

Is Automated Enforcement Constitutional?

Shari T. Kendall

May 2004

**INSURANCE INSTITUTE
FOR HIGHWAY SAFETY**

1005 NORTH GLEBE ROAD ARLINGTON, VA 22201

PHONE 703/247-1500 FAX 703/247-1678

www.iihs.org

Some critics of automated enforcement programs for red light and speeding violations have argued that these programs are unconstitutional, and there have been a number of legal challenges to this type of enforcement. Every court that has reviewed automated enforcement programs has found that using camera technology does not violate any provision of the U.S. or state constitutions; however, courts have required some cities to make changes in the programs to correct operational problems. State courts in California, Colorado, Oregon, and North Carolina, as well as the United States Ninth Circuit Court of Appeals and the Superior Court of the District of Columbia, have rejected specific constitutional challenges to automated enforcement programs; these failed challenges have raised questions about due process, equal protection, the Fourth Amendment, and the “takings clause” of the Fifth Amendment.

Due Process

Under the Fifth and Fourteenth Amendments to the U.S. Constitution, federal and state governments must have procedural safeguards in place to ensure that no citizen is deprived of life, liberty, or property without due process. Some critics have alleged that automated enforcement violates the right to due process for a number of reasons: not all drivers photographed receive tickets; an owner is presumed to be the driver at the time of the violation; statutes do not specifically state where a warning sign should be; it is presumed that the driver committed the offense; and that the delay in receiving the ticket for the violation is too long. Courts have rejected all of these challenges. *Agomo v. Williams*, Sup. Ct. D.C., Case No. 02-CA-6520 (June 12, 2003). *See also*, *CA v. Allen*, Sup. Ct., (San Diego Sep. 4, 2001); *Denver v. Piroosko*, County Court of Denver, Case No. S003143859 (Jan. 28, 2002); *Oregon v. Dahl*, 336 Ore. 481, 2004 Ore. Lexis 136 (Mar. 4, 2004); and *Shavitz v. High Point*, 270 F. Supp. 2d 702, 2003 U.S. Dist. Lexis 11839 (July 9, 2003).

Equal Protection

Other critics argued that automated enforcement violates the equal protection doctrine of the Fourteenth Amendment. They make this claim because of the different punishments between a ticket from a photographed violation and an on-the-spot officer enforced ticket (note, in some states a photo-enforced ticket is punished by a lower fine or may not include points on a license). At least one court has ruled that the different punishments are reasonable and therefore do not violate a person’s constitutional rights. “Different classes of persons may be treated differently without violation of equal protection when the classification is reasonable, not arbitrary, and bears a rational relationship to legitimate state objectives.” *Denver v. Piroosko*, County Court of Denver, Case No. S003143859 (Jan. 28, 2002).

Fourth Amendment

Two suits have alleged that issuing a citation to a registered owner of a photographed vehicle amounts to a seizure of the vehicle in violation of the search and seizure clause of the Fourth Amendment. The two courts that reviewed the challenges found no violation because there was no seizure. Sending a citation to the registered owner of a vehicle does not constitute a seizure under the Fourth Amendment. *Denver v. Pirosko*, County Court of Denver, Case No. S003143859 (Jan. 28, 2002). *See also, McNeill v. Town of Paradise Valley*, 44 Fed. Appx. 871, 2002 U.S. App. Lexis 17306 (Ninth Cir. Aug. 19, 2002).

“Takings Clause” of Fifth Amendment

A suit in Denver, Colorado, charged that the city was violating the Fifth Amendment “takings clause” by booting vehicles (placing a metal device on a vehicle that does not allow the vehicle to move more than a few inches forward or backward) whose owners had not paid their fines from automated enforcement. The “takings clause” of the Fifth Amendment states that property shall not be taken from a person without that person receiving just compensation. The court held that there was no violation of the Constitution because the booting did not amount to taking the vehicle. In addition, the court noted there are reasonable safeguards to ensure that booting happens only to owners who have been found guilty and do not pay their fines — each of the owners had been personally served and been issued a default judgment. *Denver v. Pirosko*, County Court of Denver, Case No. S003143859 (Jan. 28, 2002).

Privacy

Although the issue of invasion of privacy is often raised by opponents of automated enforcement no privacy challenges have been raised in court. This probably is because the issue of privacy in a vehicle has been very well defined by the Supreme Court of the United States. Driving is a regulated activity on public roads. By obtaining a license, a motorist agrees to abide by certain rules including, for example, to obey traffic signals. “Automobiles are justifiably the subject of pervasive regulation by the State. Every operator of a motor vehicle must expect that the State, in enforcing its regulations, will intrude to some extent upon that operator’s privacy.” *New York v. Class*, 475 U.S. 106 (Feb. 25, 1986). Because opponents have not raised privacy issues in their law suits, courts have not had to decide whether automated enforcement violates a person’s privacy. However, a judge in the District of Columbia went so far as to say, “[t]he fact that there are a high number of persons photographed running the traffic signal or operating at excessive speeds is an example of the magnitude of the problem facing city officials trying to correct a growing situation. Although cameras operated by the Government are a concern regarding privacy issues, those concerns are outweighed by the legitimate concerns of safety on our public streets.” *Agomo v. Williams*, Sup. Ct. D.C., Case No. 02-CA-6520 (June 12, 2003).

U.S. Supreme Court case law is clear that the use of automated enforcement does not violate the constitutional right to privacy. In one decision the Court noted, “One has a lesser expectation of privacy in a motor vehicle... A car has little capacity for escaping public scrutiny. It travels public thoroughfares where both its occupants and its contents are in plain view....” *Cardwell v. Lewis*, 417 U.S. 583 (June 17, 1974). Nor is there a right to privacy of license plates. The Court has stated that “it is unreasonable to have an expectation of privacy in an object required by law to be located in a place ordinarily in plain view from the exterior of a vehicle.” *New York v. Class*, 475 U.S. 106 (Feb. 25, 1986).

Conclusion

Automated enforcement has very vocal opponents; however, approximately 80 percent of people surveyed in cities with and without automated enforcement were in favor of using the technology as a means of deterring red light running. Although the opponents of the programs often raise arguments that the programs are illegal and in violation of a person’s rights granted by the U.S. Constitution, all courts that have reviewed constitutional challenges to automated enforcement programs have found that the programs do not violate the constitution.