

A06-568

STATE OF MINNESOTA
IN COURT OF APPEALS

STATE OF MINNESOTA,

Appellant,

vs.

DANIEL ALAN KUHLMAN,

Respondent.

RESPONDENT'S BRIEF AND APPENDIX

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TABLE OF CONTENTS

	<u>Page No.</u>
TABLE OF AUTHORITIES	ii
STATEMENT OF LEGAL ISSUES	1
ARGUMENT	3
I. MINNESOTA STATUTES SECTIONS 169.06, SUBDIVISION 4(a), AND 169.022 PREEMPT MUNICIPALITIES FROM ENACTING ORDINANCES THAT SHIFT LIABILITY FOR RED LIGHT VIOLATIONS FROM DRIVERS TO VEHICLE OWNERS.	3
II. MUNICIPAL ORDINANCES THAT SHIFT LIABILITY FOR RED LIGHT VIOLATIONS FROM DRIVERS TO VEHICLE OWNERS ARE INVALID BECAUSE THEY CONFLICT WITH STATE LAW.	15
III. MINNEAPOLIS ORDINANCE SECTIONS 474.640 AND 474.660 ARE NOT SEVERABLE BECAUSE IT IS APPARENT THAT THE MINNEAPOLIS CITY COUNCIL WOULD NOT HAVE IMPOSED LIABILITY FOR RED LIGHT VIOLATIONS ON VEHICLE OWNERS WITHOUT CREATING AN INNOCENT OWNER DEFENSE.	23
IV. THE MINNEAPOLIS AUTOMATED TRAFFIC LAW ENFORCEMENT SYSTEM ORDINANCES ARE UNCONSTITUTIONAL BECAUSE THEY VIOLATE THE DUE PROCESS RIGHTS OF VEHICLE OWNERS. ...	28
A. Substantive Due Process	28
B. Procedural Due Process	31
C. The Criminal Nature of Minneapolis’ Automated Traffic Law Enforcement System Ordinances	34
D. Automated Traffic Law Enforcement System Case Law	38
CONCLUSION	44
APPENDIX	45

TABLE OF AUTHORITIES

Page No.

Minnesota Cases

<u>Bochert v. Village of North Oaks</u> , 264 Minn. 32, 117 N.W.2d 396 (1962)	15
<u>Brandt v. Hallwood Management Co.</u> , 560 N.W.2d 396 (Minn. App. 1997)	11
<u>City of St. Paul v. Lofthouse</u> , 275 Minn. 312, 146 N.W.2d 858 (1966)	14
<u>City of St. Paul v. Olson</u> , 300 Minn. 455, 220 N.W.2d 484 (1974)	16, 18, 20
<u>Duffy v. Martin</u> , 265 Minn. 248, 121 N.W.2d 343 (1963)	16, 18-19
<u>In re Linehan</u> , 594 N.W.2d 867 (Minn. 1999)	28
<u>Mangold Midwest Co. v. Village of Richfield</u> , 274 Minn. 347, 143 N.W.2d 813 (1966)	7-10, 15-16, 18
<u>Nelson v. Commissioner of Employment</u> , 698 N.W.2d 443 (Minn. App. 2005)	11
<u>State ex rel. Grozbach v. Common School Dist. No. 65</u> , 237 Minn. 150, 54 N.W.2d 130 (1952)	23
<u>State ex rel. Sheahan v. Mullaly</u> , 257 Minn. 27, 99 N.W.2d 892 (1959)	5-6, 9-10
<u>State v. Auchampach</u> , 540 N.W.2d 808 (Minn. 1995)	33
<u>State v. Gladden</u> , 274 Minn. 533, 144 N.W.2d 779 (1966)	6-7, 10
<u>State v. Guminga</u> , 395 N.W.2d 344 (Minn. 1986)	29
<u>State v. Hage</u> , 595 N.W.2d 200 (Minn. 1999)	33
<u>State v. Haney</u> , 600 N.W.2d 469 (Minn. App. 1999)	35
<u>State v. Herbert</u> , 601 N.W.2d 210 (Minn. App. 1999)	25
<u>State v. Hoben</u> , 256 Minn. 436, 98 N.W.2d 813 (1959)	4-6, 9-10, 15
<u>State v. Host</u> , 350 N.W.2d 479 (Minn. App. 1984)	36
<u>State v. Kremer</u> , 262 Minn. 190, 114 N.W.2d 88 (1962)	30
<u>State v. LaForge</u> , 347 N.W.2d 247 (Minn. 1984)	33
<u>State v. Paulick</u> , 277 Minn. 140, 145, 151 N.W.2d 591 (1967)	6, 10
<u>State v. Stallman</u> , 519 N.W. 2d 903, 906 (Minn. App. 1994)	17
<u>State v. Wohlsol, Inc.</u> , 670 N.W.2d 292 (Minn. App. 2003)	29

Federal Cases

<u>Cellco Partnership v. Hatch</u> , 431 F.3d 1077 (8 th Cir. 2005)	24
<u>In re Winship</u> , 397 U.S. 358 (1970)	31-32
<u>Morisette v. United States</u> , 342 U.S. 246 (1952)	32
<u>Mullaney v. Wilbur</u> , 421 U.S. 684 (1975)	33
<u>Nightclub Management, Ltd. v. City of Canon Falls</u> , 95 F. Supp.2d 1027 (D. Minn. 2000)	23
<u>Sandstrom v. Montana</u> , 442 U.S. 510 (1979)	33
<u>Shavitz v. City of High Point</u> , 270 F. Supp.2d 702 (M.D.N.C. 2003)	14, 42
<u>Spokane Arcades, Inc. v. Brockett</u> , 631 F.2d 135 (9 th Cir. 1980)	27
<u>United States v. United States Gypsum Co.</u> , 438 U.S. 422 (1978)	33

Other State Cases

Agomo v. Williams, 2003 WL 21949593 (D.C. Super. 2003)(unpublished) 40-41
Barlow v. Davis, 72 Cal. App.4th 1258, 85 Cal. Rptr.2d 752 (Cal. App. 1999) 27
City of Seattle v. Stone, 410 P.2d 583 (Wash. 1966) 29
City of Wilmington v. Minella, 879 A.2d 656 (Del. Super. 2005) 40-41
State v. Dahl, 57 P.3d 965 (Ore. App. 2002) 38-39
State v. Dahl, 87 P.3d 650 (Ore. 2004) 39

Minnesota Statutes

Minn. Stat. § 169.01 16, 18
Minn. Stat. § 169.01, subd. 25 3, 18, 20
Minn. Stat. § 169.01, subd. 26 18
Minn. Stat. § 169.01, subd. 27 21
Minn. Stat. § 169.01, subd. 42 21
Minn. Stat. § 169.022 3-5, 7, 10, 15, 22
Minn. Stat. § 169.03 4
Minn. Stat. § 169.04 16, 21-22
Minn. Stat. § 169.04(a) 21
Minn. Stat. § 169.04(a)(2) 21
Minn. Stat. § 169.06 13, 20
Minn. Stat. § 169.06, subd. 4 13
Minn. Stat. § 169.06, subd. 4(a) 3, 16-18
Minn. Stat. § 169.06, subd. 5 13
Minn. Stat. § 169.06, subd. 5(a) 3, 16
Minn. Stat. § 169.06, subd. 5(a)(3)(i) 3, 17
Minn. Stat. § 169.062 13
Minn. Stat. § 169.20, subd. 5 10
Minn. Stat. § 169.20, subd. 5b(a) 10
Minn. Stat. § 169.20, subd. 5b(b) 12
Minn. Stat. § 169.20, subd. 5b(e) 12
Minn. Stat. § 169.444, subd. 1 11
Minn. Stat. § 169.444, subd. 6(a) 11, 31
Minn. Stat. § 169.444, subd. 6(b) 12, 31
Minn. Stat. § 169.444, subd. 6(e) 12, 31
Minn. Stat. § 169.89, subd. 1 3, 17
Minn. Stat. § 169.89, subd. 1(2) 36
Minn. Stat. § 169.89, subd. 2 35
Minn. Stat. § 169.89, subd. 5 37
Minn. Stat. § 169.95(b) 37
Minn. Stat. § 171.16, subd. 3 37
Minn. Stat. § 171.18, subd. 14 37

Minn. Stat. § 609.02, subd. 1 35

Minn. Stat. § 609.02, subd. 4a	35
Minn. Stat. § 645.20	23-24

Other State Statutes

Cal. Vehicle Code § 21455.5	12
Col. Stat. § 42-4-110.5	12
D.C. Stat. § 50-2209.01.	12
D.C. Stat. § 50-2209.02(a)	13
21 Del. C. § 4101(d)(2)	13
Ga.. Code § 40-14-20	12
Md. Code, Transportation § 21-202.1	12
N.C. Gen. Stat. § 160A-300.1	12
N.C. Gen. Stat. § 160A-300.1(c)(1).	13

Constitutional Provisions

Minn. Const. Art. I, § 7	28, 34
U.S. Const. Amend XIV	28, 34

Other Authorities

Minn. R. Crim. P. 1.01	35
Minn. R. Crim. P. 23.05, subd. 1	35
Minn. R. Crim. P. 23.05, subd. 2	35
Minn. R. Crim. P. 23.05, subd. 3	35
Minn. R. Crim. P. 23 Comment	37
Wayne R. LaFave & Austin W. Scott, Jr., <i>Substantive Criminal Law</i> § 3.2(f)(1986) . . .	28

LEGAL ISSUES

I. Whether Minnesota Statutes Sections 169.06, subdivision 4(a), and 169.022 preempt municipalities from enacting ordinances that shift liability for red light violations from drivers to vehicle owners.

The trial court held that the Minneapolis automated traffic law enforcement system ordinances are preempted by state statutes because, by changing the nature and quality of red light violations, the ordinances contravene the state interest in preserving uniform application of state traffic laws.

State v. Hoben, 256 Minn. 436, 98 N.W.2d 813 (1959)

State ex rel. Sheahan v. Mullaly, 257 Minn. 27, 99 N.W.2d 892

Mangold Midwest Co. v. Village of Richfield, 274 Minn. 347, 143 N.W.2d 813 (1966)

Minn. Stat. § 169.022

Minn. Stat. § 169.06

II. Whether municipal ordinances that shift liability for red light violations from drivers to vehicle owners are invalid because they conflict with state law.

The trial court did not rule on this issue.

Duffy v. Martin, 265 Minn. 248, 121 N.W.2d 343 (1963)

Mangold Midwest Co. v. Village of Richfield, 274 Minn. 347, 143 N.W.2d 813 (1966)

Minn. Stat. § 169.022

Minn. Stat. § 169.04

Minn. Stat. § 169.06

III. Whether Minneapolis Ordinance Sections 474.640 and 474.660 are severable.

The trial court ruled that the ordinance sections could not be severed because it is apparent that the Minneapolis City Council would not have imposed liability for red light violations on vehicle owners without creating an innocent owner defense.

State ex rel. Grozbach v. Common School District No. 65, 237 Minn. 150, 54 N.W.2d 130 (1952)

Cellco Partnership v. Hatch, 431 F.3d 1077 (8th Cir. 2005)
Minn. Stat. § 645.20

IV. Whether the Minneapolis automated traffic law enforcement system ordinances are unconstitutional because they violate the due process rights of vehicle owners.

The trial court did not address this issue.

State v. Guminga, 395 N.W.2d 344 (Minn. 1986)

State v. Kremer, 262 Minn. 190, 114 N.W.2d 88 (1962)

State v. Auchampach, 540 N.W.2d 808 (Minn. 1995)

U.S. Const. amend. XIV

Minn. Const. art. I, § 7

ARGUMENT

I. MINNESOTA STATUTES SECTIONS 169.06, SUBDIVISION 4(a), AND 169.022 PREEMPT MUNICIPALITIES FROM ENACTING ORDINANCES THAT SHIFT LIABILITY FOR RED LIGHT VIOLATIONS FROM DRIVERS TO VEHICLE OWNERS.

Minnesota statutes impose liability for red light violations on **drivers** of motor vehicles. See Minn. Stat. §§ 169.01, subd. 25 (defining “driver”), 169.06, subd. 4(a) (requiring **drivers** to obey traffic-control signals), subd. 5(a) (traffic-control signals apply to **drivers**), & subd. 5(a)(3)(i) (requiring **drivers** to stop for red lights), & 169.89, subd. 1 (imposing penalties on persons violating state traffic code provisions). Minneapolis’ automated traffic law enforcement system ordinances, however, impose liability for red light violations on **owners** of motor vehicles.¹ See Minneapolis Ordinances 474.620 to 474.670 (a copy of which appear in the Appendix to Appellant’s Brief filed herein). By shifting liability for red light violations from drivers to owners, these ordinances change the nature and quality of red light violations, and contravene the state interest in preserving the uniform application of traffic laws throughout the entire state. Therefore, as the District Court concluded in this case, Minneapolis’ automated traffic law enforcement system ordinances are invalid under Minnesota Statutes Section 169.022.

Minnesota Statutes Section 169.022 provides:

¹“Owner means the person or entity identified by the Minnesota Department of Public Safety, or registered with any state vehicle registration office, as the registered owner of a vehicle, or a lessee of a motor vehicle under a lease of six (6) months or more.” Minneapolis Ordinance § 474.620. For ease of discussion, this brief will refer simply to owners of vehicles, rather than both owners and lessees.

The 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. Local authorities may adopt traffic regulations which are not in conflict with the provisions of this chapter; provided, that when any local ordinance regulating traffic covers the same subject for which a penalty is provided for in this chapter, then the penalty provided for violation of said local ordinance shall be identical with the penalty provided for in this chapter for the same offense.

Minn. Stat. § 169.022.

In State v. Hoben, 256 Minn. 436, 98 N.W.2d 813 (1959), the Minnesota Supreme Court invalidated an Edina DUI ordinance because it altered the nature and quality of the offense by failing to incorporate procedural protections guaranteed in DUI prosecutions under state statutes. Interpreting Minnesota Statutes Section 169.03 (1959), an identical predecessor statute to what is currently codified as Section 169.022, the Hoben court initially observed that it was “unnecessary for us, in view of the disposition of this case, to discuss the issue as to whether or not the ordinance is so inconsistent with the state law as to be invalid.” 256 Minn. at 437, 98 N.W.2d at 815. Instead, the court narrowly framed the issue presented in the following manner:

The narrow question presented is this: Where a municipality has adopted an ordinance the subject of which is under the influence of drugs or alcohol, which penalty is more consistent with those provided by state law, may it by prosecution under such ordinances deny to the defendant the same constitutional and statutory safeguards which would surround him had he been prosecuted for the same act under state law?

256 Minn. at 438, 98 N.W.2d at 815.

Writing for a unanimous court, Justice Murphy answered the question in this manner:

[Minn. Stat. § 169.022] clearly states that in the interest of uniformity its provisions shall have the same application throughout the state. The fact that the municipality is given authority to adopt such an ordinance does not change the nature and quality of the offense. As we interpret [§ 169.022], it was the intention of the legislature that the application of its provisions should be uniform throughout the state both as to penalties and procedures, and requires a municipality to utilize state criminal procedure in the prosecution of the act covered by [§ 169.022]. **It would be a strange anomaly for the legislature to define a crime, specify punishment therefor, provide that its application shall be uniform throughout the state, and then permit a municipality to prosecute that crime as a civil offense.** Basic civil rights of the defendant would then depend upon the arbitrary choice of the prosecutive authorities as to the court in which action against him would be instituted. When a municipality undertakes such prosecution, it must, therefore, to insure uniformity of treatment, do so in a criminal prosecution which affords the defendant all the protection of criminal procedure including the right of trial by jury and immunity from double punishment.

256 Minn. at 443-44, 98 N.W.2d at 818-19 (footnote omitted & emphasis supplied)

Just four months after deciding Hoben, Justice Murphy authored another unanimous opinion for the court in State ex rel. Sheahan v. Mullaly, 257 Minn. 27, 99 N.W.2d 892 (1959). The issue presented in Sheehan was whether a person prosecuted for disorderly conduct under a St. Paul ordinance was entitled to a jury trial. The court held there was no right to a jury trial for those prosecuted for disorderly conduct under St. Paul's ordinance. Distinguishing the seemingly inconsistent holding in Hoben, recognizing a right to a jury trial under Edina's DUI ordinance, Justice Murphy explained that in Hoben:

We pointed out that under the provisions of [the Minnesota Highway Traffic Regulation Act] the legislature had made certain violations relating to highway traffic a matter of statewide concern. **Since the right of the municipality to enact ordinances with relation to such traffic violations is derived from that act and since the legislature provided that such regulations shall be applicable and uniform throughout the state as to provisions and penalties,** we concluded that the legislature intended municipalities to have

concurrent jurisdiction to enforce ordinances dealing with the subject of traffic regulations.

257 Minn. at 28-29, 99 N.W.2d at 893 (emphasis added).

Justice Murphy further explained that “[u]nlike the Hoben case, the subject of the prosecution before us relates to a matter of local concern. Although [§] 615.17 punishes disorderly conduct, it does not prohibit, limit, or restrict a municipality from legislating on the same subject.” 257 Minn. at 29, 99 N.W.2d at 894. Justice Murphy concluded by emphasizing: “At the risk of repetition we may observe that we held in the Hoben case that under the provisions of [chapter] 169 **prosecutions of traffic violations are to have uniform treatment throughout the state** and that therefore a defendant charged with a violation of an ordinance relating to that subject is entitled to a jury trial in the court where he is originally charged.” 257 Minn. at 30, 99 N.W.2d at 894 (emphasis supplied).

Three other Minnesota Supreme Court decisions further clarify the scope and applicability of the Hoben rule. State v. Paulick, 277 Minn. 140, 145, 151 N.W.2d 591, 595 (1967), observed that in Hoben “the court held that traffic violations were a matter of statewide concern and must be dealt with in a uniform manner.” In State v. Gladden, 274 Minn. 533, 536, 144 N.W.2d 779, 782 (1966), the court noted that Minneapolis ordinances prohibiting DUI and careless driving fell within “the rule set out in the Hoben case” because they involved conduct regulated by state statutes, chapter 169, the Minnesota Highway Traffic Regulation Act. According to the Gladden court: “An act covered by [§ 169.022] is one forbidden by a traffic ordinance and a statute.” Id. Failing to stop for a red light is

forbidden both by state statute and by municipal ordinance; therefore, it is an act covered by Section 169.022 and a matter of statewide concern which must be dealt with in a uniform manner throughout the state.

Mangold Midwest Co. v. Village of Richfield, 274 Minn. 347, 143 N.W.2d 813 (1966), a case appellant relies upon, offers a thorough examination of the difference between preemption and conflict analyses. Among the issues presented in that case were whether a Richfield Sunday closing ordinance conflicted with state law or was preempted by state law. Recognizing that “the law is not too clear as to when a particular ordinance conflicts with a state statute,” the court observed that ordinances must at the very least be in harmony with state statutes. 274 Minn. at 350, 143 N.W.2d at 815-16. The court further recognized that “preemption and conflict are separate concepts and should be governed by separate doctrines.” 274 Minn. at 356, 143 N.W.2d at 819.

Noting that the preemption doctrine has also been referred to as the “occupation of the field” concept, the Mangold Midwest Co. court observed:

[A] state law may fully occupy a particular field of legislation so that there is no room for local regulation, in which case a local ordinance attempting to impose any additional regulation in that field will be regarded as conflicting with the state law, and for that reason void, even though the particular regulation set forth in the ordinance does not directly duplicate or otherwise directly conflict with any express provision of the state law.

Id. (quoting People v. Commons, 64 Cal. App.2d Supp. 925, 930, 148 P.2d 724, 727 (Cal. Super. 1944)).

Finding guidance from the California Supreme Court on preemption analysis, the

Mangold Midwest Co. further noted:

Analysis of the many prior decisions on this subject indicates that although the language differs from case to case, the rationale of all have one thing in common, that is, that chartered counties and cities have full power to legislate in regard to municipal affairs unless: (1) the subject matter has been so fully and completely covered by general law as to clearly indicate that it has become exclusively a matter of state concern; (2) the subject matter has been partially covered by general law couched in such terms as to indicate clearly that a paramount state concern will not tolerate further or additional local action; or (3) the subject matter has been partially covered by general law, and the subject is of such a nature that the adverse effect of a local ordinance on the transient citizens of the state outweighs the possible benefit to the municipality.

274 Minn. at 357, 143 N.W.2d at 819-820 (quoting In re Hubbard, 62 Cal.2d 119, 128, 41 Cal. Rptr. 393, 398, 396 P.2d 809, 814 (1964)).

After emphasizing that “municipalities have no inherent powers and possess only such powers as are expressly conferred by statute or implied as necessary in aid of those powers which have been expressly conferred,” the Mangold Midwest Co. court focused its preemption analysis on the following four questions:

- (1) What is the 'subject matter' which is to be regulated?
- (2) Has the subject matter been so fully covered by state law as to have become solely a matter of state concern?
- (3) Has the legislature in partially regulating the subject matter indicated that it is a matter solely of state concern?
- (4) Is the subject matter itself of such a nature that local regulation would have unreasonably adverse effects upon the general populace of the state?

274 Minn. at 358, 143 N.W.2d at 820.

In answering these questions, the court offered this summary of its preemption decisions in Hoben and Sheahan:

[In Sheahan] this court stated that although there was a statute regulating disorderly conduct the municipality was not foreclosed from also proscribing such behavior. The legislature had not acted comprehensively on the subject; nor had it expressly indicated that it was a matter of state concern; nor were there adverse effects of local regulation which outweighed the historical regulation of this area by local governments. A case discussed at some length in the Sheahan case was State v. Hoben, 256 Minn. 436, 98 N.W.2d 813, involving violation of a traffic ordinance. We recognized in that case that the legislature had allowed municipalities to regulate traffic but had specified that the statutory provisions be applicable and uniform throughout the state. The court held that the jury trial guaranteed in a prosecution under the statute must be allowed in a prosecution under the ordinance. **The subject matter there was clearly traffic regulation, and the provision requiring uniformity and statewide application clearly showed the legislative intent to preempt this field except for the limited local regulation the statute expressly permitted.**

274 Minn. at 358-59, 143 N.W.2d at 820-21 (emphasis added).

Upholding the Richfield Sunday closing ordinance, the Mangold Midwest Co. court declared:

While this is a fairly close question in the instant case, it would appear that this area of Sunday closing is not one which has been impliedly declared by the legislature to be solely of state concern. **This is not the type of legislative enactment which purports to completely dictate the specific regulation of an area as, for instance, the tax and traffic provisions do.**

274 Minn. at 360, 143 N.W.2d at 821 (emphasis supplied).

Hoben, Sheahan, Gladden, Paulick, and Mangold Midwest Co., recognize that traffic violations are a matter of statewide concern and must be dealt with in a uniform manner. Accordingly, in these cases, the Minnesota Supreme Court has repeatedly concluded that by enacting Minnesota Statutes Section 169.022, the Minnesota Legislature intended to preempt the field of traffic regulation except for limited local regulation expressly permitted by statute. Given the state's paramount concern in preserving uniform statewide application of its traffic laws, local regulations not expressly permitted by statute would result in unreasonable adverse effects on the general populace of the state. Consequently, because Minnesota statutes do not expressly authorize Minneapolis to impose liability for red light violations on owners of vehicles, the city's automated traffic law enforcement system ordinances are preempted by state law and, therefore, invalid.

Appellant argues that Minneapolis has authority to enact ordinances shifting liability for red light violations from drivers to owners because two Minnesota statutes impose liability on owners for certain driving conduct. See Appellant's Brief at 22-23. Minnesota Statutes Section 169.20, subdivision 5, prohibits the failure to yield to an emergency vehicle. Section 169.20, subdivision 5b(a), imposes liability on owners of vehicles that violate this

statutory prohibition. Minnesota Statutes Section 169.444, subdivision 1, prohibits passing a school bus when its stop-arm is extended. Section 169.444, subdivision 6(a), imposes liability on owners of vehicles that violate this statutory prohibition. Appellant's reliance on these statutes, however, proves too much.

First, unlike the Minneapolis automated traffic law enforcement ordinances, these statutes are not – and cannot be – preempted by state law: **they are state law**. Second, by limiting owner liability to these two offenses, the legislature implicitly precluded it for all other traffic offenses. “[T]he textual canon *expressio unius est exclusio alterius* instructs that to ‘include one thing implies the exclusion of the other.’ Black's Law Dictionary 620 (8th ed. 2004).” Nelson v. Commissioner of Employment, 698 N.W.2d 443, 448 (Minn. App. 2005). “Where a statute enumerates the persons or things to be affected by its provisions, there is an implied exclusion of others.” Brandt v. Hallwood Management Co., 560 N.W.2d 396, 400 (Minn. App. 1997)(quoting Maytag Co. v. Commissioner of Taxation, 218 Minn. 460, 463, 17 N.W.2d 37, 40 (1944)). By expressly imposing liability for red light violations only on drivers, unlike failure to yield to emergency vehicles and school bus stop-arm violations, Minnesota statutes implicitly preclude municipalities from extending liability for red light violations to vehicle owners.

Third, unlike the Minneapolis automated traffic law enforcement system ordinances, both the failure to yield to emergency vehicles and school bus stop-arm statutes protect non-driving owners from being convicted and prohibit violations from being used to suspend or revoke owners' driver's licenses. See Minn. Stat. §§ 169.20, subd. 5b(b), (e), & 169.444,

subd. 6(b), (e). As appellant acknowledges, the suspension or revocation of a person's driver's license is controlled exclusively by the Commissioner of Public Safety and Minneapolis has absolutely no authority to prevent a driver's license suspension or revocation resulting from a violation of its automated traffic law enforcement system ordinances. See Appellant's Brief at 32-34. This is precisely why the legislature has preempted the field of traffic regulation except for limited local regulation expressly permitted by statute.

The experience of other jurisdictions further demonstrates that, absent enabling legislation, Minneapolis lacks the authority to enact its automated traffic law enforcement system ordinances. According to the Minnesota Office of Traffic Safety, “[n]ine states (California, Colorado, Delaware, Hawaii, Maryland, New York, North Carolina, Oregon and Virginia) and the District of Columbia have passed legislation allowing the use of red light running cameras in at least some communities.”² In states with such programs, state legislatures passed enabling legislation authorizing municipalities to implement automated traffic law enforcement systems. See, e.g., Md. Code, Transportation § 21-202.1; Ga.. Code § 40-14-20; Cal. Vehicle Code § 21455.5; D. C. Stat. § 50-2209.01; N.C. Gen. Stat. § 160A-300.1; Col. Stat. § 42-4-110.5. In most instances, such enabling legislation authorizes municipalities to adopt ordinances shifting the liability for violations from drivers to owners of vehicles. See, e.g., N.C. Gen. Stat. § 160A.300.1(c)(1) (“The owner of a vehicle shall be

²See http://www.dps.state.mn.us/ots/Laws_Legislation/hot_topics.asp.

responsible for a violation unless the owner can furnish evidence that the vehicle was, at the time of the violation, in the care, custody, or control of another person.”); D.C. Stat. § 50.2209.02(a)(“The owner of a vehicle issued a notice of infraction shall be liable for payment of the fine assessed for the infraction”); 21 Del. C. § 4101(d)(2)(“The Department of Public Safety . . . may provide, by regulation or ordinance, for the establishment of a program imposing monetary liability on the owner of a motor vehicle for failure to comply with traffic light signals”). In each of these statutes, the state legislature authorized its municipalities to enforce traffic regulations by shifting liability from the driver to the owner of the vehicle.

There have been several attempts to pass automated traffic law enforcement system enabling legislation in Minnesota; none has been successful. Senate File No. 1017 was introduced on April 5, 2001. That bill would have amended Minnesota Statutes § 169.06 by adding language providing that if a violation of subdivision 4 is detected through photographic evidence, the owner or lessee of the vehicle is guilty of a petty misdemeanor. The bill also would have added a new section, Minnesota Statutes § 169.062, to include local government authority for a statutory or home rule charter city to develop and implement a program to allow peace officers to detect violations of § 169.06, subd. 4, through photographic evidence, as provided in § 169.06, subd. 5. This proposed legislation, however, was never enacted into law. Attempts to pass similar legislation in following legislative sessions failed as well. See H.F. No. 508, 83rd Leg. Sess. (February 20, 2003); H.F. No. 650, 83rd Leg. Sess. (February 27, 2003); S.F. No. 439, 83rd Leg. Sess. (February 18, 2003);

S.F. No. 608, 83rd Leg. Sess. (February 26, 2003). This lack of enabling legislation dooms the Minneapolis automated traffic law enforcement system ordinances. Cf. Shavitz v. City of High Point, 270 F. Supp.2d 702, 705 (M.D.N.C. 2003)(noting that after the North Carolina legislature passed enabling legislation authorizing certain municipalities to implement automated traffic law enforcement system ordinances in 1997, an attempt to authorize them statewide was defeated in 1999), vacated on other grounds sub nom. Shavitz v. Guilford County Board of Education, 100 Fed. Appx. 146 (4th Cir. 2004).

Finally, this shift from driver to owner liability alters the expectations of vehicle owners whose vehicles are operated on Minneapolis city streets. Business owners, taxi cab companies, parents, siblings and friends all become potentially liable for the actions of whomever they permit to drive their vehicles. The shift from driver to owner liability is not apparent to persons who are not familiar with Minneapolis' automated traffic law enforcement system ordinances. As the Minnesota Supreme Court observed, “[i]t is a well-known fact that violations of traffic laws are recorded with the commissioner of highways without regard to special circumstances and that such violations are considered by insurance company underwriters in fixing premiums and limits of insurance.” City of St. Paul v. Lofthouse, 275 Minn. 312, 315-16, 146 N.W.2d 858, 861 (1966).

Shifting liability for red light violations from drivers to owners in Minneapolis requires vehicle owners to alter their expectations of vehicle use in Minneapolis. A cautious and prudent vehicle owner would avoid using valet parking in Minneapolis for fear that the valet might run a red light and the owner would be liable for that violation. Consequently, the Minneapolis automated traffic law enforcement ordinances violate the uniform statewide application of traffic regulations required by Minnesota Statutes §169.022.

II. MUNICIPAL ORDINANCES THAT SHIFT LIABILITY FOR RED LIGHT VIOLATIONS FROM DRIVERS TO VEHICLE OWNERS ARE INVALID BECAUSE THEY CONFLICT WITH STATE LAW.

Assuming arguendo that this Court concludes that Minnesota Statutes Section 169.022 does not preempt Minneapolis from enacting its automated traffic law enforcement system ordinances, those ordinances are nonetheless invalid under that statute because they conflict with state law. As the supreme court observed in Mangold Midwest Co. v. Village of Richfield, 274 Minn. 347, 356, 143 N.W.2d 813, 819 (1966), “preemption and conflict are separate concepts and should be governed by separate doctrines.” In State v. Hoben, 256 Minn. 436, 437, 8 N.W.2d 813, 815 (1959), the court invalidated the Edina DUI ordinance on the basis of preemption and, accordingly, found it unnecessary to determine “whether or not the ordinance [was] so inconsistent with the state law as to be invalid.”

Whether conflict exists is a legal question. It is only where both a municipal ordinance and a state statute seek to govern the same conduct that conflict is possible. Borchert v. Village of North Oaks, 264 Minn. 32, 38, 117 N.W.2d 396, 401 (1962). An ordinance is in conflict with a statute when both the ordinance and the statute contain express

or implied terms that are irreconcilable with each other. Mangold Midwest Co., 274 Minn. at 352, 143 N.W.2d at 816. No conflict exists where the ordinance, though different, is merely additional and complementary to or in aid and furtherance of the statute. City of St. Paul v. Olson, 300 Minn. 455, 457, 220 N.W.2d 484, 485 (1974). The legislature has prohibited the enactment of ordinances by municipalities in conflict with state statutes in order to provide uniformity in traffic regulations throughout the state; therefore, where the statute has occupied the field, an inconsistent ordinance is invalid. Duffy v. Martin, 265 Minn. 248, 252, 121 N.W.2d 343, 346 (1963).

Hence, to determine whether an ordinance impermissibly conflicts with Minnesota Statutes Chapter 169, this Court must first examine whether state and local law attempt to govern the same conduct. Then, this Court must examine whether a conflict exists between the ordinance and a statutory provision of Chapter 169. If a conflict exists, the analysis must turn to whether the city may nevertheless enact the ordinance pursuant to its local authority under Minnesota Statutes § 169.04. If the ordinance is not permitted under § 169.04, then the ordinance must be deemed invalid.

Minnesota Statutes § 169.01 provides separate definitions for a “driver” and an “owner” of a vehicle and states that the driver is the person in physical control of the vehicle. Minnesota Statutes § 169.06, subd. 4(a), requires that the driver of a vehicle must obey traffic-control signals in Minnesota. Minnesota Statutes § 169.06, subd. 5(a), states that traffic-control signals apply to drivers and pedestrians. Minnesota Statutes § 169.06, subd. 5(a)(3)(i), mandates the requirements that drivers must meet when approaching the steady

red indication of a traffic control device in Minnesota. Minnesota Statutes § 169.89, subd. 1, states that it is a petty misdemeanor for any person to do any act forbidden or fail to perform any act required by this chapter. Read together, Minnesota Statutes Chapter 169 imposes liability for violations of § 169.06, subd. 4(a), only upon drivers of vehicles. Nothing in Minnesota state law imposes liability for red light violations on vehicle owners and Minnesota lacks enabling legislation authorizing municipalities to enact ordinances that shift liability for red light violations from drivers to vehicle owners.

The first step in a conflict analysis is to determine whether the statute and ordinance regulate the same conduct. The above-referenced statutory provisions and the Minneapolis automated traffic law enforcement ordinances both regulate driving conduct when a vehicle approaches a red light. Compare Minn. Stat. § 169.06, subd. 4(a), with Minneapolis Ordinance § 474.640. Whenever both the state and a city regulate the same area of conduct, conflict may exist. See State v. Stallman, 519 N.W. 2d 903, 906 (Minn. App. 1994)(because state law does not regulate cruising behavior ordinance regulating cruising probably does not conflict with state law). Because these provisions regulate the same conduct, the Minneapolis automated traffic law enforcement ordinances may conflict with state traffic law.

The next step in a conflict analysis is to determine whether a conflict actually exists. A conflict does exist between Minnesota Statutes § 169.06, subd. 4(a), and Minneapolis Ordinance § 474.640 because the statute imposes liability on **drivers** who fail to stop for red lights, while the ordinance imposes liability on **owners** of vehicles that fail to stop for red lights. An ordinance is in conflict with a statute when both the ordinance and the statute contain express or implied terms that are irreconcilable with each other. Mangold Midwest Co., 274 Minn. at 352, 143 N.W.2d at 816. Clearly, express irreconcilable terms exist in this situation. Minnesota Statutes § 169.01 provides separate definitions of a “driver” and an “owner.” A “driver” is the person driving or in actual physical control of the vehicle. Minn. Stat. § 169.01, subd. 25. Under Minnesota Statutes § 169.01, subd. 26, an owner merely holds legal title to the vehicle and may not be in physical control of the vehicle. While it is possible that the owner of a vehicle was driving it at the time of an alleged violation, it is also possible that someone other than the owner was driving the vehicle at that time. Therefore, given the definitions provided in section 169.01, Minnesota Statutes § 169.06, subd. 4(a), contains a term that is in express conflict with the language of Minneapolis Ordinance § 474.640.

Minneapolis Ordinance § 474.640 does not merely add and complement an existing statute. No conflict exists where the ordinance, though different, is merely additional and complementary to, or in aid and furtherance of, the statute. City of St. Paul v. Olson, 300 Minn. 455, 457, 220 N.W.2d 484, 485 (1974). In Duffy v. Martin, 265 Minn. 248, 121 N.W.2d 343 (1963), the Minnesota Supreme Court examined this issue and concluded that

a similar Minneapolis ordinance was invalid. The Duffy court compared Minnesota Statutes § 169.19, which required that “[n]o person shall start a vehicle which is stopped, standing, or parked unless and until such movement can be made with reasonable safety,” with a Minneapolis ordinance which required drivers to provide an additional hand signal before starting a vehicle and proceeding into traffic. 265 Minn. at 251-52, 121 N.W.2d at 345-46. The court concluded that the ordinance added a requirement that was absent from the statute. 265 Minn. at 254, 121 N.W.2d at 347.

Moreover, the Duffy court viewed the additional requirement imposed by the ordinance as a basis for liability and held that such an act would violate the requirement of uniformity for Minnesota traffic statutes. 265 Minn. at 255, 121 N.W.2d at 348. The court explained that uniformity is required by Minnesota statutes “to enable a driver of a motor vehicle to proceed in all parts of the state without the risk of violating an ordinance with which he is not familiar.” Id. See also Minn. Op. Atty. Gen. 989-B-5, 1977 WL 36269 (proposed Moorhead ordinance to require headgear for motorcycle riders in city conflicts with statute and would be found invalid).³

The Duffy court’s reasoning is applicable to the case at bar. Minneapolis Ordinance § 474.640 shifts the imposition of liability for red light violations from the driver to the owner of the vehicle. It cannot be claimed that the ordinance is merely additional and complementary to the statute because the ordinance deviates from the definition of a “driver”

³A copy of this Attorney General Opinion is included in the Appendix attached hereto.

in Minnesota Statutes § 169.01, subd. 25, when it shifts liability from the driver under Section 169.06 to the owner of the vehicle under its automated traffic law enforcement system ordinances. To be additional and complementary, the ordinance would need to impose liability for red light violations only upon the driver, as the statute does. See City of St. Paul v. Olson, 300 Minn. 455, 220 N.W.2d 484 (1974)(holding that an ordinance dealing with the act of unreasonable acceleration falls within the general prohibition of § 169.13, subd. 2, against careless driving and specifically covers what Chapter 169 covers generally). The Minneapolis ordinances fail to meet this requirement and cannot be construed as merely additional and complementary to, or in furtherance of, the statute.

Additionally, as the District Court observed, by shifting liability for red light violations from drivers to vehicle owners, the Minneapolis ordinances diminish the procedural protections an owner would have if prosecuted for the same conduct under state statutes.

The ordinances cover the same subject as the state traffic control signal statute. If a vehicle owner is prosecuted under the statute, the state must prove beyond a reasonable doubt that the owner was the driver at the time of the offense. If a vehicle owner is prosecuted under the Minneapolis automated traffic enforcement ordinances, the owner is presumed to be the driver and must prove that someone else was driving in order to avoid a conviction. The Minneapolis procedure is invalid because it provides less due process protections than are guaranteed to vehicle owners who are prosecuted under the state traffic control signal statute.

State v. Kuhlman, Hennepin County District Court File No. 05062805, Order Granting Defendant's Motion to Dismiss at 9 (March 14, 2006).⁴

Appellant's argument that Minneapolis Ordinance § 474.640 falls within an exception contained in Minnesota Statutes § 169.04, which permits local authority to enact local regulations, must also fail. See Appellant's Brief at 24-25. That statute provides:

The provisions of this chapter shall not be deemed to prevent local authorities, with respect to streets and highways under their jurisdiction, and with the consent of the commissioner, with respect to state trunk highways, within the corporate limits of a municipality . . . and within the reasonable exercise of the police power from . . .

(2) regulating traffic by means of police officers or traffic-control signals.

Minn. Stat. § 169.04(a).

This language does not provide the City of Minneapolis the authority to enact its automated traffic law enforcement system ordinances. Both terms listed in § 169.04(a)(2) are defined in Chapter 169. The term "police officer" is defined in Minnesota Statutes § 169.01, subd. 27, as "every officer authorized to direct or regulate traffic or to make arrests for violations of traffic rules." The term "traffic control signal" means "any device, whether manually, electrically or mechanically operated, by which traffic is alternately directed to stop and permitted to proceed." Minn. Stat. § 169.01, subd. 42. Neither term encompasses the automated traffic law enforcement system created by the City of Minneapolis. Neither term discusses enforcement of traffic regulations through the use of an automated traffic law

⁴A copy of this Order is included in the Appendix attached hereto.

enforcement system involving cameras. In fact, the definition of “police officer” instead suggests that only police officers may enforce the traffic rules. It is clear from the statutory definitions of “police officer” and “traffic control signal” that the automated traffic law enforcement system ordinances enacted by Minneapolis do not fall within the exception provided for in Minnesota Statutes § 169.04.

Absent a statutory provision imposing liability for red light violations on vehicle owners, the Minneapolis automated traffic law enforcement system ordinances impermissibly conflict with the Chapter 169. The ordinances and statutes both regulate the enforcement of traffic control signals. Conflict between the ordinances and Chapter 169 arises by Minneapolis shifting liability for traffic control device violations from the driver to the owner of motor vehicles. This impermissible shift of liability diminishes the procedural protections vehicle owners have if prosecuted for the same conduct under state law. Minneapolis cannot rely on the exception for local regulation found in Minnesota Statutes § 169.04 as authorizing these ordinances. Therefore, because the ordinances impermissibly conflict with state law and are not uniform and applicable throughout the State of Minnesota, they are invalid under Minnesota Statutes § 169.022.

III. MINNEAPOLIS ORDINANCE SECTIONS 474.640 AND 474.660 ARE NOT SEVERABLE BECAUSE IT IS APPARENT THAT THE MINNEAPOLIS CITY COUNCIL WOULD NOT HAVE IMPOSED LIABILITY FOR RED LIGHT VIOLATIONS ON VEHICLE OWNERS WITHOUT CREATING AN INNOCENT OWNER DEFENSE.

Minnesota Statutes Section 645.20 provides:

Unless there is a provision in the law that the provisions shall not be severable, the provisions of all laws shall be severable. If any provision of a law is found to be unconstitutional and void, the remaining provisions of the law shall remain valid, unless the court finds the valid provisions of the law are so essentially and inseparably connected with, and so dependent upon, the void provisions that the court cannot presume the legislature would have enacted the remaining valid provisions without the void one; or unless the court finds the remaining valid provisions, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent.

Minn. Stat. § 645.20. This statutory provision governing severability applies to municipal ordinances, as well as state statutes. Nightclub Management, Ltd. v. City of Canon Falls, 95 F. Supp.2d 1027, 1037 (D. Minn. 2000).

As the Minnesota Supreme Court recognized more than fifty years ago in State ex rel. Grozbach v. Common School Dist. No. 65, 237 Minn. 150, 54 N.W.2d 130 (1952), this statute codified a longstanding rule of statutory construction:

The familiar rule on the subject is that, although a part of the statute is unconstitutional, that fact does not authorize the courts to declare the remainder void also, unless all the provisions are connected in subject-matter, depending on each other, operating together for the same purpose, or otherwise so connected together in meaning that it cannot be presumed the legislature would have passed the one without the other. Cooley, Const.Lim. 210.

237 Minn. at 154, 54 N.W.2d at 133 (quoting State ex rel. Anderson v. Sullivan, 72 Minn. 126, 133, 75 N.W. 8, 9 (1898)).

More recently, in Cellco Partnership v. Hatch, 431 F.3d 1077 (8th Cir. 2005), the Eighth Circuit relied on Minnesota Statutes Section 645.20 to hold that an unenforceable provision of a Minnesota telecommunications statute was not severable from the other provisions of the statute. Construing section 645.20, the Eighth Circuit observed:

To give these clauses independent meaning, we understand the former clause to forbid severance in cases where the remaining provisions are **not** incomplete or incapable of being executed, but where the interrelationship of the void and non-void provisions nonetheless precludes the presumption that the legislature would have enacted only the latter provision. See Archer Daniels Midland Co. v. State, 315 N.W.2d 597, 600 (Minn. 1982)(concluding remaining provisions of statute, standing alone, were not severable, where legislative intent to prefer limited application of statute was “not at all clear”).

Cellco Partnership, 431 F.3d at 1083-84 (emphasis in original).

The District Court concluded that Minneapolis Ordinance §§ 474.640 and 474.660 are not severable because the Minneapolis city council did not intend to create an automated traffic law enforcement system which did not include a procedure to protect innocent vehicle owners. See State v. Kuhlman, Hennepin County District Court File No. 05062805, Order Granting Defendant’s Motion to Dismiss at 13-14 (March 14, 2006). Appellant conceded in the trial court that “its ordinances are modeled after the state’s vehicle owner liability statutes (failure to yield to an emergency vehicle and unlawful passing of a school bus).” Id. at 14. See also Appellant’s Brief at 22-23 (“The liability created by Minneapolis Code of Ordinances Section 474.640 is identical to the liability created by these two state laws.”). As the District Court noted, “[b]oth of those statutes allow vehicle owners to avoid liability if the vehicle owners produce evidence that they were not the drivers. There is no reason to

believe that the Minneapolis city council intended to enact a vehicle owner liability ordinance without providing a similar procedural safeguard for innocent vehicle owners.” State v. Kuhlman, Hennepin County District Court File No. 05062805, Order Granting Defendant’s Motion to Dismiss at 14 (March 14, 2006).

The interrelationship between Minneapolis Ordinance §§ 474.640 and 474.660 precludes the presumption that the city council would have enacted one without the other. Both sections of the automated traffic law enforcement control system are connected in subject-matter, depend on each other and operate together for the same purpose. They are in pari materia because they relate to the same thing and have a common purpose. See State v. Herbert, 601 N.W.2d 210, 213 (Minn. App. 1999). “Courts should construe statutes in para materia in light of each other.” Id.

The plain language of Section 474.660 immediately reveals that it pertains to evidence to be used in a prosecution of a Section 474.640 violation. The title of Section 474.640 is “Violation.” The title of Section 474.660 is “Evidence.” The language of Section 474.660 further provides:

(a) In the **prosecution of a violation**, as set forth by section 474.640, captured by an automated traffic law enforcement system, **prima facie evidence** that the vehicle described in the citation was operated in violation of this section, together with proof that the defendant was at the time of such violation the owner or lessee of the vehicle, **shall constitute in evidence a rebuttable presumption that such owner or lessee was the person who committed the violation. The presumption shall be rebutted if the owner or lessee:**

(1) Provides a sworn affidavit delivered by United States mail to the city or agency that he or she was not the owner or lessee of the vehicle at the time of the alleged violation and provides the name and current address of the person operating the motor vehicle at the time of the violation; or

(2) Submits a copy of a police report showing the vehicle had been reported as stolen in a timely manner before the date of the violation.

(b) If the city or agency finds that the person named in the citation was not operating the vehicle at the time of the violation or receives evidence under paragraph (a)(1) of this section identifying the person driving the vehicle at the time of the violation, the city or agency shall issue a citation to the identified driver through the United State mail, no later than fourteen (14) days after receipt of this information.

See Appellant’s Appendix at A7 (emphasis added).

The clear language of Section 474.660 unmistakably refers to evidence to be introduced in a prosecution for a violation of Section 474.640 to rebut the presumption that the vehicle owner was driving the vehicle at the time of the violation. Despite this clear language and the inextricably intertwined interrelationship between Sections 474.640 and 474.660, Appellant argues to this Court that Section 474.660 (entitled “Evidence”) is nothing more than “an administrative directive to the Minneapolis City Attorney’s Office and the Minneapolis Police Department.” Appellant’s Brief at 11. Yet, this characterization is completely inconsistent with Appellant’s argument only two months earlier that Section 474.660 actually created “an affirmative defense” to Section 474.640 violations. See State v. Kuhlman, Hennepin County District Court File No. 05062805, Plaintiff’s Response to Defendant’s Motion to Dismiss at 21 (Jan. 31, 2006).

In the trial court, Appellant offered the following explanation of how a Section 474.660 affirmative defense would be presented at the trial of a Section 474.640 violation:

Once the State has met its burden and proven the defendant is the owner of the vehicle, the defendant may choose to raise the affirmative defense that he or she was not driving at the time of the violation. Providing the defendant the option to introduce evidence to show that he or she was not the driver at the time of the offense does not violate a defendant's right to be presumed innocent nor does it shift the burden of proof to the defendant. The affirmative defense created by section 474.660 does not violate due process because the State is not required to prove who the driver of the vehicle was in order to prove a violation for section 474.640. The affirmative defense created by section 474.660 does not negate or disprove an element of the charge, and does not violate due process.

Id.

Both the clear language of Sections 474.640 and 474.660, as well as Appellant's argument in the trial court, reveal that Section 474.660 is far more than an "administrative directive" to prosecutors and police officers. Accordingly, this Court should reject Appellant's argument that the two sections are severable. Likewise, this Court should reject Appellant's claim that the "Severance" clause contained in Minneapolis Ordinance § 474.670 controls the outcome of this Court's severability analysis. See, e.g., Spokane Arcades, Inc. v. Brockett, 631 F.2d 135, 139 (9th Cir. 1980)(statute not severable despite severability clause); Barlow v. Davis, 72 Cal. App.4th 1258, 1265, 85 Cal. Rptr.2d 752, 757 (Cal. App. 1999)(same).

IV. THE MINNEAPOLIS AUTOMATED TRAFFIC LAW ENFORCEMENT SYSTEM ORDINANCES ARE UNCONSTITUTIONAL BECAUSE THEY VIOLATE THE DUE PROCESS RIGHTS OF VEHICLE OWNERS.

Because the District Court held that the Minneapolis automated traffic law enforcement system ordinances violate the uniformity requirement in the state traffic code, it did not address the constitutional issues raised by Respondent. Nevertheless, Appellant has responded to those arguments in this Court. Accordingly, although it does not appear that these issues are ripe for appellate review at this time, Respondent will argue them in this brief.

The fourteenth amendment to the United States Constitution forbids states from depriving persons of their life, liberty or property without due process of law. Similarly, article I, § 7, of the Minnesota Constitution guarantees that no person shall be deprived of life, liberty, or property without due process of law. The Minneapolis automated traffic law enforcement system ordinances violate both substantive and procedural due process rights of registered owners of motor vehicles.

A. Substantive Due Process

The Minnesota Supreme Court has recognized that “substantive due process protects individuals from ‘certain arbitrary, wrongful government actions regardless of the fairness of the procedures used to implement them.’” In re Linehan, 594 N.W.2d 867, 872 (Minn. 1999). It is a general principle of criminal law that one is not criminally liable for how someone else acts, unless that person directs, encourages, or aids the other. Wayne R. LaFave & Austin W. Scott, Jr., *Substantive Criminal Law* § 3.2(f), at 282 (1986). See also

City of Seattle v. Stone, 410 P.2d 583, 585 (Wash. 1966)(ordinance making it no defense to parking violation that car was parked by another deprives owner of due process of law).

In State v. Guminga, 395 N.W.2d 344 (Minn. 1986), the Minnesota Supreme Court held that the Due Process Clause of the Minnesota Constitution precludes vicarious criminal liability. At issue in Guminga was the constitutionality of a statute imposing vicarious criminal liability upon an employer whose employee serves alcohol to a minor. The court characterized criminal penalties based on such vicarious liability to be a violation of substantive due process. Id. at 346. See also State v. Wohlsol, Inc., 670 N.W.2d 292 (Minn. App. 2003)(same).

Minneapolis' automated traffic law enforcement system ordinances impose vicarious criminal liability on registered owners of motor vehicles. Minneapolis Ordinance § 474.640 makes the registered owner liable for an alleged red light violation regardless of who was driving the vehicle. Section 474.660 (a) creates a presumption that the registered owner was driving the vehicle at the time of the alleged violation. This presumption may be rebutted only by the registered owner: (1) providing a sworn affidavit that he or she was not the owner or lessee of the vehicle at the time of the alleged violation and furnishing the name and current address of the person operating the vehicle at the time of the alleged violation; or (2) submitting a copy of a police report showing that the vehicle had been reported stolen before the date of the alleged violation. Minneapolis Ordinance § 474.660 (a)(1), (2). Thus, the presumption that the owner was driving the vehicle at the time of the alleged violation is not rebutted simply by evidence that someone other than the owner was driving the vehicle at

the time of the violation; the owner must also show that he or she was not the owner at the time of the alleged violation. This is vicarious criminal liability which violates substantive due process

Minneapolis' automated traffic law enforcement system ordinances also violate substantive due process by imposing absolute criminal liability on registered owners of motor vehicles. As shown above, a registered owner is strictly liable under § 474.640 regardless of who was driving the vehicle at the time of the alleged violation -- even if he or she sold the vehicle to a third party who failed to register transfer of the title with the Department of Public Safety prior to the alleged violation.

Reversing a red light conviction in State v. Kremer, 262 Minn. 190, 114 N.W.2d 88 (1962), the Minnesota Supreme Court ruled that a driver whose brakes failed without warning cannot be held responsible for running a red light. The Kremer court observed that the legislature may strictly "forbid the doing of an act and make its commission criminal without regard to the intention, knowledge, or motive of the doer." 262 Minn. at 191, 114 N.W.2d at 89. Nevertheless, the court noted, even strict liability offenses require an intent to do the act which constitutes the violation. 262 Minn. at 191-92, 114 N.W.2d at 89. Because Minneapolis Ordinance § 474.640 fails to require an intent by registered owners to do the act (driving) which constitutes the violation, it exceeds the permissible scope of strict liability and violates substantive due process.

Minnesota Statutes § 169.444, subd. 6, reveals that the Minnesota legislature knows how to create vicarious liability traffic violations. That statute imposes vicarious liability on registered owners of vehicles that illegally pass school buses. Minn. Stat. § 169.444, subd. 6(a). Unlike Minneapolis’ automated traffic law enforcement system ordinances, the vicarious liability imposed under section 169.444, subd. 6(a), is limited and cannot be imposed on the owner if another person is convicted of the violation. Id. § 169.444, subd. 6(b). Moreover, unlike the Minneapolis ordinances, a violation of section 169.444, subd. 6(a), “does not constitute grounds for revocation or suspension of the owner’s or lessee’s driver’s license.” Id. § 169.444, subd. 6(e).

B. Procedural Due Process

Minneapolis’ automated traffic law enforcement system ordinances also violate the procedural due process rights of registered owners by depriving them of the presumption of innocence, by relieving the prosecution of its burden to prove every element of the alleged violation beyond a reasonable doubt, by shifting the burden of proof to the accused, and by compelling an accused to testify in his or her own defense.

“The requirement that guilt of a criminal charge be established by proof beyond a reasonable doubt dates at least from our early years as a Nation.” In re Winship, 397 U.S. 358, 361 (1970). This procedural safeguard of due process is “basic in our law and rightly one of the boasts of a free society” Id. at 362 (quoting Leland v. Oregon, 343 U.S. 790, 802-03 (1952)(Frankfurter, J., dissenting)). “The reasonable-doubt standard plays a vital role in the American scheme of criminal procedure . . . [and] provides concrete substance for the

presumption of innocence – that bedrock ‘axiomatic and elementary’ principle whose ‘enforcement lies at the foundation of the administration of our criminal law.’” *Id.* at 363 (quoting *Coffin v. United States*, 156 U.S. 432, 453 (1895)). As the Supreme Court declared in *Winship*: “Lest there remain any doubt about the constitutional stature of the reasonable-doubt standard, we explicitly hold that the Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged.” *Id.* at 364.

The presumption contained in Minneapolis Ordinance § 474.660, that the registered owner was driving the vehicle photographed by the automated traffic law enforcement system and failed to stop for a red light, violates the presumption of innocence and relieves the prosecution of its burden of proving guilt beyond a reasonable doubt. Despite the ordinance characterizing this presumption as rebuttable, it is actually a conclusive presumption. In order to rebut the presumption of guilt, a registered owner must not only identify the driver of the vehicle at the time of the alleged violation, but must also show that at the time of the violation he or she was not the registered owner of the vehicle. Minneapolis Ordinance § 474.660 (a)(1). Consequently, if a person is the registered owner of a vehicle alleged to have violated Minneapolis’ automated traffic law enforcement system by failing to stop for a red light, he or she is conclusively presumed guilty under § 474.660.

In *Morisette v. United States*, 342 U.S. 246, 274-75 (1952), the Court held that conclusive presumptions effectively eliminate the prosecution’s burden to prove an essential element of an offense and, therefore, “conflict with the overriding presumption of innocence

with which the law endows the accused and which extends to every element of the crime.” Reaffirming this holding in United States v. United States Gypsum Co., 438 U.S. 422, 446 (1978), the Court observed that conclusive presumptions also impermissibly invade the factfinding function of trials. See also Sandstrom v. Montana, 442 U.S. 510, 521-23 (1979)(conclusive presumptions conflict with the presumption of innocence, violate the reasonable doubt standard, and invade the factfinding function of a trial). Therefore, the conclusive presumption of guilt contained in Minneapolis Ordinance § 474.660 violates the procedural due process rights of registered owners charged with violating § 474.640.

Like conclusive presumptions, rebuttable presumptions which shift the burden of proof on an essential element of a crime to the accused similarly violate procedural due process. Id. at 524. See also Mullaney v. Wilbur, 421 U.S. 684, 703-04 (1975). The “State must prove every ingredient of an offense beyond a reasonable doubt and . . . may not shift the burden of proof to the defendant” by means of a rebuttable presumption. Sandstrom, 442 U.S. at 524 (quoting Patterson v. New York, 432 U.S. 197, 215 (1977)).

In State v. Auchampach, 540 N.W.2d 808 (Minn. 1995), the Minnesota Supreme Court likewise noted: “Due process requires that the state prove beyond a reasonable doubt the existence of every element of the crime charged. A defendant’s due process rights are violated if the burden to disprove the existence of any element of the crime charged is impermissibly shifted to the defendant.” Id. at 816 (citations omitted). See also State v. LaForge, 347 N.W.2d 247 (Minn. 1984)(shifting burden of persuasion to defendant on intent element of crime violates due process). Cf. State v. Hage, 595 N.W.2d 200 (Minn.

1999)(requiring defendant to prove necessity defense by preponderance of the evidence does not violate due process because the defense does not negate an element of the crime).

The presumption contained in Minneapolis Ordinance § 474.660, that the registered owner was driving the vehicle photographed by the automated traffic law enforcement system and failed to stop for a red light, impermissibly shifts the burden of proof to the registered owner that he or she was not driving the vehicle at the time of the alleged red light violation. The identity of the person who failed to stop for the red light is an essential element of the offense. Section 474.660 violates the due process rights of registered owners by relieving the prosecution of its burden to prove that element of the crime beyond a reasonable doubt and, instead, shifting the burden to the defendant to prove that he or she did not commit the alleged violation.

By shifting the burden to the defendant to prove that he or she did not commit the alleged violation, Minneapolis Ordinance § 474.660 also violates the privilege against self-incrimination by compelling the accused to testify in his or her own defense. See U.S Const. amends. V & XIV; Minn. Const. art. I, § 7. This is a further violation of the due process rights of registered owners of motor vehicles.

C. The Criminal Nature of Minneapolis' Automated Traffic Law Enforcement System Ordinances

Minneapolis Ordinance § 474.640 provides: “If a motor vehicle is operated in violation of section 474.630 and the violation is detected by a recorded image taken by an automated traffic law enforcement system, the owner of the vehicle or the lessee of the

vehicle is guilty of a petty misdemeanor.” Minnesota Statutes § 609.02, subd. 4a, defines “petty misdemeanor” as an offense “which does not constitute a crime and for which a sentence of a fine of not more than \$300 may be imposed.” Minnesota Statutes § 609.02, subd. 1, defines “crime” as conduct “for which the actor may be sentenced to imprisonment, with or without a fine.”

Despite the facts that petty misdemeanor offenses are not punishable by imprisonment and are defined as noncriminal violations of the law, the Minnesota Rules of Criminal Procedure govern petty misdemeanor prosecutions. See Minn. R. Crim. P. 1.01. According to Minnesota Rule of Criminal Procedure 23.05, subd. 3: “A defendant charged with a petty misdemeanor violation is presumed innocent until proven guilty beyond a reasonable doubt and except as otherwise provided in Rule 23 the procedure in petty misdemeanor cases shall be the same as for misdemeanors punishable by incarceration.” The only difference in procedures between misdemeanors and petty misdemeanors, as otherwise provided in Rule 23, is that in petty misdemeanors the defendant has no right to a jury trial and no right to appointed counsel. See Minn. R. Crim. P. 23.05, subd. 1 & 2. See also Minn Stat. § 169.89, subd. 2 (no right to jury trial in petty misdemeanor prosecution and, if convicted, defendant not subject to imprisonment); State v. Haney, 600 N.W.2d 469, 471 (Minn. App. 1999)(presumption of innocence and beyond a reasonable doubt standard apply to petty misdemeanor cases).

The criminal nature of petty misdemeanor prosecutions for violations of Minneapolis' automated traffic law enforcement system ordinances is further demonstrated by the advisory contained on Hennepin County's Traffic Defendant's Rights on Petty Misdemeanor Court Trials.⁵ That document advises petty misdemeanor traffic defendants that:

- (1) They are presumed innocent;
- (2) The State must prove its case against them beyond a reasonable doubt;
- (3) They have the right to compulsory process;
- (4) They have the right to confront their accusers;
- (5) They have the right to remain silent; and
- (6) They have the right to be represented by retained counsel.

The criminal nature of prosecuting violations of Minneapolis' automated traffic law enforcement system ordinances is compounded significantly by the potential for misdemeanor enhancement. Minnesota law authorizes petty misdemeanor traffic violations to be enhanced to misdemeanor offenses if the accused has two or more petty misdemeanor traffic violations within the preceding year. Minn. Stat. § 169.89, subd. 1(2). Furthermore, even uncounseled petty misdemeanor traffic convictions may be used to enhance current petty misdemeanor traffic charges to the misdemeanor level. See State v. Host, 350 N.W.2d 479, 481-82 (Minn. App. 1984). Under Section 169.89, subd. 1(2), Minneapolis Ordinance § 474.640 violations could be used to enhance future petty misdemeanor traffic violations to misdemeanor offenses.

In addition to the potential for misdemeanor enhancement, the criminal nature of convictions under Minneapolis' automated traffic law enforcement system ordinances is

⁵A copy of the Traffic Defendant's Rights on Petty Misdemeanor Court Trials furnished to Respondent in the case at bar is included in the Appendix attached hereto.

revealed by the myriad of adverse consequences resulting from the conviction. For example, according to Minneapolis Ordinance § 474.650 (9)(b), “failure to pay the penalty of or to contest liability in a timely manner may result in a suspension of the owner’s driving privileges.” The Hennepin County Traffic Defendant’s Rights on Petty Misdemeanor Court Trials informs defendants that failing to appear for trial may result in a “conviction” on their driver’s license records, and failure to pay a fine may result in the suspension of their driver’s licenses. This information is consistent with Minnesota Statutes § 169.95 (b), which requires court administrators to certify copies of all traffic offense convictions to the Department of Public Safety within ten days. It is also consistent with Minnesota Statutes § 171.16, subd. 3, which requires the Commissioner of Public Safety to suspend driver’s licenses for failure to pay petty misdemeanor traffic conviction fines. See also Minn. R. Crim. P. 23 Comment.

Moreover, Minnesota Statutes § 169.89, subd. 5, authorizes trial courts to order anyone convicted of a petty misdemeanor traffic violation to complete a driver improvement clinic, in addition to paying a fine. The statute further provides that if a person fails to complete the driver improvement clinic ordered by the court, the Commissioner of Public Safety may suspend the person’s driver’s license. Additionally, Minnesota Statutes § 171.18, subd. 14, authorizes the Commissioner of Public Safety to suspend the driver’s license of anyone the Commissioner deems to be “an habitual violator of the traffic laws.”

D. Automated Traffic Law Enforcement System Case Law

A review of cases from Oregon, the District of Columbia, Delaware, and North Carolina, further supports the conclusion that Minneapolis' automated traffic law enforcement system ordinances violate the due process rights of registered owners of motor vehicles. For example, in State v. Dahl, 57 P.3d 965 (Ore. App. 2002), the Oregon Court of Appeals affirmed a judgment finding that the defendant violated the maximum speed limit under Oregon's photo radar statute. That statute provides a rebuttable presumption that the registered owner of the vehicle was driving it when it was photographed by a radar unit at the time of the alleged violation. Id. at 967. Upholding the constitutionality of that rebuttable presumption, the court emphasized the civil nature of the violation.

First, under Oregon law, the state is required "to prove a traffic violation 'by a preponderance of the evidence,' the ordinary civil standard, rather than 'beyond a reasonable doubt,' the standard applied in criminal cases." Id. Second, under Oregon law, a traffic violation does not result in "any disability or legal disadvantage based on conviction of a crime." Id. at 968. Third, Oregon's photo radar statute "provides a defendant in a traffic violation case with an opportunity to avoid trial altogether by submitting a certificate of innocence." Id. at 969. According to that statute, if the registered owner of the vehicle submits "a certificate of innocence within 30 days from the mailing of the citation swearing or affirming that the owner was not the driver of the vehicle and a photocopy of the owner's driver license, the citation shall be dismissed. The citation may be reissued if the jurisdiction

verifies that the registered owner appears to have been the driver at the time of the violation.”
Id. at 967 n.2.

Affirming the court of appeals, the Oregon Supreme Court similarly emphasized the civil nature of traffic violations under Oregon law. State v. Dahl, 87 P.3d 650 (Ore. 2004). Like the court of appeals, the Oregon Supreme Court observed that the civil nature of the violation is reflected by the fact “that the state has the burden of proving the violation only by a preponderance of the evidence.” Id. at 652. Also like the court of appeals, the Oregon Supreme Court noted that Oregon’s photo radar statute “requires the court to dismiss the citation if the registered owner . . . submits a ‘certificate of innocence,’ stating that he or she was not driving when the violation occurred, and a photocopy of his or her driver’s license.” Id. at 652-53.

A comparison of Oregon’s photo radar statute with Minneapolis’ automated traffic law enforcement system ordinances reveals the criminal nature of violations under those ordinances. Unlike traffic violations in Oregon, the prosecution must prove violations of Minneapolis’ ordinances beyond a reasonable doubt -- the burden of proof reserved for criminal cases, rather than merely by a preponderance of the evidence -- the ordinary civil standard. This constitutionally significant distinction demonstrates the criminal nature of violations under Minneapolis’ automated traffic law enforcement system ordinances.

Furthermore, unlike civil traffic violations under Oregon law, convictions for violating Minneapolis’ automated traffic law enforcement system ordinances do result in disabilities and legal disadvantages associated with criminal convictions. Convictions for violating

Minneapolis' automated traffic law enforcement system ordinances may be used to enhance future petty misdemeanor traffic violations to misdemeanor offenses. Such convictions can also result in the suspension or revocation of the registered owner's driver's license.

Moreover, unlike Oregon's photo radar statute, Minneapolis' automated traffic law enforcement system ordinances do not require citations to be dismissed upon the registered owner's submission of a "certificate of innocence." Under Minneapolis Ordinance Section 474.660, the presumption that the registered owner was driving the vehicle at the time of the alleged violation is not rebutted even if the registered owner provides a sworn affidavit identifying the name and address of the person operating the vehicle at the time of the alleged violation. To rebut that presumption, the owner's affidavit must also state that at the time of the alleged violation he or she was not the owner or lessee of the vehicle.

City of Wilmington v. Minella, 879 A.2d 656 (Del. Super. 2005), and Agomo v. Williams, 2003 WL 21949593 (D.C. Super. 2003)(unpublished)⁶ similarly illustrate the criminal nature of violations under Minneapolis' automated traffic law enforcement system ordinances. Based upon the nature of the proceedings and penalties imposed for alleged photo radar and photo red light violations, both courts concluded that such violations were civil rather than criminal. The Minella court observed that under Delaware's enabling legislation and Wilmington's photo red light ordinance, registered owners who contest citations are entitled only to a "civil" hearing and are liable only for "a civil or administrative fee not to exceed \$75." 879 A.2d at 658-60. Likewise, upholding the constitutionality of the

⁶A copy of this unpublished decision is included in the Appendix attached hereto.

District of Columbia's automated traffic enforcement system statute, the Agomo court noted that violations of the statute carry "only a \$75 civil penalty with no points." 2003 WL 21949593 at *5. Elaborating on the civil nature of the penalty, the court declared: "The statute as passed has in essence removed all criminal penalties for its violation and instead has imposed the equivalent of a civil fine. No points are assessed nor can any person be imprisoned or have his/her license or registration revoked or suspended for failure to pay the fine." Id. at *6.

Unlike the civil hearing in Minella, a registered owner charged with violating Minneapolis' automated traffic law enforcement system ordinances is entitled to a trial at which he or she is presumed innocent, the prosecution must prove his or her guilt beyond a reasonable doubt, and he or she has the right to compulsory process, to confront his or her accusers, to remain silent, and to be represented by retained counsel. The nature of such a trial is far more criminal than the "civil" hearing involved in Minella.

Additionally, unlike the "civil or administrative fees" not exceeding \$75 involved in both Minella and Agomo, the \$300 potential fine for violating Minneapolis' automated traffic law enforcement system ordinances is not the only consequence which can result from a conviction under those ordinances. Other criminal penalties which can result from a violation of these ordinances include misdemeanor enhancement of future violations, as well as the suspension or revocation of the registered owner's driver's license.

Shavitz v. City of High Point, 270 F. Supp.2d 702 (M.D.N.C. 2003), vacated on other grounds sub nom. Shavitz v. Guilford County Board of Education, 100 Fed. Appx. 146 (4th Cir. 2004), further demonstrates the criminal nature of Minneapolis’ automated traffic law enforcement system ordinances. The Shavitz court concluded that both the North Carolina enabling statute and the municipal ordinance implementing red light cameras were “civil in nature” rather than criminal. 270 F. Supp.2d at 713. Essential to the court’s conclusion was its observation that “in establishing the penalizing mechanisms, the legislative bodies plainly indicated an express preference for a civil label.” Id. The North Carolina statute authorized municipalities to adopt ordinances “for the civil enforcement of [red light violations] by a traffic control photographic system” Id. (emphasis in original). Both the enabling statute and the implementing ordinance provided that a “violation detected by a traffic control photographic system shall be deemed a noncriminal violation for which a civil penalty of fifty dollars (\$50.00) shall be assessed, and for which no points authorized by [North Carolina law] shall be assigned to the owner or driver of the vehicle nor insurance points as authorized by [North Carolina law].” Id. at 713-14 (emphasis in original). The court emphasized that while “persons criminally convicted of running a red light in North Carolina . . . could be assessed a penalty of up to \$100 and could be assigned driver’s license points . . . as well as insurance points . . . [n]o such points are allowed for violations of” photo red light ordinances. Id. at 716.

Nothing in Minneapolis' automated traffic law enforcement system ordinances indicates a preference for a civil label. Instead, references in the ordinances to the "prosecution" of violations and registered owners being found "guilty of a petty misdemeanor," indicate a preference for a criminal label. More importantly, unlike the North Carolina enabling statute and High Point ordinance, the Minneapolis ordinances do not protect registered owners against criminal consequences beyond a \$300 fine. Other criminal penalties can result from a violation of Minneapolis' ordinances, including misdemeanor enhancement of future violations, as well as the suspension or revocation of the registered owner's driver's license. These distinctions demonstrate the criminal nature of Minneapolis' automated traffic law enforcement system ordinances.

CONCLUSION

The Minneapolis automated traffic law enforcement system ordinances are invalid because they are preempted by and conflict with state law. Minneapolis Ordinance Sections 474.640 and 474.660 are not severable. These ordinances are also unconstitutional because they violate the substantive and procedural due process rights of registered owners of motor vehicles. Accordingly, this Court should affirm the District Court's Order dismissing the complaint filed against Mr. Kuhlman in the case at bar.

Respectfully submitted,

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APPENDIX INDEX

State v. Kuhlman, Hennepin County District Court File No. 05062805,
Order Granting Defendant’s Motion to Dismiss (March 14, 2006) A-1

Minn. Op. Atty. Gen. 989-B-5, 1977 WL 36269 A-18

Hennepin County’s Traffic Defendant’s Rights on Petty Misdemeanor Court Trials . A-21

Agomo v. Williams, 2003 WL 21949593 (D.C. Super. 2003)(unpublished) A-22