

**Automated Traffic Enforcement Systems:
The Efficacy of Such Systems and
Their Effect on Traffic Law**

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Automated traffic-enforcement systems ("ATES") conflict both legally and conceptually with the methods of enforcement traditionally pursued by the majority of the states. Despite the conflicting data concerning the utility of automated traffic enforcement devices, and their conflict with the traditional modes of traffic enforcement, a number of states have hastily decided to permit localities to install them. This Note will argue that, given the conflict between uniform state-traffic laws and the use of ATES by municipalities, states should ban such use until more study can resolve whether ATES should effectively replace human involvement in traffic-law enforcement. The states desiring to use the devices should also examine whether there are better alternatives to the automated enforcement devices that would not necessitate such a dramatic overhaul of the modes of regulating traffic, and should institute a number of safeguards to protect drivers from arbitrary or unfair enforcement by ATES.

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I. INTRODUCTION

Traffic regulations are justified public policy measures to the extent that they promote safety on the roads for motorists and pedestrians.¹ Currently, traffic law is undergoing a dramatic change: a large number of states either have already granted municipalities the power to use automated forms of traffic-law enforcement, or are currently considering whether to do so.² Where authorized, localities have eagerly employed such automated-enforcement methods.³ Some municipalities have even decided to do so absent state authorization.⁴

Indeed, since 1988, when New York City became the first major U.S. city to place cameras on traffic lights in an experimental attempt to catch drivers who run red lights,⁵ hundreds of local legislatures have implemented Automated Traffic Enforcement Systems ("ATES")^{6,7} ATES, which local bodies program to catch both speeders and red-light runners through the use of cameras and other automated technologies, now enjoy widespread use in cities and other municipalities across the country.⁸ ATES have become especially popular among the many budget-crunched localities, making them one of the fastest growing trends in local-governmental administration in the last decade.⁹

However, the jury is still out on the utility of ATES; it

is not clear whether ATES effectively regulate traffic. Critics have questioned whether ATES actually promote traffic safety,¹⁰ and motorists and other interested groups have raised a number of challenges to the use of such automated devices.¹¹ These constituencies have most successfully contested ATES under state-law theories.¹² As those cases suggest, the use of the ATES constitutes a dramatic transition from the traditional mode of traffic enforcement.¹³ Specifically, the use of ATES greatly reduces human involvement in such law enforcement, and treats traffic violations as mere civil infractions, contradicting the status quo of most state traffic-regulatory schemes.

Despite the evolution in this area of law that ATES represent, there is still not enough reliable data on the utility of the devices to conclude whether ATES have successfully prevented traffic violations and accidents. Though there is a tremendous body of data on the use of ATES, the data is not entirely reliable. In some cases, interested parties have conducted much of the underlying research; in performing others, the researchers have conducted their studies in a non-scientific manner.¹⁴ Given this lack of reliable data, this Note will argue that the state and federal governments and other disinterested bodies should conduct further research in order to resolve whether the use of ATES promote overall traffic safety.

Part II of this Note will briefly introduce the reader to

the framework of state regulations of traffic, describe how ATES work and their procedural framework surrounding their use, will then examine the motivations for municipalities using the devices, and will lastly discuss the research that investigators have performed on the devices. Part III will review the cases that have examined the conflicts between state traffic law and ATES. Part IV will argue that, given the conflict between uniform state-traffic laws and the use of ATES by municipalities, states should ban such use until more study can resolve whether ATES should effectively replace human involvement in traffic-law enforcement. Part V will suggest some guidelines that states that continue to permit the use of ATES should adopt to protect motorists from unfair treatment. Lastly, Part VI will briefly conclude the Note.

II. AN INTRODUCTION TO ATES

Despite the prevalence of ATES, most people do not know how they work, how to contest citations issued pursuant to them, why municipalities are so eager to use them, and whether they are effective in promoting traffic safety. This Part will address each of these issues separately after briefly explaining the traditional framework of state traffic regulation.

A. The Traditional Framework of State Traffic Law

To understand the issues raised by ATES, it is important to

understand the schemes by which most states regulate traffic.¹⁵ Most state governments treat moving traffic violations as criminal¹⁶ or quasi-criminal actions,¹⁷ although a minority of states treats such traffic violations as purely civil infractions.¹⁸ Most states also provide that running red lights and speeding are violations of their traffic codes.¹⁹

In contrast, most statutes that either enable the use of ATES or provide for their implementation designate violations caught by ATES as merely civil infractions, thus reducing the punishment involved for traffic-law violators caught by ATES compared to drivers caught by police officers.²⁰ By so changing the status quo, ATES create a two-tiered hierarchy within the realm of traffic enforcement, whereby the severity of punishment imposed on drivers that disobey the same traffic laws depends, somewhat arbitrarily, on whether ATES cameras or actual officers catch the driver. Thus, ATES significantly alter the modus operandi of traffic regulation. However, many local and state legislators advocating the use of ATES have largely ignored this significant alteration of state traffic regulation

Although most states have statutes that define the acts and omissions constituting traffic violations, those states differ as to the amount of power they delegate to municipalities to regulate traffic. While most states grant municipalities a fair amount of discretion concerning policing traffic within their

boundaries, many also limit that authority to specific enumerated situations.²¹ States do so largely to promote uniformity of traffic laws within their jurisdictions.²²

Furthermore, the different states use significantly different mechanisms to regulate ATES. While some states have not yet enacted legislation regarding the power of municipalities to implement ATES,²³ other states grant municipalities broad discretion regarding their use of ATES.²⁴ And yet, other states either completely ban the use of ATES or greatly limit when, where, and how the municipalities can use them.²⁵ Because of this disparity in regulatory mechanisms, the use of ATES raises different issues depending on the law in the particular jurisdiction. Whereas challengers of ATES in states that grant municipalities broad powers to use them are largely limited to state and federal constitutional claims, challengers in states that have not enacted legislation concerning ATES, or greatly regulate the use of ATES can pursue claims based on state law.²⁶

B. How ATES Work

It is important to understand how ATES operate to appreciate fully the controversy surrounding them. This section will begin with an analysis of the technical operations of ATES by examining how they catch drivers disobeying the traffic laws,

and will then explain how municipalities handle violations based on evidence from ATEs. Finally, this Section addresses how individuals may contest traffic violations based on ATEs.

1. Technical Operations of ATEs

There are two primary types of ATEs: (1) radar spectrometers, more commonly referred to as photo radar, and (2) red-light cameras.²⁷ This Note will focus largely, though non-exclusively, on red-light cameras because they are far more common than photo-radar devices and have been the subject of far more controversy.²⁸

Radar spectrometers use Doppler-radar technology to determine a passing or adjoining motor vehicle's speed, while simultaneously taking photographs.²⁹ A police officer usually operates photo-radar devices, but the officer does not generally pull over violators caught by the photo radar.³⁰ If the vehicle in question is traveling at a rate of speed above the posted limit, the camera attached to the radar spectrometer takes multiple pictures of the driver and the license plate as the vehicle passes.³¹ The device then takes note of the date, time, and location of the incident, as well as the vehicle's recorded speed, and stamps that information on the photograph.³² The picture is then ready for processing by the entity charged with issuing the ticket.

Red-light cameras operate in a slightly different manner. The most common type of red-light cameras use loop detectors³³ that permit the operation of electromagnetic sensors.³⁴ The device uses the loop detectors to determine the time it takes the vehicle to move from the first loop to the second loop. If a driver passes through the red light, the machine triggers a camera. The camera then takes a picture of the vehicle from the back, and, after a set interval, from the front, thus capturing images of the driver and the rear and front license plates.³⁵ Much like the radar spectrometers, the device then imprints information about the time and place of the violation, as well as information concerning how long the light had been red when it took the pictures.³⁶ The picture is then ready for processing.

2. Procedural Mechanisms for Adjudication of ATES-Based Violations

Once the ATES machines format the pictures of the alleged violation, their administrators send the processed information to the body charged with sending out violation notices. While that duty is principally that of the local government, almost all municipalities contract with private companies to operate their ATES and issue citations to the owners of the photographed vehicles through the mail, subject to the supervision of the local government.³⁷ Localities typically treat violations caught

by ATES as civil violations that do not affect the driver's driving record; localities almost never treat them as criminal infractions or moving violations.³⁸

Some jurisdictions require additional procedures including: (1) notification to drivers of the existence of ATES devices;³⁹ (2) inspection of the devices at regular intervals;⁴⁰ (3) issuance of warning notices pursuant to ATES violations within specified times;⁴¹ (4) presence of an officer with the ATES device, and issuance of the citations at the scene of the violation;⁴² (5) limitation of the type of ATES available to a municipality (usually red-light cameras);⁴³ (6) limitation on the subjects of the photo taken by the ATES device;⁴⁴ (7) maximum permissible amount for the fine;⁴⁵ (8) a grace period between the time the light turns red and the recording of a violation;⁴⁶ (9) a minimum change interval between the red and yellow lights for red-light cameras;⁴⁷ (10) approval from the state transportation agency;⁴⁸ and (11) holding public hearings before instituting ATES.⁴⁹

Among the states that have statutes regulating the use of ATES, some allow only certain municipalities to implement ATES by either enumerating the specific localities that can do so,⁵⁰ or by limiting the statutory authority to operate ATES to municipalities of certain population sizes.⁵¹ Some states further restrict municipalities from installing municipalities outside

of certain types of areas.⁵² Perhaps most noteworthy are the provisions enacted by some states that prohibit local governments utilizing ATES from profit-sharing revenues from fines with the private corporations they contract to operate the ATES.⁵³ The law in some states strictly regulates the operation of ATES by municipalities on the one hand, while easing those restrictions for state law-enforcement purposes.⁵⁴

i. Options to Drivers Served with Notice of Violations Based upon ATES.

After processing the ATES photo, the owner of the vehicle receives notice by mail of the citation issued against him.⁵⁵ Most states require municipalities to send this notice within a reasonable period of time.⁵⁶ Many states have statutes requiring that a copy of the photographic evidence accompany the notice.⁵⁷ Upon receipt of a citation, the statutes typically give the vehicle's owner three options: (1) pay the assessed fine, (2) sign an affidavit swearing that the car was stolen or leased at the time of the incident, or (3) request a hearing to appeal the citation on another ground.⁵⁸ The hearings mandated pursuant to contested ATES citations, if requested, generally consist of a presentation of evidence, either by law-enforcement officials, the local district attorney, or other administrators of the ATES, before an examiner appointed by the municipality; after

consideration of the evidence and arguments, the examiner decides whether the municipality has established the alleged infraction.⁵⁹ Most jurisdictions deem the notice of the infraction prima facie evidence of the infraction,⁶⁰ generally rebuttable only by proof of a limited number of factual situations.⁶¹

However, the hearings often do not engage in such thorough inquiries in practice.⁶² Most significantly, in virtually all jurisdictions using ATES, there is a presumption that the owner of the car caught by an ATES camera was driving at the time of the violation.⁶³ While this presumption seemingly creates a small burden for the driver to overcome—since the picture taken by the cameras should presumably clarify the identity of the driver—some jurisdictions hold car owners liable for the infractions of those to whom they lend their cars.⁶⁴ In any event, the success rate for appellants of ATES citations is remarkably low.⁶⁵ Nonetheless, motorists across the country continue to challenge these citations based on the statutes authorizing ATES.⁶⁶

Additionally, state and local law generally require that the municipal government administering the ATES prevent disclosure of the photographic evidence (except during a hearing). After the resolution of appeals, the statutes usually require the local governing body to destroy the evidence.⁶⁷

C. Why Municipalities Want to Use ATES

Local (and to a limited extent, state) governments use ATES because they provide a relatively inexpensive means of enforcing traffic laws that can, arguably, (1) reduce the number of traffic violations because of the restraint drivers will use knowing the devices have been installed while (2) increasing the number of drivers caught and cited for such violations. Unsurprisingly, the most common justifications local governments give for the implementation of ATES are safety and revenue. While it is not entirely clear whether ATES have made the roads safer, the devices have been excellent revenue producers for local governments across the country.⁶⁸ This Section will briefly discuss the basis for those justifications.

1. Revenue-Producing Function

ATES have proven to be extremely successful revenue generators for municipalities,⁶⁹ notwithstanding their high costs for purchase and installation.⁷⁰ Localities utilizing ATES have used the money generated from them to fund their police forces—particularly traffic patrols—and to fill the deficits in their budgets.⁷¹ Unsurprisingly, the great financial returns that municipalities using ATES have realized have encouraged many other towns and cities across the country to implement and use their own ATES.⁷² Thus, ATES are an extremely attractive option

to revenue-strapped municipalities.

2. Safety-Producing Function

Despite the financial benefits derived by municipalities who use ATES, the statistics are inconclusive as to whether ATES have succeeded in reducing *overall* traffic violations and accidents.⁷³ A number of studies have found that municipalities employing ATES have reduced traffic infractions and accidents.⁷⁴ These findings are very encouraging considering that in the late 1980s, when municipalities around the country began using ATES in large numbers, traffic accidents stemming from drivers' failures to obey traffic laws—especially red lights—were an enormous problem. By 1998, red-light runners were causing about 250,000 crashes in the U.S. per year, and that figure was gradually increasing.⁷⁵ To prevent further growth in the number of accidents, municipalities across the United States required a cheap and easy means of promoting traffic safety and driver accountability.

While this Note will discuss the overall efficacy of ATES below in Part IID, it is worth noting that many law-enforcement agencies and other administrators of ATES seem to honestly feel that ATES have made their streets safer.⁷⁶ Indeed, there is evidence that the pursuit of safety on the roads has been the predominant factor influencing many local governments to

implement ATES.⁷⁷ Furthermore, a sizable portion of the public also seems to feel that ATES are making streets safer in the places using them.⁷⁸

D. Have ATES Made the Roads Safer?

Whether the usage of ATES is justified from a public-policy perspective depends largely upon whether the reduction in traffic accidents and injuries associated with the devices outweighs the costs of the devices and the fines they have imposed upon drivers.⁷⁹ Unfortunately, the studies and the data presented therein on the efficacy of ATES do not provide an unequivocal answer to this cost-benefit analysis.⁸⁰ This Section will proceed with an examination of the data that both supports and undermines the use of ATES. It will then examine the data coming from sources less-biased sources, and will conclude by reviewing the different stances that state and local governmental bodies have taken towards ATES.

1. Studies Justifying the Use of ATES

A number of studies have found that red-light cameras increase overall traffic safety.⁸¹ The Insurance Institute for Highway Safety ("IIHS") conducted a study in Philadelphia (the "Philadelphia study").⁸² It observed that red-light violations dropped by 96% at some of Philadelphia's most dangerous

intersections after the city installed and announced the presence of red-light cameras.⁸³

Old Dominion University conducted another study concerning the effects of red-light cameras in 2007 (the "Old Dominion study").⁸⁴ Its report (1) examined the frequency of red-light running before some Virginia communities installed red-light cameras, (2) examined this frequency again while the cameras were in place, and (3) reviewed evidence of accidents after those communities removed the cameras after the state-law authorization ended.⁸⁵ The study found that the "relative risk of red light running was 3.59 times higher at previously camera-enforced intersections by one year after the law expiration."⁸⁶

Prior to those studies, there had not been a great deal of research concerning the efficacy of red-light cameras. In 2001, a study of red-light cameras in Oxnard, California (the "Oxnard study") by the IIHS found that "front-into-side crashes at intersections—the collision type most commonly associated with red light running—fell 32 percent" after the cameras were put into place, and that the frequency of such crashes involving injuries fell sixty-eight percent.⁸⁷ The study further found that such crashes declined throughout the city, about equally at intersections with or without red-light cameras, thus suggesting that the very existence of some red-light cameras in a city serves to deter overall red-light running.⁸⁸ Other local studies

have, like the Oxnard study, found a decline in the total number of accidents at all intersections with red-light cameras.⁸⁹

2. Studies Negating the Usefulness of ATES

In a scathing 2001 report, former Majority Leader of the U.S. House of Representatives Dick Armey dismissed many of the surveys that had found ATES to be an effective means of regulating traffic safety.⁹⁰ That report claimed flaw and bias in all of the studies coming before it, namely all studies performed by the IIHS and other non-governmental entities.⁹¹ It further blamed decreases in yellow light intervals at traffic signals for the increases in crashes, and concluded that municipalities could best reduce red-light crashes by increasing those intervals.⁹² Finally, that study concluded that "the only documented benefit to red light cameras is to the pocketbook of local governments who use the devices to collect millions in revenue."⁹³

Furthermore, a number of studies have either (1) found that red-light cameras either do not work, or (2) have associated red-light cameras with an increase in other problems. For example, the Oxnard study, which concluded that front-into-side crashes were less frequent, also found an increase in rear-end collisions at intersections with red-light cameras.⁹⁴ That increase in rear-end collisions seems to be a trend, as traffic

statistics from a number of locations across the county have associated their increases in rear-end crashes with the installation of red-light cameras.⁹⁵ This trend apparently is the result of drivers "slam[ming] on their brakes to avoid getting a ticket."⁹⁶ However, a number of studies also found that the installation of the cameras resulted in fewer front-to-side crashes. Because "[r]ear-end crashes do not tend to be as disastrous as side angle or t-bone crashes," many law-enforcement officials in cities with red-light cameras deem them to be an overall success.⁹⁷

Contrary to these figures, a Washington Post study (the "Washington Post study") recently found that red-light cameras in Washington, D.C. were not "making any difference in preventing injuries or collisions."⁹⁸ That study also found that, at intersections with cameras, the number of accidents actually increased, crashes involving injury or fatality increased by eighty-one percent, and the more dangerous front-to-side crashes rose about thirty percent.⁹⁹ However, the Washington Post study also found that the number of crashes overall and crashes involving injury or death also increased, though not quite as dramatically.¹⁰⁰

3. Studies Unclear About the Utility of ATES

The Federal Highway Administration ("FHA") conducted what

is, in this author's opinion, the most scientific and reliable study on the utility of ATES, and red-light cameras in particular, to date.¹⁰¹ The FHA performed a nationwide study of the effects of ATES of traffic conditions in 2005 (the "FHA study") with results consistent with many of the former studies. The FHA study researched intersections across the country with a watchful eye over the following factors: (1) the number of crashes at intersections before and after the installation of red-light cameras, (2) the type of crashes, (3) the severity of the injuries resulting from the crash, and (4) the amount of property damage resulting from the crash.¹⁰²

The study consistently found that the installation of ATES-cameras at intersections increased overall traffic safety at the chosen sites across the country, with results similar to, but not duplicative of, those of many previous studies.¹⁰³ Like the prior studies, the FHA study found that installing red-light cameras resulted in fewer front-to-side crashes and more rear-end crashes.¹⁰⁴ However, it concluded that the use of red-light cameras nonetheless created a "modest to moderate economic benefit of between \$39,000 and \$50,000 per site per year" after considering all of the aforementioned factors.¹⁰⁵

However, the FHA study does not conclusively answer whether red-light cameras have been successful instruments of public policy. First, the FHA study did not look at data over a

sufficiently long period of time after the installation of red-light cameras in the specified sites to determine whether the effects of red-light cameras are temporary or permanent.¹⁰⁶ Second, the data contained some outliers that the study did not adequately explain.¹⁰⁷ Lastly, the researchers conducting the FHA study also failed to draw conclusions concerning the "spillover" effects of red-light cameras on intersections not using the cameras.¹⁰⁸ The researchers also drew only modest conclusions about the effect of increasing yellow-light intervals at intersections.¹⁰⁹ Thus, while the FHA study is the most reliable study to date, the states and federal governments should conduct further studies before drawing legislative conclusions about the justifiability of ATES.

Furthermore, many critics agree with the Armev report. The data currently available supports the conclusion that the desire to use ATES in municipalities stems not from their safety-producing function, but from their revenue-producing function.¹¹⁰ In North Carolina, for example, a number of localities have decided to end their red-light camera programs after a judge ruled that they could only use most of the funds derived from the cameras on local schools; those local bodies were unwilling to continue to operate the cameras if they could not control how to use the proceeds, clearly demonstrating that they cared not about the safety function of ATES.¹¹¹ Indeed, the general body of

evidence suggests that the devices' ability to generate revenue has become more important to many local officials than their ability to promote safety.¹¹² Some legislators have come to the same conclusion. For example, Ohio state senator Armbruster recently referred to photo radar as "one monstrous speed trap";¹¹³ similarly, New Mexico state senator William Payne referred to the cameras as a "money generating trap."¹¹⁴

4. Lack of Clear Data Yields Varying Legislative Schemes

A number of states and localities have banned the use of photo radar or red-light cameras.¹¹⁵ Others have merely considered laws that would ban ATES.¹¹⁶ The legislatures of some other states have simply failed to enact permissive legislation. For example, in Connecticut, state House Bill 6468 would have permitted municipalities to use ATES and collect fines therefrom.¹¹⁷ However, the bill died in the hands of the state committee on transportation due to concerns that the cameras were a "very lightly veiled mechanism to raise revenues for municipalities."¹¹⁸ In Hawaii, the legislature passed an act in 1998 to authorize the use of ATES.¹¹⁹ However, by 2002, the legislature determined that the "system has caused numerous disruptions to drivers and pedestrians," and, as a result, it discontinued the law.¹²⁰ However, there has since been strong pressure on the legislature to reauthorize ATES.¹²¹

Notwithstanding the legislative decisions made in these states, the national debate concerning the permanence of ATES continues.¹²² As the aforementioned examples illustrate, a number of state legislatures continue to debate whether and under what conditions they should permit municipalities to use ATES. Nonetheless, a number of state legislatures either have passed ATES-permissive legislation, or are in the process of doing so.¹²³ Whether the ATES in those jurisdictions shall remain, however, has yet to be seen.

III. STATE-LAW CHALLENGES TO ATES

Though challengers have raised a number of different types of challenges to the use of ATES,¹²⁴ the most successful have been those alleging that ATES violate state law.¹²⁵ The most common state law issues raised by claimants include: (1) whether local ordinances governing ATES fail to comply with the state constitution; (2) whether local ordinances governing ATES are inconsistent with other state statutes; (3) whether state statutes governing ATES are inconsistent with the state constitution; and (4) whether state statutes governing ATES conflict with other statutes.¹²⁶ This section will examine the cases in which challengers have posed arguments concerning whether ATES are consistent with state statutory and constitutional law.

A. Conflict Between Local Ordinances Governing ATES and State Constitutional Law

The most successful challenges to ATES in the last few years have been those claiming inconsistency between the local ordinance governing the use of ATES and provisions of the state constitutions, particularly state home-rule provisions. The issue in such cases is whether, in the absence of specific state-statutory authority, municipalities can use ATES to collect evidence of traffic violations. This section will deal primarily with recent decisions in North Carolina and Ohio in which ATES challengers raised such claims.

In Ohio, 2006 was a pivotal year for ATES-related litigation.¹²⁷ In *Moadus v. City of Girard*, the Court of Common Pleas of Ohio for Trumbull County held that the City of Girard's ordinance, which provided for civil enforcement of speeding violations via photo radar,¹²⁸ violated the Ohio Home Rule Amendment because it was inconsistent with other Ohio law governing vehicular speeding.¹²⁹ The issue in that case was whether the local ordinance conflicted with the Ohio statutes governing speeding, by making speeding, a matter of general law traditionally treated as criminal, a civil offense.¹³⁰ Because the ordinance transformed what the State had defined "as criminal conduct into merely a civil wrong," and purported to

“simply override . . . the [Ohio] point system,” the court held that the city ordinance violated the Ohio Home Rule Amendment.¹³¹ As a result, the court enjoined the city from “using cameras for enforcement of speeding laws unless done so under the general criminal laws of Ohio.”¹³²

A brief explanation of the nature and scope of home-rule powers and amendments should help the readers better understand this dispute. State governments have the discretion—subject to federal constitutional and statutory limitations—to determine the nature and extent of the powers of their municipalities.¹³³ Many states grant the municipalities broad powers to legislate and regulate local matters; in some states, that power includes the authority to regulate traffic concerns within the municipality.¹³⁴ However, the extent of those powers varies widely from state to state, though most states, like Ohio, proscribe the municipalities from enacting ordinances that conflict with state law, with some limitations.¹³⁵ Thus, in *Moadus*, while the case revolves around the alleged violation of the state constitution, that violation occurred only because the state constitution prohibited the City of Girard from enacting ordinances that conflicted with the statewide statutes.

Numerous municipalities using ATES in the absence of enabling legislation will likely face the same issue as the City of Girard; most states treat violations of traffic laws

concerning the operation of automobiles as criminal or quasi-criminal offenses, whereas most ATEs ordinances make such violations merely civil offenses.¹³⁶ As most state legislatures create traffic codes for the purpose of promoting uniform traffic rules throughout the state,¹³⁷ such provisions are inconsistent with that legislative intent, even where the municipalities have broad home-rule powers, such as in Ohio.¹³⁸

Due to a large volume of cases on its docket involving this same question, the U.S. District Court for the Northern District of Ohio, Eastern Division, issued a certified question on the issue to the Ohio Supreme Court in 2006.¹³⁹ In early 2008, the Ohio Supreme Court answered the certified question, holding that "an Ohio municipality does not exceed its home-rule authority when it creates an automated system for enforcement of traffic laws that imposes civil liability upon violators, provided that the municipality does not alter statewide traffic regulations."¹⁴⁰

Ordinances providing for the implementation of ATEs, the court continued, do not alter statewide traffic regulations because they "complement[] rather than conflict[] with state law";¹⁴¹ they do not alter the "character of the traffic offense of speeding" by changing "the speed limits established by state law" or extinguishing the power "of police officers to cite offenders for traffic violations."¹⁴² However, the court

impliedly inserted a few limitations on the permissible scope of ATES ordinance: such ordinances could not (1) provide for ATES-based civil liability in addition to criminal liability for a driver caught by a police officer, nor could they (2) fully replace the role of police officers in ferreting out traffic violations.¹⁴³

There have been similar allegations of inconsistency between the state constitution and the local ordinances in North Carolina; however, they have been of a different nature. In *Shavitz v. City of High Point*, a driver caught by a red-light camera in the city of High Point, North Carolina challenged both the city ordinance concerning ATES, and the state statute enabling the use of ATES through federal and state claims.¹⁴⁴ Among those challenges was a claim that the city, in using the fines collected pursuant to the red-light cameras for various municipal purposes, had violated a rather obscure provision in the North Carolina Constitution.¹⁴⁵

Article IX, section 7 of the North Carolina Constitution requires that the "'clear proceeds' of all penalties, fines and forfeitures be 'appropriated and used exclusively for maintaining free public schools.'"¹⁴⁶ Based on its interpretation of that provision of the North Carolina Constitution, the court held that "the clear proceeds of High Point's red light program [were] to be paid to the Board of Education," and that the city

could not use the fines to fund other municipal ventures.¹⁴⁷ While this case clearly has relatively minor repercussions on the future of the use of ATES, given that most states do not have constitutional provisions that parallel article IX, section 7 of the North Carolina Constitution, it nonetheless demonstrates the ongoing tensions between state constitutions and local ordinances providing for ATES.

B. Conflict Between Local Ordinances Governing ATES and State Statutes

Under a theory somewhat similar to that of the *Moadus* court, the Minnesota Supreme Court recently held the Minneapolis ATES ordinance invalid in *State of Minnesota v. Kuhlman*. The City of Minneapolis passed an ordinance that presumed that the owner of a motor vehicle photographed running a red light was guilty of a petty misdemeanor.¹⁴⁸ Prior to the adoption of this ordinance, section 169.06 of the Minnesota State Statutes provided that violations of red light laws were criminal offenses, and thus the state, in prosecuting offenders, had the burden of proving both (1) that the owner of the car was the driver at the time of the citation¹⁴⁹ and (2) that the driver was guilty of the alleged red-light violation. The Court held that the presumption granted to the prosecution under the first prong of the ordinance shifted the burden from the state to the cited

car owner, and was therefore in conflict with the statute.¹⁵⁰

The Minnesota Supreme Court thus held that the ordinances were invalid because they conflicted with state statutes governing the uniformity of traffic laws.¹⁵¹ The court held that prosecutions for red-light violations under section 169.06 of the Minnesota Statutes are criminal in Minnesota, which required the state to prove that the owner of the car was the driver at the time of the citation.¹⁵² As such, it held, the presumption under the ordinance that the owner of the car was also the driver, which had the effect of shifting the burden to the cited car owner, was in conflict with the statute.¹⁵³

An Iowa court recently came to a similar conclusion in a case that considered whether the city of Davenport's red-light program conflicted with state law. In *Rhoden v. City of Davenport*, an Iowa district court held that the Davenport red-light camera ordinance conflicted with sections 321.235, 805.8, and 805.8A of the Iowa Code.¹⁵⁴ Much like its Minnesota counterpart, section 321.235 required that Iowa's statutory provisions relating to the punishment of traffic offenses "shall be applicable and uniform throughout this state and in all of its political subdivisions or municipalities therein and no local authority shall enact or enforce any rule or regulation in conflict with the provisions" unless expressly authorized to do so.¹⁵⁵

Unlike its Minnesota counterpart, however, the Iowa Code specifically exempts from that rule municipal regulation of "traffic by means of police officers or traffic-control signals."¹⁵⁶ Thus, the city argued that, in inserting that exception, the legislature had intended to delegate to the municipality the power to determine the means by which to regulate traffic.¹⁵⁷ The Iowa court quickly disposed of that argument, finding that that provision did not authorize the Davenport ordinance to make "activity that is criminal under state statute . . . a civil infraction."¹⁵⁸ Based on that finding, and the finding that the ordinance "imposes responsibility [for the offense] on the registered owner of the offending vehicle rather than on the operator of the vehicle [at the time of the violation],"¹⁵⁹ the court invalidated the ordinance.¹⁶⁰ This case is currently on appeal to the Iowa Supreme Court and is presently in the briefing stage.¹⁶¹

However, not all claims of inconsistency between state statute and local ordinance have fared so well. In *Idris v. City of Chicago*, the United States District Court for the Northern District of Illinois dismissed a claim against the City of Chicago, which alleged such a similar incongruence between state criminal traffic law and the city's ATES statute.¹⁶² However, in that case, the challenging parties opted to base their claims on equal protection grounds; i.e., they argued that because

Chicago's red-light camera ordinance "'require[ed] a different treatment [for red light violations] than the same offense prosecuted under a state statute' it therefore 'lack[ed] any rational basis' and was facially invalid" as a violation of the state and federal equal protection clauses.¹⁶³ They further argued that the equal protection forbids the enactment of a local ordinance punishing conduct that another state statute already punished.¹⁶⁴

Indeed, Illinois had enacted ordinances that punished the running of red lights with strict criminal sanctions,¹⁶⁵ and, thereafter, Chicago enacted a red-light ordinance that proscribed the same conduct.¹⁶⁶ However, the court quickly disposed of that claim,¹⁶⁷ and instead characterized the plaintiffs' claim as a double-jeopardy challenge.¹⁶⁸ The court then disclaimed the possibility that such a conflict constituted a double-jeopardy violation noting that the city ordinance treated the commission of such acts only as civil infractions, it thus did not involve the Double Jeopardy Clause.¹⁶⁹

A few challengers to the use of ATES have also sued claiming that the municipality using ATES did so in a manner inconsistent with the state enabling legislation. For example, in *Leonte v. ACS State and Local Solutions, Inc.*, a plaintiff sued a company operating an ATES for West Hollywood, California, claiming that the company's contract with the City of West

Hollywood conflicted with state statute.¹⁷⁰ California law had a stated limitation that "[o]nly a Governmental agency, in cooperation with a law enforcement agency, may operate an automated enforcement system."¹⁷¹ However, the court construed that provision "as a legislative recognition that a local governmental agency may contract with another entity to assist in some aspects of the operation of an automated traffic enforcement system."¹⁷² Consequently, it held that the contract did not violate California law.¹⁷³

C. Conflict Between State Statutes Governing ATES and State Constitutional Law

Only one case to date has determined whether a state statute enabling municipalities to use ATES violated the state constitution. In *City of Commerce City v. State*, a number of Colorado municipalities to which the state Constitution had granted home-rule authority sued the state, challenging the validity of a statute regulating the use of ATES.¹⁷⁴ Their primary contention was that the state statute,¹⁷⁵ which imposed a number of constraints on the use of ATES, was unconstitutional because it infringed upon the municipalities' home-rule powers.¹⁷⁶ Under Colorado statute, while both the state and home-rule cities have the power to regulate matters of local concern, "if a home-rule ordinance or charter conflicts with a state

statute regulating a local matter, the home-rule provision supersedes the state provision.”¹⁷⁷

However, the Supreme Court of Colorado held that the regulation of ATES was a matter of mixed local and state concern because the state had a sufficiently strong interest in regulating ATES statewide given its interest in uniform regulation of ATES, given that drivers often drive through multiple municipal jurisdictions.¹⁷⁸ The court held that the statute was constitutional.¹⁷⁹ The court further held that the state provisions superseded any conflicting local provisions.¹⁸⁰ Thus, in this case—much like challenges to ATES based on state law in other cases—the state’s interests in ensuring uniformity of traffic law throughout the state prevailed over the interests of the locality in regulating traffic in a manner it determined was most effective.

D. Conflict Between State Statutes Governing ATES and Other State Statutes

Two recent decisions have determined that a state statute creating a rebuttable presumption that the registered owner of a vehicle caught by an ATES camera was the driver when the violation occurred does not conflict with other state statutes, specifically the statutory requirements that the state prove each element of a traffic offense.

In *Agomo v. Fenty*, the District of Columbia Court of Appeals held that such a presumption did not conflict with a statutory requirement that the district prove all moving traffic infractions by clear and convincing evidence.¹⁸¹ The court distinguished “proof of the violation with the imposition of liability.”¹⁸² It reasoned that the “statutory mechanism for assessing liability once an infraction has been established in no way affects the requirement that the District prove the commission of a traffic infraction by clear and convincing evidence.”¹⁸³

Similarly, in *State v. Dahl*, the Supreme Court of Oregon held that a similar statutory presumption¹⁸⁴ did not conflict with a statutory requirement that the state prove each element of a traffic offense by a preponderance of evidence.¹⁸⁵ The court reasoned that the legislature, in creating the presumption “carves out an exception” to the burden of proof requirement because the “specific statute controls over the general.”¹⁸⁶ The court thus found no error in the application of the presumption.¹⁸⁷

IV. THE NEED FOR FURTHER REVIEW

Given the conflict between uniform state-traffic laws and the use of ATES by municipalities, state legislatures should

either suspend or ban the use of ATES until more study can resolve whether ATES provide an appropriate replacement for human enforcement of traffic laws. As the prior studies and cases that the Note has examined suggest, there has been a significant tension between the use of ATES and the traditional models of traffic enforcement utilized by the states. Virtually all ATES are, or will eventually become, systems that impose only civil liability on owners or license plate registrants whose vehicles ATES cameras record breaking the law.¹⁸⁸

Conversely, virtually all states impose criminal or quasi-criminal liability on drivers for moving violations of traffic law when prosecuted as a result of police observation.¹⁸⁹ This inconsistency clearly conflicts with the legislative purpose of statewide traffic regulations: to create uniformity of traffic law for drivers traveling through the different areas of the state.¹⁹⁰ The states ultimately need to determine whether the benefit derived from the use of ATES outweighs the benefit derived from the current mode of traffic-law enforcement that they effectively replace.

Notwithstanding the potential for increased traffic safety that ATES offer, there has simply not been enough research conducted on the effects of their use to justify the abandonment of the traditional human-oriented model of traffic enforcement. Though traffic safety may appear to be a trivial issue to many

outside observers, nothing could be further from the truth. As mentioned above, accidents caused by red-light running account for thousands of deaths and hundreds of thousands of injuries each year.¹⁹¹

While using ATES to enforce traffic laws is undoubtedly an attractive option for many state and local governments, it is simply too early for states to grant municipalities the broad power to use the devices.¹⁹² The federal and state governments need to perform additional unbiased and scientific analysis of the effects of ATES, and, in the interim, to suspend or greatly limit their use. This Part will first examine the extent of the conflict between statewide and local traffic law discussed in Part III and will then analyze the risks posed by the use of ATES. Finally, it will argue for more research and reasoned public debate before states permit local governments to use the devices.

A. Conflict Between State Traffic Law and Local ATES Ordinances

As the cases examined above in Part III suggest, local ordinances providing for the use of ATES can conflict directly with statewide traffic law in multiple different ways. They can violate a rule concerning the use of ATES provided by the state;¹⁹³ they can create a rule inconsistent with matters of

general state law;¹⁹⁴ or they can provide for different punishments for offenses than those provided for under state law.¹⁹⁵ And different courts have come to different conclusions as to whether each of these factual situations require invalidation of the local ordinance. However, even where those courts did not find such conflicts to be troubling enough to warrant such remedies, the tension between the state and local laws is significant enough to warrant further consideration by the state legislatures. So long as localities continue to treat ATES-based traffic violations as civil infractions,¹⁹⁶ and so long as states continue to mandate that violations of the same laws caught by police officers are criminal,¹⁹⁷ ATES will continue to be in friction with those state laws.

Though there has not been sufficient study on whether ATES actually "complement" human enforcement of traffic laws,¹⁹⁸ or instead tend to dominate and replace human enforcement,¹⁹⁹ it is clear that the local use of ATES undermines the purpose of statewide traffic laws. Most states have traditionally treated speeding and failure to obey traffic signals as criminal or quasi-criminal infractions.²⁰⁰ ATES violations, on the other hand, are civil in nature: they generally only impose a civil penalty on cited drivers and reduce human involvement in enforcement.²⁰¹

As mentioned earlier in this Note, this discrepancy is

significant because it results in the establishment of a two-tiered and arbitrary enforcement system. Whereas two imaginary drivers, driver A and driver B, may each run a red light on the same day, if an ATES camera catches driver A and a police officer catches driver B, they will receive significantly different punishments. Yet, they have both violated the law in the same manner, and, in doing so, have both created approximately the same level risk of collision with another automobile or pedestrian. At the very least, it is quite unfair to say that one driver caught running a red light by a live officer deserves a harsher punishment than another caught running a red light by a camera. This inconsistency also interferes with the stated policy goal of many states of ensuring uniform traffic regulation.²⁰²

In addition to this conflict, the influx of automated enforcement may have some more indirect consequences that deserve closer attention than state legislatures have given. Some of those consequences will come in the form of changed expectations of drivers on the road. For example, ATES cite people in situations in which they would ordinarily expect a police officer to excuse them.²⁰³ While objective enforcement of the law has always been an admirable goal, there are situations in which people expect police officers not to cite an offending driver, such as where a driver is rushing a sick family member

or wife in labor to the hospital.²⁰⁴ Most drivers also expect that police officers will not pull them over if their offense is slight and does not appreciably decrease the level of traffic safety, such as driving at a rate slightly above the posted limit on an empty road. Furthermore, drivers going with the flow of traffic do not expect police officers to reprimand them;²⁰⁵ indeed, it is often quite dangerous to be the only driver obeying the speed limit when traffic is moving above the limit.

The mass use of ATES will also have consequences on matters outside the scope of traffic enforcement and safety. Perhaps the most problematic consequence of reliance on ATES to patrol traffic is that they cannot catch dangerous criminals who police routinely catch during traffic stops.²⁰⁶ Even where the drivers are not criminals, taking a picture of dangerous drivers and assessing a relatively slight fine against them does not stop them from breaking the law.²⁰⁷ There is also some suggestion that when actual police officers actively police intersections there is a significant boost in compliance with red lights.²⁰⁸ Furthermore, the advent of devices that can detect red-light cameras,²⁰⁹ databases listing the nationwide locations of red-light cameras,²¹⁰ and radar detectors, allows drivers essentially to avoid compliance with traffic laws absent some human involvement in their enforcement.

B. ATEs Are Not Currently Justified Public Policy

While these issues raise a concern about the use of ATEs, ATEs would nonetheless be justified if they promoted traffic safety. However, based on the research completed as of this date, it is not altogether clear that ATEs do so.²¹¹ While the studies on ATEs vary significantly in their results, by far the most reliable study on the matter conducted to date, that of the Federal Highway Administration,²¹² found that the jurisdictions employing red-light cameras derived a net benefit in traffic safety from them.²¹³ However, the FHA study is not the final authority on the matter, nor is it flawless; on the contrary, the states and federal government should undoubtedly perform more long-term and comprehensive research, as it is already clear that ATEs create a number of procedural problems for the municipalities using them. For example, jurisdictions implementing ATEs will have to contend with an increased need for traffic adjudications based on the number of persons caught by ATEs,²¹⁴ and, for those using red-light cameras, a spike in overall accidents;²¹⁵ despite the net benefits that the FHA study determined localities have derived from the use of ATEs, it also found that ATEs are responsible for an increase in rear-end accidents.²¹⁶ Furthermore, it is not yet clear that alternate measures could not provide the same or similar increases in traffic safety without necessitating an overhaul of the

traditional traffic-law framework. In particular, altering the intervals of traffic lights at intersections²¹⁷ and/or increasing the number of traffic circles and speed bumps might more effectively increase safety than ATES without generating as many of the problems associated with ATES.²¹⁸

While the disparity between statewide traffic laws and local ATES ordinances likely does not, as the *Idris* court noted, create a double jeopardy or equal protection problem, it nonetheless creates a significant enough tension to justify further legislative inquiry by the states. As it is not yet even clear that ATES promote overall traffic safety, and do not instead merely increase the coffers of the municipalities, the state legislatures should suspend or greatly reduce the use of ATES until they further study the efficacy of ATES, and whether ATES ought to ultimately replace the traditional criminal-human enforcement of traffic laws. If such study evidences the utility of ATES, states should then engage in a serious and substantive public debate concerning whether to authorize the use of ATES. That debate should look beyond the problems inherent in current traffic enforcement systems in order to make sure that ATES are not only justified, but overall preferable to human enforcement.

V. IMPACT

While this Note advocates that the states either ban or

greatly reduce the use of ATES by municipalities pending further study, it also recognizes that it is likely that many will continue to permit their implementation. Those state legislatures deciding to do so should make a more conscious decision concerning which method of traffic enforcement they want to pursue going forward. At the very least, they should completely overhaul—or greatly restructure—the traffic laws so that the state traffic laws are once again uniform, and not two-tiered, like the present configuration. This overhaul will likely require that, at the very least, the states reconstitute moving-traffic offenses as civil infractions.

However, even after such an overhaul, the mass use of ATES may also ultimately have serious repercussions if the bodies using them are not careful. To protect the drivers and promote overall traffic safety, and not merely revenue generation, states that decide to permit localities to use ATES should adopt the following regulations and safeguards in order to increase the efficacy of ATES and reduce the likelihood of abuse of the devices by the municipalities:

- **Yellow-light interval minimums:** Minimum yellow-light intervals for *all* signalized intersections.²¹⁹ The minimum interval length should be three seconds plus one-half second for every for every five mph over 25

mph that the average driver approaches the intersection.²²⁰

- **Caution Lights:** The implementation of a caution light warning motorists of the upcoming intersection for all signalized intersections in which the average approaching motorist travels at 45 mph or greater.²²¹
- **Notice of Cameras:** All municipalities using ATES must post signs alerting drivers of their use both at the city limits and at the sites where they are being used.²²²
- **Minimum Signal Standards:** "All signals at camera-equipped intersections shall meet all warrants and recommended[ed]. . . standards described in the Manual on Uniform Traffic Control Devices (MUTCD)."²²³
- **Minimum Camera Standards:** The municipalities must refund any fine and dismiss any citation with regard to a camera citation not in compliance with minimum camera specifications, no matter how the driver pleads to the citation.²²⁴
- **Camera Supervision:** An on-site operator, employed by the county or municipality in which the camera is located, must be responsible for maintaining the

accuracy of all ATES cameras.²²⁵

- **Culpability Restricted to Violators:** "Citations must be submitted to the" motorist operating the vehicle at the time of the violation, and "not [merely] the vehicle owner." Furthermore, only the motorist operating the vehicle shall sustain any legal liability, and the owner shall have no "legal obligation to identify the driver of his or her vehicle."²²⁶
- **Minimum Photographic Requirements:** The photo taken by the ATES camera may only be used for the purpose of citing the driver depicted by the camera if the photo depicts "the driver, the vehicle [license plate number], the state of registration, and the time and date of the violation," and further depicts "the vehicle entering the intersection on a red light."
- **Procedural Requirements:** Though they may be handled as civil matters, citations issued pursuant to ATES based evidence should be handled in the same manner and with the same procedures as they would be if they had been issued by police officers.²²⁷ Before any proceedings pursuant to a violation based on photographic evidence, any "recorded images evidencing such a

violation shall be available for inspection" by the cited motorist."²²⁸ "No proceedings for contempt or arrest of a person summoned by mailing shall be instituted for failure to appear on the return date of the summons."²²⁹

- **Notice of Citations:** "All citations issued by red-light cameras must be postmarked within 48 hours of the alleged violation," and the technician in charge of operating the camera must swear to or affirm the validity of the citation after inspecting the photographic evidence.²³⁰ "They must also be sent by certified mail or personal service."²³¹
- **Sharing of Fines:** Payments to camera contractors may only be based on a calculus of the number of cameras in place and the reasonable costs of operation of those cameras. Under no circumstances can municipalities pay contractors based on a percentage of fines collected with those cameras.²³²

VI. CONCLUSION

Ultimately, the decision as to whether to permit the local use of ATEs likely will fall on the state legislatures. However, the dramatic change in traffic law that is currently occurring

in a number of states as a result of the expanded use of ATES will likely have profound consequences. As the cases cited in this Note suggest, the use of the automated devices constitutes a dramatic transition from the traditional forms of traffic enforcement, as they (1) reduce the need for, and likely reduce the involvement of police officers in traffic-law enforcement, and (2) adjudge traffic violations as merely civil, and not criminal, matters. They thereby create an arbitrary two-tiered system of traffic adjudication whereby drivers committing the same violations receive different punishment depending on whether ATES or live officers catch their disobedience.

Yet, there is still not enough reliable data on the utility of the devices to conclude properly whether they succeed in ferreting out traffic violations and accidents. As such, states should ban the use of ATES until more study can resolve whether ATES should effectively replace human involvement in traffic-law enforcement. In order to do so properly, the states, with the help of the federal government, should conduct further studies on the efficacy of ATES where they currently exist. Based on these studies, the states should then determine whether an automated system is a justifiable choice. While it may make sense to use ATES in places where enforcement of traffic laws by police officers has become excessively burdensome, in others,

human enforcement may provide for greater safety and net benefits. Furthermore, the states that ultimately choose to permit municipalities to enforce traffic laws with ATEs should institute the measures recommended in this Note to protect drivers from arbitrary or unfair treatment.

¹ Though this proposition is not incontrovertible, this author believes it to be true and will proceed under that assumption.

² See *infra* Part II.

³ See *infra* note 72 and accompanying text.

⁴ Op. Ed., *Traffic Safety: Another Area Trying Red-Light Cameras*, SOUTH FLORIDA SUN-SENTINEL, Sept. 27, 2007, at 30A (noting that cities in South Florida have and are continuing to install red-light cameras even though the Florida legislature has not passed legislation authorizing such action). *But see* Use of unmanned cameras to monitor traffic violations, Op. Att’y Gen. (Fla.) 2005-41 (July 12, 2005) (authorizing the City of Pembroke Pines, Florida to implement ATEs).

⁵ *Traffic Cameras Installed*, N.Y. TIMES, Jan. 16, 1988, at 131. However, New York City did not make the program effective until it received approval from the state legislature to institute the program permanently in 1989. Kirk Johnson, *Albany Backs Camera Use to Catch Traffic Violators*, N.Y. TIMES, Jan. 1, 1989, at 122.

⁶ This Note uses the term “Automated Traffic Enforcement Systems” to describe a traffic-policing mechanism that has been given a number of different names in different jurisdictions; however, this Note only uses the term “Automated Traffic Enforcement Systems” to avoid confusion.

⁷ See *Where They’re Operating*, STATUS REPORT (Insurance Institute for Highway Safety, Arlington, Va.), Jan. 27, 2007, at 4, available at <http://www.iihs.org/sr/pdfs/sr4201.pdf> (noting that while “[t]en years ago red light cameras were operating in only two US cities, New York and San Francisco,” they are now present in over 200 communities throughout the U.S.).

⁸ See, e.g., *City of Davenport Votes Down Revised Traffic Camera Ordinance*, AP

Alert-Iowa (1/25/07, 06:02:47 CST) (quoting Mary Thee, corporate counsel for Davenport, Iowa, noting that Davenport collected more than \$1 million from violators caught on the cameras since 2004); Marty Katz, *Frown, You're on red-light camera!*, N.Y. TIMES, Oct. 11, 2000, at H2 (noting that as early as 2000, New York's automated red-light cameras were generating 200,000 tickets a year); Joseph Ryan, *Chicago red-light scofflaw revenue just the beginning?*, DAILY HERALD (Arlington Heights, Ill.), April 2, 2007, at 13 (noting that Chicago yielded nearly \$20 million dollars from red-light runners caught on automated cameras); Del Quentin Wilber & Derek Willis, *D.C. Red-Light Cameras Fail to Reduce Accidents*, WASH. POST, Oct. 4, 2005, at A01, available at <http://www.washingtonpost.com/wp-dyn/content/article/2005/10/03/AR2005100301844.html> (noting that the District of Columbia's "red-light cameras have generated more than 500,000 violations and \$32 million in fines over the past six years").

⁹ See Daryl J. Jones, *Patrolling Traffic by Camera: An Analysis of Photo-Enforced Traffic Citations and the Common Law Requirement That a Warrantless Misdemeanor Arrest Take Place Immediately*, 45 REV. DER. P.R. 197, 197 (2006) ("Increasingly cities across the United States and its territories are incorporating automated systems."); Thomas M. Stanek, *Photo Radar in Arizona: Is It Constitutional?*, 30 ARIZ. ST. L.J. 1209, 1210 (noting that cities and towns across the country are choosing to install ATES); STATUS REPORT, *supra* note 7, at 4 (listing the hundreds of U.S. cities using ATES).

¹⁰ See Anna Song, KATU (Portland, Or.), Nov. 11, 2005 (noting that Portland's city statistics showed a "140 percent increase in rear-end crashes at the intersections where red light cameras were installed" since 2002); Wilber & Willis, *supra* note 8, at A01 (noting that "three outside traffic specialists independently reviewed the data [from the District of Columbia's traffic control system]," and concluded that "[t]he cameras do not appear to be

making any difference in preventing injuries or collisions”; also finding that “accidents increased at camera-equipped intersections the [Washington] Post monitored in Washington D.C.”); National Motorists Association, Ticket Cameras: Intersection Collisions Increase, <http://www.motorists.org/photoenforce/home/intersection-collisions-increase> (citing multiple media sources showing that red-light cameras often coincide with a sharp increase in collisions); VIRGINIA TRANSPORTATION RESEARCH COUNCIL, RESEARCH REPORT, THE IMPACT OF RED LIGHT CAMERAS (PHOTO-RED ENFORCEMENT) ON CRASHES IN VIRGINIA 2 (June, 2007), http://www.virginiadot.org/vtrc/main/online_reports/pdf/07-r2.pdf (finding that red-light cameras in Virginia are associated with a “net increase in comprehensive crash costs, but also that “the cameras were associated with a modest reduction in the comprehensive crash cost for injury crashes only”).

¹¹ See discussion *infra* Part III.

¹² *Id.*; see also *Idris v. City of Chicago*, 2008 WL 182248 (N.D. Ill. 2008) (challenging the Chicago red-light ordinance on state and federal equal protection, substantive and procedural due process, and conflict of law grounds); *City of Duluth v. Morgan*, 651 S.E.2d 475 (Ga. Ct. App. 2007) (challenging Duluth, Georgia’s red-light camera program on substantive and procedural due process grounds). However, a number of other challenges could be, and likely will be raised in the coming years. See Daryl J. Jones, *Patrolling Traffic by Camera: An Analysis of Photo-Enforced Traffic Citations and the Common Law Requirement That a Warrantless Misdemeanor Arrest Take Place Immediately*, 45 REV. DER. P.R. 197, 210 (2006) (noting that ATES concern other evidentiary, Fourth Amendment search and seizure, Sixth Amendment confrontation, and equal protection issues); see also Thomas M. Stanek, *Photo Radar in Arizona: Is It Constitutional?*, *Ariz. St. L.J.* 1209, 1213-16 (1998) for an interesting look at the early evidentiary challenges to devices

similar to ATES.

¹³ See *infra* Part III.

¹⁴ See *supra* Part IID (discussing the various studies that have been conducted on ATES).

¹⁵ Understanding state law relating to traffic regulation is particularly important given that many of the challengers to ATES have used claims arising from alleged conflicts between state law and the ATES. See discussion *infra* Part IIIB.

¹⁶ See, e.g., ALA. CODE § 32-5A-3 (1980) (making it a misdemeanor for “any person to do any act forbidden or fail to perform any act required” by the Alabama Rules of the Road); ARIZ. REV. STAT. ANN. § 28-121 (1997) (making violations of provisions of the Arizona transportation code a misdemeanor); ARK. CODE ANN. § 27-52-202 (West 1959) (same); 7A AM. JUR. 2d *Automobiles and Highway Traffic* § 295 (2007) (“The violation of laws relating to the speed of motor vehicles is ordinarily a criminal offense, in the nature of a misdemeanor”); 7A AM. JUR. 2d *Automobiles and Highway Traffic* § 261 (“passing through a red light generally constitutes an offense”);

¹⁷ See COLO. REV. STAT. ANN. § 42-4-603, 42-4-1101. (West 1995) (making disobedience to traffic control signals a class A traffic infraction and speeding a misdemeanor in some circumstances).

¹⁸ See Conn. Gen. Stat. Ann. § 14-219 (West 1998) (providing only for civil penalties for speeding).

¹⁹ See, e.g., ALA. CODE § 32-5A-31 (1980) (requiring drivers to obey traffic control devices); ALA. CODE § 32-5A-170-71 (1980) (making it illegal to speed over prescribed limits); ARIZ. REV. STAT. ANN. § 28-644 (1998) (requiring drivers to obey traffic control devices); ARIZ. REV. STAT. ANN. § 28-701 (1997) (requiring drivers to maintain reasonable rates of speed and providing for what is reasonable); ARK. CODE ANN. § 27-51-204 (West 1971) (requiring drivers

to maintain speed between prescribed maximums and minimums); ARK. CODE ANN. § 27-52-103 (West 1947) (requiring drivers to obey traffic control devices); CAL. VEH. CODE § 21461 (West 2004) (requiring drivers to obey traffic control signals); CAL. VEH. CODE § 22352 (West 2001) (setting prima facie speed limits). GA. CODE ANN. § 40-6-20 (2003) (requiring drivers to obey official traffic-control devices); 61A C.J.S. *Motor Vehicles* § 1435 (2007) (“The violation of various statutes or ordinances that regulate the speed at which motor vehicles may be operated on the public highways or streets constitutes an offense or infraction.”); 7A AM. JUR. 2d *Automobiles and Highway Traffic* § 288 (2007) (“In the exercise of their police power, the states may regulate the speed of motor vehicles”).

²⁰ See *infra* note 38 and accompanying text (noting that most of the statutes providing for the installation of ATEs stipulate that violations caught by ATEs shall only be treated only as civil violations).

²¹ See, e.g., ALASKA STAT. 28.01.010 (1997) (only permitting municipalities to enact ordinances that are consistent with state law and Uniform Vehicle Code); ARIZ. REV. STAT. ANN. § 28-627 (2006) (enumerating the powers of local authorities to adopt ordinances dealing with traffic); ARK. CODE ANN. § 27-49-106 (West 1999) (“No local authority shall enact or enforce any rule or regulation in conflict with the provisions of this subtitle unless expressly authorized in this subtitle.”); COLO. REV. STAT. ANN. § 42-4-111 (West 1997) (enumerating the powers vested in the municipalities regarding regulation of traffic, and permitting the municipalities to adopt “such other traffic regulations as are provided for by this article”). *But see* Conn. Gen. Stat. Ann. § 14-309 (West 1949) (prohibiting localities from passing ordinances or placing traffic control mechanisms in place without the approval of the State Traffic Commission).

²² See, e.g., ALA. CODE § 32-5A-11 (1980) (requiring interpretation and

construction of code as promoting uniformity); ALASKA STAT. § 28.01.010 (1997) (making provisions of vehicle code uniform throughout the state); ARK. CODE ANN. § 27-49-103 (West 1947) ("This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law."); COLO. REV. STAT. ANN. § 42-4-102, 42-4-110 (West 1995) (declaring it the intention of the state of Colorado to promote uniformity in its law relating to traffic); COLO. REV. STAT. ANN. § 42-4-110 (West 2004) (making the provisions of the traffic law uniform throughout the state); D.C. CODE § 50-2301.01 (1978) (providing that the legislature intends to make the traffic-control system uniform throughout D.C.).

²³ See ALA. CODE.; Conn. Gen. Stat. Ann.

²⁴ See CAL. VEH. CODE § 21455.5-455.7 (West 2003) (granting local governmental bodies the power to equip ATES at intersections where they meet designated requirements). *But see* CAL. VEH. CODE § 21455.6 (West 2003) ("The authorization in Section 21455.5 to use automated enforcement systems does not authorize the use of photo radar for speed enforcement purposes by any jurisdiction.").

²⁵ See, e.g., ARK. CODE ANN. § 27-52-111 (West 2005) (prohibiting the use of automated traffic enforcement devices except in school zones or at rail crossings, and even then with other limitations rendering the ATES technology futile); COLO. REV. STAT. ANN. § 42-4-110.5 (West 2004) ("A municipality may adopt an ordinance authorizing the use of an automated vehicle identification system to detect violations of traffic regulations" subject to a great number of procedural limitations); UTAH CODE ANN. § 41-6a-608(2) (2007) (providing that photo radar cannot be used except in school zones or in areas with a speed limit of thirty miles per hour or less); W.V. CODE ANN. § 17C-6-7a (West 2007); WIS. STAT. ANN. § 349.02(3)(B) ("[S]tate and local authorities may not use photo radar speed detection to determine compliance with any speed restriction").

²⁶ See discussion *Infra* Part III.

²⁷ See Jones, *supra* note 12, at 197-99 (detailing the mechanics of the devices). Though the modern forms of each of these systems that have come into widespread use are a relatively recent development, both descend from a line of earlier devices that have been in use since Massachusetts first used a "photo-speed recorder" as early as 1909. See Robin Miller, Annotation, *Automated Traffic Enforcement Systems*, 26 A.L.R.6th 179 (2007) (examining the historical development of ATES-like systems).

It is worth noting that there are a number of automated or semi-automated traffic-law enforcement devices that this Note will not examine, many of which are variations of these two devices, including: bus lane cameras, toll-booth cameras, railroad crossing cameras, congestion charge and electronic road pricing cameras, double white line cameras, high-occupancy vehicle lane cameras, and turning cameras. Wikipedia, Road Safety Camera, Oct. 30, 2007, http://en.wikipedia.org/wiki/Road_safety_camera.

²⁸ This is largely because many states impose far greater restrictions on photo radar, and many of them require that a live person actually man the photo-radar units, making them less practical.

²⁹ *Id.* at 198.

³⁰ Some states even require that an officer be present with the photo radar. See UTAH CODE ANN. § 41-6a-608(2) (requiring that a peace officer be present with the photo radar unit)

³¹ *Id.*

³² *Id.* at 198-99.

³³ "Loop Detector Systems are used for indicating the presence or passage of vehicles. A system consists of an inductive loop[, an electromagnetic detection phenomenon,] and a detector module . . . Applications include traffic signal control, access control in car parks [] vehicle counting[, and

metal detectors].” Bircher America Inc., Loop Detectors, <http://www.bircheramerica.com/industrial-door/loop-detectors.htm> (last visited Feb. 9, 2008); Wikipedia, Induction Loop, http://en.wikipedia.org/wiki/Loop_detector (last visited Feb. 9, 2008).

³⁴ Steven Tafoya Naumchik, *Stop! Photographic Enforcement of Red Lights* 30 MCGEORGE L. REV. 833, 846 (1999).

³⁵ *Id.* at 847.

³⁶ *Id.*

³⁷ See D.C. CODE § 50-2209.03 (1997) (permitting the mayor of D.C. to delegate almost all of the tasks associated with ATES to private entities); COUNCIL BLUFFS MUN. CODE (Iowa) § 9.16.055 (2002) (“The system may be managed by a private contractor that owns and operates the requisite equipment with supervisory power vested in the city’s police department.”); VA. CODE ANN. § 15.2-988.1(I) (Permitting locality to enter agreement with private contractor regarding ATES, but requiring law-enforcement officer to affirm violations); MONTBELLO MUN. CODE (California) § 10.04.050 (2000) (“The chief of police shall have the power to place and maintain or *cause to be placed and maintained* an automatic traffic enforcement system” (emphasis added)); *Leonte v. ACS State and Local Solutions, Inc.*, 123 Cal. App. 4th 521, 524 (Dist. Ct. App. 2004) (suit by plaintiff against corporation operating automated enforcement systems in a California district); *Mendenhall v. City of Akron*, 2006 WL 1371641, at 1 (U.S.D.C. N.D. Ohio 2006) (City of Akron entered into a contract with Nestor Traffic Systems to install and assist in the administration of the ATES in that city); *Shavitz v. City of High Point*, 270 F. Supp. 702, 706 (M.D.N.C. 2003) (City of High Point, North Carolina contracted with Peek Traffic, Inc. to install ATES and to collect traffic photos taken, convert them into citations); *But see* CAL. VEH. CODE § 21455.6 (West 2003) (permitting cities to contract out for operation of ATES, but

limiting duties that cities can delegate to the private sector).

³⁸ See TENN. CODE ANN. § 55-8-110(d) (making traffic violations based solely on evidence obtained from ATES a nonmoving violation); UTAH CODE ANN. § 41-6a-608(2) (Making a violation obtained through the use of photo radar not a reportable violation, and not prohibiting the local government from assessing points against the driver's driving record); VA. CODE ANN. § 15.2.968.1(B) (making drivers caught by ATES liable for only monetary penalties, and providing that imposition of such penalties are not convictions and shall not affect the drivers driving record); WASH. REV. CODE ANN. § 46.63.170(2) (making infractions detected through ATES not affect the violator's driving record, and making them parking violations in effect and in cost of the fine); COUNCIL BLUFFS MUN. CODE (Council Bluffs, IA) § 9.16.055(d) (Making punishment for violations caught by ATES only civil fines). *But see* D.C. CODE § 50-2209.01 (1997) ("Violations detected by an automated traffic enforcement system shall constitute moving violations."); COUNCIL BLUFFS MUN. CODE (Council Bluffs, IA) § 9.16.055(c) (providing that ATES citations shall not be reported to the Iowa Department of Transportation or any state department for the purpose of affecting the driver's driving record).

³⁹ See CAL. VEH. CODE § 21455.5(a)(1) (West 2003) (requiring signs that "clearly indicate the system's presence"); UTAH CODE ANN. § 41-6a-608(2) (making as a prerequisite to the use of photo radar the posting of a sign providing notice to motorists); VA. CODE ANN. § 15.2-988.1(M) (requiring signs clearly indicating to drivers that they are entering ATES zones); WASH. REV. CODE ANN. § 46.63.170(1)(g) (Same).

⁴⁰ See CAL. VEH. CODE § 21455.5(c)(1)(B) (West 2003) (requiring that the locality ensure that the ATES equipment is regularly inspected); VA. CODE ANN. § 15.2-988.1(L) (requiring inspection on a monthly basis);

⁴¹ See CAL. VEH. CODE § 21455.5(b) (West 2003) (requiring newly instituted ATES

programs in the state "to issue only warnings notices" for the first thirty days before issuing actual fines); CRANSTON MUN. CODE (Rhode Island) § 10.04.161(C) (requiring that "[o]nly notices and not citations shall be sent during the ten (10) business day period commencing with the installation" of each ATES device).

⁴² ARK. CODE ANN. § 27-52-110(d) (West 2005); COLO. REV. STAT. ANN. § 42-4-110.5 (West 2004).

⁴³ See R.I. GEN. LAWS ANN. § 31-41.2.2 (West 2005) ("Such systems shall be limited to systems which monitor and detect violations of traffic control signals.").

⁴⁴ See WASH. REV. CODE ANN. § 46.63.170(1)(c) (providing that ATES cameras "may only take pictures of the vehicle and vehicle license plate, and only while an infraction is occurring" and not of the driver or passengers of the car);

⁴⁵ See VA. CODE ANN. § 15.2-988.1(F) (making the maximum monetary penalty for an ATES-recorded violation \$50.00);

⁴⁶ See VA. CODE ANN. § 15.2-988.1(K) (Requiring a .5 "second grace period between the time the signal turns red and the time the first violation is recorded").

⁴⁷ See TEX. STAT. ANN. § 707.005 (Vernon 2007) (requiring minimum interval between red and yellow lights).

⁴⁸ See UTAH CODE ANN. § 41-6a-608(2) (Requiring the approval of the local authority's governing body for use of photo radar); VA. CODE ANN. § 15.2-988.1(J) (Requiring approval from the Virginia Department of Transportation for approval of the proposed location of the ATES unit).

⁴⁹ See CAL. VEH. CODE § 21455.6(a) (West 2003) ("A city council or county board of supervisors shall conduct a public hearing on the proposed use of an automated enforcement . . . prior to authorizing the city or county to enter into a contract for the use of the system"); VA. CODE ANN. § 15.2-988.1(N)

(providing that the governmental body instituting or expanding the ATES must first advise the public of the implementation or expansion); SOUTH GATE MUN. CODE (California) § 8.04.080(C) & MONTBELLO MUN. CODE (California) § 10.04.050(C) (requiring that thirty days before operating an ATES, the chief of police must publicly announce the installation of the system and shall issue only warning notices for the first thirty days thereafter).

⁵⁰ See N.C. GEN. STAT. ANN. § 160A-300.1(d) (2007) (enumerating which jurisdictions can enact ATES ordinances).

⁵¹ See OR. REV. STAT. § 810.434(1) (West 2005) (limiting the operation of ATES to cities with populations of 30,000 or more); *cf.* VA. CODE ANN. § 15.2.968.1(A) (providing that localities can have only one intersection monitored by a red-light camera for every 10,000 residents within that locality)>

⁵² See ARK. CODE ANN. § 27-52-110(c)(1) & 27-52-111(c)(1) (West 2005) (limiting the installation of ATES to school zones, railroad crossings); WASH. REV. CODE ANN. § 46.63.170(1)(b) (West 2007) (restricting use of ATES to "two-arterial intersections, railroad crossings, and school speed zones," and only permitting photo-radar ATES in school speed zones).

⁵³ See COLO. REV. STAT. ANN. § 42-4-110.5(5) (West 2004) (requiring that "no portion of any fine collected through the use of such system may be paid to the manufacturer or vendor of the automated vehicle identification system equipment"); VA. CODE ANN. § 15.2-988.1(I) (Same); WASH. REV. CODE ANN. § 46.63.170(1)(h) (prohibiting payment to ATES manufacturers based on a portion of fines collected). While seemingly an obvious requirement, *i.e.*, that the body enforcing the ATES not be an interested private party, some localities engaged in such profit sharing with private entities in the early stages of the growth of ATES. See *Structural Components Int'l Inc. v. City of Charlotte*, 573 S.E.2d 166, 168 (C. App. N.C. 2002) (finding that the City of

Charlotte, N.C. had entered an agreement with Lockheed Martin whereby Lockheed's "rate of compensation" was determined by "the number of violators that they identify and process"); *City of Commerce City v. State*, 40 P.3d 1273, 1277 (Colo. 2002) (noting that a number of Colorado cities had paid vendors "based on a percentage of the fine collected").

Even now, however, some companies offer free installation and maintenance of ATES in exchange for certain concessions from the revenue brought in by the ATES (which can cost about \$58,000 each, including installation, maintenance, and other costs). See Tina Kelley, *In Traffic, the camera might be fake*, NEW YORK TIMES, March 19, 2002, at B6 (noting that New York City uses fake ATES cameras to throw off drivers because of, among other things, the costs of the cameras); Joseph Ryan, *Chicago Red-Light Scofflaw Revenue Just the Beginning?*, DAILY HERALD (Arlington Heights, IL), April 2, 2007 (noting that some companies dealing in ATES will install the systems for concessions in the form of percentages of fines collected). The pursuit of contracts with the localities has also unsurprisingly led to corruption in some cases. See *Mayor pleaded guilty to accepting a bribe from a red light camera company*. NBC5KSDK-MO, 2006 WLNR 19443481 (Nov. 7, 2006, 5:00 CST) (noting that mayor of St. Peters, Mo. got caught accepting a bribe from a red-light camera company, and thereafter resigned).

Some states now also require that the localities using ATES send a portion of the ATES revenue back to the state government. See TEX. STAT. ANN. § 707.008(1) (Vernon 2007) (requiring municipalities to split send fifty percent of revenue collected from ATES-related penalties to the state comptroller).

⁵⁴ See ARK. CODE ANN. § 27-52-110(d) (specifying that the limitations imposed on municipalities using ATES do not apply to state law enforcement agencies).

⁵⁵ See *infra* note 56 and accompanying text (describing the contents and form

of the notice required by the different jurisdictions). In most cases, the recipient receives the notice because an ATES camera caught his or her vehicle violating traffic law, whether or not he was the driver at the time of the infraction.

⁵⁶ See UTAH CODE ANN. § 41-6a-608(2) (Requiring that the issuing authority include the photograph produced by the photo radar with the citation); VA. CODE ANN. § 15.2-988.1(C) (requiring a summons for a violation of ATES to be sent out by first class mail, and including "a notice of (i) the summoned person's ability to rebut the presumption that he was the operator of the vehicle at the time of the alleged violation); see also COLO. REV. STAT. ANN. § 42-4-110.5(2) (a) (II) (West 2004) (requiring issuance of the citation within ninety days of the violation); WASH. REV. CODE ANN. § 46.63.170(1) (d) (requiring mailing of the notice of ATES-recorded infraction "to the registered owner of the vehicle within fourteen days of the violation"); VA. CODE ANN. § 15.2-988.1(H) (requiring mailing of the summons for ATES violations within ten business days). Some states also provide that the body administering the ATES must provide the cited driver with a specified time after receipt of the notice to inspect the information collected by the ATES before responding. VA. CODE ANN. § 15.2-988.1(G) (providing the driver with 60 business days from the mailing of the summons).

⁵⁷ See CAL. VEH. CODE § 21455.5(f) (West 2003) (requiring that the municipality issuing the citation provide the recipient with the ability to review the photographic evidence). Even where the law does not provide that the issuing body provide a copy of the photo with the notice, state laws require that the localities otherwise make such evidence available. WASH. REV. CODE ANN. § 46.63.170(1) (d) (requiring that the body citing the driver make available the evidence of the ATES-recorded violation for inspection by the driver and admission into evidence); Fran Spielman, *City Will Put Red-Light Camera Proof*

on Web, CHICAGO SUN-TIMES, Aug. 24, 2007, at 20 (noting that Chicago will start making photos taken by ATES available instantly to cited drivers on the Internet, so as to avoid having people challenge ATES tickets).

⁵⁸ See COUNCIL BLUFFS MUN. CODE § 9.16.055 (Providing that “[a] recipient of an automated red light citation may dispute the citation by requesting an issuance of municipal infraction citation . . . Such request will result in a required court appearance,” but also mandating that in such case “state-mandated court costs will be added to the amount of the violation”); see also CHICAGO MUN. CODE § 9.102-040 (2007) (providing for a limited set of grounds upon which alleged violators can contest the charge via a hearing); D.C. CODE § 50-2209.02 (2005) (“The owner of a vehicle issued a notice of infraction shall be liable for payment of the fine assessed for the infraction, unless the owner can furnish evidence that the vehicle was, at the time of the infraction, in the custody, care, or control of another person.”); VA. CODE ANN. § 15.2-988.1(D) (Same).

⁵⁹ See D.C. CODE § 50-2302.06 (2007) (requiring a presentation before evidence in front of an examiner who decides whether the District has established the violation by clear and convincing evidence); VA. CODE ANN. § 15.2-988.1(B) (requiring proof of the violation by a sworn certificate by a law enforcement officer based on the photographs taken by the ATES); CHICAGO MUN. CODE (Illinois) § 9.100 (detailing the procedure for administrative hearings pursuant to ATES violations).

⁶⁰ See D.C. CODE § 50-2209.02(a) (2005) (creating a rebuttable presumption that the owner of a car caught by ATES was the driver at the time of the accident); WASH. REV. CODE ANN. § 46.63.170(1)(d) (making the notice of infraction with facts supporting it included with the notice to the driver prima facie evidence of the infraction, admissible at the hearing); VA. CODE ANN. § 15.2-988.1(C) (same).

⁶¹ See VA. CODE ANN. § 15.2-988.1(D) ("Such presumption shall be rebutted if the owner, lessee, or renter of the vehicle (i) files an affidavit by regular mail with the clerk of the general district court that he was not the operator of the vehicle at the time of the alleged violation or (ii) testifies in open court" to the same); VA. CODE ANN. § 15.2-988.1(C) (Same); see also *supra* note 58 and accompanying text.

⁶² See *Dajani v. Governor & Gen. Assembly of Maryland*, 2001 WL 85181, at *1 (U.S.D.C. D. Md. Jan. 24, 2001) (At a hearing pursuant to a ATES citation, "no prosecutor or witness appeared for the state, and the judge simply moved the citation into evidence before asking him how he wished to plead" and then found he had violated the traffic law and imposed a fine).

⁶³ See *supra* notes 60-61 and accompanying text.

⁶⁴ In Chicago, for example, city officials have bitterly guarded their ability to impose penalties on owners of vehicles who lend them to negligent drivers; a lawsuit on that issue has recently been decided in the United States District Court for the Northern District of Illinois, where the court dismissed all of the federal claims against the procedure, and dismissed the state-law claims against it without prejudice. See CHICAGO MUN. CODE § 9.102-020(a) (2007) ("The resisted owner of record of a vehicle is liable for a violation of" the city's ATES); *Idris v. City of Chicago*, 2008 WL 182248, at *10 (N.D. Ill. 2008); Laura Parker, *Some Seeing Red over Red-light Tickets: Chicago Lawsuit Focuses on Street Cameras*, USA TODAY, Oct. 18, 2006 (examining the merits of the lawsuit and recording the reactions of city officials). Similarly, a car owner in Cleveland appealed from a 2006 hearing in which the City of Cleveland's Parking Violations Bureau held the owner liable on similar grounds. *Wilt v. Turner*, No. CV-602403 (Ohio Cuyahoga County Ct. Com. Pl. 2008). However, the court dismissed the case on procedural grounds, but was recently remanded for consideration on the substantive issues. *Wilt v.*

Turner, 2008 WL 152118, at *2-3 (Ohio Ct. App. 2008).

⁶⁵ See Monifa Thomas, *Just Shut up and Pay: Tickets from Red Light Cameras Are Almost Always Upheld*, CHICAGO SUN-TIMES, Oct. 30, 2006, at 3 (noting that in Chicago, ninety percent of challengers to ATES citations failed, according to figures from the city's Department of Revenue).

⁶⁶ See discussion *infra* Part III.

⁶⁷ In particular, a number of states and localities require that local governments using ATES keep all evidence private. See WASH. REV. CODE ANN. § 46.63.170(1)(f) (making all evidence prepared for ATES-based citations for the "exclusive use of law enforcement . . . and not open to the public" and prohibiting its use in other proceedings unless relating to an ATES violation); VA. CODE ANN. § 15.2-988.1(H) (providing that the photos taken by ATES are solely for enforcing such violations and are not open to the public or to be used or disclosed for most other purposes, subject to a large fine); CRANSTON MUN. CODE § 10.04.161(D) (ATES records "shall not be deemed 'public records' subject to disclosure"); SOUTH GATE MUN. CODE § 8.04.080(E) (providing that "photographic records made by an automated traffic enforcement system shall be confidential, and shall be made available only to governmental" or law enforcement agencies, or the cited driver). A number of states and localities also provide for the destruction of ATES-related records either after the municipality determines that the administering has *not* occurred, or after the disposition of the citation. See VA. CODE ANN. § 15.2-988.1(H) (Providing for the destruction of information based on ATES within sixty days of payment of fines or after the locality determines that there has not been an infraction); CRANSTON MUN. CODE § 10.04.161(D) (providing for the destruction of ATES evidence).

⁶⁸ See *supra* note 9 and accompanying text.

⁶⁹ See, e.g., Ryan, *supra* note 8 (noting that Chicago yielded nearly twenty-

million dollars in the last year from red-light camera fines); APALERT-IA, Jan. 1, 2007, 06:02 (noting that Davenport, IA raised approximately \$500,000 in red-light ticket revenue from the use of its ATES); Marty Katz, *Frown, You're on Red-Light Camera!*, N.Y. TIMES, Oct. 11, 2000, at H2 (noting that New York city's thirty red-light cameras were generating 200,000 tickets a year as of 2000); Randy Kennedy, *The Mayor's Budget Plan: Spending, Transportation*, N.Y. TIMES, Nov. 15, 2002, at B9 (noting that New York mayor Bloomberg's 2003 budget plan consisted of using red-light camera to raise \$23 million in new fines by 2005).

The red-light cameras have become so burdensome to some drivers that a company has developed devices to alert drivers when they approach red-light and photo-radar cameras, which sell for \$449. Dan McGuire, *Red-Light Device Is Poetic*, CHICAGO SUN-TIMES, June 26, 2007, at 28 (noting the irony that drivers are willing to pay \$449 for devices that merely alert you as to how to avoid \$90 tickets when they should have stopped or slowed down for the red light anyway). Not everyone finds the devices so funny, however. See Gary Washburne, *Metro, Camera Detectors Irk Ald. Burke: Red-Light Violators Significant Source of Funding for the City*, CHICAGO TRIBUNE, June 22, 2007, at 3 (noting that Chicago Alderman Edward Burke proposed an ordinance that would have banned the devices in Chicago because the city had already planned to receive the red-light camera revenue).

⁷⁰ See Kelley, *supra* note 53 (describing the expense associated with ATES); see also CA B. An., A.B. 801 Assem., 7/16/2007 (noting that an amendment that heightened the punishments under a proposed California bill, which banned the sale or use of devices that prevented automated cameras from reading license plates, passed almost unanimously through the California legislature).

⁷¹ See, e.g., Gary Washburne, *City Rakes in Revenue from Tickets: Car-Related Fines Plug \$210 Million Hole in Budget*, CHICAGO TRIB., Aug. 12, 2007 (noting

that Chicago officials planned to use the red-light cameras ticket revenue to plug the immense holes in the city's budget); *Fox News @ 5:00 AM* (Chicago, IL) (Fox television broadcast June 21, 2006) (noting that Chicago officials were going to use the twelve million dollars raised by the red-light program in Chicago largely to hire about a hundred more traffic policemen); APALERT-IA, Dec. 1, 2006, 13:25:38 (noting that Davenport, Iowa planned to use the red-light camera ticket revenue to fund police reserves); APALERT-IA, Jan. 25, 2007, 06:02 (noting that the funds generated by the Davenport ATES would be used to create a new police officer post, create a juvenile crime unit, and increase neighborhood law enforcement).

⁷² Ryan, *supra* note 53 (predicting that many of Chicago's suburbs are going to follow Chicago's example and build red-light cameras after Chicago's great financial successes with the program); *CBS2 News @ 6:30* (Chicago, IL, CBS television broadcast May 7, 2007) (noting that the City of Chicago has decided to install six more red-light cameras the following Monday); David Kihara, *LV to Post Cameras*, LAS VEGAS REV.-J., June 29, 2007, at 1B (noting that Las Vegas police were about to install red-light cameras); APALERT-AZ, Aug. 7, 2007, 19:30:18 (noting that Tucson, Arizona officials planned to begin testing photo-radar and red-light cameras); Monifa Thomas, *Suburban Red-Light Runners, Beware*, CHICAGO SUN-TIMES, Aug. 15, 2007, at 6 (noting that "[f]ollowing Chicago's lead, more than a dozen suburban communities are installing red-light cameras to catch drivers who disobey traffic signals); Op. Ed., *Traffic Safety: Another Area Trying Red-Light Cameras*, SOUTH FLORIDA SUN-SENTINEL, Sept. 27, 2007, at 30A (noting that cities in South Florida have and are continuing to install red-light cameras even though the Florida legislature has not passed legislation authorizing such action); Richard Rainey, *Cameras Will Photograph Violations at Traffic Lights: Parish Targets 11 Intersections*, NEW ORLEANS TIMES PICAYUNE, Sept. 8, 2007, at 1 (noting that New

Orleans was going to install red-light cameras); NBC News @ 6:00 PM (St. Louis, MO, NBC television broadcast, Feb. 10, 2007 (noting that St. Louis officials planned to install ten red-light cameras at accident-prone intersections). The number of states granting municipalities the power to use ATES continues to mount as well. See H.B. 698, 105th Gen. Assemb. (Tenn. 2007) (authorizing the use of ATES, signed by the governor in June of this year).

⁷³ See *infra* Part IID.

⁷⁴ See *infra* Part IID.

⁷⁵ News Release, Insurance Institute for Highway Safety, *Red Light Running Crashes Are on the Increase; Characteristics of Red Light Runners Identified*, May 20, 1998, available at http://www.iihs.org/news/1998/iihs_news_052098.pdf. In response, then Transportation Secretary Rodney Slater "announced a nationwide campaign [in 1998] . . . to install more cameras at intersections to catch offenders." AP, *Running Red Lights Takes a Greater Toll*, N.Y. TIMES, May 21, 1998, at A22. In 2002, there were about 3,000 death and 476,000 injuries stemming from drivers running red lights across the country. Matthew Benson, *Accidents Increase on Camera's Watch*, THE COLORADOAN, Oct. 30, 2005 (citing data from the National Highway Transportation Safety Administration). Even today, red-light runners kill about 850 people around the U.S. injure about 170,000 in crashes. Larry Copeland, *Research: Red-Light Cameras Work*, USA TODAY, Feb. 15, 2007, available at http://www.usatoday.com/news/nation/2007-02-14-redlightcameras_x.htm (citing a study by the National Highway Traffic Safety Administration). However, it is worth noting that the use of ATES was not a novel approach when United States jurisdictions began implementing them. London had began using them as early as 1983, and had had terrific results, including a dramatic decrease in pedestrian deaths. David W. Chen, *Traffic*

Deaths Fall Sharply in New York, N.Y. TIMES, July 13, 1998, at B1; cf. John M. Broder, *How We Drive; Roads Are Safer; Cars Are Safer. Drivers? Forget it*, N.Y. TIMES, Oct. 10, 2001, at H10 (noting that other industrial nations have long avoided traffic-accident problems via better and earlier driver education, stricter enforcement of traffic, and the use of red-light cameras, and that Americans continue statistically to be terrible drivers).

⁷⁶ See Katz, *supra* note 69 (noting that New York City law enforcement officials feel that red-light cameras have reduced accidents, as well as the time police officers have to spend chasing reckless drivers and doing paperwork). Rachel Gordon, *Cut in Crashes, S.F.'s Cameras Get the Credit*, SAN FRANCISCO CHRON., Sept. 5, 2007, at A1 (noting that San Francisco officials attributed a steep decline in the number of injury-related collisions in the city to red-light cameras);

⁷⁷ For example, in New York, the city government has installed about 200 fake red-light cameras, which serve merely as a deterrent and provide no revenue. See Bobby Cuza, *200 Traffic Cameras to Turn a Blind Eye*, NEW JERSEY RECORD, March 19, 2002, at A5 (noting that New York is installing 200 fake red-light cameras which even flash at drivers, making them think they have gotten caught, and thereby deterring future red-light running). Of course, the city did so only after the state legislature refused to permit the city to add more cameras than the fifty it have previously permitted. See *id.* (noting that the N.Y. state assembly had blocked New York City's bid to install more than fifty red-light cameras citing privacy concerns); Paul von Zilbauer, *Mayor Seeks Law to Increase Police Cameras at Intersection*, N.Y. TIMES, July 19, 2003, B3 (Same). Furthermore, some former opponents of ATES have softened their resistance to them after seeing their efficacy. See Editorial, *Our Position: It's Good to See Baker Softening His or her Opposition to Cameras*, ORLANDO SENTINEL, Sept. 1, 2007, at A20 (Noting that former red-light opponent

state senator Carey Baker softened his or her resistance to the cameras, though he still had concerns about the costs of the fines). The fact that most states and localities require conspicuous signs announcing the existence of red-light cameras or photo radar also suggests that their desire to deter bad driving outweighs the pursuit of revenue. *Mind Those Traffic Lights*, STATUS REPORT, *supra* note 7, at 3 ("The true purpose of cameras is to reduce crashes by getting motorists to stop at red lights, so the most successful programs don't produce any revenue at all.").

⁷⁸ See, e.g., Damien Cave, *More Cameras Sought at Red Lights*, N.Y. TIMES, July 12, 2004, at B6 (reporting on a demonstration calling for an expansion of New York City's red-light camera program after a twelve-year old boy was critically injured when a dump truck ran into him while running a red light in Queens, N.Y.); Ericka Berg, Editorial, *Make It Safe to Cross Seattle's Streets*, SEATTLE POST-INTELLIGENCER, Jan. 1, 2007, at B5 (proposing that Seattle adopt many of the same ATES measures as are in place in Chicago); Ruth E. Lampe, Everybody's Column, *How can one man block all debate on proposal?*, June 3, 2007, at I5 (criticizing N.Y. Assemblyman David Gantt for blocking proposals to extend statutory authority to Buffalo, N.Y. to install an ATES); Editorial, *Our Position: It's Good to See Baker Softening His or her Opposition to Cameras*, ORLANDO SENTINEL, Sept. 1, 2007, at A20 (applauding the decision of a state senator to end his or her complete resistance to red-light cameras); Insurance Institute for Highway Safety, *Red Light Cameras Yield Big Reductions in Crashes and Injuries*, STATUS REPORT, Apr. 28, 2001, at 2 (referring to a study suggesting that people, both living in cities with red-light cameras and without them, throughout the country support red-light cameras); Larry Copeland, *Red-Light Cameras Bring Backlash*, USA TODAY, Feb. 15, 2007 (noting that "[p]ublic opinion surveys repeatedly find about 75%-80% support for cameras"). However, a sizable portion of the public is not sold

on ATES, feeling that they are either unwise or unconstitutional. See Ursula A. Falk, *Everybody's Column, Plan is just another way for city to raise money*, June 3, 2007, at I5 (Arguing that ATES are "a ruse to enhance the coffers of the politicians and to increase the salaries of the chosen"); Carl E. Lebron Jr., *Everybody's Column, Red light cameras are unconstitutional*, June 3, 2007, at I5 (Making the questionable argument that ATES violate the Sixth Amendment Confrontation Clause); National Motorists Association, *Intersection Collisions Increase*, <http://www.motorists.org/photoenforce/home/intersection-collisions-increase> (last visited November 4, 2007) (Claiming that red-light cameras actually increase the number of accidents); Insurance Institute for Highway Safety, *Red Light Cameras Yield Big Reductions in Crashes and Injuries*, STATUS REPORT, Apr. 28, 2001, at 2 (referring to a study suggesting that people, both living in cities with red-light cameras and without them, throughout the country support red-light cameras); Larry Copeland, *Red-Light Cameras Bring Backlash*, USA TODAY, Feb. 15, 2007 (noting that "[p]ublic opinion surveys repeatedly find about 75%-80% support for cameras"); Editorial, *Red-Light Cameras Are No Safer*, Daily Press (Newport News, VA), July 20, 2007, at A16 (criticizing installation of red-light cameras in Newport News).

⁷⁹ While the costs of review of citations pursuant to ATES will eventually factor into this determination, this author could not find data on the costs of such litigation.

⁸⁰ See Paul Sassone, *Never Did Take a Good Picture*, ANTIOCH REV., Aug. 9, 2007, (noting that studies concerning the efficacy of ATES, and red-light cameras in particular, have made very different findings. "While many studies state traffic cameras cause motorists to slow down and have reduced accidents at intersections at which they are used, other studies paint a bleaker picture.").

⁸¹ See Copeland, *supra* note 75 (citing studies by the Insurance Institute for Highway Safety and Old Dominion University). According to those studies, the cameras have “dramatically reduce[d] the number of drivers who barrel through red lights.” *Id.*

⁸² It bears mention that IIHS is wholly supported by auto insurers. Insurance Institute for Highway Safety, Nov. 4, 2007, <http://www.iihs.org>. Insurers have lobbied for red-light cameras.

⁸³ *Mind Those Traffic Light*, STATUS REPORT, *supra* note 7, at 2.

⁸⁴ The National Highway Traffic Safety Administration funded this study. National Campaign to Stop Red Light Running, *Red Light Running More than Triples in Virginia Beach after Red Light Camera Law Expires*, Jan. 16, 2007, http://www.stopredlightrunning.com/html/newsrelease_011607.htm.

⁸⁵ Copeland, *supra* note 75.

⁸⁶ National Campaign to Stop Red Light Running, *supra* note 84 (quoting Dr. Bryan Porter, Associate Professor and Assistant Chair, Department of Psychology at Old Dominion University, who led the study).

⁸⁷ Insurance Institute for Highway Safety, *Red Light Cameras Yield Big Reductions in Crashes and Injuries*, STATUS REPORT, Apr. 28, 2001, at 1-2.

⁸⁸ *Id.* at 2.

⁸⁹ See Tom Shaw, *Bluffs Sees Drop in Accidents with Cameras at Intersections*, OMAHA WORLD-HERALD, Dec. 27, 2006 (noting that a Council Bluffs, IA study showed a decline in total number of accidents). However, the Council Bluffs public works director cautioned that it was too early to determine whether the cameras were responsible for that reduction. *Id.* See also APALERT-OH, *Latest Ohio news, sports, business and entertainment*, Sept. 25, 2006, 10:30:30 (noting that police in Columbus, Ohio claim that at intersections where the city has posted red-light cameras fewer people are running red lights and accidents have consequently declined); Gordon, *supra* note 76 (noting that San

Francisco city officials attribute the fact that the number of injury collision dropped by more than half to red-light cameras).

⁹⁰ OFFICE OF THE MAJORITY LEADER, U.S. HOUSE OF REPRESENTATIVES, *THE RED LIGHT RUNNING CRISIS: IS IT INTENTIONAL?*, May 2001, available at <http://www.thenewspaper.com/rlc/docs/finalreport.pdf>.

⁹¹ *Id.* at 3.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Red Light Cameras Yield Big Reductions in Crashes and Injuries*, *supra* note 78, at 2.

⁹⁵ See Benson, *supra* note 75 (finding that the number of accidents and accident rates at an intersection equipped with a red-light camera in Fort Collins, CO "have steadily increased in the years since the city of Fort Collins installed a system in 1997"); Jonathon Miller, *With Cameras on the Corner, You're Ticket Is in the Mail*, N.Y. TIMES, Jan. 6, 2005, at G1 (noting that "several studies in recent years—in places like San Diego, Charlotte, N.C., and Australia . . . have shown that the reduction in side-angle collisions at the intersections [with red-light cameras] has been wholly or largely offset by an increase in rear-end accidents"); Paul Sisson, *Minor Rear-End Accidents Increase Since Red-Light Cameras Installed*, N. COUNTY TIMES (San Diego, CA), Apr. 22, 2005 (noting that rear-end accidents increased by as much as 800% at some intersections after the installation of red-light cameras); Anna Song, KATU (Portland, OR), Nov. 11, 2005 (finding a 140% increase in rear-end crashes in intersections in Portland, Oregon where the city installed red-light cameras); Gwen Shaffer, *Rear-End Collisions Have Increased at Intersection with Traffic Cameras*, PHILADELPHIA WEEKLY (noting an increase in rear-end accidents at Philadelphia intersections equipped with red-light cameras).

⁹⁶ Song, *supra* note 95; Shaffer, *supra* note 95; Sisson, *supra* note 95. This phenomenon was certainly the experience of Carla Correa, when a truck plowed into her car from behind after she slammed on the breaks to avoid a ticket. Miller, *supra* note 95.

⁹⁷ *Id.*; see also Sisson, *supra* note 95 (quoting Lt. Sing of the Oceanside, CA police as saying that such "rear-end accidents . . . are not as severe as head-on or side-impact collisions that are sometimes the result of running a red light.")

⁹⁸ Del Quentin Wilber & Derek Willis, *D.C. Red-Light Cameras Fail to Reduce Accidents*, WASH. POST, Oct. 4, 2005, at A01.

⁹⁹ *Id.* However, as the city traffic engineer noted, the underlying data for that study may not tell the whole story, as the D.C. "city crash database does not categorize the severity of crashes." *Id.*

¹⁰⁰ *Id.*

¹⁰¹ As the study noted "most of the studies [conducted on the efficacy of ATES up to 2005 had been] tainted by methodological difficulties that would render useless any conclusions from them." FEDERAL HIGHWAY ADMINISTRATION, SAFETY EVALUATION OF RED-LIGHT CAMERAS 1, April, 2005, available at <http://www.tfhrc.gov/safety/pubs/05048/05048.pdf>.

¹⁰² FEDERAL HIGHWAY ADMINISTRATION, *supra* note 101, at 2-3.

¹⁰³ *Id.* at 5.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ See generally FEDERAL HIGHWAY ADMINISTRATION, *supra* note 101 (accounting only for a few years before the installation of red-light cameras and a few years after the installation).

¹⁰⁷ See *id.*, at 4 (Noting that the severity of front-to-side crashes increased in some studied sites in the period after the installation of the cameras,

which the study essentially disregarded as outliers because with them, "the overall cost savings reported could be decreased by approximately \$4 million").

¹⁰⁸ See *id.*, at 73 (noting that the data collected on the "spillover" effect was inconclusive and that more study was needed).

¹⁰⁹ See *id.*, at 74 (noting that the study was unable to draw conclusions about the effects of yellow light intervals on traffic safety).

¹¹⁰ See, e.g., Marcia Biederman, *Safety; Are Red-Light Cameras Aimed at Safety or Fines?*, N.Y. TIMES, Oct. 23, 2002, at G24 (proposing that while it is unclear whether photo enforcement of traffic has provided safety benefits, they have produced "traffic fined and lawsuits in abundance"); Miller, *supra* note 95 (noting criticism of ATES use to generate revenue, which sometimes takes precedence over safety where local bodies place cameras at heavily trafficked intersections even where they are not dangerous ones); Wilber & Willis, *supra* note 10 (quoting AAA spokesman Lon Anderson concerning the questionable data concerning the successes of ATES: "'They are making a heck of a lot of money, and they are picking the motorists' pockets on the pretense of safety.'"); Editorials, *Are City's Red-Light Cameras About Revenue or Safety?*, CHICAGO SUN-TIMES, June 25, 2007, at 33 (noting that Chicago alderman Edward Burke tacitly admitted that he cared more about revenue than the safety function of red-light cameras, which runs afoul of the city's long-declared stance that the cameras are there to promote safety).

¹¹¹ See Copeland, *supra* note 78 (basing the report on the decision in *Shavitz v. City of High Point*, 630 S.E.2d 4 (C. App. N.C. 2006)).

¹¹² See *supra* Part II.C.1.

¹¹³ Reginald Fields, *Traffic Cameras' Focus May Change*, THE PLAIN DEALER, May 25, 2006.

¹¹⁴ Copeland, *supra* note 78.

¹¹⁵ See, e.g., NEV. REV. STAT. ANN. § 484.910 (West 1999) (prohibiting governmental entities from using “photographic, video, or digital equipment for gathering evidence to be used for the issuance of a traffic citation . . . unless . . . held in the hand or installed . . . within a vehicle or facility of a law enforcement agency”); N.H. REV. STAT. ANN. § 236:130 (2006) (prohibiting “surveillance on any public ways of the state or its political subdivisions”); N.J. STAT. ANN. § 39:4-103.1 (West 1992) (banning photo radar); Kathy Routliffe, *Trustees Want More Red Light Homework*, LINCOLNWOOD REV. (Illinois), June 28, 2007 (reporting that the Lincolnwood, IL village trustees opted not to install red-light cameras).

¹¹⁶ See H.F. 793, 82nd Gen. Assem., Reg. Sess. (Iowa 2007) (banning red-light cameras). The Iowa Senate voted to ban red-light cameras throughout the state, but the House subsequently voted against that proposal. Staff Editorial, *Light Laws Need Revising*, U-Wire, Apr. 24, 2007. The Michigan Attorney General also recently ruled that only live police officers, and not ATES, can issue traffic citations. Copeland, *supra* note 78.

¹¹⁷ H.R. 6468, Jan. Sess. 2007, (CT 2007).

¹¹⁸ *Hearing on H.B. 6468* Before the CT Trans. Comm. (2007) (statement of Sen. DeFronzo, Presiding Chairman, CT Trans. Comm.).

¹¹⁹ 1998 Sess. Laws of Haw., Act 234.

¹²⁰ H.B. 2167, 2002 Sess., Act 58. (Haw. 2002).

¹²¹ Haw. H.B. 351 (Haw. 2007) (reinstating the red-light camera program); KGMB-9 News @ 5 PM (Honolulu, HI) (CBS television broadcast Apr. 23 (2007) (noting that state legislators have been trying unsuccessfully to reinstate the red-light camera, but that the most recent bill died in the senate).

¹²² Copeland, *supra* note 78.

¹²³ See VA. CODE ANN. § 15.2-968.1 (West 2007) (made law on Apr. 4, 2007). *But see* Biederman, *supra* note 110 (claiming, somewhat dubiously, that the growth

of ATEs is slowing down across the country).

¹²⁴ See generally Miller, *supra* note 27 (describing all the different types of challenges that have been raised to ATEs, including procedural and substantive due process claims, Fourth Amendment claims, and Equal Protection Clause claims). There have also been some more novel claims. See McNeill v. Town of Paradise Valley, 44 Fed.Appx. 871 (9th Cir. 2002) (motorist making a RICO claim against municipality). *But see* People v. Hildebrandt, 126 N.E.2d 377, 377 (Ct. App. N.Y. 1955) (holding that "it could not be inferred from fact that defendant was owner of automobile [cited by photo radar evidence] that he was driver at time of speed violation, and" he could not be convicted without such proof); State v. Clay, 29 P.3d 1101, 1104 (Or. 2001) (same). It is also worth noting that by far the most successful federal law claims against ATEs has been those that challenged the statutory presumption states make that the owner of the car is the one driving it at the time of the ATEs citation. Indeed, the Supreme Court may eventually weigh in on this issue, seeing as the law in its present form holds liable for the commission of an offense persons other than the person who committed the crime. While there are certainly other areas of the law that operate in this manner (for example, the felony murder rule), such laws clearly raise some due process issues.

¹²⁵ For a more in depth analysis of the resolution of conflicts between state and local regulations, see generally *Conflict between statutes and local regulations as to automobiles*, 147 A.L.R. 522 (1943) (examining the resolution of different conflicts between state and local traffic regulations); *State and Municipal Regulations*, 60 C.J.S. MOTOR VEHICLES § 35 (discussing the conflict between state and local law generally).

¹²⁶ Miller, *supra* note 27, at 8-11.

¹²⁷ It should be noted that the Ohio General Assembly had passed an bill which

would have permitted municipalities to use ATES in 2006, but the governor vetoed it in 2007, thereby killing the bill. Ohio Legislative Service Commission, Ohio Bill Analysis, 2006 H.B. 56, 126th Gen. Assemb. The discussion of another case considering whether a Ohio ordinance authorizing the use of ATES was consistent with the Ohio Home Rule Amendment, *State ex rel Scott v. City of Cleveland*, 859 N.E.2d 921, 926-27, (Ohio 2006), has been omitted because it dealt with an issue slightly out of scope for this section. In *State ex rel Scott*, the Ohio Supreme Court examined whether the Cleveland ATES ordinance, in permitting parking enforcement authorities to adjudicate ATES-based violations, violated the state constitution, but the court concluded that it did not. *State ex rel Scott*, 859 N.E.2d at 927; see also CLEVELAND COD. ORD. § 314.031 (2005); OHIO CONST. art. XVIII, § 3 (“Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws.”).

¹²⁸ GIRARD ORD. (Ohio) § 7404-05

¹²⁹ *Moadus v. City of Girard*, 2006 WL 4092324 (Ct. Com. Pl. Ohio 2006).

¹³⁰ See *Id.* (Noting that “a provision of a state statute takes precedence over a municipal ordinance [if:] . . . (1) the ordinance is in conflict with the statute; (2) the ordinance is an exercise of the police power, rather than of local self government; and (3) the statute is a general law.”) The court found that speeding was a matter of general law, and that it represents an exercise of the police power. *Id.*

¹³¹ *Id.*

¹³² *Id.*

¹³³ See generally 56 AM. JUR. 2d MUNICIPAL CORPORATIONS §§ 108-123 (2007)

(examining the scope and nature of the home-rule powers granted by the states

to the municipalities, which "give municipalities discretion in managing municipal affairs").

¹³⁴ 56 AM. JUR. 2d MUNICIPAL CORPORATIONS §§ 110 (2007).

¹³⁵ See *id.* (noting that the while "a state constitution may allow a home-rule city to be governed, generally, by ordinances adopted pursuant to its municipal charter, but provide that the legislature can limit or augment a city's self governance," it may also provide that "the legislature may limit the functions to be performed by home-rule municipalities" or that "a state legislature [must] expressly [announce] that an area covered by legislation is to be exclusively controlled by the state before a home-rule county's authority to act is limited"). However, there are other variations to the grant of power. Some state constitutions grant broader powers to municipalities, providing that "home-rule cities may enjoy not only those powers specifically granted, but also may exercise all powers not expressly denied," or that "constitutional or general law limitations on the powers of home-rule cities will not be implied unless such provisions are clear and compelling."

Some states even limit the power of the legislature to override local regulations, making "home-rule power [] not dependent on any grant of power by the legislature," or stripping the legislature of the "unqualified power to withdraw, preempt, or overrule a local law that is consistent with the constitution and was enacted pursuant to a constitutionally mandated preexisting home-rule charter." *Id.*

¹³⁶ See *supra* notes 20 and accompanying text.

¹³⁷ See *supra* note 22 and accompanying text.

¹³⁸ See *supra* note 135 and accompanying text.

¹³⁹ *Mendenhall v. City of Akron*, 2006 WL 3469999, at * 1-2 (USDC N.D. Ohio 2006). The court had made an interlocutory ruling in favor of Akron. See

generally *Mendenhall v. City of Akron*, 2006 WL 1371641 (USDC N.D. Ohio 2006). However, it then vacated that ruling after the *Moadus* opinion. *Id.* at 1. As a result, the Ohio Supreme Court heard oral arguments in that case on Sept. 18, 2007. Reginald Fields, *Ohio Supreme Court Hears Red-Light Challenge*, THE PLAIN DEALER (Cleveland, OH), Sept. 19, 2007, available at <http://www.cleveland.com/news/plaindealer/index.ssf?/base/news/119019290912800.xml&coll=2>.

¹⁴⁰ *Mendenhall v. City of Akron*, 2008 WL 275728, at *1 (Ohio 2008).

¹⁴¹ *Id.* at *9.

¹⁴² *Id.*

¹⁴³ See *id.* (noting that the ATES in the case at hand were permissible because violations caught by them only applied “when no police officer is present and the automated camera captures the speed infraction,” and that “a person cannot be subject to both criminal and civil liability under the ordinance”).

¹⁴⁴ *Shavitz v. City of High Point*, 630 S.E.2d 4, 10 (Ct. App. N.C. 2006).

¹⁴⁵ *Id.*

¹⁴⁶ *Id.* at 15 (quoting N.C. Const. art. IX, § 7).

¹⁴⁷ *Id.* at 19.

¹⁴⁸ See *State of Minnesota v. Kuhlman*, 729 N.W.2d 577, 578 (Minn. 2007) (citing MINNEAPOLIS ORD. §§ 474.620-.670 (2004)).

¹⁴⁹ MINN STAT. § 169.06 (2005); *Kuhlman*, 729 N.W.2d at 584.

¹⁵⁰ *Kuhlman*, 729 N.W.2d at 584.

¹⁵¹ *Id.* at 580, 584. Specifically, the sections of the Minnesota Statutes that deals with traffic require that “[t]he provisions of this chapter shall be applicable and uniform throughout this state and in all political subdivisions and municipalities therein, and no local authority shall enact or enforce any rule or regulation in conflict with the provisions of this chapter unless expressly authorized herein.” MINN. STAT. § 169.022. The courts

in Minnesota have additionally held that that "provision . . . clearly showed the legislative intent to preempt [the field of traffic law] except for limited local regulation the statute expressly permitted." *Mangold Midwest Co. v. Village of Richfield*, 247 Minn. 347, 359 (1966). Additionally those courts have required that "municipalities must provide the same procedural protections as the state when prosecuting offenses that are covered by an ordinance and a statute," and that "a municipality may not prohibit by ordinance conduct that is not prohibited by statute." *Kuhlman*, 729 N.W.2d at 581-82.

¹⁵² MINN STAT. § 169.06 (2005); *Kuhlman*, 729 N.W.2d at 584.

¹⁵³ *Kuhlman*, 729 N.W.2d at 584.

¹⁵⁴ *Rhoden v. City of Davenport*, No. 106960 (D. Iowa Jan. 2, 2007); DAVENPORT MUN. CODE § 10.16.070 (2005); IOWA CODE § 321.235 (2005); IOWA CODE § 805.8 (2004); IOWA CODE § 805.8A (2006).

¹⁵⁵ IOWA CODE § 321.235 (2005).

¹⁵⁶ IOWA CODE § 321.236(2) (2007).

¹⁵⁷ *Rhoden*, No. 106960, at *9.

¹⁵⁸ *Id.*

¹⁵⁹ *Id.* at *7.

¹⁶⁰ *Id.* at *9.

¹⁶¹ Iowa Courts Online Search, Appellate Court, Docket No. 07-0172, <http://www.iowacourts.state.ia.us/ESAWebApp/AppelSimpFrame> (last visited Jan. 29, 2008).

¹⁶² *Idris v. City of Chicago*, 2008 WL 182248 (N.D. Ill. 2008).

¹⁶³ *Id.* at *5 (quoting plaintiffs' memorandum opposing the city's motion for dismissal).

¹⁶⁴ *Idris*, 2008 WL 182248, at *5.

¹⁶⁵ 625 ILL. COMP. STAT. 5/11-305(a); *Id.* 5/11-306.

¹⁶⁶ CHICAGO MUN. CODE § 9.102(2007).

¹⁶⁷ The court noted that the plaintiffs had not stated a equal protection claim because they did “not challenge a classification made by” Chicago’s red-light statutes, but, instead, challenged “the prospect of multiple punishments for the same conduct. Such a claim” the court noted “is not cognizable under the equal protection clause, because” it does not allege that the ordinance “treats similarly situated people differently, or that the laws of Illinois or Chicago are being enforced in a discriminatory manner.” *Idris*, 2008 WL 182248, at *5.

¹⁶⁸ *Id.* at *5-6.

¹⁶⁹ *Id.* at *6 (citing *Hudson v. United States*, 522 U.S. 93, 98 (1997)).

¹⁷⁰ *Leonte v. ACS State and Local Solutions, Inc.*, 123 Cal.App.4th 521, 523 (2005).

¹⁷¹ CAL. VEH. CODE § 21455.5 (2001). The law has since been amended. See CAL. VEH. CODE § 21455.5 (2003) (defining what the term operate means under the statute, and delineating what activities municipalities can and cannot contract out).

¹⁷² *Leonte*, 123 Cal.App.4th at 527.

¹⁷³ *Id.* at 528.

¹⁷⁴ *City of Commerce City v. State*, 40 P.3d 1273, 1277 (Colo. 2002).

¹⁷⁵ COLO. REV. STAT. ANN. § 42-4-110.5 (West 1999). The Colorado legislature has since revised that statute in 2002 and 2004. *Id.*

¹⁷⁶ *City of Commerce City*, 40 P.3d at 1277. The Colorado Constitution grants the home-rule municipalities such authority in article twenty, section six. COLO. CONST. art. XX, § 6.

¹⁷⁷ *City of Commerce City*, 40 P.3d at 1279 (citing *City & County of Denver v. Qwest*, 18 P.3d 748, 754 (Colo. 2001)).

¹⁷⁸ *Id.*

¹⁷⁹ *Id.* at 1284.

¹⁸⁰ *Id.* at 1285.

¹⁸¹ *Agomo v. Fenty*, 916 A.2d 181, 193 (D.C. Ct. App. 2007); D.C. CODE § 50-2302.06(a) (2007).

¹⁸² *Id.* at 192.

¹⁸³ *Id.* at 193-93.

¹⁸⁴ OR. REV. STAT. § 810.439(1)(B) (2005).

¹⁸⁵ *State v. Dahl*, 87 P.3d 650, 654 (Or. 2004); OR. REV. STAT. § 153.076(2) (1999).

¹⁸⁶ *Dahl*, 87 P.3d at 654.

¹⁸⁷ *Id.*

¹⁸⁸ *See supra* note 20 and accompanying text (noting that most ordinances impose only civil fines for violations caught by ATES). The state and local rules likely do so largely because the burden would be too great to prove a criminal violation with such evidence, because of the due process requirements that would be required would be too great, and because of the fear of machines effectively convicting people of crimes.

¹⁸⁹ *See supra* notes 16-17 and accompanying text (noting that most states ordinarily impose criminal or quasi-criminal liability on drivers who commit moving violations).

¹⁹⁰ *See supra* notes 22 and accompanying text (noting that most states declare the legislative intent to create uniformity of traffic law among their different jurisdictions).

¹⁹¹ *See supra* note 75 and accompanying text (detailing the extent of the problems associated with red-light running).

¹⁹² *See supra* notes 69-78 and accompanying text (examining the motivations underlying municipal use of ATES).

¹⁹³ *See generally* *City of Commerce City v. State*, 40 P.3d 1273 (Colo. 2002) (conflict between statewide regulations on the use of ATES and local

ordinance); *Leonte v. ACS State and Local Solutions, Inc.*, 123 Cal.App.4th 521 (2005) (same).

¹⁹⁴ See generally *Agomo v. Fenty*, 916 A.2d 181 (D.C. Ct. App. 2007) (conflict between state statutory presumptions and ordinance); *State v. Dahl*, 87 P.3d 650 (Or. 2004) (same);

¹⁹⁵ See generally *Idris v. City of Chicago*, 2008 WL 182248 (N.D. Ill. 2008) (making the running of a red-light a civil offense, in contrast to the state statute, which made running a red-light a criminal offense); *Mendenhall v. City of Akron*, 2008 WL 275728, at *1 (Ohio 2008) (same); *State of Minnesota v. Kuhlman*, 729 N.W.2d 577, 578 (Minn. 2007) (same); *Rhoden v. City of Davenport*, No. 106960 (D. Iowa Jan. 2, 2007) (same); *Moadus v. City of Girard*, 2006 WL 4092324 (Ct. Com. Pl. Ohio 2006) (same); *Shavitz v. City of High Point*, 630 S.E.2d 4, 10 (Ct. App. N.C. 2006) (same).

¹⁹⁶ See *supra* note 20 and accompanying text (noting that most localities treat violations caught by ATES as civil violations).

¹⁹⁷ See *supra* notes 16-17 and accompanying text (noting that most state traffic law makes traffic violations criminal or quasi-criminal violations).

¹⁹⁸ *Mendenhall v. City of Akron*, 2008 WL 275728, at *9 (Ohio 2008).

¹⁹⁹ Due to this uncertainty, this author would strongly advocate that state legislatures study whether ATES have the tendency to replace human enforcement of the traffic laws, as, if so, the conflict between the state and local laws would be quite clear. However, it would undermine one of the primary justifications of the devices, freeing officers from the duty of having to stop as many traffic-law violators, thereby permitting them to police against more significant transgressions, if the use of ATES did not replace human enforcement. Thomas M. Stanek, *Photo Radar in Arizona: Is It Constitutional?*, 30 ARIZ. ST. L.J., 1209, 1216-17 (1998); see Marty Katz, *Frown, You're on Red-Light Camera!*, N.Y. TIMES, Oct. 11, 2000, at H2 (noting

that ATES free police officers from spending time chasing reckless drivers and doing paperwork).

²⁰⁰ 61A C.J.S. *Motor Vehicles* § 1435 (2007) (“The violation of various statutes or ordinances that regulate the speed at which motor vehicles may be operated on the public highways or streets constitutes an offense or infraction.”); 7A AM. JUR. 2d *Automobiles and Highway Traffic* § 295 (2007) (“The violation of laws relating to the speed of motor vehicles is ordinarily a criminal offense, in the nature of a misdemeanor”); 7A AM. JUR. 2d *Automobiles and Highway Traffic* § 261 (“passing through a red light generally constitutes an offense”).

²⁰¹ See *supra* note 20 and accompanying text.

²⁰² See *supra* note 22 and accompanying text (examining provisions of state codes purporting to seek uniform traffic regulations).

²⁰³ This author owes this proposition in its basic form to a conversation with Professor Margaret Raymond of the University of Iowa College of Law.

²⁰⁴ See Stanek, *supra* note 199, at 1217 (“Although a camera cannot lie, it cannot truly see.”).

²⁰⁵ *Id.* at 1218.

²⁰⁶ *Id.* (noting that Timothy McVeigh may have gotten away with the Oklahoma City federal building bombing in 1995 had police not stopped him for an unrelated offense).

²⁰⁷ National Motorists Association, *supra* note 72.

²⁰⁸ Texas Transportation Institute, Development of Guidelines for Identifying and Treating Locations with a Red-Light Running Program, Research Report 0-4196-2, at 6-7, September 2004, available at <http://www.motorists.org/photoenforce/tti04.pdf> (finding a 6.4% reduction in red-light related crashes where there was area-wide officer enforcement of intersections with lights).

²⁰⁹ See McGuire, *supra* note 70, at 28 (noting that consumers can now purchase red-light camera detectors for their cars).

²¹⁰ See Photoenforced, Red Light Cameras, Speed Cameras, Toll Road Cameras & Sound Camera Locations, www.photoenforced.com (showing the red-light camera and photo radar locations throughout the United States); POI Factors, Red-Light Enforcement Cameras, <http://www.poi-factory.com/poifiles/us/red-light-cameras> (provides the locations of cameras that GPS users can enter into their GPS devices).

²¹¹ There is very little argument that photo radar does not produce a net benefit, so this section will not concern itself with such devices. Though perhaps unreliable, current data suggests that jurisdictions using red-light cameras will enjoy fewer *serious* accidents. Furthermore, ATES provide other benefits that are less quantifiable: (1) they are objective and do not discriminate as to whom they catch violating traffic laws, and (2) they free officers from the duty of having to stop as many traffic-law violators, thereby permitting them to police against more significant transgressions.

²¹² The FHA study is the most reliable one to date because it lacked any clear bias, used a scientific method in collecting its data, published its methodology, and studied a wider range of ATES locations. See generally FEDERAL HIGHWAY ADMINISTRATION, SAFETY EVALUATION OF RED-LIGHT CAMERAS 2-3, April, 2005, available at <http://www.tfhrc.gov/safety/pubs/05048/05048.pdf> (describing the studies' method, its data sources, and its purposes).

²¹³ See *supra* note 97 and accompanying text (finding that municipalities using ATES found a net benefit per intersection).

²¹⁴ See *supra* note 8 and accompanying text (detailing the number of citations issued based on ATES evidence and the immense amounts of money collected therefrom).

²¹⁵ See *supra* Part IID.

²¹⁶ See *supra* Part IID (noting the results of a number of studies suggesting that the number of rear-end collisions rise dramatically when red-light cameras are installed).

²¹⁷ National Motorists Association, *Alternatives to Red-Light Cameras*, <http://www.motorists.org/photoenforce/home/alternatives-to-red-light-cameras/> (last visited Nov. 10, 2007). As to the intervals of traffic lights, municipalities could (1) increase the length of the intervals of yellow lights, (2) add a brief interval when the lights facing all directions are red, (3) increase the visibility of traffic lights, (4) re-tune intersections so they are clearer to motorists, and (5) reengineer intersections. *Id.*

²¹⁸ Berny Morson, *Going Slower Is the Point Westminster Has Motorists Traveling in Circles for Safety*, DENVER ROCKY MOUNTAIN NEWS, Jan. 21, 2002, at 28A (discussing the relative advantages and disadvantages of traffic circles and speed bumps).

²¹⁹ Signalized intersections are those at which a traffic lights exists.

²²⁰ National Motorists Association, *Regulating Red-Light Cameras*, <http://www.motorists.org/photoenforce/home/regulating-red-light-cameras/> (last visited Nov. 10, 2007).

²²¹ *Id.*

²²² See FEDERAL HIGHWAY ADMINISTRATION, *supra* note 101, at 75. The FHA study found that ATES more successfully reduced traffic problems in jurisdictions that posted dual warning signs. *Id.*

²²³ *Id.*; U.S. Dep't Trans., Fed. Highway Admin., *Manual on Uniform Traffic Control Devices*, <http://mutcd.fhwa.dot.gov/> (last visited Feb. 15, 2008).

²²⁴ National Motorists Association, *Regulating Red-Light Cameras*, <http://www.motorists.org/photoenforce/home/regulating-red-light-cameras/> (last visited Nov. 10, 2007).

²²⁵ *Id.*

²²⁶ *Id.*

²²⁷ *Id.*

²²⁸ 2 Matthew's Municipal Ordinances § 38:11(c), Traffic Signal Violation Monitoring Systems (2007).

²²⁹ *Id.*

²³⁰ National Motorists Association, Regulating Red-Light Cameras, <http://www.motorists.org/photoenforce/home/regulating-red-light-cameras/> (last visited Nov. 10, 2007); 2 Matthew's Municipal Ordinances § 38:11(c), Traffic Signal Violation Monitoring Systems (2007).

²³¹ National Motorists Association, Regulating Red-Light Cameras, <http://www.motorists.org/photoenforce/home/regulating-red-light-cameras/> (last visited Nov. 10, 2007).

²³² See *supra* note 53 and accompanying text (noting that a number of states have banned the practice of revenue sharing with ATEs providers).