IN THE SUPREME COURT
STATE OF FLORIDA

CASE NO. SC16-1976

LUIS TORRES JIMENEZ,

Petitioner,

v.

STATE OF FLORIDA, by and through the CITY OF AVENTURA,

Respondent.

CITY OF AVENTURA'S RESPONSE IN OPPOSITION TO EDWIN CHRISTMAN'S MOTION FOR LEAVE OF COURT TO FILE BRIEF AS AMICUS CURIAE

ON DISCRETIONARY REVIEW FROM A DECISION OF THE
THIRD DISTRICT COURT OF APPEAL

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CITY OF AVENTURA'S RESPONSE IN OPPOSITION TO PROPOSED AMICUS' MOTION FOR LEAVE TO FILE AMICUS BRIEF IN SUPPORT OF PETITIONER

Respondent, City of Aventura ("City"), hereby files its response in opposition to the motion filed by Edwin Christman ("Christman") for leave to file an amicus curiae brief in support of petitioner, Luis Torres Jimenez ("Jimenez").[1]

I. INTRODUCTION

Christman has filed a motion for leave to file an amicus curiae brief, presumably in support of Jimenez in connection with Jimenez's motion for rehearing.[2] The Court should deny the motion for leave to file an amicus brief for three reasons: (a) the amicus support offered is improper as amici cannot raise issues not addressed by the parties to the action: (b) the amicus support offered is also improper on rehearing as it reaches issues that were not briefed before the Court during the appeal and, worse, reaches issues that were not raised below; and (c) amicus support of a motion for rehearing is untimely and unauthorized by Fla. R. App. P. 9.370.

[1] It appears that Christman has mailed his motion, rather than file it electronically. Accordingly, a copy of the motion is attached here for the Court's convenience, as Exhibit "A."

[2] Christman served his motion by e-mail on May 17, 2018. Jimenez's Motion for Rehearing was not filed and served until May 18, 2018.

II. ARGUMENT

A. Christman's motion improperly addresses issues not raised by the parties on appeal.

The Court should deny the motion for leave to file an amicus brief as Christman seeks to inject a host of irrelevant factual and legal issues, none of which was raised in Jimenez's trial court hearing or on appeal. Specifically, Christman seeks to address issues regarding the technology by which the speed of the vehicle is measured by red light cameras for "right on red" citations and the form of the sign prohibiting right hand turns on red at the subject City intersection. These issues were not raised by the parties and, as such, it is wholly improper for an amicus curiae to raise them. *See, e.g., Bretherick v. State,* 170 So. 3d 766, 779 n. 7 (Fla. 2015) ("An amicus curiae is not permitted to raise new issues that were not initially raised by the parties.") (citing *Riechmann v. State*, 966 So. 2d 298, 304 n. 8 (Fla. 2007)); *Dade County v. Eastern Airlines, Inc.*, 212 So. 2d 7, 8 (Fla. 1968) (striking amicus brief for injecting matters outside the record). Accordingly, on this basis alone, Christman's motion should be denied.

B. Christman's motion improperly raises new Issues for the first time on rehearing.

Christman's motion should also be denied as it improperly attempts to raise new issues, both legal and factual, for the first time on rehearing. Florida appellate courts generally disfavor such a practice. *See, e.g., Rombola v. Botchey*, 149 So. 3d 1138, 1145 (Fla. 1st DCA 2014) (denying rehearing and stating that "[i]njecting new facts and legal arguments in a rehearing motion is not looked upon

favorably."); *Ayer v. Bush*, 775 So. 2d 368, 370 (Fla. 4th DCA 2000) ("It is a rather fundamental principle of appellate practice and procedure that matters not argued in the briefs may not be raised for the first time on a motion for rehearing...."); *Polyglycoat Corp. v. Hirsch Distributors, Inc.*, 442 So. 2d 958, 960 (Fla. 4th DCA 1983) ("[M]atters not previously urged to this Court may not be raised for the first time on a motion for rehearing."). Moreover, Christman's motion also improperly presents new issues for the first time in a motion for rehearing that were not even raised at the trial court level. *See, e.g., Marriott Int'l, Inc. v. Perez-Melendez*, 855 So. 2d 624, 632 (Fla. 5th DCA 2003) (the purpose of rehearing "is not to bring to the court's attention an issue that was not properly raised in the trial court," declining on rehearing to consider unpreserved issue it would not have considered after submission of the briefs and oral argument); *Acton v. Ft. Lauderdale Hospital*, 418 So. 2d 1099 (Fla. 1st DCA 1982), *approved*, 440 So. 2d 1282 (Fla. 1983) ("[A]mici do not have standing to raise issues unavailable to the parties nor may they inject issues not raised by the parties.").

Here, Christman acknowledges, on the face of his motion, that the arguments proffered by Christman were not raised by Jimenez. Motion at p. 2 ("Jimenez doesn't address speed measurement regarding §316.1905 or FDOT specifications. Speed was not argued regarding probable cause by either party nor analyzed by this court . . . .").[3] Christman, therefore, requests leave to improperly

[3] Christman also attempts to inject a host of irrelevant, extra-record factual and legal issues, many of which relate to another proceeding involving Christman and a different local government's red light camera program.

assert issues that constitute entirely new arguments to be raised on rehearing, and not even by a party, but rather by a proposed, untimely amicus. *See, e.g.*, *Perez v. State*, 717 So. 2d 605, 606 (Fla. 3d DCA 1998) (noting general unwillingness to consider a party's argument raised for the first time on rehearing except where the law has changed or the justice of the cause mandates it). *See also Turner v. Tokai Financ. Servs., Inc.*, 767 So. 2d 494, 496 n. 1 (Fla. 2d DCA 2000) ("Because the parties to the appeal did not raise this issue and because amici lack standing to raise issues not raised by the parties, this issue was not properly before this court.") (citing *Acton v. Fort Lauderdale Hosp.*, 418 So. 2d 1099, 1101 (Fla. 1st DCA 1982)).

Accordingly, the Court should deny Christman's motion as rehearing is not an appropriate opportunity for a party — much less a proposed amicus — to address entirely new issues.

C. Christman's Motion is Untimely.

In addition to the substantive defects described herein, Christman's motion should also be denied as untimely. The Florida Rules of Appellate Procedure simply do not authorize amicus briefs in support of motions for rehearing. Specifically, Rule 9.370, which governs amicus curiae filings, provides: "An amicus curiae ***must serve*** its brief no later than 10 days after the ***first brief, petition, or response*** of the party is filed." Fla. R. App. P. 9.370(c) (Emphasis added). A motion for rehearing is not a "brief, petition, or response." *See City of Temple Terrace v. Hillsborough Ass'n for Retarded Citizens, Inc.*, 322 So. 2d 571,

579 (Fla. 2d DCA 1975) ("motions for permission to file amicus curiae briefs come too late," where they are filed along with motion for rehearing).[4]

The Court, therefore, should deny Christman's motion because amicus participation is unauthorized and untimely at this juncture of the appellate proceeding.

III. CONCLUSION

Christman has missed the proverbial boat. If he wanted to participate as amicus in these proceedings, it was incumbent upon him to *timely* petition this Court for leave and then restrict himself to arguments related to the issues on appeal and supported by the record in this case. Since Christman has done neither, his motion should be denied.

Respectfully submitted,

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[4] That Rule 9.370 does not authorize amicus briefs on rehearing is evident from its structure. The rule contemplates that amicus submissions follow the principal appellate briefs by no later than 10 days, thus assuring that the opposing party, who is required to respond to a principal brief within 20 days, pursuant to Fla. R. App. P. 9.210, is afforded a fair opportunity to formulate a response to both the principal brief and the amicus support for it. On rehearing, however, the non-movant is afforded only 10 days to respond to the motion, itself. *See* Fla. R. App. P. 9.300(a).

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By: /s/ *Edward G. Guedes*
Edward G. Guedes

CERTIFICATE OF SERVICE

I certify that a copy of this motion was served via E-portal and e-mail this 18th day of May, 2018, on on Amit Agarwal, Solicitor General (amit.agarwal@myfloridalegal.com) and Rachey Nordby, Deputy Solicitor General, Office of the Attorney General, The Capitol, PL-01, Tallahassee, Florida 32399; Robert Dietz, Senior Assistant Attorney General (Robert.Dietz@myfloridalegal.com), Office of the Attorney General, 501 E. Kennedy Blvd., Suite 1100, Tampa, FL 33134; Stephen F. Rosenthal (srosenthal@podhurst.com) and Ramon A. Rasco (rrasco@podhurst.com), Podhurst Orseck, P.A., *Counsel for Petitioner*, Suntrust International Center, One S.E. 3rd Avenue, Suite 2700, Miami, Florida 33131; Marc A. Wites (mwites@wklawyers.com), Wites & Kapetan, P.A., *Counsel for Petitioner*, 4400 North Federal Highway, Lighthouse Point, Florida 33064; Louis C. Arslanian (arsgabriela@comcast.net), *Counsel for Petitioner*, 500 Sheridan Street, Hollywood, Florida 33021; Edwin R. Christman (rchristman@gmail.com), 237 Jim Bryant Road, East Palatka, Florida 32131.

/s/ *Edward G. Guedes*
Edward G. Guedes

EXHIBIT

“A”

IN THE SUPREME COURT OF FLORIDA

No. SC16-1976

LUIS TORRES JIMENEZ, vs. STATE OF FLORIDA, etc., et al.

MOTION FOR LEAVE OF COURT TO FILE BRIEF AS AMICUS CURIAE

The movant is unique in that he independently appealed his red light camera violation (pro se) to the Seventh Judicial Circuit Court in its appellate capacity [Case No. 14-325CA]. Competent evidence was presented demonstrating the speed measurement data provided through American Traffic Solutions was both bogus and an unlawful police action according to §316.1905. In a ruling in favor of Christman and against the City of Palatka, the Final Administrative Order was reversed on July 17, 2015. Christman had further documented that speed values are *not* part of the §316.0083 "information to be reviewed". See §3.2, of the FDOT TID Specifications.

The State chose *not* to appeal the Christman case to the Fifth District Court of Appeal contrary to all other such red light camera cases statewide. Christman is a legitimate "fourth case" now conflicted and negatively impacted by the "speed" portion of the current opinion thus deserves review before this court.

Christman seeks leave to file brief for inclusive review and enlightenment of the above case as follows;

1. It addressed why a §316.0083 defined red light camera cannot be statutorily commingled or convolved with a §316.1905 defined speed measurement device as this court clearly did in its opinion.[pg. 5, line 9 of opinion]
2. It brought Florida sunshine to §316.07456 in which administration of issues such as "review" and "information" are delegated to FDOT. The Aventura (and Oldsmar) vendor BRQ is in conflict with FDOT TID documentation regarding use of speed data. This was overlooked by the court in its opinion. [page numbered 18, lines 17 & 21, Aventura Answer Brief]

3. It enlightens why the violation photos, in the Jimenez record, prove beyond doubt that the Aventura intersection ***is not*** "no-turn-on-red" per §316.0745 – Uniform Signals and Devices. This is contrary to the state's baseless decree of such and then again asserted *as fact* in the very first sentences of this court's opinion. Turns on red are permissible in this lane based on the ***circular red*** signal configuration in the photo according to the Florida MUTCD or "Manual on Uniform Traffic Control Devices". The state has since changed this signal to the legally correct ***red arrow*** signal without informing this court.[appendix pg.1-2],[pg. 10, photo, Jimenez reply appendix]
4. Further, the photo shows Jimenez traveling at only **10 mph** prior to the stop line or 5 mph slower than the Aventura violation limit of 15 mph in a right-turn-only lane. Mr. Jimenez should never have even received a violation per Aventura policy. [pg. 29, row 7 of Aventura Answer Appendix].

Jimenez doesn't address speed measurement regarding §316.1905 or FDOT specifications. Speed was not argued regarding probable cause by either party nor analyzed by this court thus the word "speed" should be clarified or deleted regarding data to be "reviewed".

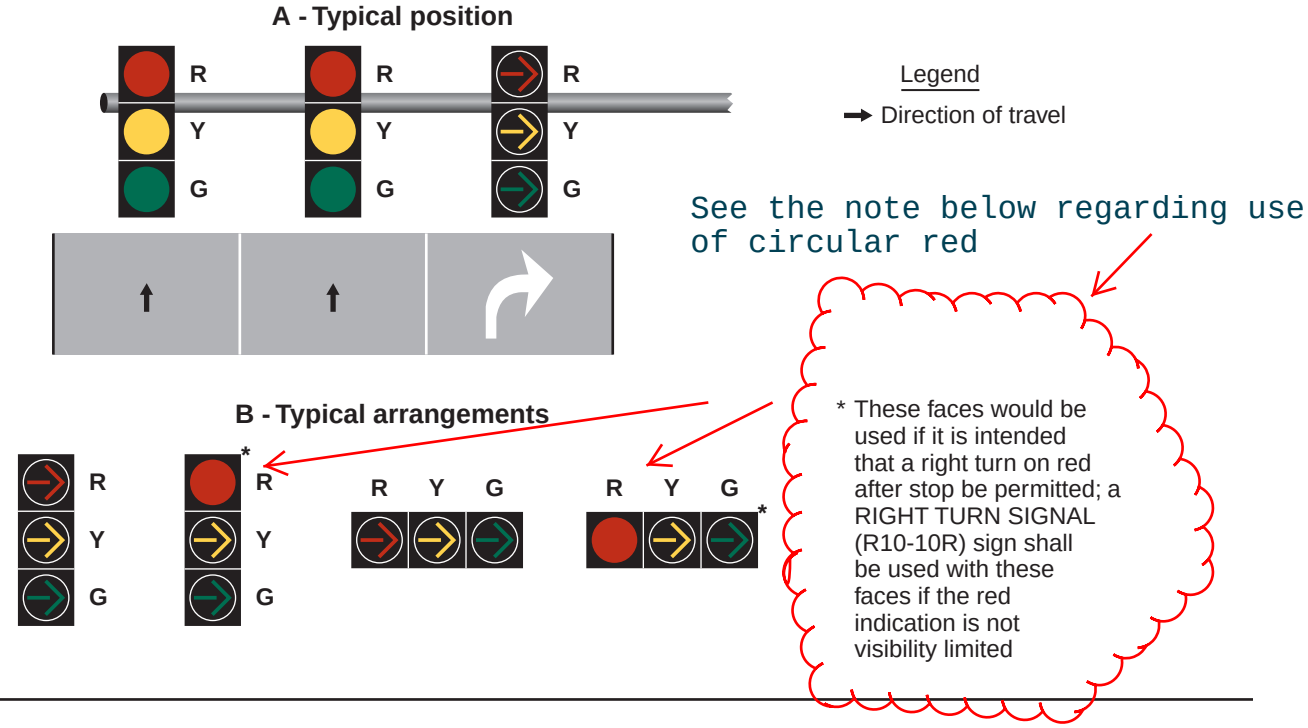
Appellant consents, Appellee objects to and does not consent to this motion.

Edwin Roy Christman (pro se) /s/ Edwin Roy Christman
C/O 237 Jim Bryant rd. 32131, 904-425-9952, rchristman@gmail.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion has been furnished by electronic mail to: Marc Wites; mwites@wklawyers.com, Stephen Rosenthal, Ramon Rasco; C/O srosenthal@podhurst.com, Louis Arslanian; arsgabriela@comcast.net, Amit Agarwal; amit.agarwal@myfloridalegal.com, Rachel Nordby; rachel.nordby@myfloridalegal.com, Pamela Bondi, Robert Dietz; C/O Robert.Dietz@myfloridalegal.com, Edward Guedes; eguedes@wsh-law.com, Samuel Zeskind; szeskind@wsh-law.com

Figure 4D-17. Typical Position and Arrangements of Separate Signal Faces for Protected Only Mode Right Turns



2. **Steady CIRCULAR RED, steady right-turn YELLOW ARROW, and right-turn GREEN ARROW. Only one of three indications shall be displayed at any given time. If the CIRCULAR RED signal indication is sometimes displayed when the signal faces for the adjacent through lane(s) are not displaying a CIRCULAR RED signal indication, a RIGHT TURN SIGNAL (R10-10R) sign (see Figure 2B-27) shall be used unless the CIRCULAR RED signal indication is shielded, hooded, louvered, positioned, or designed such that it is not readily visible to drivers in the through lane(s).**

B. During the protected right-turn movement, a right-turn GREEN ARROW signal indication shall be displayed.

C. A steady right-turn YELLOW ARROW signal indication shall be displayed following the right-turn GREEN ARROW signal indication.

D. When the separate signal face is providing a message to stop and remain stopped, a steady right-turn RED ARROW signal indication shall be displayed if it is intended that right turns on red not be permitted (except when a traffic control device is in place permitting a turn on a steady RED ARROW signal indication) or a steady CIRCULAR RED signal indication shall be displayed if it is intended that right turns on red be permitted.

E. If the protected only mode is not the only right-turn mode used for the approach, the signal face shall be the same separate right-turn signal face that is used for the protected/permissive mode (see Section 4D.24 and Figure 4D-19) except that a flashing right-turn YELLOW ARROW or flashing right-turn RED ARROW signal indication shall not be displayed when operating in the protected only mode.

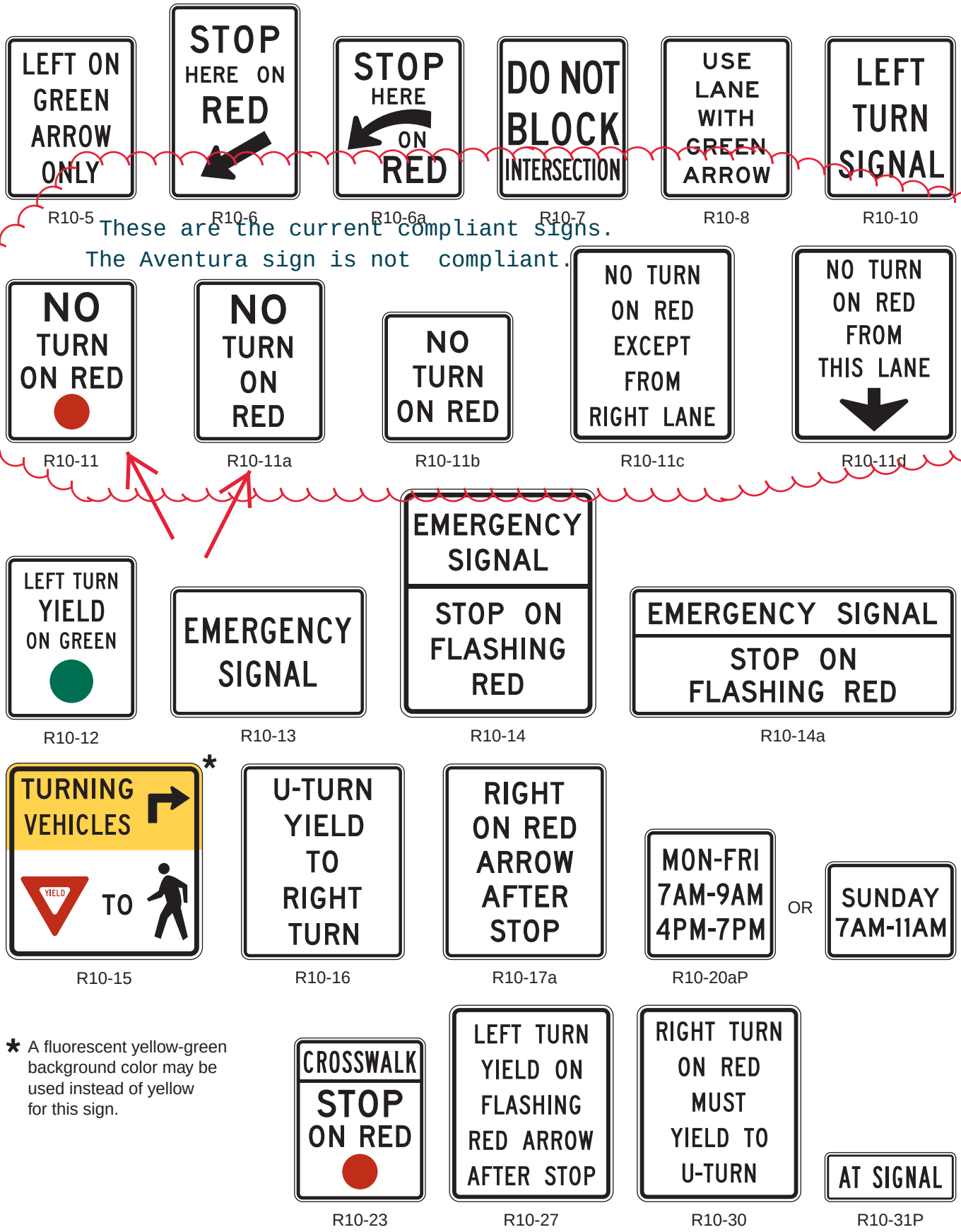
Section 4D.24 Signal Indications for Protected/Permissive Mode Right-Turn Movements

Standard:

01 **If a shared signal face is provided for a protected/permissive mode right turn, it shall meet the following requirements (see Figure 4D-18):**

A. It shall be capable of displaying the following signal indications: steady CIRCULAR RED, steady CIRCULAR YELLOW, CIRCULAR green, steady right-turn YELLOW ARROW, and right-turn GREEN ARROW. Only one of the three circular indications shall be displayed at any given time. Only one of the two arrow indications shall be displayed at any given time. If the right-turn GREEN ARROW signal indication and the CIRCULAR GREEN signal indication(s) for the adjacent through movement are always terminated together, the steady right-turn YELLOW ARROW signal indication shall not be required.

Figure 2B-27. Traffic Signal Signs and Plaques



* A fluorescent yellow-green background color may be used instead of yellow for this sign.