

IN THE SUPREME COURT OF OHIO

Bradley Walker,	:	Supreme Court Case No. 13-1277
	:	
Plaintiff-Appellee,	:	On Appeal from the Lucas
	:	County Court of Appeals,
v.	:	Sixth Appellate District
	:	(Case No. L-12-1056)
City of Toledo, <i>et al.</i> ,	:	
	:	
Defendants-Appellants.	:	

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MERIT BRIEF OF APPELLANT REDFLEX TRAFFIC SYSTEMS, INC.

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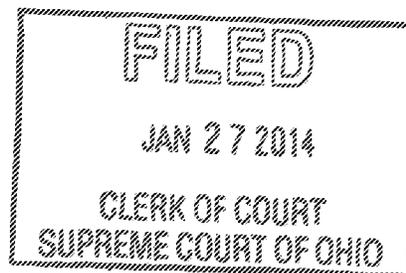
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## INTRODUCTION

The Sixth District Court of Appeals has issued an extraordinary decision in this case -- that no Ohio city can have an administrative program to enforce its own ordinances; and that all ordinance-enforcement programs have to be administered originally and exclusively within a municipal court.

The specific issue in this case concerns whether chartered municipalities have the constitutional right to conduct initial administrative hearings in furtherance of their *civil* traffic photo-enforcement programs pursuant to their "home rule" powers established under Article XVIII, §§ 3 and 7 of the Ohio Constitution. (Appendix "App" Exhibit B.) The court of appeals held municipalities do not have this power; that municipal courts have *exclusive* jurisdiction and must hear and decide citations issued under those programs pursuant to Article IV, § 1 of the Ohio Constitution and R.C. 1901.20(A).

This holding is inconsistent with a line of cases from this Court that affirm the home-rule authority of municipalities to maintain and administer civil automated traffic enforcement ordinances that are not inconsistent with state traffic laws, including conducting hearings as part of administration of those ordinances. *See, e.g., Mendenhall v. City of Akron*, 117 Ohio St.3d 33, 2008-Ohio-270, 881 N.E.2d 255; *State ex rel. Scott v. City of Cleveland*, 112 Ohio St.3d 324, 2006-Ohio-6573, 859 N.E.2d 923. These cases are consistent with the notion that chartered home-rule cities may implement traffic photo-enforcement programs that have an administrative structure to review citations issued under those programs -- subject to further administrative appeal.

This is an important issue with far-reaching implications. Not only does this case affect the almost two dozen Ohio cities that have automated traffic photo-enforcement programs.<sup>1</sup> It affects all Ohio cities. If left to stand, the court of appeals' decision *would necessarily render all administrative hearings by local boards and commissions unconstitutional as well*. Issues that have been commonly handled by a local board or commission would have to be filed originally and exclusively in municipal courts. Cities would lose the ability to self-govern.

That is, Ohio cities have many administrative enforcement programs that do not begin in the municipal court. Municipal courts would be flooded and grind to a halt if enforcement of zoning, nuisance, taxicab regulation, signage enforcement, licensing, sanitary, and other purely local issues had to *start* in the courts. That is the legal result of the Sixth District's decision.

#### STATEMENT OF FACTS

##### A. Toledo's Automated Photo-Enforcement System for Traffic Violations.

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

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<sup>1</sup> Akron, Ashtabula, Campbell, Chillicothe, Cleveland, Columbus, Dayton, East Cleveland, Garfield Heights, Hamilton, Heath, Middletown, Northwood, Parma, Parma Heights, Richmond Heights, Springfield, Steubenville, Toledo, Trotwood, West Carrolton, and Youngstown all have, or have had, such programs. See, e.g., <http://www.iihs.org/iihs/topics/laws/printablelist?print-view> (access on January 22, 2014).

An offense occurs when a “vehicle crosses a marked stop line or the intersection plane at a system location when the traffic signal for that vehicle’s direction is emitting a steady red” or when a “vehicle is operated at a speed in excess of those set forth in TMC Section 333.03.” T.M.C. 313.12(c)(1), (2). A citation for violation of the ordinance is processed by officials or agents of the City of Toledo. *Id.* at 313.12(a)(3)(A). The fact that a person is the registered owner of a vehicle depicted in the image is “prima facie evidence” that the owner was driving at the time of the violation. *Id.* at 313.12(c)(3).

When a violation occurs, a “Notice of Liability” is “forwarded by first-class mail or personal service to the vehicle’s registered owner’s address as given on the state motor vehicle registration,” and “states the manner in which the violation may be appealed.” *Id.* at 313.12(a)(3)(B), (C). The recipient then has three options: (1) pay the civil penalty, (2) submit evidence of one of the listed exceptions, or (3) request a hearing within 21 days of issuance of the Notice of Liability. *Id.* at 313.12(c)(4), (d)(4). The vehicle owner is not responsible for the violation upon furnishing the Hearing Officer with either (1) an affidavit stating the name and address of the person or entity who leased, rented, or otherwise had care, custody, and control of the vehicle at the time of the violation, or (2) a law enforcement incident report/general offense report showing that the vehicle was reported stolen before the violation. *Id.* at 313.12(c)(4)(A) and (B).

The ordinance empowers Toledo to conduct administrative hearings for those requesting an appeal challenging the Notice of Liability. *Id.* at 313.12(d)(4). If the vehicle owner requests a hearing, he or she may present other defenses and the Hearing Officer considers evidence presented by the appellant as to why he or she is not liable for the violation. As the photo-enforcement system is civil in nature, the City has the burden to prove the violation by a

preponderance of the evidence. See *Cincinnati Bar Ass'n v. Young*, 89 Ohio St.3d 306, 314, 731 N.E.2d 631 (2000). If the City prevails, the infraction results in a civil penalty of \$120. T.M.C. 313.12(d)(1), (2). Because the fine is civil in nature, no points are assessed to the driver's record and no report is sent to the owner's insurance company. *Id.*

A hearing officer's decision in favor of Toledo *is not a judgment*, but rather must be enforced by means of a subsequent civil action or other means provided by the Revised Code. *Id.* at 313.12(d)(3) ("The City of Toledo, . . . may establish procedures for the collection of the civil penalties imposed herein, and may enforce the penalties by a civil action in the nature of a debt."); 313.12(d)(4) ("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"). That is, if the City wants to enforce collection by way of garnishment or attachment, it has to file a lawsuit in the municipal court like any other creditor. And if the defendant wants to further appeal, Revised Code 2506.01 et seq. provides a mechanism to pursue an appeal in the common pleas court.

**B. Walker Receives A Notice of Liability and Voluntarily Pays the Civil Penalty.**

A vehicle owned by Appellee Bradley Walker, a resident of Paducah, Kentucky, was issued a Notice of Liability for violation of T.M.C. § 313.12. Walker voluntarily paid the \$120 civil penalty without contesting his Notice of Liability.

**C. Walker Files Suit Against Toledo and Redflex; Suit Dismissed.**

On February 24, 2011, Appellee filed his Class Action Complaint against the City of Toledo and Redflex Traffic Systems, Inc. ("Redflex"), a vendor that provides equipment and administrative services in support of the photo-enforcement program. Appellee's Complaint admitted that a vehicle he owns was cited for a civil speeding violation under T.M.C. 313.12 and that he received a Notice of Liability. Appellee also admits that he voluntarily paid the \$120 civil penalty for the violation. His Complaint seeks a declaration that T.M.C. 313.12 is

unconstitutional, class action status, and disgorgement of all civil penalties paid under T.M.C. 313.12, by Appellee and the putative class he seeks to represent.

On May 31, 2011, both the City of Toledo and Redflex filed motions to dismiss. Appellee opposed the motions to dismiss. On February 1, 2012, the trial court issued its Opinion and Judgment Entry granting Toledo and Redflex's motions to dismiss. (App. Exhibit C.) Applying this Court's decision in *Mendenhall*, 117 Ohio St.3d 33, the trial court held that Toledo was well within its home-rule authority to establish an automated system for enforcement of traffic laws that imposes civil liability upon violators. *See* Trl. Ct. Opinion, at 10 (App. p. 15). The trial court rejected Appellee's argument that R.C. 1901.20(A)(1) vests *exclusive* jurisdiction over photo-enforcement violations with the municipal court. *Id.* at 11-12 (App. p. 16-17).

The trial court also rejected Appellee's assertion that T.M.C. 313.12 was invalid because it delegated to the Toledo Police unfettered power without providing for any administrative process for enforcement. *See* Trl. Ct. Opinion at 13 (App. p. 18). Specifically, Appellee complained that the ordinance does not specify certain items in relation to the hearing, including whether parties may call witnesses, issue subpoenas, conduct discovery, and the like. The trial court rejected this argument, relying in part on *Posner v. City of Cleveland*, 188 Ohio App.3d 421, 2010-Ohio-3091, 935 N.E.2d 882 (2010). It held that that T.M.C. 313.12 did not violate the Due Process Clause because an administrative appeals process was available under R.C. Chapter 2506, and this process allowed the common pleas court to consider the record below as well as *any new or additional evidence submitted*. *Id.* at 13-14 (App. pp. 18-19).

**D. Sixth District Court of Appeals Reverses, Finding T.M.C. 313.12 Unconstitutional.**

On January 5, 2012, Appellee filed a Notice of Appeal, and on June 28, 2013, the Sixth District Court of Appeals reversed the trial court, finding in a 2-1 decision that T.M.C. 313.12 was unconstitutional and a nullity. (App. Exhibit D.)

In its Opinion, the majority declined to apply this Court's decision in *Mendenhall. Walker v. City of Toledo*, 6th Dist. Lucas No. L-12-1056, 2013-Ohio-2809, ¶¶ 12-13. It found that Ohio cities have no home-rule authority to conduct pre-suit administrative hearings and, in fact, the Ohio Constitution and R.C. 1901.20(A)(1) forbade Toledo from conducting such hearings. *Id.* at ¶ 35. The court of appeals accepted Appellee's argument that because "[t]he municipal court has jurisdiction of the violation of any ordinance of any municipal corporation within its territory . . . ." Toledo did not have the authority to enact T.M.C. 313.12 and provide for an administrative process to enforce its automated photo traffic enforcement system. *Id.* at ¶¶ 31-36.

In his minority opinion, Judge Yarbrough found R.C. 1901.20 inapplicable to a civil traffic enforcement ordinance, which "exists independently of its criminal counterparts under municipal and state law." *Walker*, 2013-Ohio-2809, ¶¶ 45-47, 59-60. He also relied upon *Mendenhall* to conclude that R.C. 1901.20 did not grant *exclusive* jurisdiction to the municipal court, and thus did not strip Toledo of its home-rule authority to maintain a "*concurrent* administrative scheme that treats specified traffic violations as civil infractions." *Id.* at ¶¶ 44, 53-58 (emphasis in original). Judge Yarbrough would have affirmed the judgment of the trial court. *Id.* at ¶ 61. Redflex filed a Notice of Appeal (App. Exhibit E) and this Court accepted jurisdiction.

## ARGUMENT

*Proposition of Law No. 1: Ohio municipalities have home-rule authority to maintain pre-suit administrative proceedings, including conducting administrative hearings, in furtherance of their civil traffic enforcement ordinances.*

1. *Scott, Mendenhall, Christoff, and Turner demonstrate that a city has home-rule authority to conduct pre-suit administrative proceedings in furtherance of their civil automated photo traffic enforcement ordinances.*

T.M.C. 313.12 enjoys a presumption of constitutionality. See *State ex rel. Scott*, 112 Ohio St.3d 324, at ¶ 18; *Klein v. Leis*, 99 Ohio St.3d 537, 2003-Ohio-4779, 795 N.E.2d 633 ¶ 4, citing *Arnold v. Cleveland*, 67 Ohio St.3d 35, 38, 616 N.E.2d 163 (1993). The power to invalidate an ordinance or statute “is a power to be exercised only with great caution and in the clearest of cases.” *Buckley v. Wilkins*, 105 Ohio St.3d 106, 2005-Ohio-2166, 826 N.E.2d 811, ¶ 18, citing *Yanjik v. Akron Dept. of Health, Hous. Div.*, 101 Ohio St.3d 106, 2004-Ohio-357, 802 N.E.2d 632, ¶ 16.

Where a legislative act is capable of more than one interpretation, one of which would render the act constitutional and the other one would render the act unconstitutional, “the court should adopt the former, so as to bring the act into harmony with the Constitution.” *State ex rel. Dickman v. Defenbacher*, 164 Ohio St. 142, 149, 128 N.E.2d 59, 64 (1955); see also *Hausman v. Dayton*, 73 Ohio St.3d 671, 678, 653 N.E.2d 1190 (1995). This presumption applies equally to ordinances. *State ex rel. Scott*, 112 Ohio St.3d 324, ¶ 18.

This Court has affirmed the home-rule right of cities to conduct civil traffic enforcement. In *State ex rel. Scott v. City of Cleveland*, 166 Ohio App.3d 293, 2006-Ohio-2062, 850 N.E.2d 747, the relator sued to invalidate Cleveland’s automated photo traffic enforcement ordinance, alleging in part that “only the Cleveland Municipal Court has jurisdiction over speeding infractions in Cleveland.” *Id.* at ¶ 11. The Eighth District Court of Appeals dismissed the

Complaint, holding that Cleveland was not “patently and unambiguously without jurisdiction to impose civil liability for speeding violations” because of its home-rule powers to regulate on the subject of local traffic. *Id.* at ¶¶ 11, 17-19.

This Court affirmed the dismissal of *Scott*, recognizing Cleveland’s home-rule right to regulate local traffic and holding that Cleveland did not “patently and unambiguously lack jurisdiction” to enforce its civil speeding enforcement ordinance. *See State ex rel. Scott*, 112 Ohio St.3d 324, at ¶¶ 1, 19, 24. Of course, if the ordinance in *Scott* did not “patently and unambiguously” cause the city to exceed its jurisdictional boundaries, then it must have been capable of more than one interpretation. And if it was capable of more than one interpretation, then it had to be construed in a way that rendered it constitutional. *State ex rel. Dickman*, *supra*; *Hausman*, *supra*. The Toledo ordinance is no different.

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

The issue of the municipal court’s jurisdiction to hear cities’ civil photo enforcement ordinances was again presented to this Court in two cases filed in 2011: *State ex rel. Christoff v. Turner*, Ohio Supreme Court Case No. 11-0235 and *State ex rel. Turner v. Brown*, Ohio Supreme Court Case No. 11-0275. Relators in those cases filed original actions seeking writs of mandamus and prohibition to invalidate Cleveland and Columbus’ automated photo traffic enforcement ordinances.

Relators in *Christoff* and *Turner* made the same argument as Appellee in this case: that the General Assembly vested the municipal courts with jurisdiction over the violation of any ordinance, citing R.C. 1901.20(A)(1), and that Cleveland and Columbus were therefore patently without jurisdiction to conduct hearings in furtherance of their civil traffic ordinances. This Court dismissed both of these cases, presumably concluding Cleveland and Columbus were not “patently and unambiguously” acting without jurisdiction when they conducted administrative hearings under their photo traffic enforcement ordinances.

The Sixth District held *Mendenhall*’s home-rule analysis inapposite to this case and ignored *Scott*, *Christoff*, and *Turner* altogether. But a city’s home-rule authority to implement a pre-suit civil traffic enforcement ordinance – one that included an administrative hearing feature – was before this Court in all of those cases, thereby making them relevant to this question.

The Sixth District’s decision failed to recognize that a municipality does not exceed its home-rule authority by providing for an administrative hearing in furtherance of its *civil* photo enforcement ordinance. As Judge Yarbrough wrote in his dissenting opinion, *Mendenhall* applies to allow a city, via its home-rule authority, to provide for “a concurrent administrative scheme that treats specified traffic violations as civil infractions.” *Walker*, 2013-Ohio-2809, at ¶ 44 wa(Yarbrough, J., dissenting). Toledo’s authority does not contravene *statute*, but in fact is consistent with its *constitutional* right to exercise police powers and regulate local traffic.

2. Toledo has home-rule authority to administer its own civil traffic ordinance, such jurisdiction being concurrent with municipal court’s authority, which is not exclusive.

At the root of the court of appeals’ error is its misinterpretation of the word “any” in R.C. 1901.20(A)(1):

“The municipal court has jurisdiction of the violation of *any* ordinance of any municipal court within its territory . . .” (Emphasis added.)

The word “any” is not a defined term as used in R.C. 1901.20. The majority of the Sixth District relied upon Merriam-Webster’s Dictionary to conclude that the “common usage” of the word “any” is “every—used to indicate one selected without restriction” and “all—used to indicate a maximum or whole.” *Walker*, 2013-Ohio-2809, ¶ 32.

But Black’s Law Dictionary notes that the word “any” has a “diversity of meaning that may be employed to indicate ‘all’ or ‘every,’ as well as ‘some’ or ‘one.’ Its meaning in a given statute depends on the context and subject matter of the statute.” *Black’s Law Dictionary* 94 (6th ed.); see also *Webster’s Encyclopedic Unabridged Dictionary*, 68 (1997 ed.) (“any” means “one, a, an, or some”; “one or more without specification or identification”; “any single or any ones”; “syn. See some”).

Several Ohio courts, including this Court, have likewise construed “any” in a more limited fashion. See, e.g., *State ex rel. Purdy v. Clermont Cty. Bd. of Elections*, 77 Ohio St.3d 338, 340, 673 N.E.2d 1351 (1997) (“‘any’ means one or some indiscriminately of whatever kind”); *State of Ohio v. Peters*, 9 Ohio App.2d 343, 224 N.E.2d 916 (2nd Dist. 1965) (in construing R.C. 4511.091, the court rejected an argument that the preferred interpretation of the word “any” means “every” or “all” and held that a warning sign had to be posted in advance of any *one* of the components of the system, not every component); *State ex rel. Barberis v. City of Bay Village*, 31 O. Misc. 203, 281 N.E.2d 209 (C.P. 1971); *Money v. Dullison*, 56 Ohio Misc. 29, 383 N.E.2d 916, 918 (M.C. 1978).

After wrongly concluding that “any” had to mean “every” and “all,” the court of appeals adopted a phenomenal *non sequitur*. It concluded that if a municipal court “has jurisdiction of the violation of any [every] ordinance,” it must mean that it has *exclusive* jurisdiction. *Walker*, 2013-Ohio-2809, ¶¶ 31-32. This makes no sense. Regardless of whether municipal courts have

jurisdiction over “any,” “every,” or “all” municipal ordinances, it does not mean that such jurisdiction (1) is exclusive, (2) cannot be preceded by a pre-suit administrative process, and (3) cannot be exercised by municipalities to “regulate on the subject of local traffic,” pursuant to their constitutional home-rule right. *Scott*, 112 Ohio St.3d 324, ¶ 19.

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

That is, the use of the word “any” in R.C. 1901.20 only means that the municipal court is *not excluded* from “any” matter involving an ordinance violation. The purpose is not to exclude cities from having administrative proceedings governing ordinance violations, but only to provide that the municipal court is not excluded. If “any” matter comes to the municipal court involving an ordinance violation, R.C. 1901.20 only makes clear that the municipal court can hear it. This is the interpretation of 1901.20 that renders the ordinance constitutional. The Sixth District went out of its way to find a definition that rendered the ordinance unconstitutional, which it was not permitted to do. *State ex rel. Dickman*, *supra*; *Hausman*, *supra*.

This Court has held that “exclusive jurisdiction is a court’s power to adjudicate an action or class of actions to the exclusion of all other courts.” *Johns v. University of Cincinnati Medical Ctr.*, 101 Ohio St.3d 234, 2004-Ohio-824; 804 N.E.2d 19, ¶ 26. If the General

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

Evidence that the legislature did not intend to give municipal courts *exclusive* jurisdiction over municipal code violations is found only a few pages before R.C. 1901.20. In R.C. 1901.181(A)(1), the General Assembly provided for “exclusive” jurisdiction of the municipal court’s housing or environmental division for violations of “local building, housing, air pollution, sanitation, health, fire, zoning, or safety code, ordinance, or regulation.” The legislature has similarly vested “exclusive original jurisdiction” in the environmental division (where established) of a municipal court to hear certain actions arising out of blighted parcels of land. *See* R.C. 1901.185(B). *See also* R.C. 2101.24(A) (exclusive jurisdiction of probate court); and R.C. 2151.23(A) (exclusive jurisdiction of juvenile court).

The legislature knows how to use the word “exclusive” when it wants to. Here, it did not use that word. *See State ex rel. Carter v. Wilkinson*, 70 Ohio St.3d 65, 66, 637 N.E.2d 1, 2 (1994) (“It is the duty of the court to give effect to the words used and not to insert words not used.”).

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

3. The court of appeals' decision has far-reaching implications, including that cities will not be permitted to conduct administrative proceedings in furtherance of its own ordinances.

The fact that R.C. 1901.20(A)(1) does not make exclusive the municipal court's jurisdiction over ordinance violations means that cities have concurrent home-rule authority to conduct administrative proceedings, including administrative hearings, in furtherance of their ordinances. Indeed, the legal implication of the court of appeals' decision goes far beyond red-light cameras. If the decision became the settled law in Ohio, it would render all administrative hearings conducted by municipal boards and commissions -- hearings to determine ordinance violations -- unconstitutional.

Enforcement boards created by ordinance would have no authority to conduct hearings because such hearings would have to *start* in a municipal court. Taxicab licensing boards could not revoke taxicab licenses for violations of taxicab ordinances. Safe neighborhood review boards could not issue notices of violation of nuisance ordinances. Cities would have to go straight to court and sue them. According to the Sixth District, all of these proceedings have to *start* in the municipal court because it has exclusive jurisdiction over the violation of "any" ordinance.

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

The court of appeals attempted to get around this problem by stating that "*most* of the board[s] [Toledo] enumerates are the creations of express legislation." *Walker*, 2013-Ohio-2809,

¶ 35 (emphasis added). It noted that boards of zoning appeals are created by R.C. § 713.11, planning commissions are created by 713.01, and boards of tax appeals are created by R.C. 718.11. *Id.* Then the court said: “These administrative bodies derive their authority from the General Assembly through enabling acts that patently carve out exceptions to municipal court review.” *Id.* But there are two problems with this position.

First, it is an incorrect statement of law. Chartered municipalities do not derive their authority to create boards and commissions from the legislature; they derive that authority from the Home-Rule Amendment to the Ohio Constitution. *See Bazell v. Cincinnati*, 13 Ohio St.2d 63, 233 N.E.2d 864 (1968) (“it is argued that a city is limited in its activities to those specified in the Revised Code. However, by reason of §§ 3 and 7 of Article XVIII of the Ohio Constitution, a charter city has *all* powers of local self-government, . . .”) (Emphasis in original.); *Esarco v. Brown*, 7th Dist. Mahoning No. 08-MA-47, 2008-Ohio-4517 (mandamus action to force a council member to vacate his elected office because he held other paid employment with the county, in violation of R.C. 705.12, was dismissed because the charter of the city, a home rule city, and not Title VII, set the qualifications for holding office); *see also State ex rel. Lockhart v. Boberek*, 45 Ohio St.2d 292, 294, 345 N.E.2d 71 (1976) (the clear meaning of R.C. 705.91 is that the provisions of R.C. 705.92 go into effect only to the extent that they have been adopted by the voters of a municipal corporation as part of a home-rule charter.”)

Second, the court said “most” boards are creatures of state statute, but ignored those boards *not* expressly created by statute, such as Toledo’s Taxicab Review Board. *Walker*, 2013-Ohio-2809, ¶ 35. If the court is correct, then hearings held by that board—and boards like it that are not created by state statute—are likewise unconstitutional and always have been. It raises the specter of cabbies stripped of their licenses by the board now suing the city for lost income.

Another example: the City of Columbus has a Refuse Collection Code which establishes an administrative enforcement program very similar to traffic photo-enforcement programs. Columbus City Code Ch. 1303. It includes ordinances governing the “storage and disposal of waste” to be complied with by residents, businesses, and haulers. *Id.* at 1303.021, 1303.022, and 1303.025. It authorizes the public service director to issue a “notice of violation” and describes the content of the notice which includes a description of the right to appeal within 20 days of receiving the notice. *Id.* at 1303.05. It establishes a “refuse collection appeals board” to hear appeals and “conduct an adjudication hearing.” *Id.* at 1303.09. It then directs further appeals to “the Franklin County Municipal Court Environmental Division.” *Id.* But if Sixth District’s ruling becomes the law of Ohio, this entire administrative system governing refuse storage and collection is unconstitutional because the entire administrative process has to *begin* in the municipal court under R.C. 1901.20(A)(1).

The court of appeals is not only wrong, but it has set dangerous precedent that could lead to immense disruptions in city administrations throughout Ohio.

**Proposition of Law No. 2:** *T.M.C. 313.12 provides for the requisite level of due process required by the Due Process Clause of the United States Constitution.*

Appellee’s Complaint also claimed that T.M.C. 313.12 is unconstitutional because the Toledo Police failed to establish an administrative appeal process separate from the ordinance, and that this violated the Due Process Clause because it did not provide notice and a meaningful opportunity to be heard. Specifically, Appellee argues there is no written procedure allowing parties to call and cross-examine witnesses, issue subpoenas, and conduct discovery.

Though the trial court rejected this argument because these protections were already in the ordinance or provided for by R.C. 2506.01 et seq. (App. pp. 18-20), the Sixth District

reversed and remanded, summarily holding that the lack of due process “would seem problematic.” *Walker*, 2008-Ohio-2809, at ¶ 39.

But Toledo’s ordinance already provided notice and an opportunity to be heard with respect to any civil citation issued under the automated system. That is all that due process requires. See *United Tel. Credit Union v. Roberts*, 115 Ohio St.3d 464, 2007-Ohio-5247, 875 N.E.2d 927, ¶ 13, citing *Armstrong v. Manzo*, 380 U.S. 545, 552, 85 S.Ct. 1187, 14 L.Ed.2d 62 (1965) (fundamental requirement of due process is the opportunity to be heard) and *Ohio Ass’n Pub. Sch. Emp., AFSCME, AFL-CIO v. Lakewood City Sch. Dist. Bd. Educ.*, 68 Ohio St.3d 175, 1994-Ohio-354, 624 N.E.2d 1043; *Jones v. Flowers*, 547 U.S. 220, 223, 126 S.Ct. 1708, 164 L.Ed.2d 415 (2006) (due process includes notice and opportunity to be heard appropriate to the nature of the case).

Indeed, the ordinance already provides sufficient process:

- The City of Toledo has adopted a civil enforcement system for red light and speeding camera system violations as outlined in the ordinance. T.M.C. 313.12(a)(1);
- The City of Toledo Division of Transportation, the Toledo Police Department, and the Toledo Department of Law administer the Automated Red Light and Speeding System, including to install and operate the camera system. T.M.C. 313.12(a)(2);
- Officials or agents of the City of Toledo process citations for violation of the ordinance, called Notices of Liability, which are delivered by regular mail and clearly state the manner in which the violation may be appealed. T.M.C. 313.12(a)(3)(A) – (C);
- A person’s status as registered owner of a vehicle committing an infraction is “prima facie evidence” that the person was operating the vehicle. T.M.C. 313.12(c)(3);
- The vehicle owner can request a hearing to appeal the Notice of Liability within 21 days. T.M.C. 313.12(d)(4);

- The recipient of a Notice of Liability is not responsible for the alleged violation if, within 21 days, he provides the Hearing Officer: (A) an affidavit stating the name and address of the person or entity who leased, rented, or otherwise had care, custody and control of the vehicle at the time of the violation; OR (B) a law enforcement incident report or the like stating that the vehicle was reported stolen before the violation. T.M.C. 313.12(c)(4)(A) and (B);
- Appeals are heard through the City of Toledo Police Department, through the use of a Hearing Officer. T.M.C. 313.12(d)(4).

And if an individual does not like the outcome of the administrative hearing provided by the ordinance, he or she can appeal to the common pleas court under R.C. 2506.01 et seq.

TM.C. 313.12 and Ohio law already provide adequate due process; an additional procedure is not needed. Enactments just like Toledo's ordinance have easily passed constitutional muster, as held by numerous courts around the country, including Ohio. *See Balaban v. City of Cleveland*, N.D. Ohio No. 1:07-cv-1366, 2010 U.S. Dist. LEXIS 10227 (Feb. 5, 2010) (collecting cases) ("the court finds that the City's substantial interest in public safety and administrative efficiency and the already-existed safeguards outweigh the low risk that Balaban will be erroneously deprived of \$100 per citation"); *Mendenhall v. City of Akron*, N.D. Ohio Nos. 5:06-CV-139, 5:06-CV-140, 5:06-CV-154, 2008 U.S. Dist. LEXIS 112268, \*23-24 (Dec. 9, 2008), *aff'd* 374 Fed. Appx. 598, 600 (6th Cir. 2010) (rejecting due process claims where the Akron's ordinance provided for notice of the citation, right to a hearing, and right to a 2506 appeal); *see also Titus v. City of Albuquerque*, 252 P.3d 780, 792-94 (N.M. 2011); *Kilper v. City of Arnold*, E.D. Mo. No. 4:08cv267-TCM, 2009 U.S. Dist. LEXIS 63471, \*61-62 (June 23, 2009); *City of Davenport v. Seymour*, 755 N.W.2d 533, 568-69 (Iowa 2008); *Agomo v. Fenty*, 915 A.2d 181, 192-94 (D.C. Ct. App. 2007); *Holst v. City of Portland*, D.Or. No. CV-03-1330, 2004 U.S. Dist. LEXIS 9076, \*10-12 (May 14, 2004).

The ordinance meets the three-part test set forth by the United States Supreme Court in *Mathews v. Eldridge*, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976), which weighs: (1) the adequacy of the current procedure *in comparison with the magnitude of the private interest at stake*; (2) the likelihood of error inherent in the adjudicative procedures and the value of additional procedural safeguards in reducing that error rate; and (3) the government interest, including the financial and administrative burdens that would be imposed by requiring additional procedural safeguards. *Id.* at 335.

The administrative procedure is adequate for the minimal private property interest at stake -- the civil penalty of \$120. There are no criminal charges, no jail time contemplated, no car seizure, no driving privileges suspended, no threat to one's livelihood, and no home in jeopardy of being lost. It is a minor civil penalty. *See Ware v. Lafayette City-Parish Consol. Gov't*, W.D.La. No. 08-0218, 2009 U.S. Dist. LEXIS 97836, \*22-23 (Jan. 6, 2009) ("The private interest at stake in the enforcement of the photo enforcement ordinance is a relatively modest monetary penalty; there is no risk of imprisonment or criminal liability.")

There is also little likelihood of error inherent in the adjudicative procedures. Toledo's ordinance provides for photographic evidence, identifies the owner based on the vehicle registration on file with the Ohio Bureau of Motor Vehicles, and requires that any notice of liability be sent by regular mail or personal service.

The ordinance also provides a hearing mechanism by which an individual can respond to present evidence to the hearing officer before a decision requiring payment of the civil penalty. Moreover, anyone found liable after the hearing could pursue an administrative appeal under R.C. Chapter 2506.

And Toledo also has an interest in traffic safety and elimination of traffic hazards, which far outweigh an interest in a \$120 civil penalty. *Balaban*, supra.

Moreover, contrary to Appellee's assertion, nothing in ordinance *precludes* the presentation of evidence and cross-examination of witnesses. If it did, it still would not be unconstitutional. See *Gardner v. City of Columbus*, 841 F.2d 1272, 1280 (6th Cir. 1988) (the technical rules for admission of evidence that apply to jury trials do not apply to proceedings before administrative agencies). And even if someone is dissatisfied with the result after an administrative hearing because of an inability to present certain evidence, serve a subpoena, or cross-examine witnesses, then an individual is entitled to a hearing before the common pleas court and court of appeals upon the transcript and "additional evidence as may be introduced by any party." R.C. 2506.03(B). This statutory safeguard is already part of Ohio law.

The Eighth District rejected the same argument in a similar case:

\* \* \* The administrative record includes the notice of liability, pictures of Posner's car from the automated camera depicting its speed, and the mobile unit's deployment log and certification. The trial court did not abuse its discretion in finding that the hearing officer's decision was supported by the preponderance of substantial, reliable, and probative evidence.

In addition, Posner argues that he was prohibited from calling witnesses at the PVB hearing thereby "handcuffing" his ability to present a defense. \* \* \*

Even if we assume Posner was procedurally barred from calling witnesses at the administrative level, the language of R.C. 2506.03(B) allows, and even mandates, that Posner be allowed to supplement the record with such testimony. Posner's inability to subpoena witnesses to testify at the PVB hearing, therefore, does not violate his due process rights. He has the right to subpoena witnesses at the trial court level, thereby satisfying any concerns raised by Posner.

*Posner v. City of Cleveland*, 8th Dist. Cuyahoga No. 95997, 2011-Ohio-3071, ¶¶ 13-14; see also *City of Cleveland v. Cord*, 8th Dist. Cuyahoga No. 96312, 2011-Ohio-4262 (in challenge to Cleveland's civil photo traffic enforcement ordinance, court found Due Process clause not

violated because R.C. 2506.03 allows owners to subpoena witnesses and present additional evidence before common pleas court).

T.M.C. 313.12 far exceeds the minimum level of due process required by the Due Process Clause of the United States Constitution.

### CONCLUSION

For the reasons set forth above, this Court should reverse the decision of the Sixth District Court of appeals and order reinstate the Lucas County Common Pleas Court's entry of judgment in favor of Appellants.

Respectfully submitted,



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## Toledo Municipal Code

**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

EXHIBIT

A

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.

(Ord. 74-08. Passed 2-12-08; Ord. 67-10. Passed 3-2-10; Ord. 273-10. Passed 5-25-10.)

**ARTICLE XVIII: MUNICIPAL  
CORPORATIONS**

*CLASSIFICATION OF CITIES AND VILLAGES.*

§1 Municipal corporations are hereby classified into cities and villages. All such corporations having a population of five thousand or over shall be cities; all others shall be villages. The method of transition from one class to the other shall be regulated by law.

(1912)

*GENERAL LAWS FOR INCORPORATION  
AND GOVERNMENT OF MUNICIPALITIES;  
ADDITIONAL LAWS; REFERENDUM.*

§2 General laws shall be passed to provide for the incorporation and government of cities and villages; and additional laws may also be passed for the government of municipalities adopting the same; but no such additional law shall become operative in any municipality until it shall have been submitted to the electors thereof, and affirmed by a majority of those voting thereon, under regulations to be established by law.

(1912)

*MUNICIPAL POWERS OF LOCAL SELF-  
GOVERNMENT.*

§3 Municipalities shall have authority 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.

(1912)

*ACQUISITION OF PUBLIC UTILITY;  
CONTRACT FOR SERVICE; CONDEMNATION.*

§4 Any municipality may acquire, construct, own, lease and operate within or without its corporate limits, any public

utility the product or service of which is or is to be supplied to the municipality or its inhabitants, and may contract with others for any such product or service. The acquisition of any such public utility may be by condemnation or otherwise, and a municipality may acquire thereby the use of, or full title to, the property and franchise of any company or person supplying to the municipality or its inhabitants the service or product of any such utility.

(1912)

*REFERENDUM ON ACQUIRING OR  
OPERATING MUNICIPAL UTILITY.*

§5 Any municipality proceeding to acquire, construct, own, lease or operate a public utility, or to contract with any person or company therefor, shall act by ordinance and no such ordinance shall take effect until thirty days from its passage. If within said thirty days a petition signed by ten per centum of the electors of the municipality shall be filed with the executive authority thereof demanding a referendum on such ordinance it shall not take effect until submitted to the electors and approved by a majority of those voting thereon. The submission of any such question shall be governed by all the provisions of section 8 of this article as to the submission of the question of choosing a charter commission.

(1912)

*SALE OF SURPLUS PRODUCT OF MUNICIPAL  
UTILITY.*

§6 Any municipality, owning or operating a public utility for the purpose of supplying the service or product thereof to the municipality or its inhabitants,

may also sell and deliver to others any transportation service of such utility and the surplus product of any other utility in an amount not exceeding in either case fifty per cent of the total service or product supplied by such utility within the municipality, provided that such fifty per cent limitation shall not apply to the sale of water or sewage services.

(1912, am. 1959)

*HOME RULE; MUNICIPAL CHARTER.*

§7 Any municipality may frame and adopt or amend a charter for its government and may, subject to the provisions of section 3 of this article, exercise thereunder all powers of local self-government.

(1912)

*SUBMISSION AND ADOPTION OF PROPOSED CHARTER; REFERENDUM*

§8 The legislative authority of any city or village may by a two-thirds vote of its members, and upon petition of ten per centum of the electors shall forthwith, provide by ordinance for the submission to the electors, of the question, 'Shall a commission be chosen to frame a charter.' The ordinance providing for the submission of such question shall require that it be submitted to the electors at the next regular municipal election if one shall occur not less than sixty nor more than one hundred and twenty days after its passage; otherwise it shall provide for the submission of the question at a special election to be called and held within the time aforesaid. The ballot containing such question shall bear no party designation, and provision shall be made thereon for the election from the

municipality at large of fifteen electors who shall constitute a commission to frame a charter; provided that a majority of the electors voting on such question shall have voted in the affirmative. Any charter so framed shall be submitted to the electors of the municipality at an election to be held at a time fixed by the charter commission and within one year from the date of its election, provision for which shall be made by the legislative authority of the municipality in so far as not prescribed by general law. Not less than thirty days prior to such election the clerk of the municipality shall mail a copy of the proposed charter to each elector whose name appears upon the poll or registration books of the last regular or general election held therein. If such proposed charter is approved by a majority of the electors voting thereon it shall become the charter of such municipality at the time fixed therein.

(1912)

*AMENDMENTS TO CHARTER;  
REFERENDUM.*

§9 Amendments to any charter framed and adopted as herein provided may be submitted to the electors of a municipality by a two-thirds vote of the legislative authority thereof, and, upon petitions signed by ten per centum of the electors of the municipality setting forth any such proposed amendment, shall be submitted by such legislative authority. The submission of proposed amendments to the electors shall be governed by the requirements of section 8 as to the submission of the question of choosing a charter commission; and copies of proposed amendments may be mailed to the electors as hereinbefore provided for copies of a

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LUCAS COUNTY

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CLERK OF COURTS  
THIS IS A FINAL  
APPEALABLE ORDER

IN THE COURT OF COMMON PLEAS OF LUCAS COUNTY, OHIO

Bradley L. Walker,

Plaintiff,

-vs-

City of Toledo, et al.,

Defendants.

\* Case No. CI 201101922  
\* Judge Ruth Ann Franks  
\* OPINION AND JUDGMENT ENTRY  
\*  
\*

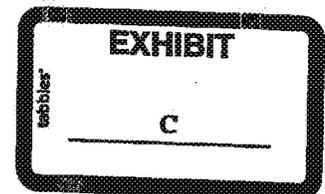
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This cause is before the Court upon Defendants City of Toledo's and RedFlex Traffic Systems, Inc.'s Motion to Dismiss. Upon consideration of the pleadings, memoranda of counsel and applicable law, the Court finds the motions well taken and granted.

**I. Facts**

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

**E-JOURNALIZED**

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

According to Walker's complaint, the City has adopted a civil enforcement system for red light and speeding camera system violations.<sup>1</sup> The enforcement system is composed of an electronic system consisting of a photographic, video, or electronic camera and a vehicle sensor installed to work alone or in conjunction with an official traffic controller and to automatically produce photographs, video, or digital images of each vehicle violating a standard traffic control.<sup>2</sup> This electronic system is provided by RedFlex, and the Toledo Municipal Code ("Code") provides that if RedFlex's equipment determines that a vehicle is speeding, the owner of the vehicle shall be liable for the associated penalty. Accordingly, if a RedFlex camera captures an alleged violation, RedFlex investigates the matter and refers it to the City.

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

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

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

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

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

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

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

situated and a class certification is appropriate in this action.

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

## II. Standard

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

## III. Discussion

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

TMC 313.12, in pertinent part, states:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

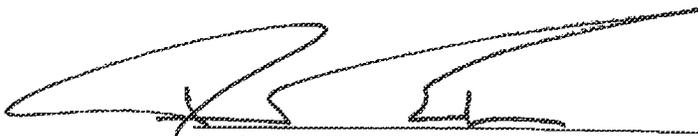
#### JUDGMENT ENTRY

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

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

February 1, 2012



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Ruth Ann Franks, Judge

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

FILED  
COURT OF APPEALS

2013 JUN 28 AM 8 02

COMMON PLEAS COURT  
BERNIE QUILTER  
CLERK OF COURTS

IN THE COURT OF APPEALS OF OHIO  
SIXTH APPELLATE DISTRICT  
LUCAS COUNTY

Bradley L. Walker

Court of Appeals No. L-12-1056

Appellant

Trial Court No. CI0201101922

v.

City of Toledo, et al.

DECISION AND JUDGMENT

Appellees

Decided:

JUN 28 2013

\*\*\*\*\*

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

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

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

\*\*\*\*\*

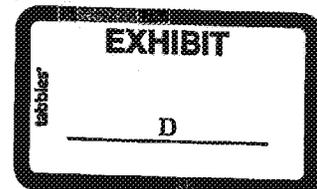
SINGER, P.J.

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

**E-JOURNALIZED**

JUN 28 2013

1.



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

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

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

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

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

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

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

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

{¶ 7} Review of a judgment granting a Civ.R. 12(B)(6) motion is de novo.

*Perrysburg Twp. v. Rossford*, 103 Ohio St.3d 79, 2004-Ohio-4362, 814 N.E.2d 44, ¶ 5.

When ruling on a motion to dismiss for a failure to state a claim upon which relief can be granted, a court must presume the truth of the factual allegations in the complaint and must make all reasonable inferences in favor of the non-moving party. *Mitchell v. Lawson Milk Co.*, 40 Ohio St.3d 190, 192, 532 N.E.2d 753 (1988). It must appear beyond doubt from the complaint that the plaintiff can prove no set of facts entitling him or her to recover. *O'Brien v. Univ. Community Tenants Union, Inc.*, 42 Ohio St.2d 242, 327 N.E.2d 753 (1975), syllabus. For these reasons, motions to dismiss for failure to

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

### Toledo Municipal Code 313.12

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

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

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

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

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

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

## I. *Mendenhall v. Akron*

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

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

## II. Standing—Immunities

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

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

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

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

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

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

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

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

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

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

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

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

### III. Municipal Court Jurisdictional Infringement

{¶ 22} Appellant submits that Ohio Constitution, Article IV, Section 1, vests judicial power in this state to "a supreme court, courts of appeals, courts of common pleas and divisions thereof, and such other courts inferior to the supreme court as may from time to time be established by law." Municipal courts, and expressly the Toledo Municipal Court, have been established by the General Assembly in R.C. Chapter 1901.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

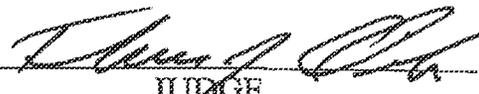
Judgment reversed.

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

Arlene Singer, P.J.

  
JUDGE

Thomas J. Osowik, J.  
CONCUR.

  
JUDGE

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

**YARBROUGH, J., dissenting.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

IN THE SUPREME COURT OF OHIO

13-1277

Bradley Walker,

Plaintiff-Appellee,

v.

City of Toledo, et al.,

Defendants-Appellants.

Supreme Court Case No. \_\_\_\_\_

On Appeal from the Lucas  
County Court of Appeals,  
Sixth Appellate District  
(Case No. L-12-1056)

NOTICE OF APPEAL OF  
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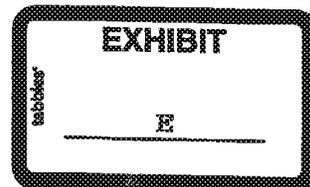
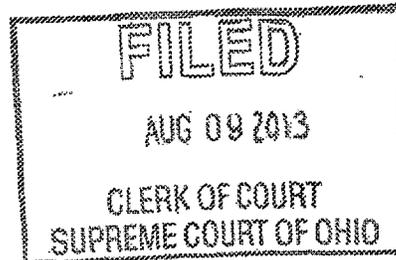
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Now comes Defendant-Appellant Redflex Traffic Systems, Inc. ("Redflex"), by and through counsel, and hereby give notice of its appeal to the Supreme Court of Ohio from the judgment of the Lucas County Court of Appeals, Sixth Appellate District, entered in Case No. L-12-1056 on June 28, 2013.

This case presents a substantial constitutional question and is a case of public and great general interest. Redflex submits its Memorandum in Support of Jurisdiction contemporaneously herewith.

Respectfully submitted,



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CERTIFICATE OF SERVICE

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

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