# IN THE SUPREME COURT OF FLORIDA

LUIS TORRES JIMENEZ,

Petitioner,

vs.

STATE OF FLORIDA, ETC.
ET AL.,

Respondents. /

Case No. SC16-1976
Lower Case Nos. 3D15-2303
3D15-2271

ON DISCRETIONARY REVIEW FROM THE DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

## PETITIONER'S INITIAL BRIEF

Louis C. Arslanian
Fla. Bar No. 801925
5800 Sheridan Street
Hollywood, FL 33021
Tel.: 954-922-2926
arsgabriela@comcast.net

Marc A. Wites
Fla. Bar No. 24783
**WITES & KAPETAN, P.A.**
4400 North Federal Highway
Lighthouse Point, FL 33064
Tel.: (954) 570-8989
Fax: (954) 354-0205
mwites@wklawyers.com

Stephen F. Rosenthal
Fla. Bar No. 131458
Ramon A. Rasco
Fla. Bar No. 617334
**PODHURST ORSECK, P.A.**
SunTrust International Center
One S.E. 3rd Avenue, Suite 2700
Miami, Florida 33131
Tel.: 305-358-2800
Fax: 305-358-2382
srosenthal@podhurst.com
rrasco@podhurst.com

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# I. STATEMENT OF THE CASE AND FACTS

## A. Introduction

This case arises out of a red light camera traffic citation issued by the City of Aventura ("City") to Petitioner Jimenez in September 2014. He moved to dismiss the citation on the ground that the City's outsourcing to a private vendor, American Traffic Solutions, Inc. ("ATS"), exceeded its authority under the state law governing the use of red light cameras for enforcement of the traffic laws, the Mark Wandall Traffic Safety Act ("Wandall Act"). The case comes to this Court from certified questions of great public importance concerning the lawfulness of the City's enforcement program.

The resolution of these questions is not just informed, but is controlled, by the express intent of Florida's Legislature to establish statewide uniformity in the enforcement of its traffic laws, as codified in chapter 316 of the Florida Statutes. To effectuate its purpose, the Legislature has made express that its regulation of traffic control is superior to that of local governments. *See* §§ 316.002, 316.007, 316.0076, Fla. Stat. (2014). Of particular relevance to the present dispute, the Legislature has expressly preempted to the State all power to regulate the use of red light cameras in the enforcement of traffic violations. § 316.0076, Fla. Stat. Yet nowhere in Chapter 316 has the Legislature expressly authorized local governments to enlist the services of a private agent to perform the functions at



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issue in each of the three questions the Third District certified for review: reviewing red light camera images against the City's own substantive standards, mailing notices of violation and traffic citations, or transmitting the traffic citations to the Clerk of Court.

### B. Pre-Wandall Act History

The City established its original red light camera program in 2007 through the adoption of a local ordinance, No. 2007-15, which authorized what was then known as the "City's Traffic Safety Camera Program." (R.820, 853). To implement its program, the City entered into an agreement with a private vendor of red light camera systems, ATS, in February, 2008, "to provide certain equipment, processes and back office services so that Authorized Employees of the City are able to monitor, identify and enforce red light running Infractions." (R.820). Those services included ATS's extensive role in the processing of infractions. (R.845-47, Ex. D to the 2008 Agreement).

A driver who received two violation notices under the City's program challenged his violations as invalid exercises of municipal authority on the grounds that the program was not expressly authorized and thus, was preempted by Florida's uniform traffic control law. This Court accepted jurisdiction to resolve an inter-district and invalidated the City's ordinance on the grounds that it was expressly preempted by Florida's Uniform Traffic Law, chapter 316, which



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nowhere provided for the use of red light cameras to punish traffic violations. *See Masone v. City of Aventura*, 147 So. 3d 492, 494, 498 (Fla. 2014).

In so doing, this Court held that "Chapter 316 could not be clearer in providing that local ordinances on 'a matter covered by' the chapter are preempted unless an ordinance is 'expressly authorized' by the statute." *Id.* at 496-97. This Court identified the source of the Legislature's express preemption of traffic regulation in the "two broad preemption provisions" of chapter 316, namely §§ 316.002 and 316.007, Fla. Stat. (2008). *Id.* at 495. This Court also recognized that both of those statutory provisions expressed the Legislature's intent to create a "uniform" system of traffic regulation through chapter 316. *Id.* at 495-96. In accordance with these principles, this Court concluded that the ordinances in question, which were not limited to using the red light cameras for regulating, monitoring, and restricting traffic, as permitted by § 316.008(1)(w), Fla. Stat. (2008), but instead included the enforcement and punishment of red light violations, had not been expressly authorized by any statutory provision in chapter 316, and thus were invalid. *Id.* at 497, 498.

### C. The Mark Wandall Traffic Safety Act

After the defendant in *Masone* had received his citations through the City's original red light camera program, the Florida Legislature enacted the Wandall Act (or "the Act"), ch. 2010-80, Laws of Fla., which took effect on July 1, 2010. The



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Wandall Act established a detailed and comprehensive network of regulations governing the use of cameras by municipalities in the enforcement of red light violations. Many of those provisions were codified at § 316.0083, Fla. Stat. (2010). The Wandall Act's various statutory provisions address the rules and processes that a municipality must adhere to, including the types of violations which are subject to the Act, *see* §§ 316.0083(1)(a), (2), (3); review and issuance of traffic citations, *see* §§ 316.0083(1)(a), (1)(c)1.a; creation of the position and responsibilities of a "traffic infraction enforcement officer," *see* §§ 316.640(1)(b)3, 316.0083(1)(a), 316.650(3)(c); requisite notifications of violations and traffic citations to registered owners of offending vehicles, *see* §§ 316.0083(1)(b)1, (1)(c); available defenses to cited owners, *see* § 316.0083(1)(d); amount of fines to be assessed against vehicle owners and the allocation of the funds collected, *see* §§ 316.0083(1)(b)1.a, (1)(b)2-4; individual hearing procedures, *see* § 316.0083(5); and local government annual reporting requirements, *see* § 316.0083(4).

At the same time that the Legislature enacted the comprehensive scheme above, it also expressly circumscribed the power that any local government could exercise by entirely preempting all regulation in this field to the State. *See* ch. 2010-80, § 3 (codified at § 316.0076, Fla. Stat.) ("Regulation of the use of cameras for enforcing the provisions of this chapter is expressly preempted to the state."). The sole reference in the Act to the use of an "agent" – a private contractor –

appears in a single provision in § 316.0083(1)(a). In that subsection, the Legislature provided that a local government "may authorize a traffic infraction enforcement officer . . . to issue a traffic citation for a violation of" two traffic laws concerning stopping at intersections with red lights. *Id*. It further stated: "This paragraph does not prohibit a review of information from a traffic infraction detector by an authorized employee *or agent* of . . . a municipality before issuance of a traffic citation by the traffic infraction enforcement officer." *Id*. (emphasis added).

### D. The City's Red-Light Camera Program

After the passage of the Wandall Act, the City amended both its 2007 ordinance and its 2008 contract with ATS in an effort to bring its program into alignment with the provisions of this newly enacted state law. (R.853). *See also* Ordinance No. 2010-06, Code of Ordinances City of Aventura, Fla. (June 17, 2010) ("Ordinance No. 2010-06").[1] The City also made several amendments to Exhibit D to the Agreement to address the numerous functions it outsourced to ATS as part of the City's use of red light cameras to enforce the traffic laws. (R.866, 1266-67).

[1] Though a copy of the ordinance does not appear in the record, the Court may, of course, take judicial notice of it. § 90.202(10), Fla. Stat. It is available at http://www.cityofaventura.com/Modules/Show Document.aspx?documentid=762.

To aid ATS in carrying out its contractually assigned role of reviewing red light camera data, ATS and the City came up with a set of guidelines, known as the Business Rules Questionnaire ("Business Rules" or "BRQ"). ATS is contractually bound to follow and apply the City's BRQ. (R.1232-33, 1247). As Sergeant Jeff Burns, the City's liaison for its red light camera program, explained during the evidentiary hearing that the trial court conducted on Mr. Jimenez's motion to dismiss his citation, ATS brought the City "a series of questions and scenarios asking how they would like them to handle different situations regarding red light violations and the processing of those violations." (R.1234). The answers were provided by the City, Sgt. Burns and "the chief." *Id*. The resulting product was the City's Business Rules. (R.253-283; 789-818). Those rules, in particular, BRQ Nos. 4.0 to 4.8, include a series of "conditions" and "answers" directed at identifying markers relevant to defining red light violations within the City. (R.256-258; 791-793). Several of the individual rules ATS presented to the City offered a menu of options from which the City could indicate its preference.

Ultimately, as Sgt. Burns explained, the purpose of the BRQ is for ATS "[t]o weed out . . . violations or incidents that are not a violation for [the City] to even meet [their] minimum requirements." (R.1258). Processors are trained for eight to nine weeks so that they gain the "knowledge that they need on how to process an event against the City's rules." (R.1369). ATS culls potential violations by



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conducting what it refers to as "sort of an administrative review" or "presorting review." (R.1367, 1381). ATS receives events captured by the red light cameras in its computer system. (R.1376.) Each event includes two still photographs and a 12-second video. *Id.* ATS's processors review the still images and video for clarity and completeness to make sure that the images in the video match the still shots and that the license plate was accurately captured. (R.1367-68, 1376-77).

In addition, ATS processors will "look at the images and the videos that come from the roadside, and they review that against the City's business rules." (R.1367, 1377). The processors then sort the events by placing those images and video the City wants to review into a working queue and those which the City has no use for and/or do not meet the requirements of the BRQ into a non-work queue. (R.1252, 1381, 1383, 1385). The BRQ mandates that ATS "not forward for processing those recorded images that clearly fail to establish the occurrence of an Infraction." (R.866).

A City officer reviews only those photos and video that ATS places in the working queue to determine if an infraction occurred. (R.1251, 1252). The City rejects between thirty and thirty-five percent of the images forwarded by ATS and approves the issuance of citations for the remaining approximately sixty-five percent of forwarded images. (R.1251, 1338).

To authorize the issuance of a citation, the City's officer clicks on an "accept" button on the computer which commands ATS's computer to print and mail a notice of violation to the registered owner. (R.1322). ATS also generates and mails the uniform traffic citation to those registered owners who do not elect to avoid the citation and electronically sends the citation to the clerk of the county court. *Id*. ATS is contractually bound to perform these tasks as well. (R.866).

### E. *City of Hollywood v. Arem*

The Fourth District, in *City of Hollywood v. Arem*, 154 So. 3d 359, 365 (Fla. 4th DCA 2014), was the first appellate court to consider the lawfulness under the Wandall Act of a municipality's involvement of a private vendor (ATS), in its red light camera program. The driver in *Arem* challenged his citation on the grounds that the Legislature had only authorized the city to outsource to ATS the "review" of information from the traffic infraction detector whereas the city's program allowed ATS to carry out numerous other functions. 154 So. 3d at 361, 364.

In considering the driver's challenge to the city's program, the Fourth District recognized that the Legislature "expressly limit[ed] the power of a municipality to legislate over traffic matters . . . so as to create a uniform, statewide traffic control system." *Id.* at 362. Thus, when the Fourth District considered whether the city had the "authority to outsource the issuance of these citations, or to outsource any other statutory duty," the court looked to the "plain wording of

the statutes" to determine if the legislature had "expressly authorized" the functions that the city had delegated to ATS. *Id.* at 363-64 (citing *Masone*).

The Fourth District found that, in the City of Hollywood, "[f]or all practical purposes, it is the *vendor* that decides which cases the TIEO gets to review; [and] it is the *vendor* who initially determines who is subject to prosecution for a red light violation." *Id.* at 364-65. Under this regime, the Fourth District found that ATS essentially had the "sole" and "unfettered" discretion to decide who would receive traffic citations, concluding that the city's outsourcing to ATS was an unauthorized delegation of police powers. *Id.* at 365. Accordingly, the Fourth District held the city's program invalid as an improper delegation of its police powers, *id.*, and the traffic citation "void at its inception," *id*. at 361.

### F. Procedural History of this Case

Mr. Jimenez received a red light camera traffic citation from the City for making a prohibited right turn on red at an intersection. *City of Aventura v. Jimenez*, 211 So. 3d 158, 159 (Fla. 3d DCA 2016). He challenged the citation in county court, moving to dismiss on the grounds that the City's use of red light cameras to enforce the traffic laws was unlawful. Focused primarily on the City's outsourcing to ATS of a "review" function beyond what the Act permits, Mr. Jimenez asserted that "any attempt by a local government to circumvent chapter



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316 by ordinance or contract is invalid unless expressly authorized by the legislature." (R.15) (citing *Masone*). Relying on *Masone* and *Arem*, he argued:

> Florida law does not grant the City *the authority* to delegate . . . critical functions to a third party, for-profit vendor. The City of Aventura has attempted to circumvent the requirements established under Chapter 316 by entering into a contractual agreement with the vendor ATS.

(R.18) (emphasis added); *see also* (Supp'l R.15, 30-31) (post-hearing memorandum). The Attorney General of Florida moved to intervene in the case as a matter of great importance, which the trial court granted. (R.26-27, 1097).

After an evidentiary hearing, at which the City called two officers from its Police Department, two ATS employees, and a representative of the Miami-Dade County Clerk's Office, the trial court concluded that, based on the evidentiary record, it would deny the motion to dismiss, but felt constrained by *Arem* to dismiss the traffic citation. *See* R.1102-17. At the urging of the City (R.929-30) and the Attorney General (R.1094-96), the trial court also certified three questions as matters of great public importance to the Third District Court of Appeal. (R.1116-17). Both the City and the Attorney General appealed the dismissal, and the Third District accepted jurisdiction. *Jimenez*, 211 So. 3d at 165.

On appeal, Mr. Jimenez reiterated his arguments that the City's broad interpretation of the "review" it could delegate to a private vendor under § 316.0083(1)(a), Fla. Stat., was incorrect and that fundamental principles of



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preemption required a finding that the City lacked authority to use red light cameras in the manner it has designed its local enforcement program. Specifically, he contended that "*Masone*, *Arem* and Section 316.0076 dictate a limited construction of 'review' in Section 316.0083(1)(a)." Answer Brief of Appellee in *Jimenez* at 30; *see id.* at 17-18, 31-33. He likewise pressed the contention that the City's "BRQ are essentially the 'local ordinances' forbidden under *Masone*." *Id*. at 44. Traffic citations "issued under the BRQ process," he argued, must be dismissed because they involve "a localized municipal enforcement regime prohibited by the Florida Supreme Court in *Masone*." *Id*. at 46 (capitalization altered); *see id*. at 47-49. He urged dismissal as the proper remedy because the issues in the case implicated a question of "municipal power because the Legislature expressly preempted the regulation of red light cameras to the state." *Id*. at 50.

The Third District never addressed the issue of preemption in its opinion. It acknowledged that "the heart of the dispute in this case is the Wandall Act's express authorization for local governments to use 'agents' to 'review' images before the 'officer' issues a citation." *Jimenez*, 211 So. 3d at 160. But, after a brief consideration of the meaning of "review," the District Court concluded that ATS's review and sorting of red-light camera data through the use of the BRQs complied with the Act because ATS carried out these "ministerial" functions in

accordance with contract language and a set of guidelines. *Id.* at 166. The court declined to follow the Fourth District's decision in *Arem*, concluding that the City's program was distinguishable from the one "as reflected in the *Arem* opinion." *Id.* at 170.

The Third District also resolved the second and third certified questions in favor of the City, finding that the outsourcing of the printing and mailing of notices and citations as well as the electronic submission of citations to the clerk of the court were ministerial tasks which the City permissibly delegated to ATS. *Id.* at 170-71. A majority of the Court voted to certify the three issues to this Court as matters of great public importance. *Id.* at 171-72. Judge Wells disagreed with the decision to certify. *Id*. at 174 (Wells, J., specially concurring).

Mr. Jimenez timely sought review in this Court on both the grounds of review of questions of great public importance and conflict with the Fourth District's decision in *Arem*. This Court accepted jurisdiction solely on the basis that the case presented issues of great public importance.

## II. SUMMARY OF THE ARGUMENT

The City of Aventura has established an unlawful regime for the use of red light cameras in its enforcement of red-light infractions. Unable or unwilling to process in-house the high volume of potential violations recorded by the cameras it has installed at intersections throughout its jurisdiction, the City adopted a local set

of detailed standards for the sorting of potential violations and outsourced to a private vendor the task of applying those standards to the photographic and video images recorded by the red light cameras. While perhaps efficient, this system transgresses the restricted role for which the Legislature permitted local governments to enlist the assistance of private contractors in their use of red light cameras for the enforcement of state traffic laws.

The Third District failed to undertake a serious analysis of the text of the operative provision of the Wandall Act, content with the basic proposition that the word "review" in § 316.0083(1)(a), Fla. Stat. conferred some degree of "evaluation" of the information from a red light camera. *See Jimenez*, 211 So. 3d at 165. Taking for granted that that text allowed the City to delegate to a vendor substantive review powers, the District Court instead focused its analysis on whether or not that power was sufficiently fettered so as not to run afoul of the principle governing non-delegation of police powers. But, as this Court recently reiterated, the "purpose in construing a statute is to give effect to the Legislature's intent." *Debaun v. State*, 213 So. 3d 747, 751 (Fla. 2017) (quotation marks omitted). The Third District skipped over this critical inquiry.

An analysis of the text of § 316.0083(1)(a), and its context within the Wandall Act, reveals a narrow, specific task envisioned for a local government's contractor. When the Legislature authorized local governments to employ an

"agent" to perform "a review of information from a traffic infraction detector," § 316.0083(1)(a), it meant that a contractor could be used to examine the photographic and video images captured by a red light camera for the limited purpose of ensuring that they are complete and visible – that is, that the requisite information (license tag, red traffic light, rear of the vehicle at the instant it fails to stop behind a stop line) was captured by the camera in a manner that can be seen. While the meaning of the word "review" in and of itself is ambiguous, the statutory context makes clear that the Legislature did not intend the broad reading the City and Attorney General endorse. The legislative history of the Act reinforces that conclusion.

The City's outsourcing of this substantive review also violates the preemption doctrine because the Legislature expressly preempted to the State the use of red light cameras to enforce the traffic laws, and the City's embrace of its own extra-statutory standards for the sorting of camera images (the BRQ) exceeds its powers. The Third District failed to address the preempted context in which the statutory analysis must take place. Chapter 316 is one of the few comprehensive statutory regimes in which the Legislature has expressly preempted a field of law enforcement to the State. *Masone*, 147 So. 3d at 495-98; *D'Agastino v. City of Miami*, --- So. 3d ----, No. SC16-645, 2017 WL 2687694, at *7 (Fla. June 22, 2017). This reality, which is of constitutional dimension, flips the interpretative



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landscape on its head: for a local government operating within the field covered by Chapter 316 to have the power to act, there must be *express* statutory authorization. *Masone*, 147 So. 2d at 147. The Third District's opinion contains no acknowledgement of this principle, nor any reference to the express preemption provisions in Chapter 316. In view of that preemptive regime, even the City's reliance on ATS to mail traffic citations and to transmit them to the clerk of court violates the law.

As a consequence of these violations of constitutional dimension, the citation issued to Mr. Jimenez was void *ab initio*, and should be dismissed.

## III. ARGUMENT

### A. THE CITY'S RED-LIGHT CAMERA ENFORCEMENT PROGRAM EXCEEDED THE AUTHORITY CONFERRED UPON IT BY THE LEGISLATURE.

In authorizing local governments to administer red-light camera traffic-enforcement programs, the Legislature, in a single legislative provision, embedded in § 316.0083(1)(a), Fla. Stat., permitted local governments to outsource to an agent only one particular task related to its red-light camera enforcement program. That task is the examination of the photographic and video images captured by a red light camera for the limited purpose of ensuring their completeness and usability. This conclusion flows from a close analysis of the statutory language. The Third District reached the wrong result because, respectfully, it failed to read

the critical provision of the Wandall Act in its statutory context and to give adequate heed to the meaning of all of its words.[2]

The precursor, and context, to the key provision establishes that a local government "may authorize a traffic infraction enforcement officer under s. 316.640 to issue a traffic citation for a violation of" specified laws requiring vehicles to stop at red lights. § 316.0083(1)(a), Fla. Stat. The cross-referenced provision explains that a "traffic infraction enforcement officer" is an "employ[ee]" of "[a]ny sheriff's department or police department of a municipality." § 316.640(5)(a), Fla. Stat.

Against this backdrop, the key provision for this case then says:

> This paragraph does not prohibit *a review of information from a traffic infraction detector* by an authorized employee or *agent* of the department, a county, or a municipality before issuance of the traffic citation by the traffic infraction enforcement officer.

§ 316.0083(1)(a), Fla. Stat. (emphasis added). Thus, although traffic citations must be issued by police or sheriff's department employees, the Legislature expressly authorized local governments to utilize a non-employee "agent" to perform certain functions in the administration of their red-light camera programs. The question is what functions the Legislature allowed the agent to perform.

[2] Issues of statutory interpretation are reviewed *de novo*. *Hardee Cty. v. FINR II, Inc.*, No. SC15-1260, --- So. 3d ---, 2017 WL 2291004, *1 (Fla. May 25, 2017).

The Third District honed in on the word "review" in § 316.0083(1)(a) as the fulcrum for the analysis. *Jimenez*, 211 So. 3d at 165. But its consideration of the meaning of that word, and the statutory text, was conspicuously abbreviated. The court's entire consideration of this key subject consisted of the following:

> 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. To be sure, it is hard to deny that the legal term 'review' indicates some level of evaluation: the Florida Constitution, after all, uses the term 'review' when establishing the jurisdiction of the Supreme Court and district courts. Art. V, §§ 3(b) & 4(b).

*Id*. (quoting Answer Br. of Appellee at 33). This brevis analysis is more notable for what it fails to consider than what it relies upon. It contains no standard analysis of statutory interpretation: no discussion of the plain meaning of the term "review," no evaluation of the statutory context in which the word "review" appears, nor any conclusion regarding the plain meaning of the word, or consideration of principles of statutory construction.

Instead, the court simply reasoned that because viewing the photographs and video evidence for mere usability involves "some modicum of assessment," the word "review" cannot just mean "viewing." *Jimenez*, 211 So. 3d at 165. Even if that is correct, the mere fact that the word "review" connotes some degree of evaluation does not reveal *what* degree nor, more to the point, the *purpose* that the

Legislature intended for such evaluation. The court's pivot to the use of the word "review" in the Florida Constitution, rather than to dictionary definitions and the word's contextual placement in the statute, does not fill that gap. Perhaps the court's intent was to imply that the word "review" by itself must convey a broad ambit of assessment (*e.g.*, one that could easily encompass the vendor looking not just at the photographic and video evidence, but also the city's chosen standards when viewing the evidence). But the use of "review" to describe the appellate judicial power is an odd choice to help define the word as it appears in the context of § 316.0083(1)(a). The use in the Constitution is a "legal term," as the court acknowledged. *Jimenez*, 211 So. 3d at 165. And the legal definition of "review" is one that dictionaries recognize as distinct from others.[3] There is no reason to think that a legal term of art was being used to describe the acceptable function of a private-sector agent looking at photographic evidence before passing it on to a government official for issuance of a traffic citation.

The proper statutory analysis yields a different analytic path, and mandates a different conclusion, than the Third District followed and reached. This Court has emphasized that statutory interpretation involves, first, an analysis of the

[3] *See Review*, WEBSTER'S II NEW COLLEGIATE DICTIONARY (3d ed. 2001) ("*Law*. To examine (an action or determination), esp. in a higher court, for the purpose of correcting possible errors."); *Review*, BLACK'S LAW DICTIONARY (5th ed. 1979) ("To re-examine judicially and administratively. A reconsideration; second view or examination; revision; consideration for purposes of correction.").



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"words of the statute to determine legislative intent." *Crews v. State*, 183 So. 3d 329, 332 (Fla. 2015). "[W]ords of common usage, when used in a statute, should be construed in their plain and ordinary sense." *Id*. (quotation omitted). Resort to a dictionary definition aids that undertaking. *Debaun*, 213 So. 3d at 751; *Crews*, 183 So. 3d at 336. When the statutory language "'is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction; the statute must be given its plain and obvious meaning.'" *Atwater v. Kortum*, 95 So. 3d 85, 90 (Fla. 2012) (quoting *Holly v. Auld*, 450 So. 2d 217, 219 (Fla. 1984)).

As the following analysis explains, the word "review" is ambiguous, requiring resort to principles of statutory construction. When applicable canons of construction are consulted, and the broader statutory context is considered, it becomes apparent that the Legislature intended a materially narrower purpose for the "review" than Respondents contend. The legislative history of the Wandall Act strongly confirms this conclusion.

### 1. The Plain Meaning of "Review" Is Ambiguous.

Looking first to the word "review," it must be acknowledged that the word is susceptible to multiple shades of meaning depending on the context in which it is used. One dictionary lists the following meanings for the word "review" when used as a verb or noun:

> —*vt.* **1.** To study or examine again. **2.** To consider retrospectively. **3.** To examine with an eye to correction or criticism <*review* a manuscript for style> **4.** To write or give a critical report on (a new work or performance). **5.** *Law*. To examine (an action or determination), esp. in a higher court, for the purpose of correcting possible errors. **6.** To subject to a formal inspection, esp. a military inspection. –*vi*. **1.** To peruse material. **2.** To act as a reviewer, as for a newspaper. –*n*. **1.** Re-examination: reconsideration. **2.** A retrospective view or survey. **3.** Restudy of subject matter. **4.** An inspection or examination with the intention of evaluating. **5. a.** A report or essay giving a critical estimate of a work or performance. **b.** A periodical devoted to such reports. **6.** A formal military inspection. **7.** *Law*. An examination of an action or determination, esp. by a higher court, so as to correct possible errors. **8.** A revue.

*Review*, WEBSTER'S II NEW COLLEGIATE DICTIONARY (3d ed. 2001).

The word appears in the operative subsection as a noun: "a review of information from a traffic infraction detector." § 316.0083(1)(a). Although "review" is not defined, its use in conjunction with another defined term, "traffic infraction detector," § 316.003(87), Fla. Stat., necessitates consideration of that term to appreciate the specific context of the "review" the Legislature authorized. *See Fla. Dep't of Envtl. Prot. v. ContractPoint Fla. Parks, LLC*, 986 So. 2d 1260, 1265 (Fla. 2008) (a word may not be read "in isolation, but must [be] read . . . within the context of the entire section in order to ascertain legislative intent for the provision."); *Holly*, 450 So. 2d at 219 ("Every statute must be read as a whole with meaning ascribed to every portion and due regard given to the semantic and contextual interrelationship between its parts.") (quotation omitted). A "traffic infraction detector" is defined in the Act as:



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> A vehicle sensor installed to work in conjunction with a traffic control signal and a camera or cameras synchronized to automatically record *two or more sequenced photographic or electronic 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 traffic control signal steady red light. Any notification under s. 316.0083(1)(b) or traffic citation issued by the use of a traffic infraction detector must include *a photograph or other recorded image showing both the license tag of the offending vehicle and the traffic control device being violated*.

§ 316.003(87), Fla. Stat. (2010) (emphasis added).[4] The Third District did not consider this section. Its definition reveals what the "information from a traffic infraction detector" that is referred to in § 316.0083(1)(a) is: particular photographic or video evidence depicting the rear of the vehicle at a particular moment in time, its license plate, and the traffic light (the "traffic control device") at that instant.

Given this context, the most applicable definition of the word "review" in § 316.0083(1)(a) is "[a]n inspection or examination with the intention of evaluating." *Review*, WEBSTER'S II NEW COLLEGIATE DICTIONARY (3d ed. 2001). Two other subsections of the Act reinforce this conclusion. In subsection 316.0083(1)(b)1.b, the Legislature also spoke of "review" of the photographic and video evidence and added an explanatory sentence that confirms this intended meaning:

[4] This definition was adopted as part of the original Wandall Act. *See* 2010 Fla. Sess. Law Serv. 349 (West). Unless otherwise indicated, all statutory language in this section of the brief is from the 2010 Act.

> Included with the notification to the registered owner of the motor vehicle involved in the infraction must be a notice that the owner has the right *to review the photographic or electronic images or the streaming video evidence* that constitutes a rebuttable presumption against the owner of the vehicle. The notice must state the time and place or Internet location *where the evidence may be examined and observed*.

§ 316.0083(1)(b)1.b, Fla. Stat. (2010) (emphasis added).[5] This usage makes clear that when the Legislature spoke of a "review" of the photographic and video evidence, it meant examination and observation. To "examine" means "[t]o inspect in detail" or "[t]o analyze or observe carefully." *Examine*, WEBSTER'S II NEW COLLEGIATE DICTIONARY (3d ed. 2001). To "observe" means "[t]o notice: perceive" or "[t]o watch attentively." *Id*. (*Observe*).

This understanding of the meaning of "review" (as examination or detailed inspection) by itself sheds no light on the intended *purpose* of that review. However, the provision does unambiguously limit *what* the agent may inspect or examine: the "information" (*i.e.*, images) that the cameras record. § 316.003(87),

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[5] Section 316.0083(1)(c)2, Fla. Stat. (2010) contains a nearly identical provision:

> Included with the notification to the registered owner of the motor vehicle involved in the infraction shall be a notice that the owner has the right *to review*, either in person or remotely, *the photographic or electronic images or the streaming video evidence* that constitutes a rebuttable presumption against the owner of the vehicle. The notice must state the time and place or Internet location where the evidence may be *examined and observed*.

(emphasis added).

Fla. Stat. This construct yields two plausible understandings of the review intended. The Legislature could have intended that local governments enlist the assistance of a private agent only to examine the photographic and video evidence for the purpose of ensuring that it is complete and usable. Or, it could have intended some broader form of review against unspecified criteria that the local government may choose. Because the language of the statute itself ("review of information from a traffic infraction detector") does not "convey a clear and definite meaning," as applied to the dispute at issue, it is ambiguous. *Atwater*, 95 So. 3d at 90. As a result, it is proper to resort to interpretative canons. *Id.*

### 2. Tools of Statutory Construction Demonstrate That the Legislature Intended to Allow Local Governments to Outsource a Limited Review Function.

This Court has at its disposal a variety of "tools" of statutory construction. *See Hardee Cty.*, 2017 WL 2291004, at *2. The structure of the statutory provision lends itself to the canon *expressio unius est exclusio alterius*, "the rule that in a statute, the inclusion of one thing indicates the exclusion of others." *Crews*, 183 So. 3d at 333. The Legislature authorized local governments to use agents to review something specific: "information from a traffic infraction detector." That information consists of a precise set of photographic and video images. Applying the above canon, the Legislature precluded agents from reviewing anything *other* than those images.

That restriction is meaningful as applied to the manner in which the City has interpreted its statutory license to employ the services of ATS. Under the City's red light camera program, ATS's processors examine two sets of information: (1) the photographic and video images from the camera, *and* (2) the sorting standards from the City's BRQ. Indeed, the processors literally have two separate computer screens in front of them: "[o]ne screen has the two images and the video, the second screen has the city rules on [it] so that at all times they know what the city wants [sic] as is required by their rules." (R. 1377). The statute's substantive limitation restricts ATS to looking at only one of those two screens: the one with the photographic and video evidence that the camera generates. By expressly delineating the body of information that an agent may review, the Legislature by necessary implication did *not* authorize the agent to review *additional* information, such as a set of standards by which to conduct the examination of the images. All the Legislature permitted was the use of an agent to review the evidence to screen it for deficiencies in the camera's capture of the raw photographic "information" required for the issuance of a citation.

This resulting interpretation makes sense. Any exercise in statutory interpretation must heed the principle that a judicial reading of text will not reach an unreasonable result. *License Acquisition, LLC v. Debary Real Estate Holdings, LLC*, 155 So. 3d 1137, 1145 (Fla. 2014). The interpretation must also accord with



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"common sense[.]" *Sch. Bd. of Palm Beach Cty. v. Survivors Charter Sch., Inc.*, 3 So. 3d 1220, 1235 (Fla. 2009). 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). ATS's Senior Manager of Operations (R. 1366) described the process:

> They have two still images, and what they call an overview one and an overview two or AB. . . . And then they have the video of that. It is a 12-second video. They are going to look at the A-shot, the B-shot. They are going to look at the video, and *they are going to make sure everything matches*.
>
> Then the system will provide the zoom image, if you will, of the rear shot, and *they are going to make sure that that actually captured the right vehicle* at the right lane. *They are going to make sure that the license plate was captured* because they have to do an optical character read to the system.

(R. 1376-77) (emphasis added). 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.



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Further confirmation that this limited reading of "review" is a reasonable one comes from the City's own ordinance. The City amended its ordinance in 2010 "so as to conform with and implement the [Mark Wandall Traffic Safety] Act." Ordinance No. 2010-06 at 1. In a provision entitled, "Review of recorded images," the City provided, in pertinent part:

> The City's . . . Traffic Infraction Enforcement Officer shall *review recorded images* prior to the issuance of a notice *to ensure the accuracy and integrity of the recorded images*. Once the Traffic Infraction Enforcement Officer has verified the accuracy of the recorded images, he or she shall complete a report, and notice shall be sent to the vehicle owner . . .

*Id*. at 5 (emphasis added).

Yet ATS goes on to perform a second and more elaborate task which it deems "sort of an administrative review": "reviewing [the images and the videos] against the City's business rules[.]" (R.1367). There is no textual support in the Wandall Act that such a broad conception of "review" was contemplated. It is difficult to believe that a Legislature which expressly created a detailed enforcement regime as a matter of state law, expressly preempting local governments' prior efforts to create red light camera enforcement schemes by ordinance, § 316.0076, Fla. Stat., would have intended to confer broad authority upon local governments to import detailed, substantive review standards such as the City's BRQ through silence. *See, e.g.*, *Villanueva v. State*, 200 So. 3d 47, 52 (Fla. 2016) (applying the canon that "nothing is to be added to what the text states

or reasonably implies"); *State v. C.M.*, 154 So. 3d 1177, 1180 (Fla. 4th DCA 2015) (same). Particularly given the Legislature's express preemption of this field, there simply is no room to supplement the statute.

Furthermore, the limited meaning of "review" which flows from its immediate semantic context is reinforced by consideration of the broader statutory scheme. Where, as here, this Court is interpreting a provision of "an entire statutory scheme," it has emphasized that "we do not look at only one portion of the statute in isolation but we review the entire statute to determine intent." *Sch. Bd. of Palm Beach Cnty.*, 3 So. 3d at 1234. The limitation that flows from the review being restricted to the discrete photographic evidence that comprises the "information from a traffic infraction detector," *see* § 316.003(87), Fla. Stat., fits the centrally important role that the photographic evidence plays in the overall statutory scheme. The Act creates a "rebuttable presumption" of a violation of a traffic law based solely on that body of information:

> The photographic or electronic images or streaming video attached to or referenced in the traffic citation is evidence that a violation [of a traffic law] has occurred and is admissible in any proceeding to enforce this section and raises a rebuttable presumption that the motor vehicle . . . shown in the photographic or electronic images or streaming video evidence was used in violation of [a traffic law] when the driver failed to stop at a traffic signal.

§ 316.0083(1)(e), Fla. Stat. That photographic evidence must also be included in the notice of violation, § 316.0083(1)(b)1.b, as well as in the ensuing traffic



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citation, § 316.0083(1)(c)2, so that the vehicle owner can inspect it and raise any defenses to the fine. Because the photographic evidence plays such a vital role in the red light camera enforcement regime the Legislature devised, its completeness and usability is critical to the functioning of the scheme. It makes perfect sense that the Legislature would authorize local governments to hire a private vendor to screen those images for that valuable purpose.[6]

[6] A complete consideration of the entire context of the Wandall Act also includes another subsection which uses the word "review" in another context. In the subsection requiring reporting to the State of statistical data and other information concerning the red light camera programs, the Legislature noted that the Department of Highway Safety and Motor Vehicles' report to the Governor and the Legislature "must include a review of the information submitted to the department by the counties and municipalities." Fla. Sess. Laws ch. 2010-80, § 5 at 352 (West 2010) (codified at § 316.0083(4)(b), Fla. Stat.). This context is obviously quite different than the "review" envisioned of the photographic and video evidence from cameras. Its usage in the context of the summary reporting provision means "[a] retrospective view or survey." *Review*, WEBSTER'S II NEW COLLEGIATE DICTIONARY (3d ed. 2001). The Legislature may, of course, use a word that has different meanings differently in different contexts. *See Crews*, 183 So. 3d at 336 n.10. Thus, this alternative use of the word "review" does not detract from the limited meaning intended in § 316.0083(1)(a). Further, the Legislature, in 2013, added a subsection that uses the word "review" in yet another context, describing the role of a "local hearing officer" in "determining whether a violation . . . has occurred." 2013 Fla. Sess. Law Serv. 1428 (West) (codified as § 316.0083(5), Fla. Stat. (2013)). This amendment created the right to request a hearing before a local hearing officer upon receipt of the notice of violation. The pertinent language states: "The local hearing officer shall *review* the photographic or electronic images or the streaming video . . ." *Id*. (emphasis added). In this context, the "review" is plainly intended to be broad, since a hearing officer is expressly charged with deciding whether a violation occurred, after taking testimony and considering the photographic and video evidence.

### 3. The Legislative History of the Wandall Act Confirms the Limited Reading of the "Review" an Agent May Perform.

Although the foregoing statutory construction strongly suggests that the Legislature intended a restrictive view of an agent's review of the photographic and video evidence, the legislative history of the Wandall Act confirms that conclusion. *See Hardee Cty*., 2017 WL 2291004, at *2 ("Legislative history can be helpful in construing a statute when its plain language is unclear."). That history reveals that the Legislature deliberately opted for a *circumscribed* role for private vendors in the red light camera enforcement scheme it ultimately adopted.

The initial version of the bill that became the Wandall Act envisioned a broad and substantive role for private contractors. It would have allowed them to "inspect[] . . . photographs or other recorded images" from the traffic infraction detector and issue a "signed statement that . . . the motor vehicle" ran a red light. HB No. 325, § 3 (filed Nov. 6, 2009) (proposed § 316.0083(1)(d)). It would have empowered both a person "employed by or under contract with" the local government to issue such a certificate of violation. *Id*. (proposed § 316.0083(1)(h)). *See also* Fla. H.R. Comm. on Roads, Bridges & Ports, HB 325 (2010) Staff Analysis at 6-7 (Jan. 8, 2010).

As the bill proceeded through committees, however, this broad delegation of authority to a contractor was eliminated. Language nearly identical to what

became § 316.0083(1)(a) was substituted. CS/CS for HB No. 325, § 5 (filed Mar. 2, 2010) (proposed § 316.0083(1)(a) ("This paragraph does not prohibit review of information from a traffic infraction detector by an authorized employee or agent . . .")). While shrinking the power of a contractor, this amended version of the bill nonetheless authorized the hiring of contractors as traffic infraction enforcement officers. It provided for the amendment of § 316.640, Fla. Stat. to create that position and specified that "[f]or the purpose of enforcing s. 316.0083, the department may employ *independent contractors or designate employees* as traffic infraction enforcement officers." *Id*. § 9 (emphasis added). *See also* Fla. H. Fin. & Tax Council, CS for HB 325 (2010) Staff Analysis at 9 (Apr. 19, 2010) (noting that § 9 of the bill likewise would amend § 316.640, Fla. Stat. to "authoriz[e] counties and municipalities to use independent contractors as traffic infraction enforcement officers."). Had that provision become law, it arguably would have allowed the City to hire ATS's processors as traffic infraction enforcement officers, a status which would have empowered them to perform the robust "review" they undertook here. However, it did not.

By the time the bill was engrossed, even this provision authorizing local governments to appoint independent contractors as traffic infraction enforcement officers was stricken. *See* CS/CS HB No. 325, § 9 (filed Apr. 23, 2010). The language amending § 316.640 was limited to authorizing only the "designat[ion of]

*employees* as independent contractors as traffic infraction enforcement officers." *Id*. (emphasis added). That more conservative scheme was ultimately adopted as the Wandall Act. *Compare* 2010 Fla. Sess. Law Serv. 353 (West) (codified as § 316.640(1)(b)3).

Another feature of the legislative history bears mention: legislators patterned aspects of the bill on the existing scheme for the use of cameras to enforce tolls. *See* Fla. H.R. Policy Comm. on Roads, Bridges & Ports, HB 325 (2010) Staff Analysis at 6-7 (Jan. 8, 2010) (observing that "[c]ameras are permitted by current Florida law to enforce violations of payment of tolls," citing § 316.1001(2)(d), Fla. Stat.). That toll-enforcement statute allows local governments to pass an ordinance authorizing a "toll enforcement officer to issue a uniform traffic citation" for the failure to pay a toll. § 316.1001(2)(a), Fla. Stat. Who can serve as a toll enforcement officer is governed by § 316.640, which authorizes "governmental entities . . . which own or operate a toll facility" to "employ *independent contractors* or designate employees as toll enforcement officers," provided they satisfy training and qualification standards established by the Department of Transportation. § 316.640(1)(b)2.b, Fla. Stat. (emphasis added).[7] The FDOT standards for "guidance for toll enforcement officers for the issuance of

[7] Notably, this provision rests next to subsection modified by the Act requiring only employees, not contractors, to serve as traffic infraction enforcement officers "for the purpose of enforcing s. 316.0083," § 316.640(1)(b)3, Fla. Stat.



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Uniform Traffic Citations," Fla. Admin. Code R. 14-100.002(1) (2006), contains language that is instructive here. It states:

> *Validation of Digital Photographic Evidence*. The Department's toll enforcement officer(s), or his or her designee, shall *review* captured photographic images of vehicle license plates *to ensure accuracy and data integrity*. The toll enforcement officer(s), or designee, shall also verify that the toll collection system and VES were performing properly, were functional, and were in operation at the time of the alleged toll violation. The toll enforcement officer(s), or designee, shall *review* the transaction data to ensure that those transactions immediately prior and subsequent to the alleged toll violation transaction were processed correctly. . . . The final *validation* of violation data and decision to issue a UTC shall be made by the toll enforcement officer(s).

Fla. Admin. Code R. 14-100.002(3) (2006) (emphasis added). Thus, at the time of the development of the Wandall Act, there was authoritative administrative use of the term "review," in connection with photographic images recorded by a camera for purposes of the remote issuance of traffic citations for toll violations, which unmistakably employed the term to connote the mere "validation" of the images "to ensure accuracy and data integrity." *Id*. The "administrative construction of a statute" is one of the tools of statutory construction, *Atwater*, 95 So. 3d at 90 (brackets and quotation marks omitted), and the fact that the Legislature that wrote the Wandall Act was cognizant of the toll-enforcement regime and employed very similar language to it makes the above-quoted rule instructive.

The totality of the legislative history demonstrates that the Legislature deliberately reduced the role that a non-employee contractor/agent could play in

the red light camera enforcement scheme. The key provision at issue in this case is the *only* remaining reference to the role a contractor may play in the scheme, save for the installation of the cameras themselves (§ 316.008(7)(b)). Given that the legislative process evidences a determination to whittle down the role of private contractors, and in view of the pre-existing limited understanding of "review" of photographic images from a camera system, there is no basis to read the provision expansively. A narrower reading is, thus, consistent with the drafting history of the Act. Accordingly, the first certified question should be answered in the negative: the review authorized by § 316.0083(1)(a), Fla. Stat. does *not* "allow a municipality's vendor, as its agent, to sort images to forward to the law enforcement officer" pursuant to "guidelines" which entrust the vendor "to decid[e] whether the images contain certain easy-to-identify characteristics[,]" *Jimenez*, 211 So. 3d at 171.

#### 4. The Legislature Did Not Authorize Local Governments to Outsource the Mailing of Traffic Citations or Transmittal of Citations to the Court.

The foregoing examination of the Legislature's evident decision to cabin the permissible role of a private contractor in municipal red-light-camera enforcement programs bears implications for the two other questions the Third District certified. Because the Legislature specified only one permissible aspect of the red-light-camera enforcement regime for which a local government could employ an



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independent contractor, by negative implication, local governments cannot contract-out other aspects of the statutorily prescribed enforcement regime. The Act does not permit a local government to outsource the mailing of the traffic citation or to transmit the citation data electronically to the clerk of court.

In the entirety of the Wandall Act, the Legislature made express reference to the use of an "agent" in the *sole* provision governing the process for the issuance of traffic citations. § 316.0093(1)(a), Fla. Stat. While the Legislature saw fit expressly to allow municipalities to engage the services of a vendor for this singular purpose, in no other provision of the statute did it permit a municipality to engage an agent, except for the installation of the cameras, § 316.008(7)(b), Fla. Stat. (2010).

Unlike the subsection of the Act authorizing a municipality to use an agent to perform "a review of information from a traffic infraction detector," the immediately following subsection which addresses how drivers are to be notified of a violation is silent as to the use of an agent. In that provision, § 316.0083(1)(b)1, the Legislature saw fit to authorize municipalities to carry out a variety of tasks as part of its mandate to notify drivers of their red-light traffic violation. Likewise, in § 316.0083(1)(c)1.a, with regard to the uniform traffic citation, the Legislature mandated that it "shall be issued by mailing the traffic citation by certified mail[.]" This provision, too, is silent as to the use of an agent

in this process. The City's contracting of a vendor to mail out notices of violation and traffic citations (R.855, ¶ 8; 866, ¶ 8), is not authorized by these provisions.

Likewise, the Wandall Act specifies that "the traffic infraction enforcement officer shall provide by electronic transmission a replica of the traffic citation to the court[.]" § 316.650(3)(c), Fla. Stat. Again, there is no mention of the use of an agent. Unlike the roadside issuance of a traffic citation, in which the police officer electronically transmits the citation to the Clerk of Court through the Police Department's own computer server (R.1349, 1429), the City obtained permission from the Clerk to have its vendor, who offers the City the option as a service (R.1447-48), transmit the City's red-light-camera citations directly to the Clerk of Court through ATS's own computer server (R. 1433-34, 1436-37). There is no statutory authorization for this use of a vendor as a part of a local government's red-light-camera enforcement program.

No doubt the City and the Attorney General will be tempted to invoke arguments about the need for delegation of functions to private contractors in order to keep up with the volume of data pouring through red light cameras. Whatever the virtue of such efficiencies, they cannot change the meaning of the statutory language that girdles the permissible, circumscribed role a private contractor may play under the Wandall Act. This Court has cautioned that its statutory interpretation will not be influenced by pleas of good public policy. *Sch. Bd. of*

*Palm Beach Cty.*, 3 So. 3d at 1227-28. "Although this subject is of interest to many Floridians, the wisdom and public policy questions regarding the use of red light cameras are not before this Court." *Masone*, 147 So. 3d at 499 (Pariente, J., dissenting). If local governments are to obtain greater flexibility in delegating to private contractors expanded review functions for red light camera enforcement, it is to the Legislature that they must turn.

### B. THE CITY'S DELEGATION OF SUBSTANTIVE REVIEW OF IMAGES FROM RED LIGHT CAMERAS TO A VENDOR EXCEEDED THE CITY'S POWER AND VIOLATED THE FLORIDA CONSTITUTION.

Not only does the City's red light camera enforcement scheme violate the Wandall Act by delegating to a vendor a substantive review of the camera images, but that central feature of its enforcement program also violates the constitutional proscription against municipal actions exceeding the bounds permitted by general law. The City's violation of the Wandall Act occurs in an expressly preempted regulatory space. That resulting insult of this *ultra vires* exercise of power is of constitutional dimension.

Although municipalities generally have broad authority to enact ordinances for municipal purposes, their authority is both constitutionally and statutorily constrained. *D'Agastino*, 2017 WL 2687694, at *7 (Fla. June 22, 2017); *City of Palm Bay v. Wells Fargo Bank, N.A.*, 114 So. 3d 924, 928 (Fla. 2013). Under

Florida's Constitution, the City is allowed to "exercise any power for municipal purposes *except as otherwise provided by law*." Art. VIII, § 2(b), Fla. Const. (emphasis added). That limitation has been imported into general law. *See* § 166.021(1), Fla. Stat. (2014) (allowing municipalities to exercise broad powers "except when expressly prohibited by law"). This Court recently reiterated that the phrase "'except as otherwise provided by law' contained in the constitutional provision 'establishes the constitutional superiority of the Legislature's power over municipal power.'" *D'Agastino*, 2017 WL 2687694, at *8 (quoting *City of Palm Bay*, 114 So. 3d at 928). Accordingly, a municipality's authority to exercise power must accede to the State where the Legislature has clearly indicated by statute that the "subject [is] expressly preempted to state or county government by the constitution or by general law." § 166.021(3), Fla. Stat.

The regulation of traffic laws is one such subject. This Court has previously held that "Chapter 316 could not be clearer in providing that local ordinances on a matter covered by the chapter are preempted unless an ordinance is *expressly authorized* by the statute." *Masone*, 147 So. 3d at 496-97 (emphasis added). In reaching this conclusion, this Court noted that the enforcement of traffic laws throughout Florida, including the "prohibition and punishment of red light violations," had – even before the passage of the Wandall Act – been preempted to the state through two "broad preemption provisions" of Chapter 316. *Id.* at 498.

This Court observed that §§ 316.002 and 316.007 each furthered the Legislature's purpose of ensuring that Florida's traffic laws be uniform throughout the state by making it "'unlawful for any local authority to pass or attempt to enforce any ordinance in conflict with the provisions of [Chapter 316],'" *id*. at 495 (quoting § 316.002, Fla. Stat. (2008)), and by providing that "'no local authority shall enact or enforce any ordinance on a matter covered by this chapter unless expressly authorized,'" *id*. at 496 (quoting § 316.007, Fla. Stat. (2008)). *See Arem*, 154 So. 3d at 363 (noting that "[t]he section 316.007 prohibition is even broader than that of 316.002: while section 316.002 precludes ordinances that 'conflict' with chapter 316, section 316.007 bars ordinances "*on a matter covered* by [chapter 316] unless expressly authorized").

The 2010 Legislature added a provision that left no doubt that the preemptive force of Chapter 316 extended fully to the use of red light cameras for enforcement purposes: "Regulation of the use of cameras for enforcing the provisions of [Chapter 316] is expressly preempted to the state." 2010 Fla. Sess. Law Serv. 349 (West) (§ 316.0076, Fla. Stat.). It appears that all members of this Court agree that, post-Wandall Act, the subject of regulation of the use of cameras for red-light enforcement purposes is fully preempted to the state.[8]

[8] *See Masone*, 147 So. 3d at 495-98 (holding in pre-Wandall Act case that "broad preemption provisions" cover red-light-camera enforcement); *id*. at 498 (Pariente, J., dissenting) ("Not until 2010 did the Legislature make clear through an express

The Wandall Act contains a "comprehensive" statewide scheme for the manner by which the traffic laws may be regulated using red light cameras. *D'Agastino*, 2017 WL 2687694, at *15 (Pariente, J., concurring). The Act addresses a multitude of actions, including detailed rules and processes governing all aspects of the enforcement regime. *See* p. 4, *supra*. This detailed procedural scheme, coupled with the broad preemption provisions in Chapter 316, leaves precious little un-preempted space in which local governments may act. That reality may be seen by contrasting the provision of the Act which authorized local governments to enforce traffic laws via red light cameras and the preemption provision it added. With one hand, the Legislature empowered local governments to "use traffic infraction detectors to enforce" certain traffic laws, § 316.008(7)(a), Fla. Stat., but with the other it insisted that "*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). Thus, local governments lack power to

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statement in the Mark Wandall Traffic Safety Act that '[r]egulation of the use of cameras for enforcing the provisions of this chapter is expressly preempted to the state.'"); *City of Ft. Lauderdale v. Dhar*, 185 So. 3d 1232, 1235 (Fla. 2016) (stating that Act "expressly preempted to the State the regulation of the use of cameras to enforce the provisions of chapter 316"); *D'Agastino*, 2017 WL 2687694, at *8 (citing *Masone* as example of express preemption); *id*. at *15 (Pariente, J., concurring) (citing § 316.0076 as "an express statement of preemption").

impose any "regulation" on how cameras are used in red-light traffic enforcement that is not "*expressly authorized* by [the] statute," *Masone*, 147 So. 3d at 497.

The sole provision that Respondents rely upon is that, "[f]or purposes of administering this section," they are "not prohibit[ed]" from using an "agent" for "a review of information from a traffic infraction detector . . . before issuance of the traffic citation by the traffic infraction enforcement officer." § 316.0083(1)(a), Fla. Stat. There can be no real debate that the "review" in this provision – whatever its meaning – constitutes part of a local government's "use" of the cameras as part of "enforcing" the Wandall Act, § 316.0076, Fla. Stat., for preemption purposes. As explained in Section A of this Brief, however, the "review" which the Legislature envisioned is much more limited than the City's interpretation. Therefore, § 316.0083(1)(a) falls short of satisfying the requirement of express authorization to a municipality to outsource the broader, substantive review that the City has given to ATS through its BRQ standards. *Cf. Masone*, 147 So. 3d at 497 ("Th[e] provision [in question], however, is not equal to the task").

Nor do any of the other provisions of the Wandall Act expressly authorize the City to enlist a private vendor to apply the City's own BRQ standards to the information captured by the red light cameras. In addition to the numerous provisions of the Act codified at § 316.0083, the 2010 Legislature also enumerated specific powers that municipalities could exercise with regard to red light cameras

in § 316.008, entitled "Powers of local authorities." Those provisions, however, merely authorize a municipality to install and to use red light cameras to enforce violations of state law (§§ 316.074(1) and 316.075(1)(c)1., Fla. Stat.). *See* § 316.008(8)(a)-(c), Fla. Stat. Nothing expressed in these provisions authorizes local governments to create, let alone enlist a private vendor to use, a specially created set of local standards in a city's enforcement of red light camera violations.

Not only does the City lack the power to have ATS apply the City's BRQ standards to the photographic images and video in the first place, but the *byproduct* of that aspect of the City's program also gives rise to an additional violation of preemption principles. As Sgt. Burns testified, the purpose of the review that ATS performs "[t]o weed out, for lack of a better word, violations or incidents that are not a violation[.]" (R.1258). A subset of recorded images do not get forwarded to the City's traffic infraction enforcement officers for decision whether to issue a citation. The contract makes that clear. *See* R.866, ¶ 3. And Sgt. Burns testified unequivocally that the Police Department "do[es] not" review the images ATS winnows out for purposes of red-light-camera enforcement. (R.1252-53, 1276, 1319). That "weeding out" process certainly comprises part of the City's enforcement regime, yet nowhere in the Act is there express permission for a City to assign such winnowing process to a vendor.

Moreover, particular rules within the BRQ are themselves preempted as they conflict with the Legislature's regulation of the specific acts that constitute a red light violation. For example, a municipality cannot issue a red light camera citation to a driver who completes a right-hand turn in a "careful and prudent" manner where permissible. *See* §§ 316.0083(1)(a), (2), Fla. Stat. Yet, the City's BRQ has ATS weeding out all events where a vehicle is traveling below 15 miles per hour. (R.257, BRQ No. 4.4). The City's individual choice of a speed limit may exempt careless and imprudent drivers from receiving a citation who, under state law, should be ticketed. A driver who is turning right at 5 miles an hour could well be careless and imprudent if he or she makes the turn in a manner that cuts off an oncoming driver. Yet the City's BRQ categorically presumes that only faster drivers are not being "careful and prudent." Hence, the BRQ directly conflicts with, and is preempted, by state law.

It would be no answer to say that just because the City's BRQ standards were not promulgated by ordinance, but were adopted by the Police Department pursuant to a contract between the City and ATS, preemption can be avoided. To be sure, preemption typically arises in the context of challenges to the validity of a local ordinance, but the principle runs much deeper, to the fundamental hierarchy between state and municipal exercises of governmental power. *See City of Palm*

*Bay*, 114 So. 3d at 928. *Any* unauthorized exercise of municipal power in an area preempted to the state is invalid. This Court has said as much:

> Although municipalities generally have 'the power to enact legislation concerning any subject matter upon which the state Legislature may act,' § 166.021(3), Fla. Stat. (2004), in exercising their power within that scope *municipalities are precluded from taking any action that conflicts with a state statute*.

*City of Palm Bay*, 114 So. 3d at 929 (emphasis added). This rationale is entirely consistent with Florida's Constitution and related general law which recognize that municipalities have authority to "exercise *any* power for municipal purposes" unless prohibited. *See* § 2(b), Art. VIII, Fla. Const. (emphasis added); § 166.021(1), Fla. Stat. The necessary corollary in the context of a field that has been preempted is that a municipality lacks *all* power to act, whether by legislation or otherwise, except where expressly authorized. Thus, "any action" a municipality takes in formal exercise of its powers that is inconsistent with state law in a preempted field is prohibited. *City of Palm Bay*, 114 So. 3d at 929.[9]

The Fourth District applied this notion to red light camera enforcement, explaining that "any attempt by a local government to circumvent chapter 316 either by ordinance *or contract* is invalid unless expressly authorized by the

[9] This must be the case, otherwise a city could circumvent the preemptive effect of the Legislature's express dictates by contract as opposed to ordinance. That is exactly what occurred here when ATS presented the BRQ template to Sgt. Burns, "the City," and the police chief, who in turn filled in the blanks, thereby creating a unique set of local rules and regulations for ATS to apply as part of the City's use of red light cameras for enforcement of state traffic laws. (R.1234).

legislature." *Arem*, 154 So. 3d at 363 (emphasis added). Moreover, when the Legislature intended to authorize a municipality to accomplish part of its red-light camera enforcement program by contract, it expressly so provided. *See* § 318.0083(8)(b), Fla. Stat. ("a municipality may install or, *by contract* or interlocal agreement, authorize the installation of any such detectors . . .") (emphasis added). A municipality cannot accomplish indirectly by contract what it lacks the power to do directly via ordinance.

The City, therefore, lacked the power to use the red light cameras for enforcement in the manner it did in this case. Its delegation of substantive review to ATS through the BRQ exceeded the City's statutory authority, and because the Legislature has insisted upon strict preemption to the State in this field, the City's program violates the Florida Constitution. *See* Art. VIII, § 2(b), Fla. Const.

It is not as though this constitutional defect is a mere technicality in the context of the City's operation of its red-light-camera enforcement program either. The unlawful delegation of substantive review power to ATS is essential to the City's ability to manage the volume of potential red light infractions:

> Each month, approximately 5,000 images are sorted into the working database and 3,000 are sorted into the non-working database. The police sergeant who oversees the City's review testified that the City would be *overwhelmed* if it was required to review all images generated by the system.

*Jimenez*, 211 So. 3d at 161 (emphasis added); *see* R.1231, 1290 (Sgt. Burns: "There are so many incidents that occur that are not violations. We would just be completely inundated reviewing potential violations."). Absent the City's unconstitutional outsourcing of this substantive review to ATS, citations like the one Mr. Jimenez received could not, as a practical matter, have been issued. The City Police Department would not have had the resources to process the camera images; it would have been "completely inundated."

Holding the City to the letter of the law, and requiring it to move in-house the substantive-review operation it depends upon to maintain its high-volume, red-light ticket-issuance practice, may well impose unwanted costs in administration, but that is a matter for legislative rather than judicial relief for the City.

### C. THE CITY'S ADOPTION OF ITS OWN STANDARDS VIOLATED THE UNIFORMITY PRINCIPLE SET FORTH IN CHAPTER 316, FLORIDA STATUTES.

The City's adoption and use of its own set of standards pursuant to its agreement with ATS, in the purported implementation of its ordinance (R.853), independently violates the uniformity principle established by Chapter 316, Fla. Stat. Chapter 316 clearly articulates "a legislative purpose of uniformity." *Masone*, 147 So. 3d at 495. Section 316.002 states in part: "It is the legislative intent in the adoption of this chapter to make *uniform* traffic laws to apply throughout the state and its several counties and *uniform* traffic ordinances to apply

in all municipalities." (emphasis added). That purpose is reiterated in § 316.007: "The provisions of this chapter shall be applicable *and uniform* throughout this state and in all political subdivisions and municipalities therein[.]" (emphasis added).[10]

The City's adoption of a set of its own standards for "Red Light Infraction Criteria" (R.861, § 1.8) violates the uniformity requisite of Chapter 316. ATS's BRQ template presents cities with a menu of options from which to select, including for the centrally important issue of "Definition of a Red Light Violation," which allows the city to choose among, for instance, four options for the "Line of Demarcation Definition": behind the stop line, behind the prolongation of the curb, behind the cross walk, or behind whichever line the tires will hit first. (R.256). The Legislature, however, did not give municipalities any flexibility in choosing a line of demarcation for red light violations. Instead, it provided a standardized and uniform rule for determining the "line of demarcation" that all municipalities must follow. § 316.075(1)(c)1, Fla. Stat.

ATS's witness also confirmed that the rules of one city are "different" from those of another, requiring ATS processors to "review the rules for a city before

[10] Indeed, this Court in *Masone* invalidated the City's original red light camera enforcement regime on the basis, in part, that it had a different punishment regime than that prescribed by state law. 147 So. 3d at 496-97. If a departure from the required uniformity of penalties was prohibited, so too must be the City's use of discordant standards for what does not constitute a violation.

they start processing" and to "have the rules up for that city" on a separate screen. (R.1379-80); *see also* R.1408, 1422 (confirming that each city's BRQ is "special" and "individual").[11] Likewise courts have recognized that ATS's questionnaire allows each city to create its own set of rules. *See Jimenez*, 211 So. 3d at 162 ("[I]n several instances, the City created its own solutions."); *City of Oldsmar v. Trinh*, 210 So. 3d 191, 197 (Fla. 2d DCA 2016) ("Each city that contracts with ATS establishes its own business rules for ATS to follow.").

This local variance in processing standards inevitably correlates with differences in the manner in which red light cameras are used to enforce state traffic laws. The BRQ are used to segregate unlikely violations from potential violations, such that ATS, applying the City's chosen criteria, effectively decides which drivers *not* to ticket. For example, in his response to Mr. Jimenez's motion to dismiss, the Attorney General suggested that cities may not want to prosecute drivers traveling slower than 10 mph for right-turn-on-red violations. (R.44, n.8). The City of Aventura set that threshold speed at 15 mph. (R.257, BRQ No. 4.4). Thus, where a driver in the City who is going 12 mph will be put in the non-working queue, that same driver in a second city with a BRQ of 10 mph would be forwarded for potential citation, leading to non-uniformity in the use of red light

[11] The Attorney General also conceded in the trial court that the BRQs "are the uniqueness that all cities have." (R.1466).

cameras for enforcement of the traffic laws. The potential for varying citation-issuance is all the more real because, as Sgt. Burns made clear, although those videos which do not meet the City's BRQ criteria (and are not forwarded to the City) still remain *available* for review, the Police Department does not review them for purposes of issuing red-light camera traffic citations. (R.1252-53, 1276, 1319). If ever, they get reviewed for unrelated purposes. *See id.*

The risk that various cities will select individualized options from ATS's questionnaire leading to inconsistent local choices in the types of events that are processed for red light violations is the precise lack of uniformity that the Legislature sought to avoid. By authorizing municipalities to issue red light camera citations "for a violation of s. 316.074(1) and s. 316.075(1)(c)1," the Legislature has already explicitly proscribed the conduct subject to punishment. Any variation from these statutory provisions that municipalities make on their BRQ standards not only results in the non-uniformity of state traffic laws, but more fundamentally is a decision that has been preempted to the State.

### D BECAUSE THE TRAFFIC CITATION WAS ISSUED PURSUANT TO AN UNCONSTITUTIONAL EXERCISE OF MUNICIPAL POWER, IT SHOULD BE DISMISSED.

A city's purported exercise of sovereign power that it lacks due to preemption to a superior authority renders the unlawful act void. This Court recently so held. In *D'Agastino*, the Court found the City of Miami Civilian

Investigative Panel's issuance of a subpoena to a law enforcement officer to be preempted by state statute. 2017 WL 2687694 at * 12. Such an improper assertion of power in a preempted field is "unconstitutional." *Id.* As a remedy, this Court quashed the decision of the district court insofar as it had affirmed the trial court's order "upholding the validity of the subpoena issued to Lt. D'Agastino and denying [him] a protective order." *Id.* In other words, the unlawful exercise of local authority must be quashed.

Similar remedies follow other unconstitutional assertions of government power. In *Department of Revenue v. Kuhnlein*, 646 So. 2d 717 (Fla. 1994), this Court likewise articulated the principle that an unconstitutional governmental act renders the assertion of power void from the outset. *Kuhnlein* involved a challenge under the Commerce Clause of the U.S. Constitution to a Florida statute purporting to authorize the assessment of an impact fee on in-state registrations of cars purchased or titled in other states. 646 So. 2d at 719-20. Finding that the statute was unconstitutional, *id*. at 725, this Court reasoned that "the impact fee was *void from its inception* because the legislature acted wholly outside its constitutional powers." *Id*. at 726 (emphasis added). Because the plaintiffs had already paid the fee, the Court concluded that "[t]he only clear and certain remedy is a full refund to all who have paid this illegal tax." *Id.* In a recent case involving red light camera citations, this Court upheld the dismissal of a red light camera citation

issued to a short-term renter of an automobile photographed running a red light. *Dhar*, 185 So. 3d at 1236. This Court held that the Wandall Act violated the constitutional right to equal protection because there was no rational basis for the disparate treatment of short-term automobile renters and registered owners and lessees. *Id*. This Court agreed with the decision of the lower courts that the dismissal of the citation was the proper remedy. *Id.*

The Fourth District in *Arem* likewise recognized that the exercise of power not expressly authorized by the Wandall Act supports the invalidation of the resulting traffic citation. 154 So. 3d at 365. After finding that the City of Hollywood had outsourced myriad functions to a vendor (ATS) in contravention of the preemptive provisions of the Act, *id.* at 363, the Fourth District held that "the City's improper delegation of authority in this case renders the citation *void at its inception*," *id*. at 361 (emphasis added). "As a result," the court concluded, "the dismissal of the citation is the proper remedy." *Id*. at 365.

The foregoing authorities warrant similar relief here: dismissal of the citation against Mr. Jimenez.

## IV. CONCLUSION

For the foregoing reasons, the Court should quash the judgment of the Third District and remand for the dismissal of the traffic citation against Mr. Jimenez.



Podhurst Orseck, P.A.
One S.E. 3rd Avenue, Suite 2700, Miami, FL 33131 • Miami 305.358.2800 Fax 305.358.2382 • Fort Lauderdale 954.463.4346 www.podhurst.com

Respectfully submitted,

*/s Stephen F. Rosenthal*

Louis C. Arslanian
Fla. Bar No. 801925
5800 Sheridan Street
Hollywood, FL 33021
Tel.: 954-922-2926
arsgabriela@comcast.net

Marc A. Wites
Fla. Bar No. 24783
**WITES & KAPETAN, P.A.**
4400 North Federal Highway
Lighthouse Point, FL 33064
Tel.: (954) 570-8989
Fax: (954) 354-0205
mwites@wklawyers.com

Stephen F. Rosenthal
Fla. Bar No. 131458
Ramon A. Rasco
Fla. Bar No. 617334
**PODHURST ORSECK, P.A.**
SunTrust International Center
One S.E. 3rd Avenue, Suite 2700
Miami, Florida 33131
Tel.: 305-358-2800
Fax: 305-358-2382
srosenthal@podhurst.com
rrasco@podhurst.com

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via e-mail service on this **30th** day of **June, 2017** upon: Edward G. Guedes, Weiss Serota Helfman Cole & Boniske, P.L., 2525 Ponce de Leon Blvd., Suite 700, Coral Gables, FL 33134, eguedes@wsh-law.com, szavala@wsh-law.com; Samuel I. Zeskind, Weiss Serota Helfman Cole & Boniske, P.L., 2525 Ponce de Leon Blvd., Suite 700, Coral Gables, FL 33134, szeskind@wsh-law.com, ozuniga@wsh-law.com; Robert Dietz, Office of the Attorney General, 501 E. Kennedy Blvd., Suite 1100, Tampa, FL 33134, Robert.Dietz@myfloridalegal.com.

By: *s/Stephen F. Rosenthal*
Stephen F. Rosenthal

## CERTIFICATE OF COMPLIANCE WITH RULE 9.210(a)(2)

I hereby certify that the type style utilized in this brief is 14 point Times New Roman proportionally spaced.

*s/Stephen F. Rosenthal*
Stephen F. Rosenthal



Podhurst Orseck, P.A.
One S.E. 3rd Avenue, Suite 2700, Miami, FL 33131 • Miami 305.358.2800 Fax 305.358.2382 • Fort Lauderdale 954.463.4346 www.podhurst.com