IN THE SUPREME COURT
STATE OF FLORIDA

LUIS TORRES JIMENEZ,
Petitioner,

vs.

CASE NO. SC16-1976
L.T. Case Nos. 3D15-2303
3D15-2271

STATE OF FLORIDA, etc., et al.,
Respondents.
_____/

MOTION FOR REHEARING

Under Rule 9.330(a), Fla. R. App. P., Petitioner files this Motion and states:

On the issue of "Uniformity," the Court began the analysis at page 20:

> Jimenez also argues that *the City's* [singular] adoption and use of *its* own set of standards, or guidelines, for determining whether a violation has occurred violates the *uniformity principle* set forth in chapter 316.

This initial statement, solely addressing, *in the singular*, the City's adoption and use of its own guidelines, and similar statements throughout, all illustrate a misapprehension of the uniformity issue caused by a lack of clarity from Jimenez at oral argument and in his briefs on the issue, and Jimenez's preoccupation with the word "review." Jimenez never argued that any *one* City's use of its guidelines violate *uniformity* principles. Rather, Jimenez's uniformity argument is based solely on the fact that *46 local jurisdictions* have adopted "special" and "unique" guidelines, with 46 different definitions of general state law, and their collective use of these different guidelines violates chapter 316's uniformity requirement.

The imprecise framing of the uniformity issue coupled with inordinate stress on the interpretation of the word "review" by Jimenez in his brief and at oral argument diluted and skewed the uniformity issue so that his fundamental position *based on variance* – that 46 cities adopted and use 46 different guidelines, with 46 different definitions of uniform state law[1] [§316.075(1)(c)1 and §316.074(1)] when images are reviewed, and the collective use of these 46 different guidelines violates chapter 316's uniformity requirement – is respectfully not discussed or addressed anywhere in the 2-page analysis of the uniformity issue.[2]

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[1] 46 municipalities use ATS as its vendor, and each of the 46 cities have different guideline. Appx. to this Motion at 6 (City Appx at 74); R. 1408, 1422, 1465-1466 as to different guidelines.

[2] Buried deeply in the Initial Brief at pages 45-47 and the Reply Brief at 19-21, Jimenez presented the uniformity issue, contending, not in the singular, *but in the plural*, that: i) all cities using ATS have rules that are "different" [IBrf at 46] ii) "courts have recognized that ATS's questionnaire allows each city to create its own separate rules" [IBrf at 47]; iii) these different rules produce "*local variance in processing standards*" [Id.]; iv) due to concession by the Attorney General that one city uses a 10 mph threshold for right turn violations, while Aventura uses a 15 mph threshold, the identical conduct (a driver making a right turn at 12 mph) will produce inconsistent results "leading to non-uniformity" city-to-city based on a different set of rules [Id.]; v) the options from ATS's questionnaire produce "inconsistent local choices" resulting in a "lack of uniformity" [IBrf at 48]; vi) the nature of the BRQ "lends itself to an unlawful variation from one jurisdiction to another" [RBrf at 20]; vii) "[e]ach of the 46 local jurisdictions using ATS [ ] constructs their own local definitions of a red light violation . . ." [Id.]; and viii) where "one municipality may choose the stop line and another the crosswalk, that local choice of the line of demarcation will surely result in non-uniform enforcement standards." RBrf at 21. <u>His arguments are based on unfairness in city-to-city variance, not in any one city</u>.

Illustrating the confusion and misapprehension, the Court's opening sentence on the issue precisely mimics, practically verbatim, the inartful and ill-phrased title of the uniformity issue presented by the drafter in both briefs ("The City's Adoption of Its Own Standards [<u>singular</u>]…"). Despite the ineptitude of Jimenez's lawyers in improperly framing the issue, the substance of Jimenez's position – the argument set forth above – must prevail over form (the title), not vice-versa. *See Bank of New York Mellon v. Peterson*, 208 So. 3d 1218, 1222, n.2 (Fla. 2d DCA 2017), for example. While form should not prevail over substance, the misapprehension addressed herein is clearly caused by the drafters of Jimenez's brief.

The continued discussion shows that city-to city variance[3] was not analyzed:

> Essentially, Jimenez complains that *the City's* [again singular] red light camera enforcement program may be *underinclusive* because there is a possibility that other motorists may have committed a red light camera violation but did not receive a citation because, based on the City's guidelines, the images were sorted into the non-working queue. Op. at 21.

Respectfully, the inartful presentation has caused a great misunderstanding, because Jimenez never argued that *any one city's* guidelines violate the uniformity principle; or, that some motorists *within a given city* may have committed violations but did not receive citations based on a particular city's *underinclusive* guidelines. Jimenez always conceded that *all* motorists *within any given city* will be treated equally. *Each city uniformly applies its own rules and definitions*, and the vendor is required to exercise no discretion in applying the designated guidelines and rules to the images *in that particular city*. RBrf at 20.

For example, in a normal straight on red light camera violation, *all* images showing *all* motorists whose vehicle is behind the line of demarcation of *that*

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[3] It is important to note that resolution of the uniformity issue against the City will not cause any harm whatsoever to the continued operation of local red light camera programs, but only make them better. Unlike what might have been the case on the "review" issue (not challenged at all herein), uniformity city-to-city will not signal the "death knell" for the red light camera programs or create catastrophes. To the contrary, as presented herein, uniformity of guidelines will only promote fairness and safety (it is not safe or fair for one city to forbid particular conduct, with the city next door requiring its vendor to approve the same conduct and not send the images to the police). Unlike the remedy required if the "review" issue was ruled against the City (devastating loss in a class action lawsuit, the police in every city would have to review every single image at great time and expense), the solution to the uniformity issue is simple and will not cost any money – mere enactment of a single uniform guideline, with a single uniform definition of what constitutes a red light violation. Since red light cameras will continue to operate, everyone should agree that they operate in a safe, fair, and consistent manner.

particular city when the light turns red will *all* uniformly be detected, and *all* such images will be forwarded to that City's police department for review; and *all* images showing otherwise (vehicle beyond line of demarcation) will be placed in the non-working queue and not forwarded to *that particular city's police*.

The problem is not created by any one city's rules. The lack of uniformity stems from 46 cities having 46 different "Definition[s] of a Red Light Violation," set forth in Section 4 of each city's Business Rules[4] that the vendor must follow.

The following key sentences from the Opinion highlight the misapprehension of Jimenez's uniformity argument caused again by what can only be described as a presentation by Jimenez with a lack of clarity:

> Importantly, Jimenez makes no suggestion of discriminatory enforcement. Rather, he seems to assert that it would be fairer if the Vendor sent all usable images to the City for review. Op. at 21.

Respectfully, Jimenez's uniformity argument *presupposes* that the City's vendor *is allowed under §316.0083(1) to conduct a review and place the images into working and non-working queues based upon a city's guidelines, because*

[4] Section 4 of the Business Rules, under the heading "Workflow – Definition of a Red Light Violation" is the "meat and potatoes" of the 46 Cities' guidelines and rules in reviewing images. Contained in Section 4 are the most pertinent matters affecting the vendor's review process, including: the line of demarcation for that City, the threshold speed to possibly constitute a right turn violation or to be placed in the non-working queue and not prosecuted, the positioning of the tires of a vehicle in relation to the chosen line of demarcation when the light turns red, etc. A copy of the 3-page portion of Section 4 of Aventura's BRQ [R. 256-258] is set forth in an Appendix to this Motion for Rehearing to aid the Court in seeing the pertinent questions and choices affecting general state laws and uniform traffic laws; and how the choices create non-uniformity. Appx. 1-3. In Section 4.1, for example, 4 choices are given for the line of demarcation to use; and in Section 4.4, 3 choices are given as to what constitutes a right hand turn violation – including a choice to set a particular speed at which the turn was made.

guidelines would not matter if such review was prohibited. To clear any misapprehension, Jimenez does not and has never contended that, in order to comply with the uniformity requirement set forth in chapter 316, all images must be reviewed by the City's police.[5] Rather, Jimenez contends that the uniform laws at issue here [§316.075(1)(c)1 and 317.074(1)] cannot possibly be uniform to all persons statewide if *there are 46 "special" sets of rules, based upon 46 different "Definition[s] of a Red Light Violation" that the reviewer must apply.*

Respectfully, and again due to a skewing of the issue of uniformity while harping on the interpretation of the word "review," the statement that "Jimenez makes no suggestion of discriminatory enforcement" is not correct. Admittedly, Jimenez is not contending that the vendor's review is fraught with discrimination based on age, sex, sexual orientation, race, religion, creed and/or any other impermissible classification without basis. However, Jimenez is contending that, due to the differences in the 46 cities' rules and local definitions of state law, there is discrimination, because general state laws are not being applied universally and

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[5] Jimenez acknowledges he suggested, in his Reply Brief at 19-20, that *if* "review" of images by the vendor was limited to "assessment and usability of the photographic data by the statute (§316.003(87)), *the review will be uniform in all municipalities*." But, more importantly, and in the very next sentence, which has been overlooked by the Court, Jimenez contended: "*If "review" is broadened to include application of substantive standards, which are found nowhere in the Act, and cities adopt their own disparate rules affecting the use of red light cameras to enforce traffic laws, the "review" will vary by jurisdiction*. RBrf at 20.

In other words, if the Court agreed with Jimenez regarding a limited parameter of "review" conducted by the vendor, *the uniformity issue would be completely moot*; but, if (and since) the Court disagreed with Jimenez, and the vendor is permitted to sort images based on the BRQ, *only then* is the uniformity issue presented since the BRQ unfairly differ city-to-city.

uniformly. The discrimination occurs randomly, wherever the violation is alleged to have occurred, based upon non-discretionary application of that particular city's set of rules and definitions which differ from the rules of other cities.

Jimenez contends that any set of identical acts committed by a motorist (i.e. making a right turn on red at 12 miles per hour, for example) will surely result in discriminatory (i.e. unfair, unjust, inequal) treatment where, under City A's rules, *all* right turns made at less than 15 miles per hour (i.e. Aventura's Business Rules) *will be placed in the non-working queue and never be prosecuted*; while, under City B's rules setting a threshold speed of 10 miles per hour, *the exact conduct* will definitely be forwarded to the police for issuance of a citation. IBrf at 47.

The section of the Opinion on the issue of uniformity concludes with the "misery loves company" characterization expressed during oral argument:

> This is no different than a traffic enforcement officer on the road stopping and citing one individual for exceeding the speed limit, *while not citing others doing the same*.

Respectfully, Jimenez's argument that 46 different sets of rules with 46 different definitions of a violation of general laws, in no way, encompasses an argument that others committing the same acts in a particular city will go either *undetected or unpunished*. To the contrary, *in any given singular city*, the record shows that *all images are treated the same* – no violations *involving the same exact conduct* either go undetected, as suggested by the Court, or are treated differently

(i.e. some going into the non-working queue, others being forward to the police). Misery would surely love company if true. However, the record is clear that, *in any given City*, misery is not want for company because *all the images of the same exact conduct* are *always*: a) readily detected; and b) treated the same under a non-discretionary application *of that City's unique set of rules and guidelines*.

The record shows that motorists in the State are being dealt with differently regarding their conduct under the "State *Uniform* Traffic Control" act, based upon *46 unique sets of local rules that **require** the vendor to treat the same exact conduct differently city-to-city*, and Jimenez presented an argument, respectfully, that is far more pervasive, rising to a constitutional level, and different than that set forth in the section on Uniformity, especially where, through poor presentation, the city-to-city variance in the rules and resulting unfairness is unaddressed.

I. THE REQUIREMENT OF UNIFORMITY SET FORTH IN VARIOUS PROVISIONS IN CHAPTER 316 IS VIOLATED WHEN CITIES ARE PERMITTED TO PROVIDE LOCAL DEFINITIONS OF WHAT CONSTITUTES A VIOLATION OF STATE LAW, THEREBY IMPROPERLY CONVERTING UNIFORM, GENERAL LAWS INTO IMPERMISSIBLE LOCAL LAWS, AND A SET OF UNIFORM STATEWIDE GUIDELINES WITH ONE SET OF DEFINTIONS AS TO WHAT CONSTITUTES A VIOLATION FOSTER SAFETY AT INTERSECTIONS AND FAIRNESS.

The notion that traffic laws must be uniform throughout the State is universally recognized and the subject of decisions cited by the Court in the instant Opinion. *See Masone v. City of Aventura*, 147 So. 3d 492, 496-97 (Fla. 2014); *City of Hollywood v. Arem*, 154 So. 3d 359 (Fla. 4th DCA 2012). This notion is

historically based, as detailed in *Arem*, to do away with "inconsistencies" in traffic laws at the municipal level, and is codified in provisions within chapter 316 in §316.002 and §316.007.

This notion is not novel, however, or only applicable to traffic laws. Rather, this notion applies to all general laws of the State of Florida. A "general law" is a "law that operates universally throughout the state, uniformly upon subjects as they may exist throughout the state, or uniformly within a permissible classification." *See Department of Business Regulation v. Classic Mile, Inc.*, 541 So. 2d 1155 (Fla. 1989), differentiating "general law" from a statute this is a "special law" ("one relating to, or designed to operate upon, particular persons or things') and a statute that is a "local law" ("one relating to, or designed to operate only in, a specifically identified part of the State"). State law is state law, not varying randomly.

Sections 316.075(1)(c)1 and 316.074(1), the laws to be enforced through the use of red light cameras under section 316.0083, requiring motorists to obey traffic signal devices are clearly "general laws" – not special or local laws.[6] What constitutes a violation of these two general laws has been codified by the Legislature, and by virtue of the fact that they are both general laws, these law must be universally applied to all persons in a uniform manner.

[6] Jimenez acknowledges that he never used the term "general law" in his briefs, but maintains that he always argued that §316.075(1)(c)1 and §316.074(1) are uniform laws which is the same as general laws, and not local laws. See n. 2 herein containing a summary of his arguments.

To view Section 4 of the Business Rules (Appx. 1-3) properly, and in the context of the record below – that each city's rules are "unique," "special" and "different"[7] – the Court should note that each city must have answered the various subsections therein differently, otherwise the record below would show that each city's rules are uniform. However, the record clearly shows otherwise.

A. There is no identifiable harm in requiring the cities [plural], under the principles of uniform and universal application of state law, to have one set of uniform state-wide guidelines with one definition of what constitutes a red light camera violation for all the possible scenarios in Section 4 of the Business Rules.

What is the harm in making one set of uniform guidelines with one definition of what constitutes a red light camera violation? No one could ever possibly cry foul (i.e. claim, for example, under that other city's guidelines, certain images would never have been sent to the police, and a citation would not have been issued). It is understood that municipalities and traffic defense lawyers will surely butt heads over many issues. But, truly, what is there to quarrel about here?

Why should the line of demarcation be different in one city than another? If right turns on red must be made in a "careful and prudent manner," why would all cities not want to have a single guideline that promotes this? Why vehemently oppose this? How does, as suggested during the trial by our Attorney General, allowing one city to choose 10 mph as <u>per se being safe</u>, while Aventura may choose 15 mph as being <u>per se being safe</u>, possibly promote safety or fairness?

[7] R. 1408, 1422, 1465-1466.

It is understood that so much attention was devoted to a single word "review," detracting from attention to the issue of uniformity, because, as pointed out powerfully in the Amicus brief, a massive class action lawsuit, with serious implications, seemingly hinged entirely on the interpretation of that one word! See Amicus Brf at 2. But, what is at stake here to prevent fair, uniform guidelines?[8]

[8] The uniformity issue does not have any class action implications as the master complaint is described in *Parker v. American Traffic Solutions, Inc. 835 F. 3d 1363 (11th Cir. 2016)* is based on findings in *Arem* that have nothing to do with uniformity:

> The master complaint alleges that Defendants unlawfully issued citations and collected fines for traffic violations recorded by red-light cameras. Among other claims, it includes an unjust enrichment claim in which Plaintiffs seek disgorgement of the fines they paid to Defendants.
>
> The fines that are the subject of the unjust enrichment claim were imposed pursuant to the Mark Wandall Traffic Safety Program (the "Wandall Act"), Florida Statutes § 316.0083. The Wandall Act authorizes the use of red-light cameras, and it creates a detailed procedure that must be followed by a local government when issuing citations and imposing fines under this program. *Id.* Pursuant to the Wandall Act, a Florida appellate court recently invalidated the red-light camera program operated by the City of Hollywood. *See City of Hollywood v. Arem* , 154 So.3d 359, 361 (Fla. Dist. Ct. App. 2014). The court in *Arem* held that Hollywood's program violated the Wandall Act because it unlawfully delegated police power to a red-light camera vendor by allowing the vendor to (1) pre-screen and determine which camera shots to send to Hollywood's traffic enforcement officer and (2) issue traffic citations with the mere acquiescence of the enforcement officer. *Id.* The court concluded that citations issued pursuant to Hollywood's red-light camera program were void and should be dismissed. *Id.* at 361, 365.
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> In support of their unjust enrichment claim, Plaintiffs allege that Defendants operated similarly unlawful red-light camera programs. Specifically, Plaintiffs contend that Defendants violated the Wandall Act by improperly delegating pre-screening authority to ATS and other red-light camera vendors. *See id.* at 365 (stating that, under Florida law, a local government "lacks the lawful authority to outsource to a third-party vendor the ability to make the initial review of the computer images of purported violations"). In addition, Plaintiffs assert that the citations they received were unlawfully issued by red-light camera vendors rather than by a Florida law or traffic enforcement officer. *See id.*

Respondents and the Amicus surely cannot identify any possible harm in having a single uniform guideline with one definition of what constitutes a red light camera violation, especially where this can be done at little or no expense, and not preclude continued operation of local red light camera programs. To be clear, on the issue of uniformity, Jimenez is not calling for an end of local red light camera programs – only that they be operated fairly to everyone throughout.

A. Uniform state guidelines, with one clear definition of what constitutes a straight on or right turn violation, would only promote safety at intersections, and the lack of uniform guidelines clearly does not promote safety.

The Respondents emphasize the need for affirmance to promote safety at traffic intersections as intended by the Legislature. City ABrf at 24-25; Amicus Brf at 3. They hammer this home. Jimenez contends that adherence to the BRQ do not foster safety where, for example, the vendor is required to not send images to the police of vehicle making a right turn at less than 15 mph – even if the vehicle was traveling slowly, but endangering oncoming traffic. IBrf at 42.

Respectfully, how is safety at intersections fostered and/or advanced by 46 different definitions of what constitutes a red light camera violation[9] – where the exact conduct is proscribed and forbidden in one city, but permitted and per se not cited as violation in the city next door? It makes no sense.

[9] The federal guidelines by the Federal Highway Administration relied upon by the City to support its argument that vendor review of images was proper [See Appx to City ABrf at 127-187] states "a very specific definition is needed to identify what constitutes a red light violation." Appx to City ABrf at 158, Appx to this Motion at 4. 46 different definitions is not very specific.

If the City and the Amicus, The League of Cities, are genuine and sincere about their concern for safety at intersections, why would they oppose the need for one set of uniform guidelines to be applied statewide with one set of definitions as to what constitutes a red light camera violation?

B. The line of demarcation is a critical factor in determining whether a violation has occurred in all straight on violations; and, where the State, in its "general law" codified in §316.075(1)(c)1, has delineated the applicable line of demarcation (the crosswalk) to be applied universally to all persons uniformly throughout the State, cities necessarily discriminate and violate the uniformity requirement by choosing their own line of demarcation to be applied locally.

The line of demarcation or boundary is a paramount factor in determining whether the law was violated for obvious reasons. As described by the Court: "if the front tires of a vehicle *crossed the boundary* and entered the intersection when the light is still displaying green, the vehicle obviously is not running a red light," but "[c]onversely, if the front tires had *not yet reached this line* when the light displays red, the vehicle would appear to be running a red light." Opinion at 5.

The Legislature, in enacting Section 316.075(1)(c)1,[10] cited below, set forth the line of demarcation to applied throughout the State – i) *the crosswalk* for a

[10] (c) Steady red indication.—

1. Vehicular traffic facing a steady red signal shall stop before entering *the crosswalk* on the near side of the intersection or, if none, then before entering the intersection and shall remain standing until a green indication is shown; however:

a. The driver of a vehicle which is *stopped at a clearly marked stop line,* but if none, before entering the crosswalk on the near side of the intersection, or, if none then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering the intersection in obedience to a steady red signal *may make a right turn*, but shall yield the right-of-way to pedestrians and other traffic proceeding as

straight on violation; and ii) *the stop line*, if there is one, for a right turn violation. *See United States v. Mills*, 2010 WL 2508860 68853 (M.D. Fla. 2010).

However, in the Opinion at 5, while detailing the City's Red Light Camera Program from the Third District's analysis, the Court explicitly described how the vendor gives each City 4 different lines of demarcation to choose:

> For example, guideline 4.1 concerns *the line of demarcation*, which means the boundary of the intersection. This is the line used to evaluate the "A" shot, which is the photograph that shows the vehicle approaching the intersection. In reviewing this guideline, one must keep in mind that if the front tires of a vehicle crossed the boundary and entered the intersection when the light is still displaying green, the vehicle obviously is not running a red light. Conversely, if the front tires had not yet reached this line when the light displays red, the vehicle would appear to be running a red light (assuming the vehicle does not immediately stop within the edge of the intersection and wait for a green light). All of the City intersections containing red light cameras have painted stop lines. *The Vendor provided four alternative suggestions for the line of demarcation: (1) the stop line; (2) the prolongation of the curb; (3) the crosswalk; and (4) whichever line the tires will hit first. The City adopted the first suggestion: the line of demarcation is the painted stop line.* A similar process was followed for the other guidelines.

The portions of the above-quoted passage from the Opinion at 5 regarding the positioning of the tires of a vehicle *as to the critical line of demarcation or boundary* while the light is still green and changes to red is completely accurate, and universally recognized and uniformly applied throughout the State as the

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directed by the signal at the intersection, except that municipal and county authorities may prohibit any such right turn against a steady red signal at any intersection, which prohibition shall be effective when a sign giving notice thereof is erected in a location visible to traffic approaching the intersection.

proper test for determining whether a driver violated the law – if the tires are beyond the line of demarcation as the light turns red, there is no violation.

The problem with the entire process lies in the fact that the vendor gives each City four choices as to the applicable line of demarcation, even though the State has already delineated only one line – *the crosswalk* – as the proper line of demarcation for a straight on violation. Even if the universal rule regarding the positioning of the tires as to the line of demarcation when the light turns red is followed throughout the State, the overall results are not uniform where cities choose different lines of demarcation.

A vehicle that has crossed one line of demarcation when the light turns red may not have crossed another, subsequent line of demarcation. Visually, in the choices provided by the vendor, at any intersection: the stop bar comes first, then the crosswalk, followed by the edge of the curb. One can easily then visualize how images of a vehicle in the *same exact position* at the moment the light turns from green to red would be treated differently – *entirely depending upon which line of demarcation or boundary was chosen by that particular city*. If the vehicle, for example, is beyond the stop line, but not yet into the crosswalk at the critical moment, the following will occur: a) in a city choosing the stop line as its line of demarcation, the image will be placed in the non-working queue by the vendor and definitely not prosecuted; but b) in a city choosing the crosswalk as its line of

demarcation, the matter will be forwarded to the police for issuance of a citation, and there is no legitimate reason why a citation would not be issued if the image showed that the vehicle had not even reached the crosswalk (a textbook violation).

Thus, the fact that each city chooses its own line of demarcation in 46 different municipalities creates a lack uniformity required by Chapter 316 and required as to all "general laws." What occurs with the treatment of right turns on red is far worse, and violates the uniformity principle even greater.

C. By allowing 46 cities to define a right hand turn violation in Section 4.4 of the BRQ by a speed in excess of a certain MPH chosen by each city, or by whether or not the vehicle ever came "to a complete stop on a right turn" creates a vast lack of uniformity leaving motorists statewide completely dumbfounded as to what can serve as a basis for making a right turn on red properly.

The use of red light cameras to enforce right hand turn violations under §316.0083(1) is different than prosecuting the same violation if a police officer viewed the matter on sight in the following manner. Under §316.075(1)(c)1.a., quoted above at 12, n. 6, before making a right turn on red, the driver *must come to a complete stop before the stop line* before being able to attempt to make a right turn safely. However, under §316.0083(1), while municipalities may use red light cameras to prosecute a right hand turn that violates §316.075(1)(c)1.a., two important exceptions are provided, one forgiving a failure to stop, and the other providing forgiveness if a full stop was made, but after the line was crossed. §316.0083(1) provides, as to these two exceptions:

1) Failure to stop at all will be forgiven, if the right hand turn was made in a careful and prudent manner. (*See 316.0083(1), in pertinent part: "*A notice of violation and a traffic citation may not be issued for failure to stop at a red light if the driver is making a right-hand turn in a careful and prudent manner at an intersection where right-hand turns are permissible."); and

2) While 316.075(1)(c)1.a. requires a full stop "at a clearly marked stop line before a right turn can be made, §316.0083(1) forgives a driver that came to "a complete stop after crossing the stop line." (*See 316.0083(1), in pertinent part:* "A notice of violation and a traffic citation may not be issued under this section if the driver of the vehicle came to a complete stop after crossing the stop line and before turning right if permissible at a red light, but failed to stop before crossing over the stop line or other point at which a stop is required). See Appx. at 5.

Why these exceptions were created by the Legislature is not readily apparent or known. Yet, these exceptions do exist, and when coupled with the BRQ choices provided in Section 4.4 of the BRQ – either: 1. The vehicle "did not come to a full complete on a right hand turn;"[11] or 2. The vehicle "slow-rolled but exceeded a certain speed . . . going __ MPH or greater" [Appx. at 3, City's BRQ, Section 4.4.] – they all lead to a completely random "hodgepodge" of non-uniformity that is far greater than just choosing a different line of demarcation.

Included in the City's Appendix to its Answer Brief was the Florida Department of Highway Safety and Motor Vehicles Red Light Camera Summary Report for the Fiscal Year 2015-2016. Appx. to City's Answer Brief at 69-100. Appendix E to the 2015-2016 Report shows that 7 of the 25 jurisdictions answering the question to the survey do not even prosecute right turns on red with

[11] A choice that is obviously in conflict with the express provisions of §316.0083 that forgive failure to stop if the right turn is made in a careful and prudent manner.

their red light camera programs. Appx. at 6.[12] A copy of pertinent sections to the 2015-2016 Report are included in the Appendix to this Motion. Appx. at 5-9. That some cities do not even prosecute right turns on right is not the real problem.

The problem lies in the varying speed limits chosen by the cities. As the Attorney General noted, one city may choose 10 mph, while another city, like Aventura chose 15 mph as its guideline. R. 44, n. 8, IBrf. at 47. In addition to being non-uniform, these choices are arbitrary and random with no consideration at all as to what is or is not "careful and prudent." After all, one turning on red at 3 mph may cause great danger to oncoming traffic, while another turning on red at 15 mph without any traffic around causes no danger to anyone. See IBrf. at 42.

Aside from the different mph chosen by each city, the 2015-2016 Report shows that two exceptions provided for in §316.0083, including the definition of "careful and prudent" are "left to the interpretation of each respective jurisdiction." Appx. at 5. *This "procedure" clearly promotes a complete lack of uniformity*.

As pointed in the Reply Brief at 21, citing to the Report of 2015-2016 and the other Reports included in the City's Appendix, a wide array of definitions of "careful and prudent" are reported to the extent that uniformity is not possible. See Appx. at 8-9, setting forth 40 completely different definitions of the pertinent term

[12] This particular chart shows a vast discrepancy in the citations issued, as well – ranging from as many as 18,868 in Sunrise and 14,804 in Sweetwater to as few as 74 in North Miami Beach and 100 in Surfside for the one-year reporting period. Appx at 6.

"careful and prudent," which definitions include a range of threshold speeds. In fact as pointed out (RBrf at 21), Aventura's definition of "careful and prudent," *as an exception to coming to a stop as provided expressly in 316.0083(1) is*:

> "vehicle stops before, at or after the stop bar before turning red at the intersection" See Appx. at 8. See RBrf at 15.

Similarly, Florida City requires "a complete stop," as does Winter Park to be careful and prudent. Id. In addition to all of the definitions being different, the definitions by Aventura, Florida City and Winter Park are completely contrary to §316.0083(1) – a vehicle is not necessarily required to stop under the statute.

The best definition of the term "careful and prudent manner" came from the City of West Miami which provided the following vague and ambiguous definition of the term, and probably after a great deal of thought, too, as:

> "careful and prudent manner"[13] Appx. at 9.

The compilation of different definitions, including those that contradict the exception to §316.0083(1) with regards to forgiving a stop (by requiring a stop to get around the exception), and a definition of the term that merely recites the term shows a non-uniform "hodgepodge" of definitions that are also nonsensical.

What is or is not a violation or an exception provided by the Legislature cannot be left to the whim of each local jurisdiction. Where, as here, the record indicates that the vendor must follow the definition provided by each city, *without*

[13] Let's all move to West Miami. On second thought, let's not.

fail, and each city provides a vastly different definition – some that do away with the exception provided by law – a great amount of different treatment as to the same exact conduct is presented. Motorists of the state are left in the dark as to what might and might not be prosecuted on right turns. While the City contends "[r]ed still means "stop"; green still means "go" [City ABrf at 16], what cities do with right hand turns the City's simplicity on its head. Not stopping means stop.

As stated at the outset of this issue, §316.074(1) and 316.075(1)(c)1 are laws in the uniform traffic code that must be applied "universally throughout the state, uniformly upon subjects as they may exist throughout the state." Local guidelines and definitions, as presented here do transform these general, uniform laws to impermissible local laws. What would happen if the definition of what constitutes "aggravated assault," or "first-degree murder," or any other matter of uniform state law, as is the case here in defining the exceptions to §316.0083(1) (as to right turn violations) or choosing different lines of demarcation (for straight on violations), was "left to the interpretation of each respective jurisdiction?"

II. THE OVEREMPHASIS ON THE "REVIEW" ISSUE CAUSED FURTHER MISAPPREHENSION OF JIMENEZ'S POSITION REGARDING PREEMPTION AS TO A CITY'S USE OF A LOCAL DEFINITION OF WHAT CONSTITUTES A VIOLATION OF GENERAL STATE LAW.

Just prior to addressing the uniformity issue on page 20 of the Opinion, the court stated: "We now turn to address Jimenez's argument regarding uniformity[,]" followed by note 5, wherein the Court wrote the following:

> 5. Jimenez also argues that the City's red light camera enforcement program is invalid because it is preempted by state law. *We need not address this argument because it is dependent upon our agreement with Jimenez regarding the meaning of "review" in section 316.0083(1)(a)*.

Respectfully, Jimenez did not contend that his preemption argument regarding adoption and use of local rules and definitions was entirely predicated upon or wholly dependent upon his position that "review" should be narrowly interpreted, and the language in note 5 on page 20 illustrates a misapprehension of his position again caused by overemphasis on the word "review." Contrary to the language in note 5, Jimenez argued that preemption to local guidelines would apply even if "review" was not narrowly interpreted by the Court:

> Those standards form an integral part of the City's administrative program of using red light cameras to enforce the traffic laws. And the chapter covers matters of "administ[ration]," including the "review of information from" the cameras. § 316.0083(1)(a), Fla. Stat. *As noted, that review is narrowly circumscribed*. Even if it were not, the BRQ would still be preempted because nothing in the chapter expressly authorizes a city to create from whole-cloth a set of substantive traffic enforcement standards and to contract with a private vendor to use them in screening red light camera images from prosecution. RBrf at 14.

In other words, even if, as ultimately determined by the Court, "review" is interpreted broadly as permitting the sorting of images (and not narrowly as review for completeness and usability), the Legislature's express authorization of "review" by the vendor did not expressly include the adoption and use of local guidelines and local definitions. There is no express authorization in any statute for the adoption and use of local definitions of a violation of state law, and

§316.0076 preempts all regulation of the use of cameras to the state. Without express authorization from the Legislature, the City and all cities are preempted from adopting and using local guidelines, with local definitions, of state law.[14]

Without re-arguing the entire position of Jimenez on this particular issue, other than as summarized in the last two sentences above, Jimenez respectfully requests the Court to reconsider the issue on its merits – and not, as done in note 5 on page 20, to entirely reject consideration of the issue, because of a misapprehension that Jimenez completely based his preemption argument on his argument regarding the meaning of the word "review." As stated in the Reply Brief at 14, Jimenez contended that preemption of local definitions was present *even if "review" was not narrowly construed – but moot if narrowly construed*.

Respectfully, his argument on this important issue should not, therefore, be summarily rejected without analysis or discussion of the merits. The Court should, instead, address the fundamental question as to what, if anything, authorizes any local jurisdiction the authority to adopt and use its own local definitions of a violation of state traffic laws.

If permitted here, should local jurisdictions have the authority to adopt local definitions in other areas of law enforcement, as well?

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[14] Nothing in §316.008(8)(a)-(c) provides authorization for local definitions of state law, or local guidelines. The only matter authorized therein is local use of red light cameras to prosecute violations of §316.075(1)(c)1 and §316.074. See J RBrf at 18.

III. BECAUSE THE PARTIES AGREED TO ALLOW THE COURT TO ADDRESS THE ISSUES ON UNIFORMITY AND BRQ PREEMPTION WITHOUT ANY RULING ON THE ISSUE BY THE TRIAL COURT OR THE THIRD DISTRICT, EVEN THOUGH THESE ISSUES WERE NOT PART OF THE CERTIFIED QUESTIONS, CLARITY AND THOROUGHNESS AS TO THE EXACT CONTENT AND PROCEDURAL BACKGROUND OF THESE ISSUES IS NECESSARY TO RESOLVE THIS MOTION.

In order to aid the Court and clear up any claimed misapprehension, the procedural history regarding the issues of uniformity and preemption to implement local definitions ("BRQ preemption"), including the timing and content of the presentation of these issues, is entirely necessary where:

1) the trial court never addressed these two issues, because they were never raised in the trial, but only raised for the first time on appeal to the Third District of the matter currently under discretionary review as "tipsy coachman" arguments;

2) notwithstanding Jimenez's presentation of these two issues for the first time in the appeal, and notwithstanding the City's vehement objection to raising these two issues for the first time on appeal without any findings by the trial court (noting that an appellate court could not initially make such findings), the Third District in the matter on discretionary review now before the Court did not address either: a) the merits of either issue; or b) whether Jimenez had properly presented the issues as "tipsy coachman" issues without initial findings by the trial court;

3) the uniformity and BRQ preemption issues in the briefs and at oral argument, both as to content and procedural background, in this matter on discretionary review of certified questions from the Third District – issues that were not part of the certified questions from the Third District but nonetheless briefed and argued – were not thoroughly and properly presented by both sides where most of the focus was on the statutory interpretation of the word "review," and the parameters of the "review" the City's vendor was permitted to conduct.

Since both sides "acquiesced" to allowing the Court to "review" these two issues, notwithstanding the fact these issues were not presented to the trial court,

not addressed at all by the Third District in the proceeding on discretionary review, and not part of the certified questions, and since the Court's Opinion on these issues is the first ruling on the merits of these two issues and will be binding on all trial and appellate courts of the State, clarity as to the entirety of these issues and the procedural timing of the presentation of these issues is absolutely necessary.

Jimenez will therefore set forth the post-*Arem* proceedings initiated by the Respondents, as well as the underlying proceedings prior to and after the Third District's decision in the instant case, as well as the procedural timing and the entire contents of the presentation of the issues of uniformity and BRQ preemption in those proceedings, ultimately leading to the briefing of these issues in this matter on discretionary review before the Court.

As is clear from the underlying record and the City's jurisdictional brief in the instant case, after the City suffered defeat in *Arem*, the Respondents and all the other cities using red light camera programs embarked on a mission to prove that *Arem* was decided incorrectly. The City's jurisdictional brief at 8-10 cites to at least 4 cases in trial courts within the Fourth District where such proceedings were commenced. Aventura also commenced this proceeding in the trial court below, which was agreed to by the parties as a "test case" in Miami-Dade County for the City's challenge to *Arem*. In the trial below, the City put the entire *Arem* trial

documents and appellate proceedings into the record,[15] and then presented evidence as to how ATS processes images, according to each city's contract and Business Rules, to show that *Arem* was completely wrong.

The record is clear that Jimenez filed a trial memorandum in the underlying proceeding, but did not raise either the uniformity issue or the BRQ preemption issue in the trial court. These two issues are found nowhere in Jimenez's closing argument memorandum. S. Ct. R. at 186-225. Therefore, the trial judge in the instant case never saw or heard any arguments on these issues, and never made any findings regarding these two issues.

The trial court sided with Jimenez, and found that it was bound by *Arem* to dismiss the case because the process was the same was used in *Arem*, but certified questions to the Third District for review. R. 1518-1533. None of those questions involved the issues of uniformity or BRQ preemption, because these issues had not been presented to the trial court. R. 1533. The issues of uniformity and BRQ preemption are not discussed by the trial court, because they were not raised there.

The City then filed its Initial Brief in the Third District addressing the certified questions posed by the trial court. The City essentially argued that the vendor was permitted to review and sort images from a red light camera under

[15] The City presented the entire *Arem* record on appeal to the Fourth District, including the "trial" transcript, to the trial court in the instant matter. R. 289-455. Additionally, the City presented all of the appellate briefs and motions for rehearing filed in *Arem* to the trial court, as well. R. 937-1011.

§316.0083(1). The City also contended that the record in underlying trial was vastly different from the record in *Arem*. SCt R 3-62. The City did not make any arguments regarding uniformity or BRQ preemption, because those issues had not been raised yet.

Thereafter, in his Answer Brief, Jimenez presented both the issue of uniformity and the issue of BRQ preemption as "tipsy coachman" arguments for the first time in the appeal to the Third District. See ABrf of Jimenez at 44-49, S. Ct. R. at 372-377, while laying the groundwork for presentation of these "tipsy coachman" arguments throughout the entirety of the Answer Brief.[16]

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[16] As detailed above, Jimenez's argument to the Third District on uniformity is based on his claim that there are 46 cities using ATS, and each has a unique and different set of rules with different definitions of what constitutes a red light camera violation. In order to make this "tipsy coachman" argument, Jimenez cited to the following, from the record during the trial below:

1) That the BRQ of the City was a template prepared by ATS, giving each city a series of choices for each pertinent matter (i.e. line of demarcation, each city given 4 choices, the threshold speed for a right turn violation, etc.), and since each city chooses differently – the rules and the definitions were different. R. 254-279 [J ABrf at 3, SCt R 331], the City's BRQ; R. 1288, Sgt. Burns' testimony that City chooses an answer listed in the template for each Section, or provides its own answer. J ABrf at 4, SCt R 332.

2) The Attorney General claimed that each City's BRQ was "unique:"

> MR. DIETZ: Your Honor, *the business rules are the unique* -- well, actually, the contract and *the business rules are the uniqueness that all cities have*, which is the reason why I'm going around the entire state doing these hearings. *So they are unique*, each - - R. 1465-1466. J ABrf at 8, SCt R 336.

3) That the record showed that each city using ATS as its vendor had a set of business rules that was individual and special to that city. R. 1408; 1422, testimony of ATS representative. J ABrf at 9, SCt R 337.

The City vehemently objected to the inclusion of these issues, arguing that there was a lack of a sufficient record without the BRQ of other cities, that it was deprived of an opportunity to present argument to the lower court on these issues, and that an appellate court could not make initial findings on such issues, citing to authorities which mandated a remand to the lower court. See, City's Answer Brief in the underlying appeal at 1-4 (SCt R at 435-438):

> **A. Jimenez's principal argument is being raised for the first time on appeal.**
>
> Much of the answer brief is devoted to arguing that the City's program is invalid because the BRQs used by the City and other local governments around the state are not uniform, purportedly conflict with state traffic laws, and are preempted by the requirement in Chapter 316 that statewide traffic laws be uniform. *See* AB at 16-21, 30-33, 38-41, 43-44, 47-48. None of these arguments was raised in the trial court. As the individual charged with a red light violation, Jimenez asserted a defense by way of a motion to dismiss that was premised entirely on the similarity of the City's program with Hollywood's program in *City of Hollywood v. Arem*, 154 So. 3d 359 (Fla. 4th DCA 2014). At no time did Jimenez argue below that Chapters 316 and 318 impose a requirement that BRQs be uniform throughout the state or that the City (and other local governments)

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4) Any new trainee at ATS could only work on one city's images for 8 weeks before being allowed to work on another city's images, because each city's rules were different, and to move from one city to another was a "big leap." R. 1378-1379, testimony of ATS representative. J ABrf at 9, SCt R 337.

5) The Attorney General in its response to Jimenez's motion to dismiss, noted that while Aventura chose 15 mph as its threshold speed for right turn violations (ATS would reject all right turns made without a stop if done less than 15 mph), another city might designate 10 mph as its threshold speed. R. 44, n. 8. J ABrf at 8, SCt R 336.

On the issue of BRQ preemption, Jimenez claimed that traffic laws were to be applied as uniform law, and cities were preempted under §316.0076 to provide their own local definitions of state law, citing to references by the City and Attorney General to §316.0076, the preemption statute, in their memoranda filed in the trial court. R. 35, n.1; 169. J ABrf at 18, SCt R 346.

were attempting to amend uniform statewide traffic law requirements by implementing the BRQs. Even the most cursory examination of the transcript reveals that Jimenez's argument below was that the City's program failed to meet the standards articulated in *Arem*. Needless to say, *Arem* says nothing about whether BRQs must be uniform statewide or whether their implementation conflicts with Chapter 316 uniformity requirements.

Sensing this shortcoming, Jimenez buries an invocation of the tipsy coachman doctrine deep in his brief. AB at 44, n. 14. Under that doctrine, an appellee generally may obtain an affirmance based on any theory supported by the record evidence. *Dade County Sch. Bd. v. Radio Station WQBA*, 731 So. 2d 638, 644 (Fla. 1999). Initially, it must be noted that Jimenez's arguments regarding the uniformity of BRQs is dependent on evidence that is not before the Court, namely, the contents of BRQs from other local jurisdictions around the state. For this reason alone, the tipsy coachman doctrine is not available to Jimenez.

However, even if there *were* such record evidence to support Jimenez's exceedingly broad argument, there is a critical exception to the tipsy coachman doctrine where applying it would effectively countenance having denied a party the opportunity to respond to the theory. In *Robertson v. State*, 829 So. 2d 901 (Fla. 2002), the Florida Supreme Court explained that affirming based on an alternate ground that was not at issue in the trial court would be improper where it operated to deprive a party of the opportunity to present evidence and argument on the matter. *Id.* at 908-09 ("Moreover, because no notice was provided and because the State never attempted to seek the admission of this evidence on the basis of the *Williams* rule, Robertson never received an opportunity to present evidence or make argument as to why the incident involving his ex-wife should not have been admitted under the *Williams* rule."). As the Fifth District Court of Appeal correctly observed in *Meyer v. Meyer*, 25 So. 3d 39 (Fla. 2d DCA 2009):

> Victor nevertheless argues that we should affirm because Daron did not allege sufficient facts to raise a defense of equitable estoppel. "In some circumstances, even though a trial court's ruling is based on improper reasoning, the ruling will be upheld if there is any theory or principle of law in the record which would support the ruling." *Dade County Sch. Bd. v. Radio Station WQBA*, 731 So.2d 638, 644

> (Fla.1999). We conclude that the record in this case will not permit us to affirm on this alternate basis. … Because the adequacy of the allegations was not in issue, Daron had no opportunity to argue they were adequate or, alternatively, to proffer additional facts. If we were to review the allegations now and affirm the trial court's dismissal, our decision would operate to deprive Daron of an opportunity to attempt to cure any alleged deficiencies.

Id. at 42 (citing *Robertson*, 829 So. 2d at 908-09).

> The trial court here made no factual findings as to the content or application of any BRQs from other local jurisdictions or contrasted them with Chapter 316 standards. As such, Jimenez cannot invoke the tipsy coachman doctrine to justify raising these uniformity and preemption arguments for the first time of appeal. *See Bueno v. Workman*, 20 So. 3d 993, 998 (Fla. 4th DCA 2009) ("[A]n appellate court cannot employ the tipsy coachman rule where the lower court has not made factual findings on an issue and it would be inappropriate for an appellate court to do so."); *see also Featured Props., LLC v. BLKY, LLC*, 65 So. 3d 135, 137 (Fla. 1st DCA 2011) (same holding; quoting *Bueno*).[17]
>
> Jimenez's uniformity and BRQ preemption argument represents a fundamental shift away from *Arem* and its application to the City's program to a wholly novel assertion that the Wandall Act imposes a requirement that (i) all BRQs around the state must be uniform in order to be effective, and (ii) BRQs reflecting a local police department's discretion in enforcement of *particular* traffic violations contradicts Chapter 316's requirement for uniform statewide traffic laws. The argument should not be considered for the first time on appeal.

The Third District decided to reverse the dismissal of Jimenez's citation and agreed with the City that *Arem* was decided incorrectly or upon different facts. The Third District also certified 3 questions to the Court as being of great public

[17] In both cases, the reviewing courts held that where the "tipsy coachman" issues were dependent upon initial findings (in *Bueno*, the issue raised involved fraud; while in *Featured Properties*, the issue raised involved agency), an appellate would not make the findings initially. Further, while the "tipsy coachman" theories were rejected on appeal, both cases were remanded to the trial court to make the findings required in the "tipsy coachman" issues.

importance. However, the Third District was completely silent as to the merits of the uniformity or BRQ preemption issue or the City's objections whether Jimenez even properly raised these issues or whether an appellate court could make initial findings on these issues, and did not address these issues at all. *See State ex rel. City of Aventura v. Jimenez*, 211 So. 3d 158 (Fla. 3d DCA 2016).

Both sides eventually briefed the issues of uniformity and BRQ Preemption with the Court in this discretionary proceeding to review the certified questions from the Third District – without thoroughly addressing the procedural background of these issues. Primarily driven by the statutory interpretation of the word "review" and hindered by page limitations, Jimenez, while presenting the issues of uniformity and BRQ preemption, never informed the Court of the matters set forth above, including the fact that these were "tipsy coachman" arguments to the Third District or that the Third District made no findings at all on these issues.

The City, as well, in its Answer Brief, did not identify the issues as "tipsy coachman" matters. Nor did the City claim, as it previously did in Third District detailed above, that Jimenez should not be able to present these issues, because he did not raise them in the trial court, that the trial court did not make any findings on these issues, and that an appellate court was precluded from making these findings initially. However, the City did contend to the Court in its Answer Brief that the issue of uniformity and BRQ preemption issues raised by Jimenez did not

answer or apply to the certified questions upon which the Court took jurisdiction, and were issues other than those certified to the Court by the Third District, arguing:

> The change in course is such that Jimenez does not directly engage the certified questions as presented, even though they form the foundation of the Court's jurisdiction. He also fails to propose answers to the questions. City ABrf at 1.
>
> For that matter, Jimenez – who has largely ignored the certified questions – fails to demonstrate (and the record does not reflect) how he or anyone else is adversely affected by the use of the BRQ. City ABrf at 9.

Therefore, both Jimenez and the City essentially "rolled the dice" on these two issues, and "place their eggs in one basket" – the Court – by foregoing the possibility of any potential remand or any pending trial court proceedings and subsequent review by intermediate appellate courts; but, instead acquiescing to allow the Court in this discretionary proceeding to "review" the issues of uniformity and BRQ preemption, even though the trial court did not consider these issues, and no appellate court ever analyzed these issues.

In light of this "gamble" by both sides in acquiescing to a final determination of these two issues by the Court and the binding nature of this gamble, Jimenez can only hope that, upon consideration of the entirety of the issues and the procedural background of same, the Court withdraws the 2-page analysis of the issue based on the City's [singular] adoption and use of its own

guidelines, and substitutes it with an analysis based on the city-to-city variances that result in unfairness as discussed above in this Motion, and argued in the briefs.

Certainly, both sides played their hands, and decided to go "all in," without any trial or any appellate court findings. If this is to be the Court of "first resort" and the Court of "last resort," Jimenez can only hope that the Court will grant a rehearing, because ruling in favor of a single, uniform statewide set of guidelines with a one definition of what constitutes a red light violation to in every local jurisdiction within the state will not harm anyone. Rather, this will only result in programs that are fair, just and safe system, as intended under the state's uniform traffic control act, and make the programs authorized by the Court better.

CONCLUSION

On the issues presented, Jimenez is not seeking to end local red light camera programs, just to ensure that they operate properly and fairly. Invalidating the use of different local guidelines with local definitions – many of which are nonsensical, and completely contrary to safety concerns – will not end red light camera programs, but only serve to make them operate better.

The Respondents cannot identify one single harm in have a single, uniform statewide set of guidelines with one definition of what constitutes a red light camera violation. Nor can the Respondents possibly deny or reject the benefits of uniform guidelines with one definition as to both fairness and safety.

Jimenez only asks for a couple of simple things: 1) since Jimenez clearly argued that uniformity issue was based on unfairness in having city-to-city variances in their collective guidelines and definitions, not within any one given city, that this issue be appropriately analyzed as such; and 2) since Jimenez did, in fact, recognize that if "review" was interpreted as the City desired (which was done), a local governmental entity was still precluded and preempted from applying a local definition of uniform state law, the Court should not summarily reject this argument without appropriate analysis of the merits of his argument.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing is being served via Florida Courts E-Filing Portal system on this 18th day of May, 2018, upon: Edward G. Guedes and Samuel I. Zeskind, Weiss Serota Helfman Cole & Boniske, P.L., 2525 Ponce de Leon Blvd., Suite 700, Coral Gables, Florida 33134, eguedes@wsh-law.com, szavala@wsh-law.com, szeskind@wsh-law.com,

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