ORIGINAL

IN THE SUPREME COURT OF OHIO

Case No. 13-1277

Bradley L. Walker,	)	
	)	On appeal from the Lucas County
	)	Court of Appeals,
Plaintiff-Appellee,	)	Sixth Appellate District
	)	Case No. L-12-1056
	)	
v.	)	
	)	
City of Toledo, *et al.*,	)	
	)	
	)	
Defendants-Appellants.	)	

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APPELLEE BRADLEY L. WALKER'S MERIT BRIEF

Andrew R. Mayle (0075622)
Counsel of Record
Jeremiah S. Ray (0074655)
Ronald J. Mayle (0070820)
MAYLE RAY & MAYLE LLC
210 South Front Street
Fremont, Ohio 43420
419.334.8377
Fax: 419.355.9698
amayle@mayleraymayle.com
jray@mayleraymayle.com
rmayle@mayleraymayle.com

John T. Murray (0008793)
MURRAY & MURRAY CO., L.P.A.
111 East Shoreline Drive
Sandusky, Ohio 44870-2517
Telephone: (419) 624-3125
Facsimile: (419) 624-0707
jotm@murrayandmurray.com
Counsel for Appellee Bradley L. Walker

Quintin F. Lindsmith (0018327)
Counsel of Record
James P. Schuck (0072356)
Sommer L. Sheely (0076071)
BRICKER & ECKLER LLP
100 S. Third Street
Columbus, Ohio 43215
614.227.2300
Fax: 614.227.2390
Counsel for Appellant RedFlex Traffic Systems, Inc.

Adam W. Loukx (0062158)
Counsel of Record
Eileen M. Granata (0016745)
Law Department, City of Toledo
One Government Center, Suite 2250
Toledo, Ohio 43604
419.245.1020
Fax: 419.245.1090
Adam.Loukx@toledo.oh.gov
Eileen.Granata@toledo.oh.gov

Philip K. Hartmann (0059413)
Yazan S. Ashrawi (0089565).
Stephen J. Smith (0001344)
Frost Brown Todd LLC
One Columbus, Suite 2300
10 West Broad Street
Columbus, Ohio 43215
phartmann@fbtlaw.com
yashrawi@fbtlaw.com
ssmith@fbtlaw.com

John Gotherman (0000504)
Ohio Municipal League
175 S. Third Street, #510
Columbus, Ohio 43215-7100
jgotherman@columbus.rr.com

Jennifer S. Gams (0063704)
City of Columbus Law Department
77 North Front Street, 4th Floor
Columbus, Ohio 43215
JLGams@Columbus.gov

John C. Musto (0071512)
City of Datyon Law Department
101 W. Third Street
P.O. Box 22
Dayton, Ohio 45401
John.Musto@DaytonOhio.gov
Counsel for amicus curaie The Ohio Municipal League, City of Columbus, and City of Dayton

Barbara A. Langhenry (0038838)
Gary S. Singletary (0037329)
John Mills (0086253)
Law Department
601 Lakeside Avenue, Room 106
Cleveland, Ohio 44114-1077
216.664.2737
Fax: 216.664.2663
gsingletary@city.cleveland.oh.us
jmills@city.cleveland.oh.us
Counsel for Amicus Curiae City of Cleveland

Andy Douglas (0000006)
Larry H. James (0021773)
Jeffrey D. Houser (0076803)
Crabbe, Brown & James LLP
500 South Front Street, Suite 1200
Columbus, Ohio 43215
614.228.5511
Fax: 614.229-4559
Counsel for Appellant City of Toledo

Joseph A. Castrodale (0018494)
John M. Alten (0071580)
Laura C. McBride (0080059)
Ulmer & Berne LLP
1660 West 2nd Street, Suite 1100
Cleveland, Ohio 44113
jcastrodale@ulmer.com
jalten@ulmer.com
lmcbride@ulmer.com

Christopher R. Heekin (0042032)
Heekin & Heekin
817 Main Street, Suite 200
Cincinnati, Ohio 45202
crheekin@gmail.com
Counsel for Amicus Curiae Optotraffic, LLC

Chris Bator (0038550)
Gregory V. Mersol (0030838)
Baker Hostetler LLP
3200 National City Center
1900 East Ninth Street
Cleveland, Ohio 44114-3485
216.621.0200
Fax: 216.696.0740
gmersol@bakerlaw.com
cbator@bakerlaw.com
Counsel for Amicus Curiae Xerox State & Local Solutions, Inc.

Richard S. Gurbst (0017672)
F. Maximilian Czernin (0087485)
Squire Sanders (US) LLP
4900 Key Tower, 127 Public Square
Cleveland, Ohio 44114
216.479.8500
Facsimile: 216.479.8780
Richard.gurbst@squiresanders.com
Max.czernin@squiresanders.com
Counsel for Amicus Curiae American Traffic Solutions, Inc.

Ronald Riley (0018857)
City of East Cleveland
14340 Euclid Avenue
East Cleveland, Ohio 44112
216.531.2169
rriley@eastcleveland.org
Counsel for Amicus Curiae The City of East Cleveland

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LAW & ARGUMENT

I. Response to appellants' first propositions of law: No municipality has home-rule power to impair or restrict a municipal court's constitutionally-protected jurisdiction.

Municipalities have no power to impair or restrict a court's jurisdiction as conferred by the General Assembly. Under R.C. 1901.20(A)(1), the Toledo municipal court "has jurisdiction" of alleged violations of TMC 313.12. Appellants insist that Toledo city council has the power to impair the municipal court's jurisdiction by conferring exclusive jurisdiction upon an unelected "Hearing Officer" in lieu of the municipal court. Are they right?

Under the separation of powers embedded in the Ohio Constitution and reflected in *Mendenhall v. Akron*, whether Toledo should permit RedFlex to install its cameras on city streets to ostensibly "regulate traffic" is a political question for city council to decide. But whether the municipal court has jurisdiction over alleged violations of TMC 313.12 is not.

"The principle of separation of powers is embedded in the constitutional framework of our state government." *State v. Hochhausler*, 76 Ohio St.3d 455, 465-466, 668 N.E.2d 457, 1996-Ohio-374. And under the separation of powers, the General Assembly has the exclusive power to create "courts inferior to the Supreme Court," including municipal courts:

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

OHIO CONST. Article IV, Section 1.

"The power to create a court ***carries with it the power to define its jurisdiction***..." *State ex. rel. Ramey v. Davis*, 119 Ohio St. 596, 165 N.E. 298 (1929), syllabus.[1] "The sovereignty of the state in respect to its courts extends over all the state, including municipalities, whether governed by charter or general laws." *Id.* The Toledo municipal court is no more an arm of the city than is this Supreme Court. Toledo has no police power or "power of local *self* government" to impair the municipal court's jurisdiction. Further, Article IV, Section 6(A)(4) requires that voters elect judges—politicians may not appoint whoever they want. *State ex. rel. Whitehead v. Sandusky Cty. Bd. of Comm.* 133 Ohio St.3d 561, 979 N.E.2d 1193, 2012-Ohio-4837.

The General Assembly has declared that the Toledo municipal court "has jurisdiction" of the violation of ***any*** ordinance. R.C. 1901.20(A)(1). Toledo city council has impaired that jurisdiction by vesting jurisdiction in a "Hearing Officer." A "Hearing Officer" presiding over a mock court is no substitute for a qualified, elected municipal court judge presiding over a real court. Toledo's ordinance frustrates not only the municipal court's jurisdiction itself, but also the General Assembly's conferral of jurisdiction upon the court and, indirectly, the electorate's voting rights.

Toledo's first proposition of law lacks merit. And like the city's two other "propositions of law," it was not even mentioned in the city's jurisdictional memorandum. In fact, Toledo has not submitted "propositions of law" as required by S.Ct.Prac.R. 16.02(B)(4). The city merely invites this court to engage in "error correction." ("***The Court of Appeals erred when***...") Toledo also fails to comply with S.Ct.Prac.R.16.02(B)(5)(a). Regardless of its failure to conform to the Rules of Practice of the Supreme Court of Ohio, the appeals court did <u>not</u> err. To the

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[1] All emphasis in this brief is added by Walker unless indicated otherwise.

contrary, the appeals court properly recognized that, by statute, the municipal court "has jurisdiction" of alleged violations of TMC 313.12. And it properly applied settled law and concluded that because Toledo's ordinance impairs or restricts that jurisdiction, the ordinance therefore violates Article IV, Section 1 of the Ohio Constitution.

Appellants would have this court believe that the Sixth District held that "home rule authority is dependent upon approval by the General Assembly."[2] Not so. The court only held that if a municipality is to impair or restrict a court's jurisdiction, then *that* is dependent upon approval of the General Assembly. The court is right: "home-ruling" a court's jurisdiction is *not* within Toledo's home-rule authority:

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

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

Toledo itself concedes that a home-rule city ***cannot*** limit a court's jurisdiction.[3] This concession should end this case. Yet appellants inexplicably cling to "home rule." Appellants' arguments vitiate the separation of powers, the cornerstone of constitutionalism.

RedFlex's first proposition of law uses a phrase, "pre-suit administrative hearing." It is doubletalk, a circumlocution for "unconstitutional impairment." The fact that the ordinance

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[2] Toledo's merit brief, p. 20.

[3] *Id.*, p. 10.

would funnel "appeals" exclusively to the nebulous, handpicked "Hearing Officer" in lieu of an elected municipal court judge does not cure the constitutional infirmity—it *is* the infirmity. The "pre-suit administrative proceedings" necessarily impair the Toledo municipal court's constitutionally-protected jurisdiction over alleged violations of TMC 313.12.

Appellants' arguments have no outer limit. If negating the municipal-court system for the accuser's perceived expediency is the criterion, Article IV, Section 1 could be read out of the Constitution any time a bare majority of any city council deemed warranted. Similarly, the fact that this case involves a "camera" ordinance does not implicate *Mendenhall*. "This case is not really about 'red light cameras."[4]

If this court holds in this case that Article XVIII supersedes Article IV, Section 1, nothing could curb such a decision to "camera" ordinances only. It takes little imagination to see where this would lead. And it has nothing to do with mowing grass or tax cheaters.

Municipalities would inevitably enact all manner of ordinances carrying financial penalties, then sidestep the municipal courts, and seek untold financial sanctions with the city's own bureaucratic hearing officer presiding. Nonpayment would come with additional sanctions—including seizure of property. This is antithetical to the purpose of establishing a statewide municipal-court system in the first place: municipal courts play a pivotal role in the trenches of Ohio's justice system. The Ohio constitution forbids municipalities from nullifying the municipal-court system and its role in society.

The entire purpose of creating a statewide municipal-court system free of local manipulation and conferring qualified, elected municipal-court judges with jurisdiction is to

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[4] Toledo merit brief, p. 28.

establish a buffer protecting citizens against unscrupulous municipal practices. Toledo has unconstitutionally destroyed this buffer for Toledo's and RedFlex's sole benefit. Toledo's scheme does not benefit citizens. It is one-sided. And that is why ATS, Optotraffic, and RedFlex—competitors—are fighting hard together here to keep it that way.

This case involves deliberate manipulation of the justice system. It is wrong. And it is unconstitutional. Appellants have no right—none—to send citizens a "Notice of Liability" via regular mail and demand that they either pay or attend a bogus unconstitutional hearing with no established procedures—or risk collection, impoundment, increased fines, etc. Appellants have kept up this scheme even after the decision below. So this court must end it.

A. Appellants do not make a case for reversing settled precedent.

If this court reverses, "home rule" would now supersede Article IV, Section 1. City council would now be the arbiters of jurisdiction. This is backwards:

> ***Section 1, Article IV*** of the Ohio Constitution is a special provision dealing with the creation of courts and ***supersedes*** the general power of local self-government granted in ***Section 3, Article XVIII***. The sovereignty of the state, as to courts, extends over all the state, including municipalities, whether charter or noncharter, and municipalities thus have no power to create courts or regulate their jurisdiction. *Ordinances and statutes enacted by the legislative bodies of the state or municipalities are enforced through judicial tribunals created by the state.* There is no dual sovereignty between the state and municipal governments.

Baldwin's Ohio Practice, Local Government Law—Municipal, §3:20, Gotherman, Babbit and Lang.

The lawyer for the Ohio Municipal League wrote this passage before becoming an advocate in this case. Now the Municipal League and the appellants say the exact opposite. But they give no reason to overrule settled precedent, which requires this court to reject their position. *Ohio Apt. Assn. v. Levin*, 127 Ohio St.3d 76, 936 N.E.2d. 919, 2010-Ohio-4414, ¶¶30-31 (failure to address standard for overruling precedent requires rejection of legal proposition

that requires overruling precedent). The simple, yet bedrock constitutional principle that municipalities may *not* affect the court system has been well understood in this state for decades:

> The court system is one of the areas where the power of self-government has been taken away from all municipal corporations by a provision in the constitution...Since the Ohio Constitution allows only the General Assembly to govern the municipal court system, [municipalities] may not, by charter or ordinance, achieve a contrary result.

Ohio Op. Att'y Gen. No. 80-014.

Under this principle, once a court has jurisdiction, no municipality may impair the court's jurisdiction. So at its core, this appeal addresses two narrow questions: (1) does the Toledo municipal court have jurisdiction of alleged violations of TMC 313.12, and if so, (2) does the ordinance impair or restrict the municipal court's jurisdiction? As explained below, the answer to both questions is "yes." Thus, under settled law, this court must affirm. "By doing otherwise, this court would become a willing participant in divesting the courts of judicial power..." *State ex. rel. Ohio Academy of Trial Lawyers v. Sheward*, 86 Ohio St.3d 451, 501, 715 N.E.2d 1062, 1999-Ohio-123.

Appellants and their *amici* make many arguments, but those arguments would make the most activist jurist blush: a straightforward application of settled law combined with a plain reading of R.C. 1901.20 dictates that Toledo's ordinance is indeed an unconstitutional nullity.

B. TMC 313.12 violates Article IV, Section 1 of the Ohio Constitution.

The General Assembly dutifully executed its exclusive Article IV powers concerning the Toledo municipal court:

- In R.C. 1901.01(A), it created the Toledo municipal court;
- In R.C. 1901.06, it created the minimum qualifications to be a judge on the Toledo municipal court;

- In R.C. 1901.07(A) it ensured that all Toledo municipal court judges shall be elected to six-year terms on a nonpartisan ballot; and

- In R.C. 1901.08, it provided for the election of seven judges to the Toledo municipal court.

And because seven qualified judges elected to six-year terms serve no purpose without jurisdiction, the General Assembly enacted R.C. 1901.20(A)(1), broadly declaring that:

> 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. ***

This conferral of jurisdiction necessarily includes jurisdiction over alleged violations of TMC 313.12. Indeed, that ordinance uses the word "violation" over and over.

1. The Toledo municipal court has jurisdiction of alleged violations of TMC 313.12—no amount of "statutory interpretation" can change this.

Under R.C. 1901.20(A)(1), the Toledo municipal court "has jurisdiction" of the alleged violation of "***any*** ordinance" in Toledo. This means that the Toledo municipal court has jurisdiction of alleged violations of TMC 313.12. "Statutory interpretation" cannot change this.

The General Assembly understands how to make exceptions: the municipal court has jurisdiction *unless* the violation is required to be handled by a parking violation bureau established under Chapter 4521. "Unless" means "under any other circumstance than that; except on the condition that..." *State ex. rel. Eberhardt v. Flxible Corp.*, 70 Ohio St.3d 649, 654, 640 N.E.2d 815 (1994). "[I]f a statute specifies one exception to a general rule or assumes to specify the effects of a certain provision, other exceptions or effects are excluded." *Thomas v. Freeman*, 79 Ohio St.3d 221, 224-225, 680 N.E.2d 997, 1997-Ohio-397. Thus, the municipal court has jurisdiction of alleged violations of TMC 313.12 because the parking-violation bureau exception

applies to *parking* infractions only. A "parking infraction" is a violation of an ordinance that regulates the standing or parking of vehicles. R.C. 4521.01(A). Because TMC 313.12 does not regulate the standing or parking of vehicles, the sole exception in R.C. 1901.20(A)(1) is inapplicable. Judicial restraint requires that this court may not create an exception by fiat:

> The General Assembly understands how to draft laws that contain exceptions, but included no exception that can be applied in this case. And we will not create an exception by judicial fiat.

Pauley v. Circleville, 137 Ohio St.3d 212, 998 N.E.2d 1083, 2013 -Ohio- 4541, ¶38.

The majority below did *not* ignore well-settled principles[5] or make "all possible efforts to create a jurisdictional infringement where none exists."[6] It succinctly explained the issue:

> [T]oledo 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.

Walker v. Toledo, 6th Dist. No. L-12-1056, 994 N.E.2d 467, 2013-Ohio-2809, ¶24

The dissent lost its way. It urged that "any" modifies "ordinance." It does. It means "*any* ordinance." The Toledo 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 under R.C. Chapter 4521. The ordinance is unconstitutional *because* "any" modifies "ordinance."

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[5] Toledo merit brief, p. 5.

[6] *Id.*

2. TMC 313.12 impairs the municipal court's constitutionally-protected jurisdiction.

Toledo's insists that: (1) "Walker has never shown how the Ordinance divests the municipal court of any jurisdiction,"[7] (2) "it is clear that the Ordinance, on its face, does not divest any court of jurisdiction";[8] and (3) "there is nothing in the plain language of the Ordinance that can be read to deprive the municipal court of jurisdiction."[9] These semantic gymnastics defy common sense—divestiture is central to the entire ordinance. By design, the ordinance impairs or restricts—"divests"—the municipal court of its jurisdiction of TMC 313.12 violation.

a. Divestiture of the municipal-court system is the operational glue holding TMC 313.12 together.

Unless RedFlex sent a Toledo municipal court judge a "Notice of Liability" by regular mail under TMC 313.12(a)(3), no judge on that court would ever be directly connected with an alleged violation of that ordinance. From start to finish, the ordinance ensures that Toledo and RedFlex—the parties that should have the burden of proof—*never* have to prove their allegations in front of an elected municipal court judge under normal rules of evidence or courtroom procedures. The ordinance effectively strips the court of its jurisdiction:

- **Allegations never filed in municipal court; no guarantee of service.** TMC 313.12(a)(3) requires that a so-called "Notice of Liability," must (1) be processed by Toledo or RedFlex, and (2) sent by regular mail to the vehicle owner without judicial oversight. No "Notice of Liability" is filed in court.

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[7] Toledo's merit brief, p. 11.

[8] *Id.*, p. 6.

[9] *Id.*, p. 8.

- **Wholesale delegation of jurisdiction to the police department and "Hearing Officer."** TMC 313.12(d)(4) requires that "Appeals *shall* be heard through an administrative process established by the City of Toledo Police Department." The ordinance itself lays down no rules, no burden of proof and no minimum qualifications for the Hearing Officer.

- **Extrajudicial power to impound vehicles.** TMC 313.12(d)(6) permits Toledo—without ever once going to court—to immobilize ("boot") *or* impound vehicles owned by "noncompliant" vehicle owners.

- **Failure to heed the Notice results in additional penalties.** TMC §313.12(d)(5).

If this scheme isn't an unconstitutional regulation of the municipal court's jurisdiction, it is difficult to imagine what would be. The ordinance strips the court's jurisdiction of the alleged violation itself. At *most*, the ordinance views the municipal court as a potential debt-collection agency after the Hearing Officer decides an alleged violation. TMC 313.12(d)(3). A reversal here would require this court to hold that municipalities—at the whim of the majority of any city council anywhere in Ohio—now have the power to impair or restrict a court's jurisdiction. This contradicts settled law:

> It is now *settled* by the decisions of this court that the authority granted to municipalities...does not include the power to regulate the jurisdiction of courts established by the Constitution or by the General Assembly thereunder.

Cupps v. Toledo, 170 Ohio St. at 149-150.

b. Municipalities have a conflict of interest regulating local courts.

Toledo cannot do indirectly what is directly prohibited. Yet Toledo apparently contends that the ordinance would only divest the municipal court if TMC 313.12 expressly stated, "Toledo municipal court shall have no jurisdiction to hear any violation of this ordinance." While the ordinance doesn't state that these exact words, the words used have *precisely* this effect. *See* TMC 313.12(d)(4) ("A notice of appeal *shall be filed with the Hearing Officer*...")

In *Cupps*, the charter provision under review did not expressly state, "Courts of common pleas have no authority to review a decision of the civil service commission." Instead it said the functional equivalent, "the commission's judgment in the matter shall be final." 170 Ohio St. at 146. This court had no problem finding this provision to be a restriction upon the Lucas county common pleas court's jurisdiction, nor should it have trouble here finding that TMC 313.12 impairs the Toledo municipal court's jurisdiction.

And that impairment is no accident: the drafters no doubt viewed the municipal court and its elected judges as inconvenient obstacles in the way of their plans. They therefore negated the municipal court's jurisdiction in favor of the "Hearing Officer." This is wrong. Municipalities have a conflict of interest regulating local courts.

Appellants and their aligned *amici* offer incoherent arguments in support of their divestiture effort. For example, Toledo argues on one hand that the municipal court has *no* jurisdiction of TMC 313.12 violations.[10] But on the other, the court also supposedly has "concurrent" jurisdiction.[11] And on page 13 of its brief, the city insists that any person "may *appeal*" to the municipal court under R.C. 1901.20 "as a matter of law." These contradictory arguments expose just how bungled the city's rationalizations have become.

The city's other arguments are flimsy at best. Toledo complains that the majority below never cited a case involving a noncriminal "parking or traffic ordinance" violation that was

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[10] Toledo merit brief, p. 24.

[11] *Id.*, p. 18.

adjudicated in municipal court.[12] But that is Walker's point: no "photo enforcement" cases have been filed in municipal court because Toledo and others have unconstitutionally impaired the municipal courts' jurisdiction in connection with those types of cases. And the point of the parking-violation bureau exception is that parking infractions do not have to be adjudicated in municipal court. Thus, *amicus curiae* American Traffic Solution's ("ATS") reliance upon *Gardner v. City of Columbus* is quite odd.[13] *Gardner* specifically involves a parking-violation bureau established under R.C. Chapter 4521, which is specifically exempted in R.C. 1901.20. 841 F.2d 1272, 1274 (6th Cir. 1988).

RedFlex's arguments are no better. It insists that "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."[14] This undermines the appellants completely. By making the "Hearing Officer" the exclusive arbiter of whether there was a violation, Toledo's ordinance *does* impair and restrict—exclude—the Toledo municipal court from exercising its constitutionally-protected jurisdiction over alleged violations of TMC 313.12.

This is *why* the Sixth District held that TMC 313.12 violates Article IV, Section 1. Appellants' circular argument that Toledo may divest the Toledo municipal court of jurisdiction assumes its own conclusion. And it's incorrect legally: this is *not* a home-rule case. Once a court "has jurisdiction," Toledo *may not* impair or restrict it. For this reason, this court must affirm whether the municipal court's jurisdiction is considered "concurrent" or "exclusive." Toledo city

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[12] Toledo merit brief, p. 25.

[13] ATS *amicus* brief, p. 5.

[14] RedFlex merit brief, p. 11 (italics supplied by RedFlex.)

council cannot impair or restrict the Toledo's municipal court's jurisdiction—however classified—without violating the Ohio Constitution. Besides, the "concurrent" jurisdiction argument is a sham.

c. The concurrent-jurisdiction argument is imaginary.

Toledo's camera ordinance does *not* present a "concurrent" scheme—the ordinance confers exclusive jurisdiction upon the Hearing officer. The Toledo municipal court judges are surely surprised to find out—reading Toledo's brief and the dissent below—that they have had "concurrent" jurisdiction all this time. Not a single alleged violation of the camera ordinance has been before them. It is no answer for Toledo that a citizen can take a further "appeal" after the Hearing Officer exercises bureaucratic "jurisdiction". This invented layer of bureaucracy—the euphemistic "pre-suit administrative proceeding"—cannot lawfully exist because it necessarily impairs or restricts the municipal court's jurisdiction, a palpable Article IV, Section 1 violation.

C. This court must apply R.C. 1901.20(A)(1) as written.

The meaning of R.C. 1901.20(A)(1) is plain: the Toledo municipal court "has jurisdiction" over alleged violations of TMC 313.12. And under the plain-meaning rule, no interpretation is needed. "The rule is that when the language of a statute is plain and unambiguous and conveys a clear and definite meaning, there is no need to apply the rules of statutory interpretation." *State ex. rel. Jones v. Conrad,* 92 Ohio St.3d 389, 750 N.E.2d 583, 587, 2001 -Ohio- 207. "Statutes clear in their terms need no interpretation; they simply need application." *Storer Communications, Inc. v. Limbach,* 37 Ohio St.3d 193, 194, 525 N.E.2d 466 (1988). "Courts must look to the statute itself to determine legislative intent, and if such intent is clearly expressed therein, the statute may not be restricted, constricted, qualified, narrowed,

enlarged or abridged." *Boley v. Goodyear Tire & Rubber Co.*, 125 Ohio St. 3d 510, 929 N.E.2d 448, 2010-Ohio-2550, ¶22.

D. Even if this court were to engage in "interpretation," Walker still prevails.

Both the text of R.C. 1901.20(A)(1) *and* the rules of interpretation support Walker. In contrast, the appellants' arguments betray the text and basic canons of statutory construction.

1. The parking-violation exception proves the rule and sinks the appellants' arguments.

Because the narrow-parking violation exception does not apply, it proves the rule: the Toledo municipal court "has jurisdiction." It also rebuts Toledo's flawed analysis that R.C. 1901.20(A)(1) does not generally apply to so-called "noncriminal" ordinances. The exempted parking violations are noncriminal by definition. *See* R.C. 4521.02. This specific exception wouldn't make sense if the grant of jurisdiction within R.C. 1901.20 did not otherwise apply to noncriminal ordinances generally:

> [T]he exception of a particular thing, from general words, proves, that in the opinion of the lawgiver, the thing excepted would be within the general clause, had the exception not been made.

Poole v. Fleeger's Lessee, 36 U.S. 185 (1837).

Toledo's argument that the General Assembly has provided an exception for a situation not otherwise covered by the general clause is illogical.

a. The appellants' reasoning improperly renders the parking-violation exception superfluous.

If Toledo had home-rule power to craft its own exceptions to the municipal court's jurisdiction, then both the parking-violation exception in R.C. 1901.20(A)(1) and all of R.C. Chapter 4521—the lengthy chapter addressing parking-violation bureaus—would be superfluous. One of the most fundamental canons of construction forbids an "interpretation" that

would discard these provisions as meaningless surplus. *State ex. rel. Carna v. Teays Valley Local School District Bd. of Edn.*, 131 Ohio St.3d 478, 967 N.E.2d 193, 2012-Ohio-1484, ¶18.

b. Appellants cannot account for the requirement that municipalities must get permission from the municipal court before establishing a parking-violation bureau.

Under R.C. 4521.04, municipalities must first seek and obtain *municipal-court approval* before establishing a parking-violations bureau. Indeed, attached in the appendix is the approval of Toledo's request to establish a parking-violations bureau. Appendix 1. If municipalities could unilaterally create administrative jurisdiction, neither the attached paperwork nor the longstanding statutory requirements in R.C. 4521.04 would serve any purpose. "(I)t is a basic presumption in statutory construction that the General Assembly is not presumed to do a vain or useless thing, and that when language is inserted in a statute it is inserted to accomplish some definite purpose." *State ex. rel. Cleveland Elec. Illuminating Co. v. City of Euclid*, 169 Ohio St. 476, 479, 159 N.E.2d 756, (1959). Thus, appellants' arguments must be rejected.

2. R.C. 1901.20 applies to *any* ordinance—not just criminal ordinances—"any" means "every" or "all."

RedFlex insists that "the root of the court of appeals' error is its misinterpretation of the word "'any.'"[15] Not so. "Any" is presumed to mean "every" and "all." *State v. Gardner*, 118 Ohio St.3d 420, 2008-Ohio-2787, 889 N.E.2d 995, ¶33. *See also, Boley v. Goodyear Tire & Rubber Co.*, supra, 2010-Ohio-2550, ¶22 (emphasizing "any" as a broad term.) RedFlex submits that in the abstract, "any" *could* mean "one" or "some."[16] But here, "any" is used broadly

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[15] RedFlex merit brief, p. 9.

[16] *Id.*, p. 10.

followed by a narrow exception. This signals broad, all-embracing legislative intent. "Almost all cases to be found in federal or state courts support such a reading." *Sommervold v. Wal-Mart, Inc.*, 2012 WL 2366240, *3 (Dist. South Dakota).

a. Substituting "one" or "some" for "any" shows that RedFlex's argument is untenable.

Substituting "one" or "some" for "any" results in a garbled statute:

> **"One."** The municipal court has jurisdiction of the violation of ~~any~~ one ordinance of ~~any~~ one 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~~ one misdemeanor committed within the limits of its territory.
>
> **"Some."** The municipal court has jurisdiction of the violation of ~~any~~ some ordinances of ~~any~~ some municipal corporations 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~~ some misdemeanors committed within the limits of its territory.

But the statute remains coherent after substituting "every" or "all":

> **"Every."** The municipal court has jurisdiction of the violation of ~~any~~ every ordinance of ~~any~~ every 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~~ every misdemeanor committed within the limits of its territory.
>
> **"All."** The municipal court has jurisdiction of the violation of ~~any~~ all ordinances of ~~any~~ all municipal corporations 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~~ all misdemeanors committed within the limits of its territory.

b. Toledo's criminal-jurisdiction argument renders the operative text *in*operative.

Toledo argues that R.C. 1901.20(A)(1) does not apply to alleged violations of TMC 313.12 because a violation of that ordinance is not a crime.[17] This doesn't follow at all. If the General Assembly intended R.C. 1901.20(A)(1) to apply to criminal ordinances only—misdemeanors—then the legislature wouldn't have used the words "*any* ordinance." The General Assembly is aware that Toledo *may* make the violation of an ordinance a crime, or as here, the violation may carry a noncriminal financial penalty:

> Any municipal corporation *may* make the violation of any of its ordinances a misdemeanor, and provide for the punishment thereof by fine or imprisonment, or both. ***

R.C. 715.67.

"May" is permissive. *J.M. Smucker, L.L.C. v. Levin*, 113 Ohio St.3d 337, 865 N.E.2d 866, 2007-Ohio-2073, ¶14. "Municipalities have no power to punish felons; violation of a municipal ordinance may constitute no more than a misdemeanor." *State ex. rel. Corrigan v. Barnes*, 3 Ohio App.3d 40, 45, 443 N.E.2d 1034 (8th Dist.1982). Thus, while Toledo has the home-rule choice to make the penalty for an ordinance violation carry a financial penalty—the only issue addressed in *Mendenhall v. Akron*—the city has no authority to impair a court's jurisdiction. Unless the General Assembly provides otherwise, the municipal court "has jurisdiction" whether the alleged violation ordinance is a misdemeanor or not.

Toledo's argument is ironic because if the General Assembly intended R.C. 1901.20(A)(1) to only confer municipal courts with jurisdiction of "criminal ordinance"

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[17] Toledo merit brief, pages 24-25.

violations, then the General Assembly would not have even mentioned the word "ordinance" in R.C. 1901.20(A)(1). Simply stating that the municipal court has jurisdiction of the violation of any misdemeanor committed within the limits of its territory would've sufficed:

> 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 words "stricken" above must be given meaning because they are used in the actual statute. R.C. 1.47(B). Significance and effect should be accorded to every word. *Brown v. Martinelli*, 66 Ohio St. 2d 45, 50, 419 N.E.2d 1081, 1084 (1981). Toledo's argument renders meaningless the very text at issue and therefore must be rejected. *State ex rel. Myers v. Spencer Twp. Rural School Dist. Bd. of Edn.*, 95 Ohio St. 367, 373, 116 N.E. 516 (1917), ("No part [of a statute] should be treated as superfluous unless that is manifestly required, and the court should avoid that construction which renders a provision meaningless or inoperative.") Alternatively, a holding that R.C. 1901.20(A)(1) applies to criminal ordinances only would require this court to insert the word "criminal" into the statute, so it would that the "the municipal court has jurisdiction of the violation of any criminal ordinance...". Of course, this court cannot insert words in a statute not used by the General Assembly. *State ex. rel. Carna v. Teays Valley Local School District Bd. of Edn.*, supra, 2012-Ohio-1484, ¶18. Further, inserting "criminal" in front of "ordinance" would render the words "and the violation of any misdemeanor" superfluous.

c. No case has ever held that R.C. 1901.20 applies to criminal ordinances only.

Appellants and their *amici* cite a lot of cases, but none of them—not one—hold that R.C. 1901.20 applies to criminal ordinances only. For example, Toledo's reliance upon *Cheap Escape Co., Inc. v. Haddox, LLC* is insincere. *Cheap Escape* required this court "to determine whether

municipal courts have subject-matter jurisdiction over matters lacking connections to their geographical territories." 120 Ohio St.3d 493, 900 N.E.2d 601, 2008-Ohio-6323, ¶1. That issue has no relevance here. This court mentioned R.C. 1901.20 in *Cheap Escape* merely to illustrate a point about *another* statute under review. And while this court stated in passing that R.C. 1901.20 confers municipal courts with their criminal jurisdiction, this court did *not* hold that R.C. 1901.20 applies *only* to violations of "criminal" ordinances.

That was not even an issue in any of the cases cited by appellants and their *amici*. And it should not be an issue here: the Toledo municipal court "has jurisdiction" of the violation of *any* ordinance of *any* city within its territory—including jurisdiction of TMC 313.12.

Under Toledo's logic, if a person is cited in municipal court for a noncriminal ordinance violation, that person could successfully defend by arguing that the municipal court lacks subject matter jurisdiction of noncriminal ordinance violations. According to Toledo, only a municipal bureaucrat would have jurisdiction. This contention is contradicted directly by R.C. 1901.20(A)(1), which—unless a specific exception applies—requires that the municipal court "has jurisdiction" of the violation of "*any* ordinance."

E. If Toledo, RedFlex, and their politically-connected *amici* do not like the municipal courts' jurisdiction then they may go through the political process and lobby the General Assembly.

ATS observes that some municipal court judges preside over many alleged ordinance violations per week. So what? Those judges are busy presiding over ordinance-violation cases *because that's what municipal courts are designed to do*: each municipal court "has jurisdiction" of the violation of *any* ordinance of *any* municipality within the court's territory. It cannot get much broader. Toledo has no Article XVIII power to tell the municipal court judges "step aside,

our Hearing Officer will take over from here." City council cannot pick and choose whether a municipal court has jurisdiction over alleged violations of the ordinances that council enacts.

1. ATS's brief reads like a lobbyist's policy statement.

If private camera companies and the Municipal League want to pitch the General Assembly as to why municipal judges aren't equipped to exercise jurisdiction of "camera" ordinances, they are free to fund a lobbying campaign at the State House. But the Supreme Court is an improper—and ironic—venue to seek to divest the courts of judicial power.

2. Appellants' and *amici's* policy arguments and examples do not withstand scrutiny.

Appellants and their *amici* insist that the decision below benefits tax cheaters and renders R.C. Chapter 2506 impotent. And cities supposedly will not be able to tell homeowners to cut overgrown grass without going to court and the municipal courts will be overcrowded. This is pure hyperbole. This court no doubt reads its fair share of embellishments. But the Municipal League's brief may take the prize. It states that if the Sixth District decision "would render *all* administrative hearings conducted by municipal boards and commissions—hearings to determine ordinance violations—unconstitutional" and that this case "implicates the legitimacy of *every* administrative enforcement board and commission established by an Ohio municipality."[18] Whoever wrote these statements either did not actually read the Sixth District's decision or does not understand. Every legitimate municipal board is unaffected by the decision below. For example, Toledo has issued business licenses, regulated overgrown yards, collected taxes, and

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[18] Ohio Municipal League *amicus* brief, p. 6.

handled local zoning matters without incident since the decision below. And that's because the decision below has absolutely no impact on those matters.

As for Chapter 2506, it concerns administrative appeals of matters that are rightfully administrative—for example, certain nuisance or zoning board hearings—or matters that do not directly involve the violation of an ordinance, such as whether to grant or deny a business license application. These matters are unlike what we have here—an ordinance unconstitutionally shoehorned into an "administrative" posture due to an underlying Article IV, Section 1 violation. Chapter 2506 simply has no application to pure ordinance-violation cases. Appellants' reliance upon it is a smoke screen.

The General Assembly wants municipal courts to preside over pure ordinance-violation cases, not common pleas courts. Indeed, appeals from parking-violations bureaus don't even go to common pleas courts, but to municipal court. R.C. 4521.08(D); R.C. 1901.20(C). A reversal would cause an unwarranted explosion in "administrative" appeals to common pleas courts over pure ordinance-violation matters that belong in municipal court.

In enacting R.C. Chapter 2506, the General Assembly did *not* give municipalities a license to negate a municipal court's jurisdiction. If so, there would have been no reason to enact the parking-violation exception in R.C. 1901.20 nor any of R.C. Chapter 4521. Chapter 2506 is a general "catch all" chapter. It addresses determinations of agencies with respect to "rights, duties, privileges, benefits, or legal relationships" of a person. R.C. 2506.01(C). But R.C. 1901.20(A)(1) applies to ordinance violations specifically and therefore it controls. The decision below doesn't impact traditional Chapter 2506 appeals and therefore appellants' reliance upon Chapter 2506 is vastly overblown.

Finally, Columbus joins the Municipal League's *amicus* brief. Columbus' feigned consternation over the integrity of Chapter 2506 after the decision below is rather ironic given that its "camera" ordinance requires appeals to the Franklin county municipal court, *not* to common pleas court. *See* CCO 2115.04(I) ("Any person against whom a decision is entered pursuant to this section may appeal the decision to the Franklin County Municipal Court by filing notices of appeal to the Columbus Division of Police and the Municipal Court within thirty (30) days of the date of entry of the decision and by the payment of such reasonable costs as the court requires.")

a. The examples in Toledo's brief are inapposite.

Toledo tries to bootstrap to the constitutionality of TMC 313.12 by comparing it to other ordinances that are not under review. Toledo addresses the hypothetical eight-inch lawn—a *per se* nuisance under TMC 955.01(a)(1)[19]—and the fictitious $120,000 tax cheat.[20] Upon scrutiny, *both* examples support Walker.

Toledo may still notify a homeowner of tall grass without first going to court. And if the owner doesn't correct the perceived problem, the city may pursue an alleged violation in municipal court as a minor misdemeanor under TMC 955.99(c), ("A violation of this chapter shall be a minor misdemeanor.") *Accord, City of Mayfield Heights v. Barry*, 8th Dist. No. 82129, 2003-Ohio-4065, ¶2 ("The city sent a letter to the appellant instructing the appellant to cut his grass and eliminate the grass growing in between the stones in his front yard. *** In accordance

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[19] TMC 955.01(a)(1) provides: "The following conditions provide harborage and breeding grounds for pests that are an immediate threat to human health, *are therefore declared to be nuisances* which shall be removed or abated from any property on which they are found:
(1) Grass over eight (8) inches in height."

[20] Toledo merit brief, p. 23.

with MHCO 917, the city issued a citation to the appellant on July 21, 2000 for non-compliance and continued to issue a citation per day until the appellant complied. The appellant received 25 citations ending on August 18, 2000. *The city filed charges with the Lyndhurst Municipal Court on each date a citation was issued.*") *Accord,* R.C. 3707.01, R.C. 3709.01, R.C. 715.261, 715.44.

In the same way, the decision below does *not* implicate Toledo's example of "ABC Co.," a "large, fictional, employer in Toledo." Toledo can still sue ABC Co. to recover the full fictitious local income-tax withholdings owed. "Ohio municipalities have the power to levy and collect income taxes..." *Angell v. City of Toledo*, 153 Ohio St. 179, 91 N.E.2d 250 (1950), ¶1 of syllabus. Toledo's brief conflates a civil action to collect unpaid municipal income taxes with prosecution for an offense made punishable under a municipal ordinance. The statute of limitations for municipal-income tax issues, R.C. 718.12, recognizes this distinction overlooked by Toledo. The statute provides two independent limitation periods:

- R.C. 718.12(A): "Civil action to recover municipal income taxes..."; and
- R.C. 718.12(B): "Prosecution for an offense made punishable under a municipal ordinance imposing an income tax..."

Toledo should know better. The city itself files violations in municipal court for failure to pay local pay-roll tax. *See e.g, City of Toledo v. Schudel*, 90 Ohio App. 55, 103 N.E.2d 287 (6th Dist. 1951). These filings would implicate the municipal court's jurisdiction under R.C. 1901.20. In contrast, a lawsuit to collect $120,000 in unpaid withholdings does not: Toledo can sue ABC Co. in common pleas court. *See e.g., City of Rocky River v. Center Ridge Hotel Assoc.*, 61 Ohio App.3d 308, 572 N.E.2d 767 (8th Dist. 1989) (civil action for unpaid municipal taxes brought in common pleas court).

b. Municipal court judges do not "harm and hinder the citizens of Ohio."

ATS urges that because the decision below requires municipalities and camera companies to prove their cases in municipal court under normal courtroom rules, this would somehow "harm and hinder the citizens of Ohio."[21] This far-fetched assertion is not even relevant to the constitutional analysis. Regardless, municipal courts do not "harm" and "hinder." Nullification of the municipal court's jurisdiction benefits the for-profit camera companies and Toledo. That's why appellants find no *amicus* support among citizen groups.

Similarly, ATS states that the Sixth District's decision eliminates "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."[22] The burden should not be on defendants to present *their* cases. Toledo's ordinance allows the city to present *its* case without respecting the rules of evidence. The rules of evidence ensure fairness, integrity, and legitimacy: ATS and Toledo dismiss them as unworthy relics. The notion that Toledo city council can discard the Rules of Evidence if it wants is supported by nothing. City council can't pick and choose whether the rules apply to Toledo.

It is no secret why the camera companies prefer the unconstitutional mock "Hearing Officer" courts as a substitute for the municipal court. Neither the municipalities nor the private companies have to (1) prove their allegations in court under normal courtroom rules, (2) call witnesses, (3) prove proper calibrations, (4) engage in discovery, or (5) have a judge regulate the burden of proof at "appeals" or decide guilt or punishment, etc. Worse, under TMC 313.12(a)(3),

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[21] ATS brief, p. 3.

[22] *Id.*

service of the "Notice of Liability" is by *regular* mail, typically weeks or more after an alleged infraction. Nothing ensures that a defendant is even aware of a case by the time Toledo claims the right to strong-arm payment by impounding or towing vehicles. The contention that this is a "beneficial system" for vehicle owners rings hollow—the system is deliberately one-sided.

Next, ATS's argument about court costs is disingenuous. Toledo's ordinance wasn't enacted to help defendants avoid court costs. The ordinance purposefully makes it onerous and asymmetrically financially burdensome for a citizen to see a real judge. Appellants place heavy reliance upon the supposed right to file an "administrative appeal" to common pleas court, but the filing fee for that typically costs up to several hundred dollars more than the disputed penalty. In contrast, defendants traditionally incur no upfront court costs in consideration of seeing an actual municipal court judge. Toledo and others have calculatedly manipulated this balance. In fact, some municipalities even require upfront bonds *for an "appeal" to the hearing officer*. Here are a few examples:

- Columbus Codified Ordinance 2115.04(A). ("Prior to the hearing, a bond must be posted in the amount of the fine. The bond shall be payable by either a check or money order.");

- Parma Codified Ordinance 313.035(d)(2)A. ("A person who receives a Notice of Liability pursuant to division (b)(5) of this section may appeal the Notice of Liability within 21 days from the date of the Notice of Liability by making a written request for a hearing to the address listed on the Notice of Liability. Said request shall be accompanied by a monetary deposit in an amount equal to the amount of the administrative fine listed on the Notice of Liability."); and

- Parma Heights Codified Ordinance 315.05(a)(3). ("An individual desiring a hearing must post payment equal to the amount of the civil penalty before an appeal will be scheduled.")

Finally, ATS's argument that the municipal-court system will be flooded if the Sixth District is not reversed sounds more like a threat than legal argument. Nothing requires that

municipalities act without discretion and flood the court system with "camera" citations. Nothing requires that cities even have camera ordinances—the vast majority of Ohio municipalities do not. The only requirement is that the municipal court "has jurisdiction" of alleged violations of these ordinances. And if this presents a real problem—as opposed to one concocted in an *amicus* brief—the appellants' remedy under the separation of powers is to lobby the General Assembly to amend R.C. 1901.20(A)(1) to provide an exception. This court may not create an exception by judicial fiat. *Pauley v. Circleville*, supra, 2013 -Ohio- 4541, ¶38.

F. *Mendenhall* is entitled to no consideration concerning Article IV, Section 1, nor is *State ex. rel. Scott v. Cleveland* or *State ex. rel. Christoff v. Turner.*

Appellants' heavy reliance upon *Mendenhall* reflects weakness: the only connection between this case and *Mendenhall* is that both cases happen to involve camera ordinances. This *factual* commonality isn't dispositive of Walker's legal challenge. As Toledo concedes, this case really is not about cameras.

1. *Mendenhall* did not involve a challenge under Article IV, Section 1 and therefore is entitled to no consideration here.

Mendenhall simply answered a narrow question certified by a federal court—do municipalities have home-rule power to enact civil penalties for offenses that are criminal under the Revised Code? This question doesn't implicate R.C. 1901.20 or Art. IV, Sec. 1. Thus, *Mendenhall* is entitled to no consideration here:

> A reported decision, although in a case where the question might have been raised, is entitled to no consideration whatever as settling, by judicial determination, a question not passed upon or raised at the time of the adjudication.

State ex. rel. Gordon v. Rhodes, 158 Ohio St. 129,107 N.E.2d 206 (1952), ¶1 of syllabus.

This court expressly stated in *Mendenhall* that procedural questions surrounding Akron's ordinance were *not* before the court and therefore *not* under review. 117 Ohio St. 3d 33, 881

N.E.2d 255, 2008-Ohio-270, ¶40. "It has long been the policy of this court not to address issues not raised by the parties." *Sizemore v. Smith*, 6 Ohio St. 3d 330, 453 N.E.2d 632 (1983), fn 2.

2. Any reliance upon *State ex. rel. Christoff v. Turner* fails basic jurisprudence.

Christoff was a class action filed directly in the Supreme Court and was dismissed *without* opinion. Because it was not a decision on the merits—and because there was no opinion—it has zero precedential value. Actual decisions "shall be reported, together with the reasons therefor." OHIO CONST., Article IV, Section 2(C). Similarly, the rules for reporting decisions in effect at the time of *Christoff* dictate that the dismissal entry is not constitutional precedent for the whole state. Appendix, Rep.R.1. The dismissal was only binding upon the parties.

3. Appellants' mistakenly rely upon *State ex. rel. Scott v. Cleveland*, 112 Ohio St. 3d 324, 859 N.E.2d 923 (2006).

As the plaintiff *Mendenhall*, the relator in *Scott* did *not* raise an Article IV, Section 1 challenge. Mr. Scott's challenge rested upon Article XVIII. Walker isn't raising a home-rule challenge: Toledo and RedFlex are raising a (bogus) home-rule *defense*. The two should not be confused. *Scott* does not govern the Article IV determination. *State ex. rel. Gordon v. Rhodes*, supra, 158 Ohio St. 129, ¶1 of syllabus

Mr. Scott sought extraordinary writs from the Eighth District, arguing that Cleveland's parking-violation bureau "patently and unambiguously" lacked jurisdiction of violations of Cleveland's traffic-camera ordinance." That heightened standard is not relevant here.

Further, Mr. Scott had to show a "conflict" between Cleveland's ordinance and R.C. Chapter 4521. Walker need not. Under his challenge, Walker must only show that the municipal court "has jurisdiction" of alleged violations of TMC 313.12. *Cf., State ex. rel. Wehrung v.*

Dinkelacker, 92 Ohio St.3d 310, 311, 750 N.E.2d 154 (2001) (Pfeifer, J., dissenting) ("[the] court will be asked to determine whether the court of common pleas had jurisdiction, which is a lesser standard than now determining whether the court of common pleas patently and unambiguously lacks jurisdiction."). Under Walker's underlying challenge, once the municipal court "has jurisdiction," that jurisdiction may not be restricted or impaired by Toledo. Besides, Cleveland's ordinance was never deemed constitutional. The issue was never decided on the merit on mandamus or prohibition. This court merely stated that it was "unclear whether Section 413.031 conflicts with R.C. 4521.05." 112 Ohio St.3d 324, 2006-Ohio-6573, 859 N.E.2d 923, ¶20. Neither the enhanced patent-and-unambiguous standard nor the home-rule conflict analysis matter in this case.

Finally, the *Scott* court cited *State ex. rel. Sferra v. Girard*, 11th Dist. No. 2005-T-0125, 2006-Ohio-1876. While the relator in *Sferra* did not prevail—and also did not raise an Article IV, Section 1 challenge—here is how the *Sferra* court concluded its analysis:

> [T]his court would acknowledge that the implementation of Ordinance 7404-05 *does raise certain* ***jurisdictional*** *questions* concerning the legality of the imposition of a sanction for a traffic violation without the intervention of a court.

Id. at ¶ 19.

The *Sferra* court's instinct was correct. Here, Toledo manipulated the municipal court's jurisdiction for its benefit and the benefit of a private camera company. Toledo concedes that a home rule city cannot limit a court's jurisdiction. And because that is *exactly* what TMC 313.12 does, it is unconstitutional. This court must affirm: there is no need to either engage in error correction or become a willing participant in the divestiture of the municipal courts.

II. **Walker's response to Toledo's second proposition of law**: It doesn't matter whether the jurisdiction conferred in R.C. 1901.20(A)(1) is exclusive or concurrent: Toledo may not negate a court's jurisdiction whether that jurisdiction is exclusive or concurrent.

Toledo's second "proposition of law"—which reads like an assignment of error—did not appear in the city's jurisdictional memoranda and therefore must be rejected. Toledo's proposition insists that the court of appeals held that the municipal court has "exclusive jurisdiction over all violations of any municipal ordinance." No it didn't. Nor did it have to: once a court "has jurisdiction" that jurisdiction may not be impaired or restricted. It doesn't matter whether the court's jurisdiction is classified as "concurrent" or "exclusive."

Similarly, RedFlex insists that the court of appeals "concluded that 'if a municipal court has jurisdiction of the violation of any [every] ordinance,' it must mean that it has *exclusive* jurisdiction."[23] That is downright false. The court of appeals *never* said that. The appeals court's supposed "conclusion"—"it must mean that it has exclusive jurisdiction"—are words that RedFlex tacks on in its brief. Those are not the appellate court's words. The court never actually reached a determination on the exclusive/concurrent issue because that empty discussion does not make a difference. It is a red herring.

A. **The concurrent-jurisdiction argument obfuscates the truth: Toledo has conferred its Hearing Officer with *exclusive* jurisdiction of alleged violations.**

Appellants and the dissent below use "concurrent"—a term of art—without pause. Appellants' loose use of "concurrent" looks past the fact that the ordinance negates the municipal court's jurisdiction to determine whether a violation occurred. Under the ordinance, the municipal court no longer "has jurisdiction" of alleged TMC 313.12 violations. City council

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[23] RedFlex merit brief, p. 10 (emphasis supplied by RedFlex).

conferred the Hearing Officer with exclusive jurisdiction to determine whether the ordinance was violated. This divestiture is the centerpiece of the entire ordinance.

And it is precisely why appellants' arguments are undercut by *State ex. rel. BancOne Corp. v. Walker*, 86 Ohio St.3d 169, 712 N.E.2d 742, 1999-Ohio-151 (1999). When the General Assembly intends to grant an agency with exclusive jurisdiction, it does so through "appropriate *statutory* language." *Id.*, 171-172. Appellants point to no *statutory* language conferring Toledo's "Hearing Officer" with exclusive jurisdiction—only Toledo's self-serving ordinance. "If anything, *State ex rel. Banc One Corp.* favors [Walker'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." *Walker*, 2013-Ohio-2809, ¶35.

B. The Toledo municipal court has exclusive jurisdiction of TMC 313.12 violations by sheer operation of Article IV, Section 1.

The General Assembly has exclusive power to establish courts and confer jurisdiction. *Cupps*; *Ramey*. And other than the Toledo municipal court, appellants identify no court that has potential overlapping jurisdiction over alleged violations of TMC 313.12. Indeed, the legislature specifically ensured that Toledo does not have a mayor's court because Toledo is "the site of a municipal court." R.C. 1905.01(A). Nor has the legislature carved an exception for "camera" cases as it has for parking violations. Thus, by sheer operation of Article IV, Section 1, the Toledo municipal court's jurisdiction with respect to TMC 313.12 violations is indeed exclusive. Nothing requires that R.C. 1901.20 recite the magic word "exclusive." But even if the municipal courts jurisdiction is somehow "concurrent," the *General Assembly* must create the concurrent jurisdiction. Toledo cannot fabricate "concurrent" jurisdiction that impairs or restricts an actual court's jurisdiction. Any contention otherwise flouts Article IV, Section 1.

Still, RedFlex persists in arguing that R.C. 1901.181(A)(1) "evidences" that the legislature did not intend to give the Toledo municipal court exclusive jurisdiction over TMC 313.12 violations.[24] Not so. Certain municipal courts have housing or environmental divisions. Accordingly, those specialized divisions may have overlapping jurisdiction of certain matters with the general division. Section 1901.181 simply requires that *if* a municipal court has a housing or environmental division, that division has jurisdiction of the enumerated types of cases—including certain civil ordinance violations—to the exclusion of the general division of the municipal court. If the court does not have a housing or environmental jurisdiction, the general division retains jurisdiction.

This has no relevance to TMC 313.12 because: (1) that ordinance would never fall within an "environmental" or housing" division's jurisdiction in the first place and (2) no other court has overlapping jurisdiction of TMC 313.12 cases. And if another court did, that simply means Toledo's ordinance divests *two* courts of jurisdiction instead of one.

Further, RedFlex overlooks 1901.181(A)(2), which states:

> If a municipal court has an environmental division, if the mayor of any municipal corporation within the territory of the municipal court conducts a mayor's court, and if any action described in division (A)(1) of this section as being within the jurisdiction of the environmental division otherwise is within the jurisdiction of the mayor's court, as set forth in section 1905.01 of the Revised Code, the jurisdiction of the environmental division over the action is ***concurrent*** with the jurisdiction of that mayor's court over the action.

This provision contradicts the argument that the legislature intended to permit municipalities to unilaterally create their own "concurrent" jurisdiction that competes with—or even divests—an actual court's jurisdiction. Under the separation of powers, a *statute* is required.

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[24] RedFlex merit brief, p. 12.

C. The concurrent/exclusive jurisdiction debate is not relevant.

The constitutional analysis is not tethered to the classification of jurisdiction at issue. A municipality doesn't enjoy a home-rule power to restrict "concurrent" jurisdiction. If a court "has jurisdiction"—any jurisdiction—that jurisdiction may not be restricted by a municipality. Otherwise, a municipality could *always* self-create "concurrent" jurisdiction and then immediately negate a municipal court's jurisdiction. This doesn't even begin to make sense.

D. Appellants' "home rule" argument unwittingly contradicts itself and would read Article IV, Section 1 out of the Ohio constitution.

Perhaps the worst of many bad features of appellants' argument is that it is utterly self contradictory. Here is why.

Appellants' tie their entire "home-rule" argument to the premise that the General Assembly could—but did not do so here—confer the Toledo municipal court with exclusive jurisdiction over alleged violations of TMC 313.12. For the sake of argument, Walker will assume appellants' premise—that the legislature can, but did not, confer exclusive jurisdiction upon the municipal court. This central premise ends up contradicting the appellants' overall constitutional argument.

Appellants claims that Toledo has a home-rule power—a *constitutional* power—to confer jurisdiction of ordinance violations upon a bureaucratic "Hearing Officer." But at the same time, appellants (correctly) concede that the General Assembly may confer exclusive jurisdiction upon a municipal court. Here is the problem: any time the General Assembly would confer exclusive jurisdiction upon a municipal court, doing so would unavoidably prohibit Toledo's supposed "home-rule power" to confer jurisdiction upon a bureaucrat and therefore would be unconstitutional. *Cleveland v. State*, 2014-Ohio-86, ¶1 of syllabus ("The General Assembly may not by statute prohibit the municipal home-rule authority granted by Article XVIII, Section 3 of

the Ohio Constitution."). Thus, under appellants' argument, if Toledo *truly* had a ***constitutional*** home-rule power to confer a local bureaucrat with jurisdiction of ordinance violations, then that constitutional power could *never* be limited by statute, meaning the General Assembly could *not* confer exclusive jurisdiction upon a municipal court, which is both internally inconsistent and absurd. In reality, Toledo has no such constitutional home-rule power:

> The authority granted to municipalities by Section 3 of Article XVIII, Ohio Constitution...***does not include*** the power to regulate the jurisdiction of courts established by the Constitution or by the General Assembly thereunder.

Cupps v. Toledo, supra, 170 Ohio St. 144, 163 N.E.2d 384, syllabus.

This is the classic case of appellants' argument "proving too much." Appellants pin their entire argument to a premise that their conclusion does not allow. This is completely illogical. Toledo has no home-rule power to confer jurisdiction upon a bureaucrat.

Appellants' arguments taken to their logical conclusion would read Article IV, Section 1 out of the Ohio constitution because municipalities would be able to override either a conferral of "concurrent" *or* "exclusive" jurisdiction. Appellants could always "home rule" a court's jurisdiction. Article IV, Section 1 would have no vitality because municipalities could ultimately impair or restrict jurisdiction at will, which is at direct odds with this court's settled precedent.

The exclusive/concurrent dichotomy is a red herring not germane to the proper constitutional analysis, which arises under Article IV, not Article XVIII. Toledo's second proposition of law—which is actually a mere assignment of error—misses the mark completely.

III. Walker's response to Toledo's third and RedFlex's second proposition of law: Toledo failed to follow its own ordinance.

Toledo's third proposition of law is another assignment of error—***"the court of appeals erred when"***—not raised in the city's jurisdictional memoranda. This completely new proposition should not be considered. Indeed, if it truly warrants this court's review, Toledo

should have included it in its jurisdictional memorandum. The same goes for RedFlex, which proposes that "TMC 313.12. provides for the requisite level of due process required by the Due Process Clause of the United States Constitution." This is new. RedFlex never mentioned this in its jurisdictional brief. Indeed, whether TMC 313.12 satisfies the Due Process Clause of the United States Constitution is seemingly not a substantial constitutional question for the Supreme Court of Ohio. But even if these new "propositions" are considered—and even if this court somehow rules that Toledo may home-rule a court's jurisdiction—this court must still affirm.

As alleged in the complaint, Toledo's entire scheme was premature. The ordinance itself contains no procedures—only a wholesale delegation to the police department. The ordinance requires that the Police Department shall ***establish*** the procedures. TMC 313.12(d)(4). "The word 'establish' means '[t]o settle firmly, to fix unalterably.'" *Cannon v. Catalytic, Inc.*, 84 Ohio App.3d 488, 617 N.E.2d 693 (1992), quoting Black's Law Dictionary (5 Ed.1979) 490. This was never even attempted until February 2011. *See* Appendix 3 and 4. This shows how lax things get when municipalities such as Toledo usurp a court's jurisdiction in favor of a slapdash agency. Toledo wants to usurp the municipal court's jurisdiction but cannot even do it without violating its own ordinance. The appellants' arguments should not be considered, have no merit, and highlight why these cases must be in municipal court in the first place.

IV. Walker's response to the Ohio Municipal League's Second Proposition of Law: Municipalities are subject to unjust-enrichment claims as long as the plaintiff is not attempting to avoid statutory formalities governing the formation of municipal contracts.

The Municipal League improperly injects its own proposition of law, preserved by neither appellant and not advanced by either appellant in their jurisdictional memoranda or merit briefs. Thus, this proposition also should not be considered. But out of caution, Walker will

address it briefly. The proposition has no merit. And even if it did, appellant RedFlex is not a municipality and therefore would not be immune even if Toledo were.

The Municipal League first argues that unjust-enrichment claims *must* be premised upon services conferred by the plaintiff upon the defendant. No case says that. An unjust-enrichment claim *can* be premised upon services conferred upon the defendant, but doesn't *have* to be. The benefit conferred can be money. *See e.g.*, *Santos v. Ohio Bur. of Workers' Comp.*, 101 Ohio St.3d 74, 2004-Ohio-28, 801 N.E.2d 441, *Judy v. Ohio Bur. of Motor Veh.*, 100 Ohio St.3d 122, 2003-Ohio-5277, 797 N.E.2d 45; *Lycan v. Cleveland* ("*Lycan II*"), 8th Dist. No. 99698, 2014-Ohio-203. The idea is that a party—including government—may not unjustly enrich itself at the expense of another's rights. The notion that collecting monies *un*constitutionally is not *un*just—that it is *just*—contradicts Ohio law. The logic that government can keep money obtained unconstitutionally is perverse. The defense that "because it was your money we took unconstitutionally and not your services, we get to keep it" is unconscionable.

The Municipal League next argues that "the law is clear that recovery cannot be had against a municipality." Not so. If the law is clear, then RedFlex and Toledo surely would've mentioned it. But they didn't. Why not? They must know that the Municipal League is flat wrong: municipalities are immune from unjust-enrichment claims ***only*** when the party asserting the claim is attempting to circumvent the statutory formalities governing the formation of public contracts. For example, if a contractor obtains an illegal no-bid contract to build a municipal bridge, builds the bridge, and then sues the city for nonpayment, the courts will leave the parties where they are found—without a legally enforceable contract. *Buchanan Bridge Co. v. Campbell*, 60 Ohio St. 406, 54 N.E. 372 (1899). The contractor is prevented from asserting a common law unjust-enrichment claim as an alternative to a breach of contract claim because

permitting that type of claim would frustrate the statutory formalities governing public contracts that the law seeks to uphold.

That rationale has no relevance here because Walker isn't seeking to avoid statutory formalities. Thus, Toledo has no immunity. *See e.g., DVCC, Inc. v. Med. College of Ohio*, 10th Dist. No. No. 05AP--237, 2006-Ohio-945, citing *Village of Indian Hill v. Atkins*, 153 Ohio St. 562, 93 N.E.2d 22 (1950). Denying a remedy here would not serve the public-policy concerns at issue in *Buchanan Bridge*, namely, ensuring compliance with the statutes governing public contracts. Denying a remedy here would be contrary to public policy. If the Municipal League were correct: (1) municipalities could collect monies unconstitutionally as they please and (2) keep the monies without consequence. Absurd. Further, statutory immunity applies only to claims for tort *damages*. R.C. 2744.02(A). The remedy here is restitution.[25]

Finally, Walker's payment doesn't "waive" his unjust-enrichment claim as Toledo suggests in a footnote, which preserves nothing. Even though the appellants have not put this issue before this court, Walker will address it very briefly. His payment is the first element of his unjust-enrichment claim.

Toledo cannot use its unconstitutional ordinance as a sword to demand Walker's money and hold up Walker's refusal to partake in the unconstitutional hearing as a shield to keep his money.

Walker's payment was not "voluntary." Toledo manipulated the justice system. Walker's payment merely enabled him to avoid the threat of impoundment or damaged credit and spared

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[25] This court has declined to accept the issue of whether municipalities have absolute immunity against restitution claims. *Lycan v. Cleveland*, Supreme Court Case No. 11-0358, ("*Lycan I*").

him the vain act of appearing before the illegal Hearing Officer. *Cf. Namazee v. Mt. Sinai Medical Center*, 56 Ohio St.3d 109, 115, 564 N.E.2d 447 (1990), ("The focus is on the *power* of the administrative body to afford the requested relief, and not on the happenstance of the relief being granted.") The city had no right to force Walker to choose whether to pay, risk more penalties and damaged credit, or attend an illegal hearing that he had no duty to attend:

> An unconstitutional act is not a law; it confers no rights; it imposes no duties; it affords no protection; it creates no office; it is, in legal contemplation, as inoperative as though it had never been passed.

Middletown v. Ferguson, 25 Ohio St.3d 71, 80, 495 N.E.2d 380 (1986).

V. The offending portions of TMC 313.12 should not be severed, but the entire ordinance should be stricken because it never would have been adopted without the offending provisions.

Footnote five of Toledo's merit brief—for the first time in this case—asks "could not the Ordinance have been cured of its alleged infirmities simply be eliminating the provisions for administrative appeal?" Walker will answer this question even though Toledo has not yet offered an answer of its own—and even though the decision below should remain unaffected whether severance is available or not.

Most ordinances define an offense and impose a penalty. But TMC 313.12 does much more. Indeed, Toledo's mention of severance unwittingly underscores the fact that virtually every provision in TMC 313.12 that doesn't either define an offense or supply the penalty is geared toward impairing the municipal court's jurisdiction. At bottom, Toledo's question asks whether this court should sever the entire ordinance except the section that defines the offense (TMC 313.12(c)(1)-(2)) and the section that provides the penalty (TMC 313.12(d)(1))? It depends. Severance is not the default, but is available only when this court's well established three-part test is satisfied:

> "(1) Are the constitutional and the unconstitutional parts capable of separation so that each may be read and may stand by itself? (2) Is the unconstitutional part so connected with the general scope of the whole as to make it impossible to give effect to the apparent intention of the Legislature if the clause or part is stricken out? (3) Is the insertion of words or terms necessary in order to separate the constitutional part from the unconstitutional part, and to give effect to the former only?"

State ex. rel. Whitehead v. Sandusky Cty. Bd. of Commrs., supra, 2012-Ohio-4837, ¶28.

Here, the unconstitutional parts of TMC 313.12 are so connected with the general scope of the whole as to make it impossible to give effect to the apparent intention of city council if the unconstitutional parts are stricken out. Toledo has never contended that it would have enacted TMC 313.12 without the features that divest the municipal court of its jurisdiction: the whole scheme is premised upon Toledo never having to prove up a Notice of Liability in municipal court. And if the unconstitutional features are gone, so are the economics. Consequently, RedFlex and its cameras—the means of enforcing the ordinance—are gone too. The ordinance serves no purpose without the unconstitutional provisions.

So, the answer to what Toledo mistakenly believed to be a rhetorical question in footnote five of its brief is actually, "No—the ordinance cannot be cured of its infirmities." But even if severance were available, that wouldn't cause reversal. Walker prevails either way.

CONCLUSION

The presumption of an ordinance's constitutionality does not require this court to overrule settled law or rewrite a statute in order to negate its plain language. Appellants do not offer a single convincing reason why the Sixth District should be reversed. Their divestiture effort presents an old question: does Toledo have home-rule authority to negate a court's jurisdiction? The answer today—"no"—is the same as it was in *Cupps v. Toledo* in 1959:

> The authority granted to municipalities by Section 3 of Article XVIII, Ohio Constitution...***does not include*** the power to regulate the jurisdiction of courts established by the Constitution or by the General Assembly thereunder.

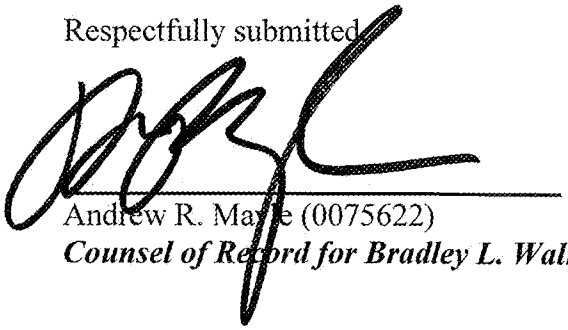
170 Ohio St. 144, 163 N.E.2d 384, syllabus.

Applying this settled precedent presents a clear-cut instance of a municipality's improper regulation of a court's constitutionally-protected jurisdiction. Reversing the appeals court would require this court to overrule settled constitutional law, rewrite R.C. 1901.20(A)(1), and open a can of worms that could never be closed. This would be improper.

But even if Toledo did not unconstitutionally strip the municipal court of jurisdiction, based on the pleadings in this case, the Sixth District should still be affirmed. As shown, Toledo did not even bother to abide by its own ordinance when it impaired the municipal court's jurisdiction. The city and RedFlex jumped the gun: the police never "established" any procedures and therefore Toledo and RedFlex mailed every "Notice of Liability" prematurely.

This court should affirm in all respects.

Respectfully submitted,



Andrew R. Maple (0075622)
Counsel of Record for Bradley L. Walker

CERTIFICATE OF SERVICE

I hereby certify that on March 11th, 2014 a true and accurate copy of the foregoing was sent by U.S. Mail, postage prepaid to the following:

Philip K. Hartmann (0059413)
Yazan S. Ashrawi (0089565).
Stephen J. Smith (0001344)
Frost Brown Todd LLC
One Columbus, Suite 2300
10 West Broad Street
Columbus, Ohio 43215
phartmann@fbtlaw.com
yashrawi@fbtlaw.com
ssmith@fbtlaw.com

John Gotherman (0000504)
Ohio Municipal League
175 S. Third Street, #510
Columbus, Ohio 43215-7100
jgotherman@columbus.rr.com

Jennifer S. Gams (0063704)
City of Columbus Law Department
77 North Front Street, 4th Floor
Columbus, Ohio 43215
JLGams@Columbus.gov

John C. Musto (0071512)
City of Datyon Law Department
101 W. Third Street
P.O. Box 22
Dayton, Ohio 45401
John.Musto@DaytonOhio.gov
Counsel for amicus curaie The Ohio Municipal League, City of Columbus, and City of Dayton

Quintin F. Lindsmith (0018327)
Counsel of Record
James P. Schuck (0072356)
Sommer L. Sheely (0076071)
BRICKER & ECKLER LLP
100 S. Third Street
Columbus, Ohio 43215
Counsel for Appellant RedFlex Traffic Systems, Inc.

Adam W. Loukx (0062158)
Counsel of Record
Eileen M. Granata (0016745)
Law Department, City of Toledo
One Government Center, Suite 2250
Toledo, Ohio 43604
Adam.Loukx@toledo.oh.gov
Eileen.Granata@toledo.oh.gov

Andy Douglas (0000006)
Larry H. James (0021773)
Jeffrey D. Houser (0076803)
Crabbe, Brown & James LLP
500 South Front Street, Suite 1200
Columbus, Ohio 43215
Counsel for Appellant City of Toledo

Joseph A. Castrodale (0018494)
John M. Alten (0071580)
Laura C. McBride (0080059)
Ulmer & Berne LLP
1660 West 2nd Street, Suite 1100
Cleveland, Ohio 44113
jcastrodale@ulmer.com
jalten@ulmer.com
lmcbride@ulmer.com

Barbara A. Langhenry (0038838)
Gary S. Singletary (0037329)
John Mills (0086253)
Law Department
601 Lakeside Avenue, Room 106
Cleveland, Ohio 44114-1077
gsingletary@city.cleveland.oh.us
jmills@city.cleveland.oh.us
Counsel for Amicus Curiae City of Cleveland

Ronald Riley (0018857)
City of East Cleveland
14340 Euclid Avenue
East Cleveland, Ohio 44112
rriley@eastcleveland.org
Counsel for Amicus Curiae The City of East Cleveland

Richard S. Gurbst (0017672)
F. Maximilian Czernin (0087485)
Squire Sanders (US) LLP
4900 Key Tower, 127 Public Square
Cleveland, Ohio 44114
Richard.gurbst@squiresanders.com
Max.czernin@squiresanders.com
Counsel for Amicus Curiae American Traffic Solutions, Inc.

Christopher R. Heekin (0042032)
Heekin & Heekin
817 Main Street, Suite 200
Cincinnati, Ohio 45202
crheekin@gmail.com
Counsel for Amicus Curiae Optotraffic, LLC

Chris Bator (0038550)
Gregory V. Mersol (0030838)
Baker Hostetler LLP
3200 National City Center
1900 East Ninth Street
Cleveland, Ohio 44114-3485
gmersol@bakerlaw.com
cbator@bakerlaw.com
Counsel for Amicus Curiae Xerox State & Local Solutions, Inc.

Andrew R. Maple

JE 04-6-006

IN THE MUNICIPAL COURT OF TOLEDO, LUCAS COUNTY, OHIO

JOURNAL ENTRY

The Toledo Municipal Court hereby authorizes the City of Toledo to establish the City of Toledo Parking Violations Bureau in accordance with Revised Code Section 4521.04, pursuant to Section 7 of City of Toledo Ordinance 697-02.

Date: 6/17/04

Gene A. Zmuda
Presiding Judge

FILED
TOLEDO MUNICIPAL COURT
04 JUN 18 PM 12:23
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VALLIE BOWMAN-ENGLISH

SUPREME COURT RULES FOR THE REPORTING OF OPINIONS

Effective May 1, 2002

Including Amendments Received Through August 1, 2011

Research Notes

These rules may be searched electronically on Westlaw in the OH-RULES database; updates to these rules may be found on Westlaw in OH-RULESUPDATES. For search tips and a summary of database content, consult the Westlaw Scope Screens for each database.

Amendments to these rules are published, as received, in the advance sheets for Ohio Official Reports, North Eastern Reporter 2d *and* Ohio Cases, *and in* Baldwin's Ohio Legislative Service Annotated.

Rule
1 Opinions and syllabus of the Supreme Court; syllabus of opinions by courts other than the Supreme Court; numbering or lettering of paragraphs of text and of footnotes
2 Opinions shall be promptly published and posted
3 Opinions of the courts of appeals
4 "Controlling" and "persuasive" designations based on form of publication abolished; use of opinions
5 Criteria for designation for print-publication
6 Form of opinions of the courts of appeals
7 Form of citation
8 Failure to print-publish an opinion in the Ohio Official Reports; failure to allow a discretionary appeal
9 Posting trial and appellate court opinions on the Supreme Court website
10 Opinions of the trial courts
11 Accuracy
12 Effective date

Rep R 1 Opinions and syllabus of the Supreme Court; syllabus of opinions by courts other than the Supreme Court; numbering or lettering of paragraphs of text and of footnotes

(A) All opinions of the Supreme Court shall be reported in the advance sheets and bound volumes of the Ohio Official Reports and posted to the Supreme Court website.

(B)(1) The law stated in a Supreme Court opinion is contained within its syllabus (if one is provided), and its text, including footnotes.

(2) If there is disharmony between the syllabus of an opinion and its text or footnotes, the syllabus controls.

(3) A Supreme Court opinion may be signed by a justice, with or without a syllabus, or be *per curiam*, with or without a syllabus. "*Per curiam*" means "by a majority of the Court."

(C) A syllabus of an opinion, or a summary under Rules 6(C) and 10(C) of these rules by a court other than the Supreme Court, is not the controlling statement of the points of law decided, but is merely a research and indexing aid.

(D) All opinions of the Supreme Court shall have paragraphs of text and footnotes consecutively numbered or lettered to assist in the "pinpoint" citation of specific portions of the opinion in electronic format. Numbering and lettering shall exclude paragraphs of the syllabus and editorial content from legal publishers. In all respects, the format of opinions shall conform to the conventions adopted by the Supreme Court Reporter.

(Adopted eff. 5-1-02)

Rep R 2 Opinions shall be promptly published and posted

Opinions shall be published in the Ohio Official Reports and posted to the Supreme Court website as promptly as reasonably possible after their announcement. Posting and publication of opinions shall not be delayed by the filing of motions for reconsideration or by pending appeals.

(Adopted eff. 5-1-02)

Rep R 3 Opinions of the courts of appeals

(A) For purposes of these rules, opinions of the courts of appeals do not include orders on procedural matters, orders without opinions, memorandum decisions, and judgment entries under Rule 11.1(E) of the Rules of Appellate Procedure.

(B) All court of appeals opinions shall be posted to the Supreme Court website. A representative selec-

CITY OF TOLEDO OHIO

DEPARTMENT OF POLICE OPERATIONS
SAFETY BUILDING
525 N. 6th Street
Toledo, Ohio 43604-1346

February 7, 2011

RE: PUBLIC RECORDS REQUEST : TRAFFIC-CAMERA TICKETS

Dear Andrew Mahyle,

I did talk to Lieutenant Sulewski of the Traffic Department. He has stated that there has no 'policy of administrative process' been written. The department is currently in the process of creating a 'written policy'. Lt. Sulewski informed me that once one has been written; a copy will be sent to you.

Sincerely,

Elizabeth J. Durham
Public Records Clerk

DEPARTMENT OF POLICE OPERATIONS
SAFETY BUILDING
525 N. Erie Street
Toledo, Ohio 43624-1346

February 14, 2011

RE: PUBLIC RECORDS REQUEST : TRAFFIC-CAMERA TICKETS

Dear Andrew Mahyle,

Please note that in my prior notification it stated that 'there has no policy of administrative process been written. On 2-7-11 I talked to Lt. Sulewski and I was informed that a police (an original) is currently being written. The policy was sent to you on 2-9-11 so this original must have been put in writing between 2-7-11 and 2-9-11.

Sincerely,

Elizabeth J. Durham
Public Records Clerk

OHIO CONST. Article IV, Section 1.

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