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Testimony for SB 976

Mr. Chairman and members of the committee, first thank you for your service.

I apologize for my inability to come before you and give this testimony in person and answer any questions the committee members may have for me.

As you do or should know by now the ways statutes and other sources of law work in theory and on paper are frequently far different from the practice and application. Few would disagree that the initial purpose of speed cameras or what the statute refers to as speed monitoring systems was to protect pedestrian safety. Originally speed cameras were only to be used in school zones during school hours or at times when students would be commuting to and from school.

Montgomery County is permitted to use speed cameras outside of school zones provided the speed limit on the road in question was set using generally accepted principals of traffic engineering. In the *Manual on Uniform Traffic Control Devices* the Federal Highway Administration recommends setting speed limits five miles higher than the 85th percentile of free flowing traffic. After receiving a ticket outside a school zone and making a Public Information Act request for the traffic engineering study. I was told that the speed limit had been set

over 20 years prior and was probably set using a speed study but that such a study could not be provided.

As you Mr. Chairman and members of this committee do or should know, the law precluded counties and municipalities from using contractors to either operate speed monitoring systems or process citations based on the number of citations issued or paid. The Baker class action showed that Montgomery County and several municipalities therein were out of compliance. The Court of Appeals said however the forum for such a challenge to a citation was in the Maryland District Court, not a class action. I certainly disagree with the Court of Appeals, believing, that when an action protects the rights and civil liberties of individual citizens and non-moneyed parties, while at the same time preserving judicial economy there should be a presumption of the legality of such an action strong enough that Montgomery County and the municipalities did not come close to defeating that presumption in Baker. However, I am not an attorney.

I do agree with what the Court of Appeals said in Baker that the Court was dubious of the county's ipse dixit assertion that the county not the municipality was the operator of the speed monitoring system simply because the county said that in the county's contract with the contractor.

When I brought this to the attention of then Councilman George Leventhal at a town meeting Leventhal laughed and said: "If you don't like it, don't speed." After making argument in the Maryland District Court, I was able to defeat one citation using the pay per citation argument.

I am not deluded into believing I was the only motorist to make such an argument, or that the law was changed because of me; however when the General Assembly found out that contractors were being paid per citation, rather than prohibiting the use of photo enforcement the General Assembly provided an extension for counties and municipalities to come into compliance with the requirement that contractors not be paid per citation.

Now in the alternative many contractors are paid per camera. I do not consider that any better and while an unsuccessful argument could be made that doing so is in compliance with the letter of the statute, it is certainly out of compliance with the spirit. This is akin to paying judges who adjudicated whether or not an African American was a fugitive slave a higher rate per case in which the African American was found to be a fugitive slave than if the African American was found not so.

I also defeated a citation on the basis that the training certificate of the technician who set up the camera was out of date, and that the technician should have had to go through the process of being recertified.

Currently the law mandates signage warning motorists of photo enforcement. I was not warned of one speed camera because I left a parking lot through an exit after that sign was visible when traveling in the direction I was traveling. Judge Cho in the District Court, said: "Mr. Miller the statute just says there has to be a sign. The statute doesn't say the sign has to be visible from every vantage point." On appeal, Judge Robert Greenberg, for whom I have tremendous respect for his fairness and thoroughness, said and I paraphrase, that while I may not care for it Judge Cho was correct. Greenberg however set the fine at zero dollars and waived court costs. There was thus no need to appeal as I was no longer an aggrieved party.

I did not make a motion to reconsider, nor did I raise the following argument before either judge, however the signs warning of speed cameras are covered in the definition of a traffic control device per Md. TRANSPORTATION Code Ann. Section 11-167. Md. TRANSPORTATION Code Ann. Section 21-201 says I must be able to read the sign even though I have to prove the sign was not readable or visible and there is a strong presumption that the sign was.

Counties and municipalities have no intention with complying with procedural law as written when it comes to speed cameras. Please do not expand their authority. The sponsor of this bill, Senator Susan Lee cares deeply about education. While I frequently disagree with her methodologies and views; I share her overall concern for our schools. The recommendations of the Kirwin Commission will be extremely costly to implement. Lee's proposals for raising money for education in the past included a bill whereby if recipients did not spend the entirety of a gift card, within a year; the balance would be transferred to the state to be used for education. Speed camera revenue is required to be spent on public safety however, the money would likely be supplanted to be spent on education. While it may be a cliché: "The road to Hell is paved with good intentions."

Thank you.