



STATEMENT OF THE ACLU-MN ON HF 3863

The ACLU of Minnesota is the statewide affiliate of the ACLU. We have over 11,000 members throughout the state of Minnesota. Our mission is to protect constitutional rights. We are especially concerned about the right to privacy and the right to Due Process. The ACLU-MN opposes HF 3863 because it will further erode the privacy of Minnesotans, it violates the constitutional right to Due Process, and it is unnecessary.

The ACLU supports enforcement of red-light violations. We recognize the important safety goal that it serves; but we also believe that safety should not come at the expense of civil liberties. We believe that there should be a policy discussion about whether it is appropriate to give up our privacy and due process in favor of photo enforcement of traffic violations. Before adopting HF 3863, the Minnesota Legislature should seriously examine and debate the extent to which we, as a state, want to let computers; cameras, sensors, and other automated technologies perform traditional law enforcement functions. Before going down this road, the Legislature should understand that once this kind of a surveillance system gets put into place, it rarely remains confined to its original purpose. New applications for the technology begin to pop up, the authorities or operators find them to be an irresistible expansion of their power, and citizens' privacy suffers another blow. This type of "mission creep" can be seen in other states where they have added speed enforcement to the type of traffic laws enforced by cameras. If the Legislature passes HF 3863, it is only a matter of time before you will be called upon to expand the law to allow photo enforcement of other traffic laws.

Photo enforcement of traffic violations will intrude on our fundamental right to privacy by creating a permanent photographic record of the violation. HF 3863 makes no mention of the data classification for the photographs, nor does it establish a retention schedule for the information gathered. The bill does not limit how the photographs are used by law enforcement agencies. Under current data practices laws, it appears that the photographs could be classified as Criminal Investigative Data under Minn. Stat. §13.82. Such data is initially considered confidential until the case is over, at which time the photographs will become public data accessible to any person who requests them.

The provisions of HF 3863 turn Due Process on its head. Because it is the vehicle that is identified by the photo, this red-light camera system presumes that the owner was driving at the time of the infraction, and imposes liability on that basis. The burden of proof to show that somebody else was driving then falls to the owner. This is contrary to the vaunted American value that the accused be considered innocent until proven guilty beyond a reasonable doubt. Even if the owner can show that somebody else was driving, HF 3863 only allows him or her to escape liability if the driver is actually convicted of the violation. Proponents argue that imposing liability on owners – regardless of who is driving – will make owners more responsible. But there are already inherent risks to lending one's vehicle to another and this law

is not necessary to that end. Moreover, even responsible drivers may face a situation (especially in snowy weather) where going through a red light is the lesser of two evils. At a minimum, if the Legislature intends to allow photo enforcement of traffic violations they must either require the system to identify the driver of the vehicle to ensure that the proper person is charged with the offense, or treat the offense as a civil infraction similar to a parking ticket rather than as a moving violation.

This Committee should scrutinize this legislation to determine whether the reported safety benefits of such systems are real; whether, the same or similar benefits can be gained in less intrusive ways; and whether any benefits are worth the cost in terms of our lost privacy and potential abuses. The unfortunate reality is the use of photo technology, and the promise of a new revenue stream from that technology creates a troubling incentive to "game" the system in order to increase local government revenue, and generates public cynicism and suspicion. We don't pay baseball umpires by the number of strikes they call and we shouldn't be providing local governments with a financial incentive to create violations. Former Congressman Dick Armey issued a report on photo enforcement of traffic laws in which he argued that traffic safety could be significantly improved by increasing yellow light times and by increasing the interval when all the lights in the intersection are red.¹ Another option would be to prohibit vehicles from entering the intersection when the light is yellow, making it less likely that drivers will race into the intersection at the last second in an attempt to beat the red light. Finally, we could allocate more resources to police enforcement of traffic violations in problem areas.

Because we believe that law enforcement by camera erodes our privacy, violates the right to Due Process and is not necessary, we respectfully urge you to reject HF 3863.

¹ The Red Light Running Crisis, Is it Intentional?" available online at <http://www.highwayrobbery.net/TickRedCamArmeyHFfinalreport.pdf>