

and :

Sharon A. Dumas, Director of Finance, :
 City of Cleveland, Ohio :
 601 Lakeside Ave., Room 106 :
 Cleveland, Ohio 44114 :

and :

James Hartley, Treasurer, :
 City of Cleveland, Ohio :
 601 Lakeside Ave., Room 106 :
 Cleveland, Ohio 44114 :

Respondents. :

Introduction

1. This Court has without exception repeatedly recognized and vindicated the absolute supremacy of the General Assembly’s exclusive power under Ohio Const. Art. IV, §1, to establish courts and determine their jurisdiction, over a municipality’s Ohio Const. Art. XVIII, §3, home-rule powers. *State ex rel. Cherrington v. Hutsinpillar* (1925), 112 Ohio St. 468, 474, 147 N.E. 647, *State ex rel. Ramey v. Davis*, 119 Ohio St. 596 (1929), *In re Fortune* (1941), 138 Ohio St. 385, 388, 35 N.E.2d 442, and *Cupps v. Toledo* (1959), 170 Ohio St. 144, 163 N.E.2d 384. The General Assembly thus vested municipal courts with jurisdiction over the “violation of any ordinance,” with but one explicitly limited exception that is irrelevant to this matter. R.C. 1901.20(A)(1) (with emphasis added).

2. Because the General Assembly vested in municipal courts the judicial power over ordinance violations which Respondent Clerk and Respondent Hearing Examiners have exercised, and are about to exercise, said Respondents are patently and

unambiguously without jurisdiction to proceed, thereby necessitating this Court's immediate issuance of extraordinary writs, all as detailed below.

3. While this case addresses both Respondent Cleveland's lack of authority to divest the Cleveland Municipal Court of its constitutionally reposed jurisdiction over the "violation of any ordinance," and Cleveland's concomitant unlawful transfer of said jurisdiction to Respondent Clerk and Respondent Hearing Examiners, it implicates neither home-rule, traffic regulations, nor this Court's decisions in *State ex rel. Scott v. City of Cleveland*, 112 Ohio St.3d 324, 2006-Ohio-6573, 859 N.E.2d 923, and *Mendenhall v. City of Akron*, 117 Ohio St.3d 33, 2008-Ohio-270, 881 N.E.2d 255.

4. The General Assembly exercised its exclusive power to establish courts and determine their jurisdiction under Ohio Const. Art. IV, §1, *State ex rel. Ramey v. Davis* (1929), 119 Ohio St. 596, by enacting R.C. 1901.20(A)(1), under which municipal courts were granted jurisdiction over the "violation of any ordinance ... ***unless the violation is required to be handled by a parking violations bureau pursuant to Chapter 4521 of the Revised Code***" [Emphasis supplied.] Jurisdiction over even the most minor vehicle parking and standing violations that are to be civilly enforced has been reposed by the General Assembly in the municipal courts. *Id.* The Constitution and this statute are clear: a municipal court has jurisdiction over absolutely all ordinance violations (save for the aforesaid exception) because the term "any" ordinance means "every" and "all" ordinances. See, *State v. Gardner*, 118 Ohio St.3d 420, 2008-Ohio-2787, 889 N.E.2d 995, at ¶33.

5. A municipality's home-rule powers are of absolutely no consequence here because the General Assembly's power under Art. IV, §1 "***supersedes*** the general power

of local self-government, as granted in Section 3, Article XVIII,” *State ex rel. Cherrington v. Hutsinpillar* (1925), 112 Ohio St. 468, 474, 147 N.E.2d 647, and further, because “[m]unicipalities have no power to establish courts or regulate the administration of justice.” *In re Fortune* (1941), 138 Ohio St. 385, 388, 35 N.E.2d 442. [All emphasis supplied.] See also *Cupps v. Toledo* (1959), 170 Ohio St. 144, 163 N.E.2d 384.

6. Violations of Respondent Cleveland’s speeding and red light ordinances, Codified Ordinances §433.03 and §413.03 (hereinafter referenced “§”), which are enforced by the imposition of civil sanctions, are being unconstitutionally adjudicated in the Cleveland Parking Violations Bureau (“*Parking Violations Bureau*”) by Respondents Mahon and Peterson, Hearing Examiners appointed pursuant to §459.03(b) by Respondent Clerk, Earle B. Turner, all of the foregoing pursuant to §413.031, instead of being adjudicated by the Cleveland Municipal Court in which the General Assembly, through R.C. 1901.20(A)(1), has reposed subject matter jurisdiction over the “violation of any ordinance” pursuant to its aforesaid superior constitutional power.

7. Cleveland’s enactment of §413.031 is thus impotent to deprive the Cleveland Municipal Court of jurisdiction over the civil enforcement of speeding and red light ordinance violations, and further incapable of diminishing or enlarging the powers of the Parking Violations Bureau and Respondent Clerk, both creatures of statute. *State ex rel. Kuntz v. Zangerle* (1935), 130 Ohio St. 84, 197 N.E. 112, and *New Bremen v. PUC* (1921), 103 Ohio St. 23, 132 N.E. 162.

8. Thus, per Ohio Const. Art. IV, §1, R.C. 1901.20(A)(1), R.C. 1901.31(E), and R.C. Chap. 4521, Respondent Clerk and Respondent Hearing Examiners patently and unambiguously lack jurisdiction to adjudicate anything beyond “parking infractions,”

statutorily defined to involve only the parking or standing of vehicles under specifically defined circumstances not remotely present in speeding and red light ordinance violations.

9. As a result, a writ of prohibition must issue against Respondent Clerk and Respondent Hearing Examiners, “both to prevent the future unauthorized exercise of jurisdiction *and to correct the results of previous jurisdictionally unauthorized action[.]*” (Emphasis *sic*) *State ex rel. Litty v. Leskovyansky* (1996), 77 Ohio St.3d 97, 98, 671 N.E.2d 236, *State ex rel. Rogers v. McGee Brown* (1997), 80 Ohio St.3d 408, 410-411, 686 N.E.2d 1126, and *State ex rel. Stern v. Mascio* (1998), 81 Ohio St.3d 297, 298-299, 691 N.E.2d 253, and a writ of mandamus must issue against Respondents Clerk, Cleveland, Dumas, and Hartley compelling them to immediately restore any monetary fines, penalties, or other sanctions obtained as a result of the aforementioned unconstitutional usurpation and exercise of judicial power. Because said money never did in reality belong in the hands of said Respondents it must be restored to the rightful owners, even in the absence of a controlling statute. *State ex rel. Zone Cab Corp. v. Industrial Com.* (1937), 132 Ohio St. 437, 443-44, 8 N.E.2d 438.

10. Because the pertinent facts are uncontroverted and it appears beyond doubt that Relators are entitled to the requested extraordinary writs, peremptory writs should be granted under the terms set out above. *State ex rel. Morenz v. Kerr*, 104 Ohio St.3d 148, 2004-Ohio-6208, 818 N.E.2d 1162, at ¶13, and *State ex rel. Sapp v. Franklin Cty. Court of Appeals*, 118 Ohio St.3d 368, 2008-Ohio-2637, 889 N.E.2d 500, at ¶14.

11. However, should this Court determine that peremptory writs are inappropriate it should issue alternative writs because, at a minimum, no question can

exist that Relators' claims may have merit. *State ex rel. Mason v. Burnside*, 117 Ohio St.3d 1, 2007-Ohio-6754, 881 N.E.2d 224, at ¶8, and *State ex rel. Duke Energy Ohio, Inc. v. Hamilton Cty. Court of Common Pleas*, 126 Ohio St.3d 41, 2010-Ohio-2450, 930 N.E.2d 299, at ¶14.

The Parties

12. Pursuant to S. Ct. Prac. R. 10.2, and Civ. R. 44.1, this Court is asked to take judicial notice, which this Court may do "at any stage of the proceeding," per Evid. R. 201(F), of all of the codified municipal ordinances of Respondent City of Cleveland, Ohio, true copies of all of which are attached hereto as **Ex. A**, including Sections 94, 99 and 100 of the Cleveland City Charter, Cleveland Codified Ordinances §413.031 (Use of Automated Cameras to Impose Civil Penalties upon Red Light and Speeding Violators), §433.03 (speeding), §413.03 (red light), and §459.03 (Parking Violations Bureau).

13. Respondent Earle B. Turner, ("Respondent Clerk"), is the clerk of the Cleveland Municipal Court, and the violations clerk of the of the Parking Violations Bureau per R.C. 4521.05(A) and §459.03(b), and Respondent Brian Mahon, Hearing Examiner, and Respondent Verlin Peterson, Hearing Examiner ("**Respondent Hearing Examiners**"), are Hearing Examiners within the Parking Violations Bureau who have been appointed by Respondent Clerk to that position pursuant to R.C. 4521.05(A), §459.03(b) and §413.031(k).

14. Relator Christoff is in receipt of a Notice of Liability for allegedly violating §413.031, a true copy of the first page of which, with Relator Christoff's Affidavit, is attached as **Ex. B**, over which Respondent Clerk and Respondent Hearing Examiners and Peterson are about to, or are about to continue to, unlawfully exercise

judicial power pursuant to §413.031(k), §459.03(b) and R.C. 4521.08(C), for which Relator Christoff has no adequate remedy in the ordinary course of the law.

15. On or about November 10, 2010, Relator Goldstein, the class representative, paid to Respondent Clerk the sum of Four Hundred Dollars (\$400.00) as evidenced by Ex. C, in satisfaction of three (3) Notices of Liability for alleged violations of §413.031, true copies of the first pages of which, with Relator Goldstein's Affidavit, are also attached hereto as part of Ex. C, and an additional Notice of Liability that has been misplaced.

16. The class of Relators relevant to the writ of mandamus consists of class representative Relator Goldstein, and of all others who have paid money to Respondent Clerk for violating or allegedly violating §413.01 in said Respondent's capacity as the §459.03(b) violations clerk of the Parking Violations Bureau.

17. Given that the class of mandamus Relators including, without limitation, Relator Goldstein, challenge the unlawful exercise of judicial power by the Respondent Clerk and Respondent Hearing Examiners over the violation of any ordinance other than a *parking infraction* defined by R.C. 4521.01, *et seq.*, all of the aforesaid class of mandamus Relators are not only similarly situated, they are identically situated.

18. Pursuant to §459.03(c), R.C. 1901.31(F), R.C. 4521.05(A), and the Cleveland Charter provisions, the money received by Respondent Clerk for the civil enforcement of violations of Cleveland's speeding and red light ordinances through §413.031 is periodically disbursed by said Respondent Clerk to Respondent James Hartley, Treasurer of Respondent Cleveland ("Respondent Treasurer"), Respondent Sharon A. Dumas, Director of Finance of Respondent Cleveland ("Respondent Director

of Finance”), and/or Respondent Cleveland, who are thereafter in receipt of money so collected by Respondent Clerk, and who have the power and the clear legal duty to disburse said funds as sought herein.

19. Pursuant to §94 of the Cleveland City Charter, Respondent Director of Finance “shall have charge of the Department of Finance and the administration of the financial affairs of the City, including the keeping and supervision of all accounts; the custody and disbursement of City funds and moneys; ... the control over expenditures; ... and such other duties as the Council may by ordinance require.”

20. Pursuant to §99 of the Cleveland City Charter, “There shall be in the Department of Finance a Division of the Treasury which shall be in charge of the City Treasurer [*i.e.*, Respondent Treasurer], who shall be the custodian of all public money of the city and all other public money coming into his hands as City Treasurer. The City Treasurer shall keep and preserve such moneys in the place or places determined by ordinance or by the provisions of any law applicable thereto.”

21. Pursuant to §100 of the Cleveland City Charter, “Except as otherwise provided in this Charter, the City Treasurer shall, under the supervision of the Director of Finance, ... shall also receive and disburse all other public money, coming into his hands as City Treasurer, in pursuance of such regulations as may be prescribed by the authorities having lawful control over such funds.”

22. Pursuant to R.C. 1901.31(G), R.C. 4521.06(D) and R.C. 4521.07(E), Respondent Clerk is required to keep and maintain records of the respective amounts received by him from the violators of an ordinance thereby allowing for the immediate

determination of the amount of any money due any Relator within the class of mandamus Relators.

COUNT I
Writ of Prohibition

I. Jurisdiction of Municipal Courts.

23. Ohio Const. Art. IV, § 1, grants to the General Assembly the sole authority to create municipal courts by providing (with emphasis added):

The judicial power of the state is vested in a supreme court, courts of appeals, courts of common pleas and divisions thereof, and such other courts inferior to the supreme court as may from time to time be established by law.

24. “Established by law” means established by the state legislature, *i.e.*, the General Assembly, not by the legislative body of a municipal corporation such as Cleveland City Council. *State ex rel. Ramey v. Davis* (1929), 119 Ohio St. 596, 165 N.E. 298.

25. The power to create a court carries with it the power to define its jurisdiction. *Ramey, Id.*

26. Municipal courts, the establishment and jurisdiction of which are defined by law, *i.e.*, by R.C. 1901.01, *et seq.*, are within the class of inferior courts contemplated by Ohio Const. Art. IV, § 1.

27. “The municipal court has jurisdiction of the violation of any ordinance of any municipal corporation within its territory ...” with but one, and only one exception, to wit: “...unless the violation is required to be handled by a parking violations bureau pursuant to Chapter 4521 of the Revised Code” R.C. 1920.01(A)(1). [Emphasis supplied.]

28. It comes as no surprise that neither speeding nor red light ordinance violations, whether civilly or criminally enforced, are within the class of violations “*required to be handed by a parking violations bureau pursuant to Chapter 4521 of the Revised Code*” *Id.*

29. Under R.C. 4521.02(A), a “*violation is required to be handled by a parking violations bureau*” when (with emphasis added):

- a. A local authority enacts an ordinance;
- b. “that *regulates the standing or parking* of vehicles;”
- c. “that a violation of the regulatory ordinance ... *shall not be considered a criminal offense for any purpose*;”
- d. “that a person who commits the violation *shall not be arrested* as a result of the commission of the violation;”
- e. “that the violation shall be handled pursuant to this chapter;” and
- f. for which a *fine* is adopted which *shall not “exceed one hundred dollars, plus costs and other administrative charges, per violation.”*

30. Thus, “If a parking violations bureau ... is established pursuant to section 4521.04 of the Revised Code ... the bureau has jurisdiction over each *parking infraction* that is a violation of an ordinance ... of the municipal corporation ... that established the bureau” R.C. 4521.05(A). [Emphasis supplied.]

31. The limited subject matter jurisdiction of a parking violations bureau is further clearly stated under R.C. 4521.05(C) (with emphasis added):

If a local authority does not enact an ordinance ... of the type described in division (A) of section 4521.02 of the Revised Code in relation to an ordinance ... enacted by the local authority that regulates the standing or parking of vehicles ... a violation of the particular regulatory ordinance ... is not a parking infraction for purposes of this chapter.

32. The violations which are so “required to be handled by a parking violations bureau” are defined as *parking infractions* by R.C. 4521.01(A), and it is self evident that neither speeding nor red light ordinance violations are “*parking infractions.*”

33. So comprehensive is the jurisdiction constitutionally granted municipal courts by the General Assembly over the violation of any ordinance that such court even retains jurisdiction over the fully decriminalized violations of parking or standing offenses, among the lowest form or criminal offenses, when “*the violation is not required to be handed by a parking violations bureau*” R.C. 1901.20(A)(1). [Emphasis supplied.]

34. Except by an act of the General Assembly, the Parking Violations Bureau’s subject matter jurisdiction cannot be expanded at the expense of the municipal court’s jurisdiction over the “violation of any ordinance,” beyond any “*parking infraction* that is a *violation of an ordinance,*” R.C. 4521.05(A). [Emphasis supplied.]

35. Hence, pursuant to R.C. 1901.20(A)(1) and 4521.05(C), the municipal court has jurisdiction over the violation of absolutely and unequivocally *all* municipal ordinances, even *fully decriminalized* ordinances which regulate the *standing or parking* of vehicles, except where the violation is *required to be handled by a parking violations bureau.*

II. Appeals from municipal courts.

36. Ohio Const. Art. IV, §3(B)(2) provides:

Courts of appeals shall have such *jurisdiction* as may be *provided by law* to review and affirm, modify, or reverse judgments or *final orders of the courts of record inferior to the court of appeals within the district....*

(Emphasis added.)

37. “[P]rovided by law” as used in Art. IV, §3(B)(2), similar to the phrase “established by law” as used in Ohio Const. Art. IV, §1, “empower[s] the General Assembly to alter the appellate jurisdiction of the Court of Appeals,” *State v. Collins* (1970), 24 Ohio St.2d 107, 107-08, 265 N.E.2d 261, and “The municipal courts established by section 1901.01 of the Revised Code ... are courts of record.” R.C. 1901.02(A).

38. Appeals from adverse judgments rendered by a municipal court are thus taken directly to the court of appeals per R.C. 1901.30(A)(with emphasis added):

To the court of appeals in accordance with the Rules of Appellate Procedure and any relevant sections of the Revised Code, including, but not limited to, Chapter 2505. of the Revised Code to the extent it is not in conflict with those rules.

39. A municipality *cannot* by ordinance affect appellate rights. *In re Fortune* (1941), 138 Ohio St. 385, 35 N.E.2d 442 [emphasis supplied]. *See also Cupps v. Toledo* (1959), 170 Ohio St. 144, 163 N.E.2d 384.

40. §413.031 further usurps and misdirects judicial power on appeal. While the appeal of a true *parking infraction* receives a one-level appeal on the regular docket of the court to a judge of the municipal court, per R.C. 1901.20(C) and R.C. 4521.08(D), and the appeal of a speeding or red light ordinance violation is to the court of appeals per R.C. 1901.30(A), an appeal of speeding and red light ordinance violations under §413.031 is relegated to a R.C. Chap. 2506 administrative appeal to the Court of Common Pleas. *Scott*, at ¶24.

41. Despite the fact that Relator Christoff would be deprived of his right to appeal an adverse judgment to the court of appeals per R.C. 1903.30(A) if his alleged

ordinance violation were properly before the municipal court pursuant to R.C. 1901.20(A)(1), the patent and unambiguous lack of jurisdiction by Respondent Clerk and Respondent Hearing Examiners makes the availability of either appeal or injunction irrelevant. *Department of Administrative Services, Office of Collective Bargaining v. State Employment Relations Bd.* (1990), 54 Ohio St.3d 48, 53, 562 N.E.2d 125. See, also, *State ex rel. Northern Ohio Telephone Co., v. Winter* (1970), 23 Ohio St.2d 6, 260 N.E.2d 827.

III. Both a parking violations bureau and a clerk of courts are creatures of statute, and their powers or jurisdiction cannot be affected by municipal ordinances.

42. “If a parking violations bureau ... is established pursuant to section 4521.04 of the Revised Code ... the bureau has *jurisdiction over each parking infraction* that is a violation of an ordinance ... of the municipal corporation ... that established the bureau” R.C. 4521.05(A). [Emphasis supplied.]

43. R.C. 1901.31 defines a municipal court clerk’s powers and allows them to be expanded to “perform all other duties *that the judges of the court may prescribe.*” R.C. 1901.31(E). [Emphasis supplied.]

44. Respondent Clerk is both the clerk of the Cleveland Municipal Court and the violations clerk of the Cleveland Parking Violations Bureau, pursuant to both R.C. 4521.05(A) and §459.03(b), and was thereby delegated the authority to appoint Respondent Hearing Examiners.

45. As creatures of statute, the Parking Violations Bureau and Respondent Clerk “can exercise only such powers as are expressly delegated by statute and only such implied powers as are necessary to carry into effect the powers expressly delegated.”

State ex rel. Kuntz v. Zangerle (1935), 130 Ohio St. 84, 197 N.E. 112. See, also, *New Bremen v. PUC* (1921), 103 Ohio St. 23, 132 N.E. 162.

IV. Respondent Clerk and Respondent Hearing Examiners are about to unlawfully exercise judicial power.

46. §413.031(k) provides that a “decision in favor of the City of Cleveland may be enforced by ... any other means provided by the Revised Code.” [Emphasis supplied.]

47. One “means provided by the Revised Code” is set forth in R.C. 4521.08(C), which allows Respondent Clerk to file in the Cleveland Municipal Court a judgment or default judgment of the Parking Violations Bureau, thereby giving such judgment “*the same force and effect as a money judgment in a civil action,*” (emphasis added) which, in turn, constitutes the exercise of judicial power by Respondent Clerk and Respondent Hearing Examiners because “[t]he proceeding contemplated by the sections of the [Codified Ordinances] now under consideration does confer power to render a judgment ... that is binding ... upon all litigants until overruled ...,” *State v. Cox* (1913), 87 Ohio St. 313, 333-34, 101 N.E. 135, and “[j]udicial power is the power of a court to decide and pronounce a judgment and carry it into effect between persons and parties who bring a case before it for decision.” *Id.*

48. Additionally, Respondent Clerk and Respondent Hearing Examiners already have, or are about to determine issues of fact and law over Relator Christoff’s alleged violations of §413.031 pursuant to §413.031(k)(1)-(4), and R.C. 4521.08(C), such determinations constitute the clear, unambiguous, patent and unlawful exercise judicial power.

49. “If the statute [here, the ordinance] in question required the determination by the clerk of any issue of fact or legal principle involved, this would have been an unwarranted exercise of judicial power.” *Hocking V. R. Co. v. Cluster Coal & Feed Co.* (1918), 97 Ohio St. 140, 142, 119 N.E. 207.

50. In addition, or in the alternative, irrespective of whether Respondent Clerk and Respondent Hearing Examiners have already exercised judicial power, Relator Christoff is entitled to the issuance of the writ of prohibition, because where, as here, said Respondents “patently and unambiguously lack[] jurisdiction over the cause, prohibition will lie both to prevent the future unauthorized exercise of jurisdiction and to correct the results of previous jurisdictionally unauthorized actions.” *State ex rel. Stern v. Mascio* (1998), 81 Ohio St.3d 297, 298-299, 691 N.E.2d 253, 255 citing *State ex rel. Rogers v. McGee Brown* (1997), 80 Ohio St.3d 408, 410, 686 N.E.2d 1126, 1127 (emphasis supplied) and *Rogers*, 80 Ohio St.3d at 1127-1128 (“... rejecting a similar contention that a writ of prohibition will not issue where the respondent judge already exercised the judicial act sought to be prevented”).

51. Various additional principles have been repeatedly articulated by this Court which preclude the exercise of judicial power by Respondent Clerk and Respondent Hearing Examiners over violations of Cleveland’s speeding and red light ordinances pursuant to a municipal ordinance, to wit (with all emphasis added):

a. That which constitutes judicial power when exercised by the municipal court over the violations of any ordinance, must by definition also constitute judicial power when exercised by the parking violations bureau through Respondent Clerk and Respondent Hearing Examiners over the

violation of §413.031 – an ordinance, as this Court held in *State ex rel. Coyne v. Todia* (1989), 45 Ohio St.3d 232, 236, 543 N.E.2d 1271: “By seeking exclusive jurisdiction at the expense of relators-mayor’s courts, respondents are about to exercise judicial power – that currently exercised by the mayors.”

b. “Section 1, Article IV, is a special provision of the Constitution that has to do with the creation of courts, and as such *supersedes* the general power of local self-government, as granted in Section 3, Article XVIII.” *State ex rel. Cherrington v. Hutsinpillar* (1925), 112 Ohio St. 468, 474, 147 N.E. 647.

c. “[N]o power exists in the municipalities of this state by their own fiat, by charter or otherwise, *to create a court or courts*, and thus seek to exercise the judicial power in contravention of Section 1, Article IV, of the Constitution.” *State ex rel. Cherrington*, 112 Ohio St. at 472-75. [Emphasis supplied.]

d. The “home rule” authority granted to municipalities by Section 3 of Article XVIII, Ohio Constitution, to “exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws” and, by Section 7 of Article XVIII, to “frame and adopt or amend a charter for its government and * * * exercise thereunder all powers of local self-government” *does not include the power to regulate the jurisdiction of courts established by the Constitution or by the General Assembly*

thereunder. *Cupps v. Toledo* (1959), 170 Ohio St. 144, syllabus, 163 N.E.2d 384.

e. “Municipalities have no power to establish courts or regulate the administration of justice.” *In re Fortune* (1941), 138 Ohio St. 385, 388. [Emphasis supplied.] See, also, *Cupps v. Toledo* (1959), 170 Ohio St. 144, 163 N.E.2d 384.

f. A municipality *cannot* by ordinance affect appellate rights. *In re Fortune* (1941), 138 Ohio St. 385, 35 N.E.2d 442.

52. As a result of the foregoing, Respondent Clerk and Respondent Hearing Examiners have exercised, and are about to continue to exercise, judicial power over Relator Christoff’s Notice of Liability of the violation of an ordinance which is clearly not authorized by law, and which contravenes not only Ohio Const. Art. IV, §1, but also R.C. 1901.20(A)(1), R.C. 1901.30, and R.C. 4521.01, *et seq.*, entitling Relator Christoff to a writ of prohibition.

V. **This Court has not yet been asked to address and apply the supremacy of the Ohio Constitution’s courts provision, Art. IV, §1, over the home-rule provision, Art. XVIII, §3, to §413.031.**

53. Neither *Mendenhall v. City of Akron*, 117 Ohio St.3d 33, 2008-Ohio-270, 881 N.E.2d 255, nor *State ex rel. Scott v. City of Cleveland*, 112 Ohio St.3d 324, 2006-Ohio-6573, 859 N.E.2d 923, addresses a municipality’s unlawful intrusion upon the General Assembly’s impermeable and exclusive authority under Section 1, Article IV of the Ohio Constitution, and none of the rulings in those two cases touch upon this issue.

54. None of the litigants in *Scott* and *Mendenhall* raised the issue of the General Assembly’s exclusive authority under Section 1, Article IV of the Ohio

Constitution to vest judicial power in courts and determine their jurisdiction. Unlike *Scott* and *Mendenhall*, this case does not implicate a municipality's home-rule powers under Section 3, Article XVIII of the Ohio Constitution. Instead, it turns entirely upon the application of Section 1, Article IV of the Ohio Constitution which, as noted above, this Court has repeatedly held supersedes the home-rule powers of municipalities. See *Cupps*, 170 Ohio St. 144, at paragraph one of the syllabus; *In re Fortune*, 138 Ohio St. at 388; *Ramey*, 119 Ohio St. 596, at syllabus; and *Cherrington*, 112 Ohio St. at 474.

55. While the issue of jurisdiction was raised in *Scott*, in its opinion this Court dealt only with the jurisdiction of Cleveland and applied the traditional home-rule conflict test found in *Struthers v. Sokol* (1923), 108 Ohio St. 263, 140, N.E. 519, in concluding that "it is unclear whether Section 413.031 conflicts with R.C. 4521.05." *Id.*, 2006-Ohio-6573, at ¶20. This Court did not address the creation of, and vesting of jurisdiction in, the Cleveland Municipal Court—by the General Assembly pursuant to Section 1, Article IV of the Ohio Constitution and Chapter 1901 of the Ohio Revised Code.

VI. Relator Christoff is entitled to the issuance of a writ of prohibition.

56. Relator Christoff has established the requisite elements for the issuance of a writ of prohibition, namely: (1) that the Respondents are about to exercise judicial or quasi-judicial authority, (2) the authority is unauthorized by law, and (3) denying the writ will result in injury for which no other adequate remedy exists in the ordinary course of law. *Department of Administrative Services, Office of Collective Bargaining v. State Employment Relations Bd.* (1990), 54 Ohio St.3d 48, 53, 562 N.E.2d 125.

57. The parking violations bureau is not a tribunal having general subject-matter jurisdiction and, therefore, cannot determine its own jurisdiction. *State ex rel. Sliwinski v. Unruh*, 118 Ohio St.3d 76, 2008-Ohio-1734, 886 N.E.2d 201, at ¶8, citing *Scott*, at ¶16.

58. Because Respondent Clerk and Respondent Hearing Examiners are "... without jurisdiction whatsoever to act, the availability or adequacy of a remedy of appeal to prevent the resulting injustice is immaterial to the exercise of supervisory jurisdiction by a superior court to prevent usurpation of jurisdiction by the inferior court. *See State, ex rel. Northern Ohio Telephone Co., v. Winter* (1970), 23 Ohio St.2d 6. *See, also, Hall v. American Brake Shoe Co.* (1968), 13 Ohio St.2d 11, 13." *State ex rel. Adams v. Gusweiler* (1972), 30 Ohio St.2d 326, 329, 285 N.E.2d 22.

59. Despite the foregoing, it must nonetheless be stated that §413.031 also ousts the court of appeals of appellate jurisdiction over judgments rendered for violations of Cleveland's speeding and red light ordinances by effectively transferring appellate jurisdiction from the court of appeals, 1901.30(A), to the court of common pleas as an administrative appeal, *Scott*, at ¶24, all in violation of Ohio Const. Art. IV, §3(B)(2), R.C. 1901.30(A), R.C. Chap. 2505, and the applicable court Rules.

60. The exercise of such judicial power by Respondents Clerk and Respondent Hearing Examiners is unauthorized by law because said Respondents patently and unambiguously lack jurisdiction. Said unlawful and unwarranted exercise of such judicial power by said Respondents will result in injury for which no other adequate remedy exists in the ordinary course of law.

61. Accordingly, Relator Christoff is entitled to the requested writ of prohibition to prevent Respondent Clerk and Respondent Hearing Examiners from exercising judicial power they are about to exercise over Relator Christoff's Notice of Liability for a violation of §413.031.

62. Because the pertinent facts are uncontroverted and it appears beyond doubt that Relator is entitled to the requested extraordinary writ of prohibition, a peremptory writ of prohibition should be granted. *State ex rel. Morenz v. Kerr*, 104 Ohio St.3d 148, 2004-Ohio-6208, 818 N.E.2d 1162, at ¶13, and *State ex rel. Sapp v. Franklin Cty. Court of Appeals*, 118 Ohio St.3d 368, 2008-Ohio-2637, 889 N.E.2d 500, at ¶13.

63. However, should this Court determine that a peremptory writ is inappropriate it should issue an alternative writ because, at a minimum, no question can exist that Relator's claims may have merit. *State ex rel. Mason v. Burnside*, 117 Ohio St.3d 1, 2007-Ohio-6754, 881 N.E.2d 224, ¶ 8, and *State ex rel. Duke Energy Ohio, Inc. v. Hamilton Cty. Court of Common Pleas* 126 Ohio St.3d 41, 2010-Ohio-2450, 930 N.E.2d 299, at ¶14.

64. The writ of prohibition should both "correct the results of previous jurisdictionally unauthorized actions" (*Stern*, 81 Ohio St.3d at 298-99), and preclude Respondent Clerk and Respondent Hearing Examiners from exercising judicial power over "the violation of any ordinance" unless such "***violation is required to be handled by a parking violations bureau***" pursuant to R.C. 4521.02(A), namely, when (with emphasis added):

- a. Respondent Cleveland enacts or has enacted an ordinance:
- b. "that ***regulates the standing or parking*** of vehicles;"

- c. “that a violation of the regulatory ordinance .. *shall not be considered a criminal offense for any purpose;*”
- d. “that a person who commits the violation *shall not be arrested* as a result of the commission of the violation;”
- e. “that the violation shall be handled pursuant to this chapter;” and
- f. for which a *fine* is adopted which *shall not “exceed one hundred dollars, plus costs and other administrative charges, per violation.”*

COUNT II
Writ of Mandamus

65. Relator Goldstein, individually and as the class representative, restates the foregoing as if fully rewritten herein and further alleges that:

66. Relator Goldstein and the class he represents have a clear legal right to have refunded any and all money wrongfully collected pursuant to the aforesaid unconstitutional exercise of judicial power, and Respondent Clerk, Respondent Treasurer, Respondent Director of Finance, and Respondent Cleveland have a corresponding clear legal duty to refund that money to him and to the class, *irrespective of whether any of such money has been expended in furtherance of collection or enforcement efforts, or otherwise.* The risk and burden of such expenditures of unconstitutionally collected funds must fall upon Respondents.

67. Having established that the fines collected by Respondent Clerk were collected through the aforementioned unconstitutional processes established by §413.031, said identifiable funds *in the amount originally collected from Relators,* which money either remain in the hands of Respondent Clerk, or pursuant to R.C. §§1901.31(F), 4521.05(A), §459.03(b), and/or §459.03(c), which have been paid by Respondent Clerk into the hands of Respondent Treasurer, Respondent Director of Finance, or Respondent

Cleveland, or which have been so collected but expended for collection, enforcement, or otherwise, §459.03(d), now attain a different status.

68. Because said funds never did in reality belong in the hands of any of said Respondents said funds are no longer properly part of the funds held by them, and said funds in the amount originally collected should and must be restored by writ of mandamus to the rightful owners, even in the absence of a controlling statute. *State ex rel. Zone Cab Corp. v. Industrial Com.* (1937), 132 Ohio St. 437, 443-44, 8 N.E.2d 438.

69. Some cases require an additional element for mandamus to the effect that a monetary claim must be definite in amount. *State ex rel. Brody v. Peltier* (10th Dist. 1985), 27 Ohio App. 3d 20, 21, 499 N.E.2d 910, citing *Williams v. State, ex rel. Gribben* (1933), 127 Ohio St. 398, 401, 188 N.E. 654, and *State, ex rel. Barborak, v. Hunston* (1962), 173 Ohio St. 295, 301, 181 N.E.2d 894.

70. This element has been uniquely satisfied at the outset of this litigation because the amount to which each Relator is entitled is immediately discernible by Respondent Clerk from the records he is required to maintain, to wit: “All moneys paid into a municipal court *shall be noted on the record of the case in which they are paid ...*,” R.C. 1901.31(G); “the payment of any fine, and any other relevant information shall be entered in the records of the ... bureau,” R.C. 4521.07(E); and “the clerk shall enter the fact of payment of the money and its disbursement in the records of the bureau,” R.C. 4521.08(C).

71. “In order to be entitled to the writ of mandamus, relators must establish a clear legal right to the requested relief, a corresponding clear legal duty on the part of respondents to provide it, and the lack of an adequate remedy in the ordinary course of

the law.” *State ex rel. Steele v. Morrissey*, 103 Ohio St.3d 355, 2004-Ohio-4960, 815 N.E.2d 1107, at ¶16, citing *State ex rel. Moore v. Malone*, 96 Ohio St.3d 417, 2002-Ohio-4821, 775 N.E.2d 812, at ¶20.

72. Relator Goldstein has established on behalf of himself and the class all of the elements required for issuance of a writ of mandamus.

73. When, as appropriate here, a court finds an ordinance unconstitutional in a mandamus action, it may direct public bodies or officials to follow a constitutional course in completing their duties, *State ex rel. Zupancic v. Limbach* (1991), 58 Ohio St.3d 130, 133, 568 N.E.2d 1206, and *State, ex rel. Park Invest. Co., v. Bd. of Tax Appeals* (1971), 26 Ohio St.2d 161, 270 N.E.2d 342, and the fact that the statutes may not expressly provide for a refund by the aforementioned Respondents is not controlling. *State ex rel. Zone Cab Corp. v. Industrial Com.* (1937), 132 Ohio St. 437, 443-44, 8 N.E.2d 438.

74. “In other words, if a court determines that a challenged ordinance is unconstitutional, it may order a municipality to satisfy its clear legal duty, i.e., to rectify any action taken pursuant to the unconstitutional ordinance.” *Parker v. City of Upper Arlington*, 10th Dist. No. 05AP-695, 2006-Ohio-1649, at ¶20.

75. §413.031 is clearly unconstitutional because it violates Ohio Const. Art. IV, §1, and Art. IV, §3(B)(2).

76. Respondent Clerk is required: a) to “...pay all fines received for violation of municipal ordinances *into the treasury of the municipal corporation the ordinance of which was violated* ... ,” R.C. 1901.31(F); b) as the §459.03(b) violations clerk of the parking violations bureau, to disburse the “fine and penalties collected by a violations

clerk for a parking infraction ... *to the local authority whose ordinance ... was violated,*” R.C. 4521.05(A); and c), to disburse all money paid in satisfaction of a judgment or default judgment to the local authority whose ordinance was violated, R.C. 4521.08(C). [All emphasis supplied.] See, also, §459.03(c) (“The fine, penalties, fees, and costs established for a parking infraction shall be collected, retained and disbursed by the Violations Clerk *if the parking infraction out of which the fine, penalties, fees, and costs arose occurred within the jurisdiction of the Parking Violations Bureau.*”)

77. Here, the local authority / municipal corporation to which such money is to be paid is Respondent Cleveland, under whose cited Charter provisions Respondents Dumas and Hartley have the power of disbursement.

78. This Court issued a writ of mandamus directing that unlawful payments should be refunded by holding that “[t]he rationale of this concept is that the [unlawful] payments never did in reality belong in the [the Respondents’ hands] ... [and are]... no longer properly a part of the fund and should be restored to the rightful owner.” *State ex rel. Zone Cab Corp. v. Industrial Com.* (1937), 132 Ohio St. 437, 443-44, 8 N.E.2d 438.

79. For the reasons set forth herein, Relator Goldstein and the class of similarly situated Relators have a clear legal right to have Respondent Clerk, Respondent Treasurer, Respondent Director of Finance, and Respondent Cleveland, to restore the money illegally collected by them for other than statutorily defined “*parking infractions,*” to wit: all money collected by said Respondents under the auspices of the Cleveland Parking Violations Bureau pursuant to §413.031, for violations of Cleveland’s speeding and red light ordinances, or collected in satisfaction of any judgment for said violations.

80. The said Respondents have a corresponding clear legal duty to restore said sums to the Relators, as set forth herein.

81. Wherefore, a writ of mandamus must issue compelling Respondent Clerk, Respondent Treasurer, Respondent Director of Finance, and Respondent Cleveland to restore to each Relator the specific amount paid by each Relator to Respondent Clerk, as appears on the records of said Respondent Clerk, for other than statutorily defined “*parking infractions*,” to wit: all money collected by said Respondents under the auspices of the Cleveland Parking Violations Bureau pursuant to §413.031, for violations of Cleveland’s speeding and red light ordinances, or collected in satisfaction of any judgment for said violations, which money either remains in the possession, custody and control of Respondent Clerk, or which Respondent Clerk has paid to, and/or which money is within the possession, custody and control of Respondent Treasurer, Respondent Director of Finance, and/or Respondent Cleveland, less attorneys fees and costs.

82. Because the pertinent facts are uncontroverted and it appears beyond doubt that Relators are entitled to the requested extraordinary writ of mandamus, a peremptory writ of prohibition should be granted. *State ex rel. Morenz v. Kerr*, 104 Ohio St.3d 148, 2004-Ohio-6208, 818 N.E.2d 1162, at ¶ 13; *State ex rel. Sapp v. Franklin Cty. Court of Appeals*, 118 Ohio St.3d 368, 2008-Ohio-2637, 889 N.E.2d 500, at ¶14.

83. However, should this Court determine that a peremptory writ is inappropriate it should issue an alternative writ because, at a minimum, no question can exist that Relators’ claims may have merit. *State ex rel. Mason v. Burnside*, 117 Ohio St.3d 1, 2007-Ohio-6754, 881 N.E.2d 224, at ¶8, and *State ex rel. Duke Energy Ohio, Inc.*

v. *Hamilton Cty. Court of Common Pleas*, 126 Ohio St.3d 41, 2010-Ohio-2450, 930 N.E.2d 299, at ¶15.

VII. This action in mandamus is maintainable as a class action.

84. Actions for a writ of mandamus are maintainable as a class action. *State ex rel. Gerspacher v. Coffinberry* (1952), 157 Ohio St. 32, 33, 104 N.E.2d 1.

85. Given that the constitutional basis for the claims of all mandamus Relators is the lack of subject matter jurisdiction by Respondent Clerk and Respondent Hearing Examiners, the legal arguments pertaining to each member of the class are identical, *i.e.*, common to the class.

VIII. This matter should be certified by this Court as a class action.

86. Given that said Respondents have no right to retain the funds so unconstitutionally paid, all Relators are not merely “similarly situated,” but instead are *identically situated* because their rights to refunds are precisely the same.

87. The members of Relator class number in the thousands. Accordingly, pursuant to Civ. R. 23(A)(1)-(4), the class is so numerous that joinder of all members is impracticable. Moreover, there are questions of law or fact common to the class, the claims or defenses of the representative parties are typical of the claims or defenses of the class, and the representative parties will fairly and adequately protect the interests of the class.

88. In addition, pursuant to Civ. R. 23(B), the prosecution of separate actions by or against individual members of the class would create a risk of adjudications with respect to individual members of the class which would as a practical matter be

dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

89. Further, pursuant to Civ. R. 23(B)(3), the questions of law or fact common to the members of the class of Relators predominate over any questions affecting only individual members.

90. A class action is thus superior to other available methods for the fair and efficient adjudication of the instant controversy.

91. To the best of Relators knowledge, after investigation, there is no pending litigation involving the members of the class of Relators brought under the same legal theories as those presented herein; there is no pending litigation in which the members of a proposed class of Relators are so similarly situated as are the members of the class of Relators herein.

92. The unique legal and constitutional arguments presented herein are distinct from those raised in prior litigation which this Court has addressed, and that distinction makes the concentration of the litigation herein most appropriate.

93. There are minimal difficulties likely to be encountered in the management of this case as a class action.

94. The identical situation of each member of the class of mandamus Relators is beyond debate.

95. Respondent Clerk of the Cleveland Municipal Court is required by statute to keep a record of the amount of money paid by each Relator, as well as a record of the amount paid by said Respondent Clerk to any of the other Respondents.

96. Contact with, and notice to the respective class members should also be facilitated through the use of the records of Respondent Clerk of the Cleveland Municipal Court.

IX. Counsel For Relators Is Entitled To Attorneys Fees Having Created A Fund.

97. A common fund has been created or preserved for the benefit of a class at the expense of one class member, *i.e.*, at the expense of one member of the class of Relators, to wit: the named Relators.

98. “The common fund doctrine is the exception to the general American rule that, absent statutory authority or a finding of bad faith, a prevailing party may not recover attorney fees as part of the cost of litigation.” *Hoepfner v. Jess Howard Elec. Co.* (10th Dist.), 150 Ohio App.3d 216, 2002-Ohio-6167, 780 N.E.2d 290, at ¶¶53-54.

99. Thus, irrespective of whether a class action is certified herein, where a fund has been created or preserved for the benefit of a class at the expense of one class member or a few class members, all members of the class may be required to share proportionately in the counsel fees incurred thereby. See, *e.g.*, *Smith v. Kroeger* (1941), 138 Ohio St. 508, 37 N.E.2d 45; *State ex rel. Montrie Nursing Home v. Creasy* (1983), 5 Ohio St.3d 124, 449 N.E.2d 763.

100. Counsel for Relators is entitled to their reasonable attorneys fees in an amount to be determined by the Court under the parameters of Prof. Cond. Rule 1.5.

PRAYER FOR PEREMPTORY WRITS

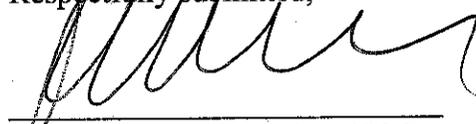
101. Because the pertinent facts are uncontroverted and it appears beyond doubt that Relators are entitled to the requested extraordinary writs, peremptory writs should be granted under the terms set out above. *State ex rel. Morenz v. Kerr*, 104 Ohio

St.3d 148, 2004-Ohio-6208, 818 N.E.2d 1162, at ¶13, and *State ex rel. Sapp v. Franklin Cty. Court of Appeals*, 118 Ohio St.3d 368, 2008-Ohio-2637, 889 N.E.2d 500, at ¶14.

102. However, should this Court determine that a peremptory writ(s) is inappropriate it should issue an alternative writ(s) because, at a minimum, no question can exist that Relators' claims may have merit. *State ex rel. Mason v. Burnside*, 117 Ohio St.3d 1, 2007-Ohio-6754, 881 N.E.2d 224, at ¶8, and *State ex rel. Duke Energy Ohio, Inc. v. Hamilton Cty. Court of Common Pleas*, 126 Ohio St.3d 41, 2010-Ohio-2450, 930 N.E.2d 299, at ¶15.

WHEREFORE, Relators urge this court to grant the relief requested herein.

Respectfully submitted,



Paul M. Greenberger (0030736)

(COUNSEL OF RECORD)

Timothy J. Duff (0046764)

Jordan Berns (0047404)

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tduff@bernssockner.com

jberns@bernssockner.com

Attorneys for Relators

STATE OF OHIO)
) SS: AFFIDAVIT
COUNTY OF CUYAHOGA)

I, Paul M. Greenberger, being first duly sworn, depose and say that:

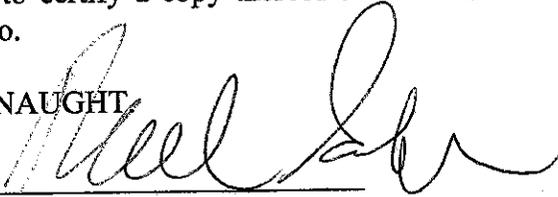
1. I am an attorney licensed to practice law within the State of Ohio since May, 1975, and I am the counsel of record for the Relators herein.

2. I have personal knowledge of the following facts:

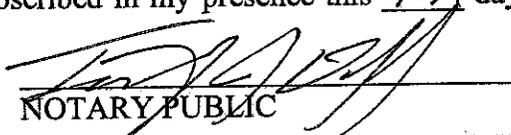
A. The copies of the City of Cleveland's Charter provisions, §§94, 99, and 100, and the copies of the City of Cleveland's Codified Ordinances, §413.031, §433.03 (speeding) and §413.03 (red light), and §459.03, prefaced by a Certificate, all of which are collectively attached to the Complaint as **Ex. A**, are true copies of said Certificate, of the text of said Charter provisions, and of said ordinances, which Certificate and text I obtained from the website containing all of the Charter provisions and the Codified Ordinances of the City of Cleveland, Ohio.

B. The copy of the attached 1/25/2011 "eTIMS : Cleveland, OH" printout attached to the Affidavit of Relator William M. Goldstein, is a true copy of that which I personally obtained from the office of the clerk of the Cleveland Parking Violations Bureau on 1/25/2011, and in particular from Ms. Siedah Williams, who identified herself as the Chief Deputy Clerk of the Cleveland Parking Violations Bureau, and who politely refused to certify a copy thereof because she said that her office cannot do so.

FURTHER AFFIANT SAYETH NAUGHT


Paul M. Greenberger

Sworn to before me and subscribed in my presence this 9th day of February, 2011.


NOTARY PUBLIC

TIMOTHY J. DUFF, ESQUIRE
Attorney At Law
Notary Public - State of Ohio
My commission has no expiration date.
Section 147.03 O. R. C.

Ex. A

CITY OF CLEVELAND



CERTIFICATE

Cleveland, Ohio June 30, 2010

TO WHOM IT MAY CONCERN:

This will certify that the matter published herewith is a true copy of the Codified Ordinances of the City of Cleveland, in effect on the 30th day of June, 2010.


Martin J. Sweeney
President of Council


Patricia J. Britt
City Clerk, Clerk of Council

Ex. A

Cleveland City Charter

§ 94 Director of Finance

The Director of Finance shall have charge of the Department of Finance and the administration of the financial affairs of the City, including the keeping and supervision of all accounts; the custody and disbursement of City funds and moneys; the making and collection of special assessments; the issuance of licenses; the collection of license fees; the control over expenditures; the purchase, storage and distribution of supplies needed by the City; and such other duties as the Council may by ordinance require.

§ 99 Division of Treasury

There shall be in the Department of Finance a Division of the Treasury which shall be in charge of the City Treasurer, who shall be the custodian of all public money of the city and all other public money coming into his hands as City Treasurer. The City Treasurer shall keep and preserve such moneys in the place or places determined by ordinance or by the provisions of any law applicable thereto.
(Effective November 9, 1931)

§ 100 Duties

Except as otherwise provided in this Charter, the City Treasurer shall, under the supervision of the Director of Finance, collect, receive and disburse all public money of the City upon warrant issued by the Commissioner of Accounts; and he shall also receive and disburse all other public money, coming into his hands as City Treasurer, in pursuance of such regulations as may be prescribed by the authorities having lawful control over such funds.
(Effective November 9, 1931)

Codified Ordinances of Cleveland

413.03 Traffic Control Signal Terms and Lights

Whenever traffic is controlled by traffic control signals exhibiting different colored lights, or colored lighted arrows, successively one at a time or in combination, only the colors green, red and yellow shall be used except for special pedestrian signals carrying words or symbols. The lights shall indicate and apply to drivers of vehicles and pedestrians as follows:

(a) *Green Indication.*

(1) Vehicular traffic facing a circular green signal may proceed straight through or turn right or left unless a sign at such place prohibits either such turn. But vehicular traffic, including vehicles turning right or left, shall yield the right of way to other vehicles and

pedestrians lawfully within the intersection or an adjacent crosswalk at the time such signal is exhibited.

(2) Vehicular traffic facing a green arrow signal, shown alone or in combination with another indication, may cautiously enter the intersection only to make the movement indicated by such arrow, or such other movement as is permitted by other indications shown at the same time. Such vehicular traffic shall yield the right of way to pedestrians lawfully within an adjacent crosswalk and to other traffic lawfully using the intersection.

(3) Unless otherwise directed by a pedestrian control signal as provided in Section 413.05, pedestrians facing any green signal, except when the sole green signal is a turn arrow, may proceed across the roadway within any marked or unmarked crosswalk.

(b) Steady Yellow Indication.

(1) Vehicular traffic facing a steady circular yellow or yellow arrow signal is thereby warned that the related green movement is being terminated or that a red indication will be exhibited immediately thereafter when vehicular traffic shall not enter the intersection.

(2) Pedestrians facing a steady circular yellow or yellow arrow signal, unless otherwise directed by a pedestrian control signal as provided in Section 413.05, are thereby advised that there is insufficient time to cross the roadway before a red indication is shown, and no pedestrian shall then start to cross the roadway.

(c) Steady Red Indication.

(1) Vehicular traffic facing a steady red signal alone shall stop at a clearly marked stop line, but if none, before entering the crosswalk on the near side of the intersection, or if none, then before entering the intersection, and shall remain standing until an indication to proceed is shown except as provided in subsections (c)(2) and (3) hereof.

(2) Unless a sign is in place prohibiting a right turn as provided in subsection (c)(5) hereof, vehicular traffic facing a steady red signal may cautiously enter the intersection to make a right turn after stopping as required by subsection (c)(1) hereof. Such vehicular traffic shall yield the right of way to pedestrians lawfully within an adjacent crosswalk and to other traffic lawfully using the intersection.

(3) Unless a sign is in place prohibiting a left turn as provided in subsection (c)(5) hereof, vehicular traffic facing a steady red signal on a one-way street that intersects another one-way street on which traffic moves to the left may cautiously make a left turn into the one-way street after stopping as required by subsection (c)(1) hereof, and yielding the right of way to pedestrians lawfully within an adjacent crosswalk and to other traffic lawfully using the intersection.

(4) Unless otherwise directed by a pedestrian control signal as provided in Section 413.05, pedestrians facing a steady red signal alone shall not enter the roadway.

(5) Council may by ordinance, as provided in Sections 413.09 and 413.10, prohibit a right or left turn against a steady red signal at any intersection, which shall be effective when signs giving notice thereof are posted at the intersection.

(d) *Signals; Locations Other than Intersections.* In the event an official traffic control signal is erected and maintained at a place other than an intersection, the provisions of this section shall be applicable except as to those provisions which by their nature can have no application. Any stop required shall be made at a sign or marking on the pavement indicating where the stop shall be made, but in the absence of any such sign or marking the stop shall be made at the signal.

(RC 4511.13; Ord. No. 91-96. Passed 3-18-96, eff. 3-26-96)

413.031 Use of Automated Cameras to Impose Civil Penalties upon Red Light and Speeding Violators

(a) *Civil enforcement system established.* The City of Cleveland hereby adopts a civil enforcement system for red light and speeding offenders photographed by means of an "automated traffic enforcement camera system" as defined in division (p). This civil enforcement system imposes monetary liability on the "owner" of a vehicle as defined in division (p) for failure of an operator to stop at a traffic signal displaying a steady red light indication or for the failure of an operator to comply with a speed limitation.

(b) *Red light offense – liability imposed.* The owner of a vehicle shall be liable for the penalty imposed under this section if the vehicle crosses a marked stop line or the intersection plane at a system location when the traffic signal for that vehicle's direction is emitting a steady red light.

(c) *Speeding offense – liability imposed.* The owner of a vehicle shall be liable for the penalty imposed under this section if the vehicle is operated at a speed in excess of the limitations set forth in Section 433.03.

(d) *Liability does not constitute a conviction.* The imposition of liability under this section shall not be deemed a conviction for any purpose and shall not be made part of the operating record of any person on whom the liability is imposed.

(e) *Other offenses and penalties not abrogated.* Nothing in this section shall be construed as altering or limiting Sections 433.03 or 413.03 of these Codified Ordinances, the criminal penalties imposed by those sections, or the ability of a police officer to enforce those sections against any offender observed by the officer violating either of those sections. Nothing in this section shall be construed to limit the liability of an operator of a vehicle for any violation of division (b) or (c) of this section.

(f) *Selection of camera sites.* The selection of the sites where automated cameras are placed and the enforcement of this ordinance shall be made on the basis of sound professional traffic engineering and law enforcement judgments. Automated cameras shall not be placed at any site where the speed restrictions or the timing of the traffic signal fail to conform to sound professional traffic engineering principles.

(g) *Locations*. The following are the locations for the Automated Traffic Enforcement Camera System:

Locations

Shaker Boulevard at Shaker Square

Chester Avenue at Euclid Avenue

West Boulevard at North Marginal Road

Shaker Boulevard at East 116th Street

West Boulevard at I-90 Ramp

Chester Avenue at East 71st Street

East 55th Street at Carnegie Avenue

East 131st Street at Harvard Avenue

Carnegie Avenue at East 30th Street

Cedar Avenue at Murray Hill Road

Grayton Road at I-480 Ramp

Euclid Avenue at Mayfield Road

Warren Road at I-90 Ramp

Prospect Avenue at East 40th Street

East 116th Street at Union Avenue

Pearl Road at Biddulph Road

Carnegie Avenue at East 100th Street

Carnegie Avenue at Martin Luther King Jr. Drive

Memphis Avenue at Fulton Road

Lakeshore Boulevard at East 159th Street

St. Clair Avenue at London Road

Clifton Boulevard between West 110th Street and West 104th Street

Chester Avenue between East 55th Street and East 40th Street

Woodland Avenue between East 66th Street and East 71st Street

West Boulevard between I-90 Ramp and Madison Avenue

Broadway between Harvard Avenue and Miles Avenue

Lee Road between Tarkington Avenue and I-480 Ramp

I-90 and West 41st Street

I-90 and West 44th Street

The Director of Public Safety shall cause the general public to be notified by means of a press release issued at least thirty days before any given camera is made fully-operational and is used to issue tickets to offenders. Before a given camera issues actual tickets, there shall be a period of at least two weeks, which may run concurrently with the 30-day public-notice period, during which only "warning" notices shall be issued.

At each site of a red light or fixed speed camera, the Director of Public Service shall cause signs to be posted to apprise ordinarily observant motorists that they are approaching an area where an automated camera is monitoring for red light or speed violators. Mobile speed units shall be plainly marked vehicles.

(h) *Notices of liability.* Any ticket for an automated red light or speeding system violation under this section shall:

- (1) Be reviewed by a Cleveland police officer;
- (2) Be forwarded by first-class mail or personal service to the vehicle's registered owner's address as given on the state's motor vehicle registration, and
- (3) Clearly state the manner in which the violation may be appealed.

(i) *Penalties.* Any violation of division (b) or division (c) of this section shall be deemed a noncriminal violation for which a civil penalty shall be assessed and for which no points authorized by Section 4507.021 of the Revised Code ("Point system for license suspension") shall be assigned to the owner or driver of the vehicle.

(j) Ticket evaluation, public service, and appeals. The program shall include a fair and sound ticket-evaluation process that includes review by the vendor and a police officer, a strong customer-service commitment, and an appeals process that accords due process to the ticket respondent and that conforms to the requirements of the Ohio Revised Code.

(k) *Appeals.* A notice of appeal shall be filed with the Hearing Officer within twenty-one (21) days from the date listed on the ticket. The failure to give notice of appeal or pay the civil penalty within this time period shall constitute a waiver of the right to contest the ticket and shall be considered an admission.

Appeals shall be heard by the Parking Violations Bureau through an administrative process established by the Clerk of the Cleveland Municipal Court. At hearings, the strict rules of evidence applicable to courts of law shall not apply. The contents of the ticket shall constitute a prima facie evidence of the facts it contains. Liability may be found by the hearing examiner based upon a preponderance of the evidence. If a finding of liability is appealed, the record of the case shall include the order of the Parking Violations Bureau, the Ticket, other evidence submitted by the respondent or the City of Cleveland, and a transcript or record of the hearing, in a written or electronic form acceptable to the court to which the case is appealed.

Liability shall not be found where the evidence shows that the automated camera captured an event is not an offense, including each of the following events and such others as may be established by rules and regulations issued by the Director of Public Safety under the authority of division (n) of this section:

- (1) The motorist stops in time to avoid violating a red light indication;
- (2) The motorist proceeds through a red light indication as part of funeral procession;
- (3) The motorist is operating a City-owned emergency vehicle with its emergency lights activated and proceeds through a red light indication or exceeds the posted speed limitation;
- (4) The motorist is directed by a police officer on the scene contrary to the traffic signal indication.

Liability shall also be excused if a vehicle is observed committing an offense where the vehicle was stolen prior to the offense and the owner has filed a police report.

The Director of Public Safety, in coordination with the Parking Violations Bureau, shall establish a process by which a vehicle owner who was not the driver at the time of the alleged offense may, by affidavit, name the person who the owner believes was driving the vehicle at the time. Upon receipt of such an affidavit timely submitted to the Parking Violations Bureau, the Bureau shall suspend further action against the owner of the vehicle and instead direct notices and collection efforts to the person identified in the affidavit. If the person named in the affidavit, when notified, denies being the driver or denies liability, then the Parking Violations Bureau shall resume the notice and collection process against the vehicle owner, the same as if no affidavit had been submitted, and if the violation is found to have been committed by a preponderance of evidence, the owner shall be liable for any penalties imposed for the offense.

A decision in favor of the City of Cleveland may be enforced by means of a civil action or any other means provided by the Revised Code.

(l) *Evidence of operation.* It is prima facie evidence that the person registered as the owner of the vehicle with the Ohio Bureau of Motor Vehicles, or with any other State vehicle registration office, or in the case of a leased or rented vehicle, the "lessee" as defined in division (p), was operating the vehicle at the time of the offenses set out in divisions (b) and (c) of this section.

(m) *Program oversight.* The Director of Public Safety shall oversee the program authorized by this Section. The Director of Public Service shall oversee the installation and maintenance of all automated cameras. An encroachment permit shall be authorized in the legislation in which locations are selected.

(n) *Rules and Regulations.* The Director of Public Safety may issue rules and regulations to carry out the provisions of these sections, which shall be effective thirty (30) days after publication in the City Record.

(o) *Establishment of Penalty.* The penalty imposed for a violation of division (b) or (c) of this section shall be follows:

413.031(b)

All violations \$100.00

413.031(c)

Up to 24 mph over
the speed limit \$100.00

25 mph or more over
the speed limit \$200.00

Any violation of a school
or construction zone \$200.00
speed limit

Late penalties

For both offenses, if the penalty is not paid within 20 days from the date of mailing of the ticket to the offender, an additional \$20.00 shall be imposed, and if not paid with 40 days from that date, another \$40.00 shall be imposed, for a total additional penalty in such a case of \$60.00.

(p) *Definitions.* As used in this section:

(1) "Automated traffic enforcement camera system" means an electronic system consisting of a photographic, video, or electronic camera and a vehicle sensor installed to work alone or in conjunction with an official traffic controller and to automatically

produce photographs, video, or digital images of each vehicle violating divisions (b) or (c).

(2) "Lessee" includes renter and means:

A. the person identified as a vehicle lessee or renter by a motor vehicle leasing dealer or motor vehicle renting dealer pursuant to RC 4511.092 and further identified by the dealer as the person having care, custody or control of the vehicle at the time of a violation of divisions (b) or (c); or

B. the person identified as the lessee or as an additional owner of a vehicle in the records of the Ohio Bureau of Motor Vehicles or the records of any other State motor vehicle bureau.

(3) "System location" means the approach to an intersection or a street toward which a photographic, video or electronic camera is directed and is in operation. It is the location where the automated camera system is installed to monitor offenses under this section.

(4) "Vehicle owner" or "owner" means the person or entity identified by the Ohio Bureau of Motor Vehicles, or registered with any other State vehicle registration office, as the registered owner of a vehicle, or in the case of a leased or rented vehicle, the "lessee". (Ord. No. 281-09. Passed 3-9-09, eff. 3-11-09)

433.03 Maximum Speed Limits; Assured Clear Distance Ahead

(a) No person shall operate a motor vehicle at a speed greater or less than is reasonable or proper, having due regard to the traffic, surface and width of the street or highway and any other conditions, and no person shall drive any motor vehicle in and upon any street or highway at a greater speed than will permit him to bring it to a stop within the assured clear distance ahead.

(b) It is prima-facie lawful, in the absence of a lower limit declared pursuant to RC 4511.21 by the Ohio Director of Transportation or Council, for the operator of a motor vehicle to operate the same at a speed not exceeding the following:

(1) A. Twenty miles per hour in school zones during school recess and while children are going to or leaving school during the opening or closing hours, and when twenty miles per hour school speed limit signs are erected; except, that on controlled-access highways and expressways, if the right-of-way line fence has been erected without pedestrian opening, the speed shall be governed by division (b)(4) of this section and on freeways, if the right-of-way line fence has been erected without pedestrian opening, the speed shall be governed by division (b)(7) of this section. The end of every school zone may be marked by a sign indicating the end of the zone. Nothing in this section or in the manual and specifications for a uniform system of traffic control devices shall be construed to require school zones to be indicated by signs equipped with flashing or other lights or giving other special notice of the hours in which the school zone speed limit is in effect.

B. As used in this section, "school" means any school chartered under RC 3301.16 and any nonchartered school that during the preceding year filed with the Department of Education in compliance with rule 3301-35-08 of the Ohio Administrative Code, a copy of the school's report for the parents of the school's pupils certifying that the school meets Ohio minimum standards for nonchartered, non-tax supported schools and presents evidence of this filing to the jurisdiction from which it is requesting the establishment of a school zone.

C. As used in this section, "school zone" means that portion of a street or highway passing a school fronting upon the street or highway that is encompassed by projecting the school property lines to the fronting street or highway, and also includes that portion of a state highway. Upon request from the City for streets and highways under its jurisdiction and that portion of a state highway under the jurisdiction of the Ohio Director of Transportation, the Director may extend the traditional school zone boundaries. The distances in divisions (b)(1) C.1. to 3. of this section shall not exceed 300 feet per approach per direction and are bounded by whichever of the following distances or combinations thereof the Director approves as most appropriate:

1. The distance encompassed by projecting the school building lines normal to the fronting highway and extending a distance of 300 feet on each approach direction;
2. The distance encompassed by projecting the school property lines intersecting the fronting highway and extending a distance of 300 feet on each approach direction;
3. The distance encompassed by the special marking of the pavement for a principal school pupil crosswalk plus a distance of 300 feet on each approach direction of highway.

Nothing in this section shall be construed to invalidate the Director's initial action on August 9, 1976, establishing all school zones at the traditional school zone boundaries defined by projecting school property lines, except when those boundaries are extended as provided in divisions (b)(1)A. and C. of this section.

D. As used in this division, "crosswalk" has the meaning given that term in Section 401.14. The Director may, upon request by resolution of Council, and upon submission by the City of such engineering, traffic and other information as the Director considers necessary, designate a school zone on any portion of a State route lying within the City that includes a crosswalk customarily used by children going to or leaving a school during recess and opening and closing hours, whenever the distance, as measured in a straight line, from the school property line nearest the crosswalk to the nearest point of the crosswalk is no more than 1,320 feet. Such a school zone shall include the distance encompassed by the crosswalk and extending 300 feet on each approach direction of the State route;

- (2) Twenty-five miles per hour in all other portions of the City, except on State routes outside business districts, through highways outside business districts and alleys;

- (3) Thirty-five miles per hour on all State routes for through highways within the City outside business districts, except as provided in divisions (b)(4) and (5) of this section;
- (4) Fifty miles per hour on controlled-access highways and expressways within the City;
- (5) Fifty miles per hour on State routes within the City outside urban districts unless a lower prima-facie speed is established as further provided in this section;
- (6) Fifteen miles per hour on all alleys within the City;
- (7) Fifty-five miles per hour at all times on freeways with paved shoulders inside the City, other than freeways as provided in division (B)(8) of this section;
- (8) Sixty-five miles per hour at all times on all portions of freeways that are part of the interstate system and are eligible for such speed in accordance with criteria issued by the federal highway administration and on all portions of freeways greater than five miles in length that are eligible for such speed in accordance with criteria issued by the federal highway administration or established by the "Intermodal Surface Transportation Efficiency Act of 1991," 105 Stat. 1968, 23 U.S.C.A. 154(a), for any motor vehicle weighing eight thousand pounds or less empty weight and any commercial bus, except fifty-five miles per hour for operators of any motor vehicle weighing in excess of eight thousand pounds empty weight and any noncommercial bus.
- (9) A speed posted on signs erected on streets or highways in a construction zone advising motorists that increased penalties apply for certain traffic violations occurring on streets or highways in a construction zone during actual hours of work within the construction zone.

A. As used in this section, "construction zone" means that lane or portion of a street or highway open to vehicular traffic and adjacent to a lane, berm or shoulder of a street or highway within which lane, berm, or shoulder construction, reconstruction, resurfacing, or any other work of a repair or maintenance nature, including public utility work, is being conducted, commencing with the point where the first worker or piece of equipment is located and ending where the last worker or piece of equipment is located. (RC 5501.27)

(c) It is prima-facie unlawful for any person to exceed any of the speed limitations in divisions (b)(1)A. to (b)(6) of this section, or any declared pursuant to this section by the Director or local authorities and it is unlawful for any person to exceed the speed limitation in division (d) of this section. No person shall be convicted of more than one violation of this section for the same conduct, although violations of more than one provision of this section may be charged in the alternative in a single affidavit.

(d) No person shall operate a motor vehicle, trackless trolley, or streetcar upon a street or highway as follows:

- (1) At a speed exceeding fifty-five miles per hour, except upon a freeway as provided in division (b)(8) of this section;
- (2) At a speed exceeding sixty-five miles per hour upon a freeway as provided in division (b)(8) of this section except as otherwise provided in division (d)(3) of this section;
- (3) If a motor vehicle weighing in excess of eight thousand pounds empty weight or a noncommercial bus as prescribed in division (b)(8) of this section, at a speed exceeding fifty-five miles per hour upon a freeway as provided in that division.
- (e) In every charge of violation of this section the affidavit and warrant shall specify the time, place and speed at which the defendant is alleged to have driven, and in charges made in reliance upon division (c) of this section also the speed which divisions (b)(1)A. to (b)(6) of this section, or a limit declared pursuant to this section declares is prima-facie lawful at the time and place of such alleged violation, except that in affidavits where a person is alleged to have driven at a greater speed than will permit him to bring the vehicle to a stop within the assured clear distance ahead the affidavit and warrant need not specify the speed at which the defendant is alleged to have driven.
- (f) When a speed in excess of both a prima-facie limitation and the limitation in division (d) of this section is alleged, the defendant shall be charged in a single affidavit, alleging a single act, with a violation indicated of both divisions (b)(1)A. to (b)(6) of this section, or of a limit declared pursuant to this section by the Director or local authorities, and of division (d) of this section. If the court finds a violation of divisions (b)(1)A. to (b)(6) of this section, or a limit declared pursuant to this section has occurred, it shall enter a judgment of conviction under such division and dismiss the charge under division (d) of this section. If it finds no violation of divisions (b)(1)A. to (b)(6) of this section or a limit declared pursuant to this section, it shall then consider whether the evidence supports a conviction under division (d) of this section.
- (g) Points shall be assessed for violation of a limitation under division (d) of this section only when the court finds the violation involved a speed of five miles per hour or more in excess of the posted speed limit.
- (h) Whenever the Ohio Director of Transportation determines upon the basis of an engineering and traffic investigation that any speed limit set forth in divisions (b)(1)A. to (d) of this section is greater than is reasonable or safe under the conditions found to exist at any intersection or other place upon any part of a State route, the Director shall determine and declare a reasonable and safe prima-facie speed limit, which shall be effective when appropriate signs giving notice are erected at the intersection or other part of the State route.
- (i) Whenever Council determines upon the basis of an engineering and traffic investigation that the speed permitted by divisions (b)(1)A. to (d) of this section, on any part of a highway under their jurisdiction, is greater than is reasonable and safe under the conditions found to exist at such location, Council may by resolution request the Director

to determine and declare a reasonable and safe prima-facie speed limit. Upon receipt of such request the Director may determine and declare a reasonable and safe prima-facie speed limit at such location, and if the Director does so, then such declared speed limit shall become effective only when appropriate signs giving notice thereof are erected at such location by the City. The Director may withdraw his declaration of any prima-facie speed limit whenever in his opinion any altered prima-facie speed becomes unreasonable, and upon such withdrawal, the declared prima-facie speed shall become ineffective and the signs relating thereto shall be immediately removed by the City.

(j) Council may authorize by ordinance higher prima-facie speeds than those stated in this section upon through highways, or upon highways or portions thereof where there are no intersections, or between widely spaced intersections, provided signs are erected giving notice of the authorized speed, but Council shall not modify or alter the basic rule set forth in division (a) of this section or in any event authorize by ordinance a speed in excess of fifty miles per hour.

Alteration of prima-facie limits on State routes by Council shall not be effective until the alteration has been approved by the Director. The Director may withdraw his approval of any altered prima-facie speed limits whenever in his opinion any altered prima-facie speed becomes unreasonable, and upon such withdrawal, the altered prima-facie speed shall become ineffective and the signs relating thereto shall be immediately removed by the City. (RC 4511.21)

(k) Whenever, in accordance with RC 4511.21 or this section, the speed limitations as established herein have been altered, either higher or lower, and the appropriate signs giving notice have been erected as required, operators of motor vehicles shall be governed by the speed limitations set forth on such signs. It is prima-facie unlawful for any person to exceed the speed limits posted upon such signs.
(Ord. No. 91-96. Passed 3-18-96, eff. 3-26-96)

459.03 Parking Violations Bureau

(a) The City of Cleveland Parking Violations Bureau is hereby established pursuant to RC 4521.04. The Parking Violations Bureau shall be within the office of the Clerk of the Cleveland Municipal Court. The Parking Violations Bureau has jurisdiction over each parking infraction that occurs within the territory of the City of Cleveland. Notwithstanding any other provision of law to the contrary, each parking infraction that occurs within the jurisdiction of the Parking Violations Bureau and the enforcement of each such parking infraction shall be handled pursuant to and be governed by the provisions of this Chapter.

(b) The operating costs of the Parking Violations Bureau shall be paid by the City of Cleveland. The Clerk of the Cleveland Municipal Court is hereby appointed as the Violations Clerk of the Parking Violations Bureau, with authority to appoint deputy clerks, hearing examiners and necessary clerical employees. No person shall be employed as a hearing examiner unless the person is an attorney admitted to the practice of law in this state or formerly was employed as a law enforcement officer.

(c) The fine, penalties, fees, and costs established for a parking infraction shall be collected, retained and disbursed by the Violations Clerk if the parking infraction out of which the fine, penalties, fees and costs arose occurred within the jurisdiction of the Parking Violations Bureau. The Violations Clerk shall provide tickets for parking infractions to law enforcement officers in the Division of Police upon requisition of the Chief of Police and shall also provide tickets for parking infractions upon requisition of the director or commissioner of any other department or division which has employees whose duties include the issuance of parking infraction tickets. Any person requisitioning tickets shall account to the Violations Clerk for all tickets requisitioned at such times as the Violations Clerk shall request. The fine, penalties, fees, and costs collected by the Violations Clerk for a parking infraction shall be disbursed by the Violations Clerk to the City of Cleveland.

(d) The Clerk of Court shall have authority to contract with any non-governmental entity to provide services in processing, collecting, and enforcing parking tickets issued by law enforcement officers and civil judgments and default civil judgments entered pursuant to this Chapter. No contract shall affect the responsibilities of hearing examiners as prescribed in this Chapter, or the ultimate responsibility of the Violations Clerk to collect, retain, and disburse fines, penalties, fees, and costs for parking infractions and monies paid in satisfaction of judgments and default judgments entered pursuant to this Chapter. All contracts entered into by the Clerk of Court shall be subject to approval of City Council.

(e) The Director of Law and the Director of Finance are each authorized to enter into contract on behalf of the Clerk of the Cleveland Municipal Court for the collection of unpaid parking infraction judgments and default judgments. In addition to any other fees or charges authorized by these codified ordinances in relation to the commission of a parking infraction, the judgment debtor on unpaid parking infraction judgments or default judgments may be assessed an amount equal to the costs paid by the City to any vendor for the costs of collection of the debt.

(Ord. No. 645-06, § 2. Passed 6-12-06, eff. 6-16-06)

STATE OF OHIO)
) SS: AFFIDAVIT
COUNTY OF CUYAHOGA)

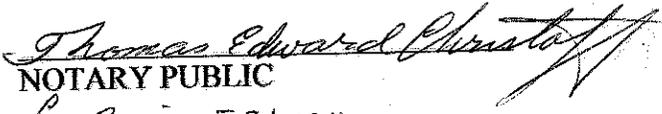
I, ANTHONY C. CHRISTOFF, being first duly sworn, depose and say that:

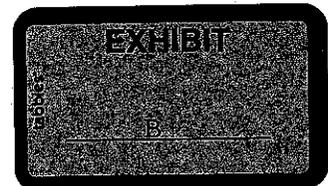
1. I am a Relator in the instant action.
2. I have personal knowledge of the following facts and I am fully competent to testify about said facts.
3. The copy of the first page of the attached Notice of Liability is a true and accurate copy of the original I received.

FURTHER AFFIANT SAYETH NAUGHT.


ANTHONY C. CHRISTOFF

Sworn to before me and subscribed in my presence this 7th day of February, 2011.


NOTARY PUBLIC
Com. Expires 5-31-2012
Thomas Edward Christoff





CITY OF CLEVELAND, OHIO
 NOTICE OF LIABILITY
 C.O. 491.057

Notice Date: 08/19/10

Registered Owner Information



ANTHONY C CHRISTOFF
 471 ARROWHEAD DR
 PERRYSBURG, OH 43551



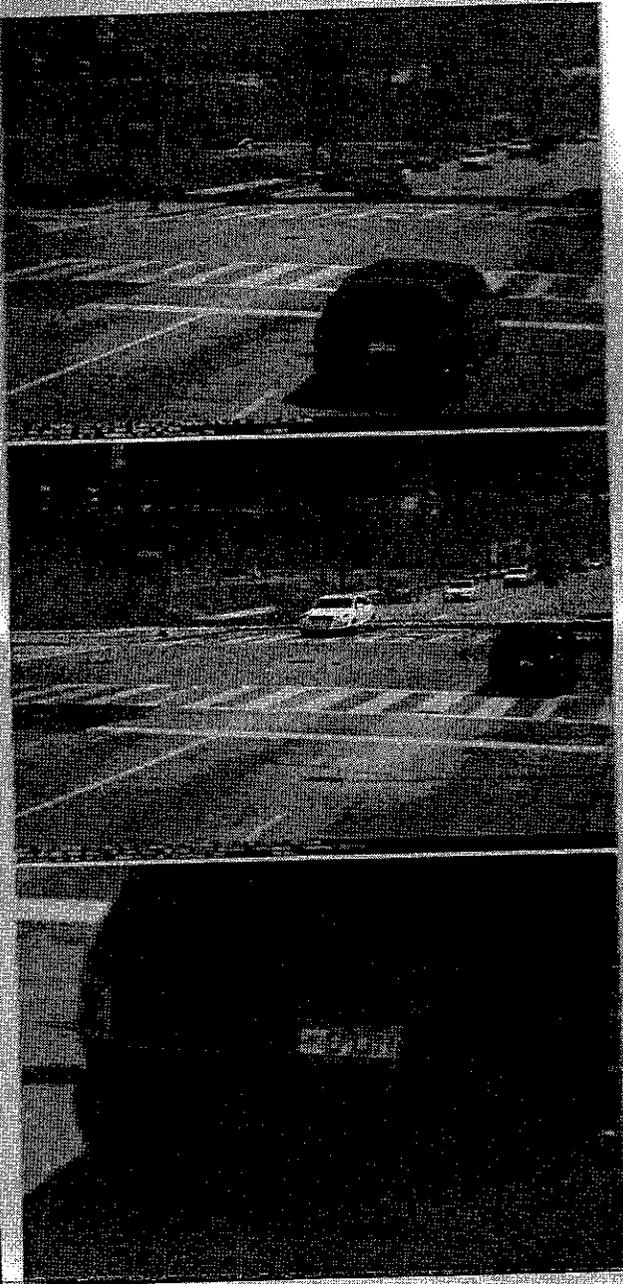
Your vehicle was photographed violating City of Cleveland codified ordinances on the date and time listed below. Under Cleveland law, the registered owner of a vehicle is liable for payment of the fine for violations recorded using an automatic traffic enforcement system unless the vehicle was not in the custody of the owner at the time of the ticket.

NO POINTS WILL BE ASSESSED AGAINST THE REGISTERED OWNER OR THE DESIGNATED DRIVER FOR THIS TICKET.

On the back of this notice you will find detailed information regarding payment, total adjudication and reassignment of responsibility.

YOUR ANSWER TO THIS NOTICE MUST BE RECEIVED BY THE PAYMENT DUE DATE LISTED BELOW.

Failure to pay the fine or otherwise answer within 20 days of the notice date in the manner and within the time required is an admission of liability. This will result in additional penalties and the loss of your right to a hearing. If you have questions regarding this ticket, please call Cleveland Parking Violations Bureau, Photo Safety Division at 216-664-4744.



VIOLATION INFORMATION

TICKET NUMBER	G002670782		
DATE OF VIOLATION	07/17/10		
TIME OF VIOLATION	12:45:41 PM		
VEHICLE REGISTRATION	OH EP13YT		
VIOLATION 413031C1A	SPEED ON GREEN		
VIOLATION LOCATION	Carnegie Av e/b @ E 100th St		
VEHICLE SPEED	49 MPH	POSTED SPEED	35 MPH

Reviewing Police Officer: _____ Badge Number: 151

Detach and return this remittance coupon with your payment in the envelope provided.
 You may also pay by telephone (MasterCard® or Visa®) at 216-664-4744 or by secure Internet at www.clevelandsafeststreets.com or in person at Cleveland Police Headquarters, 1300 Ontario Street in downtown Cleveland.

Ticket Number: G002670782 Registration: OH EP13YT

Notice Date: 08/19/10

Payment/Hearing Request Due Date: 09/08/2010

(Make check payable to "City of Cleveland")

Fine Amount Due: \$100.00

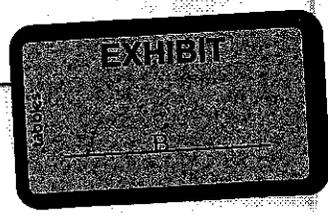
ANTHONY C CHRISTOFF
 471 ARROWHEAD DR
 PERRYSBURG, OH 43551



You may view a full color version of the violation image at http://www.public.cite-web.com	
Citation Number 00267078	PIN Number 283651403



A Public Safety Program of the City of Cleveland



STATE OF OHIO)

) SS: AFFIDAVIT

COUNTY OF CUYAHOGA)

I, WILLIAM M. GOLDSTEIN, being first duly sworn, depose and say that:

1. I am a Relator in the instant action.
2. I have personal knowledge of the following facts and I am fully competent to testify about said facts.
3. The copies of the first page of the three (3) attached Notices of Liability are true and accurate copies of the originals I received.
4. I paid a total of \$400.00 to the Cleveland Parking Violations Bureau for four (4) separate violations of Cleveland Cod. Ord. §413.031, \$100.00 for each of the aforesaid three (3) Notices of Liability, and an additional \$100.00 for another such Notice of Liability, a copy of which I have misplaced, but all of the aforesaid payments to the Cleveland Parking Violations Bureau in satisfaction of said four (4) separate Notices of Liability are further accurately represented on the relevant portion of the attached 1/25/2011 "eTIMS : CLEVELAND, OH" printout which my attorney Paul M. Greenberger obtained from the office of said Parking Violations Bureau.

FURTHER AFFIANT SAYETH NAUGHT.


WILLIAM M. GOLDSTEIN

Sworn to before me and subscribed in my presence this 9 day of February, 2011.


NOTARY PUBLIC

LINDSAY DUNSMOOR
NOTARY PUBLIC • STATE OF OHIO
Recorded in Cuyahoga County
My commission expires April 26, 2015

EXHIBIT



**CITY OF CLEVELAND, OHIO
NOTICE OF LIABILITY
C.O. 413.031**

Notice Date: 09/28/10

Registered Owner Information

**WILLIAM M GOLDSTEIN
7630 CAIRN LN
GATES MILLS, OH 44040**



* 0 0 2 2 5 0 0 8 6 *



* 6 0 0 2 7 1 7 8 4 9 *

Your vehicle was photographed violating City of Cleveland codified ordinances on the date and time listed below. Under Cleveland law, the registered owner of a vehicle is liable for payment of the fine for violations recorded using an automatic traffic enforcement system unless the vehicle was not in the custody of the owner at the time of the ticket.

NO POINTS WILL BE ASSESSED AGAINST THE REGISTERED OWNER OR THE DESIGNATED DRIVER FOR THIS TICKET.

On the back of this notice you will find detailed information regarding payment, ticket adjudication and reassignment of responsibility.

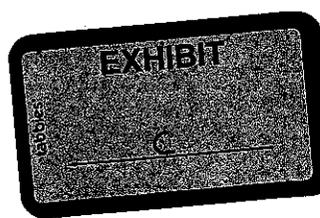
YOUR ANSWER TO THIS NOTICE MUST BE RECEIVED BY THE PAYMENT DUE DATE LISTED BELOW.

Failure to pay the fine or otherwise answer within 20 days of the notice date in the manner and within the time required is an admission of liability. This will also result in additional penalties and the loss of your right to a hearing. If you have questions regarding this ticket, please call Cleveland Parking Violations Bureau, Photo Safety Division at 216-664-4744.

VIOLATION INFORMATION

TICKET NUMBER	G002717849		
DATE OF VIOLATION	08/30/10		
TIME OF VIOLATION	3:55:06 PM		
VEHICLE REGISTRATION	OH CAV2226		
VIOLATION	413031C1A	SPEED ON GREEN	
VIOLATION LOCATION	Chester Av sb @ E 71st St		
VEHICLE SPEED	46 MPH	POSTED SPEED	35 MPH

FROM
Reviewing Police Officer: *[Signature]* Badge Number: 901





CITY OF CLEVELAND, OHIO
NOTICE OF LIABILITY
C.O. 413.031

Notice Date: 09/17/10

Registered Owner Information



WILLIAM M GOLDSTEIN
7630 CAIRN LN
GATES MILLS, OH 44040



Your vehicle was photographed violating City of Cleveland codified ordinances on the date and time listed below. Under Cleveland law, the registered owner of a vehicle is liable for payment of the fine for violations recorded using an automatic traffic enforcement system unless the vehicle was not in the custody of the owner at the time of the ticket.

NO POINTS WILL BE ASSESSED AGAINST THE REGISTERED OWNER OR THE DESIGNATED DRIVER FOR THIS TICKET.

On the back of this notice you will find detailed information regarding payment, ticket adjudication and reassignment of responsibility.

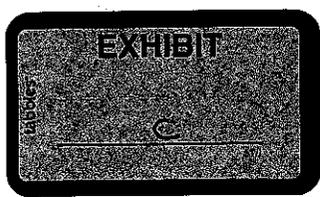
YOUR ANSWER TO THIS NOTICE MUST BE RECEIVED BY THE PAYMENT DUE DATE LISTED BELOW.

Failure to pay the fine or otherwise answer within 20 days of the notice date in the manner and within the time required is an admission of liability. This will also result in additional penalties and the loss of your right to a hearing. If you have questions regarding this ticket, please call Cleveland Parking Violations Bureau, Photo Safety Division at 216-664-4744.

VIOLATION INFORMATION

TICKET NUMBER	G002703603
DATE OF VIOLATION	08/16/10
TIME OF VIOLATION	3:53:04 PM
VEHICLE REGISTRATION	OH CAV2226
VIOLATION	413031C1A
VIOLATION LOCATION	Chester Av e/lb @ E 71st St
VEHICLE SPEED	50 MPH
POSTED SPEED	35 MPH

FROM
Reviewing Police Officer: *W.C. McCall* Badge Number: 478





CITY OF CLEVELAND, OHIO
NOTICE OF LIABILITY
C.O. 413.031

Notice Date: 09/21/10

Registered Owner Information

WILLIAM M GOLDSTEIN
7630 CAIRN LN
GATES MILLS, OH 44040



* 0 0 2 2 3 5 0 0 4 *



* G 0 0 2 7 0 6 2 8 1 *

Your vehicle was photographed violating City of Cleveland codified ordinances on the date and time listed below. Under Cleveland law, the registered owner of a vehicle is liable for payment of the fine for violations recorded using an automatic traffic enforcement system unless the vehicle was not in the custody of the owner at the time of the ticket. **NO POINTS WILL BE ASSESSED AGAINST THE REGISTERED OWNER OR THE DESIGNATED DRIVER FOR THIS TICKET.**

On the back of this notice you will find detailed information regarding payment, ticket adjudication and reassignment of responsibility. **YOUR ANSWER TO THIS NOTICE MUST BE RECEIVED BY THE PAYMENT DUE DATE LISTED BELOW.**

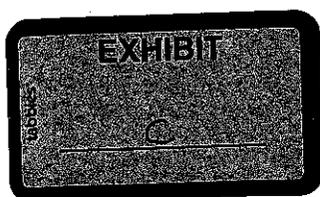
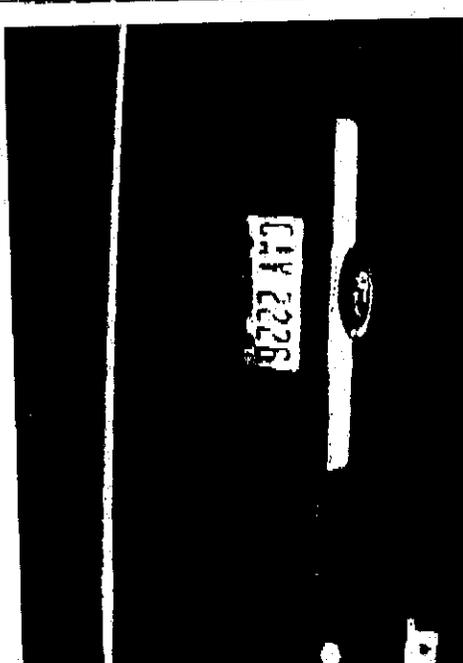
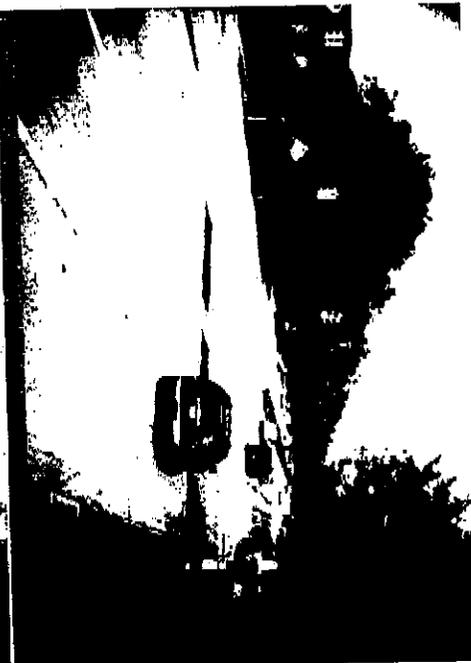
Failure to pay the fine or otherwise answer within 20 days of the notice date in the manner and within the time required is an admission of liability. This will also result in additional penalties and the loss of your right to a hearing. If you have questions regarding this ticket, please call Cleveland Parking Violations Bureau, Photo Safety Division at 216-664-4744.

VIOLATION INFORMATION

TICKET NUMBER	G002706281
DATE OF VIOLATION	08/18/10
TIME OF VIOLATION	3:59:34 PM
VEHICLE REGISTRATION	OH CAV2226
VIOLATION	413031C1A SPEED ON GREEN
VIOLATION LOCATION	Chester Av at E 71st St
VEHICLE SPEED	48 MPH POSTED SPEED 35 MPH

FROM
Reviewing Police Officer: R. G. ...

Badge Number: 151



Quick Process

- All: 17 (\$10.00)
- Open Tickets: 1 (\$10.00)
- Boot Eligible Tickets: (\$0.00)
- Marked/Held Tickets: (\$0.00)

Customer

William M Goldstein
 7630 Cairn Ln
 Gates Mills, OH 44040
Address Source: Manual

Financial Summary

Ticket Amount:
 Fee Amount:
Total Due:
 Unapplied Amt:

Choose Process

QUICK PROCESS

Ticket Type: Park
Plate: OHCAV2226 09/08/1999
License: OH297306019

<input checked="" type="checkbox"/> all <input type="checkbox"/> clear	Ticket #	Amount/ Payment Date	Type/ Method	Account	Processed On/ User ID	IPP	Overpaid	Total Due
<input type="checkbox"/>	G002717849	\$100.00 11/10/2010	PAYMENT CHECK	ONLINE	11/10/2010 M98CL14	No	\$0.00	\$0.00
<input type="checkbox"/>	G002706281	\$100.00 11/10/2010	PAYMENT CHECK	ONLINE	11/10/2010 M98CL14	No	\$0.00	\$0.00
<input type="checkbox"/>	G002703603	\$100.00 11/10/2010	PAYMENT CHECK	ONLINE	11/10/2010 M98CL14	No	\$0.00	\$0.00
<input type="checkbox"/>	G002384930	\$100.00 11/05/2009	PAYMENT CHECK	ONLINE	11/05/2009 M98CL28	No	\$0.00	\$0.00
<input type="checkbox"/>	CL80071111	\$25.00 11/05/2008	PAYMENT CHECK	ONLINE	11/05/2008 M98CL12	No	\$0.00	\$0.00
<input type="checkbox"/>	M000855729	\$100.00 03/17/2008	PAYMENT CHECK	ONLINE	03/17/2008 M98CL22	No	\$0.00	\$0.00
<input type="checkbox"/>	CL78261039	\$25.00 12/04/2007	PAYMENT CHECK	ONLINE	12/04/2007 M98CL12	No	\$0.00	\$10.00
<input type="checkbox"/>	CL65425225	\$25.00 10/12/2006	PAYMENT CHECK	ONLINE	10/12/2006 M98CL12	No	\$0.00	\$0.00
<input type="checkbox"/>	CL75801282	\$25.00 06/29/2006	PAYMENT CHECK	ONLINE	06/29/2006 M98CL14	No	\$0.00	\$0.00
<input type="checkbox"/>	CL75230730	\$25.00 03/18/2006	PAYMENT CHECK	ONLINE	03/18/2006 M98CL14	No	\$0.00	\$0.00
<input type="checkbox"/>	CL73768442	\$25.00 06/02/2005	PAYMENT CHECK	ONLINE	06/02/2005 M98CL27	No	\$0.00	\$0.00
<input type="checkbox"/>	CL73624595	\$25.00 05/13/2005	PAYMENT CHECK	ONLINE	05/13/2005 M98CL16	No	\$0.00	\$0.00
<input type="checkbox"/>	CL73607988	\$0.00				No	\$0.00	\$0.00
<input type="checkbox"/>	CL62757513	\$5.00 06/29/2006	PAYMENT CHECK	ONLINE	06/29/2006 M98CL14	No	\$0.00	\$0.00
<input type="checkbox"/>	CL59573766	\$35.00 08/19/2002	PAYMENT CASH	ONLINE	08/19/2002 M98CL15	No	\$0.00	\$0.00
<input type="checkbox"/>	CL59705103	\$35.00 08/19/2002	PAYMENT CASH	ONLINE	08/19/2002 M98CL15	No	\$0.00	\$0.00
<input type="checkbox"/>	CL58705013	\$35.00 08/19/2002	PAYMENT CASH	ONLINE	08/19/2002 M98CL15	No	\$0.00	\$0.00

