

HONORABLE JOHN C. COUGHENOUR
Hearing Date: November 20, 2009
Oral Argument Requested

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICHAEL TODD, et al.,

Plaintiffs,

v.

CITY OF ABERDEEN, et al.

Defendants.

No. 09-cv-01232 JCC

PLAINTIFFS' RESPONSE TO CITIES'
MOTION FOR JUDGMENT ON
THE PLEADINGS

NOTE ON MOTION CALENDAR:
November 20, 2009

I. INTRODUCTION

This action was originally filed in King County Superior Court on or about June 23, 2009 and was removed to this Court. Defendants' alleged basis of this Court's jurisdiction is "diversity" jurisdiction under the Class Action Fairness Act.

The Defendant camera companies have each filed a separate, 24-page, CR 12(b)(6) Motion to Dismiss the Plaintiffs' Amended Complaint against them, even though it contained all claims against both companies and the cities, and each of the Defendant's Motions raise essentially the same arguments. The Defendant cities, with the exception of the City of Renton and Bremerton, filed a single joint CR 12(b)(6) Motion, which essentially presented no legal authority and make no argument, but instead refers to the Motions filed by the Defendant camera companies.

PLAINTIFFS' RESPONSE TO
CITIES' MOTION FOR JUDGMENT
ON THE PLEADINGS - 1
[Cause No. 09-cv-01232 JCC]

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1 This Opposition filed by Plaintiffs replies to the Motion for Judgment on the Pleadings by
2 the Defendant cities and to the extent possible, addresses the virtually identical arguments made
3 by Defendants Redflex and ATS. Plaintiffs filed separate Oppositions to Motions of the Cities of
4 Renton and Bremerton with respect to the separate and unique arguments made by them.
5 Plaintiffs have also filed a separate Opposition to the CR 12(b)(6) Motions of Defendants
6 American Traffic Solutions (“ATS”) and Redflex Traffic Systems, Inc. (“Reflex”), but to the
7 extent possible, try to avoid duplicating the arguments made herein.

8 Against the Defendant cities, Plaintiffs allege that they abused the limited authority
9 granted them by the Washington State Legislature to issue tickets to the registered owner of a
10 vehicle based solely on a photograph of the license plate by a traffic camera. To protect the due
11 process rights of all involved, the Legislature expressly restricted the cities’ power to issue such
12 tickets (“Notices of Infraction”) in a variety of ways. The cities systematically violated these
13 restrictions.

14 The restrictions imposed by the Legislature and operative law included:

15 1) A limit on the amount of the fine to no more than the amount of a city’s other standard
16 parking tickets. The cities violated this by charging the same fine as if the ticket had been for a
17 moving violation issued by a police officer, which was three-to-four times the parking fine limit
18 set by the Legislature.

19 2) Advance approval by the Administrative Office of the Courts (AOC) of the form of
20 Notice of Infraction prior to use by the city. A number of the Defendant cities failed to obtain
21 such approval, or even issued Notices of Infraction that had been expressly rejected by the AOC.

22 3) Prohibition of contractual arrangements with the Defendant camera companies that
23 would encourage the companies to issue more tickets, thereby increasing their revenue. Despite
24 this restriction, many of the Defendant cities have included such prohibited provisions in their
25 contracts with the Defendant camera companies.

1 Against the Defendant cities, Plaintiffs seek a Declaratory Judgment that the cities
2 violated the law by setting fines higher than the Legislature expressly intended to permit and
3 reimbursement of the excessive amount.

4 Plaintiffs claim that the \$112 - \$250 fines charged by the cities (*Cities' incorporation of*
5 *ATS Motion to Dismiss, 12:24 and Redflex15:20, fn 10*) far exceed the maximum permitted by
6 RCW 46.63.170(2), which limits camera citation fines to the amount of other city parking fines:
7 “However, the amount of the fine issued for an infraction generated through the use of an
8 automated traffic safety camera shall not exceed the amount of a fine issued for other parking
9 infractions *within the jurisdiction.*” (emphasis added)

10 Defendants assert Plaintiffs’ claim fails on its face, because each city has at least two
11 fines of \$250 – state fines for disabled parking and junk vehicle violations. (*Cities’*
12 *incorporation of Redflex’s Motion to Dismiss, p.15:20-12; ATS Motion to Dismiss, p.12-21:-*
13 *13:2*) However Defendants err in their reliance on these two fines, which are mandated by the
14 state, not the city. As state fines, they are not fines *within the city’s jurisdiction*, and so they are
15 not the fines which the statute uses to set the maximum fine allowed.

16 Plaintiffs also seek recovery of fines paid in response to Notices of Infraction that were
17 unapproved, and/or issued pursuant to contracts that contained prohibited provisions. Finally,
18 Plaintiffs seek injunctive relief to prevent the cities from continuing any practice that exceeds the
19 limited authority granted by the Legislature with regard to the use of traffic photo cameras.

20 Against the Defendant camera companies, Plaintiffs allege that Defendants Redflex and
21 ATS entered into contracts with some of the cities that contained prohibited provisions, and
22 issued Notices of Infractions on behalf of the cities that were not approved by the AOC.

1 Defendants also issued deceptive Notices of Infraction which failed to notify the cited vehicle
2 owner of his or her right to challenge the \$124 fine as excessive, and used forms which misled
3 drivers into believing they did not have the statutory rights the legislature intended (such as
4 falsely stating that a cited person must name the driver). Plaintiffs allege that these practices
5 were unfair or deceptive practices that violated the Washington Consumer Protection Act
6 (“CPA”). They seek damages, fees and injunctive relief provided by the CPA.
7

8 **II. PERTINENT FACTS**

9 **A. FACTS PERTAINING TO EXCESSIVE FINES**

10 The operative complaint in this action at the time the Defendant’s Motions were filed was
11 Plaintiffs’ First Amended Complaint. Plaintiffs have since filed a Motion for leave to file a
12 Second Amended Complaint. The significant differences between the First Amended Complaint
13 (“FAC”) and Second Amended Complaint (“SAC”) are that the SAC adds additional Plaintiffs,
14 (some of whom have not yet had any hearing on their Notices of Infraction or paid any fines) and
15 drops the malicious prosecution claim. The SAC also clarifies that the denial of due process
16 claim is not based exclusively on the statutory presumption that the vehicle’s owner was the
17 driver, but also on the cities’ violation of the express limitations imposed on their power by the
18 Legislature. These limitations included 1) requiring cities to issue NOIs that are treated as
19 parking tickets, not moving violations, 2) setting fines at a parking ticket level, 3) obtaining
20 approval of the form of the NOI, and 4) a prohibition on contracts that surrendered control to the
21 camera companies to issue infractions, and/or had provisions that gave incentives to increase
22 revenues.

23 **1. The Traffic Camera Legislation and Legislative History**

24
25 The Washington law that authorizes the use of traffic cameras to issue infractions for
26 violating a red light traffic signal or excessive speed in a school zone was passed in 2005 and is

1 codified in RCW 46.63.170. Over the period from 2001 to 2005, the Legislature had attempted
2 to pass legislation authorizing the use of traffic cameras (called “automated traffic safety
3 cameras”) without success because of a lack of consensus on the nature of the ticket to be issued,
4 the amount of the fine and use of the monies collected as fines.¹
5

6 A major reason that agreement on the legislation took five years was because distribution
7 of the money from the fines depended on whether the ticket would be regarded as a “traffic” or
8 “parking” infraction. Payments for traffic (i.e., moving) violations are split between the city
9 issuing the citation and the State.² However, 100% of the payments collected for parking
10 citations are kept by the issuing city.³
11

12 Prior to 2005, various cities tried the cameras in “pilot projects” funded by the state. The
13 City of Lakewood was the only one that continued for more than a short time. In Lakewood,
14 during this project, the fine payments were part parking (for records) and part traffic. As traffic
15 citations, the city was required to split the fines with the state. Because of this, in 2002, the city
16 retained only \$642,000 of the \$1,076,000 annual gross revenue from camera citations.
17 Lakewood bore all of the \$ 731,000 expense.⁴
18
19
20

21 ¹ The Legislature’s first try in 2001-02 (HB118/SB5610) failed in the Senate. The next Legislature tried again in
22 2003-2004, with E2SSB5369. That Bill, almost double in length, extensively detailed how the fines from the camera
23 citations would be split between cities and states, and also failed to pass. Exhibits 1and 2 to Declaration of Edith
Bowler (Hereafter “Bowler Decl.”)

24 ² RCW 46.63.110(7) lists assessments to be added to each traffic fine for various State funds.

25 ³ RCW 3.62.040(4) All money collected for city parking infractions shall be remitted by the clerk of the district
26 court at least monthly to the city treasurer for deposit in the city's general fund.

⁴ Lakewood 2002: Four cameras issued over 16,000 citations in 2002, @ \$67/ticket [$\$1,076,143/16,000=\67].
Annual gross revenue \$1,076,143: State Share: \$422,371; County Share: \$11,431; City share \$642,340, city
expense (100% share) \$730,669. SB5060 Local Government Fiscal Note, 1/18/2005, p.2-3, Part IV B-C, Bowler
Decl., Ex. 3.

1 Finally, in 2005, the Legislature passed Senate Bill (SB) 5060⁵ (codified as RCW
2 46.63.170) authorizing the use of traffic cameras by making a camera citation a parking ticket.

3 The main changes to SB5060 in 2005 as it progressed to passage are as follows. (Source
4 citations follow in discussion text.)

5
6 Jan. 12, 2005: Original Bill, SB5060, 1st reading, Sen. Haugen, sponsor. Citations treated
7 like parking tickets to the extent they don't go on the driver's records. Applied only to
8 RR crossings and arterial intersections. Percentage of fines which cities must share with
9 state reduced from usual 68/32 division of traffic infraction fines to 90/10.

10 March 2: Senate Transportation Committee – Proposed Substitute Senate Bill (P-SSB
11 5060) to replace original Bill: Adds school zone speed violations; to avoid need for
12 major computer system changes, clarifies treatment as parking ticket for all purposes,
13 including revenue split, letting cities keep all the fines to afford cameras.

14 March 14: 2nd Reading. Senate floor debate. To counteract effect of letting city keep
15 entire fine, Sen. Haugen introduces Floor Amendment to avoid cameras being used as
16 “cash-cows” by limiting fine to no more than a city's other parking tickets, states that
17 would be “about \$20”. PASSED.

18 March 29: House Transportation Committee Public Hearings. Lakewood Assistant City
19 Manager testifies that Senate's fine reduction to “parking ticket levels” is “a concern,”
20 asks House to change.

21 April 15: House floor debate. ESSB5060 PASSED by House without changes.

22 April 22: Bill is signed into Law, effective July 24, 2005.

23 Originally SB 5060 contemplated that camera citations were to be like parking tickets in
24 that they would not go on a driver's record. The Bill stated they should be “processed as are
25 stopping, standing and parking violations under RCW 46 61.560.” However, to address the
26 financial realities that Lakewood faced in splitting the revenue of traffic infractions, but paying
all the expenses, the original Bill reduced that split to 90/10, but retained additional state fund

⁵ SB5060, See Bowler Decl., Ex.4.

1 assessments.⁶ Unfortunately, that created a new “parking-traffic” citation and also unwittingly
2 created a potential costly technical problem.

3 In the financial impact statement for SB5060, the AOC notified the Senate of costly
4 computer changes necessary to accommodate distributions to state funds from the “hybrid”
5 camera traffic-parking citations the Bill created.⁷ (The City of Lakewood had not been paying
6 some state fund assessments because the state’s computer system could not accommodate the
7 camera citations.⁸) To remedy this, the Senate Transportation Committee decided to make the
8 citations purely like a parking ticket. This change required major revisions and the Committee
9 replaced SB5060 with Substitute SB5060⁹ The Revised Fiscal Note, analyzing SSB5060,
10 noted that the change from hybrid to parking citation meant that fines of \$101 and \$177 that
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12
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14

15 ⁶ See, SB5060 Judicial Impact Fiscal Note, p.2 Part II-B 1/18/2005, Bowler Decl., Exhibit 5 (The change requires
16 the amount currently distributed, 68% to local government and 32% to the Public Safety and Education Account, to
17 be distributed 90% to local government and 10% to the Public Safety and Education Account. Other revenue
18 amounts that are part of the traffic infraction penalty will still be distributed to the State (\$12 JIS penalty, 30%
PSEA assessment, \$5 Emergency Medical Services and Trauma Care System penalty, and \$20 penalty assessed per
RCW 46.63.110(8)).

19 ⁷ See, SB5060 Judicial Impact Fiscal Note, p.2 Part II-C 1/18/2005, Bowler Decl., Exhibit 5 (This bill creates a new
20 type of infraction case which will require the Judicial Information System (JIS) to be modified to include business
21 processing procedures for the new case type. The new type of case has some characteristics of the current traffic
22 infraction case type and some of the current parking infraction case type. A new case type and business process is
needed to file these cases in JIS because of the unique way they must be handled by courts... It is estimated
programming for this requirement will require approximately 3,500 hours of
programming and will not be completed until 2007. The cost for the programming at \$150 per hour will be
approximately \$525,000.)

23 ⁸ See, SB5060 Judicial Impact Fiscal Note, p.2 Part II-B 1/18/2005, Bowler Decl., Exhibit 5 (Because the JIS does
24 not recognize [camera] infractions due to their unique nature, the City of Lakewood was unable to contribute the
statutorily required assessments [to JIS and trauma funds])

25 ⁹ See, SSB5060 Section (2) lines 13-17 3/4/05, Bowler Decl., Exhibit 6. Additionally, infractions generated by the
26 use of automated traffic safety cameras under this section shall be processed in the same manner as parking
infractions, including for the purposes of RCW 3.46.120, 3.50.100, 35.20.220, 46.16.216, and 17 46.20.270(3).

1 were in force in some cities, and were split with the state, would become \$20 traffic camera
2 fines retained by the cities.¹⁰

3 Once again, a change to avoid one problem created another. This change effectively
4 permitted the cities to retain all of the income from the traffic cameras.¹¹ While the cities and
5 camera companies were hardly opposed to this result, the Senate was. It was concerned that the
6 cities' use of the cameras should not result in a revenue-generating "windfall" for the cities.
7

8 **2. The Limitation on the Amount of the Fine to a Parking Ticket Fine**

9 Permitting the cities to keep all the revenue from fines raised the issue, as Senator
10 Haugen said, that "the cities would use the cameras as cash-cows." Therefore, after the
11 Substitute Bill (SSB5060) had been presented, the Senate added an amendment to the Bill to
12 emphasize that traffic cameras were to be used for safety, not generating added revenue.
13

14 To allay the concern that the cameras would be mis-used as revenue sources, Senator
15 Haugen proposed an amendment to **limit the fine to no more than about \$20** -- what a city
16 would charge for an ordinary parking ticket. *See*, Legislative History, Sen. Haugen, Senate Floor,
17 2nd reading, SSB 5060, 59th Leg., Reg. Sess. (Wash) Mar. 14, 2005, (Bowler Decl., Exhibit
18 9")(emphasis added):
19

20 ¹⁰ *See*, P-SSB 5060 Judicial Impact Fiscal Note, Revised 2/24/05, Part II-B (also SSB Final Note, 3/14/05),
21 Bowler Decl., Exhibits 7 and 8 (Currently the traffic infraction penalty for stoplight and railroad crossing
22 violations is \$101. The penalty for school speed zone violations is \$177. Court rule provides that the
23 penalty for parking infractions is \$20 unless otherwise set by city or county ordinance.

24 From the current \$101 [red light] traffic infraction penalty, local government retains \$42.55, [\$58.45 goes
25 to three state funds]. As parking infractions, the local government would retain the entire \$20 penalty.
26 From the \$177 school speed zone penalty, local government retains \$31.18, [\$145.82 goes to four state
27 funds]. As parking infractions, the local government would retain the entire \$20 penalty.

¹¹ While a "parking ticket" fine would be about what the cities would have retained in a traffic infraction city/state
split, the greatly increased volume of tickets issued by the cameras would more than make up for the difference. *See*
SB5060 Local Government Fiscal Note, 1/18/2005, p.2, Part IV B, Bowler Decl., Exhibit 3: "A report by the City of
Lakewood.... 88% more citations issued by ATSC [automated traffic safety cameras]."

1 Well, I know that some people would perceive that a local government will use
2 this as a cash cow. That is not our intention at all. Our intention is to try to
3 change people's behavior. Now believe me, this is the worst accident you could
4 possibly be in – is to be broadsided in a, in a, [sic] umm -- somebody running a
5 red light. And so what this amendment does is it restricts them – that they cannot
6 have a fine higher than their parking violations. Which is about -- the State
7 recommends \$20, is what the State recommends.¹² The idea is to change behavior
8 -- not to collect a lot of money.

6 Senator Haugen's amendment added this clause to the Bill:

7 However, the amount of the fine issued for an infraction generated through the
8 use of an automated traffic safety camera shall not exceed the amount of a fine
9 issued for other parking infractions within the jurisdiction.¹³

10 With this amendment approved, the Senate passed the Bill, sending SSB5060 to the
11 House of Representatives.

12 The cities were monitoring the Bill's progress and were aware that the Senate's
13 restriction that a camera citation fine "shall not exceed the amount of a fine issued for
14 other parking infractions within the jurisdiction," meant that the ticket could not be more
15 than an ordinary parking ticket. Thus, after passage in the Senate, the cities sought to
16 have the House remove the restriction. In a public hearing before the House
17 Transportation Committee, the city of Lakewood expressly noted that the restriction
18 would eliminate the current \$101 fine:
19

20 There are costly payments to the vendor which runs this program for us
21 This legislation that is before you actually treats these tickets like parking
22 infractions so that local jurisdictions can keep more of the money so we can offset
23 those high costs of this kind of enforcement There is one concern that has
24 come up with Bill that is before you. It takes the fine for these kinds of tickets
25 back to parking ticket levels. The current fine for red light running red light is

24 ¹² RCW 4.63.110(3): "The supreme court shall prescribe by rule a schedule of monetary penalties for designated
25 traffic infractions. . . ." The resulting court rule is IRLJ 6.2 Monetary Penalty Schedule: Any other parking
26 infraction (not defined by city or county ordinance): \$20."

¹³ See, S Amd 304, SSB5060, 59th Leg., Reg. Sess. (Wash) Adopted 3/14/05, attached as Bowler Decl., Exhibit 10.

1 \$101. . . . A parking ticket doesn't have the same kind of impact. . . . (Question:
2 That change was made in the Senate?) It was.¹⁴

3 The House, mirroring the Senate's concern that the cities not use these cameras as
4 a revenue source, declined to change the Bill and passed ESSB5060¹⁵ as written.

5 Codified as RCW 46.63.170 (hereinafter the "camera statute") it became effective July
6 24, 2005. The cities violated it from the start.

7 The "camera statute" permitted a city to use cameras, as long as it first passed an
8 ordinance which preserved the "protections and restrictions" the Legislature crafted.

9 (RCW 46.63.170(1)(a))¹⁶ One of the first cities to pass such an ordinance was Seattle.
10 Seattle ignored the state-mandated "city parking fine limitation" and set the fine at \$101,
11 (raised to \$124 in 2007).¹⁷ Because drafting an ordinance from scratch can be time
12 consuming and costly, most cities used earlier cities' ordinances as templates for their
13 own. Thus a revenue-grab by early cities spread to others.

14 One of the "protections and restrictions" that the Legislature had intended in
15 permitting cities to pass an ordinance implementing the use of traffic cameras was that
16 the municipality would limit the fine imposed to that of other city parking fines. (RCW
17 46.63.170(2)). But the cities had an over-powering motivation to set the fine as high as
18

19 ¹⁴ See, Legislative history, statement of Candace Bach, Lakewood Assistant City Manager, Bowler Decl.,
20 Exhibit 11, (House Transportation Committee, Mar. 29, 2005 Public Hearing on SSB 5060, 59th Leg. Reg.
Sess. (Wash. 2005) (emphasis added).)

21 ¹⁵ Bowler Decl., Exhibit 12.

22 ¹⁶ Cities with cameras already in use, like Lakewood, did not need to pass an ordinance, but were subject to the
statute. RCW 43.64.170(1)(a)

23 ¹⁷ Seattle Ordinance Number: 121944, passed Sept. 26, 2005, amending SMC 11.31.020, et.sec. Section 4. A new
24 subsection C is added to Section 11.31.120 of the Seattle Municipal Code as follows: 11.31.120 Monetary penalties.
25 C. A traffic infraction for violation of Section 11.50.140 detected through the use of an automated traffic safety
camera shall be processed in the same manner as a parking infraction, with a base monetary penalty of \$101. (In
26 2007, fine amount was effectively raised to \$124, See SMC 11.31.120©, Bowler Decl. Exhibit 13.

1 possible because the cities were now entitled to keep the entire fine. Thus, even though
2 the Legislature had specifically crafted a “trade-off” of permitting municipalities to keep
3 all of the revenue while limiting the amount of the fine to an ordinary parking ticket, the
4 cities sought to evade the Legislature’s intent by keeping the fine imposed as high as the
5 amount of the fine was for a “moving violation” at a red light signal at two intersecting
6 arterials.

7 To justify their violation of the Legislature’s intent, the cities pointed to two
8 special state parking laws that permitted the charging of much higher fines than a city’s
9 own parking tickets. The cities sought to use these state required parking ticket fines as a
10 “loophole” and proceeded to drive a truck through this “loophole” – an armored truck,
11 full of money.

12 Defendants assess a fine of \$124 for a red-light violation, including “rolling
13 rights” -- simply turning right on a red light without first coming to a complete stop
14 before the white line. They charge even more, up to \$250, for even slightly exceeding the
15 20mph speed limit in a school zone. (ATS Motion to Dismiss, p.2:23) The cameras issue
16 tickets all day, even when no children are present.¹⁸ “Coincidentally,” these camera
17 citation fines – despite the restriction to a parking fine by the statute -- are the same as if
18 the driver had been ticketed in person for a traffic (moving) violation of a red light or
19 school zone.
20

21 Without fail, Defendants repeatedly cite two \$250 “parking fines” as justification
22 for the fines assessed. (Redflex Motion to Dismiss, p.15:18-21; ATS Motion to Dismiss,
23 p.12-21:-13:2). Redflex incorrectly describes these laws as “permitting” cities to impose
24 \$250 fines for disabled parking violations. (*Redflex Motion to Dismiss, 15:18*) They
25

26 ¹⁸ RCW 46.61.440,

1 are actually state-mandated fines: RCW 46.16.381(7)-(9) imposes a \$250 fine for
2 violations of state disabled parking zone laws. RCW 46.55.105(2), commonly called the
3 “junk vehicle” law, also imposes a \$250 fine for leaving an abandoned vehicle parked on
4 the streets.¹⁹

5
6 In relying on these specific state laws, Defendants ignore the fact that RCW 46.63.170(2)
7 refers to *city* fines, not state fines, as the limiting factor: “However, the amount of the fine
8 issued for [a camera citation] shall not exceed the amount of a fine issued for other parking
9 infractions within the jurisdiction. (emphasis added). The phrase “within the jurisdiction,”
10 meaning within the city issuing the infraction, was there for a reason.

11 It is long established that the Legislature, in crafting a new law, does so carefully.
12 “Statutes must be construed to give all language effect with no portion rendered meaningless or
13 superfluous. *Whatcom County vs. City of Bellingham*, 128 Wash.2d 537, 546, 909 P.2d 1303
14 (1996); *Faben Point Neighbors v. City of Mercer Island*, 102 Wash.App., 775, 780, P.3d 322
15 (Division I, 2000). By limiting the amount of fines to each city’s parking fines, the Legislature
16 was carrying out the intent present throughout the statute – that this new form of violation was to
17 be, in all ways, considered a parking ticket, not a traffic violation.

18
19 In limiting the fines to each respective city, the Legislature also recognized that the size
20 of a city’s fines echoes the size of the city. In Seattle, for example, a violation of “angle
21 parking” rule is a \$ 38.00 fine, per SMC 11.70.020. In Fife, FMC 10.24.110 assesses the same
22 violation at \$20.00. Reasonably anticipating that most citations would be issued to residents of
23 the issuing city, the Legislature sought to protect small-town residents from being hit with big-

24
25
26 ¹⁹ RCW 46.63.110(2) states: “The monetary penalty for a violation of (a) RCW 46.55.105(2) is two hundred fifty dollars for each offense”

1 town fines. The restriction that a camera citation could not exceed “other parking infractions” in
2 their city would offer that protection.

3 The disabled parking and junk vehicle state laws Defendants rely on are “parking”
4 violations only in the abstract. In both statutes, the state addresses other public policy and safety
5 concerns, and also directs the use of the \$250 fine -- ten times a normal parking fine.
6

7 Special laws protecting disabled citizens run throughout Washington’s Code, providing
8 teachers, banning discrimination, ensuring building and restroom access– and parking access.
9 While public policy dictated setting an unusually high, \$250 fine, for parking law violations, the
10 Legislature restricted what a city collecting such a fine can do with the windfall: Fines for
11 blocking access or parking without a disabled permit “shall be used by that local jurisdiction
12 exclusively for law enforcement.” RCW 46.16.381 (10) The statute also provides that a city can
13 assess additional fees if removal of the vehicle was required.²⁰
14

15 Similarly, the “junk vehicle” statute also had a reason, beyond public policy and safety,
16 for setting the unusually high \$250 “parking” fine – the fine acts as a removal fee for the junk
17 vehicle. RCW 46.55.105 provides that a city may also try to collect “...any amount over the
18 \$250 fine that removal may have cost.”²¹
19
20

21 ²⁰ RCW 46.16.381(10) The penalties imposed under subsections (8) and (9) of this section shall be used by that local
22 jurisdiction exclusively for law enforcement. The court may also impose an additional penalty sufficient to
23 reimburse the local jurisdiction for any costs it may have incurred in removal and storage of the improperly parked
24 vehicle.

25 ²¹ RCW 46.55.105(2) If an unauthorized vehicle is found abandoned under subsection (1) of this section and
26 removed at the direction of law enforcement, the last registered owner of record is guilty of the traffic infraction of
"littering -- abandoned vehicle," unless the vehicle is redeemed as provided in RCW 46.55.120. In addition to any
other monetary penalty payable under chapter 46.63 RCW, the court shall not consider all monetary penalties as
having been paid until the court is satisfied that the person found to have committed the infraction has made
restitution in the amount of the deficiency remaining after disposal of the vehicle under RCW 46.55.140.

1 The municipalities have set their fines above the normal parking ticket in violation of the
2 clear Legislative intent conveyed in the statute and the Legislative history of the act.²² The fines
3 should have been set at the level of a normal parking ticket of around \$20, as the Legislature
4 expressly contemplated and intended when passing the legislation.

5 **B. FACTS PERTAINING TO DUE PROCESS**

6 Plaintiffs have alleged that the Defendant Cities have abused an expressly limited
7 authority granted them by the Washington State Legislature to issue tickets through use of a
8 traffic camera. Tickets issued to a vehicle's registered owner are issued in two scenarios: (1)
9 when the vehicle allegedly violates a red light traffic signal at a controlled intersection; or (2)
10 when the vehicle allegedly violates the speed limitations posted in a school "speed zone" by use
11 of a traffic camera and mounted radar equipment.²³ Without any evidence that the vehicle's
12 owner was the driver who violated the law or was even the actual owner of the vehicle at the
13 time of the alleged violation, the cities are permitted a limited prima facie presumption that the
14 registered owner was in control of the vehicle at the time of the alleged violation. See RCW
15 46.63.075(1). However, the registered owner can overcome this presumption by submitting a
16 simple declaration which provides under oath that the vehicle was, at the time of the alleged
17 violation, in the care, custody, or control of another person; or the vehicle had been stolen.
18 (RCW 46.63.075(2))

21 Despite this specific provision, numerous Defendant Cities (with the aid and assistance of
22 Defendant Companies) have provided registered owners with false and misleading forms (See,
23 e.g. Bremerton Notice of Infraction, attached as Exhibit D to Redflex's Motion to Dismiss on the
24

25 ²² See, FAC at ¶'s 3.2; 3.10-3.14 and 3.22.

26 ²³ Actually traffic cameras can also be used for violations occurring at railroad crossings as well.

1 Pleadings – filed as Document 49-3). This inherently confusing form demands that a registered
2 owner sign the declaration of Non-responsibility ONLY if their vehicle was stolen or sold prior
3 to the alleged violation. This is of course not an accurate statement of the law, and deprives a
4 registered owner of meaningful and appropriate due process. The Administrative Office of the
5 Courts (AOC) saw this confusing provision and demanded that the form be changed.
6 Declaration of Andy Robertson, “Robertson Decl.,” Exhibit 1. (AOC email to Bremerton
7 representative dated June 25, 2008 along with the form submitted for approval). AOC indicates
8 approval of the form IF the offending provision is altered. While the caption is indeed changed,
9 the provision remains essentially unchanged. If a registered owner loans their vehicle to a family
10 member at the time an alleged violation takes place in Bremerton, they are deprived of an
11 accurate and meaningful opportunity to be advised of the law, their options, the process, and the
12 means by which they may properly indicate non-responsibility. To read the Bremerton form
13 completely, it appears that a registered owner must make a request to contest the ticket entirely
14 in order to appear personally in court and attempt to provide an explanation, which is a clear
15 violation of the means described in RCW 46.63.075(2). This is but one example of many which
16 will be more fully elaborated and explored as this case progresses through the discovery process,
17 all showing a fundamentally unfair practice of citing individuals for camera infractions.
18
19
20

21 In addition to this provision to protect a registered owner from false allegations, the cities
22 are required to abide by other restrictions on their power to issue “safety camera” tickets.
23 Specifically, the tickets must be issued in a form approved by the Administrative Office of the
24 Courts (See Opposition to City of Renton Motion for Judgment on the Pleadings), to minimize
25 complication, confusion, and unjust results. This is required by both IRLJ 2.2 and RCW
26

1 46.63.060(2). The requirement that AOC monitor and approve the form of infraction notice
2 builds in an element of fairness and oversight, as well as a protection of the rights of the
3 registered owner. This in turn gives the owners due process and an opportunity to read,
4 understand, and be heard regarding the alleged violations. In fact, the Infraction Rules of
5 Limited Jurisdiction were designed for exactly this purpose.²⁴
6

7 Despite this restriction on their power, a number of the Defendant Cities failed to obtain
8 such approval or they issued Notices of Infraction that were in fact expressly rejected by the
9 AOC. As such, they have denied and will continue to deny express due process protections
10 established to protect the rights of citizens like the plaintiffs.

11 Among other restrictions imposed by the Legislature, the Defendant Cities are limited to
12 imposing a penalty to no more than the amount of a standard parking ticket, as argued *infra*.
13 Despite this express legislative restriction on their power, the cities set the fine for these
14 infractions at the exact same amount as the fine imposed in an infraction issued to a driver by a
15 police officer who personally observed the driver running a red light (and who is identified at the
16 scene as the actual driver of the vehicle who violated the law).
17

18 Plaintiffs further allege a due process violation because the City of Seattle is operating a
19 “red light” camera at a three arterial intersection (namely, the “five corners” in violation of RCW
20 46.63.170(1)(b), which states, “Use of automated traffic safety cameras is restricted to two-
21 arterial intersections, railroad crossings, and school speed zones only.” (emphasis added).
22

23
24
25 ²⁴ IRLJ 1.1(b) states: “ Purpose: These rules shall be construed to secure the just, speedy, and
26 inexpensive determination of every infraction case.”

1 **III. LEGAL ARGUMENT**

2 **A. DEFENDANTS MISCONSTRUE THE STATUTE LIMITING CAMERA**
3 **CITATIONS TO PARKING TICKET FINES**

4 When a state sets a limit on traffic camera fines, a city cannot impose a greater fine "...
5 [A] city may not impose a greater punishment than a statute imposes for acts that both the statute
6 and an ordinance prohibit; it may, however, impose lesser punishments." *City of Bellingham vs.*
7 *Schampera*, 57 Wash.2d 106, 116, 356 P.2d 292, (1960); *State of Oregon vs. Tyler* 168 Or. App.
8 600, 604, 7 P.3d 624 (2002). The cities apparently construe the statute to permit them to charge
9 the same for a camera citation, as for a moving traffic infraction, because two state "parking"
10 fines of \$250 exist. However, careful review of the entire statute demonstrates that the law was
11 intended to limit the fine a city charges for its camera citations to no more than other parking
12 fines within that city's control, which would be near the \$20 that the Legislature intended.

13
14 With conflicting interpretation by the parties, the court should construe the Legislative
15 intent and the meaning of the statute. An analysis of the true purpose of a statute is required for
16 proper statutory construction. A court's objective in construing a statute is to determine the
17 legislature's intent. (*Tingley v. Haisch*, 159 Wash.2d 652, 657; 152 P.3d 1020 (2007)).

18
19 1. No Part of a Statute May Be Ignored.

20 The phrase "within the jurisdiction" is part of the statute for a reason. "Statutes must be
21 construed to give all language effect with no portion rendered meaningless or superfluous."
22 *Whatcom County vs. City of Bellingham*, 128 Wash.2d 537, 546, 909 P.2d 1303 (1996); *Faben*
23 *Point Neighbors v. City of Mercer Island*, 102 Wash.App., 775, 780, P.3d 322 (Division I, 2000).
24 Neither party can ignore that part of the statute which restricts the cities camera fines that are no
25 higher than other parking fines "within the jurisdiction."
26

1 The Defendants’ argument that the \$250 *state* fines should be included as the maximum
2 amount would render the phrase “within the jurisdiction” meaningless. If their interpretation is
3 correct, the last sentence of RCW 46.63.170(2) should read simply: “However, the amount of
4 the fine issued for an infraction generated through the use of an automated traffic safety camera
5 shall not exceed the amount of a fine issued for other parking infractions.”
6

7 That is not how the statute reads, and not what the Legislature intended; the Defendants
8 cannot ignore part of the statute. The term “jurisdiction” is there for the express purpose of
9 limiting the fines to that of ordinary parking fines assessed by the cities. Defendants wrongly
10 ignore this clause, specifically added by an amendment, as superfluous.

11 The term “jurisdiction” is a broad one, and its use permeates the law. Despite this, the
12 basic legal definition is the same as the common one: “control” or “authority.” (“Government’s
13 general power to exercise authority” *Black’s Law Dictionary, 8th Ed., 2004*; “Power,
14 authority, control,” Webster’s *Encyclopedia Unabridged Dictionary, 1989*). Applying either the
15 legal or common definition, the limitation on fines to “other parking infractions within the
16 jurisdiction” means other parking infractions which are “within the control” of the city. The
17 fines of \$250 for disabled parking and junk vehicle violations, set by the state, are **not** within the
18 cities’ control, and do not qualify as the maximum fine a city may charge for camera citations.
19
20

21 The statute’s limitation to a city’s other parking fines made sense from a practical
22 standpoint. By restricting the fine to the amount of other parking fines *within the jurisdiction* of
23 a city, the Legislature recognized that the size of a city’s fines echoes the size of the city.
24 Reasonably anticipating that most citations would be to residents of the issuing city, the
25 Legislature sought to protect small-town residents from being hit with big-town fines. . . .”
26

1 “[Cities] cannot have a fine higher than their parking violations. . . .” (Sen. Haugen, 3/14/05
2 Senate floor speech, *supra*, (*emphasis added*).

3 2. Where a Statute is Ambiguous, it Must be Construed to Conform with the Intent of the
4 Legislature.

5 Defendants do not explain how they harmonize the statute’s limit to city parking fines
6 with their use of a state fine and so have not presented a reasonable interpretation of the statute.²⁵
7 However, if the court does find that both parties’ construction to be reasonable, then the statute is
8 ambiguous. *Estate of Haselwood v. Bremerton Ice Arena*, 166 Wash.2d 489, 498, 210 P.3d 308
9 (2009).

10 An ambiguous statute is construed by an examination of the Legislative history and
11 application of the Legislative intent. *City of Washington vs. State of Washington and its Dept. of*
12 *Labor and Industries*, 136 Wash.2d 693, 707, 965 P.2d 619 (1998); *Whatcom County vs. City of*
13 *Bellingham*, *supra* at 546. The Legislative history of this statute, both implicitly and explicitly,
14 portrays an intent to limit camera citation fines to no more than a city’s other ordinary parking
15 tickets -- about \$20, according to the sponsoring Senator. Sen. Haugen, Senate Floor, 2nd
16 reading, SSB 5060, 59th Leg., Reg. Sess. Wash.(2005), *supra*.

17 There is no doubt that the defendant cities have abused the privilege bestowed upon them
18 by the legislature to use traffic cameras to enhance safety. Instead, the cities clearly have
19 ignored the intent of the Legislature in order to raise revenue with the cameras. As recently
20 stated by Senator Kastama,
21
22
23

24
25 ²⁵ Possibly a misinterpretation by Seattle while passing its camera ordinance explains the problem: “Infractions
26 generated through the used [sic] of these cameras . . . will be treated as parking infractions with a monetary
penalty no higher than “a fine issued for other parking infractions by the jurisdiction.” (quotes in original,
emphasis added). Seattle Fiscal Note, Ordinance 121944, Sept. 26, 2005, Bowler Decl. Exhibit 15.

1 For a number of years, the Bill that would in fact allow the city of
2 Seattle to utilize these cameras has come before us, and I don't
3 believe it has passed out of Committee yet, and if it has, it has not
4 passed off the Senate Floor. Also I've learned that this bill when it
5 says, the underlying Bill, when it says pilot project this means that
6 there could be five cities, hypothetically that could have an
7 unlimited number of cameras in them. So I thought that since this
8 is a pilot project, we should limit it to one city, and in that city only
9 limit it to three.

10 I guess the rationale behind this Amendment kind of has to
11 do with the fact that we started with stoplight cameras, we then
12 went to school zones, rail crossings and construction zones. And I
13 think we are to the point now where we have so many, or
14 potentially so many of these that a person can inadvertently very
15 easily get one of these tickets, and I think that this is kind of
16 stepping over the line that many of us agreed to, at least when this
17 bill came out initially, that we would limit it to only those extreme
18 situations where in fact there was a dire public safety issue.

19 I will say that I'm also tainted by the fact that I see a lot of
20 private companies come forward and they use "public safety" and
21 that's what they argue with us that this is "all about public safety."
22 And yet I have a friend of mine whose daughter worked for one of
23 these companies and the amount of revenue they would make on a
24 daily basis was just, in my opinion—it was in the tens of thousands
25 of dollars. And so I think that the public would be upset to see
26 kind of an ubiquitous use of these in Washington state, so,
therefore, let's go slow.²⁶

B. DEFENDANTS HAVE VIOLATED THE DUE PROCESS RIGHTS OF PLAINTIFFS

"It is a purpose of the ancient institution of property to protect those claims upon which people rely in their daily lives, reliance that must not be arbitrarily undermined." Bd. of Regents v. Roth, 408 U.S. 564, 577 (U.S. 1972)." (emphasis supplied).

Procedural due process imposes constraints on governmental decisions which deprive

²⁶ Senate Committee on Transportation 61st Leg Reg. sess., (Wash), Executive Session, March 20, 2009, on SSB 5352, Senator Kastama testimony. [Start time 01:21:46; End time 01:23:30], media/mediaplayer.cfm?evid=2009031231&TYPE=V&CFID=2124321&CFTOKEN=72805301&bhcp=1.

1 individuals of "property" interests within the meaning of the Due Process Clause of the Fifth or
2 Fourteenth Amendment. State law defines what is and is not property for the purposes of
3 determining the applicability of the Due Process Clause. *See, Board of Regents v. Roth*, 408 U.S.
4 564, 577, 92 S.Ct. 2701, 2709, 33 L.Ed.2d 548 (1972).

5 To determine if process provided to a citizen is adequate, a court must weigh:

- 6 (1) the private interest affected by the official action,
7
8 (2) the risk of an erroneous deprivation of that interest through the procedures used,
9
10 (3) the probable value of additional procedural safeguards, and
11
12 (4) the government interest involved.

13 *Mansour v. King County*, 131 Wn. App. 255, 264 (2006). Here, the interest is a citizen's
14 property rights in his/her hard-earned money. To deprive a citizen of this clear property interest
15 in Washington requires minimum constitutional requirements with sufficient safeguards in a
16 state action. *Mansour*, 131 Wn.App at 264; *see also Redmond v. Moore*, 151 Wn.2d 664, 91
17 P.3d 875 (2004).

18 The Defendant Companies and Cities insist that because a citizen is provided a forum to
19 contest a ticket, that should be enough. They further insist that a "purely civil proceeding" does
20 not require the protections of due process that a criminal proceeding would require. (See Redflex
21 Motion to Dismiss, page 17: "this statutory scheme involves a purely civil proceeding and
22 therefore does not violate due process;" and ATS Motion to Dismiss, page 21, which erroneously
23 analyzes the issue under "substantive due process" protections). The Defendants are mistaken.
24 First, they err in taking the position that the statutory scheme does not violate due process, as the
25 Plaintiffs have demonstrated that the Companies and Cities failed to abide by numerous aspects
26 of the "Safety Camera" statute. Thus, the "scheme's" protections cannot be accepted as a

1 defense to their actions. Second, they err in dismissing this claim as irrelevant in a non-criminal
2 context. Not only is there an absolute guarantee of due process protections to a citizen being
3 deprived of property interest, but courts have explicitly analyzed due process provided in *the*
4 *form of notice* by which an individual is apprised of the government's planned act of depriving
5 the citizen of its property:
6

7 "An elementary and fundamental requirement of due process in any proceeding which is
8 to be accorded finality is notice reasonably calculated, under all the circumstances, to
9 apprise interested parties of the pendency of the action and afford them an opportunity to
10 present their objections." *City of Redmond v. Arroyo-Murillo*, 149 Wn.2d 607, 617, 70
11 P.3d 947 (2003) (quoting *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306,
12 314, 70 S. Ct. 652, 94 L. Ed. 865 (1950).

13 *Mansour v. King County*, 131 Wn. App. 255, 271 (2006) (deprivation of dog owner's property
14 interest in the life/location of his dog).

15 Even more relevant is Washington's analysis of due process protections afforded in the
16 notice provided to a citizen accused of a traffic infraction. Washington has seen fit to dismiss an
17 infraction based upon a due process violation when the procedural protections of the Infraction
18 Rules of Limited Jurisdiction were not complied with. In *Seattle v. Kohles*, Division One of the
19 Court of Appeals found a fundamental unfairness contrary to due process in the City's failure to
20 provide procedural protections afforded by the IRLJ's, particularly regarding notice and time
21 limits:
22

23 This failure to notify Kohles of both the right to a speedy hearing
24 and the procedure he must follow to preserve it also violates the
25 principle of fundamental fairness embodied in the constitutional
26 due process guarantee. Under the circumstances presented here, it
27 is fundamentally unfair to include a time limitation in a local rule
28 but to fail to include notice of that limit in the correspondence sent
29 to the party subject to that limitation. This is particularly true when
30 that correspondence outlines in detail every other aspect of the
31 governing rules procedures. Given the extent of the information
32 contained in the notice, it is reasonable for a party to assume that
33 all of the information pertaining to the hearing, including the right
34 to object to the hearing date, is included in the notice and that he or

1 I, Leslie A. Listy, hereby certify that on November 9, 2009, I electronically filed the
2 foregoing document with the Clerk of the Court using the CM/ECF system which will send
3 notification of such filing to all attorneys of record.
4

5 s/Leslie A. Listy
6 Leslie A. Listy, legal assistant
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