

ARE RED LIGHT CAMERAS IN GEORGIA OVEREXPOSING THE PUBLIC AND UNDERMINING PRIVACY RIGHTS?

I. INTRODUCTION

Red-light running is the leading cause of urban crashes.¹ More people are injured in crashes involving red-light running than in any other crash type.² According to the National Highway Safety Administration, more than 850 people die and approximately 170,000 are injured each year in crashes caused by drivers running red lights.³ In 2006, in Georgia alone, 69 people lost their lives in accidents caused by drivers who disregarded a stop signal.⁴

In an effort to increase intersection safety, Georgia passed a red light camera law in June 2003.⁵ Since its implementation, Georgia's red light camera law has been at the center of much debate and controversy. Among other matters, opponents of red light camera enforcement express concerns that the cameras interfere with citizens' privacy rights. On January 28, 2009, House Bill 31 was introduced to repeal Georgia's red light camera program.⁶ This comment argues that House Bill 31

1. Insurance Institute for Highway Safety, Highway Loss Data Institute: *Red Light Running*, <http://www.iihs.org/research/topics/rlr.html> (last visited Oct. 28, 2008).

2. City of Baton Rouge: *Red Light Safety Program*, <http://brgov.com/redlight/redlightrunningfacts.htm> (last visited Oct. 28, 2008).

3. Larry Copeland, *Research: Red-light Cameras Work*, USA TODAY, Feb. 14, 2008.

4. GOHS: Georgia Highway Safety Statistical Information: *Contributing Factors*, <http://www.gahighwaysafety.org/statistics/contributingfactors.html> (last visited Nov. 18, 2008).

5. H.R. 182, 144th Gen. Assem., Reg. Sess. (Ga. 2003) available at http://www.legis.state.ga.us/legis/2003_04/sum/hb182.htm (last visited Oct. 28, 2008).

6. H.B. 31, 150th Ga. Gen. Assem., Reg. Sess. (Ga. 2009), available at http://www.legis.state.ga.us/legis/2009_10/sum/hb31.htm.

should not be signed into law, because Georgia's red light camera law only minimally interferes with privacy interests and has demonstrably improved intersection safety in Georgia.

Specifically, this comment argues that motorists have a diminished expectation of privacy in automobiles and no reasonable expectation of privacy in license plates. Moreover, Georgia's interest in promoting intersection safety outweighs the minimal intrusion on an individual's privacy interests caused by the use of red light cameras. This comment begins with an analysis of Fourth Amendment Privacy Rights. Parts III and IV provide the reader with an overview of various organizations who oppose and support red light camera legislation and also an insight into their differing views in regard to privacy concerns. Part V outlines important provisions of Georgia's current red light camera law to give the reader a better understanding of the extent to which Georgia's red light camera law interferes with an individual's privacy rights. Part VI analyzes the effectiveness of the red light camera law in Georgia and also provides the reader with a brief overview of how red light cameras operate. Part VII acknowledges that red light camera legislation in the United States has seldom been challenged on privacy grounds. This comment, after carefully weighing Georgia's interest in intersection safety against the level of intrusion on an individual's privacy caused by the use of red light cameras, concludes that Georgia's red light camera law, if challenged, would likely survive a constitutional challenge on privacy grounds.

II. PRIVACY RIGHTS UNDER THE FOURTH AMENDMENT

The Fourth Amendment protects the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.⁷ Stated differently, the Fourth Amendment protects individual privacy against certain kinds of governmental intrusion. As Justice Brandeis put the matter in his dissent in *Olmstead v. United States*, the Fourth Amendment "conferred, as against the Government, the right to be let alone - the most comprehensive of rights and the right

7. U.S. CONST. amend. IV.

most valued by civilized men.”⁸

Consistently with *Katz v. United States*, the U.S. Supreme Court has held that to invoke the protection of the Fourth Amendment, a person must be able to claim a ‘justifiable,’ ‘reasonable,’ or ‘legitimate expectation of privacy’ that has been invaded by government action.⁹ Therefore, in the case of red light cameras, the issue is whether a motorist has a “reasonable” expectation of privacy while operating a motor vehicle on a public roadway.

The U.S. Supreme Court has commented on numerous occasions on the diminished expectation of privacy in an automobile.¹⁰ In *United States v. Knotts*, the Court held that a person travelling in an automobile on public thoroughfares has no reasonable expectation of privacy in his movements from one place to another.¹¹ In *Cardwell v. Lewis*, the Court explained “one has a lesser expectation of privacy in a motor vehicle because its function is transportation and it seldom serves as one’s residence or as the repository of personal effects. A car has little capacity for escaping public scrutiny. It travels public thoroughfares where both its occupants and its contents are in plain view.”¹² In *Rakas v. Illinois*, the Court pointed out “nothing is better established in Fourth Amendment jurisprudence than the distinction between one’s expectation of privacy in an automobile and one’s expectation when in other locations. We have repeatedly recognized that this expectation in ‘an automobile . . . [is] significantly different from the traditional expectation of privacy and freedom in one’s residence.’”¹³ In support of this distinction, the Court offered the following reasons: Automobiles operate on public streets; they are serviced in public places; they stop frequently; they are usually parked in public places; their interiors are highly visible;

8. 277 U.S. 438, 478 (1928) (Brandeis, J. dissenting).

9. *United States v. Knotts*, 460 U.S. 276, 280 (1983).

10. *Knotts*, 460 U.S. 276 (1983); *Rakas v. Illinois*, 439 U.S. 128 (1978); *United States v. Chadwick*, 433 U.S. 1 (1977); *South Dakota v. Opperman*, 428 U.S. 364 (1976); *Cardwell v. Lewis*, 417 U.S. 583 (1974).

11. *Knotts*, *supra* note 9, at 281.

12. 417 U.S. 583, 590 (1974) (plurality).

13. 439 U.S. 128, 153-54 (1978) (*citing* *United States v. Martinze Fuerte*, 428 US 543, 561 (1976)).

and they are subject to extensive regulation and inspection.¹⁴ For these reasons, the expectation of privacy with respect to one's automobile is significantly less than that relating to one's home or office.

In addition to the diminished expectation of privacy in an automobile, it is also important to point out that motorists have no reasonable expectation of privacy in their license plate.¹⁵ In *Ellison v. United States*, the court agreed that a motorist has no reasonable expectation of privacy in the information contained on his license plate under the Fourth Amendment.¹⁶ In support of its conclusion, the court noted: "A tenet of constitutional jurisprudence is that the Fourth Amendment protects only what an individual seeks to keep private. What a person knowingly exposes to the public . . . is not a subject of Fourth Amendment protection."¹⁷ The Ellison court also cited *New York v. Class*, in which the U.S. Supreme Court held that an automobile's Vehicle Identification Number, located inside the passenger compartment, but visible from outside the car, does not receive Fourth Amendment protection.¹⁸ In *Class*, the Court noted that "[I]t is unreasonable to have an expectation of privacy in an object required by law to be located in a place ordinarily in plain view from the exterior of the automobile. The VIN's mandated visibility makes it more similar to the exterior of the car than to the trunk or glove compartment. The exterior of a car, of course, is thrust into the public eye, and thus to examine it does not constitute a 'search'."¹⁹ The Ellison court then concluded that this reasoning logically extends to license plates, which are legally required identifiers located outside the vehicle.²⁰ "No argument can be made that a motorist seeks to keep the information on his license plate private. The very purpose of a license plate number, like that of a Vehicle Identification Number, is to provide identifying information to law enforcement officials and others. The reasoning in *Class*

14. *Id.*

15. *United States v. Ellison*, 462 F.3d 557 (2006) (citing *Katz v. United States*, 389 US 347, 351 (1967)).

16. *Id.* at 561.

17. *Id.*

18. *Id.*

19. *Id.*

20. *Id.*

vis-a-vis Vehicle Identification Numbers applies with equal force to license plates: '[B]ecause of the important role played by the [license plate] in the pervasive governmental regulation of the automobile and the efforts by the Federal Government to ensure that the [license plate] is placed in plain view,' a motorist can have no reasonable expectation of privacy in the information contained on it."²¹ The Ellison court also pointed out that every court that has addressed this issue has reached the same conclusion.²² However, establishing that there is a diminished expectation of privacy in automobiles and no reasonable expectation of privacy in license plates does not end the inquiry. In addition, "the permissibility of a particular law enforcement practice is judged by balancing its intrusion on the individual's Fourth Amendment interests against its promotion of legitimate governmental interests."²³ Here, the test would involve balancing Georgia's interest in preventing accidents caused by red-light runners, the effectiveness of red light camera enforcement in achieving that goal, and the level of

21. *Id.*

22. *Id.* at 562. Every court that has addressed this issue has reached the same conclusion. The Tenth Circuit has held on two occasions that license plates are "in plain view on the outside of the car" and thus, are "subject to seizure" because there is no reasonable expectation of privacy. *United States v. Matthews*, 615 F.2d 1279, 1285 (10th Cir.1980); *see also United States v. Walraven*, 892 F.2d 972, 974 (10th Cir.1989). The Fifth Circuit has also held that "[a] motorist has no privacy interest in her license plate number." *Olabisiomotosho v. City of Houston*, 185 F.3d 521, 529 (5th Cir.1999); *accord United States v. Sparks*, 37 Fed.Appx. 826, 829 (8th Cir.2002); *Hallstein v. City of Hermosa Beach*, 87 Fed.Appx. 17, 19 (9th Cir.2003). The only two panels of this court to address the question have reached the same result. *United States v. \$14,000.00 in U.S. Currency*, No. 98-4380, 2000 WL 222587, at *3 (6th Cir. Feb.14, 2000) (finding no Fourth Amendment violation in a computer check of a license plate); *United States v. Batten*, 73 Fed.Appx. 831, 832 (6th Cir.2003) (same). As one panel wrote, "[T]here is no case law indicating that there can be any reasonable expectation of privacy in license plates which are required by law to be displayed in public on the front and rear of any vehicle on a public street." *Batten*, 73 Fed.Appx. at 832; *see also Wayne R. LaFave*, 1 *Search & Seizure* § 2.5(b) (4th ed. 2004) ("[I]t is apparent that when a vehicle is parked on the street or in a lot or at some other location where it is readily subject to observation by members of the public, it is no search for the police to look at the exterior of the vehicle.") (*citing Katz and Olabisiomotosho*).

23. *Delaware v. Prouse*, 440 U.S. 648, 654 (1979).

intrusion on an individual's privacy caused by the red light cameras.

While the governmental interest in intersection safety has been called into question, the effectiveness of red light camera enforcement and the level of intrusion on an individual's privacy caused by the red light cameras have equally been the topic of much debate and controversy.

III. CRITICS OF RED LIGHT CAMERAS

Over the years, red light cameras have been the subject of much criticism. Many organizations, interest groups, legislators, and individuals are publicly speaking out against their use. The National Motorist Association (NMA), for instance, which was founded to represent and protect the interests of North American motorists and which supports efforts to retain motorists' freedoms and rights, strongly opposes the use of red light cameras.²⁴ The NMA claims that red light cameras do not improve safety and cites numerous photo enforcement studies, which allege that red light cameras are ineffective and even contribute to an increase in accidents.²⁵ For instance, the NMA points to a report released by the Virginia Transportation Research Council entitled "The Impact of Red Light Cameras (Photo-Red Enforcement) on Crashes in Virginia."²⁶ The report, a study of six jurisdictions in Virginia that deployed red light cameras during a seven-year period from January 1, 1998 through December 31, 2004, revealed that red light cameras were associated with an increase in rear-end crashes (about 27% or 42% depending on the statistical method used.)²⁷ According to the NMA, the preponderance of

24. National Motorists Association: *About the NMA*, <http://www.motorists.org/aboutus/> (last visited Oct. 30, 2008).

25. National Motorists Association: *Photo Enforcement Studies*, <http://www.motorists.org/photoenforce/home/studies/> (last visited Oct. 31, 2008).

26. Nicholas J. Garber, et. al, Virginia Transportation Research Council Research Report: *The Impact of Red Light Cameras (Photo Red Enforcement) on Crashes in Virginia*, available at <http://www.motorists.org/photoenforce/2007Virginia.pdf> (last visited Jan. 19, 2009).

27. *Id.*

independent research (in other words, research that was not funded by ticket camera vendors or units of government interested in justifying camera-based traffic enforcement) has illustrated that ticket cameras typically increase, not decrease, the number of accidents at controlled intersections.²⁸ Opponents of red light cameras also claim that communities are not truly concerned with safety and instead only use red light cameras as revenue generators.²⁹ For that reason, many critics negatively refer to red light cameras as “cash cows.”³⁰ The mid-Atlantic chapter of the American Automobile Association (AAA), who initially supported the use of red light cameras, now shares this view.³¹ In 2003, Lon Anderson, a spokesman for AAA, announced the organization’s shift in attitude when he told state officials that municipalities are abusing red light photo enforcement cameras to shake down drivers for needed revenue.³²

Opponents of red light cameras, point to alternatives to improve intersection safety.³³ They argue that red light violations can be reduced dramatically by simply increasing the yellow light duration.³⁴ They believe local governments ignore the safety benefit of increasing yellow light time and install red light cameras to collect profits instead. In support of their

28. National Motorists Association: *Ticket Cameras, Intersection Collisions Increase*, <http://www.motorists.org/photoenforce/home/intersection-collisions-increase/> (last visited Jan. 19, 2009).

29. Kathryn Grondin, *Red-light Cameras: Safety Tool or Moneymaker?*, DAILY HERALD, Mar. 3, 2008.

30. Bob Barr, *Lawful Frown on Red-light Cash Cows*, available at <http://www.bobbarr.org/default.asp?pt=newsdescr&RI=825>

31. Kelley Beaucar Vlahos, *Critics Say Red Light Photo Enforcement a Shakedown*, Fox News, Sept. 15, 2003.

32. *Id.*

33. National Motorists Association: *6 Cities that were Caught Shortening Yellow Light Times for Profit*, <http://www.motorists.org/blog/6-cities-that-were-caught-shortening-yellow-light-times-for-profit/> (last visited Jan. 19, 2009).

34. *Id.*; On January 1, 2009 O.C.G.A. § 40-14-22, which mandates a one-second increase in the duration of the yellow warning light at intersections with red light cameras, became effective. It will be interesting to see what kind of impact this new law will have on red light camera enforcement in Georgia.

claim, red light camera opponents point to six cities that have been caught shortening yellow light times for profit.³⁵ For instance, an investigation by a local TV station in Dallas, Texas found that of the ten red light cameras that issued the greatest number of tickets in the city, seven were located at intersections where the yellow duration was shorter than the bare minimum recommended by the Texas Department of Transportation (TxDOT).³⁶ In Tennessee, the city of Chattanooga was forced to refund \$8,800 in red light cameras tickets issued to motorists trapped by an illegally short yellow time.³⁷ The refund only occurred after a motorist challenged his citation by insisting that the yellow light time of 3.0 seconds was too short.³⁸

In addition to concerns about the effectiveness of red light cameras and their misuse as revenue generators, concerns have also been raised that the use of red light cameras interferes with citizens' privacy rights. In Georgia, former Congressman, Bob Barr, has taken a stance against the use of red light cameras. On February 20, 2007, during a hearing in front of the Motor Vehicle Committee of the House of Representatives, Mr. Barr spoke in support of House Bill 77, which had initially been introduced to abolish the use of red light cameras in Georgia.³⁹ Mr. Barr expressed concerns that citizens will see an erosion of privacy rights as jurisdictions move to include pictures of those in the cars as well as of the car itself.⁴⁰ According to Mr. Barr, the issue is one of public policy: "Do we, as a society, want to live in a panopticon where we have cameras, monitored and maintained by the state that can take away a person's freedom?"⁴¹ Mr. Barr has also written an article on the use of red light cameras entitled "Lawful Frown on Red-light Cash Cows."⁴² In the article, Mr. Barr makes it clear that, in his opinion, ubiquitous surveillance cameras are inconsistent with

35. *Id.*

36. *Id.*

37. *Id.*

38. *Id.*

39. Video Recording of the Motor Vehicles H. Comm. Meeting, Feb. 20, 2007 (remarks by Bob Barr), available at http://www.legis.state.ga.us/legis/2007_08/house/Committees/motorVehicles/motorArchives.htm.

40. *Id.*

41. *Id.*

42. Bob Barr, *supra* note 30.

the constitutional right to privacy embodied in our Bill of Rights and that their prevalence does not reflect good public policy.⁴³ The Privacy Rights Clearing House, a nonprofit consumer information and advocacy group, shares Mr. Barr's view on red light cameras. "If you take it to its logical extreme," says Beth Givens, Director of Privacy Rights Clearinghouse, "we could become a society where automated systems are enforcing the law — a system of ubiquitous monitoring."⁴⁴ The privacy issues addressed by Mr. Barr and the Privacy Rights Clearing House raise legitimate concerns, specifically in states that permit jurisdictions with red light cameras to capture an image of the driver and his/her passengers. In Italy, for example, a senator's marriage faltered when his wife spotted his mistress in a photo radar citation.⁴⁵

IV. SUPPORTERS OF RED LIGHT CAMERAS

While there are those who oppose the use of red light cameras, there are also many who support their use. Surprisingly, the large majority of the American public supports the use of red light cameras.⁴⁶ A 2002 nationwide survey sponsored by the National Highway Traffic Safety Administration found that 75 percent of drivers favored the use of red light cameras.⁴⁷

Looking at accident statistics, it is difficult to deny the existence of the red light running problem and the states' interest in increasing intersection safety. Traffic crashes are the single most significant cause of preventable death and injury in

43. *Id.*

44. Bruce Horowitz, *Smile! You're on a Redflex Camera*, USA TODAY, July 5, 2006.

45. National Motorists Association: *Ticket Cameras: Inside the District's Red Lights*, <http://www.motorists.org/photoenforce/home/inside-red-light-cameras/> (last visited Jan. 28, 2009).

46. Insurance Institute for Highway Safety, Highway Loss Data Institute: *Q&As: Red Light Cameras*, <http://www.iihs.org/research/qanda/rlr.html> (last visited Oct. 31, 2008).

47. National Highway Traffic Safety Administration, 2004, National survey of speeding and unsafe driving attitudes and behavior: 2002; Volume II: findings. Report no. DOT HS-809-730. Washington, DC: US Department of Transportation.

North America.⁴⁸ In 2006, as many as 171,000 crashes, 144,000 injuries, and 887 fatalities were attributed to red light running in the U.S.⁴⁹ In Georgia alone, 1,693 people died in car accidents in 2006.⁵⁰ Therefore, Georgia has a legitimate governmental interest in improving intersection safety by reducing the number of accidents caused by red-light runners.

In addition to many drivers, there are also organizations that believe in the effectiveness of red light camera enforcement, such as the Insurance Institute for Highway Safety (IIHS) and the Federal Highway Administration (FHWA).⁵¹ In support of their positions, the IIHS and FHWA both cite studies that show that red light cameras render intersections safer.⁵² For instance, a study by the FHWA found that red light running violations decreased by as much as 60 percent at intersections where cameras automatically enforce the law.⁵³ The report analyzed results of red light running camera programs in Los Angeles County; San Francisco; New York City; Howard County, Maryland; and Polk County, Florida.⁵⁴ The Georgia Association of Chiefs of Police also supports the use of red light cameras and believes in their effectiveness. Speaking on behalf of the association, Marietta Police Chief Dan Flynn explained to the Motor Vehicles Committee of the House of Representatives that the number of red light violations as well as the number of

48. National Campaign to Stop Red Light Running: *The Problem*, <http://www.stopredlightrunning.com/html/problem.htm> (last visited Oct. 29, 2008).

49. *Id.*

50. Fatality Analysis Reporting System Encyclopedia: *Fatalities and Fatality Rates by State*, <http://www-fars.nhtsa.dot.gov/States/StatesFatalitiesFatalityRates.aspx> (last visited Oct. 29, 2008).

51. Horovitz, *supra* note 44.

52. Insurance Institute for Highway Safety, Highway Loss Data Institute, *supra* note 1; U.S. Department of Transportation, Federal Highway Administration: *Stop Red Light Running: Success Stories*, http://safety.fhwa.dot.gov/intersections/rlrcam_success.htm (last visited Oct. 31, 2008).

53. See Press Release, Federal Highway Administration: Red Light Running: Publications: *Automated Cameras Work, FHWA Study Finds Red Light Running Violations Down 60 Percent*, Feb. 24, 2000, available at <http://www.fhwa.dot.gov/pressroom/fhwa0009.htm>

54. *Id.*

accidents has declined steadily in Georgia as a result of red light camera enforcement.⁵⁵

Supporters of red light cameras generally do not cite any privacy concerns. They believe having a police officer sitting on the side of the road and pulling them over for running the light is equally invasive.⁵⁶ As a matter of fact, cameras may be less invasive *feeling*, because they are just robots.⁵⁷ They do not judge or ask questions about where the motorist is going and came from and so forth.⁵⁸ They do not peek in the back of the motorist's car with a flashlight.⁵⁹ Supporters of red light cameras also view cameras as helping remove the potential biases of police.⁶⁰

Due to the overwhelming amount of contradicting information available on red light camera enforcement provided by different interest groups, it is difficult to determine whether or not the red light camera enforcement law has proven to be effective in Georgia and to what extent, if any, red light camera enforcement interferes with Georgians' constitutionally protected right of privacy. Light can be shed on the issue by taking a closer look at a jurisdiction in Georgia that has been utilizing the red light camera system since June 2005. First, a general understanding of Georgia's red light camera law is useful.

V. GEORGIA'S RED LIGHT CAMERA LAW

On June 3, 2003, Governor Sonny Purdue signed House Bill 182 into law, which authorized the use of red light cameras in Georgia.⁶¹ House Bill 182 amended Code Section 40-6-20 of the Official Code of Georgia Annotated relating to the

55. Video Recording of the Motor Vehicles H. Comm. Meeting, Feb. 20, 2007 (remarks by Marietta Police Chief Dan Flynn), available at http://www.legis.state.ga.us/legis/2007_08/house/Committees/motorVehicles/motorArchives.htm

56. Drivers.com: *Red light cameras: A Drivers.com Overview of the Issue*, <http://www.drivers.com/article/562/#Privacy> (last visited Jan. 29, 2009).

57. *Id.*

58. *Id.*

59. *Id.*

60. *Id.*

61. Ga. Gen. Assem., H.B. 182, *supra* note 5.

obedience to traffic control devices.⁶² Specifically, the new law provided that “The driver of a motor vehicle shall be liable for a civil monetary penalty of not more than \$70 if such vehicle is found, as evidenced by recorded images produced by a traffic-control signal monitoring device, to have been operated in disregard or disobedience of a circular red or red arrow signal in violation. . . of this Code Section. . . .”⁶³

In addition to ensuring that the new law could not be misconstrued as a criminal offense, lawmakers also imposed requirements upon the operation of red light cameras. For instance, red light cameras must record a minimum of two images (in the form of photographs, microphotographs, electronic images, or videotape) showing a traffic-control signal displaying a circular red or red arrow signal along with the rear of a motor vehicle operated in disobedience of such signal, and, on at least one image or portion of tape, clearly revealing the license plate number displayed on the motor vehicle.⁶⁴ However, in an effort to address privacy concerns, Georgia Governor Sonny Purdue, on May 13, 2004, signed Senate Bill 603 into law, which specifically prohibits red light cameras from capturing images of the driver or any passengers.⁶⁵ Pursuant to O.C.G.A. § 40-14-21(j), “a traffic-control signal monitoring device shall not be used to produce any photograph, microphotograph, electronic image, or videotape showing the identity of any person in a motor vehicle.”⁶⁶

Moreover, Georgia motorists, who despite this limitation on the use of red light cameras still have privacy concerns, also have the option of avoiding monitored intersections. Pursuant to O.C.G.A. § 40-14-23, counties and municipalities are required to warn motorists that traffic-control signal monitoring devices are being employed within their jurisdiction.⁶⁷ Specifically, counties and municipalities using red light cameras are required to erect warning signs on state routes leading into their jurisdiction and on the public roads approaching the

62. *Id.*

63. O.C.G.A. § 40-6-20(f)(3)(A) (2008).

64. O.C.G.A. § 40-6-20(f)(1)(B)(i)-(ii) (2008).

65. O.C.G.A. § 40-14-21(j) (2008).

66. *Id.*

67. O.C.G.A. § 40-14-23 (2008).

intersection where red light cameras have been installed.⁶⁸

VI. GEORGIA'S RED LIGHT CAMERA LAW IN ACTION

The City of Alpharetta is currently one of twenty-two communities in Georgia that are operating red light cameras or are in the process of installing them.⁶⁹ The city contracts with Nestor Traffic Systems, a private company headquartered in Rhode Island, which provides automated traffic safety systems to municipalities throughout the U.S. and Canada.⁷⁰ Captain Osborne, as the Commander over the Traffic Safety Unit (TSU) of the Alpharetta Police Department is responsible for overseeing the issuance of the red light camera violations.⁷¹

Alpharetta began operation of its red light camera system in June 2005 and during the first year recorded violations at five different intersections.⁷² The city now has seven intersections that are equipped with red light cameras.⁷³ According to Captain Osborne, the goal of the city's red light camera enforcement program is safety.⁷⁴ Specifically, the program seeks to reduce the number of crashes caused by red-light running by changing driver behavior through education and consistent enforcement of red light violations.⁷⁵

But, has the red light enforcement program been successful? Have monitored intersections truly become safer? Accident data collected by the City of Alpharetta shows that, during the first year of its red light camera enforcement program, motor vehicle accidents caused by red light running declined by 64% at monitored intersections and 12.8% citywide.⁷⁶ The program

68. *Id.*

69. Insurance Institute for Highway Safety, Highway Loss Data Institute: *Communities using Red Light and/or Speed Cameras*, http://www.iihs.org/research/topics/auto_enforce_cities.html (last visited Oct. 31, 2008).

70. Interview with Terri Osborne, Captain, Alpharetta Police Department, in Alpharetta, Ga. (Sept. 11, 2008).

71. *Id.*

72. *Id.*

73. *Id.*

74. *Id.*

75. *Id.*

76. *Id.*

has also been successful at changing driver behavior over time.⁷⁷ Since the initiation of the red light camera program, fewer drivers run red lights at monitored intersections.⁷⁸ As a result, the City of Alpharetta has seen a decline in the number of citations issued.⁷⁹

Pursuant to O.C.G.A. § 40-14-24, each county or municipality in Georgia using any traffic-control signal monitoring device must submit a yearly report on such use to the Governor, the Lieutenant Governor, and the Speaker of the House of Representatives.⁸⁰ Among other things, the report must include the number of violations recorded at each intersection.⁸¹ In compliance with the law, the City of Alpharetta's 2006, 2007, and 2008 Annual Reports to Governor Sonny Perdue document the number of violations recorded at five monitored intersections within the City.⁸² The data summarized in the table and graph below, which shows a reduction in the number of recorded red light violations, demonstrates the effectiveness of Georgia's red light camera law.

**Number of Recorded Red Light Camera Violations –
City of Alpharetta**

Intersections	#1	#2	#3	#4	#5
2006	5,539	5,982	2,842	8,144	4,526
2007	3,113	3,718	2,120	7,253	2,496
2008	2,340	2,828	1,479	5,394	2,400
Reduction	57.8%	52.7%	48.0%	33.8%	47%

77. *Id.*

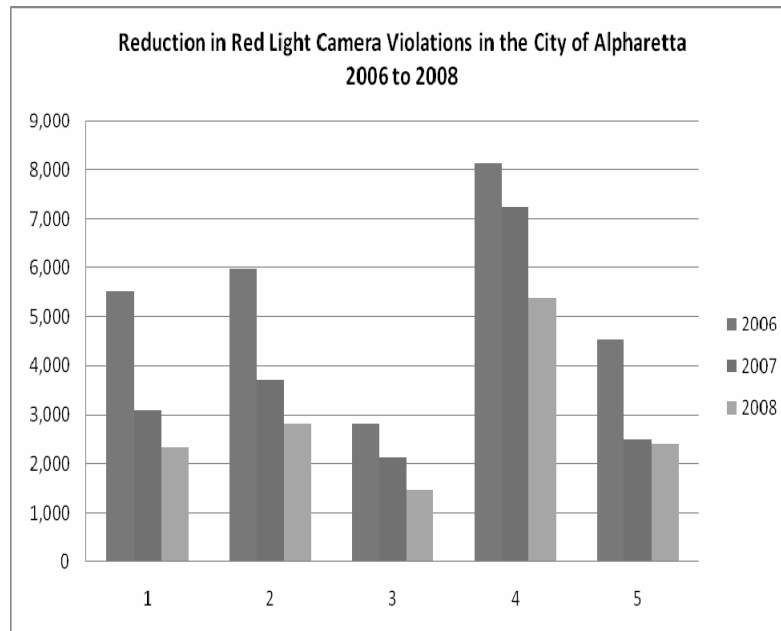
78. *Id.*

79. *Id.*

80. O.C.G.A. § 40-14-24 (2008).

81. *Id.*

82. Interview with Terri Osborne, *supra* note 70. (Note that data from 2005 was not included due to the fact that the City of Alpharetta did not implement the use of red light camera enforcement until June 2005. The 2005 Annual Report therefore does not contain data for an entire year.)



Intersections:

#1: Haynes Bridge Road at North Point Pkwy

#2: S.R. 120 at North Point Pkwy

#3: Windward Pkwy at Westside Pkwy

#4: S.R. 9 at Academy Street

#5: S.R. 120 at Haynes Bridge Road

In addition to a reduction in red-light running and an increase in safety at monitored intersections, the City of Alpharetta has experienced other positive side effects since implementing the use of red light cameras.⁸³ According to Captain Osborne, the cameras have a halo effect, meaning that the city has seen a decrease in red light violations even at intersections that are not monitored.⁸⁴ Furthermore, prior to the installation of its red light camera system, the city experienced problems with motorists blocking intersections during rush hours.⁸⁵ Since the implementation of the red light camera system, this problem has

83. *Id.*

84. *Id.*

85. *Id.*

been completely alleviated at monitored intersections.⁸⁶

While there is significant evidence that the red light camera law in Georgia has indeed changed driver behavior in the City of Alpharetta and, as a result, has rendered monitored intersections safer, there is still a question as to what extent red light cameras interfere with an individual's right to privacy. Here, a general understanding of how the red light camera enforcement system works is helpful.

The system employed by the City of Alpharetta uses multiple cameras placed at an intersection to record video evidence of red-light running.⁸⁷ Using time and distance calculations, the system predicts that a vehicle will run a red light and then activates three independent video cameras.⁸⁸ These video cameras only capture evidence of the rear of the vehicle, the license plate, and a video showing the vehicle behind the stop line while the light is red and then proceeding through the intersection while the light is still red.⁸⁹ Stated differently, no images of the driver or passengers are captured.⁹⁰ According to Captain Osborne, the video cameras do not zoom in on any of the occupants of the violator's vehicle.⁹¹ The occupants are never discernible in the video recording, not even if they are riding in a convertible with the top down.⁹² This is consistent with Georgia's red light camera law, which clearly prohibits capturing electronic images of the identity of any person in the violator's motor vehicle.⁹³ Moreover, the cameras only record violations.⁹⁴ Contrary to common belief, they are not constantly monitoring and recording the intersections.⁹⁵ For these reasons, it appears that the red light cameras do not interfere with an individual's right to privacy.

While Georgia prohibits capturing the image of the driver, other states specifically require it. For example, in California

86. *Id.*

87. *Id.*

88. *Id.*

89. *Id.*

90. *Id.*

91. *Id.*

92. *Id.*

93. O.C.G.A. § 40-14-21(e) (2008).

94. Interview with Terri Osborne, *supra* note 70.

95. *Id.*

and Colorado images of the driver are taken for the purpose of red light camera enforcement.⁹⁶ Pursuant to Section 210 of California's Vehicle Code, automated enforcement systems are designed to obtain a clear photograph not only of a vehicle's license plate but also of the driver of the vehicle.⁹⁷ Similarly, in Colorado, red light cameras record a photograph of the vehicle, the license plate of the vehicle, and the operator of the vehicle.⁹⁸ However, it is important to note that in both California and Colorado, red light offenses recorded by automated enforcement systems are criminal offenses.⁹⁹ Due to the fact that the standard of proof is higher in a criminal proceeding, photographic evidence of the driver is needed to prove, beyond a reasonable doubt, the identity of the offender. Yet even among states that require photographic evidence of the driver, some states have enacted specific provisions to address privacy concerns. For instance, in California, notwithstanding the California Open Records Act, or any other provision of law, photographic records made by an automated enforcement system must be kept confidential and are made available only to governmental agencies and law enforcement agencies and only for the purpose of red light enforcement.¹⁰⁰

VII. CONSTITUTIONAL CHALLENGES ON PRIVACY GROUNDS

While red light legislation has been challenged on different constitutional grounds, such as equal protection and procedural due process, it has seldom been challenged on privacy grounds.¹⁰¹ However, in *Agomo v. Williams*, a District of Columbia Superior Court case, the trial judge, the Honorable Melvin R. Wright, addressed the notion of privacy concerns

96. GHSA: *Speed and Red Light Camera Laws*, http://www.ghsa.org/html/stateinfo/laws/auto_enforce.html (last visited Oct. 31, 2008).

97. CAL.VEH. CODE § 210 (West 2008).

98. COLO. REV. STAT. ANN. § 42-4-110.5 (West 2008).

99. *Id.*; CAL.VEH. CODE § 21461 (West 2008).

100. CAL.VEH. CODE § 21455.5(e)(1) (West 2008).

101. Insurance Institute for Highway Safety, Highway Loss Data Institute: *Summary of Decisions Concerning Automated Enforcement*, http://www.iihs.org/laws/auto_enforce_cases.html (last visited Oct. 31, 2008).

surrounding photo enforcement despite the fact that the plaintiffs had brought suit challenging the constitutionality of the District of Columbia's Automated Traffic Enforcement System on Fifth Amendment Due Process grounds.¹⁰² The court concluded, "Although cameras operated by the government are a concern regarding privacy issues, those concerns are outweighed by the legitimate concerns for safety on our public streets."¹⁰³

VIII. CONCLUSION

In Georgia, the red light camera law has not yet been challenged on privacy grounds. Moreover, Georgia's Attorney General, Thurbert E. Baker, also has not issued any official or unofficial opinions regarding privacy concerns surrounding the use of red light camera enforcement.¹⁰⁴ However, should Georgia's red light camera law ever face a challenge on privacy grounds, it is likely to survive the balancing test in which courts weigh the intrusion of a law enforcement practice on an individual's Fourth Amendment interests against its promotion of legitimate governmental interests.¹⁰⁵ As already mentioned above, in case of Georgia's red light camera's law, the test involves balancing Georgia's interest in preventing accidents caused by red light runners, the effectiveness of red light camera enforcement in achieving that goal, and the level of intrusion on an individual's privacy caused by the red light cameras.

While critics fear an erosion of privacy rights as more jurisdictions adopt red light camera legislation, the level of intrusion caused by Georgia's red light camera law on an individual's privacy is minimal. As explained above, the U.S. Supreme Court has held that motorists have a diminished expectation of privacy in automobiles and no reasonable expectation of privacy in license plates. Additionally, Georgia's red light camera law has provisions which safeguard an

102. No. 02-0006520, 2003 WL 21949593 (D.C. Super. June 12, 2003).

103. *Id.* at *7.

104. Official Website for the State of Georgia: Attorney General, Thurbert E. Baker, <http://law.ga.gov/02/ago/home/0,2705,87670814,00.html> (last visited Oct. 31, 2008).

105. *Delaware v. Prouse*, *supra* note 23, at 654.

individual's privacy. Georgia law specifically prohibits red light cameras from capturing images of the driver or any passengers. Moreover, Georgia motorists have the option of avoiding intersections equipped with red light cameras. Under Georgia law, counties and municipalities using red light cameras are required to erect warning signs on roads approaching red light camera intersections and also on state routes leading into their jurisdiction.

There is also strong evidence to support that Georgia has an interest in preventing accidents caused by red light runners. While critics claim that communities are not truly concerned with safety and instead misuse red light cameras to generate revenue, accident statistics clearly establish the existence of a red light running problem. Furthermore, there is strong evidence to suggest that red light cameras are effective at changing driver behavior and as a result render intersections safer. This in turn, leads to a significant decline in the number of red light citations issued at monitored intersections over time, which undermines the cash-cow argument.

Having established that Georgia has a strong interest in intersection safety and that red light camera enforcement is indeed effective in achieving that goal, and, furthermore having established that the intrusion on an individual's privacy is minimal, it is evident that Georgia's interests in promoting intersection safety clearly outweigh the minimal intrusion on an individual's privacy caused by the use of red light cameras. Therefore, Georgia's red light camera law is likely to survive any challenges based on privacy grounds. For these reasons, and especially in light of the fact that Georgia's red light camera law has demonstrably improved intersection safety, House Bill 31 should not be signed into law.

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