

ORIGINAL

IN THE SUPREME COURT OF OHIO

BRADLEY L. WALKER

Plaintiff-Appellee,

v.

CITY OF TOLEDO, et al.,  
OHIO DEPT. OF PUBLIC SAFETY

Defendants-Appellants.

CASE NO. 13-1277

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

BRIEF OF AMICUS CURIAE AMERICAN CIVIL LIBERTIES UNION OF OHIO  
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## TABLE OF CONTENTS

STATEMENT OF INTEREST OF AMICUS CURIAE .....	1
STATEMENT OF THE ISSUES PRESENTED .....	1
INTRODUCTION .....	1
STATEMENT OF THE FACTS OF THE CASE .....	2
LAW AND ARGUMENT .....	2
I. The Camera Law Violates the United States Constitution and the Ohio Constitution's Guarantees of Due Process .....	2
A. Deprivations of Property under the Camera Law Require Procedural Due Process Protection .....	2
1. The Constitutions of the United States and of the State of Ohio Forbid an Agency to Deprive an Individual of His Property Interest Without Due Process of Law. ...	2
2. The Camera Law's Imposition of a Civil Penalty of \$120 is a Deprivation of Property, Invoking Due Process Requirements. ....	3
B. The Camera Law is Unconstitutional Because it Fails to Provide Even the Most Basic Safeguards of Due Process.....	3
1. While Not All of the Trappings of Due Process are Required at Every Type of Hearing, the Basic Safeguards of Fairness are <i>Always</i> Required. ....	3
2. The Camera Law Fails to Provide Even the Most Basic Elements of Due Process. ....	4
a. The Camera Law Fails to Provide Adequate Notice.....	4
b. The Camera Law Fails to Provide an Opportunity for a Meaningful Hearing. 6	4
c. The Camera Law Process is Not Governed by an Impartial Decision Maker. ...	7
C. Deprivations of Property under the Camera Law Process Require Greater than Minimal Safeguards.....	7
1. The Matthews Test Requires that the Camera Law Provide Higher Safeguards to Ensure Fairness. ....	8
II. That a Municipal Court Could Theoretically Review the Police Department Process Does Not Cure the Camera Law's Due Process Infirmities.....	9
III. The Defects of the Camera Law Process Underscore the Argument that such Matters Should Be Handled by an Independent Judiciary, Rather than by a Police Department. ....	9
CONCLUSION.....	10
CERTIFICATE OF SERVICE .....	11

## TABLE OF AUTHORITIES

### Cases

Adler v. Whitbeck, 44 Ohio St. 539, 9 N.E. 672 (1886).....	2
Armstrong v. Manzo, 380 U.S. 545, 85 S.Ct. 1187, 14 L.Ed.2d 62 (1965) .....	6
City of Lakewood v. Plain Dealer Pub. Co., 486 U.S. 750, 108 S.Ct. 2138, 100 L.Ed.2d 771 (1988).....	9
Fuentes v. Sheven, 407 U.S. 67, 92 S.Ct. 1983, 32 L.Ed.2d 556 (1972).....	3
Gibson v. Barryhill, 411 U.S. 564, 93 S.Ct. 1689, 36 L.Ed.2d 488 (1973).....	3, 7
Goldberg v. Kelly, 397 U.S. 254, 90 S.Ct. 1011, 25 L.Ed.2d 287 (1970).....	2
Jodka v. Cleveland, 8th Dist. Cuyahoga No. 99951, 2014-Ohio-208 .....	7
Lycan v. Cleveland, 8th Dist. Cuyahoga No. 99698, 2014-Ohio-203 .....	8
Mathews v. Eldridge, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976) .....	2, 4, 6, 7, 8
Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865 (1950). 3, 4	
Ward v. Village of Monroeville, Ohio, 409 U.S. 57, 93 S.Ct. 80, 34 L.Ed.2d 267 (1972) .....	9
Whitmore v. Hill, 456 Fed.Appx. 726 (10th Cir. 2012) .....	3
Zilba v. City of Port Clinton, Ohio, 924 F.Supp.2d 867 (N.D. Ohio 2013) .....	3, 4

### Statutes

Toledo Municipal Code 313.12 .....	1, 3, 4, 5, 7, 8
------------------------------------	------------------

### Constitutional Provisions

the Ohio Constitution.....	2, 9, 10
the United States Constitution .....	2, 10

## STATEMENT OF INTEREST OF AMICUS CURIAE

*Amicus Curiae* the American Civil Liberties Union of Ohio Foundation ("ACLU") is the Ohio affiliate of the national American Civil Liberties Union, one of the oldest and largest organizations in the nation dedicated to the preservation of the Bill of Rights and the defense of the freedoms set forth therein. With some five hundred thousand members in all fifty states, and with almost thirty thousand members and supporters in Ohio, the ACLU appears routinely in state and federal courts, both as *amicus* and as direct counsel, without bias or political partisanship, to hold the government accountable to the public, and to protect the right of the individual to due process under the law.

A central mission of the ACLU is implicated in this case because it involves the enforcement of an individual's right to due process under an ordinance enacted by a city government.

## STATEMENT OF THE ISSUES PRESENTED

It is a violation of an individual's right to due process when a municipality enacts an ordinance that removes a class of traffic violations from the purview of the court system and places it before an administrative body that imposes civil penalties in a process that lacks essential safeguards of fairness.

## INTRODUCTION

Appellee Walker asserts that jurisdiction over alleged violations of Toledo Municipal Code 313.12 (the "Camera Law") properly lies in municipal court, rather than in an administrative process administered by the City of Toledo Police Department.

Reinforcing Walker's position, this *Amicus* Brief points out the due process deficiencies of the Camera Law, and notes that if jurisdiction over Camera Law violations were restored to municipal court, most if not all of the due process infirmities of the Camera Law would be cured.

## STATEMENT OF THE FACTS OF THE CASE

*Amicus* adopts the statement of facts as set forth in the Amended Brief of the Appellant, Bradley L. Walker.

## LAW AND ARGUMENT

### I. The Camera Law Violates the United States Constitution and the Ohio Constitution's Guarantees of Due Process.

The administrative process established by the Camera Law deprives individuals of property without the due process of law, in violation of both the United States Constitution and the Ohio Constitution.

#### A. Deprivations of Property under the Camera Law Require Procedural Due Process Protection.

Although the Camera Law establishes an administrative process that imposes only civil penalties, it is not exempt from due process requirements.

#### 1. The Constitutions of the United States and of the State of Ohio Forbid an Agency to Deprive an Individual of His Property Interest Without Due Process of Law.

The United States Constitution's Fifth and Fourteenth Amendment procedural due process requirement, "imposes constraints on governmental decisions which deprive individuals of "liberty" or "property" interests." *Mathews v. Eldridge*, 424 U.S. 319, 332, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976); *see also Goldberg v. Kelly*, 397 U.S. 254, 261-62, 90 S.Ct. 1011, 25 L.Ed.2d 287 (1970).

The Ohio Constitution, employing the phrase, "due course of law," imposes the same requirement. *Adler v. Whitbeck*, 44 Ohio St. 539, 569, 9 N.E. 672 (1886).

**2. The Camera Law's Imposition of a Civil Penalty of \$120 is a Deprivation of Property, Invoking Due Process Requirements.**

The imposition of even a small civil fine implicates property rights protected by due process. *See Whitmore v. Hill*, 456 Fed.Appx. 726 (10th Cir. 2012) (a prisoner's \$10 fine); *see also Zilba v. City of Port Clinton, Ohio*, 924 F.Supp.2d 867 (N.D. Ohio 2013) (a parking ticket).

The Camera Law fine, at \$120, of course, is larger. Toledo Municipal Code 313.12(d)(5).

And even beyond the monetary penalty assessed, under Toledo's Camera Law, an individual is subject to having his vehicle "booted" (immobilized), or impounded. Toledo Municipal Code 313.12 (d)(6).

It is unquestionable that the Camera Law must thus comport with the requirements of procedural due process.

**B. The Camera Law is Unconstitutional Because it Fails to Provide Even the Most Basic Safeguards of Due Process.**

The procedures established by the Camera Law fail to provide even the most basic elements of due process.

**1. While Not All of the Trappings of Due Process are Required at Every Type of Hearing, the Basic Safeguards of Fairness are Always Required.**

When an individual stands to be deprived of property by the government, due process requires certain essential safeguards in every case, without exception. These core safeguards are: notice, the opportunity for a meaningful hearing, and an impartial decision maker. *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865 (1950) (notice as a fundamental requirement); *Fuentes v. Sheven*, 407 U.S. 67, 92 S.Ct. 1983, 32 L.Ed.2d 556 (1972) (notice and opportunity to be heard are basic safeguards); *Gibson v. Barryhill*, 411 U.S. 564, 93 S.Ct. 1689, 36 L.Ed.2d 488 (1973) (it is unconstitutional to have a decision maker who would potentially gain personally from his decision).

It may be acceptable in some contexts for the government to provide only minimal due process safeguards, but these minimal safeguards must always include notice, the opportunity for a meaningful hearing, and an impartial hearing officer.

**2. The Camera Law Fails to Provide Even the Most Basic Elements of Due Process.**

The Camera Law fails to provide any of the most essential requirements of due process: notice, opportunity for a meaningful hearing, and an impartial decision maker.

**a. The Camera Law Fails to Provide Adequate Notice.**

Notice, to meet the requirements of due process, "must be reasonably calculated under the circumstances to (1) apprise a person of the pendency of the action and (2) afford him an opportunity to present his objections. *Mullane*, 339 U.S. at 314, 70 S.Ct. 652, 94 L.Ed. 865; *see also Zilba*, 924 F.Supp.2d 867.

The Camera Law contains notice provisions, but the provisions are insufficient to afford a vehicle owner an opportunity to present his objections before consequences -- possibly severe consequences -- have befallen him. The right to be heard is meaningful only *before* loss is suffered. This is a principle that is basic to our society. *Matthews v. Eldridge*, 424 U.S. 319, 333, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976).

The notice provision of the Camera Law states:

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

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

Toledo Municipal Code 313.12(a)(3).

Although a "Notice of Liability" is to be "forwarded" after "process(ing)," nothing in the Camera Law requires that notice be actually received. No delivery confirmation is required. If, as is commonplace, an owner has recently moved, or if a notice is lost in the mail, misdirected, or delivered to the wrong address, the vehicle owner will be deprived of the right to contest the violation. Toledo Municipal Code 313.12(d)(4). Thereupon, the City, with no further attempt to notify the owner, may boot or impound his vehicle, *Id.* at 313.12(d)(6), and hold him liable for increased fines. That the loss of use of one's vehicle may be imposed without ever receiving notice is a patent deprivation of due process.

All of the Camera Law's negative consequences are triggered by the expiration of a 21-day period that is said to begin upon "the date listed" on the "Notice of Liability." If an owner does not appeal or pay the civil penalty within the 21-day time period, his right to contest the citation is waived. *Id.* at 313.12(d)(4). Failure to appeal or pay within the 21 days also triggers an additional penalty of \$25, and enables the City to boot or impound the vehicle. *Id.* at 313.12(d)(5)-(d)(6).

But the Camera Law contains no provision as to what the "date" that is "listed" refers. The City of Toledo thus has discretion to determine what date it will "list" to commence the 21-day period. In addition, it may take as much of the 21-day period as it wishes to "process" and mail the citation. Thus, the City's own delay in processing or mailing the citation can operate to the prejudice of the vehicle owner who, if he even receives a notice, must mount his defense within 21 days of whatever date the City has chosen to "list."

Even if the "Notice of Liability" is received "on time," if the registered owner of the vehicle happened not to be the person driving it at the time of the alleged violation, the Camera

Law may not give the owner enough time to obtain the documentation necessary to challenge the citation.

**b. The Camera Law Fails to Provide an Opportunity for a Meaningful Hearing.**

The Supreme Court has held that the most fundamental requirement of due process is the opportunity to be heard “at a meaningful time and in a meaningful manner.” *Matthews*, 442 U.S. at 335, 96 S.Ct. 893, 47 L.Ed.2d 18, quoting *Armstrong v. Manzo*, 380 U.S. 545, 552, 85 S.Ct. 1187, 14 L.Ed.2d 62 (1965).

The Camera Law’s defective notice provisions, while in and of themselves a deprivation of due process, also result in a tremendous incursion on the meaningfulness of the hearing. In a non-camera traffic violation, the officer who stops, notifies, and issues a ticket to a motorist, makes him immediately aware of a violation. Under the Camera Law, however, a “Notice of Liability” is created, processed and mailed – whenever the City of Toledo chooses to create, process and mail it – sometime after the alleged infraction. (As mentioned above, the Camera Law does not specify when the Notice is to be created, how long “processing” may take, or how soon the Notice must be mailed.) This arbitrary, unpredictable and possibly long delay in notification makes it difficult, if not impossible for a motorist to try to remember and reconstruct who may have been driving his car at the time of the alleged violation, or under what circumstances. If the registered owner had not been driving the vehicle, the actual driver may not find out about the alleged violation until even longer after it occurred. The more time that elapses between the alleged violation and the notification, the more difficult it is to remember the circumstances surrounding the incident to mount a defense.

**c. The Camera Law Process is Not Governed by an Impartial Decision Maker.**

The Camera Law places administrative appeals of citations right in the hands of the Toledo Police Department, Toledo Municipal Code 313.12(d)(4), giving the department unbridled discretion to serve as both prosecutor and judge. Not only is this a deprivation of one of the basic tenets of due process, but the conflict of interest is heightened because the proceeds of the violations go in part to the city coffers.

It is axiomatic that where the same non-judicial hearing officer is both the prosecutor and the judge, the person who contests liability lacks any meaningful ability to present a defense. *Jodka v. Cleveland*, 8th Dist. Cuyahoga No. 99951, 2014-Ohio-208, ¶ 14 (dictum); *see also Gibson v. Barryhill*, 411 U.S. 564, 93 S.Ct. 1689, 36 L.Ed.2d 488.

For all the reasons stated above, the Camera Law fails to provide even the most minimal standards of due process. Moreover, as shown below, the due process standard that the Camera Law must meet is a higher, and more exacting, standard of fairness. Clearly, the Camera Law fails this higher standard to an even larger degree.

**C. Deprivations of Property under the Camera Law Process Require Greater than Minimal Safeguards.**

When the government deprives an individual of his property, such that due process is required, the nature and extent of safeguards necessary to satisfy the requirement depend on the particular situation. Although certain minimal safeguards are *always* required, the determination of what *further* safeguards may be required is situation-dependent. For this purpose, the Supreme Court, in the case of *Mathews v. Eldridge*, cited above, has articulated a three-part balancing test to determine whether due process is satisfied in any particular context. The three elements to be considered are:

- (1) The private interest that will be affected by the official action;

- (2) The risk of an erroneous deprivation of that interest and the probable value of additional procedural safeguards; and
- (3) The government's interest, including the function involved and the fiscal and administrative burdens that the additional procedural requirements would entail.

*Mathews v. Eldridge, supra*, at 335.

1. **The Matthews Test Requires that the Camera Law Provide Higher Safeguards to Ensure Fairness.**

As shown above, the Camera Law fails to provide even minimal due process safeguards, and is unconstitutional for that reason alone. However, the due process deficiencies of the Camera Law are even more glaring because its process fails to provide the higher standards of protection required under the *Mathews* test. The *Mathews* test requires higher protection because the Camera Law's enforcement scheme (1) affects a significant private interest, (2) is fraught with the risk of erroneous deprivations, and (3) perversely offers opportunity for the Government to reap reward for not shouldering its rightful burden.

First of all (*Mathews* factor #1), the private interest affected by the Camera Law is not merely a minimal civil fine. The Camera Law imposes a civil penalty of at least \$120, which, in the estimation of at least one court, is a significant value. ("The imposition of a \$100 civil penalty resulting from a red-light camera violation has significant value to the individual." *Lycan v. Cleveland*, 8th Dist. Cuyahoga No. 99698, 2014-Ohio-203, ¶ 2.) On top of this, the Camera Law permits additional fines, and for vehicles to be booted and impounded without further notice, significantly escalating the private interest in need of protection. Toledo Municipal Code 313.12(d)(6).

Secondly, (*Mathews* factor #2), the risk under the Camera Law of an erroneous deprivation is very substantial, because, as explained above, the scheme militates against

meaningful hearings and fact-finding by taking procedural short-cuts to arrive at “waivers” and “admissions” that trigger its full range of penalties.

Last, (*Mathews* factor #3), an even stronger case for safeguards exists in the present case because the city government is incented not to provide safeguards, not just because of the administrative cost, but because the government benefits from the very lack of safeguards, since it collects, and retains some of, whatever penalties it may assess.

The Camera Law, failing to meet even the most minimal requirements of due process, clearly also fails to meet any higher standard.

**II. That a Municipal Court Could Theoretically Review the Police Department Process Does Not Cure the Camera Law’s Due Process Infirmities.**

The due process failures of the Camera Law are not cured by the theoretical possibility that the municipal court may review the Toledo Police Department process. *City of Lakewood v. Plain Dealer Pub. Co.*, 486 U.S. 750, 771, 108 S.Ct. 2138, 100 L.Ed.2d 771 (1988); *see also Ward v. Village of Monroeville, Ohio*, 409 U.S. 57, 57, 93 S.Ct. 80, 34 L.Ed.2d 267 (1972) (holding, after reviewing the appeal of a traffic fine imposed by a Mayor’s court, that, “it is of no constitutional relevance that petitioner could later be tried de novo in another court, as he was entitled to an impartial judge in the first instance.”).

**III. The Defects of the Camera Law Process Underscore the Argument that such Matters Should Be Handled by an Independent Judiciary, Rather than by a Police Department.**

Restoring jurisdiction over Camera Law violations to the system of justice created by the Ohio General Assembly under the authority of the Ohio Constitution, a system shaped by centuries of jurisprudence to ensure due process in its administration of justice, would cure most if not all of the due process infirmities of the Camera Law.

## CONCLUSION

There is only one command that is stated twice in the United States Constitution, the command that the federal and state governments furnish due process of law. This command is repeated in our State Constitution. The Camera Law ordinance, in removing a class of traffic violations from the purview of the court system, placing it before an administrative body that deprives individuals of their property interests in a process that lacks essential safeguards of fairness, violates this fundamental command.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on March 12, 2014, a true and accurate copy of the foregoing *Brief of Amicus Curiae American Civil Liberties Union of Ohio Foundation on Behalf of Appellee* was served via electronic mail and/or U.S. Mail, postage prepaid, to the following:

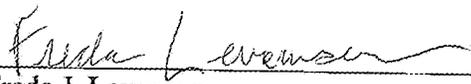
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