IN THE SUPREME COURT
STATE OF FLORIDA

CASE NO. SC16-1976

LUIS TORRES JIMENEZ,

Petitioner,

v.

STATE OF FLORIDA, by and through the CITY OF AVENTURA,

Respondent.

ANSWER BRIEF ON MERITS OF CITY OF AVENTURA

ON DISCRETIONARY REVIEW FROM A DECISION OF THE THIRD DISTRICT COURT OF APPEAL

Edward G. Guedes, Esq.
Samuel I. Zeskind, Esq.
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 Aventura

ABBREVIATIONS USED IN THE BRIEF

References to petitioner, Luis Torrez Jimenez, will appear as "Jimenez."

References to respondent, the City of Aventura, will appear as "City."

References to the City's red light camera vendor, American Traffic Solutions, Inc., will appear as "ATS."

References to the Mark Wandall Traffic Safety Act, codified predominantly at section 316.0083, Florida Statutes, will appear as the "Wandall Act."

References to Jimenez's initial brief on the merits will appear as "IB."

References to Jimenez's appendix (the decision below) will appear as "J. App."

References to the record on appeal will appear as "R."

TABLE OF CONTENTS

Page

TABLE OF CONTENTS
(Continued)

Page

TABLE OF CONTENTS
(Continued)

Page

TABLE OF CITATIONS

Page

Cases

TABLE OF CITATIONS
(Continued)

Page

TABLE OF CITATIONS
(Continued)

Page

TABLE OF CITATIONS
(Continued)

Page

Statutes

TABLE OF CITATIONS
(Continued)

Page

INTRODUCTION

Jimenez has abandoned the issues that drove the presentation of evidence in the trial court to focus instead on a narrow preemption issue that he maintains the Third District Court of Appeal did not expressly address. The change in course is such that Jimenez does not directly engage the certified questions as presented, even though they form the foundation of the Court's jurisdiction. He also fails to propose answers to the questions.

In his effort to direct the issues in this case away from the Fourth District Court of Appeal's concern in *City of Hollywood v. Arem*, 154 So. 3d 359 (Fla. 4th DCA 2014), about the exercise of "unfettered discretion" by a camera vendor in issuing red light camera citations – *id.* at 365 – Jimenez gives short shrift to the factual findings in this case. These findings establish that the City's administrative use of a business rules questionnaire ("BRQ") is not preempted by or in conflict with the Wandall Act or any other aspect of Chapter 316, Florida Statutes.

As more fully discussed below, the BRQ represent directives from the City's police department to its camera vendor, ATS, as to how captured events should be organized for subsequent review by a City police officer. As the trial court and Third District correctly concluded – and Jimenez has not challenged on appeal – the BRQ govern a ministerial function aimed at administrative and discretionary allocation of police resources, without any adverse impact on Jimenez or any other violator. Nothing about the use of the BRQ is incompatible with either the Wandall Act or any other provision in Chapter 316; and given the unrestricted authority

conferred by the Legislature to allow for an agent's review of captured data before subsequent issuance of a citation, nothing is preempted either.

STATEMENT OF THE CASE AND FACTS

Because Jimenez does not explore a number of critical, unchallenged factual findings, the City provides the following statement of the case and facts.[1]

A. Jimenez's red light signal violation.

Jimenez was recorded by a City camera running a red light when he turned right on red at an intersection where such turns are prohibited and was issued a notice of violation ("NOV"). R. 1518. When Jimenez did not respond to the NOV or invoke any of the Wandall Act's remedies, *id*., a uniform traffic citation ("UTC") was issued to Jimenez for the infraction. *Id*.

Officer Jeanette Castro, a 13-year veteran of the City's police department, issued the UTC to Jimenez. J. App. at 10. Officer Castro has issued thousands of UTCs roadside, and hundreds as part of the City's red light camera program. *Id*. Officer Castro's badge number and electronic signature appear on both the NOV and UTC issued to Jimenez. *Id*. At the motion to dismiss hearing, Officer Castro testified that, in finding probable cause that Jimenez committed an infraction, she considered the following: (i) at the time the vehicle approached the right hand turn,

---

[1] Jimenez has not challenged, and therefore has conceded, the factual findings made by the trial court or set forth in the Third District's decision. *See Hoskins v. State*, 75 So. 3d 250, 257 (Fla. 2011) ("[A]n issue not raised in an initial brief is deemed abandoned and may not be raised for the first time in a reply brief.") (quoting *Hall v. State*, 823 So. 2d 757, 763 (Fla. 2002)).

the light had already been red for 5.7 seconds; (ii) it was a no-turn-on-red intersection; and (iii) the vehicle proceeded to make a right hand turn into moving oncoming traffic while the light was red. R. 1339, 1344-46. She further testified that she considered this a violation of the red light statutes and made that determination based on her interpretation of those statutes. J. App. at 11; R. 1346. Officer Castro's "decision to issue a citation to Jimenez was based on the same factors and criteria she uses when she issues a citation for a similar roadside violation." J. App. at 12; R. 1346-47.

B. The trial court's findings regarding the City's program.

The City first contracted with ATS in 2008 and, thereafter, ATS provided red light cameras and software data-based services to the City in connection with the program. R. 1519-20. Following passage of the Wandall Act in 2010, the City amended its contract with ATS to comply with the Act. *Id*. To reflect the review allowed by the Act, paragraph 3 of contract Exhibit D was amended:

> Vendor shall act as City's *agent* for the limited purpose of making an *initial determination* of whether the recorded images should be *forwarded to an authorized employee to determine whether an infraction has occurred* and shall not forward for processing those recorded images that clearly fail to establish the occurrence of an infraction.

R. 1520 (emphasis added).

The trial court found that ATS's processors review the images collected by the detectors, which consist of two still photographs (the A-Shot and B-Shot) and one 12-second video clip. R. 1520. The images are sorted into a working queue that is immediately accessible to the City's officer and a non-working queue,

which the *City* has determined (and instructed ATS) it does not want sorted for probable cause review. R. 1520, 1522.

The trial court also made specific findings regarding how ATS engages in its preliminary review and sorting of events:

> In order for ATS's review and sorting to take place the City provided ATS with detailed directives through a document entitled Business Rules Questionnaire (BRQ). The BRQ, in sections 4 and 6, contains a series of questions and scenarios by which *the City dictates to ATS which images to forward to the police for their determination if probable cause exists that a violation has occurred and those not to forward because the police have determined they would not approve it as a violation*. The directives are fairly straight forward and call for the majority of the images to be forwarded. Section 4 of the BRQ defines the criteria the City's police have established for forwarding a possible red light violation.

R. 1521 (emphasis added). The trial court found that the "BRQ requires ATS to forward all images on straight through and left turns when the A-Shot shows the vehicle's front tires are behind the stop line and the B-Shot shows the entire vehicle has crossed the stop line while the light is red." *Id*. The trial court also found that the BRQ provided ATS with "a list of intersections with posted no right turn on red signs and *all turns made on a red light at those intersections are to be forwarded*." *Id*. (emphasis added).

Based on the evidence, the trial court found that the "review and sorting conducted by ATS is done by trained processors," who allocate the images into working or non-working queues. R. 1522. The trial court also made numerous factual findings concerning the extensive training the ATS processors receive prior to being certified to process the images. R. 1523. The trial court found that "[t]he

goal of ATS is to accurately process the images according to the City's BRQ," R. 1522, and

> [o]nce the processor places the images into the City's respective queues *there is no further human involvement by ATS*. The police also have access to a report screen that provides the number of images in the non-working queue and the reasons for not forwarding each image. Sergeant Burns testified he does review this report.

Id. (emphasis added). The trial court also found that ATS "processors are trained that when the images show anything not covered by the BRQ or they have any doubt, the rule they must follow is to forward the images to the police." R. 1528.

To access the City's working queue, an officer is required to log onto the ATS system using his or her unique user ID and password. R. 1523. The trial court found:

> The officer then reviews the images for each potential violation *to make a determination whether there is probable cause to believe that an infraction has occurred*. The officer uses the same decision making process in determin[ing] whether an infraction has occurred when viewing the red light camera images as would be used when issuing an infraction roadside. Of the images reviewed by the City's police officers, *only between sixty-five percent (65%) and seventy percent (70%) are approved as a violation*. If the officer determines an infraction has occurred, the officer selects the "accept" button. By selecting "accept" the officer authorizes the issuance of the NOV and the placement of his/her electronic signature and badge number on the NOV. *At the same time, the officer also authorizes his/her signature to be placed on a UTC if no action is taken on the NOV* during the statutory time allowed. Although the officer never sees the completed NOV or the UTC, all of the information required to be contained on both of these documents is contained within the images and data reviewed by the officer *when determining whether an infraction has been committed*.

R. 1523-24 (emphasis added). The trial court found that once the officer "accepts" the event for prosecution, "all further statutory steps from creation and printing of the NOV and UTC, their mailing, and the transmitting of the UTC data to the Clerk is *an entirely automated process* generated according to the instructions contained in the City's BRQ *without any decision making or input from ATS*." R. 1524 (emphasis added).

On the issue of electronic transmission of the UTC to the court, the trial court credited the testimony of Sonny Thomas, a technical services employee of the Miami-Dade County Clerk of Court. *Id*. Thomas testified about the acceptance of electronic citations and red light camera citations, noting that approximately 40 law enforcement agencies file their citations electronically. *Id*. The trial court analogized to the roadside issuance of UTCs, finding that the e-citation is first transmitted from the officer's laptop or handheld device to the agency's server, which then transfers the data to the Clerk of Court. *Id*. When the Wandall Act was enacted, local police departments requested permission from the Clerk of Court to have the red light camera e-citations transmitted directly from their vendors' servers. *Id*. Vendors had to comply with the same State-mandated requirements for participation in the electronic transmission system. *Id.* The trial court found:

> While red light camera E-citations transmissions are activated and come from the vendor's server, everything else is the same as E-citations coming from a police server. In addition, there is a list of E-citation vendors approved by the State of Florida, which includes ATS. The City's BRQ specifies that ATS is to provide the UTC data to the Clerk electronically. This is done at the same time the UTC is generated. The UTC data received by the Clerk is *totally automated with no human involvement based on the police officer's affirmative*

> *selection of the "accept" button after making the probable cause determination.*

R. 1524-25 (emphasis added). Jimenez did not cross-appeal this adverse ruling.

C. The Third District's decision.

While most of the initial brief is devoted to challenging a single paragraph in the Third District's decision, the court made a series of other findings and conclusions – largely derived from the trial court's unchallenged findings of fact – that Jimenez has not challenged on appeal. These conclusions relate to why the BRQ are not preempted by or in conflict with the Wandall Act or Chapter 316:

> 1. The functions performed by ATS pursuant to the BRQ are ministerial, clerical and non-discretionary in nature, and any doubt in the application of the BRQ results in the City's officer deciding whether to issue an NOV and UTC. J. App. at 3, 17, 18, 20, 21, 23, 24, 26, 27-28, 33, 35.
>
> 2. The City does not "merely acquiesce" in ATS's allocation of events to a particular queue. *Id*. at 3, 21, 24-25.
>
> 3. Use of the BRQ neither conferred unfettered discretion on ATS nor resulted in an unlawful delegation of police power. *Id*. at 3, 16, 17-20.
>
> 4. An officer "issues" the NOV and UTC after reviewing the captured evidence and making a probable cause determination. *Id*. at 3, 10, 21, 23, 25. This determination is made in the same manner, using the same statutory analysis as when a UTC is issued roadside. *Id*. at 10-11, 21, 25.
>
> 5. Both the working queue and non-working queue are available to City police for review, and the sergeant responsible for the program reviews ATS's report as to the events placed in the non-working queue and the reasons for their placement in that queue. *Id*. at 5. Events in the non-working queue are also periodically reviewed in connection with other police investigations. *Id*.

As to the "review" permitted by section 316.0083(1)(a), Florida Statutes, the Third District observed:

> In his brief, Jimenez acknowledged that "it makes perfect sense for the Legislature to have allowed the private entity to 'review' this evidence [generated by the red light camera program] to ensure that it is usable." Jimenez therefore essentially conceded that the term "review" as used in the statutes, connotes not just viewing, but also some modicum of assessment.

Id. at 15.[2] Having accepted Jimenez's concession that section 316.008(1)(a) "review" allows for "some modicum of assessment," the Third District – citing *Arem* among other precedents – went on to apply traditional principles governing whether such an assessment results in an unlawful delegation of police power. *Id.* ("[B]ehind the statutory term 'review' is the principle of law that a city's legislative body cannot delegate its legislative function by investing unbridled discretion in an administrative agency, government official, or private party.").

After considerable consideration of the BRQ and the processes underlying ATS's review, the Third District concluded that the use of the BRQ did not result in a delegation of unbridled or unfettered authority.[3] *Id.* at 25. This determination is unchallenged by Jimenez on appeal.

---

[2] Jimenez renews his concession here, but goes further by asserting that the "review" permitted by statute is one to ascertain "completeness and usability." IB at 15, 25. According to him, the permitted statutory "review" also contemplates a determination that "the vehicle fails to stop behind the stop bar or clearly marked stop line when facing a…steady red light[.]" IB at 25.

[3] The Second District Court of Appeal reached virtually the same conclusions in *City of Oldsmar v. Trinh*, 210 So. 3d 191 (Fla. 2d DCA 2016), a decision essentially ignored by Jimenez, despite its clear relevance to the issues before this (continued . . .)

The Third District went on to consider the remaining two questions certified by the trial court regarding the City's ability to rely on ATS software and fully automated processes to (i) print and mail NOVs and UTCs, and (ii) ensure that the UTC is transmitted electronically to the clerk of court, as required by section 316.650(3)(c), Florida Statutes. *Id.* at 25-27, 27-28. The Third District concluded that such ministerial functions were not prohibited by the Wandall Act, but rather were consistent with it. The court further noted the similarities between the transmission processes employed in the City's red light camera program and those used by officers when issuing citations roadside. *Id.* at 28.

SUMMARY OF ARGUMENT

Neither the Wandall Act nor the rest of Chapter 316 preempts the City's use of the BRQ to instruct ATS how to review events captured by the City's cameras. The BRQ represent detailed instructions by the City's police department to ATS reflecting the *City's* determination of how best to allocate its resources with respect to tens of thousands of red light camera violations. The BRQ, which govern functions now conceded by Jimenez to be wholly ministerial and non-discretionary, do nothing to alter the substantive requirements for enforcement of red light violations under state law. Unlike the scenario in *Masone v. City of Aventura*, 147 So. 3d 492 (Fla. 2014), nothing here demonstrates how the administrative use of the BRQ is incompatible with the substantive requirements of

(. . . continued)
Court. While Jimenez does not point it out, reversal here would require disapproval of *Trinh*, as well.

the Wandall Act or any other aspect of Chapter 316. For that matter, Jimenez – who has largely ignored the certified questions – fails to demonstrate (and the record does not reflect) how he or anyone else is adversely affected by the use of the BRQ. The BRQ do not "regulate the use of cameras to enforce the provisions of Chapter 316," since they do not extend their use to other traffic enforcement activities or alter the statutory or regulatory standards for use of the cameras.

Jimenez's excursion through the legislative weeds in search of a definition of "review" that suits his needs is unwarranted under the traditional statutory construction principles that govern this appeal. The Legislature chose the language it did when it indicated the City's agent could conduct "a review of information from a traffic infraction detector[.]" Given the Legislature's explicit and presumed awareness of (i) existing pre-Wandall Act municipal red light camera programs; (ii) existing federal guidelines promulgating as "proper" red light camera programs operated by private contractors; and (iii) the role played by camera vendors in those programs, the Legislature could have easily imposed greater limitations on the "review" permissible under section 316.0083(1)(a), but opted instead to confer unrestricted authority to "review," consistent with the plain meaning of that term.

Jimenez's attempt to find some undisclosed intent to limit the scope of "review" is also contrary to well-established principles governing the broad exercise of municipal home rule authority in fields where the Legislature has *expressly* allowed local governments to act. Where the City's interpretation of "review" does not demonstrably conflict with either the Wandall Act or Chapter 316, there is no basis to conclude that preemption arises.

The Third District below and the Second District in *Trinh* both correctly recognized that the sole limitation on the meaning of "review" are traditional limitations on the delegation of police powers – an issue Jimenez argued below but has abandoned here. Even the *Arem* court reached the same conclusion, albeit on a substantially different record. The only "review" not permitted by law is a review that results in ATS's exercise of unfettered discretion in performing delegated police (not ministerial) functions. Since Jimenez has elected not to challenge the Third District's conclusion that the City's delegation of authority to ATS is ministerial in nature and constrained by strict and unambiguous guidelines, the City's use of the BRQ to have an agent review and sort captured events is consistent with the Wandall Act and not preempted.

ARGUMENT

I. STANDARD OF REVIEW.

Because Jimenez has not challenged any of the factual findings of the trial court or the factual recitations of the Third District, the sole issues before the Court are ones of statutory interpretation, which are subject to a *de novo* standard of review.[4] *See, e.g.*, *Williams v. State*, 186 So. 3d 989, 991 (Fla. 2016) (citing *Johnson v. State*, 78 So. 3d 1305, 1310 (Fla. 2012)).

[4] The City adopts the arguments of the Attorney General in her answer brief.

II. USE OF THE BRQ TO ALLOW ATS TO REVIEW AND SORT EVENTS CAPTURED BY THE CAMERAS IS NOT PREEMPTED BY EITHER THE WANDALL ACT OR THE REST OF CHAPTER 316.

A. *Masone* does not control the outcome of this appeal.

At the outset, the City would point out that despite Jimenez's attempt to piggy-back on the reasoning of *Masone*, that decision does not control the outcome in this appeal. *Masone* considered the validity of municipal red light camera programs *before* the Legislature expressly authorized them. Jimenez misinterprets the holding in *Masone*, asserting that the City's program was invalidated because it was not expressly authorized by Chapter 316. IB at 2-3. While *partly* correct, that assertion does not fully explain the reasoning in *Masone*.

The City argued in *Masone* that section 316.008(w)(1), Florida Statutes, which permitted municipalities to use "security devices" for "regulating, restricting, or monitoring traffic," was sufficient authorization for its entire red light camera program. 147 So. 3d at 497. This Court did not conclude that the cited statutory provision was insufficient to allow for use of cameras to enforce red light violations. Rather, the Court held that the City's use of a wholly independent code enforcement based system (rather than the courts) to enforce violations and its imposition of fines inconsistent with the requirements of Chapter 318 resulted in a conflict that invalidated the program. *Id.* at 497 ("'Control[ling] certain traffic movement' through '[r]egulating, restricting, or monitoring traffic by security devices' does not specifically encompass undertaking enforcement measures … outside the framework established by chapters 316 and 318 for conduct that is proscribed by chapter 316 and subject to punishment under chapter 318."), 498

("Nothing in section 316.008(1)(w) provides that municipalities are granted the authority to enact an enforcement regime different from the enforcement regime applicable under the provision of section 316.075(4) that red light violations are 'punishable pursuant to chapter 318.' And nothing in section 316.008(1)(w) creates an exception from the express preemption imposed by section 318.121 of any fines other than the penalties imposed as provided in chapter 318.").

The City's program at the time did not pass muster because there were specific provisions in Chapters 316 and 318 that governed how red light violations would be punished, and section 316.008(w)(1) was simply not "equal to the task" of allowing for a separate enforcement mechanism that overrode the conflicting statutory provisions. *Masone*, 147 So. 3d at 497. Here, in contrast, Jimenez has failed to identify a single provision in the Wandall Act or the remainder of Chapter 316 that governs how specifically an agent may "review" data captured by red light cameras.[5] Jimenez has not articulated how the administrative, ministerial use of the BRQ gives rise to a conflict (or even a potential inconsistency) with the Wandall Act or the rest of Chapter 316.

B. The Legislature has neither expressly nor impliedly indicated through the Wandall Act or elsewhere in Chapter 316 that the administrative use of BRQ is preempted.

The Legislature enacted the Municipal Home Rule Powers Act to codify the broad authority conferred on municipalities under the Florida Constitution. *City of*

[5] Jimenez has not asserted a conflict with Chapter 318, Florida Statutes.

Boca Raton v. State, 595 So. 2d 25, 27-28 (Fla. 1992). Section 166.021, in particular, (i) secured to municipalities the "exercise [of] any power for municipal purposes, except when expressly prohibited by law" or "expressly preempted" to the state; and (ii) ensured that the "provisions of this section shall be so construed as to secure for municipalities the broad exercise of home rule powers granted by the constitution" unless "expressly prohibited by the constitution, general or special law…." § 166.021(1)-(4), Fla. Stat. Of course, any municipal exercise of authority must be cognizant of "the constitutional superiority of the Legislature's power over municipal power." *D'Agastino v. City of Miami*, --- So. 3d ---, 2017 WL 2687694, *8 (Fla. June 22, 2017) (quoting *City of Palm Bay v. Wells Fargo Bank N.A.*, 114 So. 3d 924, 928 (Fla. 2013)).

In section 316.002, Florida Statutes, the Legislature conferred broad authority on municipalities to regulate traffic within their jurisdictions:

> The Legislature recognizes that there are conditions which require municipalities to pass certain other traffic ordinances in regulation of municipal traffic that are not required to regulate the movement of traffic outside of such municipalities. Section 316.008 enumerates the area within which municipalities may control certain traffic movement or parking in their respective jurisdictions. This section shall be *supplemental to the other laws or ordinances of this chapter and not in conflict therewith*.

§ 316.002, Fla. Stat. Section 316.008, in turn, enumerates more than two dozen ways local governments may regulate traffic, while subsection (8) of that section specifically references a municipality's authority to implement a red light camera program. § 316.008(8)(a)-(c), Fla. Stat. Accordingly, the City's exercise of

authority to implement a red light camera program presumptively "is supplemental to" Chapter 316 and "not in conflict therewith."

Jimenez ignores the foregoing aspects of section 316.002, and instead focuses *solely* on the last sentence of that section. Even that preemption language, though, lends support to the City's argument here. After expressly recognizing a municipality's authority to regulate traffic within its jurisdiction, section 316.002 concludes that it is "unlawful for any local authority to pass or attempt to enforce any ordinance *in conflict with* the provisions of [Chapter 316]." § 316.002, Fla. Stat. (emphasis added). As previously noted, Jimenez, in advancing his own definition for "review," has not identified any provision in the Wandall Act or the rest of Chapter 316 that is "in conflict with" the City's interpretation of "review" or that precludes the administrative and ministerial use of the BRQ.[6]

The preemption language in section 316.007 similarly does not preclude the use of the BRQ: "no local authority shall enact or enforce any ordinance on a *matter covered by this chapter* unless expressly authorized." § 316.007, Fla. Stat. (emphasis added). There is no provision in the Wandall Act or the remainder of Chapter 316 that "covers" the relationship between local police and its camera vendor – other than the broad and unrestricted authority in section 316.0083(1)(a) for an "agent" to "review" events. In fact, there does not appear to be *any* provision

[6] Jimenez's argument presupposes that this preemption language reaches purely administrative, operating procedures like the BRQ, when the statute actually addresses efforts to enact or enforce *ordinances* in conflict with state law. There is no indication that the City has enacted or attempted to enforce any ordinance in conflict with Chapter 316. On the contrary, the record is clear that the BRQ were implemented to facilitate *compliance* with state legislation.

in Chapter 316 directed to how local police are to administer their traffic enforcement efforts within their jurisdictions (and Jimenez certainly has not cited such a provision). Indeed, immediately preceding the preemption language in section 316.007 is a phrase that describes the purpose of Chapter 316 as maintaining the uniformity of "traffic *laws*" – not police procedures – from jurisdiction to jurisdiction. *See infra* at 42-43.

There is no aspect of the BRQ that alters or purports to alter the substantive standards for traffic laws. Red still means "stop"; green still means "go." There is also no aspect of the BRQ that alters the statutory standards for what constitutes a signal violation. The unchallenged factual record demonstrates that the City's police officers review captured camera events using the pertinent *statutory* standards to determine whether probable cause exists to support a violation. J. App. At 11-12; R. 1346-47. The BRQ do not alter the *mechanism* by which a violation is enforced, once it is determined to exist. On the contrary, it is undisputed that violations cited by the City are enforced (and any subsequent fines imposed) *precisely* in accordance with the mechanisms in the Wandall Act. Administrative use of the BRQ to organize captured events is no more preempted by Chapter 316 than is an officer's exercise of discretion roadside when enforcing a red light violation.[7]

[7] If, hypothetically, the City had Officer A screen and apply the BRQ to sort events into queues, and Officer B reviewed the events in the working queue to issue NOVs and UTCs, it is difficult to imagine how that would give rise to preemption concerns. The fact that ATS fulfills the function of Officer A, under the authority of section 316.0083(1)(a), should similarly not be cause for concern.

The Legislature has specifically authorized red light camera programs and expressly authorized the City's agent to review events captured by the cameras before issuance of a citation by an officer. Absent some conflict with state statute, there is no preemption. *Masone*, 147 So. 3d at 495 ("'[W]here concurrent state and municipal regulation is permitted … 'a municipality's concurrent legislation must not conflict with state law.'") (quoting *City of Palm Bay*, 114 So. 3d at 928). Once a City officer determines probable cause exists to support a violation of state statute, the violation is enforced precisely as contemplated by the Wandall Act. In short, the preemption and conflict concerns that drove the Court's analysis in *Masone* are absent here.

C. The Wandall Act's separate preemption language does not reach the use of the BRQ.

Jimenez reads the preemption language is section 316.0076, Florida Statutes, too broadly in an effort to encompass wholly administrative procedures that govern the City police department's relationship with its camera vendor. Section 316.0076 states, "Regulation of the use of cameras for enforcing the provisions of this *chapter* is expressly preempted to the state." § 316.0076, Fla. Stat. (emphasis added). The BRQ *do not alter* or even touch upon any of the statutory or regulatory provisions governing how cameras may be used to enforce Chapter 316.

If the BRQ purported to change where cameras could be placed or what signage was required to alert drivers to their presence and operation or what data had to be captured by those cameras, then *maybe* Jimenez might have been in a position to assert that the BRQ "regulate" how cameras are used to enforce Chapter

316. Similarly, if the BRQ purported to allow the City to use cameras to enforce speed limit violations or any other aspect of traffic control other than red light violations, then section 316.0076 might be implicated. The BRQ, though, do not serve any of these functions.

The Wandall Act contains specific statutory provisions that *do* "regulate" how cameras may be used to enforce red light violations. For example, section 316.0776, Florida Statutes, sets forth specific criteria (i) requiring traffic infraction detectors (*i.e.*, cameras) to be permitted by the Department of Transportation ("FDOT") pursuant to "placement and installation specifications" developed by FDOT; (ii) requiring the installation of signage alerting the public that a camera may be in use at an intersection, which signage has to conform to FDOT specifications; and (iii) requiring local governments initiating a program to conduct a "public awareness campaign" at least 30 days before commencing enforcement. §§ 316.0776(1)-(3), Fla. Stat.

FDOT, for its part and at the direction of the Legislature, has adopted extensive regulations governing all aspects of red light camera operation in Florida. *See Traffic Infraction Detector Equipment Specifications* (Dec. 6, 2010); *Special Provisions to General Use Permit for New Installations of Traffic Infraction Detectors on the State Highway System* (Feb. 7, 2013); and *Traffic Infraction Detector Placement and Installation Specifications* (Jan. 29, 2015), all available at http://www.fdot.gov/traffic/TrafficServices/RLRC.shtm. Nowhere in those regulations is there any mention of the relationship between local police and their camera vendors or how they may structure their relationship. Given that the

purpose of express preemption is for the State to communicate to local governments that they should not legislate in a particular field, the correct reading of section 316.0076 is that the Legislature was clarifying for local governments that – notwithstanding the language in section 316.008(1)(w) – they should not, as occurred in *Masone*, innovate programs that use cameras to enforce *other* aspects of traffic control governed by Chapter 316.[8]

III. THE LEGISLATURE CONFERRED BROAD AND UNRESTRICTED AUTHORITY ON LOCAL GOVERNMENT AGENTS TO REVIEW CAPTURED INFORMATION.

Rather than take the plain language of section 316.0083(1)(a) at face value, Jimenez has rummaged the proverbial attic of statutory interpretation principles in search of interpretive snippets that might yield a definition of "review" that imposes restrictions on local governments – restrictions the Legislature did not deem appropriate for inclusion in the statute. In doing so, Jimenez writes into the statute language that does not appear there, in violation of the rule that courts will not re-write statutes to achieve a particular objective. *See, e.g., Lawnwood Med. Ctr., Inc. v. Seeger*, 990 So. 2d 503, 513 (Fla. 2003) ("It is a well-established tenet of statutory construction that courts 'are not at liberty to add words to the statute that were not placed there by the Legislature.'") (quoting *State v. J.M.*, 824 So. 2d 105, 111 (Fla. 2002)); *Armstrong v. City of Edgewater*, 157 So. 2d 422, 425 (Fla.

[8] This conclusion is supported by the fact that (i) the Legislature elected to include the preemption language in section 316.0076, even though preemption language already existed in sections 316.002 and 316.007; and (ii) the Legislature referred to "cameras," generally, rather than "traffic infraction detectors," the term actually used *within* the Wandall Act.

1963) ("When there is doubt as to the legislative intent or where speculation is necessary, then the doubts should be resolved against the power of the courts to supply missing words.").

Ironically, Jimenez ignores that the Fourth District in *Arem* – a case he has relied on since it was decided – interpreted the term "review" in a manner more in line with the City's interpretation than with his. At issue in *Arem* was not whether a municipal agent enjoyed broad authority to review information captured by red light cameras, but rather whether that broad grant of authority extended to the "issuance" of citations by a camera vendor exercising ostensibly unfettered discretion. The Fourth District stated:

> Although the legislature in section 316.0083(1)(a) *did permit cities to delegate **the** review of information obtained from a traffic infraction detector*, it did not permit cities to delegate their authority *to **issue** any resulting traffic citations* anywhere in these statutes. Had the legislature intended to allow for delegation of this authority or responsibility, *just as it **expressly allowed** for delegating **the** review of traffic infraction detector information by employees or agents under section 316.0083(1)(a)*, it could have easily done so.

154 So. 3d at 364 (emphasis added).[9] Since Jimenez has abandoned his prior arguments regarding whether ATS is "issuing" any citations, the City need not devote additional argument in support of the Third District's reasoning on this

[9] Of course, the *Arem* court went on to conclude that the camera vendor (rather than an officer) was "issuing" the citations and exercising "unfettered discretion" in doing so, and Hollywood was merely acquiescing in those decisions. *Id.* at 365. It reached these conclusions because, as the Third District noted, the *Arem* court was unaware of the existence of the BRQ and how they operated. J. App. at 23.

point. However, even *Arem* found that the Legislature had "expressly allowed" a municipality to delegate "the review of traffic infraction detector information" to an agent.[10]

A. The Legislature was aware of the existence of municipal red light camera programs when it enacted the Wandall Act, yet chose not to restrict the authority of a municipal agent to review camera data.

The language in section 316.0083(1)(a) is fairly straightforward and unburdened by limitations or restrictions: "This paragraph does not prohibit a review of information from a traffic infraction detector by an authorized … agent of … a municipality before issuance of the traffic citation by the traffic infraction enforcement officer." § 316.0083(1)(a), Fla. Stat. Merriam-Webster's Online Dictionary offers multiple relevant definitions of "review," but not one suggests that "review" means merely "to look at." *See* https://www.merriam-webster.com/dictionary/review.[11] All the definitions involve some level of

---

[10] Jimenez may be judicially estopped even from advancing his current interpretation of the term "review." *Philip Morris USA, Inc. v. Green*, 175 So. 3d 312, 314 (Fla. 5th DCA 2015) ("[P]arties will be held to the theories upon which they secure action by the court, and … a party may not take inconsistent positions in a litigation.") (quoting *Federated Mut. Implement & Hardware Ins. Co. v. Griffin*, 237 So. 2d 38, 41 (Fla. 1st DCA 1970)). "One who assumes a particular position or theory in a case is judicially estopped in a later phase of that same case … from asserting any other … position toward the same parties and subject matter." *Id.* at 314-15 (quoting *In re Adoption of D.P.P.*, 158 So. 3d 633, 639 (Fla. 5th DCA 2014)). In the trial court, Jimenez took no issue with the meaning of "review," other than to contend that such "review" did not extend to "issuance" of citations.

[11] All online sources were lasted accessed on August 24, 2017.

(continued . . .)

"assessment" as part of "review." The same may be said of the definitions offered by the Oxford Dictionary. *See* https://en.oxforddictionaries.com/definition/review. The Third District highlighted this point when it noted that Jimenez had conceded the term "review" meant more than the non-purposeful act of looking at data. J. App. at 15. The Legislature was undoubtedly cognizant of the breadth of the term "review" and its ordinary dictionary meaning and elected not to restrict the authority.[12]

In fact, Jimenez concedes that "review" means more than merely looking at camera-captured information. IB at 21. However, rather than acknowledge that the Legislature chose not to include any limiting language along with its express authorization, Jimenez attempts to cobble together a definition of "review" that requires an agent's assessment for "completeness and usability."[13] IB at 25. In doing so, Jimenez ignores a critical aspect of the legislative enactment and amendment process that is not dependent on wading through selective staff analyses.

It is clear that the Legislature was aware of the existence of operating municipal red light camera programs at the time it enacted the Wandall Act. Indeed, the Wandall Act makes specific reference to those programs:

(. . . continued)

[12] The City has been unable to locate a single Florida or federal decision finding that the term "review" is ambiguous or confusing or precludes analysis as part of the review.

[13] For further refutation of this point, see Argument III.D, *infra* at 35-37.

> Any traffic infraction detector deployed on the highways, streets, and roads of this state must meet specifications established by the Department of Transportation…. However, *any such equipment acquired by purchase, lease, or other arrangement under an agreement entered into by a county or municipality on or before July 1, 2011, or equipment used to enforce an ordinance enacted by a county or municipality on or before July 1, 2011, is not required to meet the specifications established by the Department of Transportation until July 1, 2011*.

§ 316.07456, Fla. Stat. (emphasis added). Even if the Wandall Act did not explicitly reference existing municipal red light camera programs, this Court has repeatedly held that the Legislature is presumed to be aware of the state of the law at the time it enacts legislation, and that its choice of language, from a statutory interpretation perspective, reflects that knowledge. *See, e.g., Alachua County v. Expedia, Inc.*, 175 So. 3d 730, 735 (Fla. 2015); *Crescent Miami Center, LLC v. Fla. Dept. of Rev.*, 903 So. 2d 913, 918 (Fla. 2005) ("Florida's well-settled rule of statutory construction [is] that the legislature is presumed to know the existing law when a statute is enacted…."); *Florida Convalescent Centers v. Somberg*, 840 So. 2d 998, 1007 (Fla. 2003).

The operation of municipal red light camera programs in 2010 was a matter of public record. Not only were the decisions to implement such programs made at public hearings, but all records associated with their operation were public records subject to inspection under Florida's Public Records Law, Chapter 119, Florida Statutes. The programs were the subject of numerous judicial challenges. *See, e.g., Lally v. City Homestead*, Case No. 09-84934-CA-21 (11th Jud. Cir.); *Sierra v. City of North Miami*, Case No. 09-62226-CA-06 (11th Jud. Cir.); *Barnet v. City of Coral Gables*, Case No. 10-47078-CA-06 (11th Jud. Cir.); *Lazarus v. City of*

Hallandale Beach, Case No. 10-29090-CA-21 (17th Jud. Cir.). In fact, as Justice Pariente observed in *Masone*, the programs were "of interest to many Floridians," and their legality was a subject that was "high profile and controversial." *Masone*, 147 So. 3d at 499 (Pariente, J., dissenting).

Additionally, since its enactment in 2010, the Wandall Act – specifically, section 316.0083 – has been amended by the Legislature four times. Laws of Fla., Chs. 2012-174, §§ 3, 74; 2012-181, § 43; 2013-15, § 5; 2013-160. The Court may take judicial notice of the fact that every year, the press reports ongoing legislative efforts to further curtail or repeal red light camera programs.[14] Despite these efforts, the Legislature has not seen fit to amend or clarify the meaning of "review" in section 316.0083(1)(a). And during this period, the Florida Department of Highway Safety and Motor Vehicles (the "Department") has been complying with its obligations under section 316.0083(4)(b), reporting annually to the Legislature regarding the operation of these local red light camera programs:

> On or before December 31, 2012, and annually thereafter, the department shall provide *a summary report* to the Governor, *the President of the Senate, and the Speaker of the House of Representatives regarding the use and operation of traffic infraction detectors under this section*, along with the department's recommendations and any necessary legislation. The summary report must include a review of the information submitted to the department

---

[14] *See, e.g.*, http://www.sun-sentinel.com/news/politics/florida-politics-blog/fl-reg-red-light-camera-repeal-20170322-story.html; http://miamiherald.typepad.com/nakedpolitics/2016/03/house-votes-to-repeal-red-light-cameras-in-florida-but-unlikely-to-clear-senate.html; http://politics.heraldtribune.com/2015/04/14/no-end-in-sight-for-red-light-cameras/; http://jacksonville.com/slideshow/2014-03-27/red-light-cameras-wont-be-turned-florida-year#slide-1.

> by the counties and municipalities and must describe the enhancement of the traffic safety and enforcement programs.

§ 316.0083(4)(b), Fla. Stat. (emphasis added).

Those reports make specific references to the "business rules" used by municipalities and their camera vendors. *See* Red Light Camera Summary Report ("Annual Report"), Fiscal Year 2013-14, App. A at 28 (noting municipal reference to "Business Rules set with our vendor ATS"); Annual Report, Fiscal Year 2014-15, App. D at 16 (noting municipal reference to "business rules"); Annual Report, Fiscal Year 2015-16, App. E at 17, 30 (noting municipal references to the use of BRQ).[15] Those same reports very clearly disclose that private contractors are involved in *reviewing* events captured by the cameras.[16]

Thus, in the December 17, 2013 report, the Department informed the Legislature, "Jurisdictions were asked to provide a breakdown of all personnel involved in issuing Notices of Violation, reviewing contested Notices of Violation, and issuing uniform traffic citations. Sworn officers, non-sworn government employees, and *contractors may be involved in different steps of the same*

---

[15] The Annual Reports referenced here are set forth in App. A and available online at https://www.flhsmv.gov/resources/cabinet-and-legislature-reports/.

[16] To be clear, these reports are submitted not to establish how these particular programs *actually* operated, but rather to demonstrate that the Legislature was on notice as to the involvement of private contractors in the review of information captured by red light cameras. To the extent necessary, the City would ask the Court to take judicial notice of these official state reports. § 90.202(5), Fla. Stat. (allowing for judicial notice of "official actions of the…executive…departments of…any state").

process."[17] 2013 Annual Report at 5. This was followed by a chart showing that 12 percent of the personnel used by local governments to "review" incidents were non-police, non-government personnel. *Id.* Other annual reports contained similar, if not more comprehensive information. *See* 2013-14 Annual Report at 4 (noting 15% of personnel reviewing camera images were "non-sworn Contractor Employees"; also noting reports of camera vendors' "automated" systems for printing and mailing of citations); 2014-15 Annual Report at 3 (asking "who reviews the camera images" before an NOV is issued and noting 16 respondents who answered with "non-sworn Contractor Employee").

Despite being made aware of the role private contractors were playing in reviewing images, the Legislature took no steps to amend section 316.0083(1)(a) to clarify what "review" meant – just as the Legislature could have at the outset readily included restrictive language in allowing for an agent's "review," but elected not to. *See Alachua County*, 175 So. 3d at 735 ("The [L]egislature is presumed to have been aware of the Department's … position. Not having thereafter amended the relevant legislation, the [L]egislature may be considered to have thereby implicitly affirmed that position as reflecting the legislative intent.") (quoting *Dep't of Revenue v. Bonard Enter., Inc.*, 515 So. 2d 358, 359 (Fla. 2d DCA 1987)).

The Legislature's inaction is perhaps not surprising when one considers that even before passage of the Wandall Act, Florida law contemplated the involvement

[17] Of course, the undisputed record here demonstrates that ATS reviews and sorts captured events, but the City's officer issues the NOV and UTC.

of private parties in regulating, restricting and monitoring traffic in local jurisdictions through the use of "security devices." § 316.008(1)(w), Fla. Stat. (2009) ("The provisions of this chapter shall not be deemed to prevent local authorities … from … (w) Regulating, restricting, or monitoring traffic by security devices … *whether by public or private parties*….") (emphasis added).

Similarly, at the Legislature's directive, FDOT could have implemented regulations that provided parameters on the kind of review permitted under section 316.0083(1)(a). *See, e.g.*, §§ 316.0745, Fla. Stat. (requiring review and approval by FDOT of the design of any "system of traffic control devices controlled and operated from a remote location by electronic computers or similar devices"); 316.07456 (requiring conformity of camera operations to the specifications of FDOT); 316.0776 (allowing for red light cameras on state roads subject to FDOT permitting and requiring operational compliance with FDOT regulations). However, a comprehensive review of FDOT regulations reveals nothing that could be construed as a limitation on a municipal agent's review of red light camera information.

B. The staff analyses Jimenez relies on actually demonstrate that the Legislature was aware of and *endorsed* the idea of a private contractor engaging in a more comprehensive kind of review than that performed by ATS.

While Jimenez has cherry-picked those portions of the staff analyses that he believes he can cobble together for a restrictive interpretation of "review," he has either overlooked or chosen to disregard a very clear indication of Legislative Staff's endorsement of private contractors acting in a substantial review capacity.

At the very least, this acknowledgment by Legislative Staff is indicative that the Legislature was aware of and chose not to prevent private contractors from engaging in meaningful review of information captured by red light cameras.

In *each* of the House of Representatives Staff Analyses for House Bill 325 (the Wandall Act), dated January 8, January 25, March 9, April 13 and April 19, 2010 – all relied upon by Jimenez – the following substantive analysis appears:

> The Federal Highway Administration (FHWA) and the National Highway Traffic Safety Administration (NHTSA) have developed guidelines ***for the use of state and local agencies on the implementation and operation of red light camera systems***. These guidelines were most recently updated in January 2005. Although not a regulatory requirement, ***the guidance is intended to provide critical information for state and local agencies on relevant aspects of red light camera systems in order to promote consistency and proper implementation and operation***.

FL Staff An., H.B. 325, 1/8/2010 at 3 (emphasis added).[18] When one examines the federal guidelines endorsed by Legislative Staff as instructive on the "proper implementation and operation" of red light camera systems, one quickly learns that the active involvement of private contractors in reviewing violations and operating the programs was specifically contemplated in the vast majority of available models.

In the January 2005 circular published by the U.S. Department of Transportation, Federal Highway Administration entitled, "Red Light Camera Systems – Operational Guidelines (hereafter, the "Federal Guidelines"), Table 1 identifies four potential operational models for red light camera systems. Three of

[18] This identical language appears in every staff analysis.

the four models (Options A, B and C) contemplate that a *private contractor* would engage in "Operation and Maintenance" of the programs and "Citation Data Processing." Federal Guidelines at 16, Tab. 1.[19] The Federal Guidelines go on to explain what is meant by the private contractor activities identified as "Operation and Maintenance" and "Citation Data Processing."

Among the activities encompassed by "Operation and Maintenance" of a red light camera program, which a private contractor can perform, are:

> (i) Collect images of recorded violations and related violations data from photo-enforced intersections.
>
> (ii) ***Review recorded violations data to identify violations***.
>
> (iii) ***Prepare and mail citations to vehicle registered owners.***
>
> (iv) ***Provide court-requested information*** and support court hearings.

Id. at 26-27 (emphasis added). The Federal Guidelines go on to elaborate on the meaning of "Citation Data Processing" as follows:

> The procedures and methods employed for system operations should be designed to ensure the preservation of the chain of custody of evidence for each recorded violation so that backup data and documentation can be easily retrieved when needed. The procedures and methods used for system operations should be comprehensive, clearly documented in writing, and followed without exception.
>
> * * *
>
> Procedures, especially important to ensure quality control, should be developed for each of the following areas:

[19] A copy of the Federal Guidelines is included in the City's appendix at Tab B. The guidelines are also available online at https://safety.fhwa.dot.gov/intersection/conventional/signalized/rlr/fhwasa05002/.

> • *Guidelines to be applied for issuing a citation. In other words, a very specific definition is needed to identify what constitutes a red light running violation*.
>
> • *Citation review and approval requirements*, including provisions for the procedure to be used when the time to review is shortened, traffic officers are not available to conduct the reviews, or the number of citations is larger than usual.
>
> • Quality assurance audits, to be conducted by trained traffic officers for *randomly selected sample of recorded violations on a periodic basis*.
>
> *Only a qualified law enforcement officer should be authorized to issue a citation.* Citations should not be created prior to review of appropriate evidentiary material by the officer. *Under no circumstances should a citation be issued when the officer expresses any lack of confidence that a properly documented and provable violation has occurred*.

Id. at 27 (emphasis added).[20]

Contrary to Jimenez's assertions, it is readily apparent that Legislative Staff was fully aware that private contractors *could* engage in substantial review of information gathered by red light cameras, not merely for categorization (as was the case for the City) but even for purposes of "issuing a citation." It strains credulity to conclude, given Legislative Staff's acknowledgment that the Federal Guidelines were designed to provide guidance to local agencies in the "proper administration and operation of red light camera programs," that the Legislature necessarily intended the scope of the "review" in section 316.0083(1)(a) to be a

[20] Consistent with these requirements, the trial court and Third District both concluded that only a City police officer was permitted to make a determination of probable cause and "issue" a citation, without merely acquiescing in any review by ATS. None of these conclusions has been challenged by Jimenez on appeal.

restrictive model that precludes the use of the BRQ by the City. On the contrary, the admonition in favor of local governments developing "guidelines to be applied for issuing citations," Federal Guidelines at 27, goes much further than the BRQ the City adopted for its program.

C. Where the Legislature has authorized local governments to act within a field, there is no reason to superimpose a restriction on that authority absent a showing of conflict with some other provision of superseding law.

There is no dispute that the Legislature has expressly permitted municipalities to have an agent "review" information captured by red light cameras before an officer subsequently issues a citation. Jimenez, though, contends that this "review" must be construed restrictively (apparently in a manner *he* deems appropriate) because the Wandall Act does not "expressly authorize" the use of the BRQ. The argument fails for two additional reasons.

First, Jimenez's argument regarding express authorization, presumably derived from the language in section 316.007, would also defeat the interpretation of "review" *he* contends is "proper." Nowhere in the Wandall Act or elsewhere in Chapter 316 is there "express authorization" for an agent's review to ensure "completeness and usability." As a result, Jimenez is forced to concede that "review" must mean something more than merely looking at the captured information. This concession inexorably leads to the conclusion that the interpretation of "review" is not a preemption question, but one of normal statutory construction, which is the analysis the Third District engaged in below.

It is also what the Second District did in *Trinh*, where the court examined a substantially similar record for the City of Oldsmar's program (also operated with the assistance of ATS) and reached the same conclusions that the Third District did here. The Second District, citing *Arem*, explicitly noted that the Wandall Act "expressly preempt[s] to the State the regulation of the use of cameras to enforce the provisions of chapter 316," 210 So. 3d at 192, but went on to conclude:

> Undoubtedly, section 316.0083(1)(a) permits "a review of information from a traffic infraction detector by an authorized ... agent of ... a municipality before issuance of the traffic citation by the [TIEO]." And, like the Third District in *Jimenez*, we conclude that the screening function performed by the ATS processors falls within the "review" permitted by the statute.

Id. at 206. In reaching this conclusion, the Second District relied not merely on the reasoning of its sister court, but also the guiding principles of this Court governing when authority may be delegated to a third party. *Id.* (citing *St. John's Cty. v. Ne. Fla. Builders Ass'n*, 583 So. 2d 635, 642 (Fla. 1991) (holding that a county ordinance imposing an impact fee on new residential construction to be used for new school facilities did not constitute an unauthorized delegation of power from the county to the school board because "the fundamental policy decisions [were] made by the county, and the discretion of the school board [was] sufficiently limited") and *Citizens v. Wilson*, 567 So. 2d 889, 892 (Fla. 1990) (holding that the Florida Public Service Commission did not improperly delegate to its staff "the authority to approve [a] revised supplemental service rider" when "the staff merely carried out the ministerial task of seeing whether [the] conditions [specified by the board] were met").

Second, even if the correct interpretation of "review" could (or should) be couched in terms of traditional preemption analysis, this Court has held that where the Legislature allows local government to legislate in a particular field, preemption cannot arise unless the local effort results in a conflict with a superseding law. *Masone*, 147 So. 3d at 495 ("'[W]here concurrent state and municipal regulation is permitted … 'a municipality's concurrent legislation must not conflict with state law.'") (quoting *City of Palm Bay*, 114 So. 3d at 928). Jimenez has proffered no explanation for how the use of the BRQ results in a conflict with any other aspect of the Wandall Act or the remainder of Chapter 316.

To adopt a more restrictive interpretation of "review" in section 316.0083(1)(a) under these circumstances unnecessarily flies in the face of this Court's numerous precedents acknowledging the breadth of municipal home rule authority. As recently as a couple of months ago, this Court reiterated the broad home rule authority enjoyed by municipalities and cautioned against courts "implying" preemption too hastily. *D'Agastino*, 2017 WL 2687693, **7-8 (noting that municipal home rule authority derives from the Florida Constitution and the Municipal Home Rule Powers Act, and stating, "However, we must be careful and mindful in attempting to impute intent to the Legislature to preclude a local elected governing body from exercising its home rule powers."). The Court went on to observe, "In sum, under this framework, '[l]egislative statutes are relevant only to

determine limitations of authority.'"[21] *Id.* at *8 (quoting *City of Boca Raton*, 595 So. 2d at 28).

Jimenez has failed to identify, either in the Wandall Act or the remainder of Chapter 316, any such statutory limitation on the authority conferred in section 316.0083(1)(a) for a municipal agent to "review" information captured by red light cameras. This is not a situation akin to *Masone*, where local governments implemented code enforcement systems through which to enforce red light signal violations captured by cameras, without regard to the enforcement mechanisms and requirements already found in Chapter 318. Here, the Legislature has expressly conferred authority, not merely to operate red light camera systems, but to allow municipal agents to "review" camera-captured information before later issuance of an NOV or UTC by an officer. Absent superseding legislation that conflicts with a plain language, unrestricted interpretation of "review," Jimenez's contrived interpretation of the term must fail.

---

[21] Similarly, in *City of Palm Bay*, the municipality's invocation of home rule authority to create a "super-priority" for its code enforcement liens ran afoul of express language in Chapter 695, Florida Statutes, that imposed limitations of local power. 114 So. 3d at 928-29 ("Here, it is undisputed that the Palm Bay ordinance provision establishes a priority that *is inconsistent with* the priority established by the pertinent provisions of chapter 695. … Giving effect to the ordinance superpriority provision would allow a municipality to displace the policy judgment reflected in the Legislature's enactment of the statutory provisions. And it would allow the municipality to destroy rights that the Legislature established by state law.") (emphasis added).

D. Even under Jimenez's definition of "review," the City's use of the BRQ is permissible.

Jimenez makes a remarkable concession at page 25 of his initial brief:

> The testimony in this case vouchsafes the reasonableness of reading the language to entail a limited review of the photographic evidence for completeness and usability. ***That is precisely what ATS's employees do, under the guise of what ATS terms "pre-sorting review."*** (R. 1381). … Thus, ATS examines the photographic and video evidence – constituting the "information from a traffic infraction detector," § 316.0083(1)(a), Fla. Stat. – to determine that it contains the necessary information required by the statute – namely at least "two … images or streaming video of only the rear of a motor vehicle ***at the time the vehicle fails to stop behind the stop bar or clearly marked stop line*** when facing a…steady red light…includ[ing] a[n]…image…[of] the license tag…and the [red light]," § 316.003(87), Fla. Stat. ***This first-tier review is all that is contemplated by the statute***.

IB at 25 (emphasis added). In other words, according to Jimenez, ATS's processors ***are*** permitted by the Wandall Act to "review" the captured information to make certain substantive assessments, one of which is that certain information was obtained when the vehicle "fails to stop behind the stop bar or clearly marked stop line." In order to do so, ATS processors must determine whether the vehicle, in fact, failed to stop at a specific point. This is *precisely* the purpose of the two primary components of the BRQ – Rules 4.1 and 4.2. J. App. 17 (describing Rule 4.1 as the main guideline and Rule 4.2 as further eliminating any discretion by requiring all qualifying events to be placed in the working queue for police review).

Rule 4.1 asks the City to identify what the line of demarcation is going to be for its program, against which all captured events will be reviewed and

categorized. The City responded that the "stop line" would be the line of demarcation. R. 256; *see also* J. App. at 9 ("This is the line used to evaluate the "A" shot, which is the photograph that shows the vehicle approaching the intersection. In reviewing this guideline, one must keep in mind that if the front tires of a vehicle crossed the boundary and entered the intersection when the light is still displaying green, the vehicle obviously is not running a red light. Conversely, if the front tires had not yet reached this line when the light displays red, the vehicle would appear to be running a red light (assuming the vehicle does not immediately stop within the edge of the intersection and wait for a green light."). Rule 4.2 represents the City's instruction to ATS that if a vehicle's front tires are touching or slightly beyond the stop bar when the light turns red and the vehicle does not complete a stop, that captured event is to be placed in the police's working queue for assessment for a possible violation of the statute, if the captured information reflects that "the tires were behind the line when the light turned red." R. 256; J. App. 17.

The testimony in the trial court demonstrated that these two rules constitute the primary "assessment" done by ATS processors in connection with a review pursuant to the BRQ. J. App. 20 ("The sergeant in charge of City's program testified that 'sufficient evidence of a violation' refers to whether guidelines 4.1 and 4.2 are met. He testified this means 'the A-shot was before the stop bar and in the B-shot is already passed through the intersection.'"). Inasmuch as Jimenez was cited for turning "right on red" at an intersection where such turns are not permitted (J. App. 17, n. 3), the review, assessment and categorization that ATS

performed in connection with Jimenez's citation was *precisely* the kind of review and assessment Jimenez now *concedes* is "contemplated by the statute."[22]

E. Neither the Wandall Act nor the remainder of Chapter 316 preempts the City's ability to use wholly automated software provided by ATS to print, mail and transmit NOVS and UTCs.

At the outset, it bears repeating that Jimenez's assertion that the Legislature intended to "cabin the permissible role of a private contractor," IB at 33, is manifestly wrong, as the Legislative Staff's reliance on the Federal Guidelines, alone, amply demonstrates. Those guidelines reflect acceptable models for the "proper" administration of a red light camera that involve private contractors performing the ministerial functions of printing, mailing and transmitting NOVs and UTCs (and more).

Beyond that dispositive point, Jimenez's interpretation of the Wandall Act results in patently absurd results, as both the Third District below and the Second

---

[22] Because this appeal does not involve consideration of whether a permissible right hand turn was performed in a "careful and prudent manner," Rule 4.4 of the BRQ does not come into play. However, even if it had, section 316.075(1)(c)1, Florida Statutes, still requires a driver to come to a complete stop at the stop bar before proceeding carefully, yielding to traffic and pedestrians. § 316.075(1)(c)1, Fla. Stat. ("The driver of a vehicle which is stopped at a clearly marked stop line … may make a right turn, but shall yield the right-of-way to pedestrians and other traffic…."). This is consistent with Rule 4.4, which requires ATS to assess, in part, whether the vehicle "did not come to a complete stop." The remainder of Rule 4.4 addresses the *City's* assessment – not ATS's – in the exercise of its police powers, that it considers a turn performed at less than 15 mph to be one performed in a "careful and prudent manner."

District in *Trinh* concluded. J. App. at 26; *Trinh*, 210 So. 3d at 208. Courts will avoid an interpretation of a statute that results in absurd or unreasonable results, a point Jimenez acknowledges but refuses to apply to this situation. IB at 24 (citing *License Acquisition, LLC v. Debary Real Estate Holdings, LLC*, 155 So. 3d 1137, 1145 (Fla. 2014)); *see also Florida Dept. of Envt'l Protection v. Contractpoint Fla. Parks, LLC*, 986 So. 2d 1260, 1270 (Fla. 2008) (citing *State v. Atkinson*, 831 So. 2d 172, 174 (Fla. 2002) and *State v. Burris*, 875 So. 2d 408, 414 (Fla. 2004)). Even where statutory language is ostensibly unambiguous, "the plain meaning analysis should not be used when to do so would clearly defeat the intent of the legislature. 'It is a fundamental rule of statutory construction that legislative intent is the polestar by which the court must be guided, and *this intent must be given effect even though it may contradict the strict letter of the statute*.'" *Barber v. State*, 988 So. 2d 1170, 1172 (Fla. 4th DCA 2008) (quoting *Knowles v. Beverly Enters.-Fla., Inc.*, 898 So. 2d 1, 6 (Fla. 2004) (emphasis in original)).

Jimenez's argument here transgresses the bounds of common sense. He asserts that because section 316.0083(1)(c)1.a – which states that the UTC "shall be issued by mailing the traffic citation by certified mail" – does not expressly authorize an agent to mail the citation, agent involvement in the task must be preempted. IB at 34-35. Respectfully, this is the quintessential absurd result. Taken literally, Jimenez's interpretation means *no one* can mail the citation, because the provision is silent as to who shall mail it.[23] The Legislature plausibly chose the

[23] Jimenez does not attempt to explain who *is* expressly permitted to mail the UTC. Below, Jimenez contended that a TIEO's "issuance" of the UTC captured (continued . . .)

passive voice and failed to indicate that anyone in particular had to mail the citation because it *did not matter* in the overall legislative scheme.

On the question of electronic transmission of the UTC to the clerk of court, the City would first note that, while the Third District addressed the issue in its decision, Jimenez is barred from challenging the City's protocol here because he did not cross-appeal the trial court's adverse ruling against him on this point.[24] *See, e.g., Phillip Morris U.S.A., Inc. v. Naugle*, 182 So. 3d 885, 886 (Fla. 4th DCA 2016) (holding "the appellee waived the comparative fault issue by failing to cross-appeal that point"); *Cespedes v. Yellow Transp., Inc. (URC)/Gallagher Bassett Servs., Inc.*, 130 So. 3d 243, 249 (Fla. 1st DCA 2013) ("A cross-appeal is an appellee's exclusive method of obtaining relief from error in an order, and absent a cross-appeal ... the appellee may only defend the order."); *Premier Indus. v. Mead*, 595 So. 2d 122, 124 (Fla. 1st DCA 1992) ("Because Northbrook failed to invoke the appellate jurisdiction of this court by filing a ... notice of cross appeal ... it has remained an appellee and is not authorized ... to argue positions as an aggrieved party in derogation of the appealed order.").

(. . . continued)
the act of mailing – a contention he has abandoned here.

[24] While the trial court ruled in Jimenez's favor on the applicability of *Arem*, it ruled against him on the issue of electronic transmission of the UTC to the clerk of court. R. 1531-32. The *Arem* court never reached this issue. The City brought this failure to preserve to the Third District's attention. *See* Third District IB at 3, 14, n.4 and RB at 1, n. 1.

Assuming the Court were nonetheless inclined to consider Jimenez's argument on this point, the argument would fail. Section 316.650(3)(c) merely states that the officer "shall provide *by electronic transmission* a replica of the traffic citation data to the court having jurisdiction over the alleged offense." § 316.650(3)(c), Fla. Stat. (emphasis added). The statute says nothing about what particular server must be used or that a third-party's indirect involvement would be precluded. The undisputed factual record establishes that the officer's determination of probable cause sets in motion a wholly automated, electronic process that results in the UTC being printed, mailed and transmitted to the court. R. 1524. The record is equally clear that there is no human involvement by anyone at ATS in the performance of these tasks. R. 1525. These actions occur by means of access to software made available to the City by ATS. R. 1529.

Jimenez ignores that section 316.650(3)(c) contemplates "electronic" transmission. There is no conceivable way an officer can *electronically* transmit the UTC to the court without using software provided by *someone* else; unless, of course, Jimenez is insisting that the officer must develop his or her own software and use it to transmit the UTC. Just as police officers regularly rely on software to accomplish multiple duties addressed in Chapter 316, so too here, the City's officer relies on ATS software to accomplish his statutory obligation to electronically transmit the UTC.[25]

---

[25] One has to assume that Jimenez would not take issue with an officer using commercially available word processing or spreadsheet software in the performance of duties mandated by Chapter 316, even though nowhere in Chapter 316 is there any mention of allowing software manufacturers to play any role in (continued . . .)

IV. THE CITY HAS NOT DELEGATED TO ATS ANY AUTHORITY OTHER THAN THE AUTHORITY TO ENGAGE IN THE MINISTERIAL FUNCTION OF REVIEWING AND CATEGORIZING CAPTURED EVENTS.

The Third District concluded that the functions performed pursuant to the BRQ are ministerial and non-discretionary in nature, and Jimenez has not challenged those findings on appeal. Instead, he contends that even such ministerial and non-discretionary functions are prohibited because they are not expressly authorized.[26] IB at 41. In doing so, Jimenez seems to suggest that ATS is somehow "winnowing" events that might otherwise be substantively enforced by the City, such as right hand turns on red at speeds below 15 miles per hour. IB at 42. What Jimenez ignores is that the decision not to enforce those potential violations is made *by the City's police department*, not by ATS, and ATS is required to apply the City's directive.

The City's decision not to enforce right-on-red violations below 15 miles per hour at intersections where such turns are allowed is no more constitutionally offensive than the same decision made by a police officer roadside who elects not to pull over a driver who *arguably* performs a right-on-red in a less than "careful and prudent" manner. As both the Third District below and the Second District in *Trinh* concluded, as long as ATS is not independently performing that analysis

---

(. . . continued)
enforcement.

[26] Jimenez's "constitutional" argument – IB at 36-45 – is dependent on the correctness of his assertion that "review" means what he claims it means. Since he is incorrect in his interpretation of the term, his constitutional argument also fails.

without controlling guidance from the City, you do not have an improper delegation of authority. J. App. at 23-24; *Trinh*, 210 So. 3d at 206-07. *See also St. John's Cty.*, 583 So. 2d at 642 (holding ordinance imposing an impact fee on new residential construction for use in new school facilities did not constitute an unauthorized delegation of power because "the fundamental policy decisions [were] made by the county, and the discretion of the school board [was] sufficiently limited"); *Citizens*, 567 So. 2d at 892 (holding the Florida Public Service Commission did not improperly delegate to staff "the authority to approve [a] revised supplemental service rider" when "staff merely carried out the ministerial task of seeing whether [the] conditions [specified by the board] were met").

V. USE OF THE BRQ DOES NOT OFFEND THE UNIFORMITY REQUIREMENTS INHERENT IN CHAPTER 316.

As previously noted, section 316.002 expresses the legislative intent that the "traffic laws" throughout the state be "uniform." § 316.002, Fla. Stat. Conspicuously, this section does not call for police enforcement decisions throughout the state to be uniform. Jimenez's argument is grounded in the faulty premise that the BRQ are a set of local regulations or ordinances that somehow modify the State's uniform traffic laws. However, as the trial court and the Third District made clear, the City's BRQ are simply a set of detailed directives from the City to ATS through which the City dictates to ATS exactly which events to sort into the police working queue and which images to sort into the non-working queue. The BRQ do nothing to change the State's uniform traffic laws. They are

simply a means utilized by the City in furtherance of the exercise of *its* discretion to determine which particular traffic violations to *enforce* and prosecute.[27] It is axiomatic that local law enforcement *always* retains this discretion. *See*, *e.g*., *Everton v. Willard*, 468 So. 2d 936, 938-39 (Fla. 1985), *Brown v. Miami-Dade Cnty.*, 837 So. 2d 414, 418 (Fla. 3d DCA 2001); *Lester v. City of Tavares*, 603 So. 2d 18, 19 (Fla. 5th DCA 1992); *Alderman v. Lamar*, 493 So. 2d 495, 497-98 (Fla. 5th DCA 1986).

A contrary analysis would lead to the inevitable and preposterous conclusion that the substantive uniformity in section 316.002 mandates that all police officers everywhere in the state enforce every violation they see and every prosecutor prosecute every probable cause determination in the exact same manner. The factual record in this case is clear that the City's officers evaluate each incident in the working queue under the substantive standards set forth in the Florida Statutes, just as they do when they enforce a violation roadside. J. App. at 4. If the BRQ purported to change the substantive criteria pursuant to which a citation issued, Jimenez's argument might have merit. However, the record is devoid of any indication that any NOV or UTC issued under the City's program was based on something other than a violation of the statutory standard for that violation.

---

[27] For example, the City has instructed ATS that it will not enforce camera-captured violations involving emergency vehicles with lights on, and therefore, those are to be placed in the non-working queue. R. 794. That the City has chosen through its BRQ not to enforce a signal violation involving an emergency vehicle with lights on, while another jurisdiction may choose to review similar incidents on an incident-by-incident basis, does not alter the statewide uniformity of the substantive standards governing those incidents.

Moreover, if the City's police chief hypothetically instructed the officers in the patrol division that they were not to enforce *any* red light signal violations in the City, because he wanted them focused instead on speeding, such a decision – even if it constituted terrible policing practices – would not violate the uniformity mandate of section 316.002. In short, the fact that a decision is made not to enforce a particular violation of sections 316.074(1) or 316.075(1)(c)1 – whether observed roadside or through cameras – does not suddenly alter the uniformity of the law regarding red light signals throughout the state.

Jimenez's line of demarcation argument does nothing to alter this conclusion. In selecting the line of demarcation within Rule 4.1 of its BRQ, the City has not instituted a new regulation or ordinance. Instead, the City has merely communicated to ATS that, if the vehicle's front tires are behind the stop bar when the light turns red, the event should be sorted into the working queue. Once an event is sorted into the working queue, the City's officer applies the State's uniform traffic laws in determining whether to issue an NOV or UTC. In fact, the City's "officers decide to issue a citation based on the images in *the same manner they decide to issue a roadside citation*." J. App. at 4 (emphasis added). As Officer Castro testified at the final hearing, the City's officer then applies his or her discretion in interpreting and applying State traffic laws. J. App. At 11-12; R. 1346-47.

Even if, *arguendo*, Jimenez had standing to complain and were correct that the City has selected the stop bar as the line of demarcation to be used by its officers in making *probable cause determinations* – and there is absolutely no

evidence it has – it would simply not be improper for the City to do so. The statutory provision cited by Jimenez, section 316.075(1)(c)1, sets forth that "[v]ehicular traffic facing a steady red signal shall stop before entering the crosswalk on the near side of the intersection ***or, if none, then before entering the intersection and shall remain standing until a green indication is shown***." § 316.0075(1)(c)1, Fla. Stat. (emphasis added). Jimenez has offered no record evidence that there is even a crosswalk located at any of the relevant intersections within the City (let alone the intersection where he committed his violation). Indeed, Jimenez was not even cited for a straight through violation.

The statutory provision relevant – the line of demarcation on right hand turns – is set forth in section 316.0075(1)(c)1.a., which states:

> ***The driver of a vehicle which is stopped at a clearly marked stop line***, but if none, before entering the crosswalk on the near side of the intersection, or, if none then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway ***before entering the intersection in obedience to a steady red signal may make a right turn***, but shall yield the right-of-way to pedestrians and other traffic proceeding as directed by the signal at the intersection….

§ 316.0075(1)(c)1.a., Fla. Stat. (emphasis added). Therefore, with respect to right hand turns, the stop line *is* the line of demarcation set forth by the Legislature. As such, with respect to the UTC at issue here, Jimenez cannot assert lack of uniformity as to the City utilizing the stop line as the line of demarcation.[28]

---

[28] Jimenez, himself, has not been harmed by any of the alleged defects in the City's program. His chief complaint is about the City's decision not to enforce certain other potential violations. Jimenez lacks standing to complain about (continued . . .)

VI. EVEN IF CERTAIN ASPECTS OF THE CITY'S PROGRAM WERE INVALID, WHICH THEY ARE NOT, DISMISSAL WOULD NOT BE THE PROPER REMEDY.

Jimenez over-reaches when he asserts that the City's program would be void from inception because of ATS's involvement in the program. Unlike the situation in *Masone*, where the Legislature had not authorized red light camera programs and the City's enforcement mechanism conflicted with Chapter 318, the City's program here *is* unquestionably authorized by the Legislature. Even assuming Jimenez were correct in all of his criticisms of the program, they would still amount only to technical defects in the *implementation* of the program, not a wholesale invalidation of red light camera enforcement. For this reason, his reliance on *Department of Revenue v. Kuhnlein*, 646 So. 2d 717 (Fla. 1994) and *Arem* is wholly misplaced.

In *Kuhnlein*, the impact fee, which constituted the entire basis for the local program, was found to be prohibited by law. The local government acted without any authorization. *Id.* at 725-26. In contrast here, the red light camera program is actually authorized by the Legislature. Similarly, even giving *Arem* the broadest interpretation possible, the Fourth District concluded that the camera vendor was

---

(. . . continued)
provisions that had no impact on him. *See, e.g., Trans Health Mgm't Inc. v. Nunziata*, 159 So. 3d 850, 856 (Fla. 2d DCA 2014) (citing *Centerstate Bank Cent. Fla., N.A. v. Krause*, 87 So. 3d 25, 28 (Fla. 5th DCA 2012)). Jimenez's grievance is tantamount to a driver pulled over roadside for running a red light who challenges the validity of his citation by arguing that the officer did not pull over another driver who also ran the light.

not merely reviewing traffic camera information, but issuing citations on its own, using unfettered discretion, with mere acquiescence by Hollywood police. 154 So. 3d at 365. None of those alleged defects is present here.[29]

Not every defect in the implementation of a program renders the program a nullity from inception. *See State v. Phillips*, 463 So. 2d 1136 (Fla. 1985); *State v. Gray*, 435 So. 2d 816 (Fla. 1983); *Delgado v. State*, 43 So. 3d 132 (Fla. 3d DCA 2010); *Loper v. State*, 840 So. 2d 1139 (1st DCA 2003); *State v. Perez*, 783 So. 2d 1084 (Fla. 3d DCA 1998). Taken together, these cases stand for the proposition that dismissal is not an appropriate remedy unless the defect in the process affects substantive rights and causes *actual* prejudice to a defendant.

In *Phillips*, this Court determined that the defect in the information in that case was one of form, not of substance, "as evidenced by the fact that both parties were willing and able to proceed to trial." 463 So. 2d at 1138. Likewise, in *Delgado*, the Third District held that a charging document is "fundamentally defective ***only*** where it totally omits an essential element of the crime or is so vague, indistinct or indefinite that the defendant is misled…." 43 So. 3d at 133 (emphasis added). It also stated that the test for granting relief based upon such a defect in a charging document is *actual* prejudice to the defendant. *Id*. (citing *Gray*, 435 So. 2d at 818). Further, in *Perez*, the Third District ruled that "[t]he defect in the information was one of form, not substance." 783 So. 2d at 1084. It

[29] The City believes that the Fourth District's conclusion that Hollywood's program was "void at inception" was erroneous, but it need not explore that issue here because it is not germane to the correct analysis.

went on to say that, "[b]ecause no risk of double jeopardy is present in the instant case and because the defendant has failed to demonstrate that he was prejudiced in any way as a result of the defect, the charging document is *not rendered void* as a result of the defect." *Id.* (emphasis added.)

Here, any purported defect in the UTC is procedural and is one of form, not substance. The UTC received by Jimenez described the year, make and license plate number of his car, as well as the date, time and location of the alleged violation. In addition, the UTC expressly disclosed the offense alleged to have been committed. R. 6. The UTC, in addition to supplying photographs of the violation, further informed Jimenez where he could view the video recording of the violation, as required by the Wandall Act. There is nothing vague, indistinct or indefinite about the charge against Jimenez.

Further still, Jimenez does not even assert that *he* was prejudiced in any way by the process used by the City to observe Jimenez's red light infraction or create the UTC.[30] Most importantly, it is *undisputed* that a City officer *did* review the evidence against Jimenez before determining that an NOV and UTC should issue to him. Jimenez received notice of the charges against him and was provided with a meaningful opportunity to be heard. Accordingly, because Jimenez's UTC is a valid charging document that did not violate his due process rights or prejudice

[30] The closest Jimenez comes to articulating prejudice is his contention that, absent ATS's participation, the City's program would necessarily collapse onto itself because of the number of events captured by the cameras. IB at 45. Such an assertion is rank supposition, since the City would always have the *option* of assigning additional resources to compensate for the additional workload.

him in any way, and because Jimenez was not harmed by any of the alleged defects in the City's program, dismissal cannot be the proper remedy.

Additionally, the Legislature has made no mention of a remedy for non-compliance with a provision of the Wandall Act. This Court held in *Jenkins v. State*, 978 So. 2d 116 (Fla. 2008) that it is up to the Legislature to provide a remedy for the violation of a state statute and that courts cannot create a remedy where the Legislature has not done so. In that case, which involved a statute governing strip searches (which the defendant contended had been violated justifying suppression of evidence), the Court stated that "the remedies for violation of this statute fall within the purview of the Legislature" and "the plain language of [the statute] does not expressly provide for exclusion of evidence as a remedy for a violation of the statute." 978 So. 2d at 130. The remedy could not be inferred, "regardless of its effectiveness as a deterrent or how desirable or beneficial we believe exclusion may be." *Id*. *See also QBE Ins. Corp. v. Chalfonte Condo. Apartment Ass'n, Inc.*, 94 So. 3d 541, 553 (Fla. 2012) (holding courts cannot create a remedy for a statutory violation relating to insurance requirements "when the Legislature has failed to do so").

Jimenez's red light incident *was* placed in the police working queue, *was* reviewed by a police officer and found to be in violation, and the resulting UTC *did* afford him notice and an opportunity to defend against the charge. Consequently, even if the Court were to conclude that the way the City operates its program is preempted, it should still conclude that dismissal of Jimenez's citation is not appropriate.

CONCLUSION

For the foregoing reasons, the City respectfully requests that the Court answer the first certified question in the affirmative, the second in the negative, and the third (should the Court reach it), also in the negative. The Third District's decision below should be approved in its entirety.

Respectfully submitted,

Edward G. Guedes, Esq.
Florida Bar No. 768103
Prim. E-Mail: eguedes@wsh-law.com
Sec. E-Mail: szavala@wsh-law.com
Samuel I. Zeskind, Esq.
Florida Bar No. 043033
Prim. E-mail: szeskind@wsh-law.com
Sec. E-mail: ozuniga@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 Aventura

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

CERTIFICATE OF SERVICE

I certify that a copy of this answer brief on the merits was served via E-Portal on August 28, 2017, on Amit Agarwal, Solicitor General (amit.agarwal@myfloridalegal.com) and Rachey Nordby, Deputy Solicitor

General, Office of the Attorney General, The Capitol, PL-01, Tallahassee, Florida 32399; Robert Dietz, Senior Assistant Attorney General (Robert.Dietz@myfloridalegal.com), Office of the Attorney General, 501 E. Kennedy Blvd., Suite 1100, Tampa, FL 33134; Stephen F. Rosenthal (srosenthal@podhurst.com) and Ramon A. Rasco (rrasco@podhurst.com), Podhurst Orseck, P.A., *Counsel for Petitioner*, Suntrust International Center, One S.E. 3rd Avenue, Suite 2700, Miami, Florida 33131; Marc A. Wites (mwites@wklawyers.com), Wites & Kapetan, P.A., *Counsel for Petitioner*, 4400 North Federal Highway, Lighthouse Point, Florida 33064; Louis C. Arslanian (arsgabriela@comcast.net), *Counsel for Petitioner*, 500 Sheridan Street, Hollywood, Florida 33021.

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

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