

In the wake of the passage of the state law pertaining to so-called “red light traffic cameras,” [See Acts 2008, Public Chapter 962, effective July 1, 2008, codified at Tenn. Code Ann. § 55-8-198 (Supp. 2009)], numerous local governments have passed ordinances enacting regulatory schemes regarding use of this modern police tool. Previously in this newsletter I explored some possible challenges to red light camera ordinances. This is the third part in a series of articles that briefly explores some other possible challenges, and an appropriate municipal response based on cited case law.

G. Selective Enforcement Issue

1. Defendants may raise a “selective prosecution” argument based on the fact that cameras are placed in some areas but not other areas of the city. Such an argument has been previously raised in a red-light camera case and summarily rejected.

3. In Akbar v. Daley, 2009 U.S. LEXIS 85897 (N.D. Ill. 2009), the plaintiff raised an “Equal Protection” violation claim based on alleged selective enforcement. In dismissing this attack on the Chicago red-light camera program, the Akbar court held as follows:

In order to set forth a valid selective enforcement claim, Plaintiff must meet the “ordinary equal protection standards that [United States v. Armstrong, 517 U.S. 456; 116 S.Ct. 1480; 134 L.Ed.2d 687 (1996)] outlines for selective prosecution claims.” [citation omitted] Armstrong states that a selective prosecution claim is actionable as a violation of equal protection only if the decision to prosecute is based upon “an unjustifiable standard such as race, religion, or other arbitrary classification.” [citation omitted] A plaintiff may demonstrate that the law is “directed so exclusively against a particular class of persons ... with a mind so unequal and oppressive that the system of prosecution amounts to a practical denial of equal protection of the law.” [citation omitted]

Any such claim [here] ... founders on Plaintiff’s inability to identify a discrete class of persons at all, much less one as to which the *Equal Protection Clause* is concerned. Plaintiff’s conclusory assertion that the placement of cameras strictly outside the downtown area was “arbitrary” is insufficient in light of Defendant’s entirely rational reasons for deploying cameras in certain intersections but not others. “As long as a law or regulation is rationally based, the mere failure of those who administer it to treat all persons who have violated it with complete equality does not of itself infringe the constitutional principle of equal protection.” [citation omitted] ... see also Dandridge v.

Williams, 397 U.S. 471, 485; 90 S.Ct. 1153; 25 L.Ed.2d 491 (1970) (citation omitted) (noting that a classification does not violate the *Equal Protection Clause* simply because it “is not made with mathematical nicety or because in practice it results in some inequity”).

In short, no suspect class or fundamental rights are targeted by the placement of cameras throughout the City. Any individual, regardless of race, national origin, or any other classification is a potential target of this ordinance. As such, Defendant’s choice of intersections will be upheld unless Plaintiff can negate “every conceivable basis which might support” those decisions, which he cannot.

Akbar.