

NORTH CAROLINA SUPREME COURT

ERIC STEVEN FEARRINGTON,
CRAIG D. MALMROSE,

Plaintiffs-Respondents,

v.

CITY OF GREENVILLE, PITT
COUNTY BOARD OF EDUCATION,

Defendants-Petitioners.

From the Court of Appeals
No. COA20-877

From Pitt County
No. 19 CVS 1217

PLAINTIFFS' RESPONSE TO DEFENDANT GREENVILLE'S MOTION TO FILE
SUPPLEMENT TO DEFENDANT'S PETITION FOR DISCRETIONARY REVIEW
AND DEFENDANT'S MOTION FOR JUDICIAL NOTICE OF *ALLEN v. CITY OF
FAYETTEVILLE, ET AL.*

Allen v. City of Fayetteville does not alter this Court's analysis of Greenville's petition for discretionary review. Of more than five hundred North Carolina municipalities, just two have active red-light camera programs. Timothy Nye, *The 2017-2018 North Carolina Survey of Automatic Traffic Enforcement Systems*, February 2018, North Carolina Governor's Highway Safety Program at https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/north_carolina_ae2018_survey.pdf.¹ Fayetteville and Greenville terminated their programs in late 2022. A

¹ The citations in this document embed hyperlinks to the cited sources.

lawsuit against Fayetteville does not alter the effect on the public interest. Nor does it affect the validity of the Court of Appeals' unanimous decision.

Greenville expressly modeled its program on Fayetteville's red-light camera program. The City Council's resolution calling for a red-light camera program called for "a program similar to the City of Fayetteville's program." (R p 14). Legislative proponents of the local act creating Greenville's red-light camera program cited Fayetteville's similar program as a reason to extend the law to Greenville. *Vaitovas v. Greenville*, 271 N.C. App. 578, Record on Appeal p. 134. Greenville's City's Police Department "observed" Fayetteville's red-light camera program before implementing its own program. (R pp 242, 296). The Police Department also compared its program to Fayetteville's when setting tolerances and other program specifics. (R p 314).

More importantly, both Greenville and Fayetteville have stopped operating their red-light camera programs. *Fayetteville Ends its Red Light Camera Program*, Fayetteville Observer, November 17 2022; *Greenville City Council Votes to End Red Light Camera Program*, WITN, November 7 2022. Whatever effect these red-light camera programs had on the public interest ended in November 2022.

Finally, because this case is an "as-applied" constitutional challenge, this Court should not alter the record on appeal by taking judicial notice of *Allen v. Fayetteville*. An as-applied challenge depends on "the limited context of the facts of the case before [the Court.]" *Kimberley Rice Kaestner 1992 Family Tr. v. N.C. Dep't of Revenue*, 371 N.C. 133, 138, 814 S.E.2d 43, 47 (2018). Many of Plaintiffs claims relate specifically to how Greenville applies its red-light camera program, such as

how it conducts its hearings e.g., by forcibly preventing recording of administrative hearings) or how its camera designs were approved (e.g., without a proper seal from a licensed engineer). Those facts may differ between Greenville and Fayetteville. Fayetteville's application of the law is irrelevant to an as-applied challenge to Greenville's application of the law.

Because *Allen v. Fayetteville* is irrelevant, does not alter the analysis of whether this case affects the public interest, and does nothing to undermine the validity of the Court of Appeals' unanimous decision, this Court should deny Greenville's motion.

Respectfully submitted,

25 January 2023

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CERTIFICATE OF SERVICE

I certify that I served the attached **Response** on all parties by electronic mail addressed as follows:

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25 January 2023

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