

IN THE SUPREME COURT OF OHIO

State ex rel. Anthony C. Christoff, et al.

CASE NO. 11-0235

Relators,

ORIGINAL ACTION

v.

*Earle B. Turner, Clerk of Courts,
Cleveland Municipal Court
and as Violations Clerk,
Cleveland Parking Violations Bureau,
et al.*

Respondents.

**Relators' Motion for Oral Argument
S. Ct. Prac. R. 9.2(A)**

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Pursuant to S. Ct. Prac. R. 9.2(A), Relators Anthony C. Christoff and William M. Goldstein respectfully request oral argument on the Respondents' Motion to Dismiss. Relators understand that oral argument is not required in original actions in this Court and is, instead, discretionary. *State ex rel. Mun. Constr. Equip. Operators' Labor Council v. Cleveland*, 114 Ohio St.3d 183, 2007-Ohio-3831, 870 N.E.2d 1174, ¶ 42. This Court has explained that in exercising its discretion, it will "consider whether the case involves a matter of great public importance, complex issues of law or fact, a substantial constitutional issue, or a conflict among courts of appeals." *State ex rel. Davis v. Pub. Emps. Retirement Bd.*, 111 Ohio St.3d 118, 2006-Ohio-5339, 855 N.E.2d 444, ¶ 15. In support of this request, Relators state the following:

1. **This case involves a substantial constitutional question not previously addressed by this Court.**

This case pits the exclusive authority of the General Assembly under **Section 1, Article IV of the Ohio Constitution** to establish courts inferior to this Court and to determine their jurisdiction against the home rule authority granted to Ohio's municipalities by **Article XVIII of the Ohio Constitution**. Although this case relates to Section 413.031 of the Cleveland Codified Ordinances ("Section 413.031"), which establishes civil penalties for speeding and red light ordinance violations, *State ex rel. Scott v. City of Cleveland*, 112 Ohio St.3d 324, 2006-Ohio-6573, 859 N.E.2d 923, which held that the City of Cleveland did not "patently and unambiguously lack jurisdiction to impose" such penalties, is **not** dispositive of Relators' claims because *Scott* involved a challenge to Section 413.031 as beyond the City's home rule authority under Article XVIII. It did not involve the challenge raised here by Relators under Article IV.

Acting on behalf of the Cleveland Parking Violations Bureau (“PVB”), a creature of statute enacted by the General Assembly under Article IV (R.C. 4521.04) and vested by the General Assembly (in R.C. 4521.05) with jurisdiction only over *parking ordinance infractions*, Respondents Earle B. Turner (“Respondent Clerk”) and Brian Mahon and Verlin Peterson (“Respondent Hearing Examiners”) have exercised and continue to exercise jurisdiction over violations of the City’s *speeding* and *red light ordinances*, jurisdiction of which has been vested by the General Assembly in the municipal courts under R.C. 1901.20(A)(1). Respondents contend that, among other things, their exercise of jurisdiction over speeding and red light ordinance violations is authorized by Section 413.031 pursuant to the City of Cleveland’s home-rule authority. This Court has long recognized the supremacy of the General Assembly’s exclusive constitutional authority to establish courts inferior to this Court and to determine their jurisdiction over the home-rule authority in Article XVIII. *See, e.g., Cupps v. Toledo* (1959), 170 Ohio St. 144, paragraph one of the syllabus, 163 N.E.2d 384; *State ex rel. Cherrington v. Hutsinpiller* (1925), 112 Ohio St. 468, 474, 147 N.E. 647.

2. This case also involves a matter of great public importance.

The public importance of this case cannot be overstated. Municipalities across the State have enacted or are contemplating the enactment of ordinances establishing civil penalties for violations of speeding and red light ordinances. This case concerns the use of judicial power granted by the General Assembly to adjudicate violations of such municipal ordinances. Relators are challenging the ability of municipalities to appropriate inferior courts and tribunals created and empowered by the General

Assembly and to vest those courts and tribunals with any additional jurisdictional powers those municipalities may desire.

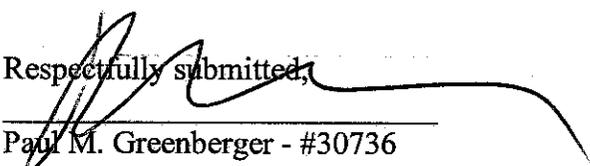
3. This case also involves complex issues of law and fact.

This Court has already decided two cases, *Mendenhall v. City of Akron*, 117 Ohio St.3d 33, 2008-Ohio-270, 881 N.E.2d 255, and *Scott*, which recognize the home-rule authority of municipalities to enact ordinances which establish civil penalties for speeding and red light ordinance violations. Neither of those cases addressed the issues presented here, but Respondents' Motion to Dismiss contends that they are dispositive.

What's more, this case calls upon this Court to discern the specific contours and limits of the PVB's and Respondents' jurisdiction and powers under the Revised Code and also entails review of Section 413.031 as well. As demonstrated in Relators' Opposition to Respondents' Motion to Dismiss, Respondents have exercised and continue to exercise certain powers granted by R.C. Ch. 4521 (in connection with parking ordinance infractions), some powers purporting to emanate from Section 413.031, and some powers which are enumerated nowhere.

While it is certainly Relators' hope that their briefs are sufficient to resolve the issues raised in Respondents' Motion to Dismiss, the foregoing considerations compel them to ask this Court for oral argument in order to answer any questions the Court may have and to clarify any issues the Court may believe need clarification.

Respectfully submitted,


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CERTIFICATE OF SERVICE

A copy of the foregoing has been served via first class U.S. Mail, postage prepaid
this 23 day of March, 2011 upon the following parties:

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