rec'd 8-26-11 S/S OSP

2nd Civ. No. B231678

IN THE COURT OF APPEAL OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

vs.

[redacted]GOLDSMITH,

Defendant and Appellant,

APPLICATION FOR LEAVE TO FILE AMICI CURIAE BRIEF AND AMICI CURIAE BRIEF IN SUPPORT OF THE RESPONDENT

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City of West Hollywood,
City of Beverly Hills and City of Culver City

INTRODUCTION

Pursuant to California Rules of Court, rule 8.520(f), the City of West Hollywood, the City of Culver City and the City of Beverly Hills (collectively, "the Cities") respectfully request leave to file, as *amicus curiae*, the attached brief in support of the Respondent's Brief filed herein by the People of the State of California. This application is timely, *i.e.*, made within thirty (30) days after the filing of the reply brief on the merits, that brief having been filed on or about July 1, 2011.

THE *AMICI CURIAE*

The parties seeking *amici curiae* status are the City of West Hollywood, the City of Culver City and the City of Beverly Hills. [1]

INTEREST OF *AMICI CURIAE*

The issues presented in this case concern nothing less than a matter of life and death on the streets of California. Appellant here attacks the continued viability of the automated red light enforcement system[2], a program that has been proven by research recently published by the Insurance Institute for Highway Safety ("IIHS") to prevent accidents and save lives, not only in California but also throughout the United States. Because each of the Cities operates an ARLES within its city limits, reversal of the judgment of the conviction in this case will

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[1] No party or counsel for a party in this pending appeal authored any part of this *amici curiae* brief or made any monetary contribution intended to fund the preparation or submission of this brief. Cal. R. Ct. 8.520(f)(4)(A). Further, no person or entity other than *amici* made a monetary contribution to fund the preparation or submission of this brief. Cal. R. Ct. 8.520(f)(4)(B).

[2] The ARLES is a camera/computer system by way of which a series of high-speed photographs are taken when the system's sensors are triggered by a vehicle's entry into the intersection during the red light phase. The ARLES photographs depict the vehicle entering the intersection, the front license plate number of the vehicle and the driver behind the wheel. The ARLES automatically records data (*i.e.*, the timing of appellant's violation) and photographs of the violation.

have a direct, profound and lasting effect on the Cities and the people who travel the streets of the Cities.

Further, the Cities not only have a substantial interest in the outcome of this appeal but also seek *amici curiae* status in order to assist this Court in its determination by putting before the Court the IIHS study that supports the viability – and the life-saving effect – of the ARLES. The findings of the IIHS study are not only relevant but also crucial should the Court consider the general viability of the ARLES in relation to the present appeal.

Finally, the Cities respectfully submit that their participation as *amici curiae* is appropriate because the Cities wish to join with the City of Inglewood in the arguments made in its Respondent's brief. Essentially, the Cities contend -- as does Respondent – that when, as in this case, the ARLES is properly administered and enforced, it constitutes an invaluable aid to California's local governments by reducing traffic fatalities.

For the foregoing reasons, the cities of West Hollywood, Culver City and Beverly Hills respectfully request that the Court grant this application and accept the accompanying *amici curiae* brief and attached exhibits for filing in this case.

Dated: July 8, 2011

Respectfully submitted,
DAPEER, ROSENBLIT & LITVAK, LLP

By: _____
William Litvak, Esq.
Caroline K. Castillo, Esq.
Attorneys for amici curiae,
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The City of West Hollywood, the City of Culver City and the City of Beverly Hills (collectively, "the Cities") submit their *amici curiae* brief, as follows:

INTRODUCTION

As described in their attached Application, the Cities here join in each and every one of the arguments advanced in Respondent's Brief, relative to the appeal of the judgment finding Appellant guilty of violating the red light law, *i.e.*, Vehicle Code, § 21453(a), as captured by the automated red light enforcement system ("ARLES") provided for by Vehicle Code, § 21455.5. As Respondent articulates in detail, California law supports the continued use of the ARLES and the evidence it generates when, as in the present case, the system was operated -- and its evidence utilized -- in a legal, constitutional manner. Indeed, each of the Cities here characterized as an *amicus curiae* operates just such a system within its city limits. Accordingly, any attack on the ARLES is ultimately an assault on each of these cities and the health and welfare of its citizens who have benefited from the enhanced traffic safety resulting from implementation of the ARLES.

The Cities are particularly committed to demonstrating their support for the position of Respondent because recently published research by the Insurance Institute for Highway Safety establishes the efficacy of the ARLES and the fact that **the system has saved hundreds of lives** in cities throughout the country. The Cities present herewith that study for the Court's review. (See Exhibit A, Declaration of William Litvak.) To the extent this case is an effort to impugn the ARLES as a whole, this study will arm the Court with hard data to review in tandem with its consideration of the clear intent of our legislature relative to the design and enactment of the ARLES. In short, the record in the present case establishes that the ARLES is operating as intended and that its operation is effective and critical to the safety of every member of the public.

Because the Cities are in complete accord with the arguments of Respondent, the Cities offer a brief that actually is *brief* so as not to burden the

Court with redundant argument while at the same time expressing their compelling interest in the outcome of this appeal.

LEGAL ANALYSIS

I.

THE CITIES SUPPORT AND JOIN IN THE ARGUMENTS ADVANCED BY THE CITY OF INGLEWOOD IN ITS RESPONDENT'S BRIEF

Relative to the present case, each of the Cities is similarly situated *vis à vis* Respondent in that each is a locality that operates an ARLES at intersections throughout its city limits. From that vantage point, the Cities approve and join in the arguments advanced by the City of Inglewood in its Respondent's Brief.

As a threshold matter, the Cities agree that the clear intent of our legislators in enacting the ARLES statute was to reduce the traffic deaths and injuries that occur when motorists like Appellant run red lights. Indeed, affirming judgment in the present case is consistent with the intent evinced by our Legislature in enacting Vehicle Code, § 21455.5. The history of that legislation speaks clearly on that subject:

> "Sponsors of the red light photographic enforcement equipment provisions cite the use of such equipment in reducing the rate of violations as well as the number of accidents and fatalities at intersections. Various studies and tests of the equipment have concluded that a substantial portion of urban vehicle crashes occur at intersections involving drivers running through red lights. Such violators, as a group, are younger, less likely to wear seatbelts, and have poorer driving records. Reports from Victoria, Canada showed a 72 percent drop in red light violations while Melbourne, Australia reported a 30 percent reduction in traffic fatalities, both cases attributable to use of the automated enforcement units."
>
> (California Bill Analysis, S.B. 833 Assem., 7/10/1995.)

In turn – and as developed in Respondent's Brief -- California law supports the continued use of the ARLES and the evidence it generates when, as in the present case, the system was operated -- and its evidence utilized -- in a legal,

constitutional manner. More particularly, affirming the present judgment will establish the viability of the ARLES when – and only when – there is competent testimony to support the admissibility of the evidence of a violation captured by the system. Simply put, when, as here, the protections for the public built into the ARLES are observed, the statute must be allowed to function as our Legislature intended. And when – as here – a red light violator mounts an attack on the very existence of the red light enforcement system supported by spurious arguments, this Court must reject that effort. In sum, because the ARLES was properly implemented in the present case and because the trial court did not err in adjudging Appellant guilty of violating the red light law, the Cities respectfully join with Respondent in requesting that this Court affirm the judgment of conviction.

II.

THE UNDISPUTED, PUBLISHED RESEARCH RELATIVE TO THE EFFICACY OF THE ARLES ESTABLISHES THAT IT PREVENTS ACCIDENTS AND SAVES LIVES[3]

In February, 2011, the Insurance Institute for Highway Safety ("IIHS"), a 501(c)3 non-profit foundation that researches highway safety, published its research paper entitled ***Effects of Red Light Camera Enforcement on Fatal Crashes in Large US Cities.*** (Please see, Exhibit A to the attached Declaration of William Litvak.)[4]

The IIHS study found that while fatal red light running crashes for the major

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[3] California courts have long accepted the use of published research material relative to social statistics by way of a "Brandeis brief", such that such research material "is habitually used without entering it in evidence, without putting the author under oath or cross-examining him."(*Rivera v. Division of Industrial Welfare* (1968) 265 Cal.App.2d 576, 589-590.) In that time-honored spirit, the IIHS study is presented by these *amici curiae*.

[4] The study was authored by Wen Hu, Anne T. McCartt and Eric R. Teoh .

cities studied which did not utilize the cameras declined by 14%, **fatal red light running crashes declined by 35% in cities with red light camera enforcement programs**. (Exhibit A, p. 1.) Moreover, the average annual rate of all fatal crashes at signalized intersections **decreased by 14 percent for cities with camera programs and *increased* by 2% for cities without cameras**. *(Id.)*

In sum, the rate of fatal red light running crashes during 2004-08 for cities with red light camera programs was an estimated **24 percent lower than what would have been expected without cameras**. The rate of all fatal crashes at signalized intersections during 2004-08 for cities with camera programs was an estimated 17 percent lower than what would have been expected without cameras. The study concluded, as follows:

> "Red light camera enforcement programs reduce the citywide rate of fatal red light running crashes and, to a lesser but still significant extent, the rate of all fatal crashes at signalized intersections. Cities wishing to reduce fatal crashes at signalized intersections should consider red light camera enforcement."

In sum, the study concluded that red light cameras saved 159 lives in the period 2004-08 in fourteen (14) of the biggest US cities and that ***had cameras been operating during that period in all large cities, a total of 815 deaths would have been prevented.*** (Please see, Exhibit B to Declaration of William Litvak.)

These *amici curiae* respectfully request that this Court review and consider the compelling statistics included in the IIHS report. To the extent this appeal is deemed to challenge the very nature or continued viability of the ARLES, it is critical that this Court bear in mind the legislative intent behind the system and the fact that it is well-documented that its use has prevented accidents and saved hundreds of lives and it will continue to do so.

CONCLUSION

For all the foregoing reasons, the Cities vigorously support each and every argument advanced by the City of Inglewood in its Respondent's Brief. As that brief carefully establishes, the judgment of conviction against Appellant evolved

from an application of the ARLES system that was – in every regard -- proper and lawful. Indeed, to the extent Appellant attempts to assert that the ARLES evidence is *ipso facto* inadmissible, that contention stands in stark contravention of the clear intent of our legislators in designing and enacting the ARLES statute. Fortunately, as articulated in Respondent's Brief, California law supports the continued use of the ARLES and the evidence it generates when, as in the present case, the system was operated -- and its evidence utilized -- in a legal, constitutional manner.

In turn, the legislative wisdom from which the ARLES statute evolved is borne out in dramatic degree by the IIHS statistics proving that hundreds of lives have been saved by use of the ARLES throughout the United States. Sadly, hundreds of lives have been lost in cities that declined to implement the system. The Cities file this brief in the hope that no one who travels their streets will become such a tragic – and unnecessary -- statistic.

Dated: July 8, 2011

Respectfully submitted,

DAPEER, ROSENBLIT & LITVAK, LLP

By: _____

William Litvak, Esq.
Caroline K. Castillo, Esq.
Attorneys for amici curiae,
City of West Hollywood, City of Beverly Hills and City of Culver City

CERTIFICATE OF WORD COUNT

The text of this BRIEF consists of 2061 words as counted by the Microsoft Word X word-processing program used to generate the brief.

Dated: July 8, 2011

Respectfully submitted,

DAPEER, ROSENBLIT & LITVAK, LLP

By: _____

William Litvak, Esq.
Caroline K. Castillo, Esq.
Attorneys for amici curiae,
City of West Hollywood, City of Beverly Hills and City of Culver City

DEC. OF
W. LITVAK

DECLARATION OF WILLIAM LITVAK, ESQ.

I, William Litvak, declare as follows:

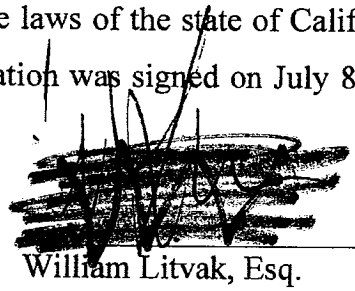
1. I am an attorney licensed to practice before all courts in the state of California and am a partner in the law firm of Dapeer, Rosenblit, & Litvak, LLP, attorneys for *amici curiae* applicants, the City of West Hollywood, the City of Culver City and the City of Beverly Hills. (collectively, "the Cities.") I am the attorney primarily responsible for this matter, and I know the matters in this declaration from personal knowledge or from my review of the file maintained by my office in the ordinary course of business, and if called to testify, I could and would testify competently thereto.

2. This declaration is made in support of the Cities' Application for Leave to File *Amici Curiae* Brief relative to the appeal before this Court in *People v. Goldsmith*, case number B231678, a case involving the automated red light enforcement system. ("ARLES.") The Cities' substantial interest in this case lies in the fact that each of these Cities operates an ARLES within its borders. The Cities are profoundly concerned with the outcome of this case because a reversal of the judgment of conviction to the extent it affects future use and enforcement of the ARLES may jeopardize the health and safety of each and every citizen who travels the streets of the Cities.

3. In an effort to assist this Court with information not already before it, the Cities herewith provide a research paper reporting the results of a study undertaken by the Insurance Institute for Highway Safety, a 501(c)3 non-profit group that researches highway safety, entitled *Effects of Red Light Camera Enforcement on Fatal Crashes in Large US Cities,* published in February, 2011. (A true and correct copy of the study is attached hereto as Exhibit A and was downloaded from the internet on July 5, 2011 at http://www.iihs.org/news/rss/pr020111.html.) The IIHS also published a news release relative to the findings of the red light camera report. (A true and correct

copy of the news release is attached hereto as Exhibit B and was downloaded from the internet on July 7, 2011 at http://www.iihs.org/news/rss/pr020111.html.)

I declare under penalty of perjury of the laws of the state of California that the foregoing is true and correct. This declaration was signed on July 8, 2011, in Los Angeles, California.



William Litvak, Esq.

EXHIBIT A

Effects of Red Light Camera Enforcement on Fatal Crashes in Large US Cities

Wen Hu
Anne T. McCartt
Eric R. Teoh

February 2011

INSURANCE INSTITUTE
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Abstract

Objective: To estimate the effects of red light camera enforcement on per capita fatal crash rates at intersections with signal lights.

Methods: From the 99 large US cities with more than 200,000 residents in 2008, 14 cities were identified with red light camera enforcement programs during 2004-08 but not during 1992-96, and 48 cities were identified without camera programs during either period. Analyses compared the citywide per capita rate of fatal red light running crashes and the citywide per capita rate of all fatal crashes at signalized intersections during the two study periods, and rate changes then were compared for cities with and without cameras programs. Poisson regression was used to model crash rates as a function of red light camera enforcement, land area, and population density.

Results: The average annual rate of fatal red light running crashes declined for both study groups, but the decline was larger for cities with red light camera enforcement programs than for cities without camera programs (35 vs. 14 percent). The average annual rate of all fatal crashes at signalized intersections decreased by 14 percent for cities with camera programs and increased slightly (2 percent) for cities without cameras. After controlling for population density and land area, the rate of fatal red light running crashes during 2004-08 for cities with camera programs was an estimated 24 percent lower than what would have been expected without cameras. The rate of all fatal crashes at signalized intersections during 2004-08 for cities with camera programs was an estimated 17 percent lower than what would have been expected without cameras.

Conclusions: Red light camera enforcement programs reduce the citywide rate of fatal red light running crashes and, to a lesser but still significant extent, the rate of all fatal crashes at signalized intersections. Cities wishing to reduce fatal crashes at signalized intersections should consider red light camera enforcement.

EXHIBIT B

INSURANCE INSTITUTE
FOR HIGHWAY SAFETY

NEWS RELEASE

February 1, 2011
Contact: Russ Rader 703/247-1500 (office) or 202/257-3591 (cell)

VNR: **Tues. 2/1/2011 10:30-11 am EST (C) GALAXY 19/Trans. 8 (dl3860H)**
repeat 1:30-2 pm EST (C) GALAXY 19/Trans. 8 (dl3860H); dedicated

CAMERA ENFORCEMENT IN 14 LARGE CITIES REDUCES RATE OF FATAL RED LIGHT RUNNING CRASHES BY 24 PERCENT

ARLINGTON, VA — Red light cameras saved 159 lives in 2004-08 in 14 of the biggest US cities, a new analysis by the Insurance Institute for Highway Safety shows. Had cameras been operating during that period in all large cities, a total of 815 deaths would have been prevented.

"The cities that have the courage to use red light cameras despite the political backlash are saving lives," says Institute president Adrian Lund.

Looking at the 99 US cities with populations over 200,000, the researchers compared those with red light camera programs to those without. Because they wanted to see how the rate of fatal crashes changed after the introduction of cameras, they compared two periods, 2004-08 and 1992-96. Cities that had cameras during 1992-96 were excluded from the analysis, as were cities that had cameras for only part of the later study period.

The researchers found that in the 14 cities that had cameras during 2004-08, the combined per capita rate of fatal red light running crashes fell 35 percent, compared with 1992-96. The rate also fell in the 48 cities without camera programs in either period, but only by 14 percent.

Based on that comparison, the researchers concluded that the rate of fatal red light running crashes in cities with cameras in 2004-08 was 24 percent lower than it would have been without cameras. That adds up to 74 fewer fatal red light running crashes or, given the average number of fatalities per red light running crash, approximately 83 lives saved.

The actual benefit is even bigger. The rate of all fatal crashes at intersections with signals — not just red light running crashes — fell 14 percent in the cam-

— MORE —

era cities and crept up 2 percent in the noncamera cities. In the camera cities, there were 17 percent fewer fatal crashes per capita at intersections with signals in 2004-08 than would have been expected. That translates into 159 people who are alive because of the automated enforcement programs.

This result shows that red light cameras reduce not only fatal red light running crashes, but other types of fatal intersection crashes as well. One possible reason for this is that red light running fatalities are undercounted due to a lack of witnesses to explain what happened in a crash. Drivers also may be more cautious in general when they know there are cameras around.

Based on these calculations, if red light cameras had been in place for all 5 years in all 99 US cities with populations over 200,000, a total of 815 deaths could have been avoided.

Since the 1990s, communities have used red light cameras as a low-cost way to police intersections. The number of cities embracing the technology has swelled from just 25 in 2000 to about 500 today.

National surveys indicate widespread support for red light cameras. At the same time, opponents of automated enforcement have become increasingly vocal, claiming that camera programs are revenue-generating schemes that violate drivers' privacy.

"Somehow, the people who get tickets because they have broken the law have been cast as the victims," Lund says. "We rarely hear about the real victims — the people who are killed or injured by these lawbreakers."

Red light running killed 676 people and injured an estimated 113,000 in 2009. Nearly two-thirds of the deaths were people other than the red light running drivers — occupants of other vehicles, passengers in the red light runners' vehicles, bicyclists, or pedestrians.

Without cameras, enforcement at intersections is difficult and often dangerous. In order to stop a red light runner, officers usually have to follow the vehicle through the red light, endangering themselves, as well as other motorists and pedestrians.

— MORE —

Moreover, the manpower required to police intersections on a regular basis would make it prohibitively expensive. In contrast, camera programs can pay for themselves by requiring people who break the law to shoulder the cost of enforcing it.

Previous research has established that red light cameras deter would-be violators and reduce crashes at intersections with signals. Institute studies of camera programs have found that red light violations fell at intersections where cameras were installed and that this effect also spilled over to intersections without cameras. An Institute study in Oxnard, Calif., found that injury crashes at intersections with traffic signals fell 29 percent citywide after automated enforcement began.

The new study adds to this by showing that cameras reduce not only violations and crashes throughout entire communities but deaths, too.

"Examining a large group of cities over several years allowed us to take a close look at the most serious crashes, the ones that claim people's lives," says Anne McCartt, Institute senior vice president for research and a co-author of the study. "Our analysis shows that red light cameras are making intersections safer."

Results in each of the 14 camera cities varied. The biggest drop in the rate of fatal red light running crashes came in Chandler, Ariz., where the decline was 79 percent. Two cities, Raleigh, NC, and Bakersfield, Calif., experienced an increase.

"We don't know exactly why the data from Raleigh and Bakersfield didn't line up with what we found elsewhere," McCartt says. "Both cities have expanded geographically over the past two decades, and that probably has a lot to do with it."

End 3-page news release on red light running crashes

VNR on 2/1/2011 at 10:30-11 am EST (C) GALAXY 19/Trans. 8 (dl3860H)
repeat 1:30-2 pm EST (C) GALAXY 19/Trans. 8 (dl3860H); dedicated

For more information go to www.iihs.org