

In the Ross County Board of Elections

Re: Initiative Ordinance Restricting the Use of Mobile Speed Enforcement Vehicles and Traffic Law Photo Monitoring Devices

Protest

The City of Chillicothe, pursuant to Section 3501.39, Ohio Revised Code, protests against the petition for the initiative petition for the reasons that portions of the petition violate existing state law, portions of the petition violate the Ohio and United States Constitution and the petition is confusing and misleading to the voting public.

The specific protests are as follows:

1. The proposed ordinance attempts to limit the conduct of any law enforcement officer employed by Ross County in the use of mobile speed enforcement vehicles and traffic law photo-monitoring devices. The City of Chillicothe nor its citizens have any legal authority to regulate the conduct of law enforcement officers employed by Ross County.
2. The proposed ordinance attempts to repeal Chillicothe Ordinance Number 151-07 and Chapter 315 of the Revised Ordinances of Chillicothe, Ohio. Accordingly, it is directed at the cameras installed by RedFlex, which monitor red light and speed violations at various locations in the city. However, the definitions in the proposed ordinance of "traffic law photo-monitoring device" and "mobile speed enforcement vehicle" are so broad as to include any law enforcement vehicle, which uses either a mounted camera, radar or a laser system in the enforcement of traffic violations. Accordingly, under the terms of the proposed ordinance, a Chillicothe police officer patrolling in his/her police cruiser and observing a vehicle violating a red light or speeding, could not radio the violation to another police cruiser and have that officer stop the offender. Even if the officer that observed the violation then arrived at the scene of the arrest and attempted to issue the ticket personally, it would be invalid because it would not be issued at the time and location of the violation as required by the proposed ordinance.
3. The proposed ordinance not only indicates that it is repealing Chillicothe Ordinance Number 151-07, [The ordinance that authorized the mayor to enter into a contract with RedFlex] and Chapter 315 the Revised Ordinances of Chillicothe, Ohio, [Which governs the use and enforcement of red light camera violations], but it also indicates that any future City Council is prohibited from acting or enforcing any ordinance that conflicts with the proposed ordinance. It is illegal to attempt to prohibit future councils from exercising their legal powers.

4. The proposed ordinance is illegal and unconstitutional in that it attempts to impair an existing contract between the City and RedFlex.
5. The proposed ordinance incorrectly states that the benefits of the procedures set forth in the Ohio Rules of Civil Procedure apply to the enforcement of any traffic law violation. No proceedings for the enforcement of any traffic law violation, including those contained in Chapter 315 of the Codified Ordinances is a civil proceeding, and therefore the Rules of Civil Procedure do not apply.
6. The proposed ordinance incorrectly indicates that in any administrative proceeding for the enforcement of any traffic law violations, the alleged violators are entitled to the benefits of the procedures set forth in Title 119 of the Ohio Revised Code, when title 119 of the Revised Code does not apply to any administrative proceeding for the enforcement of traffic law violations.
7. The actions of the Council of the City of Chillicothe in enacting Ordinance 151-07 and Chapter 315 of the Codified Ordinances were administrative and not legislative. Therefore those actions are not subject to initiative proceedings.

Please schedule a hearing on these protests at your earliest opportunity.



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Certificate of Service

I hereby certify that I served a copy of the foregoing protests upon William C. Kaltenbach, chairperson, CAPE Initiative Petition Committee, by mailing it to him by certified mail at 516 McKellar Road, Chillicothe, Ohio 45601 this 14th day of August, 2009.



James L. Mann (0007611)
Assistant director of law

TITLE: AN ORDINANCE RESTRICTING USE OF MOBILE SPEED ENFORCEMENT VEHICLES AND TRAFFIC LAW PHOTO-MONITORING DEVICES AND REPEALING ORDINANCE NUMBER 151-07 AND CHAPTER 315 OF THE REVISED ORDINANCES OF CHILlicothe, OHIO

TEXT: BE IT ORDAINED as follows:

Section 1: The City of Chillicothe, including its various boards, agencies and departments, shall not use any traffic law photo-monitoring device or mobile speed enforcement vehicle for the enforcement of a qualified traffic law violation, unless a law enforcement officer is present at the location of the device or vehicle and personally issues the ticket to the alleged violator at the time and location of the violation.

Section 2: Definitions. As used in this Ordinance:

- a. "Law enforcement officer" means any law enforcement officer employed by the City or any other political jurisdiction in Ohio, including the State. The City may from time to time and in its discretion, by ordinance or resolution, designate which City employees are "law enforcement officers" for purposes of this Ordinance.
- b. "Qualified traffic law violation" means a violation of any of the following: (1) any state or local law relating to compliance with a traffic control signal or a railroad crossing sign or signal; or (2) any state or local law limiting the speed of a motor vehicle.
- c. "Ticket" means any traffic ticket, citation, summons, or other notice of liability (whether civil or criminal) issued in response to an alleged qualified traffic law violation detected by a traffic law photo-monitoring device.
- d. "Traffic law photo-monitoring device" means any electronic, photographic, video, radar, laser or digital system used to produce evidence of an alleged traffic violation or the identity of the operator of any motor vehicle.
- e. "Mobile speed enforcement vehicle" means any vehicle that uses any electronic, photographic, video, radar, laser or digital system to produce evidence of the speed of motor vehicles or the identity of the operator of any motor vehicle.

Section 3: Any ordinance enacted prior to the passage of this Ordinance, including without limitation, Ordinance Number 151-07 and Chapter 315 of the Revised Ordinances of Chillicothe, Ohio, is void. After the enactment of this Ordinance, the City shall not enact or enforce any ordinance that conflicts with this Ordinance. In the event that any provision of this Ordinance is found to be unconstitutional or impermissibly in conflict with state or federal law, only such provision found to be unconstitutional or impermissible will be stricken, and the remainder of this Ordinance will remain in full force and effect.

ATTESTATION

This is to certify and attest to the fact that the above and foregoing is a true and exact reproduction of the original proposed ordinance.

INITIATIVE PETITION (Municipality or Home Rule Township)

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Revised Code 504.14, 731.28 - .41, 3501.38, 3503.06

NOTE: Prior to circulation of an initiative petition proposing an ordinance or measure, a certified copy of such ordinance or measure must be filed with the City Auditor, Village Clerk or Township Fiscal Officer (home rule township). This petition must be signed by ten percent of the number of electors in the city, village or unincorporated area of the township who voted for governor at the preceding gubernatorial election and must be filed with the City Auditor, Village Clerk or Township Fiscal Officer.

(NOTE - The below notice must be printed in red.)

NOTICE - Whoever knowingly signs this petition more than once, signs a name other than his own, or signs when not a legal voter, is liable to prosecution.

To the City Auditor of the City of Chillicothe, Ohio:
City Auditor, Village Clerk or Township Fiscal officer City, Village or Township Name of City, Village or Township

We, the undersigned, electors of the City of Chillicothe, Ohio
City, Village or Township Name of City, Village or Township

respectfully propose to the electors of such city, village or township for their approval or rejection at the general election to be held on the 3rd day of November, 2009 the following Ordinance:

The following is a full and correct copy of the title and text of the proposed Ordinance:

TITLE: AN ORDINANCE RESTRICTING USE OF MOBILE SPEED ENFORCEMENT VEHICLES AND TRAFFIC LAW PHOTO-MONITORING DEVICES AND REPEALING ORDINANCE NUMBER 151-07 AND CHAPTER 315 OF THE REVISED ORDINANCES OF CHILICOTHE, OHIO

TEXT: BE IT ORDAINED by the electors of the City of Chillicothe, as follows:

Section 1: The City of Chillicothe, including its various boards, agencies and departments, shall not use any traffic law photo-monitoring device or mobile speed enforcement vehicle for the enforcement of a qualified traffic law violation, unless a law enforcement officer is present at the location of the device or vehicle and personally issues the ticket to the alleged violator at the time and location of the violation.

Section 2: Definitions. As used in this Ordinance:

- a. "Law enforcement officer" means any law enforcement officer employed by the City of Chillicothe or by Ross County.
- b. "Qualified traffic law violation" means a violation of any of the following: (1) any state or local law relating to compliance with a traffic control signal or a railroad crossing sign or signal; or (2) any state or local law limiting the speed of a motor vehicle.
- c. "Ticket" means any traffic ticket, citation, summons, or other notice of liability, whether civil, criminal, or administrative, issued in response to an alleged qualified traffic law violation detected by a traffic law photo-monitoring device.
- d. "Traffic law photo-monitoring device" means any electronic, photographic, video, radar, laser or digital system used to produce evidence of an alleged traffic violation and/or the identity of the operator of any motor vehicle.
- e. "Mobile speed enforcement vehicle" means any vehicle that uses any electronic, photographic, video, radar, laser or digital system to produce evidence of the speed of motor vehicles or the identity of the operator of any motor vehicle.

Section 3: Chillicothe Ordinance Number 151-07, Chapter 315 of the Revised Ordinances of Chillicothe, Ohio, and any ordinance implementing either that may be enacted prior to the passage of this Ordinance, are hereby repealed, void, and of no effect. The City shall not hereafter enact or enforce any ordinance that conflicts with this Ordinance. In the event that any provision of this Ordinance is found to be unconstitutional or impermissibly in conflict with state or federal law, only such provision found to be unconstitutional or impermissible will be stricken, and the remainder of this Ordinance will remain in full force and effect.

Section 4: The City shall not be a party to any contract for the installation of any traffic law photo-monitoring device or mobile speed enforcement vehicle if payment to the vendor or installer is contingent on the number of tickets issued or fees collected. Any such contract is hereby declared to be void for illegality.

Section 5: In any civil proceeding for the enforcement of any traffic law violation, the alleged violator is entitled to the benefits of the procedures set forth in the Ohio Rules of Civil Procedure, in Title 23 of the Ohio Revised Code, and in the Ohio Rules of Evidence.

Section 6: In any administrative proceeding for the enforcement of any traffic law violation, the alleged violator is entitled to the benefits of the procedures set forth in Title 119 of the Ohio Revised Code and in the Ohio Rules of Evidence.

Section 7: Notwithstanding the provisions of Sections 4 and 5, alleged traffic violators in any civil or administrative traffic proceeding are also entitled to the benefits of such other sections of state, federal, or common law as may apply.

ATTESTATION

This is to certify and attest to the fact that the above and foregoing is a true and exact reproduction of the original proposed ordinance.


Chairperson, CAPE
Initiative Petition Committee


Member, CAPE
Initiative Petition Committee


Member, CAPE
Initiative Petition Committee

Member, CAPE
Initiative Petition Committee


Member, CAPE
Initiative Petition Committee