

ORIGINAL

IN THE SUPREME COURT OF OHIO

Bradley Walker,	:	Supreme Court Case No. 2013-1277
	:	
Plaintiff-Appellee,	:	
	:	
v.	:	On Appeal from the Lucas County Court
	:	of Appeals, Sixth Appellate District
City of Toledo, <i>et al.</i> ,	:	(Case. No. L-12-1056)
	:	
Defendants-Appellants.	:	

AMICUS CURIAE BRIEF OF
THE CITY OF EAST CLEVELAND AND
AMERICAN TRAFFIC SOLUTIONS, INC.
IN SUPPORT OF APPELLANTS

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INTRODUCTION

The Majority Opinion of the Panel of the Sixth Appellate District Court of Appeals below and the position advocated by Appellee are founded on a false premise: “Home Rule Authority” does not emanate from acts of the legislature but rather is founded in the Ohio Constitution and its power is derived from the people, the citizens of the State of Ohio. Pursuant to its “Home Rule Authority,” Toledo and other municipalities around the state are free to establish their own individual system of administrative review of and enforcement of the civil penalties imposed for violating a traffic signal or the offense of speeding, without judicial interference, provided that the municipality does not alter statewide traffic regulations and the administrative process protects the due process rights of the citizens of the State of Ohio. Both of those requirements are met here (indeed, the latter issue is not even part of this appeal).¹

STATEMENT OF AMICUS INTEREST

The City of East Cleveland works to empower its residents, schools and businesses and to ensure that its neighborhoods are safe and desirable places to live, work and play. The City of East Cleveland uses a camera enforcement system for purposes of civil violations. American Traffic Solutions, Inc. is a leading provider of technology enable business and service solutions for Road Safety Camera operations and Traffic Violation Management services. American Traffic Solutions provides these services to the City of East Cleveland.

STATEMENT OF FACTS

The City of East Cleveland and American Traffic Solutions, Inc. do not have independent knowledge of the facts of this case. As a result, the City of East Cleveland and American Traffic Solutions, Inc. adopt and incorporate by reference Appellants’ statement of the case and facts

¹ The administrative process has been found to meet due process concerns. *Mendenhall v. City of Akron*, Case Nos. 5:06 CV 139, 5:06 CV 154, 2008 U.S. Dist. LEXIS 112268 (N.D. Ohio Dec. 9, 2008), *aff’d*, 374 Fed. App’x 598 (6th Cir. 2010) (unpublished).

ARGUMENT

In addition to the following arguments, The City of East Cleveland and American Traffic Solutions, Inc. adopt and incorporate by reference, to the extent applicable, the arguments and authorities relied upon by Appellants.

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

With the adoption of the “Home Rule Amendment,” a municipality (as distinct from a county) derives its powers of self-governance directly from the Ohio Constitution. *City of Canton v. State*, 95 Ohio St.3d 149, 2002-Ohio-2005, 766 N.E.2d 963, ¶¶ 7–8. Specifically, the “Home Rule Amendment” to the Ohio Constitution provides that a municipality has the “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 the general laws” of the state. Ohio Constitution, Article XVIII, Section 3. Thus, “municipalities ‘derive no authority from, and are subject to no limitations of, the General Assembly, except that such ordinances shall not be in conflict with general laws.’” *Geauga County Bd. of Comm’rs. v. Munn Rd. Sand & Gravel*, 67 Ohio St.3d 579, 582, 621 N.E.2d 696 (1993) (quoting *Struthers v. Sokol*, 108 Ohio St. 263, 140 N.E. 519, paragraph one of the syllabus (1923)).

The Ohio Constitutional Convention rejected any notion that residual power remains in the General Assembly to preempt legislative authority. A review of the history of the “Home Rule Amendment” reveals that the initial draft of Article XVIII Section provided:

Municipalities shall have the power to enact and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws, affecting the welfare of the state, as a whole, and no such regulations shall by reason of

requirements therein, in addition to those fixed by law, be deemed in conflict therewith **unless the general assembly, by general law, affecting the welfare of the state as a whole, shall specifically deny all municipalities the right to act thereon.**

Journal of the Constitutional Convention, at p. 482 (emphasis added).

This language never survived debate, and the convention followed the lead of home rule supporters and voted against the state assembly retaining the express power to preempt. As a result, municipalities were granted “all powers of local government” and local police power, subject only to the prohibition that local laws not conflict with general laws.

By its ruling, the majority opinion of the Panel of the Sixth Appellate District Court of Appeals wreaks havoc not only on Toledo’s civil traffic enforcement system, but if applied statewide, with all administrative processes utilized by municipalities in a whole host of areas: enforcement of health codes for restaurants, taxi cabs, food trucks, and building permits.

Proposition of Law No. 2: The practical application of the rule of law created by the panel of the sixth appellate district harms and hinders the citizens of Ohio.

The statewide impact of the decision by the Panel of the Sixth Appellate District Court of Appeals would harm individual Ohio citizens by eliminating an opportunity for citizens to present their cases to a third party without the restrictions of the Rules of Evidence, and without the costs associated with a judicial proceeding. With some minimal variations, each of the amici curiae cities that use camera enforcement provides an initial administrative hearing process from which an appeal may be taken to a Common Pleas Court, pursuant to R.C. 2506.01.

[E]very final order, adjudication, or decisions of any officer, tribunal, authority, board, bureau, commission, department, or other division of any political subdivision of the state may be reviewed by the court of common pleas of the county in which the principal office of the political subdivision is located as provided in Chapter 2505 of the Revised Code.

R.C. 2506.01.

Moreover, each municipality provides that enforcement of the violation is permitted only after the municipality, in a separate civil action, files suit in court and obtains a civil judgment. As a result, judicial review occurs by two separate avenues, both of which enable citizens of Ohio to contest violations.

Under the Toledo ordinances, like other municipal ordinances, the owner of a vehicle receiving a notice of violation has a right to contest the notice of violation hearing. At the hearing, the citizen has the opportunity, without negative consequences, to demonstrate why the camera violation was incorrect or what circumstances exist warranting a dismissal of the violation. These hearings are not and never have been considered “charades, but provide a meaningful opportunity to be heard.” As this Court has previously noted, “[i]n November 2005, [Kelly] Mendenhall received an automated citation, noting her vehicle’s speed of 39 mph in a 25 mph zone. Mendenhall exercised her right to an administrative appeal which was sustained. The citation was dismissed, and no civil penalty was assessed against her” *Mendenhall v. City of Akron*, 117 Ohio St.3d 33, 2008-Ohio-270, 881 N.E.2d 255, ¶ 10. Appellee Walker never chose to even seek a hearing, thereby omitting an opportunity to demonstrate why the notice of violation was erroneous. As demonstrated day in and day out throughout the State of Ohio, there are no negative consequences to participation in the administrative hearing process where judicial review is preserved. Rather, to the contrary, such participation is beneficial.

Indeed, individual citizens, without the assistance of counsel are provided with a forum and opportunity to present their contentions, not restricted by the Rules of Evidence or the formality of a traditional courtroom. Courts frequently recognize that “[i]t is very sensible to lower the technical standards for presenting evidence to facilitate the *pro se* party presentation to

his case.” *Gardner v. City of Columbus*, 841 F.2d 1272, 1280 (6th Cir. 1988) (reviewing constitutional challenge to Columbus parking ticket ordinance in which an administrative process was used subject to judicial appellate review).

In place of this beneficial system designed to afford citizens the opportunity to be heard without formality or negative consequence, the majority opinion of the Panel of the Sixth Appellate Court of Appeals and Appellee would mandate that civil violations be heard first and only by a Municipal Court, operating pursuant to the Rules of Evidence. This is but one of the many legal barriers the decision constructs.²

Practically, the decision below also has other significant ramifications for the average citizen. In municipalities and the State, separate procedures and proceedings have been created and utilized for the purpose of administrative review of violations arising from camera enforcement of traffic violations. Those proceedings specialize solely in the administrative review of camera enforcement. Generally, court costs are associated with the efforts of citizens to seek redress for an erroneous notice of violation. In stark contrast, the dockets of Ohio’s Municipal Courts, particularly the traffic dockets of those courts, are extremely crowded. In East Cleveland, the sole judge hears criminal traffic cases as part of his regular docket three days a week. In Akron, approximately one hundred cases are scheduled each day. In Cleveland there are already two dockets daily for traffic arraignment. At the arraignment, if the person wishes to contest the allegation and desires to be heard on the merits, that individual pleads “not guilty” and the case is assigned to the docket of an individual judge. As a result of that process, the individual who wishes to contest the matter is required to return to court at least one more time

² One can only imagine the subsequent arguments of issue preclusion and *res judicata* created by the judicial administrative process Appellee suggests.

and often twice before the matter is heard on the merits. In Cleveland, traffic court costs are at least \$140.

One can only imagine that if the Municipal Court were the first step in the administrative review of civil violations (as would be the case if the ruling below were allowed to stand), citizens seeking administrative review would be herded into an already overburdened docket, and likely encounter considerable delays before ever having their grievances heard. Further, in most crowded municipal courts, in an effort to both “move the docket” and “be fair to everyone,” the courts hear contested matters at the end of a docket.

As for court costs, as noted above, no court costs generally are associated with an administrative hearing. By contrast, in East Cleveland, court costs on criminal traffic cases begin at \$100. In Akron the basic traffic court amount subject to additional amounts, is \$100 and in Cleveland typical court costs are at least \$140. The practical outcome of the decision below thus not only threatens the efficiency of the review process, but will also cause the citizens of Ohio to expend additional costs for the right to participate in a more inefficient process.

Ultimately, the practical effect of the Majority Opinion of the Panel of the Appellate District Court of Appeals provides no benefit to the citizens of Ohio, and, in fact, is detrimental to their interests. The decision below inhibits their opportunity to contest the nature of the violation through a process designed to permit the individual citizen to appear, and to expeditiously be heard without counsel and without the restrictions of the Rules of Evidence, in a specialized administrative process, that is subject to a two-pronged judicial review both via an administrative appeal to court and through subsequent civil litigation if brought, to collect unpaid violations.

CONCLUSION

Nothing beneficial comes from the tortured ruling contained in the Majority Opinion of the panel below. This Court should reverse that erroneous decision.

Respectfully submitted,



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I hereby certify that a copy of the foregoing Amicus Brief was served by ordinary U.S.

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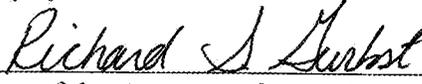
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