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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Daniel Arthur Gutenkauf,
an unmarried man,

Plaintiff,

vs.

The City of Tempe, a municipal corporation
and body politic, et al.;

Defendants.

CASE No. 2:10-cv-02129-FJM

**REDFLEX TRAFFIC SYSTEMS
DEFENDANTS' REPLY IN SUPPORT
OF THEIR RULE 12(B)(6) MOTION
TO DISMISS**

I. INTRODUCTION.

Plaintiff takes issue with the Redflex Defendants' characterization of Plaintiff's claims as a gripe that certain defendants in this case allegedly did not check his driver's license photo prior to issuing a civil traffic citation. Plaintiff's protestations notwithstanding, that is exactly what his claims boil down to, and nothing in his Response demonstrates otherwise. What his Response does demonstrate, however, is that the Redflex Defendants are clearly entitled to have Plaintiff's pending claims against them dismissed with prejudice. Plaintiff does not and cannot dispute that had the defendants in this case checked his driver's license, it would not have made any actionable difference because the individual in the photo radar picture was either Plaintiff or his identical twin, Daniel. Moreover, Plaintiff cannot dispute that he was given an early opportunity to identify Daniel as the driver, and chose not to do so, and that he was afforded a full

1 hearing and appeal. Accordingly, and for numerous other reasons, Plaintiff's claims
2 against the Redflex Defendants should be dismissed.

3 **II. PLAINTIFF'S § 1983 CLAIM AGAINST THE REDFLEX DEFENDANTS**
4 **FAILS BECAUSE THE REDFLEX DEFENDANTS DID NOT ACT UNDER**
5 **COLOR OF STATE LAW, VIOLATE PLAINTIFF'S CONSTITUTIONAL**
6 **RIGHTS, OR VIOLATE CLEARLY ESTABLISHED LAW.**

7 **A. The Redflex Defendants Did Not Act Under Color of State Law.**

8 In their Motion to Dismiss, the Redflex Defendants established that Plaintiff's
9 § 1983 claim fails because Plaintiff has failed to plead facts plausibly establishing that
10 there was significant state involvement in the Redflex Defendants' actions. Plaintiff
11 responds (at 4-6) that he has sufficiently pled state involvement because the issuance of
12 traffic tickets is a state function, Redflex performs its services for the City of Tempe
13 through an agreement, the City of Tempe exercises coercive power over Redflex, and
14 Redflex issues civil traffic citations on behalf of the City of Tempe. None of these
15 allegations is sufficient to establish that the Redflex Defendants acted under color of state
16 law.

17 The fact that the issuance of traffic tickets is sometimes a state function is not
18 sufficient to show that anyone who performs that function is a state actor. In *Rendell-*
19 *Baker v. Kohn*, 457 U.S. 830, 842 (1982), the Court ruled that in determining whether a
20 private actor is performing a public function, the court must consider "whether the
21 function performed has been `traditionally the *exclusive prerogative* of the state.'" *Id.*
22 (citations omitted) (emphasis added). The mere performance of a public function does not
23 make the acts of a private entity state action. *Id.* Here, the enforcement of civil traffic
24 laws is not currently, and never has been, the exclusive prerogative of the state. In fact,
25 "[w]ell before the current budget crunch, governments had been turning to the private
26 sector to offload the unsavory tasks of enforcement and fine collection." Sullivan, *Inside*
27 *the Cut Throat World of Parking Tickets*, available at <http://redtape.msnbc.com> (last
28 accessed Mar. 31, 2011) (Attached hereto as **Exhibit "A"**). For example, the City of
Atlanta recently outsourced its on-street parking enforcement. Stirgus, *Atlanta to*

1 *Outsource Parking Enforcement* (Oct. 26, 2009) (Attached hereto as **Exhibit "B"**). The
2 Redflex Defendants' ministerial role in the issuance of civil traffic tickets does not,
3 therefore, automatically make them state actors. *Cf. Watkins v. Reed*, 557 F. Supp. 278,
4 282 (E.D. Ky. 1983) ("Like nursing home services in *Blum*, traffic regulation, the public
5 function said to have been delegated to the ATA, lacks the element of exclusivity.").

6 The mere existence of an agreement between Redflex and the City of Tempe also is
7 not sufficient to give rise to state action. *See Rendell-Baker*, 457 U.S. at 841 (noting that
8 "[a]cts of such private contractors do not become acts of the government by reason of
9 their significant or even total engagement in performing public contracts."). Moreover,
10 Plaintiff has not pled the existence of a sufficiently symbiotic relationship between
11 Redflex and the City of Tempe to satisfy the nexus test -- Plaintiff has not alleged that the
12 City of Tempe has any control over Redflex's day-to-day activities or that the City of
13 Tempe is entitled to a portion of Redflex's profits. *See id.* at 842-43 (declining from
14 finding symbiotic relationship, distinguishing *Burton* on the basis that the private party in
15 that case was located on public property and rent payments directly supported the public
16 entity); 1 Martin A. Schwartz, Section 1983 Litigation: Claims and Defenses § 5.13[A] at
17 5-90-5-91, 5-94 (4th ed. 2003) ("The lower federal courts generally follow the present
18 Supreme Court's reading of *Burton* that the most significant fact that led to the finding of
19 state action was the public authority's profiting from the restaurant's discrimination.").

20 Last, Plaintiff generally recites the procedures followed in civil traffic cases (i.e. a
21 ticket is certified, then mailed, then served) in arguing that the City of Tempe exercises
22 coercive power over Redflex. Contrary to Plaintiff's argument, the fact that Redflex and
23 the City of Tempe follow certain uniform procedures in processing civil traffic citations
24 does not meet the coercive power test. Plaintiff has not alleged that the City of Tempe
25 forced Redflex to issue a civil traffic citation to Plaintiff, and thus Plaintiff has not shown
26 state action by way of coercion. Having not met any of the four state action tests,
27 Plaintiff's § 1983 claim against the Redflex Defendants should be dismissed.

28 ///

1 **B. The Redflex Defendants Did Not Violate Plaintiff's Constitutional**
2 **Rights.**

3 Plaintiff's § 1983 claim further fails because he has not pled facts giving rise to a
4 plausible claim that the Redflex Defendants violated his federal constitutional rights. The
5 certification which Plaintiff claims was a violation of state law did not come from any of
6 the Redflex Defendants. Moreover, a violation of A.R.S. § 28-1561(A) does not give rise
7 to a violation of Plaintiff's federal constitutional rights. Finally, Plaintiff received much
8 more than the minimum procedure he was entitled to -- Plaintiff was given a pre-hearing
9 opportunity to identify the actual driver of his vehicle, a full hearing before an impartial
10 adjudicator, and the right to appeal.

11 Nonetheless, Plaintiff claims (at 7-13) that the Redflex Defendants violated his
12 constitutional rights by issuing a perjured traffic ticket, allegedly providing a brochure to
13 the Trial Judge in his case, and requiring him to appear for a hearing. Plaintiff also claims
14 that civil traffic tickets are actually criminal in nature.

15 Addressing Plaintiffs' argument that civil traffic tickets are akin to criminal
16 punishment, Plaintiff admits (at 10) that "only the clearest proof will suffice to override
17 legislative intent and transform what has been denominated a civil remedy into a criminal
18 penalty." Here, the Arizona Legislature has unequivocally spoken: "A violation of a
19 statute relating to traffic movement and control . . . shall be treated as a *civil* matter . . ."
20 A.R.S. § 28-1591 (emphasis added); *see also State v. Poli*, 161 Ariz. 151, 152, 776 P.2d
21 1077, 1078 (App. 1989) ("The state legislature has decriminalized certain traffic
22 violations."). Moreover, the Arizona Supreme Court has rejected the very argument
23 Plaintiff makes -- namely, that the civil traffic laws are so punitive in nature as to
24 constitute criminal punishments. *See Taylor v. Sherrill*, 169 Ariz. 335, 342, 819 P.2d 921,
25 928 (1991) ("We agree with the court of appeals' conclusion in *Walker* that Arizona's
26 Civil Traffic Violation statutes are not punitive in either purpose or effect.").

27 Plaintiff also claims that the Reflex Defendants violated his due process rights by
28 issuing a perjurious civil traffic ticket, relying on U.S. Supreme Court cases holding that

1 the Due Process Clause is violated by the knowing use of perjured testimony. The issue
2 here, however, is whether the Redflex Defendants' mere issuance of a civil traffic notice
3 containing an independent, but allegedly perjurious, certification was a violation of
4 Plaintiff's federal constitutional rights. Plaintiff does not allege that any testimony given
5 at his actual hearing was deliberately false, or that the Redflex Defendants, who were not
6 present at the hearing, were somehow responsible for such false testimony. Thus, the
7 perjury cases upon which Plaintiff relies are inapposite.

8 Next, Plaintiff claims that the Redflex Defendants violated his constitutional right
9 to a fair trial by allegedly providing the municipal court judge with a training manual.
10 Plaintiff's First Amended Complaint does not satisfy his heavy burden of showing that the
11 municipal court judge in his case was unconstitutionally impartial, let alone that any
12 impartiality was caused by the Redflex Defendants. "All decision makers, judges and
13 administrative tribunals alike, are entitled to a presumption of 'honesty and integrity.'" *Hourani v. Benson Hosp.*, 211 Ariz. 427, 433, 122 P.3d 6, 12 (App. 2005). Consequently,
14 a plaintiff may only challenge a decision maker's impartiality by "demonstrat[ing] that the
15 mind of the decision maker is 'irrevocably closed' on the particular issues being decided."
16 *Havasu Heights Ranch & Dev. Corp. v. Desert Valley Wood Prods., Inc.*, 167 Ariz. 383,
17 387, 807 P.2d 1119, 1123 (App. 1990). Here, Plaintiff does not plead facts plausibly
18 demonstrating that any of the trial court's decisions were based on information contained
19 in Redflex's alleged training manual, and not the evidence and testimony the judge
20 received at Plaintiff's hearing. Thus, Plaintiff has failed to rebut the presumption of
21 impartiality.
22

23 Finally, Plaintiff claims that the Redflex Defendants violated his Fourth
24 Amendment right to be free from unreasonable searches and seizures because he was
25 served with process and was required to appear at a hearing if he wished to avoid a fine
26 and points against his driver's license. A traffic citation is only a 'promise to appear' and
27 is not a seizure under the Fourth Amendment. *Karam v. City of Burbank*, 352 F.3d 1188,
28 1194 (9th Cir. 2003); *see also Williams v. Chai-Hsu Lu*, 335 F.3d 807, 809 (8th Cir. 2003)

1 ("A court's mere acquisition of jurisdiction over a person in a civil case by service of
2 process is not a seizure under the fourth amendment."); *Nieves v. McSweeney*, 241 F.3d
3 46, 56 (1st Cir. 2001) ("the view that an obligation to appear in court to face criminal
4 charges constitutes a Fourth Amendment seizure is not the law"). Thus, Plaintiff's claim
5 that the Redflex Defendant's violated his Fourth Amendment rights fails.

6 **C. The Redflex Defendants Did Not Violate Clearly Established Law.**

7 Plaintiff's § 1983 claim against the Redflex Defendants further fails because he has
8 not shown that the federal rights the Redflex Defendants are alleged to have violated were
9 "clearly established such that a reasonable government official would have known that his
10 conduct was unlawful in the situation he confronted." *See Dunn v. Castro*, 621 F.3d 1196,
11 1199 (9th Cir. 2010). Plaintiff claims that the Redflex Defendants violated his
12 constitutional rights when they allegedly processed a civil traffic ticket without first
13 comparing the photo radar picture with Plaintiff's drivers license picture. While Plaintiff
14 attempts (unsuccessfully) to distinguish his case from the cases that the Redflex
15 Defendants cite in their Motion to Dismiss, Plaintiff does not cite to a single case holding
16 that a private contractor's failure to compare a photo radar picture with a driver's license
17 picture is a violation of the photo radar ticket recipient's constitutional rights.¹ This
18 failure is fatal to Plaintiff's § 1983 claim.

19 ///

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23 ¹ The only case Plaintiff cites is *Albright v. Oliver*, 510 U.S. 266 (1994). The portion of
24 that case which Plaintiff cites discusses only the general proposition that "the Due Process
25 Clause is violated by the knowing use of perjured testimony or the deliberate suppression
26 of evidence favorable to the accused." *See id.* at 299 (Stevens, J. dissenting). That
27 generalized statement, however, did not provide the Redflex Defendants with reasonable
28 notice that failing to compare a photo radar picture with a driver's license picture is a
violation of the photo radar ticket recipient's constitutional rights. *See Saucier v. Katz*,
533 U.S. 194, 201 (2001) (explaining that the clearly established law inquiry "must be
undertaken in light of the specific context of the case, not as a broad general proposition").
Further, the portion of *Albright* upon which Plaintiff relies is contained in a dissent and is
not controlling authority. *See* 510 U.S. at 299 (Stevens, J. dissenting).

1 **III. PLAINTIFF'S CIVIL RICO CLAIM AGAINST THE REDFLEX**
2 **DEFENDANTS FAILS BECAUSE PLAINTIFF HAS NOT PROPERLY**
3 **PLED ANY PREDICTE ACTS OR RICO CAUSATION.**

4 **A. Plaintiff Does Not Properly Plead the Elements of Mail and Wire Fraud**
5 **or Extortion.**

6 Plaintiff based his civil RICO claim on the predicate acts of mail and wire fraud
7 and extortion. Neither the traffic citation nor the photonotice.com website contained false
8 or misleading statements by the Redflex Defendants. There also is nothing extortionate
9 about the City of Tempe's civil traffic enforcement system and the predicate act of
10 extortion cannot be based on the efforts of City of Tempe employees to obtain money
11 exclusively for the benefit of the City of Tempe. Thus, Plaintiff's fraud and extortion
12 claims fail.

13 With respect to his fraud claims, Plaintiff claims (at 16) that the Court should not
14 reject those claims because "Plaintiff needs discovery to gain more facts and evidence
15 from Redflex to further support his pleadings." Plaintiff does not, however, identify
16 which facts or evidence he hopes to gain from further discovery. Moreover, given that a
17 viable claim of fraud would be based on statements *made to Plaintiff*, further discovery
18 cannot help him uncover additional evidence of fraud. If Plaintiff cannot now identify
19 fraudulent statements made to him by the Redflex Defendants, he never will be able to.

20 Turning to Plaintiff's extortion claim, he still does not explain how it is extortionate
21 for the Redflex Defendants to provide alleged violators of the State's civil traffic laws
22 with a notice of their rights and a description of the consequences if they should fail to
23 appear or be found responsible. Plaintiff also does not reconcile his extortion claim with
24 the U.S. Supreme Court's ruling in *Wilkie v. Robbins*, 551 U.S. 537, 563-64 (2007)
25 (holding that the predicate act of extortion cannot be based on the "efforts of Government
26 employees to get property for the exclusive benefit of the Government."). Instead,
27 Plaintiff merely states that he has pled a sufficient number of predicate acts of mail and
28 wire fraud. As explained above, that also is not correct. Because Plaintiff has not pled
facts establishing that the Redflex Defendants committed any predicate RICO acts,

1 Plaintiff's civil RICO claim should be dismissed.

2 **B. Plaintiff Does Not Properly Plead RICO Causation.**

3 Plaintiff's admission that the person driving his vehicle at the time of the speeding
4 violation may have been his identical twin brother defeats his civil RICO claim. A
5 comparison between the photo radar ticket and Plaintiff's drivers license photo would not
6 have prevented Plaintiff from receiving the civil traffic ticket. Moreover, Plaintiff was
7 given a pre-hearing opportunity to identify his twin brother as the driver of the vehicle,
8 and he chose not to do so. These facts defeat any possible causal link between the
9 Redflex Defendants and any alleged injury Plaintiff suffered. Plaintiff, in his Response,
10 fails to address the identical twin issue altogether. Instead, Plaintiff only responds (at 18)
11 that Redflex provided the police and the trial court judge in his case with a procedures
12 manual. Needless to say, this irrelevant argument does not cure Plaintiff's causation
13 difficulties, and therefore his civil RICO claim falls flat.

14 **IV. PLAINTIFF'S DECLARATORY JUDGMENT CLAIM FAILS FOR LACK**
15 **OF STANDING AND LACK OF A PRIVATE RIGHT OF ACTION.**

16 Plaintiff requests a declaration from the Court that Redflex is required under
17 Arizona law to obtain a private investigator's license. Plaintiff's claim fails because he
18 does not assert facts establishing that Redflex's failure to have a private investigator's
19 license has caused him harm, or that an order requiring Redflex to obtain such a license
20 would remedy his alleged injury. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561-
21 62 (1992). Moreover, Plaintiff has not established that Arizona's private investigator
22 licensing statute, A.R.S. § 32-2411(A), contains an implied private right of action. *See*
23 *Transamerica Fin. Corp. v. Super. Ct.*, 158 Ariz. 115, 116, 761 P.2d 1019, 1020 (1988).
24 Plaintiff responds (at 18) only that he has standing because he was improperly cited. This
25 argument does not address the causation or the remediation prongs of the standing
26 analysis, and does not address the private right of action issue. Accordingly, Plaintiff's
27 claim for declaratory relief should be dismissed.

28 ///

1 **VI. CONCLUSION.**

2 For the foregoing reasons, and those contained in the Redflex Defendants'
3 Rule 12(b)(6) Motion to Dismiss, the Court should dismiss Plaintiff's claims against the
4 Redflex Defendants, in their entirety, with prejudice.

5 RESPECTFULLY SUBMITTED this 8th day of April 2011.

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9 By s/ Michael S. Catlett

10 Nicole M. Goodwin
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CERTIFICATE OF SERVICE

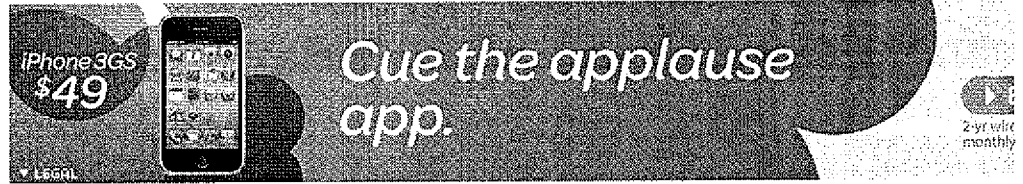
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EXHIBIT A



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Bob Sullivan covers Internet scams and consumer fraud for MSNBC.com. He is the winner of multiple journalism awards for his coverage of online crime and author of *Gotcha Capitalism: How Hidden Fees Rip You Off Every Day and What You Can Do About It.* and *Your Evil Twin: Behind the Identity Theft Epidemic.*

Got some red tape you want Bob to untangle? Write BobSullivan@feedback.msnbc.com.

Inside the cut-throat world of parking tickets

Posted: Friday, September 18 2009 at 06:00 am CT by Bob Sullivan

Competition for the right to profit from parking tickets is apparently pretty cut-throat.

Last month, one of the nation's largest parking enforcement companies, Dallas-based Affiliated Computer Services Inc., sued competitor Duncan Solutions of Milwaukee, accusing it of extensive corporate cyber-espionage. Affiliated says Duncan found a way to tap into e-mails from its employees, and had been monitoring incoming and outgoing private messages for two years.

Welcome to the hyper-competitive world of law enforcement privatization. State and local governments around the country are racing to sell off driving-related enforcement duties to the highest bidder, often splitting the profits with companies that take over. As detailed earlier this week, cash-starved cities are turning up the heat on parking scofflaws, hoping to plug budget gaps by pulling in millions of dollars in what's sometimes called a "curb tax." The result has been rising frustration among some drivers who say they are being treated unfairly. Many may not realize that a sizable portion of their parking, speeding and red light fines goes to a private company's bottom line - and in some cases, enriches foreign owners.

For example, just outside Washington, D.C., in Montgomery County, Md., a contract with Affiliated signed in 2006 awarded the firm \$16.25 for every for every speeding ticket it writes. A class action lawsuit is challenging the deal's legality.

Well before the current budget crunch, governments had been turning to the private sector to offload the unsavory tasks of enforcement and fine collection. Privatization enthusiasts compare parking enforcement to other functions that cities regularly outsource, like garbage collection. Some of the stories that surround the industry might remind you of garbage collection's ugly past. Tales of political payoffs, bribery, espionage and rampant unfairness abound.

In the espionage case, Affiliated alleges that Duncan employed a relative simple trick to spy on e-mails from dozens of employees.

The lawsuit, filed Aug. 18 in the Dallas U.S. District Court, reads like a spy novel.

Earlier this year, Affiliated employee Jeff Frank clicked "reply all" on an e-mail sent to him by a Duncan employee and noticed something strange. When he

clicked on his own name in the e-mail header, revealing the underlying data behind it through the "properties" feature, the software showed his address to be JFrank@DuncanSolutions.com -- as if he were a Duncan employee.

The lawsuit alleges that Duncan had created a copycat e-mail address, hoping to trick Frank and others into sending internal e-mails out to Duncan-controlled servers.

Subsequent investigation showed another 25 such copycat e-mail addresses, Affiliated alleges -- one dating back to July 2007. To avoid raising suspicion, Duncan had set up an e-mail tool that automatically rerouted the intercepted messages back to their rightful recipient at Affiliated, according to the lawsuit.

"Duncan has gained a wholly improper competitive advantage by having the opportunity to review Affiliated's internal emails," the lawsuit alleges. "The stolen emails reveal not only information about specific prospective and existing clients, but also confidential and proprietary information regarding Affiliated's general business strategies and plans."

Affiliated did not respond to requests for comment at press time.

Jeffrey Remsik, a spokesman for Duncan, said his firm denies the allegations in the lawsuit.

"We dispute the facts as alleged and we will aggressively defend ourselves in court, and we expect to win," he said. He declined to answer additional questions.

How the attack might have worked

Kevin Rowney, head of the data loss prevention division at Symantec Corp. and an expert in espionage, said the alleged e-mail hack is among the most dramatic allegations he's ever heard.

"This ranks up there pretty high," he said. The competitive intelligence gained from reading all those e-mails could have serious implications for a targeted company. "For any organization, this would be a serious risk. For some organizations, this could be an existential risk. You could rip off enough customers that you could wipe them out."

The spy trick works because it takes advantage of a Microsoft Outlook feature that attempts to "do you a favor," Rowney said. Generally, Outlook e-mail display only "to" and "from" names, not underlying e-mail addresses, making it easy for an attacker to disguise the true destination. Also, once an e-mail is sent to a recipient, the e-mail address is cached and suggested later, when a user begins to type a name in the "to:" box. It would be easy for a sender to accidentally pick the copycat e-mail address when sending notes. Doing so would actually spread the "infection" around a company's e-mail, Rowney said.

The lawsuit also alleges that Duncan has an "intense competitive nature." In it, Affiliated cites a recent competition between the two firms involving parking meters in Dallas -- a competition Affiliated won.

"After losing, Duncan retaliated by sending the City of Dallas a broad FOIA request that included all documents relating to the implementation of the contract. A temporary injunction currently prohibits the City of Dallas from complying with Duncan's request," the lawsuit says.

Other lawsuits, accusations

Affiliated itself is no stranger to controversy. In Canada last year, the firm was accused of trying to bribe Edmonton police officers in an attempt to gain favor for a bid to get the area's red light camera business. The firm was acquitted of wrongdoing.

Another lawsuit filed in July by a driver advocacy organization, The Road Safety Awareness Group, in Canada says the firm "unduly influenced" the photo enforcement contract tendering process, unfairly collected personal information about Canadian citizens and spied on a journalist who wrote an unfavorable story about the company. The group is seeking the return of \$177 million in tickets written by Affiliated since 2003. The province of Manitoba, also named in the suit, has asked a judge to dismiss it.

In 2006, two Affiliated executives -- including CEO Mark King -- resigned after they were the subject of an investigation by the Securities and Exchange Commission for allegedly back-dating stock options, an illegal method for increasing the value of stock options compensation.

There have been performance-related criticisms of Affiliated, too. In 2007, a report by the Office of the Auditor in Washington D..C. said the company mishandled its seven-year contract with the city for parking meter operation and enforcement. Complaints jumped to 89,840 in 2005, the first year of the contract, from 3,652 the year before, the report found. The office also concluded that the city paid Affiliated \$26 million during the life of the contract, but could have operated the system itself for \$18 million.

The same year, an Affiliated contract to operate 50 red light cameras in the city expired. The competitor who took over the contract, American Traffic Solutions, claimed 27 of the cameras weren't working.

Only months earlier, the D.C. City Council had renewed the parking meter deal with Affiliated for another five years.

Affiliated apparently had strong ties to the D.C. officials. In 2006, it gave \$10,600 to then-Mayor Anthony Williams to help pay for a privately funded trade mission to Africa. It donated another \$8,000 to other elected city officials. At the time, Councilman Phil Mendelson, who got \$1,300 from Affiliated, told the D.C. Examiner newspaper that the money did not buy influence.

"(Affiliated) has always had a very good government relations effort," he told the paper. "And regardless of whether they gave contributions or not, they make a point of communicating with members on issues."

Duncan Solutions has also taken an interest in local politics. The company and its employees contributed \$3,625 to St. Louis Treasurer Larry Williams in 2008, according to the St. Louis Business Journal. Early this year, Williams decided to lay off all 73 government parking meter maintenance workers and outsource their work to Duncan.

Enforcement of parking and traffic laws by private companies is controversial; it's also big business. Australia-based Redflex Traffic Systems, a red light camera firm which operates in hundreds of U.S. cities, estimates the potential nationwide market for speed enforcement at \$10 billion annually and red light enforcement at \$4 billion, according to a 2005 investors' presentation.

Lockheed-Martin, a government contractor best known for its aircraft division, was among the first to enter the private parking business. The original operator of the controversial Washington, D.C., system, it sold its parking enforcement division to Affiliated for a cool \$800 million in 2001.

The case for privatization

Leonard Gilroy, an advocate for privatization efforts and a researcher at The Reason Institute, says private firms will always find a more efficient way to allocate limited resources than government agencies.

"There's nothing inherently governmental about a city running a parking meter operation," he said. "Governments ... tend to under-price. So they have an asset and they can't maximize the value of that asset."

For example, Gilroy said, government agencies have a difficult time raising prices because of political pressure. So water treatment plants, toll roads, parking lots and other operations are run at a loss. Eventually, he said, "a death spiral" occurs as the government agency can't pay for upkeep.

Furthermore, "When a government is in the position of being the operator and the regulator, you don't have accountability," he said.

He cheered the city of Chicago's recent lease outsourcing its parking operations for 75 years in exchange for a \$1 billion upfront payment. Deals like that allow cities to quickly modernize equipment and better track parking usage, he said.

He disagreed with civil liberties concerns expressed by critics, saying cities can write contracts that retain control over important functions, such a fine setting, adjudication and other law enforcement duties.

He hadn't seen the lawsuit filed against Duncan, and would not comment on it, but he made the point that government-run operations are hardly immune to such scandals.

John Van Horn is editor of Parkingtoday.com, a trade magazine and Web site that follow the private parking industry. He wouldn't comment on the lawsuit either, but he was dismissive of the negative publicity that companies like Duncan and Affiliated have received, saying it goes with their turf.

"Have you ever seen a positive story about parking?" he said.

There have been plenty of negative stories. The Web site TheNewspaper.com tracks news about private parking and traffic enforcement companies. It lists six U.S. cities where yellow light cycles were shortened after the installation of red light cameras, allegedly to enhance revenue.

Camera appeal

"(Cameras) appeal to cities as the easy way to solve a crime," said Richard Diamond, editor of the site. "But the primary motive is money. When you have private corporations involved, there is no question that for the company there can only be one motive: profit for the shareholders."

Pointing to allegations that companies falsify evidence for adjudication hearings and often hire former police officers to grease the skids for government contracts, he said he was not surprised about allegations of espionage.

"It's a dirty business. You cannot look at the stacks of cases of corruption, fraud, bribery and not conclude that there's something wrong here," he said.

In some areas, consumers are growing frustrated with the automated justice. In Maryland's Montgomery County, for instance, local radio station WTOP discovered through Freedom of Information Act requests that 27 speeding cameras had been vandalized in recent months -- many spray painted to obstruct the camera lenses.

Barnet Fagle, a motorists' advocate at the National Motorists Association, says voters are expressing their displeasure as well.

"Any time (cameras) have been put up to a referendum they have died," he said.

New laws are impacting the discussion, too, he said. When Georgia passed legislation requiring longer yellow light cycles for intersections where cameras are installed, ticketing and revenue from the cameras plunged. Within months, cameras in Gwinnett County were disabled, because they no longer issued enough tickets to pay for themselves.

Anyone who's watched an episode of A&E's "Parking Wars," a cop-ride-along TV show based in Philadelphia, knows that drivers often are guilty of the offenses they are accused of.

But Fagle sees the issue as a fundamental argument over constitutional rights.

"I think the cameras are unconstitutional. According to the 6th Amendment, you have the right to face your accuser," he said, arguing that there's no way to face a camera or a computer provided by a private firm. Also, he said, when tickets are issued, drivers are "presumed guilty unless you prove yourself innocent. ... That's not what I learned in civics class."

Diamond, of TheNewspaper.com, said outsourcing also raises more practical concerns.

"You want a police force to have one goal, to make the community safer," he said. "When you throw in private companies, ... you've created a situation where doing what's best for the public is not job No. 1. And there are plenty of cases where this turns into a problem. The slippery slope cases manifest themselves very quickly."

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 **109 COMMENTS**

Unbelievable! I thought this post was about corporate corruption and stuff. But these comments are all "I got caught speeding and now I want to punish the government". It's hard to have empathy about the methods used to catch criminals when the criminals accept no responsibility for their crimes.

I've gotten speeding tickets too. I paid my fines, saw my insurance rates go up, and didn't speed again for several years. That's how justice is supposed to work, that's what the fines are for.

Take some accountability people!



Evan in Illinois - I like your idea! I'm sure innocent people do get abused by these methods, but right now they are camouflaged by all the legitimate offenders that refuse to accept responsibility for their crimes. If everybody followed the rules, the abuses would stand out like weeds.

Ms. Bartlett in Hillsboro - You never said if your husband was driving or not, or if the driver was speeding. Those are pretty critical elements to determining whether the method was just or affective. And the picture only showed the license plate probably because privacy groups complained about the cameras - they didn't want their picture taken, so governments conceded to only have plates photographed. That's what happened in a town near here when they installed red light cameras.

And anybody who's speeding through a construction zone should be downright ashamed - regardless how you get caught! I can see the argument about going 75 in a 65, 35 in a 25 - that's where factors like traffic flow, roadway design, and individual reaction time come into play. But in construction zones there are hazards that you cannot control at all. You hit a rock, it gets temporarily caught on your tire, spins at so many RPM's before coming lose and flying perpendicular to your car at high speed right into a construction zone.

EXHIBIT B



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Atlanta to outsource parking enforcement

By Eric Stirus
The Atlanta Journal-Constitution

5:24 p.m. Monday, October 26, 2009



Starting Sunday, Atlanta's on-street parking enforcement program will be managed by a private company, city officials announced Monday.

The program will be outsourced to Professional Account Management, LLC, a Duncan Solutions company, doing business as ParkAtlanta. The seven-year contract includes parking meter collections, right-of-way enforcement, parking citation processing, booting and towing.

The contract requires the company to provide the city \$5.5 million a year. ParkAtlanta will install more than 200 multi-space parking meter pay stations that will accept coins, bills, and credit cards.

Find this article at:

<http://www.ajc.com/news/atlanta/atlanta-to-outsource-parking-174423.html>

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