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Picture It: Red Light Cameras Abide by the Law of the Land

Where was your car at 9:33 a.m. two days ago? North Carolina has implemented a “traffic-control photographic system”¹ that requires vehicle owners to know exactly where their vehicle is and who is driving it twenty-four hours a day, seven days a week. A traffic-control photographic system, or red light camera system,² is a program designed to reduce the number of drivers running red lights by placing electronic cameras at intersections to catch violators. One can argue, however, that North Carolina’s red light camera system is actually a plan to generate revenue by shifting the burden of proof to the defendant who must stand trial before a tribunal who has a monetary interest in holding the defendant liable. Contrary to this argument, this Recent Development contends that North Carolina’s red light camera system does not violate the “Law of the Land”³ Clause, or Due Process Clause,⁴ of the North Carolina Constitution.⁵ The red light camera statute does not violate the Law of the Land Clause because (1) it passes the rational basis test;⁶ (2) the rebuttable

1. N.C. GEN. STAT. § 160A-300.1 (1999 & Supp. 2000) (authorizing the use of cameras to photograph drivers who run red lights).

2. For the history of red light enforcement and the shift to red light cameras, see Steven Tafoya Naumchik, *Stop! Photographic Enforcement of Red Lights*, 30 MCGEORGE L. REV. 830, 834–36 (1999); Thomas M. Stanek, Note, *Photo Radar in Arizona: Is it Constitutional?*, 30 ARIZ. ST. L.J. 1209, 1213–16 (1998).

3. N.C. CONST. art. I, § 19 (providing that no person shall be deprived of life, liberty, or property “but by the law of the land”).

4. *Bacon v. Lee*, 353 N.C. 696, 721, 549 S.E.2d 840, 856 (2001) (concluding that the “law of the land” clause is synonymous with the Fourteenth Amendment Due Process Clause of the United States Constitution); *State v. Collins*, 169 N.C. 323, 323–24, 84 S.E. 1049, 1050 (1915) (same).

5. This Recent Development does not address the concern that red light cameras might constitute an unconstitutional invasion of privacy. Compare Quentin Burrows, Note, *Scowl Because You're on Candid Camera: Privacy and Video Surveillance*, 31 VAL. U. L. REV. 1079, 1121–30 (1997) (concluding that photo surveillance is unfair to “people who have nothing to hide” and want and deserve their privacy), and Valerie Alvord, *Critics of Red Light Cameras Laud Ruling*, USA TODAY, Sept. 6, 2001, at A3 (noting that House Majority Leader Dick Armey believes red light cameras are “unconstitutional and are an ‘Orwellian’ threat to privacy”), and Associated Press, *Traffic Monitoring System Alarms Civil Libertarians* (July 12, 2000), at <http://www.aclu.org/news/2000/w071200c.html> (noting that the ACLU and other groups believe that red light cameras pose “a threat to privacy”) (on file with the North Carolina Law Review), with Lisa S. Morris, Note, *Photo Radar: Friend or Foe?*, 61 U. MO. KAN. CITY L. REV. 805, 816–18 (1993) (arguing that red light cameras do not invade privacy), and Stanek, *supra* note 2, at 1239–41 (concluding that it is unlikely that red light cameras invade privacy).

6. See *infra* notes 26–75 and accompanying text.

presumption placed upon the owner of a vehicle photographed while running a red light shifts only the burden of production;⁷ and (3) impartial tribunals hear the cases of accused violators.⁸

Prior to 1998, police rarely ticketed drivers who ran red lights.⁹ In order to allow municipalities to begin meaningful deterrence of red light violators, the General Assembly passed section 160A-300.1 of the North Carolina General Statutes.¹⁰ The statute authorized Charlotte¹¹ to adopt an ordinance, which it calls "SafeLight," that permitted the use of cameras to photograph drivers running red lights.¹² Section 160A-300.1 allows the assessment of a fifty dollar civil penalty against violators who are ticketed on the basis of photographs taken by red light cameras.¹³ Because the violation is not an infraction, as it would be if a police officer ticketed an offender for running a red light,¹⁴ no points are added to an offender's driver's license or insurance policy.¹⁵ The vehicle owner receives a citation

7. See *infra* notes 76-98 and accompanying text.

8. See *infra* notes 99-125 and accompanying text. Some North Carolina cities have instituted similar red light camera programs. See, e.g., GREENSBORO MUNICIPAL CODE § 16-58 (2000), available at <http://fws.municode.com> (on file with the North Carolina Law Review); HIGH POINT MUNICIPAL CODE § 10-1-306 (2000), available at <http://fws.municode.com> (on file with the North Carolina Law Review). This Recent Development focuses on Charlotte's system because it has existed longer than those of other cities and thus offers a better statistical analysis.

9. See Charlotte Dep't of Transp., *First-Year Report* at <http://www.charmeck.nc.us/citranportation/programs/safelight/report1.htm> (last modified Jan. 22, 2002) [hereinafter *First-Year Report*] (stating that from 1995 to 1998, only 7,700 red light citations were issued at Charlotte's 572 signalized intersections) (on file with the North Carolina Law Review); see also N.C. GEN. STAT. § 20-158(b)(5) (1999) (requiring drivers to stop at red lights).

10. Act of June 23, 1997, ch. 216, 1997 N.C. Sess. Laws 423 (codified as amended at N.C. GEN. STAT. § 160A-300.1 (1999 & Supp. 2000)).

11. Section 160A-300.1 has been amended to authorize more North Carolina cities to implement the red light camera system. See Act of June 16, 1999, ch. 181, 1999 N.C. Sess. Laws 363 (codified as amended at N.C. GEN. STAT. § 160A-300.1 (1999 & Supp. 2000)) (authorizing Greensboro, High Point, and Rocky Mount to use red light cameras); Act of June 16, 1999, ch. 182, 1999 N.C. Sess. Laws 365 (codified as amended at N.C. GEN. STAT. § 160A-300.1 (1999 & Supp. 2000)) (permitting Wilmington, Greenville, Greensboro, Huntersville, Matthews, and Cornelius to institute red light cameras); Act of July 4, 2001, ch. 286, 2001 N.C. Adv. Legis. Serv. 129 (codified at N.C. GEN. STAT. §§ 160A-300.1 to 160A-300.3 (1999 & Supp. 2000)) (allowing some municipalities to use red light camera fines to fund public schools).

12. N.C. GEN. STAT. § 160A-300.1(d) (1999 & Supp. 2000); see Charlotte Municipal Ordinance §§ 14-226 to 14-230 (2000), available at <http://fws.municode.com> (allowing the installation of cameras at certain intersections with traffic signals) (on file with the North Carolina Law Review).

13. N.C. GEN. STAT. § 160A-300.1(c)(2).

14. *Id.* § 20-176(a) (2001) (characterizing a red light violation as an infraction).

15. *Id.* § 160A-300.1(c)(2). The state adds three points to the driver's license of a person caught running a red light. *Id.* § 20-16(c) (1999 & Supp. 2000). The state can

within forty-eight hours of the time that his vehicle was photographed running a red light.¹⁶ The owner has three options: pay the penalty,¹⁷ furnish the name and address of the person who was driving the car or furnish an affidavit stating that the vehicle was stolen,¹⁸ or object to the citation.¹⁹ If the vehicle owner objects to the citation, a hearing officer will review the objection at a “nonjudicial administrative hearing.”²⁰ In Charlotte, the Superior Court of Mecklenburg County may grant certiorari and review the hearing officer’s decision.²¹

Before further analyzing the red light camera statute, this Recent Development briefly will explain the technology of North Carolina’s red light camera system. The cameras at the monitored intersections are linked to and operated by a computer that connects to the traffic light’s control box and sensors in the road.²² In North Carolina, red light cameras only photograph the rear of a violator’s vehicle.²³ Technicians from the private company that installs and maintains the camera system view each photograph for accuracy and use a

suspend the license of a driver who earns twelve points on his driver’s license in a three-year period. *Id.* § 20-16(a)(5). The state may rate a driver’s safety and file this rating with the driver’s automobile insurance company. *Id.* § 58-36-65.

16. *First-Year Report*, *supra* note 9.

17. § 160A-300.1(c)(3).

18. *Id.* § 160A-300.1(c)(1).

19. *Id.* § 160A-300.1(c)(3).

20. *Id.* § 160A-300.1(c)(4).

21. CHARLOTTE MUNICIPAL CODE § 14-230 (2000), available at <http://fws.municode.com> (on file with the North Carolina Law Review).

22. Charlotte Dep’t of Transp., *Statement of Technology*, at <http://www.charmeck.nc.us/citransportation/programs/safelight/tech.htm> (last modified Jan. 22, 2002) [hereinafter *Statement of Technology*] (on file with the North Carolina Law Review). The computer activates the camera system .03 seconds after the traffic signal turns red and shuts the camera system down as soon as the traffic signal turns green. See Randy Jay Harrington, *You’ve Run a Red Light—Your Citation is in the Mail: Automated Red Light Photo Enforcement in Charlotte, North Carolina* (2000), at <http://www.charmeck.nc.us/citransportation/programs/safelight/thesis.htm> (on file with the North Carolina Law Review); *Statement of Technology*, *supra*. A red light camera will not take a picture of a vehicle that is already completely inside the intersection when the traffic signal turns red. *Statement of Technology*, *supra*.

23. Charlotte Dep’t of Transp., *SafeLight FAQ*, at <http://www.charmeck.nc.us/citransportation/programs/safelight/safecit2.htm> (last modified Jan. 22, 2002) [hereinafter *SafeLight FAQ*]. The red light camera takes two pictures when a vehicle passes over the sensors in the road. *Statement of Technology*, *supra* note 22. The first picture shows the vehicle as well as the traffic signal before the vehicle enters the intersection. *Id.* The second picture shows the vehicle while it is in the intersection with the traffic signal still red. *Id.* “The second photo data box records the violation date and time, time interval between the first and second photograph, red time elapsed when the vehicle is photographed proceeding through the intersection and speed of the vehicle at the time of the violation.” *Id.*

"[s]pecial scanner" to zoom in on the violator's license plate.²⁴ After determining that the photograph is accurate, the private company mails the vehicle's owner a citation.²⁵

The first inquiry under the Law of the Land is whether the North Carolina General Assembly was authorized to enact the red light camera statute.²⁶ The General Assembly does have the power to enact the red light camera statute because the statute's purpose is reasonably related to the means used to achieve that purpose. The North Carolina General Assembly "may legislate for the protection of the public health, safety, morals and general welfare of the people,"²⁷ but these laws must remain within the limits of the Law of the Land provision of the North Carolina Constitution.²⁸ In assessing whether this statute, which does not involve discrimination against a suspect class or infringe upon a fundamental right,²⁹ transgresses the Law of the Land provision, courts should apply the rational basis test.³⁰ To satisfy the rational basis test, the statute must serve a "legitimate purpose of state government and be rationally related to the achievement of that purpose."³¹

In determining whether a statute serves a legitimate purpose, courts give effect to the stated legislative purpose of the statute as long as the purpose "can reasonably be presumed to exist, and . . . may be reasonably conceived in the mind of the court."³² This

24. *Statement of Technology*, *supra* note 22.

25. *Id.*

26. N.C. GEN. STAT. § 160A-300.1 (1999 & Supp. 2000).

27. *Martin v. N.C. Hous. Corp.*, 277 N.C. 29, 45, 175 S.E.2d 665, 674 (1970).

28. *Shipman v. N.C. Private Protective Servs. Bd.*, 82 N.C. App. 441, 443, 346 S.E.2d 295, 296 (1986).

29. *See N.C. Dep't of Transp. v. Rowe*, 353 N.C. 671, 675, 549 S.E.2d 203, 207 (2001) (determining that if a law involves discrimination or infringes upon a fundamental right, courts must apply heightened scrutiny to the statute).

30. *Shipman*, 82 N.C. App. at 443, 346 S.E.2d at 296. To satisfy the rational basis test, "all that is required is that the statute serve a legitimate purpose of state government and be rationally related to the achievement of that purpose." *Id.*

31. *Id.* at 443, 346 S.E.2d at 296; *see also Poor Richard's Inc. v. Stone*, 322 N.C. 61, 64, 366 S.E.2d 697, 699 (1988) (concluding that a statute must have a proper governmental purpose and use reasonable means to effect that purpose for the statute to be held valid under the North Carolina Constitution). A rational relationship protects the citizens of North Carolina from "arbitrary legislation." *Lowe v. Tarble*, 313 N.C. 460, 461, 329 S.E.2d 648, 650 (1985). The North Carolina court's decision to overturn only arbitrary legislation is derived from its desire to allow the political process to protect the people against abuses by the legislature. *Id.*

32. *Martin*, 277 N.C. at 44, 175 S.E.2d at 673; *see also Poor Richard's*, 322 N.C. at 64-66, 366 S.E.2d at 699-700 (holding that a statute regulating retail sales of military property had a legitimate purpose). The Supreme Court used the same test that the North Carolina Courts applied in determining whether the 1974 Railroad Retirement Act's grandfather

reasonably conceivable purpose requirement allows the court to give deference to the stated legislative purpose while reserving the right to render the statute unconstitutional when no evidence supports the stated purpose.³³ The red light camera statute passes the rational basis test because it has a reasonably conceivable purpose, reasonably related to the means used to achieve the purpose.³⁴

The stated purpose of the red light camera statute is to “authorize local governments to use photographic images as prima facie evidence of a traffic violation.”³⁵ Preventing traffic violations promotes safety, which serves a legitimate purpose of state government.³⁶ In order to determine if the red light camera statute has a legitimate purpose, it is necessary to consider Charlotte’s motivation for enacting the red light camera ordinance. Charlotte enacted its red light camera ordinance to promote safety by decreasing the number of traffic violations and accidents at intersections with traffic signals and allowing police officers to focus on other offenses.³⁷ If Charlotte indicated in the ordinance’s history that the purpose for enacting the ordinance was to promote safety, then a court is likely to accept that intent at face value. When examining Charlotte’s intent, a court will also try to determine whether red light cameras further that purpose.

The number of red light violators has decreased substantially since the implementation of the SafeLight program.³⁸ The Charlotte Department of Transportation (“DOT”) studied eight intersections to determine whether red light cameras reduced the number of red light violations.³⁹ Before the DOT installed cameras, it observed 875

provision, which provided some employees with windfall benefits, served a legitimate purpose. See *United States R.R. Retirement Bd. v. Fritz*, 449 U.S. 166, 174–75 (1980) (concluding that the Court will accept any conceivable legitimate purpose as sufficient to satisfy the rational basis test).

33. *Martin*, 277 N.C. at 44, 175 S.E.2d at 673 (stating that the test “ ‘does not apply if the evidence is to the contrary, or if facts judicially known or proved, compel otherwise’ ” (citing 16 C.J.S. *Constitutional Law* § 100b, at 454–55)). The court’s ability to render a legislative purpose inconceivable prevents the legislature from validating every law by purporting to have passed the law to protect an important public interest.

34. North Carolina courts have not addressed this issue.

35. Act of June 23, 1997, ch. 216, 1997 N.C. Sess. Laws 423 (codified as amended at N.C. GEN. STAT. § 160A-300.1 (1999 & Supp. 2000)).

36. See *Lowe*, 313 N.C. at 462, 329 S.E.2d at 650.

37. Charlotte Dep’t of Transp., *SafeLight Program Objectives*, at <http://www.charmeck.nc.us/citransportation/programs/safelight/safeobj.htm> (last modified Aug. 22, 2001) [hereinafter *SafeLight Program Objectives*] (on file with the North Carolina Law Review).

38. *First-Year Report*, *supra* note 9.

39. *Id.*

violations at these eight intersections during a twelve-hour period.⁴⁰ After the cameras were installed at those same eight intersections, red light violations decreased to 58 over a twenty-four hour period.⁴¹ Based on the ordinance's language and these statistics, a court could infer that the purpose and indeed the effect of the statute is to promote safety.

Reports issued by the DOT⁴² seem to contradict the contention that red light cameras are reducing traffic violations, however. In the first year of the SafeLight Program 27,780 citations were issued.⁴³ Technicians issued 46,199 citations in the second year.⁴⁴ The increase in the number of citations during the second year of the program implies that the SafeLight program failed to curb red light running. This purported failure in its purpose raises the issue of whether Charlotte is pleased with the SafeLight program⁴⁵ not because it reduces incidences of red light running, but rather because it generates substantial revenue.⁴⁶ If the purpose of the red light camera ordinance is to generate revenue, rather than to promote compliance with traffic laws, it violates the Law of the Land, not because a city's generation of revenue is illegitimate, but because the use of red light cameras bears no rational relation to such a purpose.

The increase in the number of citations from the first year to the second is, however, defensible. First, for the first two months of SafeLight's existence, only two cameras monitored intersections.⁴⁷ Charlotte installed red light cameras at twenty intersections by the end of the second month of operation.⁴⁸ During the second year of operation, twenty cameras monitored intersections for the entire year.⁴⁹ Second, camera and computer technology improved, allowing technicians to more easily identify violators.⁵⁰ Hence, a larger, more

40. *Id.*

41. *Id.*

42. Charlotte Dep't of Transp., *SafeLight Annual Report*, at <http://www.ci.charlotte.nc.us/citranportation/programs/safelight/99-00%20report.pdf> (last visited Mar. 7, 2002) [hereinafter *Annual Report*] (on file with the North Carolina Law Review); *First-Year Report*, *supra* note 9.

43. *First-Year Report*, *supra* note 9.

44. *Annual Report*, *supra* note 42.

45. *See id.* (noting that the city believes SafeLight's success warrants expansion of the program).

46. *Id.* (stating that Charlotte received \$889,108 from red light citations during SafeLight's second year); *First-Year Report*, *supra* note 9 (stating that Charlotte received \$447,835 from red light citations during SafeLight's first year).

47. *First-Year Report*, *supra* note 9.

48. *Id.*

49. *Annual Report*, *supra* note 42.

50. *First-Year Report*, *supra* note 9.

sophisticated system operating during the second year accounts for the increased violations. Thus, one cannot argue that the increased number of violations reflects an underlying purpose to generate revenue rather than enforce traffic laws.

The second purpose of the SafeLight program is to promote safety by decreasing the number of collisions red light violators caused.⁵¹ Since the installation of red light cameras, collisions caused by red light violators at intersections with cameras have decreased twenty-four percent.⁵² The overall number of accidents at camera-monitored intersections has only decreased by one percent, however, and has even increased at some intersections.⁵³ These statistics are somewhat unreliable to indicate whether accidents caused by red-light running have decreased because they reflect all accidents, including "rear-end" collisions, not caused by light running, but by people slamming on their brakes at monitored locations.⁵⁴ Before red light cameras, the driver probably would have run the red light rather than slam on his brakes because police rarely issued citations for red light running. Now, a driver who knows he will be caught for the violation, is more likely to slam on his brakes to avoid the ticket, thereby causing an accident.⁵⁵ Although the overall number of collisions has not dropped significantly,⁵⁶ the severity of crashes at camera-monitored intersections has decreased substantially,⁵⁷ suggesting that the camera system promotes safety.⁵⁸

51. *Id.*

52. *Annual Report*, *supra* note 42.

53. Lauren Markoe, *City's Red Light Runners Are Getting the Picture*, CHARLOTTE OBSERVER, Sept. 11, 2001, at A1.

54. *Id.*

55. *Id.* (noting that rear-end accidents increased by 15.8% at camera monitored intersections).

56. *Id.*

57. *Annual Report*, *supra* note 42 (reporting that the severity of crashes has decreased fourteen percent).

58. Another stated purpose of the red light camera ordinance is to free up police officers to fight crime. *SafeLight Program Objectives*, *supra* note 37. In the three years before the city implemented red light cameras, police officers ticketed 7,700 drivers for running red lights. *First-Year Report*, *supra* note 9. So, police officers were detained from fighting crime 7,700 times. But police are still required to ticket red light violators, even at camera monitored intersections. North Carolina General Statute section 160A-300.2 states that a person is not required to pay the SafeLight citation when ticketed both by a police officer for running a red light and also cited by SafeLight for the same violation. If police officers were not required to monitor intersections with red light cameras, then this language in the statute would be unnecessary.

Assuming *arguendo* that police officers were not required to monitor intersections with red light cameras, Charlotte has 572 intersections and cameras monitor only twenty. *Id.* Police officers must still catch violators at 552 other intersections. N.C. GEN. STAT.

Nonetheless, an argument still persists that the statute sought to generate revenue rather than to promote public safety because the standard for issuing a ticket has been effectively lowered, making it easier to collect money. First, an accused red light violator is issued only a civil penalty when the SafeLight program cites him.⁵⁹ Conversely, a violator who is ticketed by a police officer for running a red light has an infraction levied against him.⁶⁰ A camera-monitored violation may be proved by a mere preponderance of the evidence, but the State must prove beyond a reasonable doubt that an infraction was committed.⁶¹ Consequently, the legislature has made collecting the penalty money from photographed red light runners easier by imposing a lesser burden of proof.⁶² If the vehicle owner does not respond to the citation, the civil penalty is doubled and the city “[m]ay enforce the penalties by a civil action in the nature of debt.”⁶³

Furthermore, one might argue that the state is not seriously seeking deterrence, but rather revenue generation. The penalty

§ 160A-300.2 (1999 & Supp. 2000). Thus, the legislature could not realistically have meant to free up police officers to fight other crime when it passed section 160A-300.1. This Recent Development imputes the legislature's intent to Charlotte because Charlotte was the main proponent for the bill, being the first to lobby the state legislature for it. *First-Year Report*, *supra* note 9 (stating that the Charlotte DOT approached the North Carolina Legislature in 1997 seeking approval for a red light camera system).

59. N.C. GEN. STAT. § 160A-300.1(c)(2).

60. *Id.* § 20-176(a) (1999). Section 160A-300.1 might be unconstitutional because it imposes a different punishment for the same traffic violation. A person who is ticketed by a police officer for running a red light is punished more severely upon being held responsible than a person cited by SafeLight for committing exactly the same violation. This Recent Development does not discuss this possibility. The United States Supreme Court has not held that the Cruel and Unusual Punishment Clause, U.S. CONST. amend. IIX, contains a proportionality requirement. See Margaret R. Gibbs, *Eighth Amendment-Narrow Requirement Preserves Deference to Legislative Judgment*, 82 J. CRIM. L. & CRIMINOLOGY 955, 960-68 (1992) (discussing the different interpretations the Justices have given the clause).

61. N.C. GEN. STAT. § 15A-1114(f)(1999) (declaring that infractions must be proved beyond a reasonable doubt).

62. If a court finds that the purpose of the red light camera statute is to generate revenue, then the court may decide that the statute is unconstitutional on the ground that the statute is effectively a “hidden tax”—instead of being merely a self sufficient, self-contained program, it adds money to government coffers. *First-Year Report*, *supra* note 9. Some, however, think tax dollars beyond the revenue collected by the program support the SafeLight program. *Id.* Although a tax is permitted, N.C. CONST. art. V, § 2, cl. 1 (stating that the General Assembly has the power to tax only for public purposes), the legislature may not conceal its tax, N.C. CONST. art. 1, § 8 (requiring the citizens to consent to being taxed).

63. N.C. GEN. STAT. § 160A-300.1(c)(3). Accordingly, Charlotte would pursue the claim in Small Claims Court. *Annual Report*, *supra* note 42.

assessed against photographed red light runners is only fifty dollars.⁶⁴ With such a minimal penalty, many people will not challenge the citation.⁶⁵ Fifty dollars is not an inexpensive fine, but cost effectiveness dictates paying the fine rather than missing time from work and hiring a lawyer to fight the case. In addition, once the accused violator pays the citation, no points are added to the accused's driver's license.⁶⁶ Three points are added to the driver's license of a person who is ticketed by a police officer and found responsible for running a red light.⁶⁷ The citation becomes more than a fifty dollar penalty, it becomes the difference between driving and not driving. If one's driving privilege is at stake, his incentive to object to the citation increases. Moreover, the red light runner's insurance premium will not increase as a result of being cited by SafeLight.⁶⁸ If an accused red light runner is threatened with the possibility of losing her driver's license or paying a higher insurance premium, it might prove more cost effective for the accused to object to the citation.

It appears the legislature purposely set a minimal punishment to reduce the likelihood that accused violators would challenge their citations—generating revenue under the pretext of promoting safety. From August 1999 through July 2000, Charlotte collected over two million dollars from people caught by red light cameras,⁶⁹ of which, Charlotte received \$889,108. If evidence did not exist to explain the ease with which an accused red light runner may be held liable and the penalty assessed against photographed red light runners remains minimal, a court might reasonably conceive that the purpose of the red light camera statute was revenue generation and not safety promotion.⁷⁰

Notwithstanding these facts that suggest that the legislature has purposely set a minimal standard for issuing tickets and a minimal punishment to prevent accused violators from challenging their

64. N.C. GEN. STAT. § 160A-300.1 (c)(2). A penalty of one hundred dollars is assessed against a red light violator ticketed by a police officer. See N.C. GEN. STAT. § 20-176(b) (2001).

65. *Annual Report*, *supra* note 42 (stating that 434 out of the 46,199 people who received citations in SafeLight's second year filed for an administrative hearing); *First-Year Report*, *supra* note 9 (noting that 369 out of the 27,870 people who received citations in SafeLight's first year filed for an administrative hearing).

66. N.C. GEN. STAT. § 160A-300.1(c)(2).

67. *Id.* § 20-16(c) (1999 & Supp. 2000).

68. *Id.* § 160A-300.1(c)(2).

69. See *Annual Report*, *supra* note 42.

70. If the statute's purpose is revenue generation, the statute violates the Law of the Land. See *supra* notes 45-46 and accompanying text.

citations, the statute preserves the main purpose of promoting safety. The city assesses a civil penalty because the driver cannot be positively identified; the camera only photographs the rear of the vehicle.⁷¹ A positive identification of the accused is helpful in a trial where the defendant must be proven guilty beyond a reasonable doubt.⁷² Because the burden of proof is lower for a civil penalty, adding points to one's driver's license and insurance policy would be unfair. Thus, section 160A-300.1 is not an attempt to generate revenue, but an attempt to promote safety without transgressing the Law of the Land Clause of the North Carolina Constitution.

The legislature could reasonably believe that authorizing North Carolina cities to implement red light camera systems would promote safety, thereby justifying the law. In 1997, red light runners caused nearly seven thousand accidents in Charlotte alone.⁷³ The red light running epidemic warranted legislative attention and intervention. The North Carolina General Assembly likely considered the success of other cities that implemented red light cameras.⁷⁴ Thus, it had a legitimate reason to believe that instituting red light cameras in its cities would enforce compliance with red lights and promote safety for its citizens. Whether these red light cameras are actually promoting compliance and safety—and they seem to be—is not for the court to decide. The legislature must determine the means for achieving its goals.⁷⁵ The court must only find a rational relation between the means and purpose of the statute. In this case, the statute has a legitimate purpose that is rationally related to the means used to achieve the purpose. Therefore, North Carolina General Statute section 160A-300.1 is not arbitrary, and by enacting the statute, the legislature did not violate the Law of the Land.

Though the red light camera statute survives a Law of the Land rational basis challenge, another potential concern is whether the

71. Harrington, *supra* note 22.

72. See *State v. Legget*, 292 N.C. 44, 54, 231 S.E.2d 896, 902 (1977); see also Harrington, *supra* note 22 (stating that criminalizing red light violations "requires positive driver identification").

73. Harrington, *supra* note 22. People who ran red lights caused over eight hundred deaths in America last year, and they caused five deaths in Charlotte in the year before the SafeLight program was instituted. *First-Year Report*, *supra* note 9.

74. See Stanek, *supra* note 2, at 1218–29 (noting that in some Arizona cities the accident rate decreased by twenty-five percent); Associated Press, *supra* note 5 (stating that red light cameras have reduced red light running by forty percent in the cities that have instituted the cameras).

75. N.C. CONST. art. II, § 1 (vesting the power to make laws in the General Assembly).

rebuttable presumption placed on accused red light runners⁷⁶ deprives them of due process. The Law of the Land guarantees respect for fundamental rights.⁷⁷ One of those fundamental rights is the right to a fair trial.⁷⁸

When a red light camera photographs a vehicle running a red light, section 160A-300.1 creates a rebuttable presumption that the owner of the photographed vehicle is liable⁷⁹ for running a red light.⁸⁰ To overcome this presumption, the accused must prove not only that she was not driving, but also prove who was driving.⁸¹ Initially, the rebuttable presumption that section 160A-300.1 creates might seem to violate the Law of the Land: “[a] law which hears before it condemns; which proceeds upon inquiry and renders judgment only after trial.”⁸²

Even though the punishment prescribed by section 160A-300.1 is civil rather than criminal, the legal system places the burden of proof upon the plaintiff in civil cases. Despite being characterized as “civil,” the statutory penalty remains a punishment. Punitive damages resemble a civil penalty, punishing defendants who act maliciously or extremely recklessly.⁸³ Still, the plaintiff must prove that the punitive damages are necessary for punishment and deterrence.⁸⁴ In red light camera trials, the city is the plaintiff because it seeks to compel the accused red light runner to pay a penalty. The

76. See N.C. GEN. STAT. § 160A-300.1(c)(1) (1999 & Supp. 2000) (“The owner of a vehicle shall be responsible for a violation unless the owner can furnish evidence that” the owner was not driving her vehicle at the time of the violation.”).

77. *State v. Tolley*, 290 N.C. 349, 364, 226 S.E.2d 353, 365 (1976).

78. *Id.* at 364, 226 S.E.2d at 366. This Recent Development does not discuss the possibility that red light cameras violate a driver’s Sixth Amendment right to present a defense because a violator may forget the exigency of the circumstances that caused the driver to run a red light. When a driver runs a red light and is stopped by a police officer, the driver will be able to recall the reason for running the red light. Compare Stanek, *supra* note 2, at 1235–37 (concluding that photo enforcement does not violate a red light runner’s right to present a defense), with Frederick Grab, *Photo-Radar: What’s Wrong with This Picture?*, 10 GLENDALE L. REV. 51, 53–56 (1991) (arguing that red light cameras are unconstitutional because the lapse of time between the violation and the citation is too great). But cf. Sherry F. Colb, *The Qualitative Dimension of Fourth Amendment “Reasonableness,”* 98 COLUM. L. REV. 1642, 1655 (1998) (suggesting that police officers should be able to record the license number of a violator and issue a citation to the owner of the vehicle).

79. The vehicle owner is liable because this is a noncriminal violation for which a civil penalty is assessed. N.C. GEN. STAT. § 160A-300.1(c)(2) (1999 & Supp. 2000).

80. *Id.* § 160A-300.1(c)(1).

81. *Id.*

82. *State v. Collins*, 169 N.C. 323, 324, 84 S.E. 1049, 1050 (1915) (emphasis added).

83. See *Ivey v. Rose*, 94 N.C. App. 773, 775–76, 381 S.E.2d 476, 478 (1989).

84. N.C. GEN. STAT. § 1D-15 (1999).

penalty assessed on the red light runner serves purposes similar to those of punitive damages: punishment and deterrence. Thus, if punitive damages, where the burden of proof is upon the plaintiff to prove that punitive damages are necessary, are similar to civil penalties, then the burden should be on the city to prove that the red light runner deserves a civil penalty. The rebuttable presumption, however, seems to place the burden on the accused.

North Carolina Rule of Evidence 301 explains, however, that a rebuttable presumption⁸⁵ does not shift the burden of proof to the defendant, but merely shifts the burden of producing evidence.⁸⁶ The plaintiff must bear the burden of persuasion throughout the trial or proceeding.⁸⁷ Indeed, the courts have found that rebuttable presumptions, even in criminal trials, are constitutional; although *conclusive* presumptions are not.⁸⁸ A conclusive presumption, or irrebuttable presumption, is "one 'which testimony could not overthrow.'"⁸⁹ A rebuttable presumption, on the other hand, is satisfied if the defendant presents evidence that "permit[s] reasonable minds to conclude that the presumed fact does not exist."⁹⁰ Actually, the rebuttable presumption is more accurately characterized as a rebuttable *inference*.⁹¹ Thus, the distinction is that a conclusive presumption requires the defendant to disprove the existence of a fact, but a rebuttable presumption allows "an inference which must be drawn upon the proof of basic facts."⁹² A conclusive presumption violates a defendant's due process rights, but a rebuttable presumption does not.⁹³

85. "A presumption is an assumption of fact resulting from a rule of law which requires such fact to be assumed or inferred from another established fact in the action." N.C. R. EVID. 301 cmt.

86. N.C. R. EVID. 301 ("In all civil actions and proceedings . . . a presumption imposes on the party against whom it is directed the burden of going forward with evidence to rebut or meet the presumption, but *does not shift to such party the burden of proof* in the sense of the risk of nonpersuasion.") (emphasis added).

87. *Id.*

88. See *County Court v. Allen*, 442 U.S. 140, 157-58 (1979); *Davis v. Allsbrooks*, 778 F.2d 168, 172-74 (4th Cir. 1985); *State v. Reynolds*, 307 N.C. 184, 188, 297 S.E.2d 532, 535 (1982). In fact, Rule 301 does not apply to conclusive presumptions. N.C. R. EVID. 301 cmt.

89. *Reynolds*, 307 N.C. at 189-90, 297 S.E.2d at 535 (quoting *Morissette v. United States*, 342 U.S. 246, 275 (1952)).

90. N.C. R. EVID. 301.

91. See *State v. White*, 300 N.C. 494, 507, 268 S.E.2d 481, 489 (1980).

92. *Id.* The commentary to Rule 301 defines basic fact as the term designating "the fact from which the assumption or inference is made." N.C. R. EVID. 301 cmt.

93. *White*, 300 N.C. at 507, 268 S.E.2d at 489.

Section 160A-300.1 creates a rebuttable presumption and not a conclusive presumption. The statute does not actually shift the burden of persuasion; it merely shifts the burden of production. When a person runs a camera-monitored red light, the camera automatically photographs the vehicle's license plate, which is matched with the vehicle's owner.⁹⁴ The photographic evidence showing the car running the red light allows a reasonable person to infer that the owner of the vehicle was driving the vehicle and thus violated the law.⁹⁵ To rebut this presumption, the vehicle owner must produce evidence that she was not the vehicle's driver.⁹⁶ Additionally, the owner could produce evidence to challenge the photograph's credibility.⁹⁷ If the defendant produces evidence that she was not driving the vehicle or that the photograph was not credible, then reasonable minds could conclude the fact to be presumed—that the vehicle owner ran the red light—did not exist.⁹⁸ Because the defendant may overcome the presumption, the presumption is rebuttable and not conclusive. Thus, the rebuttable presumption placed upon the owner of a vehicle photographed while running a red light does not violate the Law of the Land.

A final due process issue raised by the red light camera system is whether it affords the accused a hearing before an impartial tribunal. A recent San Diego case addressed this issue, holding San Diego's red light camera system illegal.⁹⁹ The judge ruled that the private

94. The photograph shows the vehicle in the intersection while the traffic signal is red, and it shows the vehicle's license plate. *Supra* note 23.

95. North Carolina follows the "silent witness doctrine" that allows evidence of the crime itself to be entered into evidence without a witness to testify that the photographs fairly and accurately represent the scene. *State v. Kistle*, 59 N.C. App. 724, 726, 297 S.E.2d 626, 627 (1982). Thus, pictures of a red light violation are automatically admissible evidence. The defendant must prove to the trier of fact that the photographs are not credible and, thus, should be disregarded. For a discussion regarding the problems that accompany photographic evidence, see Benjamin V. Madison III, Note, *Seeing Can Be Deceiving: Photographic Evidence in a Visual Age—How Much Weight Does It Deserve?*, 25 WM. & MARY L. REV. 705, 716–37 (1984).

96. N.C. GEN. STAT. § 160A-300.1(c)(1) (1999 & Supp. 2000) (requiring the owner to furnish the name and address of the person in control of the vehicle or an affidavit stating that the vehicle was stolen at the time of the violation).

97. See Madison, *supra* note 95, at 716 (stating that "photographs can and do lie").

98. See *id.* The situation could arise where both the vehicle owner and the person she accuses deny driving the vehicle at the time of the violation. If this happens, the trier of fact must determine, after reviewing the whole record of evidence, which defendant she believes was driving at the time of the violation. A determination of this nature does not threaten due process.

99. See Alvord, *supra* note 5 (discussing the controversy); Amanda Brondstad, *Suit Targets Cities over Cameras at Stop Lights*, L.A. BUS. J., Oct. 1, 2001, available at 212001 WL 27971444 (noting that San Diego city officials continue to believe the red light

company in charge of the red light cameras was too involved in the enforcement of the system because the company installed and maintained the cameras, reviewed the film, sent out citations, and received \$70 for every \$271 fine generated.¹⁰⁰ The judge dismissed the City's argument that the private company did not have the final say in the ticket because the police department reviewed tickets before mailing them to accused offenders.¹⁰¹ In light of this decision, some critics argue that North Carolina's red light camera statute violates due process because it fails to provide an accused red light runner with a trial before an impartial tribunal.¹⁰² Here, private companies issue tickets based on their review of the red light camera photographs and receive a substantial portion of the fine that the accused red light runners pay.¹⁰³

The Law of the Land requires "notice and an opportunity to be heard or defend in a regular proceeding before a competent tribunal."¹⁰⁴ An impartial trier of fact and law is required in order to afford each party due process.¹⁰⁵ Indeed, North Carolina's public

cameras are legal despite the contrary ruling); Brian E. Clark, *Poway to Consider Reinstating Red Light Cameras*, SAN DIEGO UNION TRIB., Sept. 22, 2001, at NC 2 (stating that Poway, California delayed reinstating a red light camera system until the San Diego case was decided).

100. Alvord, *supra* note 5.

101. *Id.*

102. Mike Fuchs, *Red Light Ruling Stirs up Debate Greensboro and High Point Officials Say Their Red Light Camera Procedures Aren't the Same as in the California Case*, GREENSBORO NEWS & REC., Sept. 7, 2001, at B1 (discussing the controversy that the San Diego case raised); Joanna Kakissis & Anne Blythe, *Camera Use Reviewed in Light of Court Ruling*, NEWS & OBSERVER (Raleigh, N.C.), Sept. 6, 2001, at B1 (announcing that Chapel Hill officials would consider the San Diego ruling before instituting its own red light camera system).

103. *See id.* (quoting Justin McNaull, spokesman for auto club AAA Mid-Atlantic, stating "[m]ost red light camera programs operate the same way [as San Diego's]"); Fuchs, *supra* note 99 (stating that Greensboro and High Point officials say that their red light camera system is different from San Diego's because the private company does not "have the final say on who gets cited and who loses an appeal"); Kakissis & Blythe, *supra* note 99 (stating that critics argue that private companies running red light camera systems in North Carolina violate due process because they get a cut of each citation that they issue). A Charlotte judge dismissed a challenge to Charlotte's red light camera system because the case was filed improperly. Eric Frazier, *Judge Tosses Charlotte, N.C., Red Light Camera Suit*, CHARLOTTE OBSERVER, Aug. 17, 2001, available at 2001 WL 26626028. The challenger argued that the cameras violated due process because accused red light runners have to send in their fine before they can appeal the ticket. *Id.*

104. *Smith v. Keator*, 285 N.C. 530, 535, 206 S.E.2d 203, 206 (1974).

105. *Hearne v. Sherman*, 350 N.C. 612, 619, 516 S.E.2d 864, 868 (1999) (Martin, J., dissenting) (concluding that a fair tribunal is a basic requirement of due process); *Crump v. Bd. of Educ.*, 326 N.C. 603, 616, 392 S.E.2d 579, 586 (1990) (holding that an impartial tribunal is necessary to provide due process to a party even at a school board hearing); *Ponder v. Davis*, 233 N.C. 699, 704, 65 S.E.2d 356, 359 (1951) (holding that the defendants

policy mandates that no judge should "participate in a matter in which he has a personal interest, or has taken sides therein."¹⁰⁶

Because the Law of the Land has been held synonymous with the Due Process Clause of the United States Constitution,¹⁰⁷ it is appropriate to consider Supreme Court jurisprudence that has required tribunals to be impartial in order to comply with Due Process. For example, in *Tumey v. Ohio*,¹⁰⁸ the United States Supreme Court held that the defendant was denied due process of law when the salary of the town mayor who tried and convicted him was contingent upon finding the defendant guilty.¹⁰⁹ The Court stated that a trier of fact could not be expected to be impartial when he had a direct pecuniary interest in convicting a defendant.¹¹⁰ In *Ward v. Monroeville*,¹¹¹ a defendant who contested traffic fines in a trial before the town mayor was not provided due process when the town derived a major source of its income from the fines the mayor's court assessed.¹¹² Thus, a trier of fact and law is not impartial if he has a pecuniary interest in the outcome of a case.

The first person to review the photograph of the alleged red light runner is not a public official, but a technician employed by the private company that installs and maintains the red light cameras.¹¹³ The technician reviews the photograph for accuracy and credibility and mails citations to those that he believes violated the law by running a red light.¹¹⁴ Therefore, the technician's decision is like a tribunal who must be impartial and provide the red light runner with due process. In Charlotte, the private company receives twenty-eight dollars for every fifty dollar penalty collected.¹¹⁵ Thus, the employer

were not provided due process of law when the dispute arose over a challenged election and the judge had a partisan interest in the outcome of the election).

106. *Ponder*, 233 N.C. at 703, 65 S.E.2d at 359.

107. *Bacon v. Lee*, 353 N.C. 696, 721, 549 S.E.2d 840, 856 (2001) (holding that the Governor's consideration of an inmate's clemency request did not transgress the Law of the Land where the Governor served as Attorney General during the inmate's appellate and post-conviction review proceedings).

108. 273 U.S. 510, 531-32 (1927).

109. *Id.* But see *Ex parte Steele*, 220 N.C. 685, 687, 185 S.E.2d 132, 135 (1942) (holding that the judgment of a tribunal with a pecuniary interest in the outcome of a trial is voidable and therefore the defendant can waive her right to have the tribunal disqualified).

110. *Tumey*, 273 U.S. at 532.

111. *Ward v. Monroeville*, 409 U.S. 57 (1972).

112. *Id.* at 59.

113. *First-Year Report*, *supra* note 9.

114. *Id.*

115. *Id.*; see also *Greensboro Agreement Between the City of Greensboro, N.C. and Peek Traffic, Inc.*, § V (Oct. 9, 2000) (promising the private red light camera company

of the person reviewing the evidence of an alleged violation will only be paid if the technician determines that a violation occurred and issues a citation. The red light camera statute does not require public officials to review the tickets before they are issued.¹¹⁶ The technician cannot be considered impartial, consequently the red light camera statute violates due process.

The technician, however, is not the tribunal. After receiving a citation, the accused may pay the fifty dollar penalty or object to the citation.¹¹⁷ If the accused objects to the citation, he is entitled to personally view the evidence¹¹⁸ and to have a nonjudicial administrative hearing.¹¹⁹ Few people object to the citation,¹²⁰ but the option to object precludes the technician from serving as the tribunal. The technicians who review the photographic evidence have no final say in determining a violation. The argument that technicians are biased and violate a person's right to due process is invalid because the technician is not the trier of fact or law.

Although a nonjudicial administrative hearing officer¹²¹ may have an interest in improving the city with revenue from red light camera citations,¹²² that interest is insubstantial when compared to

thirty-five dollars for every fifty dollar penalty collected) (on file with the North Carolina Law Review).

116. N.C. GEN. STAT. § 160A-300.2 (1999 & Supp. 2000). *But see* Fuchs, *supra* note 99 (stating that in High Point "a trained . . . police officer reviews" every citation before it is mailed to the accused red light runner). Even if the statute did require public officials to review the citations, a North Carolina judge might dismiss the argument, as did the San Diego judge, because the private company was already too involved in the enforcement of red light violations.

117. § 160A-300.1(c).

118. The citation includes a picture of the vehicle before it enters the intersection, a picture of the vehicle in the intersection while the traffic signal is red, and a picture of the vehicle's license plate. *SafeLight FAQ*, *supra* note 23.

119. § 160A-300.1(c)(4).

120. *Annual Report*, *supra* note 42 (explaining that 434 out of the 46,199 people who received citations in SafeLight's second year filed for an administrative hearing); *First-Year Report*, *supra* note 9 (stating that 369 out of the 27,870 people who received citations in SafeLight's first year filed for an administrative hearing).

121. § 160A-300.1(c)(4) (requiring the city to "institute a nonjudicial administrative hearing to review objections").

122. Unlike the technicians, no available evidence suggests that administrative hearing officers' salaries, unlike the private companies that install and maintain the red light camera systems, are related to the number of times that they convict defendants of red light violations. *Accord First-Year Report*, *supra* note 9 (stating that of the fifty dollar penalty, twenty-two dollars goes to the city and the other twenty-eight dollars goes to the private red light camera company). Therefore, these hearing officers differ from the mayor in *Tumey* because they have no pecuniary interest in the outcome of the hearing. *See Tumey v. Ohio*, 273 U.S. 510, 531-32 (1927).

that of the mayor's interest in *Ward v. Monroeville*.¹²³ A mayor is an elected official with a direct interest in generating revenue for his town. By contrast, the public does not elect administrative hearing officers.¹²⁴ Even though an administrative hearing officer stands to gain if the city makes money, the hearing officer does not have a *direct* interest in the outcome of the case in the same way that a mayor does. A mayor's political career, to some extent, depends upon the fiscal success of the city. A hearing officer is not elected, and thus is impartial compared to the mayor as a trier of fact.¹²⁵ Consequently, the statute does not violate due process because technicians who issue the citations for red light camera violations are not the tribunal, and the administrative hearing officers who are the tribunal are impartial.

Therefore, North Carolina's red light camera statute is consistent with the Law of the Land because it passes the rational basis test, provides a constitutional rebuttable presumption, and allows a hearing before an impartial tribunal. Red light cameras reasonably relate to promoting safety in North Carolina. The red light camera statute is, thus, rationally related to the purpose of the statute. In addition, the rebuttable presumption the red light camera statute imposes affords the accused due process because it shifts only the burden of production to the defendant and not the burden of persuasion. Finally, an accused red light runner is not deprived of due process because she is allowed to have her day in court in front of an impartial tribunal.

Although red light cameras in North Carolina are consistent with due process, the statute may be attacked on other grounds. Courts rendering judgment on the constitutionality of red light cameras will need to address whether the cameras are an unconstitutional invasion of privacy,¹²⁶ whether the red light camera system violates an accused red light runner's right to present a defense,¹²⁷ and whether the red light camera system is an unconstitutional hidden tax.¹²⁸ In the

123. 409 U.S. 57, 59 (1972).

124. *SafeLight Appeal Process*, available at <http://www.charmeck.nc.us/cittransportation/programs/safelight/appeal.htm> (last modified Feb. 12, 2002) (on file with the North Carolina Law Review).

125. See *Annual Report*, *supra* note 42 (stating that sixteen percent of the people who were tried by hearing officers in the second year of SafeLight were acquitted); *First-Year Report*, *supra* note 9 (noting that seventeen percent of the people who were tried by hearing officers in the first year of SafeLight were acquitted).

126. See *supra* note 5.

127. See *supra* note 78.

128. See *supra* note 62.

meantime, vehicle owners in North Carolina will have to obey red lights equipped with cameras to avoid being fined.¹²⁹

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129. See Markoe, *supra* note 53 (stating that Charlotte is lobbying for the implementation of photo radar, a system that photographs vehicles violating the speed limit).