute bears a strong presumption of validity and 'must be upheld against equal protection challenge *if there is any reasonably conceivable state of facts that could provide a rational basis for the classification*.'") (quoting *F.C.C. v. Beach Commc'ns., Inc*., 508 U.S. 307, 313 (1993) (emphasis added).

"In other words, a legislative choice is not subject to courtroom fact-finding and may be based on rational speculation unsupported by evidence or empirical data." *Beach Commc'ns.*, 508 U.S. at 315. A classification does not fail rational basis review merely because it is not made with mathematical nicety or because in practice it results in some inequality. *Heller*, 509 U.S. at 321. Importantly, the constitutional principle of equal protection "is not a license for courts to judge the wisdom, fairness, or logic of legislative choices." *Beach Commc'ns.*, 508 U.S. at 313.

(1) The legal burden was improperly placed on the City to establish a rational basis for the Act.

The trial court and the Fourth District both courts erred *in shifting the burden to the City* to establish that the Legislature had a rational basis for the

statutory owner/renter distinction at issue. As previously noted, it is well-settled that "statutes come clothed with a presumption of constitutionality." *Fla. Ass'n of Criminal Def. Lawyers, Inc.*, 978 So. 2d at 139. "To overcome the presumption, the invalidity must appear beyond reasonable doubt, for it must be assumed the legislature intended to enact a valid law." *Id*.

Moreover, "the Equal Protection Clause does not demand for purposes of rational-basis review that a legislature … actually articulate at any time the purpose or rationale supporting its classification." *Nordlinger v. Hahn*, 505 U.S. 1, 15 (1992). Instead, "[t]he burden is on the one attacking the legislative enactment to negate every conceivable basis which might support it." *Eastern Air Lines v. Dep't of Revenue*, 455 So. 2d 311, 314 (Fla. 1984) (citing *Madden v. Kentucky*, 309 U.S. 83 (1940)); *see also Fla. High Sch. Activities Ass'n*, 434 So. 2d at 308 ("the *burden is upon the party challenging the statute* … to show that there is no conceivable factual predicate which would rationally support the classification under attack. Where the challenging party fails to meet this difficult burden, the statute or regulation must be sustained.") (citing *Fraternal Order of Police v. Dep't of State*, 392 So. 2d 1296, 1302 (Fla. 1981); *Lewis v. Mathis*, 345 So. 2d 1066 (Fla. 1977); *Level 3 Communications, LLC v. Jacobs*, 841 So. 2d 447 (Fla. 2003) ("[W]here a fundamental right is not at stake, the courts apply the rational basis test. 'Under the rational basis standard, the party challenging the statute bears the burden of showing that the statutory classification does not bear a rational relationship to a legitimate state purpose.'") (quoting *Lite v. State*, 617 So. 2d 1058, 1061 n. 2 (Fla. 1993)).

Here, the trial court and the Fourth District neither afforded the Act the presumption of constitutionality it was due, nor properly placed the burden on Dhar to negate the rational bases articulated by the City. Instead, the Fourth District Court of Appeal found "the City's *attempt to justify* the disparate treatment given to short-term renters to be wholly unpersuasive." *Dhar*, 154 So. 3d at 367 (emphasis added). The Fourth District further stated that "*the City failed to present any meritorious argument* that supports treating short-term renters differently than registered owners and lessees." *Id*. (emphasis added).[5]

It was not and is not the City's burden to "justify" the statutory provision. Instead, the onus is on Dhar to "negate" every conceivable rationale for the alleged disparate treatment. In fact, the standard is not whether the basis for the disparate treatment is supported by "empirical data," *Beach Commc'ns., Inc*., 508 U.S. at 315, but rather whether it was "conceivable" for the legislature to have believed the stated justification. *Fla. High Sch. Activities Ass'n*, 434 So. 2d at 308. *See also Gonzalez*, 134 So. 3d at 1123 (same holding).

That the burden was improperly shifted to the City is illustrated by the fact that the Fourth District's decision, remarkably, does not mention (much less analyze) the City's articulated conceivable reasons for the Act's treatment of

[5] Similarly, the trial court ruled only that the Legislature's failure to address short-term rental agreements in the Act constituted "an oversight" and "an oversight cannot provide or be the basis of a rational basis." R. 68. The Fourth District compounded the problem by echoing this analytically defective approach. 154 So. 3d at 368 ("an oversight cannot serve as a rational basis upon which to validate the disparate treatment").

renters as compared with owners. Instead, the Fourth District summarily concludes, without analysis, that the provision is unconstitutional because renters and owners are similarly situated and the pre-2013 version of the Act was a "mere oversight" by the legislature that cannot serve as a rational basis to validate the disparate treatment of renters. *Dhar*, 154 So. 3d at 367-68. This ipso facto conclusion of disparate treatment as a sole justification for invalidating legislation runs afoul of well-established precedent of this Court: "Equal protection is not violated merely because some persons are treated differently than other persons." *Duncan v. Moore*, 754 So. 2d 708, 712 (Fla. 2000). Because even where individuals are similarly situated, invalidation of legislation requires affirmatively demonstrating the absence of any rational basis for the differentiation. *Id.* (citing *City of Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432, 440-41, 105 S.Ct. 3249 (1985)).

Thus, because the trial court and the Fourth District failed to give the Act the presumption of constitutionality to which it was entitled and improperly placed the burden of establishing a rational basis on the City, the Fourth District's decision should be reversed.

(2) Rational bases for the Act exist.

Moreover, upon examination, it is clear that rational bases exist for the Act's differentiation of owners and renters in the areas of culpability, deterrence, and administrative convenience. "To satisfy the rational basis test, a statute must bear a rational and reasonable relationship to a legitimate state objective, and it cannot be

arbitrary or capriciously imposed." *Estate of McCall v. U.S.*, 134 So. 3d 894, 901 (Fla. 2014) (citation omitted). "A statute that discriminates in favor of a certain class is not arbitrary if the discrimination is founded upon a reasonable distinction or difference in state policy. *Eastern Air Lines*, 455 So. 2d at 314 (citing *Allied Stores v. Bowers*, 358 U.S. 522 (1959)). Legislation is not constitutionally suspect "if there is *any* conceivable basis for the legislature to believe that the means they have selected will tend to accomplish the desired end.'" *Tidemann v. Dep't of Mgmt. Servs*., 862 So. 2d 845, 847 (Fla. 4th DCA 2003) (quoting *Cash Inn of Dade, Inc. v. Metro. Dade Cnty*., 938 F. 2d 1239, 1241 (11th Cir. 1991)) (emphasis added). Legislation that has a reasonable basis does not violate equal protection "simply because it is not drawn with perfect precision or because in its application some inequality results." *Gluesenkemp v. State*, 391 So. 2d 192, 200 (Fla. 1981). *See also Loxahatchee River Envtl. Control Dist. v. Sch. Bd. of Palm Beach Cnty*., 496 So. 2d 930, 938 (Fla. 4th DCA 1986) ("That the statute results in some inequality will not invalidate it; the statute must be so disparate in its effect as to be wholly arbitrary.") (citation omitted).

(a) Culpability

Although the City is under no obligation to prove a rational basis for the Act, *see Nordlinger*, 505 U.S. at 15, there are, in fact, numerous rational bases for the differential treatment of renters as compared with owners under the Act.[6]

[6] For purposes of the Act, the term "owners" includes both the actual owner of the vehicle and lessees. § 316.003(26). However, the rational bases discussed herein apply regardless of whether the comparison is made between actual owners and renters or lessees and renters.

Pursuant to the Act, red light cameras are utilized to detect and enforce red light camera violations. § 316.008(8)(a), Fla. Stat. (2011). The purpose of red light camera programs is to penalize those who violate red light camera laws in order to improve safety on our roadways. *See* DHCMV, *Traffic Safety Statistics Report, 2008:* A Compilation of Motor Vehicle Crash Data From the Florida Crash Records Database, at 37, available at http://www.flhsmv.gov/hsmvdocs/CS2008.pdf (noting that cameras reduce red light violations by 40-50% and reduce injury crashes by 25-30%, the Legislature authorized local governments to use and continue to use red light cameras). Although the Act has increased enforcement of the law and improved safety, the red light camera technology authorized by the Act has limitations.

While a red light camera can capture the image of the vehicle and tag, from which information concerning the owner of the vehicle is obtained from the DMV, the camera cannot provide images sufficient to determine the *identity* of the person driving the vehicle when the violation occurred. *See Idris v. City of Chicago*, 552 F. 3d 564, 566 (7th Cir. 2009) (recognizing that "[a] camera can reliably show which cars and trucks go through red lights but is less likely to show who was driving"). Accordingly, the Act provides that after an NOV is issued to the vehicle's registered owner, the owner is given the opportunity to pay the fine, request an administrative hearing, *or submit an affidavit*. §§ 316.0083(1)(b)1.a, (d)(1), Fla. Stat. If the owner submits an affidavit establishing that someone other than the owner was driving the vehicle at the time of the violation, a UTC is issued

to the driver, or in this case, a renter, instead of the registered owner. §§ 316.0083 (d)(3), Fla. Stat. (2012).

In line with the Act's purpose to penalize those who violate red light camera laws, the Legislature could have reasonably determined that a renter, whom an owner has established by affidavit was in the care, custody, or control of the vehicle when the violation occurred, should be treated like a driver pulled over by a police officer who observes him or her running a red light. In both scenarios, there is comparable evidence of culpability confirming the identity of the driver at the time of the violation. Accordingly, just as a police officer may immediately issue a UTC (without the prerequisite of an NOV) to a driver he or she observes violating the law, the Legislature authorized local governments to issue UTCs to renters identified by affidavit as having driven the vehicle at the time the violations occurred. The Legislature could have drawn this analogy in enacting the pre-2013 statutory provision, which is reasonable and sufficiently addresses the practical limitations imposed by red light camera technology.[7]

Ironically, the Fourth District correctly concluded in *State v. Arrington*, 95 So. 3d 324, (Fla. 4th DCA 2012) that section 316.075, Florida Statutes – which provides that a law enforcement officer may immediately issue a UTC when he or she observes the violation – is constitutional, notwithstanding the Act's

[7] In fact, a renter under the Act receives more favorable treatment than he or she would receive if pulled over by a police officer. Unlike the latter scenario, a UTC issued under the Wandall Act does not expose the driver to points on his or her license and may not be used in calculating insurance rates. § 322.27(3)(d)6, Fla. Stat.

authorization of an NOV when the same incident is captured by a camera. *Id*. at 327. The Fourth District found a rational basis for the Act's more lenient treatment of owners whose vehicles are captured by red light cameras as compared with drivers whom law enforcement officers observe violating the law, notwithstanding that the same unlawful conduct is at issue.[8] *Id*.

Accordingly, addressing culpability supplies a conceivable rational basis for treating renters of vehicles in a manner distinct from owners of vehicles under the pre-2013 version of the Act.

(b) Deterrence

The Legislature may have also believed that the issuance of a UTC to a renter, whom the owner has established by affidavit was driving the vehicle at the time of the violation, fosters deterrence. Renters, like other drivers who neither own nor lease their vehicles, put owners at risk when they violate traffic laws. Specifically, renters who violate red light signals monitored by cameras force owners to respond to NOVs based on renters' conduct. If an owner were inadvertently to fail to respond to an NOV, a UTC would be issued to the owner with respect to a violation for which the owner is not personally responsible.

---

[8] The Fourth District's failure even to acknowledge its own precedent in *Arrington* is particularly jarring when one considers its language in this case below: "Whether a person owns a vehicle, leases a vehicle, or enters into a short-term rental agreement, *the circumstances surrounding the infraction remain the same*. *The activity that is being addressed* (either poor driving, or ensuring that people are responsible when loaning their vehicle to others) *is the same*." *Dhar*, 154 So. 3d at 367 (emphasis added). Surely, precisely the same could have been said of the conduct at issue in *Arrington*.

Additionally, should a renter cause an accident, or even a fatality, by running a red light, the owner may be required to defend against a lawsuit and may ultimately be held liable or partially liable even though the owner was not driving the vehicle at the time of the accident. This additional risk to owners conceivably justifies creating an extra incentive for renters to obey the law, such as the immediate issuance of UTCs. It would, therefore, be reasonable for the Legislature to have concluded that the issuance of a UTC to a renter, without the prerequisite of an NOV, fosters deterrence and encourages compliance with red light camera laws.

(c) Administrative convenience

The Legislature's rational basis for the owner/renter dichotomy in the pre-2013 Act might also be grounded in administrative efficiency. As even the Fourth District has acknowledged, "Administrative considerations may be sufficient to show a rational basis for a classification." *Gonzalez*, 134 So. 3d at 1122 (citing *Armour v. City of Indianapolis*, 132 S.Ct. 2073, 2081–82 (2012) (administrative considerations provided a rational basis for a city's distinction between homeowners who had paid their taxes in a lump sum and those who paid over time by installments; thus, when the city changed its tax policy, the city's refusal to provide a refund to those who paid in a lump sum did not violate equal protection); *Tiedemann v. Dep't of Mgmt. Servs.*, 862 So. 2d 845, 847 (Fla. 4th DCA 2003) ("A concern about keeping costs 'at an affordable level' is a legitimate state interest."); *Guttman v. Khalsa*, 669 F.3d 1101, 1123 (10th Cir. 2012) ("Costs are especially

relevant when the state's actions are subject only to rational basis review, given that conserving scarce resources may be a rational basis for state action.")).

In *Gonzalez*, the Fourth District held that administrative convenience provided sufficient justification for the Act's provision that in the case of joint ownership of a vehicle, a traffic citation may be mailed only to the person whose name appears first on the vehicle registration. The court found:

> The procedure of issuing a citation only to the first named owner is simple and easy to administer. It also makes the most sense economically, as it eliminates the duplicative waste of mailing the same notice to multiple vehicle owners. Duplicative notices may lead to duplicative payments, thereby causing additional administrative costs associated with refunding overpayments.

Id. at 1123.

The use of red light camera technology to enforce the law undoubtedly promotes efficiency. In Florida, 340,000 camera citations were issued in 2012.[9] Law enforcement officers could not have observed, in real time, 340,000 red light camera violations. *See, e.g.*, *Idris*, 552 F.3d at 566 (noting that the use of red light cameras "reduces the costs of law enforcement and increases the portion of all traffic offenses that are detected").

Given the volume of citations, the Legislature could have reasonably concluded that owners should be given the option to pay a fine after receiving an NOV in order to avoid challenging the violation in county court.

---

[9] DHSMV, *Red Light Camera Summary Report*, at 3 (Dec. 17, 2013 as revised Jan. 8, 2014), available at http://www.flhsmv.gov/Reports/RedLightCameraAnalysis2013.pdf.

§§ 316.0083(1)(b)1.a, (d)(1), Fla. Stat. When owners chose this option, there is no subsequent administrative or financial burden on the court system. However, there is no obligation that the Legislature provide this option to *all* drivers (renters) under the Act.

Indeed, the NOV payment option not only alleviates the burden on the court system, but constitutes an accommodation for the limitation in the red light camera technology. Because the cameras cannot gather sufficient information to identify a driver (as opposed to an owner), an opportunity to rebut the statutory presumption of culpability is afforded to the owner before a UTC is issued directly to the presumable driver. But, where there is already evidence that a *driver*, such as a renter, was, in fact, in control of the vehicle, and thus, culpable, the Legislature does not reasonably need to provide the NOV option to the driver. *See* Section II, B (2)(a), *infra*. For those drivers, a UTC is as appropriate as it is when a police officer observes a violation in real time and pulls the driver over. As the United States Supreme Court has astutely observed in the equal protection context: "The problems of government are practical ones and may justify, if they do not require, rough accommodations – illogical, it may be, and unscientific." *Metropolis Theatre Co. v. Chicago*, 228 U.S. 61, 69-70 (1913). *See also Gluesenkemp*, 391 So. 2d at 200 (legislation that has a reasonable basis does not violate equal protection "simply because it is not drawn with perfect precision or because in its application some inequality results").

CONCLUSION

The Fourth District erred in upholding the trial court's conclusion that the pre-2013 Act, which permitted the City to issue a UTC to a renter without the prerequisite of an NOV, violates Dhar's equal protection and due process rights. For the reasons set forth above, the Court respectfully should conclude that Dhar failed to meet her burden to show that "there is no conceivable factual predicate which would rationally support the classification under attack." *Fla. High Sch. Activities Ass'n*, 434 So. 2d at 308. As such, the presumption of the Wandall Act constitutionality should be upheld, the Fourth District's decision reversed, and the case remanded to the trial court for further proceedings.

Respectfully submitted,

Edward G. Guedes, Esq.
Florida Bar No. 768103
Prim. E-mail: eguedes@wsh-law.com
Sec. E-mail: szavala@wsh-law.com
Alicia H. Welch, Esq.
Florida Bar No. 100431
Prim. E-mail: awelch@wsh-law.com
Sec. E-mail: jfuentes@wsh-law.com
Weiss Serota Helfman
Cole & Bierman, P.L.
2525 Ponce de Leon Blvd., Ste. 700
Coral Gables, Florida 33134
Telephone: (305) 854-0800
Facsimile: (305) 854-2323

Counsel for City of Fort Lauderdale and City of Tamarac

By: /s/ *Edward G. Guedes*
Edward G. Guedes

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy to the foregoing brief was served via the e-Portal upon the following on this 20th day of July, 2015:

Cynthia A. Everett
1300 West Broward Boulevard
Fort Lauderdale, Florida 33312
ceverett@fortlauderdale.gov

Bradley H. Weissman
1300 West Broward Boulevard
Fort Lauderdale, Florida 33312
bweissman@fortlauderdale.gov

Jason T. Forman, Esq.
633 S. Andrews Avenue
Fort Lauderdale, Florida 33301
attorneyforman@yahoo.com

Louis C. Arslanian
5800 Sheridan Street
Hollywood, Florida 33021
arsgabriela@comcast.net

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief was prepared in Times New Roman, 14-point font, in compliance with Rule 9.210(a)(2) of the Florida Rules of Appellate Procedure.

/s/ *Edward G. Guedes*
Edward G. Guedes