

IN THE SUPREME COURT OF OHIO

13 - 1277

Bradley Walker,	:	Supreme Court Case No. _____
	:	
Plaintiff-Appellee,	:	On Appeal from the Lucas
	:	County Court of Appeals,
v.	:	Sixth Appellate District
	:	(Case No. L-12-1056)
City of Toledo, <i>et al.</i> ,	:	
	:	
Defendants-Appellants.	:	

---

**MEMORANDUM IN SUPPORT OF JURISDICTION OF  
APPELLANT REDFLEX TRAFFIC SYSTEMS, INC.**

---

Quintin F. Lindsmith (0018327)  
 James P. Schuck (0072356)  
 Sommer L. Sheely (0076071)  
 BRICKER & ECKLER LLP  
 100 South Third Street  
 Columbus, Ohio 43215-4291  
 Telephone: (614) 227-2300  
 Facsimile: (614) 227-2390  
[qlindsmith@bricker.com](mailto:qlindsmith@bricker.com)  
[jschuck@bricker.com](mailto:jschuck@bricker.com)

*Counsel for Appellant-Defendant  
 Redflex Traffic Systems, Inc.*

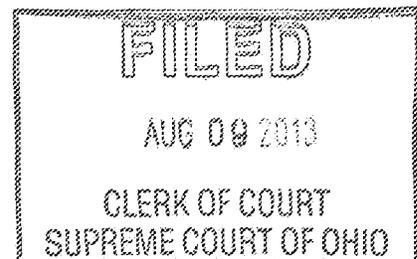
Adam W. Loukx (0062158)  
 Eileen M. Granata (0016745)  
 DIRECTOR OF LAW'S OFFICE, CITY OF TOLEDO  
 One Government Center, Suite 2250  
 Toledo, Ohio 43604  
 Telephone: (419) 245-1020

*Counsel for Appellant-Defendant  
 City of Toledo*

John T. Murray (0008793)  
 MURRAY & MURRAY CO., L.P.A.  
 111 E. Shoreline Drive  
 Sandusky, Ohio 44870  
 Telephone: (419) 624-3000

Andrew R. Mayle (0075622)  
 Jeremiah S. Ray (0074655)  
 Ronald J. Mayle (0030820)  
 MAYLE, RAY & MAYLE LLC  
 210 South Front Street  
 Fremont, Ohio 43420  
 Telephone: (419) 334-8377

*Counsel for Appellee-Plaintiff  
 Bradley L. Walker*



**TABLE OF CONTENTS**

	<u>Page</u>
TABLE OF CONTENTS.....	i
EXPLANATION OF WHY THIS CASE INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION AND IS OF PUBLIC AND GREAT GENERAL INTEREST .....	2
STATEMENT OF THE CASE AND FACTS .....	8
A.    Nature and Provisions of T.M.C. 313.12.....	8
B.    The Path to the Supreme Court of Ohio.....	9
ARGUMENT IN SUPPORT OF PROPOSITION OF LAW .....	10
<u>Proposition of Law No. I:</u> Ohio municipalities have the home-rule authority to maintain pre-suit administrative proceedings, including conducting administrative hearings, in furtherance of their civil traffic enforcement ordinances.....	10
CONCLUSION.....	15
CERTIFICATE OF SERVICE .....	unnumbered

**EXPLANATION OF WHY THIS CASE INVOLVES A  
SUBSTANTIAL CONSTITUTIONAL QUESTION AND  
IS OF PUBLIC AND GREAT GENERAL INTEREST**

The Sixth District Court of Appeals has issued an extraordinary decision – that no Ohio city can have an administrative program for enforcing its own ordinances; that all ordinance-enforcement programs have to be administered by and within a municipal court. According to the court, taxicab licensing boards cannot revoke taxicab licenses for violations of taxicab ordinances. Safe neighborhood review boards cannot issue notices of violation of nuisance ordinances. Cities cannot issue “notices of violations” to residents, businesses, or haulers who violate refuse collection ordinances; they have to go straight to court and sue them. According to the legal ruling of the Sixth District, all of these proceedings have to *start* in the municipal court because it has jurisdiction over the violation of “any” ordinance.

The precise issue before the Court is (1) whether chartered municipalities have the constitutional right to conduct pre-suit administrative hearings in furtherance of their traffic photo-enforcement programs pursuant to “home rule” powers established under Article XVIII, §§ 3 and 7 of the Ohio Constitution, or (2) whether municipal courts have the *exclusive* jurisdiction to hear and decide citations issued under those programs pursuant to Article IV § 1 of the Ohio Constitution and R.C. 1901.20(A). The Sixth District has declared the latter. This is both a substantial constitutional question and an issue of great public interest and importance. Considering the impact of this issue just on photo-enforcement programs, almost two dozen Ohio cities will be affected, including six of Ohio’s seven largest cities, and potentially every Ohioan who drives or owns a vehicle.

At least twenty Ohio cities have, or have had, automated traffic photo-enforcement programs. Besides Toledo, these cities include Akron, Ashtabula, Campbell, Chillicothe,

Cleveland, Columbus, Dayton, East Cleveland, Garfield Heights, Hamilton, Heath, Middletown, Northwood, Parma, Parma Heights, Richmond Heights, Springfield, Steubenville, Trotwood, and West Carrolton, and Youngstown. *See, e.g.,* [http://www.iihs.org/laws/auto\\_enforce\\_cities.aspx](http://www.iihs.org/laws/auto_enforce_cities.aspx) (accessed on July 23, 2013). These ordinances have been passed by cities to promote traffic safety; fines collected from violators of these traffic ordinances are typically dedicated to public safety.<sup>1</sup>

Like the Toledo ordinance, photo-enforcement ordinances typically provide that if an owner receives a citation, he or she can request an administrative hearing, which is conducted by a hearing officer appointed by the city.<sup>2</sup> Individuals found liable after an administrative process have a right of appeal by filing a complaint in either the common pleas court pursuant to R.C. 2506.01 *et. seq.* or municipal court pursuant to R.C. 1901.20(A)(1). A violation can only be reduced to an enforceable judgment by the city *filing suit in the municipal court.*

This Court has twice held that Ohio cities have home-rule authority to establish and administer civil traffic photo-enforcement. *See Mendenhall v. City of Akron*, 117 Ohio St.3d 33, 2008-Ohio-270, 881 N.E.2d 255 (2008); *State ex rel. Scott v. City of Cleveland*, 112 Ohio St.3d 324, 2006-Ohio-6573, 859 N.E.2d 923 (2006). These cases are consistent with the notion that chartered home-rule cities may implement traffic photo-enforcement programs that have an

---

<sup>1</sup> *See, e.g.,* Akron Code § 79.01(G) (“All funds generated by civil penalties... shall be placed into a fund to be used for... expenses related to implementing the provisions of this section. The balance of the funds... will be used for child safety education programs... . No money... shall be placed in the general fund.”).

<sup>2</sup> *See, e.g.,* Akron Code § 79.01(F) (“A notice of appeal shall be filed within twenty-one days from the date listed on the “notice of liability” with the Hearing Officer appointed by the Mayor of the City of Akron. \* \* \*Administrative appeals shall be heard through an administrative process established by the City of Akron.”); and Columbus City Code § 2115.04(A), (B) (“A person ... may appeal the notice of liability by making a written request for a hearing... . \* \* \* Within forty-five (45) days of the receipt of the request for a hearing, a hearing officer appointed by the director of public safety or his or her designee shall hold a hearing.”)

administrative structure to review citations issued under those programs – subject to further administrative appeal.

But a *split panel* of judges of the Sixth District Court of Appeals has found that Ohio cities have no such constitutional right and that the Ohio Constitution forbids cities from conducting pre-suit administrative hearings. The court accepted Appellee’s argument, which begins with Article IV, § 1 of the Ohio Constitution. It vests “[t]he judicial power of [Ohio] 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.” The legislature, in turn, established the municipal courts. R.C. Chapter 1901.

R.C. 1901.20(A)(1) states that “[t]he municipal court has jurisdiction of the violation of any ordinance of any municipal corporation within its territory... .” It is a simple grant of jurisdiction. The legislature did not insert the word “exclusive” in front of “jurisdiction.” But the Sixth District concluded that R.C. 1901.20(A)(1) establishes that municipal courts have *exclusive* jurisdiction over the violation of every municipal ordinance. It accepted Appellee’s argument that Toledo’s civil photo-enforcement program with a pre-suit administrative hearing “stripped” the municipal court of its “exclusive” jurisdiction.

The trial court had dismissed Appellee’s Complaint. Applying *Mendenhall*, the court held that Toledo was well within its home-rule authority to establish an automated system for enforcement of traffic laws that imposes civil liability upon violators. *See* Trl. Ct. Opinion, at 10 (Exhibit 2 hereto). The trial court rejected Appellee’s argument that R.C. 1901.20(A)(1) vests *exclusive* jurisdiction over photo-enforcement violations with the municipal court. *Id.* at 11.

*In a 2-1 decision*, the Sixth District Court of Appeals reversed the trial court, holding that T.M.C. 313.12 was unconstitutional and a nullity. In interpreting R.C. 1901.20(A)(1), the court

held that the word “any” has the same meaning as “every” and “all.” It then adopted a phenomenal *non sequitur*. It concluded that if a municipal court “has jurisdiction of the violation of any [every] ordinance,” it must mean that it has exclusive jurisdiction. Ct. of App. Opinion, at 14 (Exhibit 1 hereto). This makes no sense. Regardless of whether municipal courts have jurisdiction over “any,” “every,” or “all” municipal ordinances, it does not mean that such jurisdiction (1) is exclusive, (2) cannot be preceded by a pre-suit administrative process, and (3) cannot be exercised by municipalities to “regulate on the subject of local traffic,” pursuant to their constitutional home-rule right. *Scott*, 112 Ohio St. 3d 324, ¶ 19.

The court of appeals’ opinion raises substantial constitutional questions. At one end of the debate is Article IV, § 1 of the Ohio Constitution, which enables the legislature to determine the jurisdiction of municipal courts. At other end is Article XVIII, §§ 3 and 7, which grants home-rule authority to municipalities to exercise all powers of self-government and adopt local police and traffic regulations. These constitutional provisions, along with R.C. 1901.20(A)(1) and the photo-enforcement ordinances of two dozen Ohio cities are all implicated by this case.

But the constitutional impact does not end with photo-enforcement programs. If left to stand, the court of appeals’ decision – that municipal courts have jurisdiction over the violation of “every” municipal ordinance to the exclusion of a municipality’s right of self-governance – *would render all administrative hearings by local boards and commissions unconstitutional as well*. Issues that have been commonly handled by a board or commission, including a host of non-monetary licensing issues, would have to be filed originally and exclusively in municipal courts. Cities could not self-govern.

That is, Ohio cities have many administrative enforcement programs that do not begin in the municipal court. Municipal courts would grind to a halt if enforcement of zoning, nuisance,

taxicab regulation, signage enforcement, licensing, sanitary, and other purely local issues had to *start* in the courts. That is the legal result of the Sixth District's decision.

Not only does this case present significant constitutional questions, but it also involves a case of public and great general interest. Few issues have garnered as much public interest in Ohio over the last decade as red-light and speed cameras. In just the last year alone, Ohio newspapers have published over 400 articles – more than one per day on average – on the topic of traffic photo-enforcement. And while there may be a dispute over the legal issue in this case, there can be no dispute that the outcome of this case will affect many Ohioans. The population of just the counties containing the five largest Ohio cities to utilize traffic photo-enforcement – Franklin, Cuyahoga, Lucas, Montgomery, and Summit – indicates this issue could impact well over 4,000,000 Ohioans. See <http://quickfacts.census.gov/qfd/states/39000.html> (accessed August 2, 2013).

This case is also of great significance to the cities that have traffic photo-enforcement. In this case, Appellee seeks to certify a class of every single person who has ever paid a citation for violation of T.M.C. 313.12, under the theory that because Toledo lacked the constitutional authority to conduct administrative hearings under T.M.C. 313.12, it was unjustly enriched when it collected civil penalties under that ordinance. Appellee seeks the recovery of every dime paid by those who have violated Toledo's civil traffic ordinance.

But this is not just about Appellee, the class he seeks to represent, or even the City of Toledo. Emboldened by the court of appeals' decision, the exact same lawsuit has been filed against three other cities – Cleveland, Columbus, and Northwood. Each case is brought by the same counsel who is representing Appellee in this case. The complaints against these three cities mimic the Complaint in this case: (1) alleging those cities do not have authority to conduct

administrative hearings for photo-enforcement; (2) seeking to declare those cities' photo-enforcement ordinances unconstitutional, and (3) demanding disgorgement of all monies these cities have received from photo-enforcement.<sup>3</sup> The apparent strategy is to file the same class action lawsuit against every city that has ever had traffic photo-enforcement and seek disgorgement of all civil fines these cities have received under their programs.

It is not difficult to see how this will go: lawsuit upon lawsuit will be filed, clogging courts all over Ohio, with the courts coming to varying conclusions. The same suit is currently pending against Cleveland in the Eighth District of Appeals and the new suit against Columbus will likely end up in the Tenth District Court of Appeals. If suits against big cities such as Akron and Dayton are filed, as expected, decisions from the Second and Ninth District Courts of Appeals will be forthcoming too. Resolving this issue now will stem the onslaught of these class action cases being filed around Ohio.

And if the plaintiffs in these various cases are successful, the financial impact to the affected cities could be immensely damaging. A judgment clawing back ten years of civil penalties against a large city like Toledo, Cleveland, or Columbus could easily exceed \$10 million. A cumulative financial impact to cities could reach \$100 million. Such a scenario would have severe consequences for the individuals and businesses who reside in those cities since such a debt of a city necessarily falls on its citizenry.

What is before this Court now is clearly a case involving substantial constitutional questions and issues of general and great public interest.

---

<sup>3</sup> See *Jodka v. City of Cleveland*, Eighth District Court of Appeals Case No. CA-13-099951; *McNutt v. City of Columbus*, Franklin County Common Pleas Court, Case No. 13-CV-007237; *Frye v. City of Northwood*, Wood County Common Pleas Case No. 2012-CV-691.

## STATEMENT OF THE CASE AND FACTS

### **A. Nature and Provisions of T.M.C. 313.12**

In 2003, the City of Toledo enacted T.M.C. 313.12, which provides a “civil enforcement system” for “red light and speeding camera system violations.” T.M.C. 313.12(a)(1). It empowers the City of Toledo Division of Transportation, Toledo Police Department, and Toledo Department of Law to administer the system. *Id.* at 313.12(a)(2). The legislation authorizing the photo-enforcement system was enacted for the legitimate public safety purposes of conserving resources incurred in conducting conventional traffic enforcement and protecting citizens by curtailing the number of red light violations and accidents in the City of Toledo.

An offense occurs when a “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” or when a “vehicle is operated at a speed in excess of those set forth in TMC Section 333.03.” T.M.C. 313.12(c)(1), (2). A citation for violation of the ordinance is processed by officials or agents of the City of Toledo. *Id.* at 313.12(a)(3)(A). The fact that a person is the registered owner of a vehicle depicted in the image is “prima facie evidence” that the owner was driving at the time of the violation. *Id.* at 313.12(c)(3).

When a violation occurs, Toledo issues a “Notice of Liability” to the address of the vehicle’s registered owner. It describes the manner in which the violation may be appealed. *Id.* at 313.12(a)(3)(B), (C). The recipient has three options: (1) pay the administrative fine, (2) submit evidence of one of the listed exceptions, or (3) request a hearing within 21 days of issuance of the Notice of Liability. *Id.* at 313.12(c)(4), (d)(4). The vehicle owner is not responsible for the violation upon furnishing the Hearing Officer with either (1) an affidavit stating the name and address of the person or entity who leased, rented, or otherwise had care, custody, and control of the vehicle at the time of the violation, or (2) a law enforcement incident

report/general offense report showing that the vehicle was reported stolen before the violation. *Id.* at 313.12(c)(4)(A) and (B).

The ordinance empowers Toledo to conduct administrative hearings for those requesting an appeal challenging the Notice of Liability. *Id.* at 313.12(d)(4). If the vehicle owner requests a hearing, he or she may present other defenses and the Hearing Officer considers evidence presented by the appellant as to why he or she is not liable for the violation. As the photo-enforcement system is civil in nature, the burden of proof is on the City to demonstrate the violation by a preponderance of the evidence. *See Cincinnati Bar Ass'n v. Young*, 89 Ohio St.3d 306, 314, 731 N.E.2d 631 (2000). If the city prevails, the infraction results in a civil fine of \$120.00. T.M.C., at 313.12(d)(1), (2). Because the fine is civil, not criminal, no points are assessed to the driver's record and no report is sent to the owner's insurance company. *Id.*

Both R.C. 2506.01 and R.C. 1901.20(A)(1) provide a mechanism for any person dissatisfied with the outcome of a hearing to pursue an appeal in the common pleas court or municipal court.

Conversely, a decision in favor of Toledo *is not a judgment*, but may be enforced by means of a subsequent civil action or any other means provided by the Revised Code. *Id.* at 313.12(d)(3), (d)(4) ("The City of Toledo, ... may establish procedures for the collection of the civil penalties imposed herein, and may enforce the penalties *by a civil action* in the nature of a debt."). (Emphasis added.) That is, if the City wants to enforce collection by way of garnishment or attachment, it has to file a lawsuit in the municipal court like any other creditor. There is no stripping of municipal jurisdiction contemplated or allowed in the ordinance.

#### **B. The Path to the Supreme Court of Ohio**

On February 24, 2011, Appellee filed his Complaint against the City of Toledo and Reflex Traffic Systems, a vendor that provides equipment and administrative services in

support of the photo-enforcement program. Appellee admits that a vehicle he owns was cited for a civil speeding violation under T.M.C. 313.12 and that he received a Notice of Liability. Complaint ¶ 2. Appellee also admits that he paid the \$120 fine for the violation. *Id.* His Complaint seeks a declaration that T.M.C. 313.12 is unconstitutional and seeks disgorgement of all fines paid under T.M.C. 313.12, both by Appellee and a putative class he seeks to represent.

On May 31, 2011, both Toledo and Redflex filed motions to dismiss. Appellee opposed the motions to dismiss. On February 1, 2012, the trial court issued its Opinion and Judgment Entry granting Toledo and Redflex's motions to dismiss. (Exhibit 2 hereto.) On January 5, 2012, Appellee filed a Notice of Appeal, and on June 28, 2013, the court of appeals reversed the trial court, finding in a 2-1 decision that T.M.C. 313.12 was unconstitutional. (Exhibit 1 hereto.)

#### **ARGUMENT IN SUPPORT OF PROPOSITION OF LAW**

Proposition of Law No. I: Ohio municipalities have the home-rule authority to maintain pre-suit administrative proceedings, including conducting administrative hearings, in furtherance of their civil traffic enforcement ordinances.

Section 1, Article IV of the Ohio Constitution vests the judicial power in the supreme court, the courts of appeals, the common pleas courts, and such other courts "as may from time to time be established by law." Appellee contends that the General Assembly vested jurisdiction over "all red light ordinance violations" in the municipal courts. Appellee relies on R.C. 1901.20(A)(1), which provides that "the municipal court has jurisdiction of the violation of any ordinance of any municipal corporation within its territory,...." Appellee interprets this language to mean that the legislature has vested judicial power in the municipal courts for photo-enforcement ordinance infractions, to the exclusion of any pre-suit enforcement mechanisms, such as the T.M.C. 313.12. Appellee then stretches this interpretation of R.C. 1901.20(A)(1) to the conclusion that Toledo lacks jurisdiction to enforce T.M.C. 313.12 because such exercise of jurisdiction is unconstitutional pursuant to Section 1, Article IV.

Appellee reads too much into R.C. 1901.20(A) and attempts to alter its clear meaning. Revised Code 1901.20(A)(1) says that a municipal court “has jurisdiction of the violation of any ordinance.” But this language merely describes the cases the municipal court is permitted to entertain; it does not mean that its ability to entertain those cases is exclusive. That distinction is an important one: instead of designating the municipal court as the exclusive forum for violations of city ordinances, the legislature has simply enabled the municipal courts to be one possible forum for city code enforcement. And there is nothing in this statute that precludes a city from conducting a pre-suit administrative process.

This Court has held that “exclusive jurisdiction is a court’s power to adjudicate an action or class of actions to the exclusion of all other courts.” *Johns v. University of Cincinnati Medical Ctr.*, 101 Ohio St.3d 234, 2004-Ohio-824, 804 N.E.2d 19, ¶ 26. If the General Assembly had wanted to vest the municipal courts with exclusive jurisdiction under 1901.20(A), it would have expressly provided so. *State of Ohio ex rel., Banc One Corp. v. Walker*, 86 Ohio St.3d 169, 171, 712 N.E.2d 742 (1999) (“When the General Assembly intends to vest exclusive jurisdiction in a court or agency, it provides it by appropriate statutory language”).

Evidence that the legislature did not intend to give municipal courts *exclusive* jurisdiction over municipal code violations is found only a few pages before R.C. 1901.20. In R.C. 1901.181(A)(1), the General Assembly provided for “exclusive” jurisdiction of the municipal court’s housing or environmental division for violations of “local building, housing, air pollution, sanitation, health, fire, zoning, or safety code, ordinance, or regulation.” The legislature has similarly vested “exclusive original jurisdiction” in the environmental division (where established) of a municipal court to hear certain actions arising out of blighted parcels of

land. See R.C. 1901.185(B). See also R.C. 2101.24(A) (exclusive jurisdiction of probate court); and R.C. 2151.23(A) (exclusive jurisdiction of juvenile court).

The legislature knows how to use the word “exclusive” when it wants to.

By not vesting “exclusive” jurisdiction in the municipal court for violations of city ordinances, the legislature allowed Ohio cities to enact their own civil enforcement programs for matters within their home rule powers. Toledo validly exercised its home-rule authority over local traffic matters when it enacted T.M.C. 313.12, including provisions providing for pre-suit administrative proceedings. Toledo has the *constitutional* power to conduct such proceedings. R.C. 1901.20(A) accommodates that power; it does not prohibit it.

This Court has affirmed the home-rule right of cities to conduct civil traffic photo-enforcement. In *Scott*, the Court affirmed the dismissal of a complaint for writ of prohibition that contended Cleveland lacked jurisdiction to operate a civil traffic enforcement program and conduct hearings in conjunction with its automated photo-enforcement program. *State ex rel. Scott v. Cleveland*, 166 Ohio App. 3d 293, 2006-Ohio-2062, 850 N.E.2d 747, ¶ 18, *aff’d*, 112 Ohio St. 3d 324, ¶ 19. Implicitly rejecting the assertion that Cleveland lacked authority to conduct administrative hearings, it held that the home-rule amendment empowers Ohio charter cities to regulate on the subject of local traffic. *Scott*, 112 Ohio St. 3d 324, at ¶ 19.

Not long after *Scott*, this Court issued its decision in *Mendenhall*. In considering Akron’s civil traffic camera ordinance, this Court held: “An Ohio municipality does not exceed its home-rule authority when it creates an automated system for enforcement of traffic laws that impose a civil liability upon violators... .” *Mendenhall*, 117 Ohio St.3d 33, syllabus.

Shockingly, the court of appeals held *Mendenhall*’s home rule analysis inapposite to this case and ignored *Scott* altogether. But a city’s home-rule authority to implement a pre-suit civil

traffic enforcement ordinance – one that included an administrative hearing feature – was before this Court in *Mendenhall*, and thus is relevant to this question. As Judge Yarbrough wrote in his dissenting opinion, *Mendenhall* applies to allow a city, via its home-rule authority, to provide for “a concurrent administrative scheme that treats specified traffic violations as civil infractions.” *Walker*, 2013-Ohio-2809, at ¶ 44 (Yarbrough, J., dissenting).

The legal implication of the court of appeals’ decision goes far beyond red-light cameras. If the decision became the settled law in Ohio, it would render all administrative hearings conducted by municipal boards and commissions – hearings to determine ordinance violations – unconstitutional. Enforcement boards created by ordinance would have no authority to conduct hearings because such hearings would have to *start* in a municipal court.

This is not a small issue. Ohio’s municipalities have hundreds of long-established boards and commissions on a wide variety of topics, including taxicab licensing boards, downtown commissions, civil service commissions, boards of water and sewer charge appeals, and the like. The majority’s decision would vitiate the home-rule right of cities to maintain administrative hearings before these boards and commissions simply because the proceedings do not start in the municipal courts.

The court of appeals attempted to get around this problem by stating that “*most* of the board[s] [Toledo] enumerates are the creations of express legislation.” *Walker*, 2013-Ohio-2809, ¶ 35 (emphasis added). It noted that boards of zoning appeals are created by R.C. § 713.11, planning commissions are created by 713.01, and boards of tax appeals are created by R.C. 718.11. *Id.* Then the court said: “These administrative bodies derive their authority from the General Assembly through enabling acts that patently carve out exceptions to municipal court review.” *Id.* But there are two problems with this.

First, it is an incorrect statement of law. Chartered municipalities do not derive their authority to create boards and commissions from the legislature; they derive that authority from the Home-Rule Amendment to the Ohio Constitution. *See Bazell v. Cincinnati*, 13 Ohio St. 2d 63, 233 N.E.2d 864 (1968) (“it is argued that a city is limited in its activities to those specified in the Revised Code. However, by reason of §§ 3 and 7 of Article XVIII of the Ohio Constitution, a charter city has *all* powers of local self-government,... .”) (Emphasis in original.); *Esarco v. Brown*, 7th Dist. No. 08-MA-47, 2008-Ohio-4517 (mandamus action to force a council member to vacate his elected office because he held other paid employment with the county, in violation of R.C. 705.12, was dismissed because the charter of the city, a home rule city, and not Title VII, set the qualifications for holding office); *see also State ex rel. Lockhart v. Boberek*, 45 Ohio St.2d 292, 345 N.E.2d 71 (1976) (the clear meaning of R.C. 705.91 is that the provisions of R.C. 705.92 go into effect only to the extent that they have been adopted by the voters of a municipal corporation as part of a home-rule charter.”)

Second, the court said “most” boards are creatures of state statute, but ignored those boards *not* expressly created by statute, such as Toledo’s Taxicab Review Board. *Walker*, 2013-Ohio-2809, ¶ 35. If the court is correct, then hearings held by that board are likewise unconstitutional and always have been. It raises the specter of cabbies stripped of their licenses by the board now suing the city for lost income. Another example: the City of Columbus has a Refuse Collection Code which establishes an administrative enforcement program very similar to traffic photo-enforcement programs. Columbus City Code Ch. 1303. It includes ordinances governing the “storage and disposal of waste” to be complied with by residents, businesses, and haulers. *Id.* at 1303.021, 1303.022, and 1303.025. It authorizes the public service director to issue a “notice of violation” and describes the content of the notice which includes a description

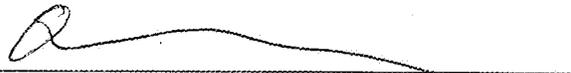
of the right to appeal within 20 days of receiving the notice. *Id.* at 1303.05. It establishes a “refuse collection appeals board” to hear appeals and “conduct an adjudication hearing.” *Id.* at 1303.09. It then directs further appeals to “the Franklin County Municipal Court Environmental Division.” *Id.* But if Sixth District’s ruling becomes the law of Ohio, this entire administrative system governing refuse storage and collection is unconstitutional because the entire administrative process has to *begin* in the municipal court.

The court of appeals has set dangerous precedent that could lead to immense disruptions in city administrations throughout Ohio. This case is about much more than traffic cameras.

### CONCLUSION

For the reasons set forth above, this case involves a substantial constitutional question and is a matter of public and great general importance.

Respectfully submitted,



Quintin F. Lindsmith (0018327)

*Counsel of Record*

James P. Schuck (0072356)

Sommer L. Sheely (0076071)

BRICKER & ECKLER LLP

100 S. Third Street

Columbus, OH 43215

Telephone: (614) 227-2300

Facsimile: (614) 227-2390

[qlindsmith@bricker.com](mailto:qlindsmith@bricker.com)

[jschuck@bricker.com](mailto:jschuck@bricker.com)

[ssheely@bricker.com](mailto:ssheely@bricker.com)

*Counsel for Appellant*

*Redflex Traffic Systems, Inc.*

**CERTIFICATE OF SERVICE**

The undersigned certifies that on August 9, 2013, a copy of the foregoing *Memorandum in Support of Jurisdiction of Appellant Redflex Traffic Systems, Inc.* was served via U.S. mail, postage pre-paid to the following:

John T. Murray, Esq.  
MURRAY & MURRAY CO., L.P.A.  
111 E. Shoreline Drive  
Sandusky, Ohio 44870

Andrew R. Mayle, Esq.  
Jeremiah S. Ray, Esq.  
Ronald J. Mayle, Esq.  
MAYLE, RAY & MAYLE LLC  
210 South Front Street  
Fremont, Ohio 43420



---

Quintin F. Lindsmith

# **EXHIBIT 1**

FILED  
COURT OF APPEALS  
2013 JUN 28 AM 8 02  
COMMON PLEAS COURT  
BERNIE QUILTER  
CLERK OF COURTS  
IN THE COURT OF APPEALS OF OHIO  
SIXTH APPELLATE DISTRICT  
LUCAS COUNTY

Bradley L. Walker

Court of Appeals No. L-12-1056

Appellant

Trial Court No. CI0201101922

v.

City of Toledo, et al.

**DECISION AND JUDGMENT**

Appellees

Decided:

JUN 28 2013

\*\*\*\*\*

Andrew R. Mayle, Jeremiah S. Ray, Ronald J. Mayle and  
John T. Murray, for appellant.

Adam W. Loukx, Director of Law, and Eileen M. Granata,  
Senior Attorney, for appellee City of Toledo.

Quintin F. Lindsmith, Sommer L. Sheely and James P. Schuck,  
for appellee RedFlex Traffic Systems, Inc.

\*\*\*\*\*

**SINGER, P.J.**

{¶ 1} Appellant appeals a judgment of the Lucas County Court of Common Pleas  
dismissing a putative class action unjust enrichment suit against a city and traffic

**E-JOURNALIZED**

JUN 28 2013

enforcement camera company. Because we conclude the trial court's dismissal of the suit improper, we reverse and remand for further proceedings.

{¶ 2} In 2003, appellee city of Toledo ("city") instituted an automated red light enforcement system. Appellee RedFlex Traffic Systems, Inc. ("RedFlex") provided a camera system that synchronized with traffic signals to take pictures of automobiles that entered an intersection after the traffic light turned red. Speed measuring devices were later added. RedFlex installed, maintains and monitors the cameras. Appellees allegedly share the revenues generated from auto owners that are sent a civil "notice of liability" after having been photographed during a red light or speed violation.

{¶ 3} Appellant, Bradley L. Walker, was one of those who received such a notice and paid a \$120 "civil penalty." On February 24, 2011, appellant brought suit on behalf of himself and those similarly situated to recover the "civil penalty" he, and the others, paid. Appellant did not contest the validity of red light cameras. He concedes they are legal. Rather he asserted that the legal structure by which such penalties were extracted violated the Ohio Constitution, making the penalties collected unlawful. Appellant sought return of such money taken under the doctrine of unjust enrichment.

{¶ 4} Appellant advanced three theories as a basis for recovery. First, he maintained that by enacting the ordinance governing red light cameras, Toledo Municipal Code 313.12, the city unconstitutionally usurped the jurisdiction of the Toledo Municipal Court by diverting challenges to the violation notices to an administrative hearing officer set up within the police department. Second, appellant suggested the ordinance is

unconstitutionally vague because it delegates adjudicatory authority to the Toledo Police without articulating intelligible governance principles. Finally, appellant alleged, the Toledo Police failed to establish any administrative procedures by which a violation notice could be challenged, denying due process to those who received such notices.

{¶ 5} Both appellees filed a motion to dismiss appellant's complaint for failure to state a claim for which relief can be granted, pursuant to Civ.R. 12(B)(6). After briefing, the trial court granted appellees' motion and dismissed appellant's complaint.

{¶ 6} From this judgment, appellant brings this appeal. Appellant sets forth a single assignment of error:

The trial court erred in ruling that Mr. Walker failed to state a claim upon which relief can be granted.

{¶ 7} Review of a judgment granting a Civ.R. 12(B)(6) motion is de novo. *Perrysburg Twp. v. Rossford*, 103 Ohio St.3d 79, 2004-Ohio-4362, 814 N.E.2d 44, ¶ 5. When ruling on a motion to dismiss for a failure to state a claim upon which relief can be granted, a court must presume the truth of the factual allegations in the complaint and must make all reasonable inferences in favor of the non-moving party. *Mitchell v. Lawson Milk Co.*, 40 Ohio St.3d 190, 192, 532 N.E.2d 753 (1988). It must appear beyond doubt from the complaint that the plaintiff can prove no set of facts entitling him or her to recover. *O'Brien v. Univ. Community Tenants Union, Inc.*, 42 Ohio St.2d 242, 327 N.E.2d 753 (1975), syllabus. For these reasons, motions to dismiss for failure to

state a claim are rarely successful. *Tri-State Computer Exchange v. Burt*, 1st Dist. No. C-020345, 2003-Ohio-3197, ¶ 12.

### **Toledo Municipal Code 313.12**

{¶ 8} With the enactment of Toledo Municipal Code 313.12, the city adopted what is characterized in the code as a “civil enforcement system for red light and speeding camera system violations.” The plan imposes “monetary liability” on the owner of a vehicle for failure to comply with traffic lights or posted speed limits. City transportation, police and law departments are charged with the administration of the system. Police and the transportation division are tasked with choosing the location of automated red light and speed monitoring devices and maintaining the devices once installed. Apparent violations are to be processed by city officials or its agents. When a violation is recorded, the registered owner of the offending vehicle is sent a “Notice of Liability,” Toledo Municipal Code 313.12(a), indicating that he or she is liable for a “civil penalty” of \$120. Toledo Municipal Code 313.12(d)(1)(2).

{¶ 9} The ordinance declares that the fact an individual is the registered owner of a vehicle is “prima-facie evidence” that he or she was operating the vehicle at the time of the offense. Toledo Municipal Code 313.12(c)(3). An owner of a vehicle may be absolved of such presumptive liability only if, within 21 days of the notice, he or she furnishes a hearing officer with an affidavit identifying the person operating the vehicle at the time of the offense (at which point, presumably, liability shifts to the person

informed upon) or a police report showing that the vehicle was reported stolen prior to the offense. Toledo Municipal Code 313.12(c)(4).

{¶ 10} Toledo Municipal Code 313.13(d)(4) describes an appeal process. The provision, in its entirety, provides:

A notice of appeal shall be filed with the Hearing Officer within twenty-one (21) days from the date listed on the "Notice of Liability." 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 citation and will be considered an admission. Appeals shall be heard through an administrative process established by the City of Toledo Police Department. A decision in favor of the City of Toledo may be enforced by means of a civil action or any other means provided by the Ohio Revised Code.

{¶ 11} In their motion to dismiss, appellees maintained that the ordinance is constitutional. Moreover, appellee city argued that unjust enrichment claims cannot be maintained against a municipality, since appellant did not appeal his violation there could be no due process violation and appellant lacked standing to bring an action. Appellee RedFlex also asserted that appellant waived a challenge to the law because he paid his fine and did not appeal, and that a constitutional challenge does not apply to RedFlex because it is not a state actor.

## I. *Mendenhall v. Akron*

{¶ 12} Appellee city first sought dismissal on the ground that the Ohio Supreme Court has approved the use of speed and red light detection devices in a civil administrative liability context in *Mendenhall v. City of Akron*, 117 Ohio St.3d 33, 2008-Ohio-270, 881 N.E.2d 255. The trial court properly ruled *Mendenhall* not dispositive of this matter. The question certified to the court in *Mendenhall* was whether, under home rule, a municipality may enact civil penalties for acts deemed criminal offenses by the state. *Id.* at ¶ 2. The court ruled that, since Akron’s ordinance did not alter or supersede Ohio law, it was compatible with the city’s home rule powers. *Id.* at ¶ 43. The question of the constitutionality of the ordinance in other respects was not before the court.

{¶ 13} We note that the *Mendenhall* court issued a caveat to its decision when, at ¶ 40, the court stated, “[a]lthough there are due process questions regarding the operation of the Akron Ordinance and those similar to it, those questions are not appropriately before us at this time and will not be discussed here.” The trial court concluded that this remark was a “passing comment.” We view the statement rather as an express limitation on the scope of the *Mendenhall* decision.

## II. Standing—Immunities

{¶ 14} Appellee city suggested to the trial court that appellant lacked standing to bring the suit and that a municipality cannot be liable in quasi-contract. Appellee RedFlex argued appellant is barred from challenging the ordinance because he failed to exhaust administrative remedies. In any event, appellee RedFlex insisted, it could not be

held liable for constitutional infirmities because it is not a state actor. The trial court rejected all of these arguments, and properly so.

{¶ 15} A party who has been or will be adversely affected by the enforcement of an ordinance has standing to attack its constitutionality. *State v. Bloomer*, 122 Ohio St.3d 200, 2009-Ohio-2462, 909 N.E.2d 1254, ¶ 30. Appellant alleges that he has received a notice of civil liability for a red light violation and has paid the penalty. This monetary injury produces sufficient interest in the operation of the ordinance to challenge its constitutionality.

{¶ 16} With respect to a suit in unjust enrichment, the general rule is that “all governmental liability ex contractu must be express and must be entered into in the prescribed manner.” *Perrysburg Twp. v. City of Rossford*, 149 Ohio App.3d 645, 2002-Ohio-5498, 778 N.E.2d 619, ¶ 58 (6th Dist.), quoting *Kraft Constr. Co. v. Cuyahoga Cty. Bd. of Commrs.*, 128 Ohio App.3d 33, 44, 713 N.E.2d 1075 (8th Dist.1998). Nevertheless, it has been held that a suit seeking the return of specific funds wrongfully collected or held by the state may be maintained in equity. *Santos v. Ohio Bur. of Workers' Comp.*, 101 Ohio St.3d 74, 2004-Ohio-28, 801 N.E.2d 441, syllabus. *Accord Judy v. Ohio Bur. of Motor Veh.*, 100 Ohio St.3d 122, 2003-Ohio-5277, 797 N.E.2d 45; *Ohio Hosp. Assn. v. Ohio Dept. of Human Serv.*, 62 Ohio St.3d 97, 579 N.E.2d 695 (1991). *Santos* concerned money withheld in subrogation under a statute deemed unconstitutional. *Judy* and *Ohio Hospital Assn.* were about money wrongfully withheld under misinterpreted or unconstitutional regulations. The allegation of appellant is that

the city's collection of automated fines was wrongfully premised on an unconstitutional ordinance. This is in the nature of those actions held to be permitted.

{¶ 17} With respect to appellee RedFlex's assertion that it cannot be required to return money collected by an unconstitutional ordinance because it is not a state actor, appellant asserts no federal claims against RedFlex. He only maintains that RedFlex is in possession of funds it is not properly entitled to hold. Unjust enrichment exists when there is:

(1) a benefit conferred by a plaintiff upon a defendant;

(2) knowledge by the defendant of the benefit; and (3) retention of the benefit by the defendant under circumstances where it would be unjust to do so without payment (i.e., the "unjust enrichment" element). Ohio law does not require that the benefitted party act improperly in some fashion before an unjust enrichment claim can be upheld; instead, unjust enrichment can result "from a failure to make restitution where it is equitable to do so. That may arise when a person has passively received a benefit which it would be unconscionable for him to retain" without paying compensation. (Citations omitted.) *Advantage Renovations, Inc. v. Maui Sands Resort, Co., L.L.C.*, 6th Dist. No. E-11-040, 2012-Ohio-1866, ¶ 33.

{¶ 18} A defendant in a suit seeking compensation for unjust enrichment need not be a state actor.

{¶ 19} With respect to exhaustion of administrative remedies, as the trial court noted, an administrative agency possesses no authority to determine the constitutionality of a statute or ordinance. *Herrick v. Kosydar*, 44 Ohio St.2d 128, 130, 339 N.E.2d 626 (1975). As a result, exhaustion of administrative remedies is unnecessary when the gravamen of the suit is a constitutional attack on an underlying ordinance.

{¶ 20} This leads us to the merits of appellant's allegations. Appellant argues that Toledo Municipal Code 313.12 is unconstitutional in three respects. If any of these assertions is correct, the trial court's judgment dismissing the case must be reversed and the matter remanded for further proceedings.

{¶ 21} Municipal ordinances, like other legislative enactments, are entitled to the presumption of constitutionality. *Hudson v. Albrecht*, 9 Ohio St.3d 69, 71, 458 N.E.2d 852 (1984). The burden is on the party challenging the ordinance to prove otherwise beyond a reasonable doubt. *State v. Lowe*, 112 Ohio St.3d 507, 2007-Ohio-606, 861 N.E.2d 512, ¶ 17, citing *Klein v. Leis*, 99 Ohio St.3d 537, 2003-Ohio-4779, 795 N.E.2d 633, ¶ 4.

### III. Municipal Court Jurisdictional Infringement

{¶ 22} Appellant submits that Ohio Constitution, Article IV, Section 1, vests judicial power in this state to "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." Municipal courts, and expressly the Toledo Municipal Court, have been established by the General Assembly in R.C. Chapter 1901.

Home rule municipalities have no power to regulate the jurisdiction of a municipal court. *Amer. Fin. Services Assn. v. Toledo*, 161 Ohio App.3d 477, 2005-Ohio-2943, 830 N.E.2d 1233, ¶ 76 (6th Dist.), citing *Cupps v. Toledo*, 170 Ohio St. 144, 163 N.E.2d 384 (1959), paragraph one of the syllabus.

{¶ 23} In R.C. 1901.20(A)(1), the legislature has defined the jurisdiction of a municipal court:

The municipal court has *jurisdiction of the violation of any ordinance of any municipal corporation within its territory*, unless the violation is required to be handled by a parking violations bureau or joint parking violations bureau pursuant to [R.C. Chapter 4521], and of the violation of any misdemeanor committed within the limits of its territory. The municipal court has jurisdiction of the violation of a vehicle parking or standing resolution or regulation if a local authority, as defined in [R.C. 4521.01], has specified that it is not to be considered a criminal offense, if the violation is committed within the limits of the court's territory, and if the violation is not required to be handled by a parking violations bureau or joint parking violations bureau pursuant to [R.C. Chapter 4521]. The municipal court, if it has a housing or environmental division, has jurisdiction of any criminal action over which the housing or environmental division is given jurisdiction by [R.C. 1901.181], provided that, except as specified in division (B) of that section, no judge of the court other than the

judge of the division shall hear or determine any action over which the division has jurisdiction. In all such prosecutions and cases, the court shall proceed to a final determination of the prosecution or case. (Emphasis added.)

{¶ 24} Appellant reasons that Toledo Municipal Code 313.12 is an ordinance of a municipal corporation within the territory encompassed by the Toledo Municipal Court and is not a parking violation; therefore, the violation of Toledo Municipal Code 313.12 is subject to the jurisdiction of the Toledo Municipal Court. Any attempt, in whole or in part, to divest the court of that jurisdiction violates the authority of the General Assembly to set the jurisdiction of the court, thus violating Ohio Constitution, Article IV, Section 1.

{¶ 25} Appellant insists that the effect of Toledo Municipal Code 313.12 is to divest the municipal court of jurisdiction by setting up a wholly extrajudicial scheme that grants to a hearing officer, chosen in an unspecified manner by the police department, the authority to adjudicate violations of the ordinance. Such usurpation of jurisdiction violates the Ohio Constitution and should be declared a nullity, appellant maintains. Appellant seeks the return to himself and others similarly situated of all monies collected by the city and RedFlex by virtue of this unconstitutional plan.

{¶ 26} RedFlex responds, characterizing appellant's argument as being that R.C. 1901.20 confers exclusive jurisdiction to municipal courts to the exclusion of all alternative means of enforcement. RedFlex then attacks this argument, suggesting that when the legislature bestows exclusive or original jurisdiction it must do so expressly and

unambiguously. Moreover, RedFlex maintains, appellant's argument is "fatally flawed" because R.C. 1901.20, titled "Criminal and traffic jurisdiction," applies only to criminal ordinances, not civil matters such as "civil penalties" like the one at issue.

{¶ 27} Appellee city concedes that home rule does not provide a municipality with the authority to alter the jurisdiction of a municipal court. Nevertheless, the city asserts, R.C. 1901.20 does not grant exclusive jurisdiction to the municipal court for all matters contained in the city code. R.C. 1901.20(A)(1) states that the municipal court has jurisdiction over the "violation of any ordinance." "Any," according to the city, "is not 'all.'" Had the legislature intended the municipal court to have exclusive jurisdiction over all municipal ordinances, appellee city argues, it could have easily have done so as it did with juvenile courts in R.C. 2151.23(A) or in providing for a building code appeal board in R.C. 3781.20(B). Indeed, the city suggests, if appellant's interpretation is correct, hearings before the Board of Zoning Appeals, Plan Commissions, Taxi Cab Review Boards, Tax Appeal Boards and Boards of Revision would have to be heard by municipal courts.

{¶ 28} The trial court, citing *State ex rel. Banc One Corp. v. Walker*, 86 Ohio St.3d 169, 712 N.E.2d 742 (1999), concluded that the legislature had not included the necessary express language in R.C. 1901.20 to vest exclusive jurisdiction over all municipal ordinances in the municipal court. "[T]his court does not interpret the use of the word 'any' to be an expression of 'all' or 'exclusive.'"

{¶ 29} In his brief to this court, appellant characterizes the question of whether R.C. 1901.20 confers exclusive jurisdiction on a municipal court a “red herring.” Even if the statute confers only concurrent jurisdiction on the municipal court, a municipality has no power whatsoever to place any regulation on the jurisdiction of the court. Moreover, appellant insists, for any local administrative body to have concurrent jurisdiction with the court, such jurisdiction must be conferred by the General Assembly. Since the legislature has provided no enabling legislation for a municipal traffic-camera agency, Toledo Municipal Code 313.12 is ultra vires and monies collected in reliance of the ordinance were wrongfully taken.

{¶ 30} It is a rule of statutory construction that, with exceptions inapplicable here, “Title, Chapter, and section headings \* \* \* do not constitute any part of the law as contained in the ‘Revised Code,’” R.C. 1.01, thus, consideration of a statute’s title in ascertaining its meaning is “unnecessary and improper.” *State v. Beener*, 54 Ohio App.2d 14, 16, 374 N.E.2d 435 (2d Dist.1977). We can attach no significance to the heading “Criminal and traffic jurisdiction” in R.C. 1901.20.

{¶ 31} It is also a rule of construction that words and phrases that have not been legislatively defined or acquired a technical meaning “shall be read in context and construed according to the rules of grammar and common usage.” R.C. 1.43. Common usage may be ascertained by reference to a dictionary. *See Cincinnati City School Dist. Bd. of Edn. v. State Bd. of Edn.*, 122 Ohio St.3d 557, 2009-Ohio-3628, 913 N.E.2d 421, ¶ 15-16.

{¶ 32} “Any” means “every —used to indicate one selected without restriction” and “all —used to indicate a maximum or whole.” *Merriam-Webster Dictionary*, <http://www.merriam-webster.com/dictionary/any> (accessed Mar. 26, 2013.) Construing the language of the first sentence of R.C. 1901.20(A)(1) in context and according to common usage, the legislature has unambiguously granted to municipal courts jurisdiction over a violation of every and all municipal ordinances within its territory, unless, in certain circumstances, the offense is a parking violation.<sup>1</sup> The maxims of construction forbid the substitution of inferences or implications when the language of a statute is unequivocal. *Ashley Tri-County Mut. Tel. Co. v. New Ashley Tel. Co.*, 92 Ohio St. 336, 341, 110 N.E. 959 (1925), applying the maxim “expressum facit cessare tacitum.”

{¶ 33} With respect to the argument of appellees, as adopted by the trial court, that the legislature should have, but did not, confer “exclusive” jurisdiction on the court, appellees’ reliance on *State ex rel. Banc One Corp.*, 86 Ohio St.3d 169, 712 N.E.2d 742 (1999), is perplexing. The case was an appeal from the judgment of this court denying a petition for a writ of prohibition to prevent a common pleas court judge from continuing to hear a suit arising from a business dispute. Relators, defendants in a suit alleging interference with an insurance contract, believed the suit could not be resolved without

---

<sup>1</sup> We note that, when the city of Cleveland enacted an automated camera ordinance, it directed that appeals of notices of liability be directed to the city’s Parking Violations Bureau. Cleveland Codified Ordinances 313.031(k).

administrative consideration. Relators claimed the common pleas court was divested of jurisdiction over the matter by the doctrine of primary jurisdiction.

{¶ 34} The Supreme Court of Ohio rejected this assertion. The court explained:

The doctrine of primary jurisdiction applies where a claim is originally cognizable in a court and enforcement of the claim requires the resolution of issues that have been placed within the special expertise of an administrative body. Under this doctrine, the judicial process is suspended pending referral of the issues to the administrative body for its views.

(Citations omitted.) *Id.* at 171.

The court explained that this process did not divest a court of general jurisdiction from hearing the case and added that this was because the legislature had not vested exclusive jurisdiction of the issue to an administrative agency. *Id.* The court went on to say that a legislative intent to confer exclusive jurisdiction to an agency or special court must be done “patently and unambiguously,” which was not the case with the Department of Insurance. *Id.* at 172.

{¶ 35} If anything, *State ex rel. Banc One Corp.* favors appellant’s argument that if the legislature intended to divest municipal courts of jurisdiction over some municipal ordinance, it would have enacted legislation to that effect. Appellant also gains support from appellee city’s argument that, if appellant’s position is correct, then the municipal court would need to preside over numerous municipal boards. In fact, most of the board appellee city enumerates are the creations of express legislation. Boards of Zoning

Appeals are the creation of R.C. 713.11, Plan Commissions are provided for in R.C. 713.01, Tax Appeal Boards by R.C. 718.11. These administrative bodies derive their authority from the General Assembly through enabling acts that patently carve out exceptions to municipal court review. We must admit, we found no legislative enabling provision for a Taxi Cab Review Board.

{¶ 36} It is clear that the legislature has vested the municipal court with the jurisdiction to adjudicate the violation of any municipal ordinance, including Toledo Municipal Code 313.12. The plain language of the ordinance also reveals that appellee city has attempted to divest the municipal court of some, or all, of its jurisdiction by establishing an administrative alternative without the express approval of the legislature. Such usurpation of jurisdiction violates Ohio Constitution, Article IV, Section 1, and is therefore a nullity.

#### **IV. Void for Vagueness/Due Process Violations**

{¶ 37} Appellant claims the delegation of authority to the police department stating that “[a]ppeals shall be heard through an administrative process established by the City of Toledo Police Department” is not a proper delegation of administrative authority. Neither does it provide to the police any fixed standards for such delegation, nor does it provide a mechanism for a review of the police decision.

It is the function of the legislative body to determine policy and to fix the legal principles which are to govern in given cases. However, it is not possible for the legislature to design a rule to fit every potential

circumstance. As such, legislation may be general in nature, and discretion may be given to an administrative body to make subordinate rules, as well as to ascertain the facts to which the legislative policy applies. In order to be valid, however, the legislative enactment must set forth sufficient criteria to guide the administrative body in the exercise of its discretion. (Citations omitted.) *Hudson v. Albrecht, Inc.*, 9 Ohio St.3d 69, 73-64, 458 N.E.2d 852 (1984).

{¶ 38} Appellant's view of the delegation of administrative authority may be too circumspect. The definition of the offense itself found in Toledo Municipal Code 313.12(c) creates a presumption that the owner of the vehicle was its operator and defines two narrow exceptions to the presumption. The proceeding is expressly non-criminal. While there appears to be, at least inferentially, an irrefutable presumption as to the accuracy of these devices, this is not a facial defect and does not affect the delegation of authority. The delegation of authority is extremely Spartan,<sup>2</sup> but does not, in our view, rise to the level of constitutional vagueness.

{¶ 39} Finally, appellant complains that the trial court's finding that he had conceded the existence of an administrative process was both unsupported in the record and beyond the breadth of what may be considered in contemplation of a Civ.R. 12(B)(6) motion. The complaint alleges that Toledo police never established an administrative

---

<sup>2</sup> Compare Columbus Code of Ordinances 2115.04(D) which expressly enumerates six affirmative defenses, including that the recording device was not operating properly.

appeal process. This is an allegation in the complaint and must be considered as true on a motion to dismiss for failure to state a claim. *Johnson v. Microsoft Corp.*, 106 Ohio St.3d 278, 2005-Ohio-4985, 834 N.E.2d 791, ¶ 6. Since at a minimum, due process of law requires notice and a meaningful opportunity to be heard, *Ohio Assn. of Pub. School Emp. v. Lakewood Cty. School Dist.*, 68 Ohio St.3d 175, 177, 624 N.E.2d 1043 (1994), it would seem the absence of any process would be problematic. Thus, this branch of appellant's constitutional argument does not warrant dismissal.

{¶ 40} Accordingly, appellant's sole assignment of error is well-taken.

{¶ 41} On consideration whereof, the judgment of the Lucas County Court of Common Pleas is reversed. This matter is remanded to said court for further proceedings. Appellees are ordered to pay the court costs of this appeal pursuant to App.R. 24.

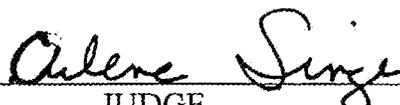
Judgment reversed.

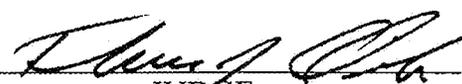
A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See also 6th Dist.Loc.App.R. 4.

Arlene Singer, P.J.

Thomas J. Osowik, J.

CONCUR.

  
JUDGE

  
JUDGE

Stephen A. Yarbrough, J.  
DISSENTS AND WRITES SEPARATELY.

**YARBROUGH, J., dissenting.**

{¶ 42} Because my reading of the statute at issue, R.C. 1901.20, differs from the interpretation adopted by majority, I respectfully dissent and would find Walker's sole assigned error not well-taken.<sup>3</sup>

{¶ 43} In *Mendenhall v. Akron*, 117 Ohio St.3d 33, 2008-Ohio-270, 881 N.E.2d 255, the Ohio Supreme Court held that "[a]n Ohio municipality does not exceed its home-rule authority when it creates an automated system for enforcement of traffic laws that imposes civil liability upon violators, *provided that the municipality does not alter statewide traffic violations.*" (Emphasis added.) *Id.* at syllabus. In upholding Akron's creation of a civil infraction system to deal with traffic offenders, the court reasoned, in pertinent part:

Akron Ordinances 461-2005, which provides for implementation of an automated mobile speed-enforcement system, does not conflict with state law because it does not alter or supersede state law. *The Ordinances provides for a complementary system of civil enforcement that, rather than decriminalizing behavior, allows for the administrative citation of vehicle*

---

<sup>3</sup> I agree with majority and the trial court that Walker has standing to challenge the constitutionality of Toledo Municipal Code 313.12.

*owners under specific circumstances.* Akron has acted within its home rule authority granted by the Constitution of Ohio. *Id.* at ¶ 42.

{¶ 44} Here, Toledo Municipal Code 313.12 creates a civil-infraction system for enforcing red-light and speed-limit ordinances by means of automated cameras. Per *Mendenhall*, enactment of the ordinance is fully within the city of Toledo's home rule authority as a chartered municipality and its provisions are presumptively constitutional. In working around this starting point, the majority first reads certain dicta to be "an express limitation on the scope of the *Mendenhall* decision." Yet the language which the majority cites for that statement<sup>4</sup> does not detract at all from the basic constitutionality of a *concurrent* administrative scheme that treats specified traffic violations as civil infractions. Nor does that language speak to Walker's claim that the civil-infraction system created by Toledo Municipal Code 313.12 "usurps" the jurisdiction of the municipal court, as set forth in R.C. 1901.20(A)(1), over "all red light ordinance violations."

{¶ 45} R.C. 1901.20 was formerly entitled "Criminal and traffic jurisdiction," but is now entitled, "Criminal jurisdiction." Subsection (A)(1) reads, in pertinent part:

The municipal court has *jurisdiction* of the *violation of any ordinance* of any municipal corporation within its territory, unless the

---

<sup>4</sup> The majority quotes ¶ 40 of the *Mendenhall* opinion which states: "Although there are due process questions regarding the operation of the Akron Ordinance and those similar to it, those questions *are not appropriately before us* at this time and *will not be discussed here.*" (Emphasis added.)

violation is required to be handled by a parking violations bureau or joint parking violations bureau pursuant to Chapter 4521 of the Revised Code, *and of the violation of any misdemeanor* committed within the limits of its territory. (Emphasis added.)

{¶ 46} Initially the majority opinion incorrectly cites R.C. 1.01 as “a rule of statutory construction” in order to ignore the subject-matter that R.C. 1901.20 was intended to cover. *See State ex rel. Cunningham v. Industrial Comm.*, 30 Ohio St.3d 73, 76, 506 N.E.2d 1179 (1987) (“R.C. 1.01 is not an ‘ordinary rule of statutory construction.’ Rather, it is a law which, by its terms, applies specifically to statutes enacted as part of the Ohio Revised Code [and] only require[s] that the ‘title’ or ‘section heading’ \* \* \* be disregarded.”) While the title or heading of a statute forms no part of the statutory text, it can reveal the legislative purpose or scope of the statute and suggest some contextual insight into the subject-matter it was intended to address.

{¶ 47} R.C. 1901.20 was intended to establish the jurisdiction of the municipal court over criminal offenses (misdemeanors) and traffic code violations that carry criminal penalties. Had the General Assembly intended to vest an *exclusive* jurisdiction in the municipal court over criminal violations of traffic ordinances *and* any parallel scheme that would treat the same violations as civil infractions, it would have used that word—“exclusive”—as an adjectival modifier preceding the primary subject-noun of the sentence, “jurisdiction.” In grammatical parlance, the use of such an adjective is intended

to denote more specifically the quality, quantity, or extent of the noun it modifies, or to distinguish the noun from its unmodified sense.

{¶ 48} The majority then engages in rewriting the first sentence of R.C. 1901.20(A)(1) to find “exclusive” jurisdiction by interpreting the word “any” as if it somehow modified the word “jurisdiction,” which it does not. The majority opinion states:

“Any” means “every—used to indicate one selected without restriction” and “all—used to indicate a maximum or whole.” *Merriam-Webster Dictionary* \* \* \* [.] Construing the language of the first sentence of R.C. 1901.20(A)(1) in context and according to common usage, the legislature has unambiguously granted to municipal courts jurisdiction over a violation of every and all municipal ordinances within its territory, unless, in certain circumstances, the offense is a parking violation. The maxims of construction forbid the substitution of inferences or implications when the language of the statute is unequivocal.

{¶ 49} But the same maxims of construction forbid us, under the guise of construing or interpreting a statute, from interpolating a word not used, like “exclusive,” or expanding on the meaning of an existing word to accomplish the same thing, like “any,” in disregard of its placement in the sentence or of the context in which it is used. *See State v. Peters*, 9 Ohio App.2d 343, 344, 224 N.E.2d 916 (2d Dist.1965) (Rejecting defendant’s argument that the word, “any,” should be construed to mean “every” or “all”:

“Although the word, ‘any,’ is sometimes used to mean ‘every,’ this is not its preferred dictionary definition. Actually, *it is a general word* and may have a diversity of meanings *depending upon the context and subject-matter of the statute in which it is used.*” (Emphasis added.); *see also State v. Taniguchi*, 74 Ohio St.3d 154, 156, 656 N.E.2d 1286 (1995) (“A court should give effect to the words actually employed in a statute, and should not delete words used, *or insert words not used, in the guise of interpreting the statute.*” (Emphasis added.))

{¶ 50} Given how the word “any” is actually placed in R.C. 1901.20(A)(1), it modifies only the word “ordinance,” which is not the primary subject-noun of the sentence. Because “any” does not in any way modify the word “jurisdiction,” it cannot support a conclusion of exclusivity for the municipal court to adjudicate *all* violations of city traffic ordinances. The majority has improvidently accepted Walker’s invitation to “imagine” that the first sentence of the statute reads other than it does.<sup>5</sup>

---

<sup>5</sup> In *Johns v. Univ. of Cincinnati Med. Assoc., Inc.*, 101 Ohio St.3d 234, 2004-Ohio-824, 804 N.E.2d 19 (2004), the Ohio Supreme Court rejected just this sort of interpretive slight-of-hand in “construing” a sentence in R.C. 2743.02(F), the jurisdictional statute for the court of claims, where “exclusive” *is* used as an adjectival modifier, the converse of the situation here. At that time R.C. 2743.02(F) stated, in pertinent part:

A civil action against an officer or employee [of the state] \* \* \* shall first be filed against the state in the court of claims, which has *exclusive, original* jurisdiction to determine, *initially*, whether the officer or employee is entitled to personal immunity under section 9.86 of the Revised Code and whether the courts of common pleas have jurisdiction over the civil action. (Emphasis added.)

{¶ 51} When the General Assembly intends to grant a court or agency exclusive jurisdiction over particular cases, claims or matters, “it provides it by appropriate statutory language.” *State ex rel. Banc One Corp. v. Walker*, 86 Ohio St.3d 169, 171-172, 712 N.E.2d 742 (1999). Such jurisdiction has long been signaled by the enabling statute’s use of the terms “exclusive,” “original,” or both, or by certain forms of absolutist language indicating exclusivity. *See, e.g., State ex rel. Sanquily v. Lucas Cty. Court of Common Pleas*, 60 Ohio St.3d 78, 80, 573 N.E.2d 606 (1991) (under R.C. 2743.02(F), court of claims has “exclusive original jurisdiction” to determine whether public employee is immune from suit); *State ex rel. Ohio Edison Co. v. Parrott*, 73 Ohio St.3d 705, 708-709, 654 N.E.2d 106 (1995) (under R.C. 4903.12, the language “no court

---

The proponent had argued that the word “initially,” which appears in a non-modifying position in the sentence, recast the scope of the jurisdiction granted to the court of claims such that a common pleas court could also determine the employee’s immunity. The Supreme Court held:

Exclusive jurisdiction is “[a] court’s power to adjudicate an action or class of actions *to the exclusion of all other courts.*” Black’s Law Dictionary (7th Ed.1999) 856. Original jurisdiction is “[a] court’s power to hear and decide a matter *before* any other court can review the matter.” *Id.* Therefore, to interpret the word “initially” in R.C. 2743.02(F) to mean that a second determination of immunity can be made by a court of common pleas *would nullify the plain language of R.C. 2743.02(F), which bestows “exclusive jurisdiction” to determine immunity on the Court of Claims.* (Emphasis added.) *Id.* at ¶ 26.

That plain language made the court of claims “the *only* court with authority to determine whether a state employee is immune from personal liability under R.C. 9.86.” *Id.* at ¶ 30.

*other than the supreme court*” gave the Supreme Court exclusive jurisdiction to suspend or enjoin orders of the PUCO. (Emphasis added.)

{¶ 52} Thus, for example, R.C. 2151.23(A) states that the “juvenile court has *exclusive original* jurisdiction under the Revised Code as follows,” and then delineates sixteen categories of cases by subject-matter. Commenting on this statutory language in *Pula v. Pula-Branch*, 129 Ohio St.3d 196, 2011-Ohio-2896, 951 N.E.2d 72, the Ohio Supreme Court observed that grants of exclusive and non-exclusive jurisdiction over certain cases are easily distinguished, stating:

[C]ases brought pursuant to R.C. Chapter 3115 are explicitly excluded from the juvenile court’s exclusive jurisdiction. R.C. 2151.23(A)(11) grants *exclusive* jurisdiction to juvenile courts to “hear and determine a request for an order for the support of any child *if the request is not ancillary to* an action for divorce, dissolution of marriage, annulment, or legal separation \* \* \* *or an action for support brought under Chapter 3115 of the Revised Code.*” \* \* \* Thus, if the sought-after support order arises in a domestic relations case or an R.C. Chapter 3115 case, the juvenile court *does not have exclusive jurisdiction* over support orders. Since juvenile courts do not have exclusive jurisdiction under R.C. Chapter 3115 claims, *other courts may hear those cases.* (Emphasis added.) *Id.* at ¶ 7-8.

{¶ 53} R.C. 2101.24(A)(1) likewise directs that “except as otherwise provided by law, the probate court has *exclusive* jurisdiction” of certain cases and thereafter enumerates 32 species of actions for which such jurisdiction is granted. Notably, 2101.24(B)(1) expressly grants the probate court “*concurrent* jurisdiction” with the general division of the common pleas court for certain purposes.

{¶ 54} In the administrative context, the General Assembly has employed identical language in statutes creating a board or agency. R.C. 3781.20(B), pertaining to boards of building appeals, states that “[a] certified local board of building appeals has *exclusive* jurisdiction to hear and decide all adjudication hearings arising from rulings of the local chief enforcement official concerning the provisions of this chapter and Chapter 3791.” (Emphasis added.)

{¶ 55} Finally, the General Assembly’s use of these same terms—“exclusive” and “original”—in other sections of R.C. Chapter 19 only reinforces the conclusion that the “jurisdiction” of the municipal court specified in R.C.1901.20(A)(1) is non-exclusive.

{¶ 56} In pertinent part, R.C. 1901.181(A)(1) states:

[I]f a municipal court has a housing or environmental division, the division has *exclusive jurisdiction* within the territory of the court in any civil action to enforce any local building, housing, air pollution, sanitation, health, fire, zoning, or safety code, ordinance, or regulation applicable to premises used or intended for use as a place of human habitation, buildings, structures, or any other real property[.] (Emphasis added.)

{¶ 57} R.C. 1901.185(B) also states that the environmental division of a municipal court “shall \* \* \* exercise *exclusive original* jurisdiction to hear actions arising under section 3767.50 of the Revised Code \* \* \* pertaining to blighted parcels.” (Emphasis added.)

{¶ 58} In my view, R.C. 1901.20(A)(1) cannot reasonably be read as giving the municipal court “exclusive” jurisdiction over violations of particular traffic ordinances that Toledo has chosen to classify separately as civil infractions and to enforce as such. Absent that modifying term, the jurisdiction granted is *non-exclusive* and, hence, a *concurrent* civil enforcement scheme may be established under Toledo’s home rule authority. Second, the “violations” referenced in R.C. 1901.20(A)(1) pertain to the commission of *criminal* misdemeanors and to traffic offenses for which *criminal* or quasi-criminal penalties are imposed, such as incarceration, judicial suspension of the offender’s driver’s license, the assignment of “points” toward the offender’s license, the issuance of “warrant blocks” against an offender’s license or vehicle registration with the Ohio Bureau of Motor Vehicles, the authority to order a vehicle impounded, etc.<sup>6</sup>

{¶ 59} Toledo Municipal Code 313.12, on the other hand, explicitly classifies the violations it covers as “non-criminal.” The scheme created is purely *civil* in nature and imposes no sanction beyond the assessment of an administrative penalty—a \$120 fine.

---

<sup>6</sup> The Supreme Court has expressly read R.C. 1901.20(A)(1) as conveying to municipal courts “subject-matter jurisdiction in *criminal* matters only when the *crime* was committed ‘within its territory’ or ‘within the limits of its territory.’” *Cheap Escape Co., Inc. v. Haddox, L.L.C.*, 120 Ohio St.3d 493, 2008-Ohio-6323, 900 N.E.2d 601, ¶ 18.

Toledo Municipal Code 313.12, therefore, has no operative effect on the jurisdiction of Toledo Municipal Court to adjudicate *criminal* violations of “any [traffic] ordinance.” It is, as the *Mendenhall* court phrased it, wholly a “complementary” enforcement process to that which would occur if a police officer were present, observed the same red light or speed violation, and acted on it. Indeed, *Mendenhall* rejected the claim, similar to the gambit Walker presently couches in jurisdictional garb, that Akron’s system of treating traffic violations as civil infractions “decriminalize[d] behavior that is criminal under state law.” *Id.* at ¶ 36. In describing Akron’s concurrent system, the Supreme Court observed:

After the enactment of the Akron ordinance, a person who speeds and is observed by a police officer remains subject to the usual traffic laws. *Only when no police officer is present and the automated camera captures the speed infraction does the Akron ordinance apply, not to invoke the criminal traffic law, but to impose an administrative penalty on the vehicle’s owner. The city ordinance and state law may target identical conduct - speeding - but the city ordinance does not replace traffic law. It merely supplements it.* Furthermore, a person cannot be subject to both criminal and civil liability under the ordinance. The ordinance states that if a violation is both recorded by the automated system and observed by a police officer, then the criminal violation takes precedence. The Akron ordinance *complements rather than conflicts* with state law. (Emphasis

added.) *Mendenhall*, 117 Ohio St.3d 33, 2008-Ohio-270, 881 N.E.2d 255,  
at ¶ 37.

{¶ 60} The same is true of the civil-enforcement scheme that Toledo created in Toledo Municipal Code 313.12. It exists independently of its criminal counterparts under municipal and state law. The ordinance does not prevent, interfere with, or usurp the ability of Toledo Municipal Court to deal with red-light and speed-limit violators in that forum, and therefore does not conflict with or abridge that court's criminal jurisdiction under R.C. 1901.20(A)(1).

{¶ 61} Finding no merit in Walker's assigned error, I would affirm the judgment of the trial court in all respects.

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:  
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.

# **EXHIBIT 2**

FILED  
LUCAS COUNTY

2012-1-24 07

**THIS IS A FINAL  
APPEALABLE ORDER**

IN THE COURT OF COMMON PLEAS OF LUCAS COUNTY, OHIO

Bradley L. Walker,	*	Case No. CI 201101922
Plaintiff,	*	Judge Ruth Ann Franks
-vs-	*	OPINION AND JUDGMENT ENTRY
City of Toledo, et al.,	*	
Defendants.	*	

---

This cause is before the Court upon Defendants City of Toledo's and RedFlex Traffic Systems, Inc.'s Motion to Dismiss. Upon consideration of the pleadings, memoranda of counsel and applicable law, the Court finds the motions well taken and granted.

#### I. Facts

Plaintiff Bradley L. Walker ("Walker") has filed a complaint on behalf of himself and "those similarly situated" as against Defendants City of Toledo ("City") and RedFlex Traffic Systems, Inc. ("RedFlex"). Walker's complaint seeks the return of all monies that City and RedFlex have collected pursuant to City's traffic camera "enforcement system" which is codified at Toledo Municipal Code 313.12. Walker alleges that the provisions of the same are invalid,

**E-JOURNALIZED**

FEB 02 2012

therefore City and RedFlex have been unjustly enriched by receipt of monies from the ordinance.

According to Walker's complaint, the City has adopted a civil enforcement system for red light and speeding camera system violations.<sup>1</sup> The enforcement system is composed of 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 a standard traffic control.<sup>2</sup> This electronic system is provided by RedFlex, and the Toledo Municipal Code ("Code") provides that if RedFlex's equipment determines that a vehicle is speeding, the owner of the vehicle shall be liable for the associated penalty. Accordingly, if a RedFlex camera captures an alleged violation, RedFlex investigates the matter and refers it to the City.

Walker further alleges that, as part of this joint venture between RedFlex and the City, RedFlex compiles evidence, determines the name and address of the vehicle owner, and forwards this information to the City, who then reviews the information and issues a citation to the vehicle's owner. These violations are classified as "non-criminal," and carry a penalty of \$120. Walker alleges that RedFlex and the City "split" the proceeds of the penalty, with most of it going to the former party. If a penalty is not paid, the City claims authority to collect and enforce the citation via a civil action or any other means authorized by the Ohio Revised Code, including the immobilization or impounding of the vehicle.

Walker states that the Code allows a vehicle owner to appeal a RedFlex citation, provided

---

<sup>1</sup> Much of the Court's recitation of facts will be taken verbatim from Walker's complaint in order to accurately articulate his claims.

<sup>2</sup> Walker cites to Toledo Municipal Code 313.12(b)(1).

the same is done in a particular manner. Despite this appearance of an "administrative process," Walker alleges, the Code does not actually create the process. Instead, it delegates authority to the Toledo Police Department to establish the process. Walker alleges that this delegation was void on its face, and no administrative process was established until February 2011. Walker asserts three "problems" with the City's enforcement system: (1) no legislative body has given the enforcing agency (the police department) any guidelines or standards, and the police department is therefore unfettered in its discretion; (2) no administrative process was established before February 2011, even though the enforcement system was in place prior to that time; and (3) the enforcement program attempts to impermissibly strip the Toledo Municipal Court of its exclusive jurisdiction to preside over municipal ordinance violations as provided in the Ohio Revised Code.

Accordingly, Walker asserts that, first, the City's ordinance is invalid because it delegates power to the police without providing any rules or standards, in violation of due process and equal protection under the United States' and Ohio's Constitution. Further, the ordinance violates public policy because it fails to establish an administrative process of enforcement. Next, even if a legislative body, specifically the City Council, made a proper delegation of the administrative process, any fines received prior to its creation must be returned. Finally, even if the Code is not facially invalid and even if the police department established an unwritten administrative appeals process, the fines must be returned because the Code usurps the Toledo Municipal Court's jurisdiction over municipal ordinance violations. Therefore, the Defendants have been unjustly enriched through the collection of the fines.

Additionally, Walker alleges that "several thousand other vehicle owners" are similarly

situated and a class certification is appropriate in this action.

The Defendants have responded to Walker's complaint with a motion to dismiss. Walker opposed the motions, and replies and a sur reply were filed. The matter is decisional.

## II. Standard

A Civ.R. 12(B)(6) motion to dismiss for failure to state a claim upon which relief can be granted is the proper remedy when a plaintiff has failed to attach an affidavit of merit to his complaint. Fletcher v. Univ. Hosp. of Cleveland, 172 Ohio App. 3d 153, 2007 Ohio 2778, 873 N.E.2d 365. A motion to dismiss for failure to state a claim upon which relief can be granted pursuant to Civ.R. 12(B)(6) is procedural and tests the sufficiency of the complaint. Bratton v. Couch, 5th Dist. No. CA02-012, 2003-Ohio-3743, at ¶8, citing State ex rel. Hanson v. Guernsey Cty. Bd. of Comms., 65 Ohio St.3d 545, 605 N.E.2d 378 (1992). The Court is required to examine only the four corners of the complaint. Ferraro v. B.F. Goodrich Co., 149 Ohio App.3d 301, 777 N.E.2d 282 (2002), citing Thompson v. Cent. Ohio Cellular, 93 Ohio App.3d 530, 538, 639 N.E.2d 462 (1994).

## III. Discussion

The City has moved for dismissal of Walker's complaint based on the authority of Mendenhall v City of Akron, 117 Ohio St.3d 33, 881 N.E.2d 255 (2008), in which the Ohio Supreme Court held that a municipality's ordinance that enforced speed and red light traffic violations was constitutional despite it being based within a civil administrative liability context. The City also asserts several other reasons Walker's complaint must fail, including that unjust enrichment claims cannot lie against a municipality, and Walker did not choose to appeal the violation therefore there was no violation of his due process. Finally, the City contends that the

Ohio Revised Code does not grant exclusive jurisdiction to the Toledo Municipal Court as argued by Walker, and Walker lacks standing to bring the within action.

RedFlex has also moved for dismissal of Walker's complaint, making the additional arguments that Walker waived his right to challenge the ordinance because he paid the fine and did not seek a hearing (which also render's Walker's claim moot), and that constitutional challenges are inapplicable to RedFlex because it is not a state actor, nor are there allegations that it is.<sup>3</sup>

The Court first turns to the issue of standing, and whether Walker has satisfied this requirement. "Before a court may decide the merits of a case, the party seeking relief must have standing to do so. 'A person has no standing to attack the constitutionality of an ordinance unless he has a direct interest in the ordinance of such a nature that his rights will be adversely affected by its enforcement'." State v Bloomer, 122 Ohio St. 3d 200, 2009 Ohio 2462, 909 N.E.2d 1254, citing Anderson v. Brown, 13 Ohio St.2d 53, 233 N.E.2d 584, (1968) paragraph one of the syllabus. "In order to have standing to attack the constitutionality of a legislative enactment, the private litigant must generally show that he or she has suffered or is threatened with direct and concrete injury in a manner or degree different from that suffered by the public in general, that the law in question has caused the injury, and that the relief requested will redress the injury." State ex rel. Ohio Acad. of Trial Lawyers v. Sheward, 86 Ohio St. 3d 451, 715 N.E.2d 1062 (1999). "Unlike the federal courts, state courts are not bound by constitutional strictures on standing; with state courts standing is a self-imposed rule of restraint." Id. "State courts need not become enmeshed in the federal complexities and technicalities involving standing and are free

---

<sup>3</sup> RedFlex also discusses many of the same points that the City asserts in its own motion to dismiss.

to reject procedural frustrations in favor of just and expeditious determination on the ultimate merits." Id.

Subjudice, Walker alleged that he paid the fine he was issued pursuant to the ordinance. Accordingly, his injury is monetary. While Defendants argue that Walker's payment of the fine actually renders his claim moot and bars any standing, the Court disagrees. Had Walker *not* paid the fine, it might be said that he did not avail himself of *any* of the avenues to deal with the notice of liability and therefore suffered no injury.<sup>4</sup> Further, Walker's complaint alleges that there was actually no administrative appeals process in place at the time he received his notice of violation. Accepting this allegation as true for purposes of considering the motion to dismiss, and based on the four corners of the complaint, the Court cannot say at this time that Walker failed to avail himself of the processes available to him, if any, and as a result lacks standing.

Defendants further argue that Walker's failure to exhaust administrative remedies bars his claim. The Court disagrees under the present circumstances. R.C. 2721.03 allows for a suit to determine the validity of a municipal ordinance. South Euclid Fraternal Order of Police v D'Amico, 4 Ohio App. 3d 15, 446 N.E.2d 198 (8th Dist. 1982). The necessary case or controversy for a declaratory judgment exists when a plaintiff has alleged past or future harm. See, Id. Subjudice, Walker has alleged such harm. Further, the exhaustion of administrative remedies is not required when the constitutionality of an ordinance is being challenged.

---

<sup>4</sup> See, e.g. Williams v RedFlex, E.D.Tenn. No. 3:06-cv-400, at \*2, 2008 U.S. Dist. LEXIS 22723 (March 20, 2008) (because plaintiff who was challenging the red light system failed to pay the fine or pursue the appeals process, she lacked standing to challenge the sufficiency of the process). RedFlex cites to Williams for the proposition that the plaintiff's lack of standing was based on her failure to use the administrative appeal process, however, this Court's reading of Williams reveals that the court noted that the plaintiff additionally did not pay the fine and, therefore, availed herself of *no* process.

The Court also notes that RedFlex cites a string of cases to support its argument that payment of the fine resolved the dispute and Walker thereby waived his defenses. RedFlex then asserts "[c]ritically, this includes constitutional defects." RedFlex offers no legal support for this latter assertion, however.

Sandusky Marina Ltd. P'ship v Dept. of Natural Resources, 126 Ohio App.3d 256, 710 N.E.2d 302 (6th Dist. 1998), citing Johnson's Island v. Bd. of Twp. Trustees, 69 Ohio St. 2d 241, 248-249, 431 N.E.2d 672 (1982). This is because an administrative agency is without jurisdiction to determine the constitutional validity of a statute. Herrick v Kosydar, 44 Ohio St. 2d 128, 339 N.E.2d 626 (1975). Accordingly, because Walker is challenging the constitutionality of the ordinance, the Court will not dismiss his claim for his failure to exhaust his administrative remedies. See also, Lycan v City of Cleveland, 8th Dist. No. 94353, 2010 Ohio 6021, disc. appeal not allowed at 2011 Ohio 2420, 2011 Ohio LEXIS 1287 (Ohio, May 25, 2011) (court found that even though plaintiffs paid the fines from traffic cameras and declined an opportunity to challenge the same through administrative appeal, the existence of the opportunity "[did] not necessarily foreclose any right to equitable relief.")

The Court next turns to the City's argument that municipalities are immune from unjust enrichment claims. While the Court finds support for this argument, it comes in the form of precedent addressing contractual claims against municipalities in which it has been held that municipalities cannot be sued in quasi-contract or quantum meruit, for which unjust enrichment is a remedy. See, e.g., Perrysburg Township v City of Rossford, 149 Ohio App.3d 645, 2002 Ohio 5498, 778 N.E.2d 619 (6th Dist.); R&K Contractors v Lone Star Constr. Co., 11th Dist. No. 92-T-4809, 1994 Ohio App. LEXIS 1500 (April 8, 1994); City of Seven Hills v City of Cleveland, 47 Ohio App. 3d 159, 547 N.E.2d 1024 (8th Dist. 1988).

To the contrary, Walker points to Santos v Ohio Bureau of Workers Comp., 101 Ohio St. 3d 74, 2004 Ohio 28, 801 N.E.2d 441, to support his assertion that the Ohio Supreme Court "has made clear that a class representative may bring an unjust enrichment claim for the return of

specific funds collected under unconstitutional legislation."<sup>5</sup> Santos concerned employees who sought restitution for subrogated amounts wrongfully collected from them before a workers compensation subrogation statute had been found unconstitutional. The actual question the Santos Court considered was jurisdictional in nature, and the court held that "a suit that seeks the return of specific funds wrongfully collected or held by the state is brought in equity. Thus, a court of common pleas may properly exercise jurisdiction over the matter as provided in R.C. 2743.03(A)(2)." Santos at syllabus.

Likewise, the Santos Court noted its review of Judy v Ohio Bur. of Motor Veh., 100 Ohio St.3d 122, 2003 Ohio 5277, 797 N.E.2d 45, which was a class action suit seeking injunctive relief and reimbursement from the BMV for its improper collection of double reinstatement fees based on the Bureau's erroneous interpretation of a statute. The Court commented that although the defendant in Judy did not appeal any jurisdictional issues, the Court did not recognize any because the suit was not for money "damages," but rather to correct the unjust enrichment BMV gained from the wrongful collection of fees. Accordingly, the suit was one brought in equity. While this Court acknowledges that Santos focused on the issue of jurisdiction, which is not the issue subjudice, it cannot be ignored that the Santos and Judy cases were indeed both entertained and their bases are analogous to the unjust enrichment claim before this Court. See also, Lycan (Ohio, May 25, 2011) (court denied defendant's motion for judgment on the pleadings as to plaintiff's claim of unjust enrichment against defendant's retention of red light camera fines). Based on the above, the Court does not find merit in the City's assertion that it enjoys immunity from Walker's unjust enrichment claim.

---

<sup>5</sup> Walker's brief in Opposition, p. 2.

Since it has been determined that Walker has standing to bring the action and that the City is not immune from the suit, the Court now turns to the question of whether Walker has stated a claim upon which relief may be granted. Walker asserts that the ordinance is invalid because it gives exclusive jurisdiction over all TMC 313.12 violations to an agency, when R.C. 1901.20 actually confers exclusive jurisdiction of these violations to the Toledo Municipal Court. He further argues that nothing in R.C. 1901.20 gives a local police department exclusive jurisdiction over municipal ordinance violations concerning traffic cameras. Moreover, the authority granted to municipalities by the Ohio Constitution to exercise all powers of local self-government does not include the power to regulate the jurisdiction of courts.<sup>6</sup> Walker acknowledges that municipal ordinances are presumed to be constitutional, and the burden is his to show otherwise. "It is fundamental that a court must 'presume the constitutionality of lawfully enacted legislation'." Klein v Leis, 99 Ohio St. 3d 537, 2003 Ohio 4779, 795 N.E.2d 633. "Legislation being challenged will not be invalidated unless the challenger establishes that it is unconstitutional beyond a reasonable doubt." Hilton v. Toledo, 62 Ohio St.2d 394, 405 N.E.2d 1047 (1980); Klein.

TMC 313.12, in pertinent part, states:

(1) Notwithstanding any other provision of this Traffic Code, the City of Toledo hereby adopts a civil enforcement system for red light and speeding camera system violations as outlined in this Section. Said system imposes monetary liability on the owner of a vehicle for failure of an operator thereof to comply with traffic control indications in the City of Toledo in accordance with the provisions of this Section.

---

<sup>6</sup> This is taken nearly verbatim from Walker's brief in Opposition.

(2) The City of Toledo Division of Transportation, the Toledo Police Department, and the Toledo Department of Law shall be responsible for administering the Automated Red Light and Speeding System. Specifically, the Toledo Division of Transportation and the Toledo Police Department shall be empowered to install and operate red light and speeding camera systems within the city of Toledo. And, the Toledo Division of Transportation and the Toledo Police Department shall maintain a list of system locations where red light and speeding camera systems are installed. Said departments will make the determination as to which locations will be utilized.

The ordinance further provides that any violation of this section is deemed civil in nature, carrying only a monetary fine, and no "points" under the point system for license suspension. A violation may be administratively appealed, with a further appeal to the common pleas court available pursuant to R.C. 2506.

In Mendenhall v City of Akron, 117 Ohio St. 3d 33, 2008 Ohio 270, 881 N.E.2d 255, the Ohio Supreme Court held that "[a]n Ohio municipality does not exceed its home rule authority when it creates an automated system for enforcement of traffic laws that imposes civil liability upon violators, provided that the municipality does not alter statewide traffic regulations." Mendendall at syllabus. The Court did a Home Rule analysis of Akron's ordinance instituting this form of enforcement and noted that the ordinance was an exercise of police power that relates to the public health, safety, and welfare of the general public; the traffic statute was a general law; and the ordinance was not in conflict with the statute. The Court also rejected a preemption argument that the state has intended to completely occupy the field of traffic regulation, thus municipalities could not take such action. It further declined any consideration of

"motivation" issues with respect to its analysis.<sup>7</sup> Subjudice, Walker points to the Mendenhall Court's observation that "although there are due process questions regarding the operation of the Akron Ordinance and those similar to it, those questions are not appropriately before [the court] at this time and will not be discussed here." Mendenhall at 42.<sup>8</sup> Hence, under Mendenhall, the City subjudice was within its authority to establish this system for the enforcement of traffic violations.

The Court rejects Walker's argument, however, that the Ohio Revised Code gives the Toledo Municipal Court exclusive jurisdiction over violations issued pursuant to TMC 313.12. "Exclusive jurisdiction" is a court's power to adjudicate an action or class of actions to the exclusion of all other courts. Johns v. University of Cincinnati Medical Center (2004), 101 Ohio St.3d 234, 239, 804 N.E.2d 19. R.C. 1901.20(A), titled "criminal and traffic jurisdiction," states:

(A) (1) The municipal court has jurisdiction of the violation of any ordinance of any municipal corporation within its territory, unless the violation is required to be handled by a parking violations bureau or joint parking violations bureau pursuant to Chapter 4521. of the Revised Code, and of the violation of any misdemeanor committed within the limits of its territory. The municipal court has jurisdiction of the violation of a vehicle parking or standing resolution or regulation if a local authority, as defined in division (D) of section 4521.01 of the Revised Code, has specified that it is not to be considered a criminal offense, if the violation is committed within the limits of the court's territory, and if the violation is not required to be handled by a parking violations bureau or joint parking violations bureau pursuant to Chapter 4521. of the Revised Code. The municipal court, if it has a housing or environmental division, has jurisdiction of any criminal action over

---

<sup>7</sup> Is the city's motivation behind automated camera enforcement actually public-safety related or is it simply for purposes of increasing revenue?

<sup>8</sup> Despite the Mendenhall court's passing comment in this respect, this Court declines to read anything into the Mendenhall decision that is not articulated.

which the housing or environmental division is given jurisdiction by section 1901.181 [1901.18.1] of the Revised Code, provided that, except as specified in division (B) of that section, no judge of the court other than the judge of the division shall hear or determine any action over which the division has jurisdiction. In all such prosecutions and cases, the court shall proceed to a final determination of the prosecution or case.

Walker relies on the use of the word "any" in the first sentence above to indicate that the Toledo Municipal Court has exclusive jurisdictions for violations of TMC 313.12 such as his. Walker asserts that, with R.C. 1901.20, "the General Assembly made the statewide determination that municipal ordinance violations must be adjudicated in courts." While Walker does not directly address the appeal to the court of common pleas that would have been available to him R.C. 2506.01, he opines that a municipality's ability to fashion the enforcement of ordinance violations in an administrative nature will lead to a burdened common pleas docket. The Court is not persuaded by this argument, as Walker and those similarly situated clearly have the benefit of an appeal before a judicial body. Moreover, a reading of R.C. 1901.20 demonstrates that it does not confer *exclusive* jurisdiction to the Toledo Municipal Court over these violations. "When the General Assembly intends to vest exclusive jurisdiction in a court or agency, it provides it by appropriate statutory language." State ex Rel. Banc One v Walker, 86 Ohio St. 3d 169, 1999 Ohio 151, 712 N.E.2d 742. The statute within uses no such unambiguous terms to indicate exclusive jurisdiction, and this Court does not interpret the use of the word "any" to be an expression of "all" or "exclusive." In this respect, Walker's complaint does not state a cause of action relative to the unconstitutionality of the ordinance in this respect.

Walker also asserts that the City's ordinance is invalid because it delegates power to the

police without providing any rules or standards, which is in violation of due process and equal protection under the United States' and Ohio's Constitution; that the ordinance violates public policy because it fails to establish an administrative process of enforcement. He further argues that even if a legislative body, specifically the City Council, made a proper delegation of the administrative process, any fines received prior to its creation must be returned. The Court disagrees that these assertions state a cause of action. First, TMC 313.12 indicates that appeals may be had through a "hearing officer," and Walker's complaint concedes that there is an administrative appeals process in conjunction with an automated camera ticket. Walker's criticism, however, is that the ordinance does not explicitly state the rules or standards to be followed by the police department when it conducts the appeals process. Specifically, Walker states that it is unknown whether parties may bring attorneys, whether there is subpoena power, the right to call witnesses and the right of cross examination, whether evidentiary rules apply, whether discovery may be had, or whether parties may give opening and closing statements.

Presuming for purposes of the motion to dismiss that these allegations are all true, and this information is not provided in written form, Walker's complaint still does not suggest that the ordinance is invalid beyond a reasonable doubt. Walker conceded that the administrative appeal process was available to him. Had Walker been displeased with the outcome of the administrative appeal, Ohio law provides that he could have commenced an appeal of the administrative decision pursuant to R.C. 2506 in the common pleas court. See, e.g., City of Cleveland Parking Violations Bureau v Barnes, 8th Dist. No. 94502, 2010 Ohio 6164. As a part of that process, R.C. 2506.03 provides that "[t]he common pleas court considers the 'whole record,' including any *new or additional evidence* admitted under R.C. 2506.03, and determines

whether the administrative order is unconstitutional, illegal, arbitrary, capricious, unreasonable, or unsupported by the preponderance of substantial, reliable, and probative evidence. . ."

(emphasis added). Barnes, quoting Henley v. Youngstown Bd. of Zoning Appeals, 90 Ohio St.3d 142, 2000 Ohio 493, 735 N.E.2d 433 (2000).

This same issue was considered in Posner v City of Cleveland, 188 Ohio App. 3d 421, 2010 Ohio 3091, 935 N.E.2d 882 (2010). Posner had appealed an automated camera ticket administratively but was unsuccessful, so he appealed to the common pleas court. His arguments included the facial unconstitutionality of the ordinance, as well as its application to him. The Posner court explained:

A statute's constitutionality can be challenged on its face or on the particular set of facts to which the statute has been applied. When a statute is challenged on its face, the challenger must demonstrate that no set of circumstances exist under which the statute would be valid. The fact that the statute could operate unconstitutionally under some given set of facts or circumstances is insufficient to render it wholly invalid. Posner at 426 (internal citations omitted).

While the Posner court declined to entertain Posner's facial constitutional challenge to the ordinance because the same was inappropriate during an administrative appeal, the court remanded the matter to the trial court to analyze Posner's "as applied" constitutional challenge. See, Posner v City of Cleveland, 8th Dist. No. 95997, 2011 Ohio 3071. The subsequent Posner court found that Posner's due process rights were not violated because even if he had been precluded from presenting witnesses and evidence during the administrative appeal, "the language of R.C. 2506.03(B) allows, even mandates, that [he] be allowed to supplement the record with such testimony." Posner, 2011 Ohio 3071 at ¶15. See also, City of Cleveland v Cord,

8th Dist. 96312, 2011 Ohio 4262, disc. appeal not allowed at 2012 Ohio 136. ("Appellant's due process rights were not frustrated because R.C. 2506.03 left an avenue open for him to call witnesses and present additional evidence that he was prevented from utilizing during the [administrative] hearing").

Subjudice, Walker brings a facial challenge to the ordinance, so he must demonstrate that no set of circumstances exist under which the statute would be valid. Even presuming all of his allegations as true, Walker cannot do this. As discussed in the Posner and Cord cases, R.C. 2506 provides a route by which due process is guaranteed to those seeking an appeal from a TMC 313.12 violation. Hence, even if the procedural administrative process is not explicitly spelled out in the ordinance, the basic tenets of Ohio law with respect to administrative hearings are in place<sup>9</sup> with respect to the administrative reviewing body, as are the procedural safeguards built into R.C. 2506. In this respect, it cannot be said that the Toledo Police have "unfettered" authority with respect to administrative appeals of TMC 313.12 violations. Consequently, Walker's complaint fails to state a cause of action, and his complaint is dismissed.

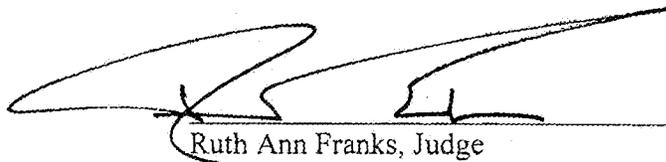
#### JUDGMENT ENTRY

---

<sup>9</sup> "The Ohio Supreme Court has held that administrative agencies are not bound by the rules of evidence applied in court." Cord citing Simon v. Lake Geauga Printing Co., 69 Ohio St.2d 41, 44, 430 N.E.2d 468 (1982). "Evidence that is admissible in administrative hearings is defined as follows: (1) 'Reliable' evidence is dependable, that is, it can be confidently trusted. In order to be reliable, there must be a reasonable probability that the evidence is true. (2) 'Probative' evidence is evidence that tends to prove the issue in question; it must be relevant in determining the issue. (3) 'Substantial' evidence is evidence with some weight, it must have importance and value." Cord citing Our Place, Inc. v. Ohio Liquor Control Comm., 63 Ohio St.3d 570, 571, 589 N.E.2d 1303 (1992). "Furthermore, hearsay is admissible in administrative proceedings." Cord citing Simon, 69 Ohio St.2d at 44, 430 N.E.2d 468. While the Court subjudice notes that the Our Place case is one concerning liquor permits, the Court agrees with Cord's use of this proposition of law relative to other administrative hearing cases.

It is therefore ORDERED, ADJUDGED, and DECREED that Defendant City of Toledo's and Defendant RedFlex's Motions to Dismiss are well taken and granted.

February 1, 2012



Ruth Ann Franks, Judge

cc: Andrew R. Mayle, Esq.  
John T. Murray, Esq.  
Adam W. Loukx, Esq.  
Quintin F. Lindsmith, Esq.