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December 3, 2010

Albemarle County Board of Supervisors
401 McIntire Road
Charlottesville, VA 22902

Re: Albemarle County's PhotoSafe Program Involving Red Light Camera

Dear Supervisors:

The Rutherford Institute¹ has received a number of inquiries and complaints regarding Albemarle County's PhotoSafe Program, which relies upon red light monitoring devices put into operation on November 11, 2010, to enforce traffic light signals. Our investigation into the County's decision to implement the cameras has given rise to a number of concerns, legal and otherwise, relating to the nature of the contractual arrangement with the manufacturer of the devices, the impact of the cameras on traffic safety, the inconsistency of the program's objective with actual evidence, and the overall fairness of the adopted procedures for the system's implementation.

The County's Contractual Fee Arrangement

First and foremost, the County's contractual arrangement with the Australian corporation Redflex Traffic Systems appears to be a direct violation of VA. CODE ANN. § 15.2-968.1(I). This statute specifically provides, "No locality shall enter into an agreement for compensation based on the number of violations or monetary penalties imposed." However, the Redflex contract incorporates a so-called "cost-neutrality" provision whereby the company's compensation, up to the amount of the contractual monthly fee, hinges on the number of violations or monetary penalties imposed. For instance, if no traffic violations resulting in monetary penalties occur at the monitored intersections, the vendor will not be compensated until violations do occur in a

¹ The Rutherford Institute is an international non-profit civil liberties organization headquartered in Charlottesville, Virginia. Our mission is to educate the public on civil rights issues and to provide free legal representation to those whose fundamental liberties have been threatened or infringed.

subsequent month.² It would seem that by virtue of this arrangement, both the vendor and Albemarle County have a financial incentive to see that as many violations as possible occur.

In 2008, a California Superior Court held that a city's fee arrangement with the vendor of a traffic monitoring system violated California's counterpart to VA. CODE ANN. § 15.2-968.1(I) because the fee could be negotiated up or down depending on the revenue generated from citations.³ The court found this policy invalid because it gave the vendor an incentive "to ensure sufficient revenues [were] generated to cover the monthly fee."⁴ Thus, regardless of how the fee arrangement is worded or structured, it is likely to be found in violation of Virginia law where the vendor has a financial incentive to ensure that a high number of citations are issued.

The Impact of the Cameras on Traffic Safety

The red light cameras are not proven to increase safety, and multiple studies indicate that they actually *increase* the number of crashes. The hard evidence thus casts doubt on claims that the purpose of the PhotoSafe Program is to enhance traffic safety.

In Greensboro, North Carolina, the Urban Transit Institute at the North Carolina Agricultural and Technical State University analyzed 57 months of data and concluded that the red light cameras were associated with a 40% increase in crashes.⁵ In Ontario, Canada, Synectics Transportation Consultants (on behalf of the Ministry of Transportation) evaluated intersections with cameras as well as intersections with increased police enforcement.⁶ It found a 16% increase in accidents with cameras, as opposed to an 8% increase at comparison intersections with no enforcement or cameras.⁷ It also found a 2% increase in injury/fatal crashes at camera intersections as opposed to a 10% *decrease* with police enforcement.⁸

Studies conducted in the Commonwealth show that the cameras result in an increased number of rear-end collisions. The Virginia Department of Transportation and the Federal

² Former Police Chief Miller confirmed this fee arrangement at the Board of Supervisors' August 5, 2009 meeting. In response to the Supervisors' questions concerning funding for the red light camera program, Chief Miller explained, "it is a leased [sic] program and is based on violations, and if the amount of violations within an intersection doesn't cover the costs then the program would cease." Chief Miller further stated, "If that [\$4,500 per month] number were not met, there would be no cost to the County and the program would just be shut down." As referenced in Albemarle County Board of Supervisors Meeting Minutes, p. 55, Aug. 5, 2009, available at http://www.albemarle.org/upload/images/Forms_Center/Departments/Board_of_Supervisors/Forms/Minutes/20090805minutes.pdf.

³ *California v. Franco*, Judgment on Appeal from the Superior Court of Orange County, Case No. 30-2008-93057 (2008).

⁴ *Id.*

⁵ Mark Burkey and Kofi Obeng, "A Detailed Investigation of Crash Risk Reduction Resulting From Red Light Cameras In Small Urban Areas," Urban Transit Institute, July, 2004, available at <http://www.thenewspaper.com/rlc/docs/burkeyobeng.pdf>.

⁶ Synectics Transportation Consultants, Inc., "Evaluation of the Red Light Camera Enforcement Pilot Project," December, 2003, available at <http://www.thenewspaper.com/rlc/docs/2003-ontario.pdf>.

⁷ *Id.*

⁸ *Id.*

Highway Administration funded a study of seven years of crash data by the Virginia Transportation Research Council.⁹ The study associated red light cameras with a 27% increase in rear-end crashes and a 42% decrease in red-light-running crashes across six Virginia jurisdictions (Alexandria, Arlington, Fairfax City, Fairfax County, Falls Church, and Vienna).¹⁰ While there were significant variations in effects among different intersections and jurisdictions, *crashes increased overall* because there are generally more rear-end crashes than red light running crashes.¹¹ The study concluded that the results “cannot be used to justify the widespread installation of cameras because they are not universally effective.”¹²

Less Intrusive, More Effective Means of Enhancing Traffic Safety

As a Charlottesville-based organization, The Rutherford Institute values the Board’s concern for traffic safety and its desire to protect residents from intersection crashes. However, there are far superior alternatives. For instance, according to the National Highway Traffic Safety Administration, intersection safety would be increased by simply lengthening the yellow light time or adding an all-red light interval.

A study by the Texas Transportation Institute (TTI) found that increasing the length of yellow lights by one second decreased the chance of accidents by 40%.¹³ Similarly, a case study of two intersections entitled, “The Influence of the Time Duration of Yellow Traffic Signals on Driver Response,” revealed that a mere 30% increase in yellow light time produced substantial safety benefits.¹⁴ And when the Virginia Department of Transportation (VDOT) increased the yellow light duration from 4.0 seconds to 5.5 seconds at an Arlington intersection in 2000, the problem of red light running practically disappeared.¹⁵

Rather than trading one type of crash for another as red light cameras do, increasing the duration of the yellow light is proven to be effective in actually enhancing intersection safety. Moreover, this cost-free means of achieving the County’s stated goal carries none of the costs to motorists’ privacy or community morale. This is clearly the superior alternative to the implementation of technological spying devices that have outraged so many Albemarle County residents.

⁹ Nicholas J. Garber, John S. Miller, R. Elizabeth Abel, Saeed Eslambolchi, and Santhosh K. Korukonda, “The Impact of Red Light Cameras (Photo-Red Enforcement) on Crashes in Virginia,” Virginia Transportation Research Council 2007, http://www.virginiadot.org/vtrc/main/online_reports/pdf/07-r2.pdf.

¹⁰ Id.

¹¹ Id.

¹² Id.

¹³ James Bonneson and Karl Zimmerman, “Development of Guidelines for Identifying and Treating Locations with a Red-Light-Running Problem,” Texas Transportation Institute, 2004. <http://www.thenewspaper.com/ric/docs/04-alternatives.pdf>.

¹⁴ William A. Stimpson, Paul L. Zador, and Philip J. Tarnoff, “The Influence of the Time Duration of Yellow Traffic Signals on Driver Response,” *ITE Journal*, November, 1980.

¹⁵ Richard Retting, “Statement Before the Kentucky Senate Transportation Committee on Red Light Violations and Red Light Cameras,” March 9, 2000.

Sacrificing Safety to Generate Revenue

While we are hopeful that the Albemarle County Board of Supervisors was motivated to implement this program solely by its concern for traffic safety, a close examination of the history of traffic monitoring devices reveals that, on a larger scale, the profit motive figures prominently into the rise of localities' implementation of this technology. In fact, while evidence such as that cited above consistently indicates that lengthening the yellow light duration increases intersection safety, national guidelines have actually *lowered* the recommended yellow light duration at problem intersections, apparently in an effort to spawn the implementation of red light cameras across the nation.

A 2001 report released by former House Majority Leader Dick Armey documents the pertinent history well.¹⁶ The report found that in 1985, the Institute of Transportation Engineers (ITE) began to change the way signal times were calculated so as to provide at least three methods resulting in a reduction of yellow light time.¹⁷ The report ultimately concluded:

Transportation officials and engineers *know* that the yellow signal timing is essential to safety. The data showing this to be the case are found in their studies. Nonetheless, some have systematically and intentionally ignored the inescapable engineering fact that longer yellows would solve the so-called crises caused by *shortened* yellows. Red light cameras present a perverse disincentive for local jurisdictions to fix intersections with excessive red light entries. It's hard to fix a "problem" that brings in millions in revenue. In other words, red light cameras aren't fixing a safety problem, they're creating one.¹⁸

Such conclusions are validated by a review of the marketing materials used by Redflex Traffic Systems in procuring its contract with Virginia localities. One document provided by the company states:

Program cost evaluations should not be based on just the approach fee, but the number of citations issued, that translates into saving more lives *and generating more revenue*, a real Redflex advantage.

...

Since our system yields in under many circumstances are 50%-100% greater than our competition the *return on investment* with Redflex is the strongest in the industry.¹⁹

¹⁶ Office of the Majority Leader, *U.S. House of Representatives*, "The Red Light Running Crisis: Is It Intentional?" May 2001.

¹⁷ *Id.* at p. 13.

¹⁸ *Id.* at p. 21.

¹⁹ Materials provided to City of Newport News by Redflex Traffic Systems and incorporated into the company's contract with Albemarle County (emphasis added).

It is clear that the “return on investment” Redflex references is not an increase in traffic safety, but rather an increase in revenue generated by traffic offenses at the monitored intersections. Obviously, the goal of generating revenue from red light runners and the goal of increasing safety at an intersection are mutually exclusive. Whatever Albemarle County’s actual intentions are in this matter, Redflex’s stated goals for its system make the County’s business relationship with the company unseemly.

The Rutherford Institute submits that in light of the sinister purposes fueling the larger movement toward technological traffic monitoring—a system proven to be detrimental to traffic safety—the County would be well-advised to discontinue its use of the system as soon as possible. Instead, if the County is truly motivated solely by a desire to enhance traffic safety, it could do a real service to motorists by choosing to go the proven route of lengthening yellow light duration.

Additional Concerns

Recent changes to Virginia law, designed to facilitate the use of the red light cameras and maximize the opportunity for localities to profit from the systems, present additional concerns about the PhotoSafe Program. Last spring, Governor McDonnell signed into law House Bill 1292, which allows private firms operating the systems to access motorists’ confidential information from the Department of Motor Vehicles. This amendment compounds drivers’ fears about the continuing erosion of their privacy. Not only will Big Brother have one more means of monitoring a person’s whereabouts, but a remote, privately-owned company will now have access to drivers’ confidential information.

House Bill 1292 also shortened the amount of time given to alleged traffic law violators to respond to citations resulting from the use of the technology. While prior law allotted sixty (60) days for the response, the amendment cut that time in half to thirty (30) days.²⁰ This brief interval of time is inadequate for the average motorist to receive and review the information, determine what action is required, avail him or herself of the opportunity to inspect the evidence and determine *how* he or she might do so, consider appealing the citation, and respond appropriately.

Adding to the confusion engendered by technological law enforcement is the public debate regarding whether or not *any* action is really required upon receipt of a red light camera citation. While the governing statute allows summonses issued as a result of camera enforcement to be mailed to the presumed offender, it also states that the summons is to be issued in the traditional manner if the summoned person fails to appear on the return date, and no arrest or contempt proceedings may be initiated.²¹ As a result, some groups who oppose the technology are encouraging motorists to simply ignore the citations.²² However, some legal

²⁰ VA. CODE ANN. § 15.2-968.1(G).

²¹ *Id.*

²² See Henry Graff, “Red Light Cameras Spark Payment Debate,” Nov. 29, 2010, available at <http://www.nbc29.com/story/13506180/red-light-cameras-spark-payment-debate>.

professionals have suggested that unpaid citations issued by mail will be handed over to private collection agencies or withheld from drivers' tax refunds, etc.²³

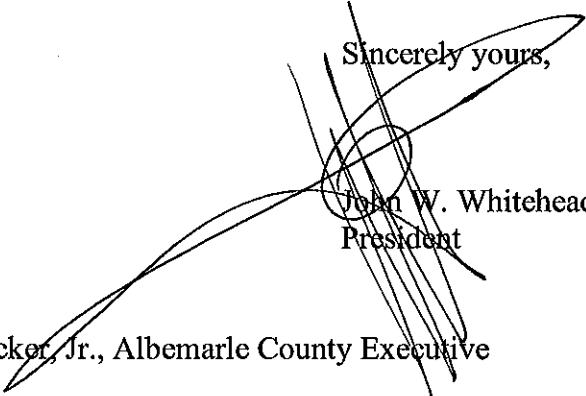
Finally, as an organization dedicated to preserving citizens' civil liberties, including their right to due process under the law, we are concerned about the use of this technology to trigger a "rebuttable presumption" of guilt based merely on photographs of a vehicle and the fact of a person's ownership of the vehicle.²⁴ It is a cherished precept of our legal system that one is innocent until proven guilty, and we believe that this particular presumption goes too far.

Conclusion

In light of the evidence of the technology's dismal effect on traffic safety and the ready availability of a proven effective alternative, we submit that the considerable countervailing factors tip the scale solidly against the use of red light cameras. Your constituents, many of whom have been contacting us to complain about the technology, are unsettled by the idea of "Big Brother" looking over their shoulders. Even drivers who are careful to obey traffic laws—indeed, perhaps they in particular—feel violated by the watchful eyes of cameras as they drive through the streets of their hometown. This sense of intrusion engendered by the red light technology is likely to lead to a generalized resentment of local government that is detrimental to the health and well-being of the community.

In view of the foregoing considerations, The Rutherford Institute strongly urges the Board of Supervisors to reconsider Ordinance No. 09-9(1) concerning the use of Traffic Light Signal Monitoring Systems. Should you be willing to re-open this topic for discussion, we would happily make ourselves available as a resource and an ongoing conduit for residents' concerns.

Sincerely yours,



John W. Whitehead
President

cc: Mr. Robert W. Tucker, Jr., Albemarle County Executive

²³ Id.

²⁴ VA. CODE ANN. § 15.2-968.1(D).