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STATE OF NORTH DAKOTA

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Stephanie Sauby, individually and)	
on behalf of those similarly situated,)	Supreme Court No. 20070202
)	
Plaintiff/Appellant.)	
v.)	U.S. District Court.
)	Southwestern Division.
City of Fargo,)	District of North Dakota.
)	No. 3:07-cv-10
Defendant/Appellee,)	

Proceedings on certification from a July 10, 2007, order of the Federal District Court certifying a question to the North Dakota Supreme Court.

U.S. District Court, Southwestern Division
The Honorable Rodney S. Webb

BRIEF OF AMICUS CURIAE

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INTEREST OF AMICUS CURIAE

The North Dakota League of Cities has an interest in this appeal as an amicus curiae. The North Dakota League of Cities is a membership organization with over ninety percent of North Dakota's 357 incorporated cities as members. Our member cities make up ninety-nine percent of the population of incorporated cities in North Dakota. Over thirty percent of the incorporated cities have home rule charters approved by local voters, including all 12 North Dakota cities with populations over 5,000. Many of these cities impose traffic fees in excess of those provided for under state law. These cities provide for enforcement of ordinances designed to protect the health and safety of everyone within their boundaries, whether they are residents or visitors. It is important that the elected officials in these cities have the ability to use the authority granted to them by local voters in order to be able to deal quickly with issues relating to health and safety. The ability to effectively control the speed of motor vehicles within their jurisdictions is important for local safety. Effective control may require increased penalties in some jurisdictions. These cities have a strong interest in being able to set fees for violations of motor vehicle ordinances passed pursuant to authority granted by local voters in home rule charters.

ARGUMENT

- I. The North Dakota legislature has made specific powers available to home rule cities in section 40-05.1-06 of the North Dakota Century Code. This section contains 16 specific powers that may be included in charters

submitted to the voters and, once approved, implemented by local ordinance. The powers available to home rule cities include the power to “provide for the adoption, amendment, and repeal of ordinances, resolutions, and regulations to carry out its governmental and proprietary powers and to provide for *public health, safety, morals, and welfare, and penalties for a violation thereof*”. (N.D.C.C. section 40-05.1-06(7), emphasis added) Home rule cities also have the power to “define offenses against private persons and property and the *public health, safety, morals, and welfare, and provide penalties for violations thereof*”. (N.D.C.C. section 40-05.1-06(9), emphasis added) These powers were included in the home rule charter of the City of Fargo and implemented by city ordinances. These ordinances were designed to protect the public safety by providing penalties for driving in excess of stated speed limits. It is important that local officials have this power so that they can respond effectively to situations that may threaten public safety. Recognizing the importance of local authority in these matters, the legislature stated in N.D.C.C. section 40-05.1-06,

“It is the intention of this chapter to grant and confirm to the people of all cities coming within its provisions the full right of self-government in both local and city matters within the powers enumerated herein. The statutes of the state of North Dakota, so far as applicable, shall continue to apply to home rule cities, *except insofar as superseded by the charters of such cities or by ordinance passed pursuant to such charters.*” (emphasis added)

II. When a question arises as to the extent of a home rule power, the legislature has clearly stated its intent in N.D.C.C. section 40-05.1-05,

“The charter and the ordinances made pursuant to the charter in such matters *supersede* within the territorial limit and other jurisdiction of the city *any law of the state* in conflict with the charter and ordinances and *must be liberally construed for such purposes*”. (emphasis added)

The North Dakota Supreme Court has also stated that a home rule city can have broad powers if those powers are included in the charter and implemented through ordinances. Haugland v. City of Bismarck, 429 N.W. 2d 449 (N.D. 1988)

III. The question before the Court was also presented to the North Dakota Attorney General in 1982. At that time the Attorney General opined that a home rule city does possess the statutory power to enact ordinances regulating traffic and motor vehicle activity within its city limits. (1982 N.D. Op. Att’y Gen. 62) In that opinion, the Attorney General cited a North Dakota Supreme Court case stating that the supersession provision set out in N.D.C.C. section 40-05.1-05 applied only to those powers listed in N.D.C.C. Section 40-05.1-06, provided they are also *included in the home rule charter* and actually *implemented by city ordinance*. Litten v. City of Fargo, 294 N.W. 2d 628.632 (N.D. 1980) (emphasis added) The powers in question in this case were included in Article 3 of the City of Fargo’s home rule charter and implemented by the City of Fargo in their traffic control ordinances.

CONCLUSION

Based upon the files and records of this case and the arguments and authorities cited herein, the North Dakota League of Cities, as an amicus curiae, respectfully requests that this Court answer “YES” to the certified question in this case by declaring that the City may lawfully impose traffic fees in excess of those authorized by state law.

Dated this 18th day of September, 2007.

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