

ORIGINAL

IN THE SUPREME COURT OF OHIO

Bradley L. Walker,

Case No. 2013-1277

Plaintiff-Appellee

On appeal from the Lucas County Court of Appeals, Sixth Appellate District

vs.

Court of Appeals Case No. CA 4801 CL-12-1056

City of Toledo, et al.

Defendants-Appellants

JOINT BRIEF OF AMICI CURIAE XEROX STATE & LOCAL SOLUTIONS, INC. AND CITY OF CLEVELAND IN SUPPORT OF APPELLANTS CITY OF TOLEDO AND REDFLEX TRAFFIC SYSTEMS, INC.

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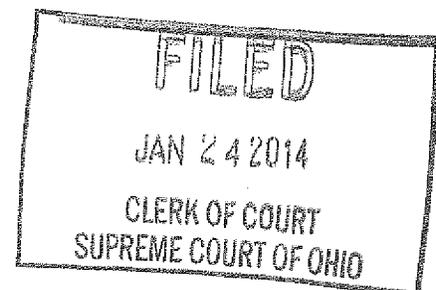
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I. STATEMENT OF AMICI'S INTEREST

The City of Cleveland adopted Cleveland Codified Ordinance 413.031 ("CCO 413.031") (copy attached as Apx. 001-005) in 2005. CCO 413.031 authorizes the use of an automated traffic enforcement camera system to impose civil penalties for red light and speeding violations that are documented by system. Xerox State & Local Solutions, Inc., formerly known as ACS State & Local Solutions, Inc. ("Xerox") is the company which provides and operates the red light and speeding cameras for the City of Cleveland in accordance with Cleveland's photo enforcement program. Xerox's and the City of Cleveland's interests are aligned with those of Defendant-Appellant City of Toledo and Defendant-Appellant Redflex Traffic Systems, Inc. ("Redflex"). Redflex provides and operates the civil red light and speeding camera enforcement program adopted and authorized by the City of Toledo at Toledo Municipal Code Section 313.12 ("TMC 313.12," copy attached as Apx. 006-008).

Currently pending before the Eighth District Court of Appeals is the case of *Jodka v. City of Cleveland, et al.*, 8th Dist. Ct. App. Case No. 13 099951. Xerox, referred to as ACS for purposes of the *Jodka* litigation, is a co-defendant with the City of Cleveland. The plaintiff in *Jodka*, like the plaintiff in *Walker v. City of Toledo*, is challenging whether CCO413.031 violates Article IV, Section 1 of the Ohio Constitution (copy attached as Apx. 009) and jurisdiction of the municipal court under Ohio Revised Code Section 1901.20(A)(1) (copy attached as Apx. 010). The Cuyahoga County Court of Common Pleas had granted motions to dismiss filed by the City of Cleveland and ACS and Jodka appealed those ruling. Jodka's first assignment of error proposed to the Eighth District Court of Appeals reads: "The trial court erred in holding that a municipality has power to enact an ordinance that restricts and impairs a court's jurisdiction provided by the General Assembly." Thus, Appellants' propositions of law presented to this Court in *Walker* will also be dispositive of Jodka's Article IV, Section 1 constitutional claim.

Xerox and the City of Cleveland will follow Toledo's propositions of law for purposes of this joint amici brief.

II. STATEMENT OF THE CASE AND FACTS

Xerox and the City of Cleveland adopt the Statement of the Case and Facts set forth in Redflex's and the City of Toledo's respective Merit Briefs.

III. ARGUMENTS IN SUPPORT OF PROPOSITIONS OF LAW

Proposition of Law No. 1: Neither R.C. § 1901.20 nor Ohio Constitution Article IV, Section 1 are offended when a home rule municipality enacts, by ordinance, a civil administrative process for photo enforcement of speed and red light violations.

1. The Courts' decisions in *State of Ohio, ex rel. Scott v. City of Cleveland*, 166 Ohio App.3d 293, 2006-Ohio-2062, 850 N.E.2d 747 (8th Dist.), *aff'd*, 112 Ohio St.3d 324, 2006-Ohio-6573, 859 N.E.2d 923, and *Mendenhall v. City of Akron*, 117 Ohio St.3d 33, 2008-Ohio-270, 881 N.E.2d 255, validate a municipality's photo-enforcement ordinance for speeding and red light traffic violations enacted pursuant to home-rule authority.

Ohio courts, including the Ohio Supreme Court, have already validated a municipality's home-rule authority to enact traffic photo-enforcement ordinances pursuant to home-rule authority despite jurisdiction challenges. The Eighth District Court of Appeals in *State of Ohio ex rel. Scott v. City of Cleveland*, 166 Ohio App.3d. 293, 2006-Ohio-2062, 850 N.E.2d 747 (8th Dist.), dismissed an original action seeking a writ of prohibition that made similar jurisdictional arguments concerning CCO 413.031 as those being advanced by Walker in this action. The Eighth District in *Scott* defined the relators' arguments in part as follows:

Relators argue that Codified Ordinance 413.031 violates a variety of provisions in the Ohio Constitution requiring equal protection, due process, and confrontation of witnesses, and also violates the separation-of-powers doctrine. **They assert that only the Cleveland Municipal Court has jurisdiction over speeding infractions in Cleveland.** They also contend that R.C. 4521.04 permits a municipal corporation or township to create a parking violations bureau "to handle all parking infractions," not moving violations such as speeding.

Id. at ¶ 11 (emphasis added). On appeal, the Ohio Supreme Court in *State of Ohio ex rel. Scott v. City of Cleveland*, 112 Ohio St.3d 324, 2006-Ohio-6573, 859 N.E.2d 923 at ¶ 2, recognized that the City of Cleveland's camera-based civil enforcement system was authorized by Cleveland City Council's enactment of CCO 413.031:

In July 2005, the City of Cleveland enacted Cleveland Codified Ordinances 413.031 ("Section 413.031"), which authorizes the use of automated-camera systems to impose civil penalties on the owners of cars that have been photographed by an automated-camera system. "This Civil enforcement system imposes monetary liability on the owner of a vehicle for failure of an operator to stop at a traffic signal displaying a steady red light indication or for failure of an operator to comply with speed limitation." Section 413.031(a). The imposition of liability under Section 413.031 is not deemed a conviction and is not made part of the car owner's driving record. Section 413.031(g). In addition, no points are assessed against the owner or driver. Section 413.031(i).

This Court affirmed the Eighth District Court of Appeal's dismissal of the writ of prohibition in *Scott* recognizing that "[b]ecause the city does not patently and unambiguously lack jurisdiction to impose these penalties, we affirm." *Id.* at ¶ 1.

Two years later, in *Mendenhall v. City of Akron*, 117 Ohio St.3d 33, 2008-Ohio-270, 881 N.E.2d 255, this Court, in addressing the City of Akron's similar traffic camera ordinance, held in its syllabus:

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, provided that the municipality does not alter statewide traffic regulations.

The decision of the Sixth Appellate District in *Walker v. City of Toledo*, 6th Dist. Ct. App. No. L-12-1056, 2013-Ohio-2809, is thus contrary to this Court's affirmation in *Scott* as well as its holding in *Mendenhall* that a municipality does not exceed its constitutional, home-rule authority by enacting an ordinance creating an automated system for enforcement of traffic laws

that provides for civil violations. In neither decision did this Court express any concern that such an ordinance usurps the jurisdiction of the municipal court and violates Article IV, Section 1 of the Ohio Constitution.

Moreover, in 2011 this Court was specifically presented with the issue whether CCO 413.031 violates Article IV, Section 1 of the Ohio Constitution pertaining to the jurisdiction of the courts in the unreported case of *State of Ohio ex rel. Anthony C. Christoff v. Earl B. Turner, et al.*, Ohio Supreme Court Case No. 11-0235. *Christoff* was an original action for preemptory and alternative writs of prohibition. (A copy of the *Christoff* complaint is attached as Apx. 011-039). After the parties briefed the issues, on May 4, 2011 this Court issued an entry granting respondents' motion to dismiss, a copy of which is attached hereto as Apx. 040. This Court's dismissal of *Christoff* is consistent with its holdings in *Scott* and *Mendenhall*.

The Sixth District's decision in *Walker* completely misses the mark because it wrongly decided that *Mendenhall* was limited to the specific issue whether a municipality could enact civil penalties for acts deemed criminal by the state pursuant to home-rule authority but otherwise had no effect on the constitutionality of Akron's ordinance. *Walker*, 2013-Ohio-2809 at ¶¶ 12-13. As noted in the dissenting opinion in *Walker*, *Mendenhall* is likewise applicable to the issue whether the ordinance violates the jurisdiction of the municipal court. A city, via its home-rule, constitutional authority can enact an ordinance that provides for "a *concurrent* administrative scheme that treats specified traffic violations as civil infractions." *Walker*, 2013-Ohio-2809 at ¶ 44 (Yarbrough, J., dissenting).

2. Municipalities have home-rule authority to establish an administrative process to resolve civil traffic camera violations without the General Assembly first creating an exception to the municipal court's jurisdiction under Ohio Revised Code Section 1901.20(A)(1).

A municipality does not first need the General Assembly to include an exception for speeding and red light offenses in Ohio Revised Code Section 1901.20(A)(1) before enacting a civil, photo-enforcement ordinance such as CCO 413.031 or TMC 313.12. It has home-rule authority to do so. The fact that the General Assembly did carve out civil parking infractions handled by a parking violations bureau pursuant to Ohio Revised Code Chapter 4521 is irrelevant to the analysis as that statute was enacted in 1982—25 years before *Mendenhall*.

The simple fact is that neither the City of Cleveland nor the City of Toledo usurped the jurisdiction of the municipal court by enacting CCO 413.031 and TMC 313.12, respectively. The ordinances, which are strictly civil in nature and involve the recognized exercise of “quasi-judicial” authority, merely supplement the municipal courts’ exclusive jurisdiction over criminal traffic violations involving speed and red light infractions. *See Mendenhall*, 2008-Ohio-270 at ¶ 37 (finding that the Akron traffic camera ordinance supplements state traffic law). The *Walker* majority completely ignored the impact of *Mendenhall* when it stated that “if the legislature intended to divest municipal courts of jurisdiction over some municipal ordinance, it would have enacted legislation to that effect. *Walker* at ¶ 35.

This Court’s decision in *Cupps v. City of Toledo*, 170 Ohio St. 144, 163 N.E.2d 385 (1959), holding that municipalities cannot regulate the jurisdiction of the courts, is not implicated. *Walker* places too much emphasis on *Cupps* as it is distinguishable from the controversy now before the Court. At issue in *Cupps* was whether a police officer could appeal to the court of common pleas an adverse decision of the Toledo Civil Service Commission. The city’s charter provided that the commission’s decision was final, and this was in direct conflict

with a provision of the Ohio Revised Code providing for an appeal from the civil service commission to the court of common pleas. The issue was not, as it is here, whether an initial administrative appeal is with the exclusive jurisdiction of the municipal court.

The City of Cleveland and City of Toledo were neither attempting to establish a “court” that would be exercising judicial power with the ordinance nor were they attempting to regulate the exclusive criminal jurisdiction of the municipal courts. Neither CCO 413.031 nor TMC 313.12 violate Article IV, Section 1 of the Ohio Constitution.

3. The Municipal Courts’ jurisdiction under Ohio Revised Code Section 1901.20(A)(1) as to the violation of “any ordinance” refers to criminal ordinances, not civil ordinances such as CCO 413.031.

The erroneous premise of the Sixth District’s decision in *Walker* is that the municipal court’s jurisdiction under R.C. 1901.20(A)(1) applies to “every” and “all” municipal ordinances within its territory, except for parking violations which are carved out from the courts’ jurisdiction. *Walker*, 2013-Ohio-2809 at ¶ 32. Ohio Revised Code Section 1901.20(A)(1), which is part of the statute granting municipal courts jurisdiction in certain criminal matters, provides, in pertinent part:

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 word “any” is not defined as used in Ohio Revised Code Section 1901.21(A)(1) or in general as set forth in Ohio Revised Code Chapter 1. “Any” can mean “every” and “all” (as noted by the court in *Walker* at ¶ 32), but it can also mean “one” or “some.” See *Webster’s Ninth New Collegiate Dictionary* (1983) (relevant pages attached as Apx. 041-042). *Black’s Law Dictionary* (5th Ed.) notes, “[The] [w]ord ‘any’ has a diversity of meaning and may be employed

to indicate 'all' or 'every' as well as 'some' or 'one' and its meaning in a given statute depends upon the context and subject matter of the statute." (relevant pages attached as App. 043-044). "Any' is a word of flexible meaning that must be interpreted in light of the context." *Motor Cargo, Inc. v. Board of Township Trustees of Richfield Township*, 67 Ohio Law Abs. 315, 117 N.E.2d 224, 227 (C.P. Summit Cty., 1953).

Thus, one must take into account the context of the word "any" as used in a statute or ordinance when interpreting its meaning. In *State of Ohio v. Gardner*, 118 Ohio St.3d 420, 2008-Ohio-2787, 889 N.E.2d 995 at ¶ 33, this Court found that it was appropriate to interpret "any criminal offense" as used in Ohio Revised Code Section 2911.11 defining "aggravated robbery" to encompass "every" and "all" criminal offenses recognized in Ohio. Courts construing the word "any" in the context of other statutes have, however, limited the scope of the word.

In *State of Ohio v. Peters*, 9 Ohio App.2d 343, 224 N.E.2d 916 (2d Dist., Montgomery Cty., 1965), the court construed the word "any" as used in Ohio Revised Code Section 4511.091 pertaining to posting of a sign advising that a radar was is in use to measure a vehicle's speed. The language at issues stated that the sign had to be posted in advance of such radar transmitter "or any component part of such mechanical or electrical timing device." The defendant, who was cited for speeding, argued that the word "any" meant "every" or "all" such that the warning sign had to be posted in advance of all components of the radar system. The appellate court rejected that argument and noted, "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 of the subject matter of the statute in which it

is used.” *Id.* at 344. Thus, based on the context of the statute, the warning sign had to be posted in advance of any one of the components of the system and not every component. *Id.*

In *State of Ohio ex rel. Barberis v. City of Bay Village*, 31 O. Misc. 203, 281 N.E.2d 209 (C.P. Cuyahoga Cty., 1971), the court construed language in the Bay Village City charter that “the electors of the municipality shall have the power to approve or reject at the polls any ordinance or resolution passed by Council.” In construing the phrase “any ordinance or resolution” to mean only ordinances and resolutions which are legislative in character and not administrative, the court noted that it was necessary to “[take] into consideration the inherent nature or purpose of the power, together with the intent indicated by the full text of the charter. . . .” 281 N.E.2d at 211-12. *See also, Money v. Dullison*, 56 Ohio Misc. 29, 383 N.E.2d 916 (Miamisburg Muni. Ct., 1978) (The term “any ordinance” in former Ohio Revised Code Section 4507.40(G)(1) on driver’s license suspension does not refer to all state statutes relating to suspension or revocation but “refers to any municipal ordinance which is patterned in the same verbiage and means the same as the type of suspension which exists under R.C. Sections 4507.38 and .39 [The specific statutes referenced in 4507.40(G)(1)].” 383 N.E.2d at 918.

When interpreting the phrase “any ordinance of any municipal corporation” as used in Ohio Revised Code Section 1901.20(A)(1), it is essential to recognize that Ohio Revised Code Section 1901.20 establishes the *criminal* jurisdiction of municipal courts. Municipal courts are courts of limited jurisdiction and the separate criminal and civil jurisdiction of municipal courts are established by separate statutes as was recognized in *State of Ohio v. Cowan*, 101 Ohio St.3d 372, 2004-Ohio-1583, 805 N.E.2d 1085, wherein the Ohio Supreme Court, in reviewing the jurisdiction of municipal courts, stated:

Municipal courts are creatures of statute and have limited jurisdiction. R.C. 1901.18 and 1901.20 provide for their creation, with the former statute relating to civil matters and the latter relating to criminal and traffic matters.

Id. at ¶ 11. *See also, Cheap Escape Co., Inc. v. Haddox, LLC*, 120 Ohio St.3d 493, 2008-Ohio 6323, 900 N.E.2d 601 at ¶18 (in analyzing the “within its territory” language of Ohio Revised Code Section 1901.18, this Court noted that Ohio Revised Code Section 1901.20 provides jurisdiction for criminal matters within the municipal court’s territory); *City of Columbus v. Miller*, 10th Dist. No. 09AP-770, 2010-Ohio-1384 at ¶ 31 (while considering whether the municipal court had jurisdiction for a decision that the defendant violated a Columbus ordinance relating to misconduct involving public transportation, the court noted that the Ohio Revised Code Section 1901.20(A) provides for jurisdiction with regard to criminal matters); *State of Ohio v. Human*, 56 Ohio Misc. 5, 8, 381 N.E.2d 969 (Crawford Muni. Ct., 1978) (“The extent of the criminal jurisdiction of a municipal court is specified in R.C. 1901.20 which provides, in part, ‘[t]he municipal court has jurisdiction of the violation of any ordinance of any municipal corporation within its territory and of any misdemeanor committed within the limits of its territory.’”); *State of Ohio v. Wise*, 4th Dist., Gallia Cty., No. 89-CA-19, 1990 WL 253037 at *3 (Dec. 13, 1990) (recognizing that R.C. 1901.20 sets forth criminal subject matter jurisdiction); *Olmsted Falls v. Kuzman*, 8th Dist., No. 40527, 1980 WL 354584 at nt. 2 (Feb. 22, 1980) (“Revised Code 1901.20 vests jurisdiction over certain criminal matters in municipal courts.”); *City of Cleveland v. Cleveland Electric Illuminating Co.*, 8th Dist., Nos. 41808, 41809, 41810 and 41811, 1981 WL 4710 at *19 (Dec. 22, 1981), *reversed on other grounds*, 4 Ohio St.3d 184, 448 N.E.2d 130 (1983) (“R.C. Section 1901.20 provides that a municipal court has jurisdiction over the violation of any criminal ordinance of any municipal corporation within its territory.”). And as most recently noted by Judge Yarbrough in his dissenting opinion in *Walker*,

“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.”). *Walker*, 2013-Ohio-2809 at ¶ 47 (Yarbrough, J., dissenting).

CCO 413.031 and TMC 313.12 instead “authorize the use of automated camera systems to impose *civil* penalties on the owners of cars that have been photographed by an automated-camera system.” *Scott*, 2006-Ohio-6573 at ¶ 2. The Ohio Supreme Court’s decision in *Cowan* was decided in 2004, at a time when traffic offenses were considered criminal. Speeding violations under Ohio Revised Code Section 4511.21 et seq. and violations of traffic lights under Ohio Revised Code Section 4511.13 provide for criminal penalties.

Consequently, when Ohio Revised Code Section 1901.20(A)(1) provides that the municipal court has jurisdiction of “any ordinance of any municipal corporation within its territory,” the ordinances at issue are criminal, including traffic violations with criminal penalties, not civil ordinances such as CCO 413.031 and TMC 313.12. Moreover, CCO 413.031 and TMC 313.12 do not violate the civil jurisdiction of municipal courts established by Ohio Rev. Code Section 1901.18 as there is no reference in 1901.18 conferring civil jurisdiction of municipal courts over violations of traffic ordinances.

In upholding the right of municipalities to enact camera enforcement ordinances levying civil penalties for moving violations, this Court in *Mendenhall* stated that “although the General Assembly has enacted a detailed statute governing criminal enforcement of speeding regulations, it has not acted in the realm of civil enforcement. Indeed, Ohio Revised Code Chapter 4511, which deals broadly with traffic laws, is silent on the matter.” *Id* at ¶ 32. Before *Mendenhall*, this Court had earlier recognized in considering Cleveland’s civil camera enforcement ordinance that “Section 413.031 authorizes an administrative proceeding that does not require compliance

with statutes and rules that, by their own terms, are applicable only to courts.” *Scott*, 2006-Ohio-6573 at ¶ 21. Moreover, even though the municipal court is not involved in the hearing process, those receiving a notice of violation nonetheless have “an adequate remedy in the ordinary course of law by way of the administrative proceedings set forth in Section 413.031 and by appeal of the city’s decision to the court of common pleas. *Scott*, 2006-Ohio-6573 at ¶ 24.

Proposition of Law No. 2: R.C. § 1901.20 does not confer exclusive jurisdiction over civil administrative violations of municipal codes to municipal courts.

1. Even if Ohio Revised Code Section 1901.20(A)(1) applies to violations of civil ordinances, the municipal courts’ jurisdiction is not exclusive to that of an administrative body authorized by a municipality to adjudicate civil violations pursuant to home-rule authority.

Even if Ohio Revised Code Section 1901.20(A)(1) grants jurisdiction to municipal courts to adjudicate violations of civil ordinances, the City of Cleveland and City of Toledo nonetheless had constitutional, home-rule authority to authorize an administrative process to handle the initial hearing of violations. This is so because Ohio Revised Code Section 1901.20(A) does not grant the municipal courts *exclusive* jurisdiction over ordinance violations.

“‘[E]xclusive 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 at ¶ 26. If the General Assembly wanted to vest the municipal courts with exclusive jurisdiction under 1901.20(A), it would have so provided. *State of Ohio ex rel., Banc One Corp. v. Walker*, 86 Ohio St. 3d 169, 171-171, 712 N.E.2d 742, 745 (1999) (“When the General Assembly intends to vest exclusive jurisdiction in a court or agency, it provides it by appropriate statutory language”).

In other statutes describing the jurisdiction of municipal courts, the General Assembly has provided for such exclusive jurisdiction. For example, in Ohio Revised Code Section 1901.181(A)(1), the municipal courts’ housing or environmental division, if so established, has

“exclusive jurisdiction” to enforce “any local building, housing, air pollution, sanitation, health, fire, zoning, or safety code, ordinance, or regulation.” In addition, if a municipal court has an environmental division, it has “exclusive original jurisdiction” to hear certain actions arising out of blighted parcels of land. Ohio Revised Code Section 1901.185(A). *See also*, Ohio Revised Code Section 2151.23(A) (providing that the juvenile court has exclusive original jurisdiction over enumerated provisions); Ohio Revised Code Section 2101.24(A)(1) (providing that the probate court has exclusive jurisdiction over enumerated provisions).

The General Assembly obviously recognized that municipalities could and would create administrative bodies to review and adjudicate various civil code violations with the appellate process proceeding via the courts of common pleas pursuant to Ohio Revised Code Section 2506.01. This is evident by review of Ohio Revised Code Section 1901.183(I) which provides that the environmental division of a municipal court, if so established, shall have jurisdiction: “In any review of appeal of any final order of any administrative officer, agency, board, department, tribunal, commission, or other instrumentality that relates to local building, housing, air pollution, sanitation, health, fire, zoning, or safety code, ordinance or regulation in the same manner and to the same extent as in similar appeal in the court of common pleas.” Such a provision would not be necessary if, as Walker argues, all ordinance violations must be heard by the municipal court.

By not vesting municipal courts with “exclusive jurisdiction” or even “original jurisdiction” for ordinance violations under Ohio Revised Code Section 1901.20(A), the General Assembly has allowed municipalities to enact their own civil enforcement mechanisms within the authority granted to them by home rule. A driver who receives a violation notice under CCO 413.031 still has access to the courts via an appeal from the Parking Violations Bureau to the

Cuyahoga County Court of Common Pleas pursuant to Ohio Revised Code Section 2506.01. To accept Walker's argument would strip the common pleas court of its appellate jurisdiction under Ohio Revised Code Section 2506.01 to review "every final order, adjudication, or decision by any office, tribunal, authority, board, commission, department, or other division of any political subdivision of the state." Accepting Walker's argument would also overwhelm the Cleveland and Toledo Municipal Courts with the initial hearing of ordinance violations when that clearly was not the intent of the cities in enacting the respective ordinances.

As noted above, a municipality does not need the General Assembly first to carve out an exception to Ohio Revised Code Section 1901.20(A) for red light and speeding offenses before the municipality can authorize the bureau to handle such offenses. Pursuant to *Mendenhall*, municipalities already have that authority via Article XVIII, Section 3 of the Ohio Constitution. Again, this is where the majority in *Walker* erred. It failed to recognize the impact of *Mendenhall*. As astutely pointed out by Judge Yarbrough in his dissenting opinion:

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.

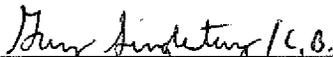
Walker at ¶58 (Yarbrough, J., dissenting) (emphasis in original).

This Court's decision in *Cupps* again is not implicated. Municipalities such as the City of Cleveland and City of Toledo in enacting such an ordinance: (1) have home-rule authority to do so and (2) are not regulating the exclusive jurisdiction of the municipal court.

IV. CONCLUSION

For the foregoing reasons, Amici Curiae Xerox and the City of Cleveland respectfully request that this Court reverse the decision of the Sixth District Court of appeals in favor of Plaintiff-Appellee Bradley Walker. This Court should hold that a municipality's home-rule authority to enact civil photo enforcement legislation does not deprive the municipal court of jurisdiction in violation of Article IV, Section 1 of the Ohio Constitution and Ohio Revised Code section 1901.20(A)(1).

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CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that he served a copy of the foregoing JOINT BRIEF OF AMICI CURIAE XEROX STATE & LOCAL SOLUTIONS, INC. AND CITY OF CLEVELAND IN SUPPORT OF APPELLANTS CITY OF TOLEDO AND REDFLEX TRAFFIC SYSTEMS, INC. to the following via U.S. Mail, postage prepaid on January 23, 2014:

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APPENDIX

Apx. 001-005	Cleveland Codified Ordinance § 413.031
Apx. 006-008	Toledo Municipal Code § 313.12
Apx. 009	Ohio Constitution Art. IV, § 1
Apx. 010	Ohio Rev. Code § 1901.20
Apx. 011-039	Complaint in <i>State of Ohio ex rel. Anthony C. Christoff, et al. v. Earl B. Turner, et al.</i> , Ohio Supreme Court Case No. 11-0235 (w/o attachments)
Apx. 040	May 4, 2011 Entry of the Ohio Supreme Court in <i>State of Ohio ex rel. Christoff</i> , No. 11-2035, granting respondents' motion to dismiss
Apx. 041-042	<i>Webster's Ninth New Collegiate Dictionary</i> , definition of "any"
Apx. 043-044	<i>Black's Law Dictionary</i> , definition of "any"

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

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

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

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

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

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

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

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

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

Locations

Shaker Boulevard at Shaker Square

Chester Avenue at Euclid Avenue

West Boulevard at North Marginal Road

Shaker Boulevard at East 116th Street

West Boulevard at I-90 Ramp

Chester Avenue at East 71st Street

East 55th Street at Carnegie Avenue

Woodland Avenue in the 4500 to 4700 block

Euclid Avenue between Cliffview Road and Torbenson Road

East 131st Street at Harvard Avenue

Carnegie Avenue at East 30th Street

Cedar Avenue at Murray Hill Road

Grayton Road at I-480 Ramp

Euclid Avenue at Mayfield Road

Warren Road at I-90 Ramp

Prospect Avenue at East 40th Street

East 116th Street at Union Avenue

Pearl Road at Biddulph Road

Whenever traffic is controlled by traffic control signals exhibiting different colored lights, or colored lighted arrows, successively one (1) at a time or in combination, only the colors green, red and yellow shall be used except for special pedestrian signals carrying words or symbols. The lights shall indicate and apply to drivers of vehicles and pedestrians as follows:

(a) *Green Indication.*

(1) Vehicular traffic facing a circular green signal may proceed straight through or turn right or left unless a sign at such place prohibits either such turn. But vehicular traffic, including vehicles turning right or left, shall yield the right-of-way to other vehicles and pedestrians lawfully within the intersection or an adjacent crosswalk at the time such signal is exhibited.

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

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

(b) *Steady Yellow Indication.*

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

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

(c) *Steady Red Indication.*

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

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

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

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

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

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

Carnegie Avenue at East 100th Street
 Carnegie Avenue at Martin Luther King Jr. Drive
 Memphis Avenue at Fulton Road
 Lakeshore Boulevard at East 159th Street
 St. Clair Avenue at London Road
 Clifton Boulevard between West 110th Street and West 104th Street
 Chester Avenue between East 55th Street and East 40th Street
 Woodland Avenue between East 66th Street and East 71st Street
 West Boulevard between I-90 Ramp and Madison Avenue
 Lee Road between Tarkington Avenue and I-480 Ramp
 I-90 and West 41st Street
 I-90 and West 44th Street
 Woodland Avenue at East 55th Street
 Harvard Avenue at Lee Road
 Orange Avenue at East 30th Street
 Chester Avenue at East 105th Street
 St. Clair Avenue at East 152nd Street
 Kinsman Road at East 93rd Street
 Lee Road at Miles Road
 Stokes Boulevard at Cedar Avenue
 West 25th Street at Clark Avenue
 I-490 at East 55th Street
 Pearl Road at Denison Avenue
 Broadview Road at Brookpark Road
 West 65th Street and Clark Avenue
 St. Clair Avenue at East 105th Street
 Woodland Avenue at East 30th Street
 Lorain Avenue at West 65th Street
 Broadview Road at Spring Road
 St. Clair Avenue at East 55th Street
 Puritas Avenue at West 150th Street
 Martin Luther King Jr. Drive at East 105th Street
 East 105th Street and Superior Avenue
 East 156th Street and Waterloo Road
 Neff Road and East 185th Street

The Director of Public Safety shall cause the general public to be notified by means of a press release issued at least thirty (30) days before any given camera is made fully operational and is used to issue tickets to offenders. Before a given camera issues actual tickets, there shall be a period of at least two (2) weeks, which may run concurrently with the thirty (30) day public-notice period, during which only "warning" notices shall be issued.

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

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

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

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

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

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

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

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

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

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

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

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

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

(m) *Program Oversight.* The Director of Public Safety shall oversee the program authorized by this section. The Director of Public Works shall oversee the installation and maintenance of

all automated cameras. An encroachment permit shall be authorized in the legislation in which locations are selected.

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

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

413.031(b) All violations	\$100.
413.031(c) Up to 24 mph over the speed limit:	\$100.
25 mph or more over the speed limit:	\$200.
Any violation of a school or construction zone speed limit:	\$200.

Late penalties: for both offenses, if the penalty is not paid within twenty (20) days from the date of mailing of the ticket to the offender, an additional twenty dollars (\$20.00) shall be imposed, and if not paid within forty (40) days from that date, another forty dollars (\$40.00) shall be imposed, for a total additional penalty in such a case of sixty dollars (\$60.00).

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

(1) "Automated traffic enforcement camera system" means an electronic system consisting of a photographic, video, or electronic camera and a vehicle sensor installed to work alone or in conjunction with an official traffic controller and to automatically produce photographs, video, or digital images of each vehicle violating divisions (b) or (c).

(2) "Lessee" includes renter and means:

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

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

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

(4) "Vehicle owner" or "owner" means the person or entity identified by the Ohio Bureau of Motor Vehicles, or registered with any other State vehicle registration office, as the registered owner of a vehicle, or in the case of a leased or rented vehicle, the "lessee".

(Ord. No. 1072-13, Passed 8-14-13, eff. 8-16-13)

☐ § 413.032 Costs of Collection of Unpaid Tickets for Photo-Enforced Offenses

In addition to any other fees or charges authorized by these Codified Ordinances in relation to the commission of a violation of division (b) or division (c) of Section 413.031, a person liable for the penalties established by division (o) of Section 413.031 may be assessed a fee under this section in an amount equal to the costs paid by the City to any vendor for the costs of collection of the debt.

(Ord. No. 1029-07, Passed 8-8-07, eff. 8-16-07)

☐ § 413.04 Lane-Use Control Signals Over Individual Lanes

When lane-use control signals are placed over individual lanes of a street or highway, such signals shall indicate and apply to drivers of vehicles as follows:

(a) *A Steady Downward Green Arrow.* Vehicular traffic may travel in any lane over which a green arrow signal is shown.

313.12. Civil penalties for automated red light system violations.

(a) Automated red light and speeding system/civil violation – General.

(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.

(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.

(3) Any citation for an automated red light and speeding system violation pursuant to this Section, known as a "Notice of Liability" shall:

- A. Be processed by officials or agents of the City of Toledo;
- B. Be forwarded by first-class mail or personal service to the vehicle's registered owner's address as given on the state's motor vehicle registration, and
- C. Clearly state the manner in which the violation may be appealed.

(b) Definitions.

(1) "Automated red light and speeding system" is the equivalent of "Traffic control signal monitoring device" or "Traffic control photographic system." Said system/device is 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.

(2) "In operation" means operating in good working condition.

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

(4) "Vehicle owner" is the person or entity identified by the Ohio Bureau of Motor Vehicles, or registered with any other State vehicle registration office, as the registered owner of a vehicle.

(5) "Responsible party" is the person or entity named per TMC Subsection (c)(4) A.

(c) **Offense.**

(1) The owner of a vehicle, or the party named per TMC Subsection 313.12 (c)(4)A, shall be liable for the penalty imposed pursuant to this Section if such vehicle crosses a marked stop line or the intersection plane at a system location when the traffic signal for that vehicle's direction is emitting a steady red light.

(2) The owner of a vehicle, or the party named per TMC Subsection 313.12 (c)(4)A, shall be liable for a penalty imposed pursuant to this Section if such vehicle is operated at a speed in excess of those set forth in TMC Section 333.03.

(3) It is prima-facie evidence that the person registered as the owner of the vehicle with the Ohio Bureau of Motor Vehicles (or with any other State vehicle registration office) was operating the vehicle at the time of the offense set out in subsection (c)(1) or (c)(2) above.

(4) Notwithstanding subsection (c)(3) above, the owner of the vehicle shall not be responsible for the violation if, within twenty-one (21) days from the date listed on the "Notice of Liability", as set forth in subsection (d)(4) below, the owner of the vehicle furnishes the Hearing Officer:

A. An affidavit by him, stating the name and address of the person or entity who leased, rented, or otherwise had the care, custody and control of the vehicle at the time of the violation; OR

B. A law enforcement incident report/general offense report from any state or local law enforcement agency/record bureau stating that the vehicle involved was reported as stolen before the time of the violation.

(5) An imposition of liability under the Section shall not be deemed a conviction as an operator and shall not be made part of the operating record upon whom such liability is imposed.

(6) Nothing in this Section shall be construed to limit the liability of an operator of a vehicle for any violation of subsection (c)(1) or (c)(2) herein.

(7) This Section shall not apply to violations involving vehicle collisions.

(d) Penalty; Administrative Appeal.

(1) Any violation of subsection (c)(1) herein shall be deemed a noncriminal violation for which a civil penalty of \$120.00 shall be assessed and for which no points authorized by Ohio R. C. 4507.021 ("Point system for license suspension") shall be assigned to the owner or driver of the vehicle.

(2) Any violation of subsection (c)(2) herein shall be deemed a noncriminal violation for which a civil penalty of \$120.00 shall be assessed and for which no points authorized by Ohio R.C. 4507.021 ("Point system for license suspension") shall be assigned to the owner or driver of the vehicle.

(3) The City of Toledo, via its Division of Transportation, Police Department, Law Department and Municipal Court Clerk 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.

(4) 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.

(5) The failure to respond to a Notice of Liability in a timely fashion as set forth in subsection (d)(4) of this section shall result in an additional penalty of twenty-five dollars (\$25.00).

(6) In lieu of assessing an additional penalty, pursuant to subsection (d)(5) above, the City of Toledo may (i) immobilize the vehicle by placing an immobilization device (e.g. a "boot") on the tires of the vehicle pending the owners compliance with the Notice of Liability, or (ii) impound the vehicle, pursuant to TMC Section 303.08(a)(12). Furthermore, the owner of the vehicle shall be responsible for any outstanding fines, the fee for removal of the immobilization device, and any costs associated with the impoundment of the vehicle.



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§ 4.01 In whom power vested

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

(Amended 7-7, 1968; Nov. 6, 1973; SJR No.30.)

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1901.20 Criminal and traffic jurisdiction.

(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 which the housing or environmental division is given jurisdiction by section 1901.181 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.

(2) A judge of a municipal court does not have the authority to dismiss a criminal complaint, charge, information, or indictment solely at the request of the complaining witness and over the objection of the prosecuting attorney, village solicitor, city director of law, or other chief legal officer who is responsible for the prosecution of the case.

(B) The municipal court has jurisdiction to hear felony cases committed within its territory. In all felony cases, the court may conduct preliminary hearings and other necessary hearings prior to the indictment of the defendant or prior to the court's finding that there is probable and reasonable cause to hold or recognize the defendant to appear before a court of common pleas and may discharge, recognize, or commit the defendant.

(C) A municipal court has jurisdiction of an appeal from a judgment or default judgment entered pursuant to Chapter 4521. of the Revised Code, as authorized by division (D) of section 4521.08 of the Revised Code. The appeal shall be placed on the regular docket of the court and shall be determined by a judge of the court.

Effective Date: 03-17-1998

ORIGINAL

IN THE SUPREME COURT OF OHIO

11-0235

State ex rel. Anthony C. Christoff,
471 Arrowhead Drive
Perryburg, Ohio 43551

and

State ex rel. William M. Goldstein,
on behalf of himself and all others
similarly situated
7630 Cairn Lane
Gates Mills, Ohio 44040

Relators,

v.

Earle B. Turner, Clerk of Courts,
Cleveland Municipal Court
and as Violations Clerk,
Cleveland Parking Violations Bureau
Justice Center - 1200 Ontario Street
Cleveland, Ohio 44113

and

Brian Mahon, Hearing Examiner,
Cleveland Parking Violations Bureau
Justice Center - 1200 Ontario Street
Cleveland, Ohio 44113

and

Verlin Peterson, Hearing Examiner,
Cleveland Parking Violations Bureau
Justice Center - 1200 Ontario Street
Cleveland, Ohio 44113

and

The City of Cleveland, Ohio,
601 Lakeside Ave., Room 106
Cleveland, Ohio 44114

CASE NO.

ORIGINAL ACTION

COMPLAINT FOR PEREMPTORY
AND ALTERNATIVE WRITS OF
PROHIBITION,

CLASS ACTION COMPLAINT FOR
PEREMPTORY AND
ALTERNATIVE WRITS OF
MANDAMUS, AND FOR
ATTORNEYS FEES AND COSTS

(With Affidavits Per S.Ct. Prac.
R. 10.4(B))

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FILED
FEB 10 2011
CLERK OF COURT
SUPREME COURT OF OHIO

and :

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

and :

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

Respondents. :

Introduction

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Parties

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

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

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

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

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

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

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

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

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

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

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

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

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

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

COUNT I
Writ of Prohibition

I. Jurisdiction of Municipal Courts.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

II. Appeals from municipal courts.

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

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

(Emphasis added.)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

c. "that a violation of the regulatory ordinance .. *shall not be considered a criminal offense for any purpose;*"

d. "that a person who commits the violation *shall not be arrested* as a result of the commission of the violation;"

e. "that the violation shall be handled pursuant to this chapter;" and

f. for which a *fine* is adopted which *shall not "exceed one hundred dollars, plus costs and other administrative charges, per violation."*

COUNT II
Writ of Mandamus

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PRAYER FOR PEREMPTORY WRITS

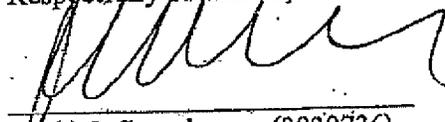
101. Because the pertinent facts are uncontroverted and it appears beyond doubt that Relators are entitled to the requested extraordinary writs, peremptory writs should be granted under the terms set out above. *State ex rel. Morenz v. Kerr*, 104 Ohio

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

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

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

Respectfully submitted,



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Attorneys for Relators

The Supreme Court of Ohio

FILED

MAY 04 2011

CLERK OF COURT
SUPREME COURT OF OHIO

State ex rel. Anthony C. Christoff, and William
M. Goldstein, on behalf of himself and all
others similarly situated

Case No. 2011-0235

IN MANDAMUS AND PROHIBITION

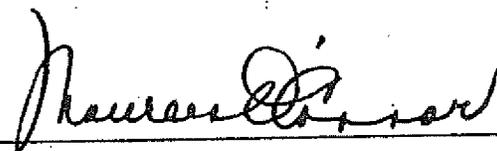
v.

ENTRY

Earle B. Turner, Clerk of Courts, et al.

This cause originated in this Court on the filing of a complaint for a writ of mandamus and prohibition.

Upon consideration of respondents' motion to dismiss, relators' motion for class certification and request for oral argument, it is ordered by the Court that the motion to dismiss is granted, and the motion for class certification and request for oral argument are denied. Accordingly, this cause is dismissed.



Maureen O'Connor
Chief Justice



WEBSTER'S
Ninth New
Collegiate
Dictionary

hat when brought together with its...
antiphonal (1533): the usu. ironic or humorous...
antiphony (14c): a book containing...

antiphony (14c): a book containing...
antiphony (1592): responsive alternation...
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antiphony (1847): of, relating to, or...
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antiphony (1947): one who advocates or enforces anti-...

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antiphony (1906): opposed or hostile to...
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antiphony (1838): absence or defective excretion...

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ant lion: larva, 2 adult

BLACK'S LAW DICTIONARY

Definitions of the Terms and Phrases of
American and English Jurisprudence,
Ancient and Modern

By

HENRY CAMPBELL BLACK, M. A.

Author of Treatises on Judgments, Tax Titles, Intoxicating Liquors,
Bankruptcy, Mortgages, Constitutional Law, Interpretation
of Laws, Rescission and Cancellation of Contracts, Etc.

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ANTICIPATORY OFFENSE

Anticipatory offense. A crime which has as its object a further crime, such as an attempt, a conspiracy, a solicitation, all of which are crimes in themselves.

Anticipatory repudiation. See **Anticipatory breach of contract.**

Anti-deficiency legislation. Statutes which are enacted to provide revenue when a budget deficiency is created.

Anti-Dumping Act. See **Dumping Act.**

Anti-dumping duty. Tariff, purpose of which is to prevent imports of goods for sale at a lower price than that charged in the country of origin. See **Dumping Act.**

Antigraphus /'æntigræfəs/. In Roman law, an officer whose duty it was to take care of tax money. A comptroller.

Antigraphy. A copy or counterpart of a deed.

Anti-lapse statute. Legislation enacted in most jurisdictions to provide for the testamentary passing of property to heirs and next of kin of the designated legatee or devisee if he dies before the testator, thus preventing a lapse of the legacy and the passing of such property through intestacy to the heirs and next of kin of the testator.

Anti manifesto. A term used in international law to denote a proclamation or manifesto published by one of two belligerent powers, alleging reasons why the war is defensive on its part.

Antinomia /'æntɒnɔːmiə/. In Roman law, a real or apparent contradiction or inconsistency in the laws. Conflicting laws or provisions of law; inconsistent or conflicting decisions or cases.

Antinomy /'æntɪnəmɪ/. A term used in logic and law to denote a real or apparent inconsistency or conflict between two authorities or propositions; same as *antinomia* (q.v.).

Antiqua custodia /'æntɪkwə kɛst(y)ʊmə/. In old English law, an export duty on wool, woollens, and leather, imposed during the reign of Edw. I. It was so called by way of distinction from an increased duty on the same articles, payable by foreign merchants, which was imposed at a later period of the same reign and was called "*custuma nova*."

Antiquare /'æntɪkwəri/. In Roman law, to restore a former law or practice; to reject or vote against a new law; to prefer the old law. Those who voted against a proposed law wrote on their ballots the letter "A," the initial of *antiquo*, I am for the old law.

Antiqua statuta /'æntɪkwə stətjʊwɔː/. Also called "*Vetera Statuta*." English statutes from the time of Richard I to Edward III. See **Nova statuta.**

Antiquum dominicum /'æntɪkwəm dɒmɪnɪkəm/. In old English law, ancient demesne.

Anti-Racketeering Act. Federal act prohibiting robbery, extortion, or other unlawful interference with interstate commerce. See **Hobbs Act.**

Antithetarius /'æntɪθətəriys/. In old English law, a man who endeavors to discharge himself of the crime of which he is accused, by retorting the charge on the accuser. He differs from an approver in this: that the latter does not charge the accuser, but others.

Antitrust acts. Federal and state statutes to protect trade and commerce from unlawful restraints, price discriminations, price fixing, and monopolies. Most states have mini-antitrust acts patterned on the federal acts. The principal federal antitrust acts are: Sherman Act (1890); Clayton Act (1914); Federal Trade Commission Act (1914); Robinson-Patman Act (1936). See **Boycott**; **Combination in restraint of trade**; **Price fixing**; **Restraint of trade**; **Rule (Rule of reason)**.

Antitrust Civil Process Act. Federal statute permitting antitrust action by way of a petition in U.S. District Court for an order for enforcement of law. 15 U.S.C.A. § 1314.

Anxiety. An unpleasant affective state with the expectation but not the certainty of something happening; sometimes manifested as a sense of fear, poorly understood by the subject, which arises without justifiable cause; anxious state may have overtones of "impending" danger rather than present danger. See **Phobia**.

Any. Some; one out of many; an indefinite number. One indiscriminately of whatever kind or quantity. **Federal Deposit Ins. Corporation v. Winton, C.C.A. Tenn., 131 F.2d 780, 782.** One or some (indefinitely). **Siegel v. Siegel, 135 N.J.Eq. 5, 37 A.2d 57, 58.** "Any" does not necessarily mean only one person, but may have reference to more than one or to many. **Doherty v. King, Tex.Civ.App., 183 S.W.2d 1004, 1007.**

Word "any" has a diversity of meaning and may be employed to indicate "all" or "every" as well as "some" or "one" and its meaning in a given statute depends upon the context and the subject matter of the statute. **Donohue v. Zoning Bd. of Appeals of Town of Norwalk, 155 Conn. 550, 235 A.2d 643, 646, 647.**

It is often synonymous with "either", "every", or "all". Its generality may be restricted by the context; thus, the giving of a right to do some act "at any time" is commonly construed as meaning within a reasonable time; and the words "any other" following the enumeration of particular classes are to be read as "other such like," and include only others of like kind or character.

A.O.C. Anno orbis conditi, the year of the creation of the world.

A.P.A. Administrative Procedure Act.

A pais. To the country; at issue.

Apanage /'æpənəj/. In old French law, a provision of lands or feudal superiorities assigned by the kings of France for the maintenance of their younger sons. An allowance assigned to a prince of the reigning house for his proper maintenance out of the public treasury.

Apartment house. A building arranged in several suites of connecting rooms, each suite designed for independ-

dent house
veniences,
common
Sometimes

**Apalsatio /a
pact.**

A.P.C. Alien

**A.P.C.N. A
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**Apex. The
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