

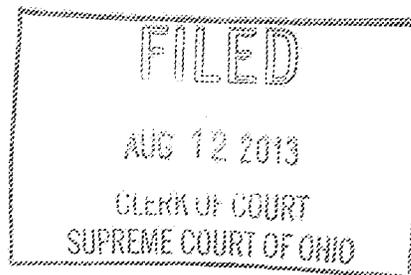
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IN THE SUPREME COURT OF OHIO

Bradley L. Walker,	:	Case No. <u>13-1277</u>
	:	
Appellees,	:	On Appeal from the
	:	Sixth District Court of Appeals
v.	:	Lucas County, Ohio
	:	
City of Toledo, et al.,	:	Court of Appeals
	:	Case No. L-12-1056
Appellants.	:	
	:	
	:	

**MEMORANDUM IN SUPPORT OF JURISDICTION OF AMICUS CURIAE
THE OHIO MUNICIPAL LEAGUE, CITY OF COLUMBUS AND CITY OF DAYTON**

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**INTRODUCTION: THIS CASE INVOLVES A
MATTER OF GREAT GENERAL INTEREST**

The Ohio Municipal League (“League”), as amicus curiae on behalf of the City of Toledo (“City”), the City of Columbus and the City of Dayton (collectively “Appellants”), urge this Court to accept jurisdiction over this case in order to reverse the decision of the Sixth District Court of Appeals (“Sixth District”) in *Walker v. Toledo*, 2013-Ohio-2809. In *Walker*, the Sixth District erroneously reversed the trial court’s dismissal of the suit by finding that the City’s photo-enforcement administrative process amounted to “usurpation of jurisdiction” and, therefore, violated Ohio Constitution, Article IV, Section 1.

The precise issue before the Court is whether 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 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.

Cities’ photo-enforcement administrative process is constitutionally valid because Ohio municipalities have the home-rule authority to maintain pre-suit administrative proceeding, including conducting administrative hearings, in furtherance of their civil traffic enforcement ordinances.

This Court has an opportunity to clarify the scope of R.C 1901.20(A). The impact of this case is not limited simply to photo-enforcement programs, but also greatly affects all Ohio cities' ability to establish administrative procedures by ordinance.

These issues implicate matters of great general and public interest. First, the decision of this case implicates the exercise of valid authority protected and reserved to municipalities under the Home Rule provision of Section 3, Article XVIII of the Ohio Constitution. Accordingly, these issues address matters that pertain to all Ohio municipalities. The issues presented in this case will affect the way in which administrative programs are implemented and enforced in all municipalities across the state. This case provides an opportunity for the Court to clarify the scope of R.C. 1901.20 specifically, as well as the ability of municipalities to establish administrative procedures by ordinance pursuant to their Home Rule powers. For these reasons and the reasons contained herein, this case is worthy of the time and attention of this Court, and Appellants urges this Court to accept jurisdiction over it.

STATEMENT OF AMICUS INTEREST

The Ohio Municipal League is a non-profit Ohio corporation composed of a membership of more than 700 Ohio cities and villages. The Ohio Municipal League and its members have an interest in ensuring the proper application of R.C. 1901.20 in order to preserve Home Rule powers of political subdivisions, enforcement of their ordinances, and avoid unwarranted and unnecessary liability and costs incurred as a result of piecemeal litigation.

The Appellants, by this memorandum, respectfully seeks to advise the Court of the urgency and implications of the Sixth District's decision in this case.

STATEMENT OF THE CASE AND FACTS

The Appellants hereby adopts, in its entirety, and incorporates by reference, the statement of the case and facts contained within the Memorandum in Support of Jurisdiction of Appellant City of Toledo, Ohio.

ARGUMENT

In addition to the following arguments, the Ohio Municipal League incorporates, to the extent applicable, the well-reasoned arguments and authorities contained in Appellant Redflex's brief.

Proposition of Law No. 1: Ohio municipalities have the home-rule authority to maintain pre-suit administrative proceeding, 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.

Ohio Revised Code Section 1901.20(A)(1) does not grant exclusive jurisdiction to the Toledo Municipal Court for all matters contained in the City's municipal code. R.C.

1901.20(A)(1) reads in pertinent part as follows, “[t]he municipal court has jurisdiction of the violation of any ordinance . . .” “Any”, however, is not “exclusive”. No words in the statute indicate exclusivity or even arguably signal that the Ohio General Assembly contemplated providing the Municipal Court mandatory jurisdiction for this purpose. This distinction in language is both critical and determinative. The Ohio General Assembly enabled, but did not require, the municipal courts to be used as a forum for city code enforcement.

As the trial court recognized, Ohio law is clear that “[w]hen 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, 171-72, 712 N.E.2d 742 (1999). While it is correct that the Home Rule provision of the Ohio Constitution in Article XVIII, Section 3, does not give the City the power to regulate the jurisdiction of courts as established by the Constitution or General Assembly, TMC §313.12 operates in complete conformance with both the Ohio Constitution and the Ohio Revised Code. TMC §313.12 in no way operates to regulate the jurisdiction of the courts as provided by the Ohio General Assembly.

The Ohio General Assembly has specified by clear and plain language those purposes for which exclusive jurisdiction is provided. For instance, R.C. 2151.23(A) provides that the “juvenile court has *exclusive* original jurisdiction under the Revised Code ***”. [Emphasis added.] R.C. 3781.20(B) provides 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 ***”. [Emphasis added.] R.C. 2101.24(A)(1) provides that “except as otherwise provided by law, the probate court has *exclusive* jurisdiction ***”, and then the section enumerates the purposes for which the specific authority is granted. [Emphasis added.]

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 the word “exclusive,” as it has in many other code sections.

Absent language vesting exclusive jurisdiction for violations of city ordinances in the municipal court, Ohio cities retain the authority under the Ohio Constitution’s Home Rule powers to enact their own civil enforcement mechanisms.

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. 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.

Proposition of Law No. 2: Claims of restitution that allege unjust enrichment cannot be brought against municipalities.

In the matter before the trial court, Appellee was seeking restitution by alleging unjust enrichment based on a lack of due process under the City’s civil administrative traffic violation photo enforcement. However, Appellee’s restitution claim pursuant to the unjust enrichment allegation must fail as a matter of law. Unjust enrichment claims do not and cannot lie against a municipality. See *Cleveland v. Village of Marblehead*, 6th Dist. Ottawa No. OT-00-018, 2001 Ohio App. LEXIS 1336 (March 6, 2001); and *Perrysburg Twp v. City of Rossford*, 149 Ohio

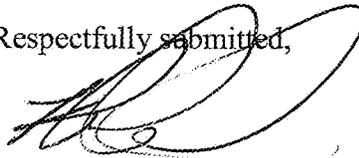
App.3d 645, 2002-Ohio-5498, 778 N.E.2d 610 (6th Dist.). Furthermore, in *Wright* the Court held that “[a] claims for unjust enrichment arises when one person has unfairly benefitted from the services of another. In that event, courts have adopted a legal fiction, ‘quasi contract’, to provide a remedy allowing the aggrieved party to seek recovery for as much as he deserves.” *Wright v. City of Dayton*, 158 Ohio App. 3d 152, 2004-Ohio-3770, 814 N.E.2d 514 (2nd Dist.); see also *Eastlake v. Davis*, 11th Dist. Lake No. 510, 1952 Ohio App. LEXIS 603 (May 3, 1952), (citing 28 Ohio Jurisprudence, 924, Section 575), *G.R. Osteland Co. v. City of Cleveland*, 8th Dist. Cuyahoga No. 77305, 2000 Ohio App. LEXIS 5225 (Nov. 9, 2000), and *Montz Sales & Serv. V. City of Barberton*, 9th Dist. Summit No. 11089, 1983 Ohio App. LEXIS 11126 (July 27, 1983).

The payment of a fine as assessed in a “Notice of Liability” is a civil fine for violating a traffic rule, not a payment for rendering a service. Therefore, claims for unjust enrichment must fail against municipalities that issue civil fines.

CONCLUSION

This case presents a matter of great public and general interest to state and local governments throughout Ohio. The exercise of jurisdiction over this case is warranted and respectfully requested.

Respectfully submitted,



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CERTIFICATE OF SERVICE

A copy of the foregoing *Memorandum in Support of Jurisdiction of Amicus Curiae the Ohio Municipal League*, has been sent via regular U.S. mail, postage pre-paid this 12th day of August, 2013 to:

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