

ORIGINAL

IN THE SUPREME COURT OF OHIO

Bradley L. Walker,

Case No. 2013-1277

Plaintiff-Appellee

vs.

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

City of Toledo, et al.

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

Defendants-Appellants

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

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TABLE OF CONTENTS

Page

Table of Authorities.....v

Joint Reply Brief of Amici Curiae Xerox State & Local Solutions
Inc, and City of Cleveland.....1

I. Toledo, Cleveland, and Other Municipalities Properly
Enforce Their Respective Civil Traffic Camera Ordinances
Through the Authorization of Quasi-Judicial Administrative
Hearings. Administrative Enforcement of the Civil Traffic
Ordinances Does not Impair or Diminish the Municipal Courts’
Criminal Jurisdiction Established at R.C. 1901.20.....1

A. R.C. 1901.20 Establishes the Municipal Court’s Criminal
Jurisdiction.....2

B. Quasi-Judicial Judicial Hearings Provide Legal Remedy
to Those Receiving Civil Notices of Liability.....5

II. Walker Lacks Standing to Bring His Claim.....9

III. Conclusion.....14

Certificate of Service

Appendix

APX 001-028: *Jodka v. City of Cleveland, et al.*, 8th Dist No. 13 099951, 2014-Ohio-208

APX 029: *Jodka v. City of Cleveland et al.*, 8th Dist. “Journal Entry” – Certified Conflict
Questions

TABLE OF AUTHORITIES

<u>CASES</u>	<u>Page(s)</u>
<i>Ahrns v. SBA Communications Corp.</i> , 3d Dist. No. 2-01013, 2001-Ohio-2284	10
<i>Burger Brewing Co. v. Liquor Control Commission</i> , 34 Ohio St.2d 93, 296 N.E.2d 261 (1973).....	12
<i>Carroll v. City of Cleveland</i> , 522 Fed. Appx. 299, 2013 WL 1395900 (6th Cir. 2013).....	11, 13
<i>City of Cleveland v. Posner</i> , 193 Ohio App.3d 211, 2011-Ohio-1370, 951 N.E.2d 476 (8th Dist.).....	11
<i>City of Warren v. Urban Leasing, Inc.</i> , 11 th Dist. No. 3136, 1983 WL 5996 (December 9, 2003)	4
<i>Dayton v. Hill</i> , 21 Ohio St.2d 125, 256 N.E.2d 194 (1970)	3
<i>Dickson & Campbell, L.L.C. v. Cleveland</i> , 181 Ohio App.3d 238, 908 N.E.2d 964, 2009 -Ohio- 738.....	9
<i>Driscoll v. Austintown Assoc.</i> , 42 Ohio St.2d 263, 328 N.E.2d 395 (1975).....	12
<i>Greenhills Home Owners Corp. v. Village of Greenhills</i> , 5 Ohio St.2d 207, 215 N.E.2d 403 (1966).....	13
<i>Henley v. Youngstown Bd. of Zoning Appeals</i> (2000), 90 Ohio St.3d 142, 735 N.E.2d 433	9
<i>Jodka v. City of Cleveland, et al.</i> , 8 th Dist. No. 13 099951, 2014-Ohio-208.....	9, 10, 11, 12
<i>Mendenhall v. Akron</i> , 117 Ohio St.3d 33, 2008 -Ohio- 270, 881 N.E.2d 255.....	3, 4, 6, 7, 8
<i>Mendenhall v. City of Akron</i> , 374 Fed.Appx. 598, 2010 WL 1172474 (6 th Cir.).....	8
<i>North Canton v. Canton</i> , 114 Ohio St.3d 253, 2007-Ohio-4005, 871 N.E.2d 586.....	14
<i>State ex rel. Chagrin Falls v. Geauga Cty. Bd. of Commrs.</i> , 96 Ohio St.3d 400, 2002-Ohio-4906, 775 N.E.2d 512.....	8
<i>State ex rel. Midwest Pride IV, Inc. v. Pontious</i> , 75 Ohio St.3d 565, 664 N.E.2d 931 (1996).....	7
<i>State ex rel. Lieux v. Village of Westlake</i> , 154 Ohio St. 412, 96 N.E.2d 414 (1954)	10, 13

State ex rel. Scott v. City of Cleveland, 112 Ohio St.3d 324, 2006-Ohio-6573,
859 N.E.2d 9236, 8

State ex rel. Wright v. Ohio Bur. of Motor Vehicles, 87 Ohio St.3d 184,
718 N.E.2d 908 (1999).....6

State of Ohio v. Human, 56 Ohio Misc. 5, 381 N.E.2d 969 (C.P. 1978).....5

State of Ohio v. Cowan, 101 Ohio St.3d 372, 2004-Ohio-1583, 805 N.E.2d 10852, 3

Summerville v. City of Forest Park, 128 Ohio St.3d 221,
2010-Ohio-6280, 943 N.E.2d 5221

Utility Service Partners, Inc. v. Public Utilities Commission of Ohio,
124 Ohio St.3d 284, 2009-Ohio-6764, 921 N.E.2d 103814

Van Harken v. City of Chicago, 906 F. Supp. 1182 (N.D. Ill. 1995),
aff'd as modified, 105 F.3d 1346 (7th Cir. 1997).....14

Wade v. City of Cleveland, 8 Ohio App.3d 176, 456 N.E.2d 829 (8th Dist. 198813

Walker v. Toledo, 6th Dist No. L-12-1056,984 N.E.2d 467, 2013-ohio-28095, 9, 11

Wymyslo v. Bartec, Inc., 132 Ohio St.3d 167, 2012-Ohio-2187, 970 N.E.2d 89811

Constitution

Article IV, Section 18, 9, 10, 14

Statutes

R.C. Chapter 2506.....8, 9, 13, 14

R.C. Chapter 4521.....4, 5

R.C. 1901.182, 3

R.C. 1901.201, 2, 3, 4, 5, 14

R.C. 2953.212, 3

Ordinances

Cleveland Codified Ordinance 413.0311, 6, 7, 9, 10, 13, 14

Toledo Municipal Code 313.1213, 14

Treatise

12 Moore, *Federal Practice*, Sec. 57.60.....12

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

I. Toledo, Cleveland, and Other Municipalities Properly Enforce Their Respective Civil Traffic Camera Ordinances Through the Authorization of Quasi-Judicial Administrative Hearings. Administrative Enforcement of the Civil Traffic Ordinances Does Not Impair or Diminish the Municipal Court Criminal Jurisdiction Established at R.C. 1901.20.

Appellee Walker's response to Appellants Toledo and Redflex displays the weak foundation upon which Appellee's allegations are built. First, neither Toledo nor any amici have suggested, as characterized by Walker, that a "city council has the power to impair the municipal court's jurisdiction..." (Walker brief at p.1). Such argument is not before this Court. Rather the legal reality is that the "quasi-judicial" administrative hearings established with the civil camera enforcement ordinances adopted by Toledo, Cleveland, and other municipalities do not divest Ohio's municipal courts of the "criminal" jurisdiction established at R.C. 1901.20. Walker's further characterization of such hearings as "[a] 'Hearing Officer' presiding over a mock court..." (Walker brief at p.2) is simply not reflected in the appellate process described by Toledo, and is counter to the reality of the administrative hearings established with Cleveland Codified Ordinance 413.031 ("CCO 413.031").

A. R.C. 1901.20 Establishes the Municipal Court's Criminal Jurisdiction.

This Court continues to recognize that "[i]t is a well-settled rule of statutory interpretation that statutory provisions be construed together and the Revised Code be read as an interrelated body of law." *Summerville v. City of Forest Park*, 128 Ohio St.3d 221, 2010-Ohio-6280, 943 N.E.2d 522. Such rule of interpretation as applied to Chapter 19 of the Revised Code

establishes that R.C. 1901.20 was enacted to establish the criminal jurisdiction of Ohio's municipal courts. While Walker dismissively argues that no cases have ever held that R.C. 1901.20 applies to criminal ordinances only (Walker brief at p. 18), Walker fails to read Chapter 1901 as an interrelated body of law and avoids addressing this Court's earlier decision in *State of Ohio v. Cowan*, 101 Ohio St.3d 372, 2004-Ohio-1583, 805 N.E.2d 1085, as cited in the joint amicus brief in support of Toledo filed by Cleveland and Xerox State & Local Solutions, Inc. In the course of interpreting the breadth of jurisdiction contained in R.C. 2953.21, this Court took into account the statutory distinction between a municipal court's established civil jurisdiction (R.C. 1901.18) and its criminal jurisdiction (R.C. 1901.20).

Cowan addressed and answered “[w]hether a municipal court has jurisdiction to review a petition for post-conviction relief, filed pursuant to R.C. 2953.21, where the conviction is based upon violation of a state law.” *Id.* at ¶ 1. The appellant Cowan had been convicted of a misdemeanor in the Portage County Municipal Court. Among Cowan's subsequent appellate maneuvering, she sought post-conviction relief in the municipal court, where she had been convicted of a misdemeanor offense, on the authority of R.C. 2953.21. *Id.* at ¶ 2. R.C. 2953.21 provided in pertinent part:

*Any person who has been convicted of a criminal offense * * * and who claims that there was such a denial or infringement of the person's rights as to render the judgment void or voidable under the Ohio Constitution or the Constitution of the United States, * * * may file a petition in the court that imposed sentence, stating the grounds for relief relied upon, and asking the court to vacate or set aside the judgment or sentence or to grant other appropriate relief.*

Cowan at ¶ 9 (emphasis added). As used in the provision “criminal offense” was not limited to felonies and “the court that imposed sentence” was not further defined. Similar to Walker's argument herein, the appellant in *Cowan* argued that “the plain language of the statute states that post-conviction petitions can be filed by ‘any person convicted of a criminal offense,’ which

would include *state violations*, and that the statute does not limit such petitions to common pleas courts.” *Id.* at ¶ 10.¹ (emphasis added).

This Court, in again analyzing whether R.C. 2953.21 would allow post-conviction petitions to be brought in municipal courts for state law violations as opposed to violations of municipal ordinances, reviewed the statute within the encompassing statutory scheme allowing for the filing of a petition for post-conviction relief. In comprehensively analyzing the statutory provisions the Court reviewed the source of municipal court jurisdiction in R.C. Chapter 1901 and distinguished between the statutory civil and criminal jurisdiction provided by statute:

Municipal courts are creatures of statute and have limited jurisdiction. *R.C. 1901.18 and 1901.20 provide for their creation, with the former statute relating to civil matters and the latter relating to criminal and traffic matters.* Neither R.C.1901.18 nor R.C.1901.20 provides for jurisdiction over post-conviction relief petitions in municipal court. Had the General Assembly envisioned such jurisdiction, it could have explicitly conferred it in R.C. Chapter 1901.

Id. at ¶ 11 (emphasis added).

Cowan was decided in 2004. It was not until it decided *Mendenhall v. Akron* in 2008 that this Court formally recognized that local civil traffic camera enforcement laws did not conflict with but rather complemented and supplemented through administrative penalty the enforcement of Ohio’s criminal traffic laws:

¹ In *Dayton v. Hill*, 21 Ohio St.2d 125, 256 N.E.2d 194 (1970), this Court had previously held that the statutes did not allow a petition for post-conviction relief to be filed in a municipal court as a result of a conviction and sentence for violating a *municipal ordinance*. *Cowan* at ¶ 7. In *Hill* this Court narrowly construed the undefined phrase “criminal offense” for this specific application: “In view of the foregoing, it must be concluded that the General Assembly did not intend for Sections 2953.21 to 2953.24, inclusive, Revised Code, to apply to a conviction and sentence of the type at bar, and that as used in those sections the words ‘criminal offense’ do not include the violation of a municipal ordinance.” *Id.* at 128.

The ordinance does not change the speed limits established by state law or change the ability of police officers to cite offenders for traffic violations. After the enactment of the Akron ordinance, a person who speeds and is observed by a police officer remains subject to the usual traffic laws. Only when no police officer is present and the automated camera captures the speed infraction does the Akron ordinance apply, *not to invoke the criminal traffic law, but to impose an administrative penalty on the vehicle's owner. The city ordinance and state law may target identical conduct—speeding—but the city ordinance does not replace traffic law. It merely supplements it.* Furthermore, a person cannot be subject to both criminal and civil liability under the ordinance. * * * The Akron ordinance complements rather than conflicts with state law.

117 Ohio St.3d 33, 2008 -Ohio- 270, 881 N.E.2d 255, ¶ 37 (emphasis added). *Mendenhall* again made clear that municipalities receive their authority to regulate traffic from Ohio's Constitution and not through any grant of authority from the General Assembly. *Id.* at ¶¶ 33-34.

The exception for Chapter 4521 contained in R.C. 1901.20(A) does not “sink the appellant’s arguments” as claimed by Walker (Walker brief at p. 14). Chapter 4521 of the Revised Code was enacted in 1983 to “allow municipalities to make parking non-criminal and to establish a bureau to conduct hearings where the municipalities must prove the violation by a preponderance of the evidence, and the decision of the bureau has the effectiveness of a civil default judgment.” *City of Warren v. Urban Leasing, Inc.*, 11th Dist. No. 3136, 1983 WL 5996, *2 (December 9, 1983). If anything, the references to Chapter 4521 in R.C. 1901.20(A) reinforce the point that the statute otherwise identifies the limited statutory-based criminal jurisdiction provided to municipal courts. A lone designated exception broadening the authority of the municipal court was included following the enactment of R.C. 4521 for circumstances when a local authority had specified parking infractions were no longer to be considered criminal, but where such offense was not to be handled by a parking violations bureau:

The municipal court has jurisdiction of the violation of a vehicle parking or standing resolution or regulation if a local authority, as defined in division (D) of section

4521.01 of the Revised Code, has specified that it is not to be considered a criminal offense, if the violation is committed within the limits of the court's territory, and if the violation is not required to be handled by a parking violations bureau or joint parking violations bureau pursuant to Chapter 4521. of the Revised Code.

Walker's universal and mistaken exclusive jurisdiction argument would make this limited jurisdictional language unnecessary as under his mistaken reasoning the default provision for all violations -- criminal or civil -- would reside in R.C. 1901.20. The General Assembly otherwise understood that given the intended criminal jurisdiction established with the statute that jurisdiction over a civil parking violation, in the absence of a parking violation bureau being created to handle the civil citation, would not automatically be found at R.C. 1901.20.

The Crawford County Municipal Court was correct in recognizing that "[t]he extent of the criminal jurisdiction of a municipal court is specified in R.C. 1901.20 which provides, in part, '(t)he municipal court has jurisdiction of the violation of any ordinance of any municipal corporation within its territory and of any misdemeanor committed within the limits of its territory.'" *State v. Human*, 56 Ohio Misc. 5, 8, 381 N.E.2d 969 (C.P. 1978). Likewise, Judge Yarbrough in his dissenting opinion in *Walker v. Toledo* cogently and correctly expressed:

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

2013-Ohio-2809 at ¶ 47 (Yarbrough, J. dissent).

B. Quasi-Judicial Judicial Hearings Provide Legal Remedy to Those Receiving Civil Notices of Liability.

The base-line for understanding the legitimacy of the hearing and appeals process associated with local civil camera enforcement laws starts with this Court's review of CCO

413.031 in *State of Ohio ex rel. Scott v. City of Cleveland*, 112 Ohio St.3d 324, 2006-Ohio-6573, 859 N.E.2d 923. Relators in *Scott* had sought to prohibit Cleveland from “conducting any hearings concerning the automated-camera system and Section 413.031 through the Parking Violations Bureau, and permanently enjoining the city from issuing any notices of liability as a result of its automated-camera system”. *Id.* at ¶ 10. Far from Walker’s “mock court” characterization and the due process concerns expressed in the ACLU’s amicus brief, this Court recognized that the civil administrative hearing process in CCO 413.031 authorized “the exercise of quasi-judicial authority”, which constitutes “the power to hear and determine controversies between the public and individuals that require a hearing resembling a judicial trial.” *Id.* at ¶ 15, quoting *State ex rel. Wright v. Ohio Bur. of Motor Vehicles*, 87 Ohio St.3d 184, 186, 718 N.E.2d 908 (1999).

This Court considered a federal district court’s question concerning Ohio law and whether municipalities had home rule authority “to enact civil penalties for the offense of violating a traffic signal light or for the offense of speeding, both of which are criminal offenses under the Ohio Revised Code.” *Mendenhall v. Akron*, at ¶ 2. In responding to the federal question, this Court noted that “we decide whether a municipality may constitutionally use its home-rule powers to authorize a method of traffic enforcement that imposes a civil fine.” *Id.* at ¶ 1 (emphasis added). Clearly, the installed camera system itself is but a mechanical part of the comprehensive “method of enforcement,” as installing cameras without an associated method for securing compliance with Ohio’s traffic laws would be useless.

In reviewing the method of traffic enforcement implemented by Akron this Court fully understood, as it did in *Scott*, that a quasi-judicial administrative process was involved:

Owners of vehicles receiving notices of civil liability have several options. They may pay the amount owed, sign an affidavit that the vehicle was stolen or leased to

someone else, or administratively appeal the violation. Owners choosing to appeal have 21 days to complete and return the notice-of-appeal section of the notice-of-liability form.

Administrative appeals of notices of liability are overseen by a hearing officer, who is an independent third party appointed by the mayor of Akron. After administering the oath to any witnesses and reviewing all the evidence, the hearing officer determines whether a violation of Section 79.01 of the Codified Ordinances of the city of Akron is established by a preponderance of the evidence and whether the owner of the vehicle is liable for that violation. The images of the vehicles and their license plates, the ownership records of the vehicles, and the speed of the vehicles on the date in question are considered prima facie proof of a civil violation and are made available to the appealing party.

Mendenhall at ¶¶ 7-8. In *Scott* it was well understood that “Section 413.031 authorizes an administrative proceeding that does not require compliance with statutes and rules that, by their own terms, are applicable only to courts.” *Id.* at ¶ 21.

In addressing *Mendenhall*, Walker characterizes that “[t]his Court expressly stated in *Mendenhall* that procedural questions surrounding Akron’s ordinance were not before the court and *not* under review.” (Walker brief at pp. 26-27), citing *Mendenhall* at ¶ 40. More precisely this Court noted, “Although there are *due process* questions regarding the operation of the Akron Ordinance and those similar to it, those questions are not appropriately before us at this time and will not be discussed here.” *Id.* Due process addresses “notice and an opportunity for some kind of hearing prior to deprivation of a protected interest.” *State ex rel. Midwest Pride IV, Inc. v. Pontious*, 75 Ohio St.3d 565, 567, 664 N.E.2d 931 (1996). That Akron’s ordinance provided due process to *Mendenhall* was subsequently addressed, found by the district court, and confirmed on appeal by the Sixth Circuit Court of Appeals:

As the district court found, the ordinance provides for notice of the citation, an opportunity for a hearing, provision for a record of the hearing decision, and the right to appeal an adverse decision. We agree with the district court that the ordinance and its implementation, as detailed in the stipulations, *satisfy due process*, and reject plaintiff’s assertion that it violates due process to impose civil penalties for speeding violations irrespective of whether the owner was, in fact, driving the vehicle when

the violation was recorded.

Mendenhall v. City of Akron, 374 Fed.Appx. 598, 600, 2010 WL 1172474 (6th Cir.) (emphasis added).

Walker's arguments seeking to denigrate the application and availability of R.C. Chapter 2506² in the administrative appeals processes provided by camera enforcement ordinances (*see generally* Appellee's Brief at pp. 20-21) chooses to disregard this Court's analysis of Cleveland's ordinance and the recognition in *Scott* that the available appeal to the common pleas court following the administrative hearing was factored into finding the ordinance provided an adequate remedy in the ordinary course of law:

Finally, because the city does not patently and unambiguously lack jurisdiction, appellants have an adequate remedy in the ordinary course of law by way of the administrative proceedings set forth in Section 413.031 *and by appeal of the city's decision to the common pleas court.*

Scott, 2006-Ohio-6573 at ¶ 24 (emphasis added), *citing, e.g., State ex rel. Chagrin Falls v. Geauga Cty. Bd. of Commrs.*, 96 Ohio St.3d 400, 2002-Ohio-4906, 775 N.E.2d 512, ¶ 14.

Walker's suggestion at p. 21 that the camera ordinances "are unconstitutionally shoehorned into an 'administrative' posture due to an underlying Article IV, Section 1 violation" has no validity, and finds no support in this Court's *Mendenhall* and *Scott* decisions.

² The amicus brief filed by the ACLU does not comment on this Court's holdings in *Scott* or *Mendenhall*, nor does it comment on the due process protections provided by Chapter 2506 to quasi-judicial administrative hearings.

The brief of Amicus Curiae 1851 Center for Constitutional Law and Ohio State Senators and State Representatives ignores the recognition of administrative "quasi-judicial" authority and the role of R.C. 2506 in such matters, incorrectly arguing little more in general than that "Toledo's automated traffic camera ordinance attempts to exact property from Ohio drivers through administrative hearing officers, without access to an elected and accountable judge or a judge authorized by the state's duly-elected and accountable legislators." (1851 Brief at p. 1)

Walker's further argument at pp. 29-30 that Toledo, or any other City by way of their civil camera enforcement ordinances, has conferred its hearing officer with "exclusive jurisdiction" to determine whether the ordinance was violated is untrue, given the availability of appeal under R.C. Chapter 2506. The Eighth District has previously recognized with regard to appeals taken from the decision of the CCO 413.031 administrative hearing officer that the common pleas court afterward considers the whole record in reviewing the administrative order:

The common pleas court considers the "whole record," including any new or additional evidence admitted under R.C. 2506.03, and determines whether the administrative order is unconstitutional, illegal, arbitrary, capricious, unreasonable, or unsupported by the preponderance of substantial, reliable, and probative evidence.

Dickson & Campbell, L.L.C. v. Cleveland, 181 Ohio App.3d 238, 908 N.E.2d 964, 2009 -Ohio-738, ¶ 7, citing *Henley v. Youngstown Bd. of Zoning Appeals* (2000), 90 Ohio St.3d 142, 147, 735 N.E.2d 433.

II. Walker Lacks Standing to Bring His Claim

At pages 36-37 of his Merit Brief, Walker mentions and summarily dismisses the notion that his payment of the fine waived his unjust enrichment claim. Not so. This very issue has recently been addressed by the Eighth District Court of Appeals in *Jodka v. City of Cleveland, et al.*, No. 13 099951, 2014-Ohio-208, (copy attached at APX 001-028), in the context of standing and has ramifications on Walker's claims here.

The *Walker* action is substantially similar to and presents the same Art. IV, Section 1 constitutional challenge as *Jodka v. City of Cleveland, et al.*, Cuyahoga County Court of Common Pleas Case No. 12 CV 784372, currently on appeal to the Eighth District Court of Appeals, Case No. CA 13 099951. *Jodka* involves constitutional challenges and a claim for unjust enrichment with respect to Cleveland City Ordinance 413.031 which authorizes red light and speeding cameras in Cleveland. Xerox State & Local Solutions, Inc. (formerly ACS State &

Local Solutions, Inc.) operates the cameras for the City of Cleveland. The same attorneys who represent Walker also represent Jodka.

The trial court in *Jodka* had granted the defendants' motions to dismiss and Jodka appealed. The Eighth District Court of Appeals released and journalized its *Jodka* opinion on January 23, 2014, wherein it affirmed in part, reversed in part, and remanded the case to the trial court. One judge concurred in part and dissented in part. The appellate court ruled that Jodka lacked standing both to present an unjust enrichment claim (*Jodka*, ¶35) and to assert a claim that the ordinance is unconstitutional because he paid the fine rather than invoke the quasi-judicial process instituted as part of the ordinance to contest the citation, (*Id.*, ¶ 37), but the court also issued an advisory opinion that CCO 413.031 violates Art. IV, § 1 of the Ohio Constitution (*Jodka*, ¶33).

On January 31, 2014, Jodka filed a Combined Motion for Reconsideration and for En Banc Review with the Eighth District Court of Appeals challenging its ruling that Jodka lacked standing. Cleveland and Xerox/ACS opposed the motion and argued that because the court ruled that Jodka lacked standing, its ruling that CCO 413.031 violates Art. IV, Section 1 of the Ohio Constitution is *dicta*. *State of Ohio, ex rel. Lieux v. Village of Westlake*, 154 Ohio St. 412, 96 N.E.2d 414 (1954), ¶ 1 of the syllabus ("Constitutional questions will not be decided until the necessity for their decision arises."); *Ahrns v. SBA Communications Corp.*, 3d Dist. No. 2-01013, 2001-Ohio-2284 (Trial court's ruling that zoning statute, R.C. 519.211(B), was unconstitutional was unnecessary and merely *dicta* because the court resolved the case on other grounds.) The Eighth District entered orders denying Jodka's motion for reconsideration and application for en banc review on March 13 and 14, 2014, respectively.

On February 27, 2014 the Eighth District *sua sponte* certified that *Jodka* is in conflict with the Sixth District's Decision in *Walker*, Lucas Cty. No. L-12-1056, 2013-Ohio-2809 on two issues:

(1) Whether a person who has challenged the constitutionality of a city ordinance that establishes an automated civil traffic enforcement system on the basis that the ordinance deprives the municipal court of jurisdiction over violations of any ordinance, but who, himself, never availed himself of the quasi-judicial process created to contest his liability, has standing to present a claim of unjust enrichment against the city.

(2) Whether, when an appellate court has determined that a person's challenge to the constitutionality of a portion of a city's ordinance has merit, and has determined further that a city's quasi-judicial process established by an ordinance is unconstitutional, the appellate court's determinations are purely advisory, so as to permit the city to continue the quasi-judicial process established by the ordinance.

(Journal Entry attached at APX 029). It is anticipated that *Jodka* will file a certified conflict appeal to this Court to resolve these issues. The resolution will also affect the issues being addressed in *Walker*.

Like *Jodka*, *Walker* also lacked standing to pursue his unjust enrichment claim and to challenge the constitutionality of Toledo Municipal Code Section 313.12. He never invoked the process available to him to challenge the ordinance. There were two avenues available to *Walker* to challenge the constitutionality of TMC 313.12. First, he could have refused to pay the fine and instead requested an administrative hearing as set forth in the ordinance. While it is true that an administrative body cannot rule on the constitutionality of an ordinance, *Walker* could have then filed an appeal to the Lucas County Court of Common Pleas from the Hearing Officer pursuant to Ohio Revised Code Chapter 2506. There he could have challenged the constitutionality of TMC 313.12 as applied to him. *City of Cleveland v. Posner*, 193 Ohio App.3d 211, 2011-Ohio-1370, 951 N.E.2d 476 ¶ 17 (8th Dist.); *Carroll v. City of Cleveland*, 522 Fed. Appx. 299, 2013 WL 1395900 (6th Cir. 2013). But he first had to exhaust his

administrative remedies before making an as-applied constitutional challenge in court. *Wymyslo v. Bartec, Inc.*, 132 Ohio St.3d 167, 2012-Ohio-2187, 970 N.E.2d 898, ¶ 22; *Driscoll v. Austintown Assoc.*, 42 Ohio St.2d 263, 273, 328 N.E.2d 395 (1975). This appellate process gave him an adequate remedy at law. *Scott v. City of Cleveland* at ¶ 24. He did not do this. Consequently, Walker lacked standing.

Walker's second option was to file a separate declaratory judgment action in common pleas court and assert a facial challenge to the ordinance. *Posner* at ¶ 16. He did not do this either. In his Complaint, Walker did not have a count or make a claim for a declaration that TMC 313.12 is unconstitutional as required by Ohio Civil Rule 57 and Ohio Revised Code Sections 2721.01 through 2721.15. *See, e.g.*, 12 *Moore's Federal Practice* § 57.60[1] ("A complaint for declaratory relief must precisely state the declaratory judgment sought. . ."). As was the case in *Jodka*, Walker never moved the court for judgment in his favor that the ordinance is unconstitutional. Rather, he merely opposed the Defendants' motions to dismiss on the assumption that the ordinance was unconstitutional. He therefore never had a valid declaratory judgment action pending and there was no constitutional claim before the court to decide. Without a claim, Walker could not attempt to seek relief via unjust enrichment.

Moreover, as noted by this Court, "[a]n action for declaratory judgment to determine the validity of an administrative agency regulation may be entertained by a court, in the exercise of its sound discretion, where the action is within the spirit of the Declaratory Judgment Act, a justiciable controversy exists between adverse parties, and speedy relief is necessary to the preservation of rights which may otherwise be impaired or lost." *Burger Brewing Co. v. Liquor Control Commission*, 34 Ohio St.2d 93, 296 N.E.2d 261 (1973) (¶ 1 of the syllabus). Furthermore, "[a] court will not exercise its power to determine the constitutionality of a

legislative enactment unless it is absolutely necessary to do so. *Greenhills Home Owners Corp. v. Village of Greenhills*, 5 Ohio St.2d 207, 215 N.E.2d 403 (1966), citing, *State of Ohio ex rel. Lieux v. village of Westlake*, 154 Ohio St. 412, 96 N.E.2d 414 (1951).

There is no genuine dispute between Walker and the City of Toledo or Reddflex of sufficient immediacy and reality to justify a declaratory judgment action addressing the constitutionality of TMC 313.12. He accepted liability by paying and not contesting his citation. Instead, he could have filed an administrative appeal, or he could have immediately filed a proper declaratory judgment action upon receipt of his citation in November 2009. Rather, he waited 15 months, until February 2011, to file his “Class Action Complaint for Restitution.” In addition, his address identified in the Complaint is Paducah, Kentucky. He has not alleged that he regularly drives in Toledo and would thus be subject to the speeding cameras there on a regular basis. He simply has not alleged any genuine dispute of sufficient immediacy and reality to warrant declaratory relief.

Whether one addresses the issue in terms of waiver, res judicata, or lack of standing, the result is the same – Walker has no claims to assert. The majority opinion in *Jodka* cites to *Carroll v. City of Cleveland*, 522 Fed. Appx. 299, 2013 WL 1395900 (6th Cir. 2013), in which the Sixth Circuit held that res judicata (claim preclusion) barred a claim of a person who paid a traffic camera violation citation without contesting the citation as authorized by the CCO 413.031 and R.C. Chapter 2506. The Sixth Circuit specifically found that “claim preclusion ‘is ... applicable to actions which have been reviewed before an administrative body, in which there has been no appeal made pursuant to R.C. 2506.01’”. *Id.* at *4, citing, *Wade v. City of Cleveland*, 8 Ohio App.3d 176, 177, 456 N.E.2d 829, 831-832 (8th Dist. 1988). If a claim is barred by res judicata or waiver, which Walker’s claims are, then Walker was an inappropriate

person to assert a claim that provisions of TMC 313.12 unconstitutionally stripped the municipal court of jurisdiction over his offense. He no longer has a “personal stake.”

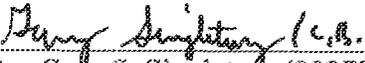
Just as Jodka failed to preserve and properly assert his constitutional jurisdictional challenge to CCO 413.031 by not invoking the administrative appeal process of the ordinance and R.C. Chapter 2506, and by not filing a proper declaratory judgment action, Walker’s claims should likewise fail. *See Utility Service Partners, Inc. v. Public Utilities Commission of Ohio*, 124 Ohio St.3d 284, 2009-Ohio-6764, 921 N.E.2d 1038, ¶ 49, *quoting North Canton v. Canton*, 114 Ohio St.3d 253, 2007-Ohio-4005, 871 N.E.2d 586, ¶ 11 (“A party must have standing to be entitled to have a court decide the merits of a dispute”); *Van Harken v. City of Chicago*, 906 F. Supp. 1182, 1187 (N.D. Ill. 1995), *aff’d as modified*, 105 F.3d 1346 (7th Cir. 1997) (In addressing class certification issues in litigation over Chicago’s parking violations ordinance, the court held that persons who paid their tickets without availing themselves of the administrative hearing process provided by the ordinance did not have standing to challenge the ordinance on due process grounds. “[T]he point is that the persons who paid their tickets do not have a constitutional claim at all because they cannot claim the inadequacy of the process that they made no effort to bring into play.”).

III. CONCLUSION

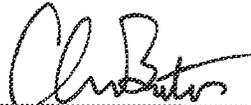
For the foregoing reasons, as well as for the reasons set forth in their brief filed on January 24, 2014, Amici Curiae Xerox and the City of Cleveland respectfully request that this Court reverse the decision of the Sixth District Court of appeals in favor of Plaintiff-Appellee Bradley Walker. This Court should hold that a municipality’s home-rule authority to enact civil photo enforcement legislation does not deprive the municipal court of jurisdiction in violation of Article IV, Section 1 of the Ohio Constitution and Ohio Revised Code section 1901.20(A)(1).

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that he served a copy of the foregoing JOINT REPLY BRIEF OF AMICI CURIAE XEROX STATE & LOCAL SOLUTIONS, INC. AND CITY OF CLEVELAND IN SUPPORT OF APPELLANTS CITY OF TOLEDO AND REDFLEX TRAFFIC SYSTEMS, INC. to the following via U.S. Mail, postage prepaid on March 27, 2014:

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603165677.1

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 99951

SAM JODKA

PLAINTIFF-APPELLANT

vs.

CITY OF CLEVELAND, OHIO, ET AL.

DEFENDANTS-APPELLEES

**JUDGMENT:
AFFIRMED IN PART; REVERSED IN PART; AND
REMANDED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-784372

BEFORE: Rocco, J., S. Gallagher, P.J., and Kilbane, J.

RELEASED AND JOURNALIZED: January 23, 2014

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FILED AND JOURNALIZED
PER APP.R. 22(C)

JAN 23 2014

CUYAHOGA COUNTY CLERK
OF THE COURT OF APPEALS
By Deputy

KENNETH A. ROCCO, J.:

{¶1} This appeal presents another challenge to the constitutionality of a city's automated camera civil traffic enforcement system. *See Mendenhall v. Akron*, 117 Ohio St.3d 33, 2008-Ohio-270, 881 N.E.2d 255; *Posner v. Cleveland*, 193 Ohio App.3d 211, 2011-Ohio-1370, 951 N.E.2d 476 (8th Dist.); *State ex rel. Scott v. Cleveland*, 166 Ohio App.3d 293, 2006-Ohio-2062, 850 N.E.2d 787 (8th Dist.), *aff'd State ex rel. Scott v. Cleveland*, 112 Ohio St.3d 324, 2006-Ohio-6573, 859 N.E.2d 923; *Balaban v. Cleveland*, 6th Cir. No. 07-CV-1366, 2010 U.S. Dist. LEXIS 10227 (Feb. 5, 2010); *Gardner v. Cleveland*, 656 F. Supp.2d 751 (N.D. Ohio 2009); *Mendenhall v. Akron*, N.D. Ohio Nos. 06-CV-139 and 06-CV-154, 2008 U.S. Dist. LEXIS 112268 (Dec. 9, 2008); *Walker v. Toledo*, 6th Dist. Lucas No. L-12-1056, 2013-Ohio-2809.

{¶2} Herein, plaintiff-appellant Sam Jodka appeals from the trial court's order that granted the motions to dismiss and for summary judgment that defendants-appellees the city of Cleveland, Affiliated Computer Services, Inc., Boulder Acquisition Corp., and Xerox Corporation¹ filed in response to Jodka's complaint. Jodka's complaint asserted that Cleveland Codified Ordinances ("CCO") 413.031, which adopts an automated camera civil traffic enforcement system with a concomitant quasi-judicial process for that city, violates the Ohio

¹As they were in the trial court, the latter three defendants-appellees are referred to in this opinion collectively as "ACS."

Constitution's Article IV, Section 1. That section of the constitution gives the Ohio General Assembly the exclusive power to create a court. Jodka further asserted in his complaint that, because the city wrongfully collected monies from purported violators of this unconstitutional ordinance, he was entitled to class certification in order to pursue a claim of unjust enrichment against the appellees.

{¶3} Jodka presents three assignments of error. He argues in his first and second assignments of error that the trial court's decision to dismiss his complaint was improper because: (1) several sections of CCO 413.031 impair the jurisdiction of the Cleveland Municipal Court; and (2) he presented a cognizable common law claim for unjust enrichment. In his third assignment of error, he asserts that the trial court improperly granted ACS's motion for summary judgment.

{¶4} This court finds that sections CCO 413.031(k) and (l) violate Article IV, Section 1 of the Ohio Constitution. Therefore, the trial court improperly dismissed that count of Jodka's complaint, and Jodka's first assignment of error is sustained.

{¶5} However, because Jodka lacks standing to pursue a claim for unjust enrichment, his second assignment of error is overruled. This court declines to address Jodka's third assignment of error because he presents no authority for his argument as required by App.R. 16(A)(7). The trial court's order is affirmed

in part, reversed in part, and this matter is remanded for further proceedings.

{¶6} Jodka filed his complaint on June 6, 2012. Therein, he made the following pertinent allegations.

{¶7} Cleveland adopted a "civil enforcement system for red light and speeding offenders" pursuant to CCO 413.031. ACS provided the physical components for implementing the system. By means of this system, an electronic photographic, video or electronic camera and vehicle sensor automatically captures images of each vehicle that violates a speed limit or a red light. ACS employees review the images, obtain the names and addresses of the vehicle owners, then send them to Cleveland employees. Appellees "jointly" send "tickets" for these violations to the vehicle owners, and the vehicle owners are assessed a monetary penalty of between \$100.00 and \$200.00. Appellees "jointly" reap the benefits of the monies collected under traffic camera enforcement system pursuant to CCO 413.031. In 2007, appellees sent Jodka a ticket for a violation of the ordinance, and he "paid the associated monetary penalty."²

{¶8} In the first count of his complaint, Jodka alleged that CCO 413.031 violated Art. IV, Sec. 1 of the Ohio Constitution because it "stripped" the municipal court of jurisdiction over violations of "any ordinance" as conferred

²Jodka did not specify the amount.

by R.C. 1901.20. Jodka alleged that actions over which CCO 413.031 purported to apply were under the exclusive jurisdiction of municipal courts pursuant to R.C. 1901.20 because, “[b]y definition, 413.031 violations (i.e., speeding and red light) are not ‘parking infractions.’” Jodka asserted that his payment of the penalty did not waive his claim, but “created” it.

{¶9} In the second count of his complaint, Jodka further alleged that, prior to its 2009 amendment, when he paid his fine, CCO 413.031 also violated the Art. I, Sec. 2 of the Ohio Constitution, because “owners” were the only class of persons who were liable for violations. Jodka asserted there was no rational basis to differentiate drivers who violated the ordinance between vehicle “owners” and vehicle “lessees.” He demanded a “return of the monies collected or held under former 413.031” by appellees, and asserted this claim was brought “in equity.”

{¶10} In the third count of his complaint, Jodka requested the trial court to certify a class pursuant to Civ.R. 23 for every person who paid a penalty for a ticket issued under the unconstitutional ordinance. He sought to establish a “sub-class” of owners like himself who had paid a fine for violating the ordinance prior to its 2009 amendment.

{¶11} ACS filed a “motion to dismiss and/or for summary judgment” with

respect to Jodka's complaint, attaching an affidavit to its motion.³ On August 20, 2012, Cleveland filed a Civ.R. 12(B)(6) motion to dismiss Jodka's complaint. Neither appellee filed an answer.

{¶12} Appellees maintained in their motions that the ordinance is constitutional. ACS also argued that Jodka could not support his unjust enrichment claim against it because, rather than "splitting" ticket monies with ACS, Cleveland simply paid for ACS's services pursuant to a contract.

{¶13} On September 11, 2012, the trial court issued a journal entry that stated as follows:

By agreement of the parties, Defendant ACS' argument that Plaintiff's unjust enrichment claims against ACS fail as a matter of law (found at pp. 16-17 of ACS' August 17, 2012 motion to dismiss and/or for summary judgment) is hereby severed from the motion, without prejudice. ACS will have the opportunity to reassert the argument, and the parties will have the opportunity to engage in discovery, *in the event* Court *denies* ACS' motion to dismiss. * * *

(Emphasis added.)

{¶14} On September 21, 2012, Jodka filed a single brief in opposition to appellees' motions. He attached to his brief copies of: (1) the 1985 Cleveland Municipal Court order that permitted the city to establish a "Parking Violations Bureau" with the authority "to handle all parking infractions occurring within

³ACS's affidavit was that of its "Program Manager," Paul Kuczkowski, who "clarified" some of the "misstatements" about appellees' relationship as alleged in Jodka's complaint.

the territory of the municipal corporation," and (2) CCO Chapter 459, the enabling legislation for that bureau. As set forth in CCO 459.01(a), violation of CCO 413.031 was not listed within the definition of a "parking infraction."

{¶15} On May 3, 2013, the trial court issued an opinion and journal entry that granted appellees' motions and dismissed Jodka's complaint. The trial court stated in pertinent part as follows:

Under CCO 413.031(k), violations are handled along the same lines as parking violations. As such, when an alleged violator disputes the claim, there is an appeal process where appeals are heard by the Parking Violations Bureau through an administrative process established by the Clerk of the Cleveland Municipal Court.

* * * [T]he Complaint indicates that in 2007, Plaintiff Sam Jodka (hereafter "Plaintiff") was issued a ticket for violation of CCO 413.031. Plaintiff paid the monetary penalty and did not appeal the violation. However, five years after the ticket was issued, Plaintiff brought suit based upon the receipt of his ticket on the theory that CCO 413.031 violates Article IV, Section 1 of the Ohio Constitution, and that the version of CCO 413.031 in effect in 2007 violated the Equal Protection Clause of Article I, Section 2 of the Ohio Constitution.

Plaintiff now seeks monetary relief against ACS and the City of Cleveland * * * . Defendants * * * have moved to dismiss and/or for summary judgment * * * .

* * *

The General Assembly exercised its exclusive power to establish courts and determine their jurisdiction under Ohio Const. Art. IV, Sec. 1 by enacting R.C. 1901.20(A)(1), under which municipal courts were granted jurisdiction over the "violation of any ordinance * * * unless the violation is required to be handled by a parking violations bureau pursuant to Chapter 4521 of the Revised Code."

* * *

* * * [T]he precise issue of a constitutional violation has already been considered and rejected by Ohio Courts. * * *

Based on the applicable standards, and a review of case law, this Court finds CCO [413.031] does not violate Article IV, Section 1 of the Ohio Constitution, and finds the logic of both [*State ex rel. Scott v. Cleveland*, 112 Ohio St.3d 324, 2006-Ohio-6573, 859 N.E.2d 923], and *Mendenhall v. Akron*, 117 Ohio St.3d 33, 2008-Ohio-270, 881 N.E.2d 255] persuasive. Accordingly, this Court gran[t]s Defendants' Motions to Dismiss/Motions [sic] for Summary Judgment.

[As to] Plaintiff's claim that the earlier version of CCO 413.031 in effect prior to March 11, 2009 violated the Equal Protection Clause of Article I, Section 2 of the Ohio Constitution by treating vehicle owners and lessees differently[,]

[a]s a preliminary matter, this Court notes that "legislative enactments are presumed to be constitutional." See *McCrone v. Bank One Corp.*, 107 Ohio St.3d 272, 2005 Ohio 6505, 839 N.E.2d 1, P. 20. * * *

* * * [T]his Court finds that there is no private cause of action for alleged violations of the Equal Protection Clause of the Ohio Constitution.

Accordingly, Plaintiff's claim for an alleged violation must fail as a matter of law.

* * *

For the reasons as outlined, the Court hereby grants Defendants' Motions to Dismiss and/or for Summary Judgment in their totality. Final.

{¶16} Jodka appeals from the trial court's decision with the following three assignments of error.

I. The trial court erred in holding that a municipality has power to enact an ordinance that restricts and impairs a court's jurisdiction provided by the General Assembly.

II. The trial court erred in holding that a common law unjust-enrichment claim is not valid unless it is first enabled by statute.

III. The trial court erred in granting the non-Cleveland defendants' motion for summary judgment.

{¶17} In his first assignment of error, Jodka argues that the first count of his complaint was improperly dismissed because several sections of CCO 413.031 violate Art. IV, Sec. 1 of the Ohio Constitution, which vests judicial power in the courts of this state as "established by law." He contends that the trial court thus incorrectly relied upon the Ohio Supreme Court's decisions in *State ex rel. Scott v. Cleveland*, 112 Ohio St.3d 324, 2006-Ohio-6573, 859 N.E.2d 923, and *Mendenhall v. Akron*, 117 Ohio St.3d 33, 2008-Ohio-270, 881 N.E.2d 255, when it dismissed his complaint, because those cases did not consider his specific argument. This court agrees.

{¶18} Appellate review of an order dismissing a complaint for failure to state a claim for relief is de novo. *Perrysburg Twp. v. Rossford*, 103 Ohio St.3d 79, 2004-Ohio-4362, 814 N.E.2d 44. This court accepts the material allegations of the complaint as true and makes all reasonable inferences in favor of the plaintiff. *Johnson v. Microsoft Corp.*, 106 Ohio St.3d 278, 280, 2005-Ohio-4985, 834 N.E.2d 791. In order for a defendant to prevail on a Civ.R. 12(B)(6) motion,

it must appear from the face of the complaint that the plaintiff can prove no set of facts that would justify a court granting relief. *O'Brien v. Univ. Comm. Tenants Union, Inc.*, 42 Ohio St.2d 242, 245, 327 N.E.2d 753 (1975).

{¶19} Municipal ordinances, like other legislative enactments, are entitled to the presumption of constitutionality. *Hudson v. Albrecht*, 9 Ohio St.3d 69, 71, 458 N.E.2d 852 (1984). The burden is on the party challenging the ordinance to prove it is unconstitutional beyond a reasonable doubt. *State v. Lowe*, 112 Ohio St.3d 507, 2007-Ohio-606, 861 N.E.2d 512, ¶ 17, citing *Klein v. Leis*, 99 Ohio St.3d 537, 795 N.E.2d 633, ¶ 4. Jodka maintains that CCO 413.031 unconstitutionally usurps the authority of the Cleveland Municipal Court to adjudicate certain traffic infractions. He does not assert that the ordinance is unconstitutional on another ground, as was the situation the Ohio Supreme Court faced in *Mendenhall*, 117 Ohio St.3d 33, 2008-Ohio-270, 881 N.E.2d 255.

{¶20} With respect to a different constitutional challenge to an automated camera civil traffic enforcement system, the *Mendenhall* court made the following pertinent observations at ¶ 16-41:

Section 3, Article XVIII of the Ohio Constitution provides that municipalities are authorized "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."

We use a three-part test to evaluate claims that a

municipality has exceeded its powers under the Home Rule Amendment. * * * [The test is] whether (1) the ordinance is an exercise of the police power, rather than of local self-government, (2) the statute is a general law, and (3) the ordinance is in conflict with the statute.

The first part of the test relates to the ordinance. As we have held, "If an allegedly conflicting city ordinance relates *solely* to self-government, the analysis stops, because the Constitution authorizes a municipality to exercise all powers of *local self-government* within its jurisdiction." *Am. Fin. Servs. Assn. v. Cleveland*, 112 Ohio St.3d 170, 2006-Ohio-6043, 858 N.E.2d 776, ¶ 23. If, on the other hand, the ordinance pertains to "*local police, sanitary and other similar regulations*," Section 3, Article XVIII, Ohio Constitution, the municipality has exceeded its *home rule authority* only if the ordinance is *in conflict* with a general state law. * * *

A. The ordinance

It is well established that *regulation of traffic is an exercise of police power that relates to public health and safety*, as well as to the general welfare of the public. See *Linndale v. State* (1999), 85 Ohio St.3d 52, 54, 706 N.E.2d 1227, citing *Geauga Cty. Bd. of Commrs. v. Munn Rd. Sand & Gravel* (1993), 67 Ohio St.3d 579, 583, 621 N.E.2d 696. Here, there is no dispute that the Akron ordinance is *an exercise of concurrent police power rather than self-government*. Thus, the question remains whether the state statute involved is a general law and, if so, whether the Akron ordinance impermissibly conflicts with the general law.

B. The statute as a general law

* * * When interpreted as part of a whole, R.C. 4511.21 applies to all citizens generally as part of a statewide regulation of traffic laws and motor vehicle operation.

C. Conflict Analysis

Because the statute regarding speed limits is a general law, we must finally determine whether, when cities pass ordinances

creating automated systems of speed-limit enforcement, the municipal ordinances are in conflict with the state statute.

* * *

R.C. 4511.07 does not *expressly* signal that the state has exclusivity in the area of speed enforcement. Furthermore, because there is no indication that the state has intended to reserve to itself the ability to enforce *statewide traffic laws through a civil process*, we decline to recognize a conflict by implication.

* * *

* * * The ordinance does not change the speed limits established by state law or change the ability of police officers to cite offenders for traffic violations. After the enactment of the Akron ordinance, a person who speeds and is observed by a police officer remains subject to the usual traffic laws. Only when no police officer is present and the automated camera captures the speed infraction does the Akron ordinance apply, not to invoke the criminal traffic law, but to impose an administrative penalty on the vehicle's owner. The city ordinance and state law may target identical conduct — speeding — but *the city ordinance does not replace traffic law. It merely supplements it.* * * * The Akron ordinance complements rather than conflicts with state law.

IV. Other theories

* * * *Although there are due process questions regarding the operation of the Akron Ordinance and those similar to it, those questions are not appropriately before us at this time and will not be discussed here.*

V. Conclusion

* * * We hold *merely* that an Ohio municipality does not exceed its *home rule authority* when it creates an automated system for enforcement of traffic laws that imposes civil liability upon violators, provided that the municipality does not alter statewide traffic regulations.

(Emphasis added.)

{¶21} Thus, the *Mendenhall* court determined that a city's automated camera civil traffic enforcement system is constitutional pursuant only to Section 3, Article XVIII of the Ohio Constitution. Previously, in *Scott*, 112 Ohio St.3d 324, 2006-Ohio-6573, 859 N.E.2d 923, at ¶ 2-6, the Ohio Supreme Court determined that issues of the constitutionality of CCO 413.031, which were "unclear" for purposes of the issuance of an extraordinary writ, should be resolved "in the ordinary course of law." *Accord Carroll v. Cleveland*, 522 Fed.Appx. 299, 2013 U.S. App. LEXIS 7178 (6th Cir.2013). *Scott* also provided an overview of the quasi-judicial process CCO 413.031 established at its inception. Since the decision in *Scott*, the ordinance, as amended, includes the following pertinent provisions:

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

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

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

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

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

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

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

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

(Emphasis added.)

{¶ 22} The adjudicatory hearing procedure established by CCO 413.031(j)

through (1), therefore, consists of the following: (1) a representative of the camera vendor and a police officer jointly determine if the photo shows a violation; (2) notice of this determination is sent to the vehicle owner or lessee; (3) if the vehicle owner wants to dispute the determination, he or she files an appeal; (4) at the hearing on the appeal, a person appointed by the city presides; (5) this city-appointed person displays the camera vendor's photo to the vehicle owner or lessee; (6) the city-appointed person determines the sufficiency of the photo as evidence of liability; and then, (7) the decision about liability proceeds to the municipal court as an administrative decision. In this process, the same non-judicial hearing officer is both the prosecutor and the judge, and the person who contests liability lacks any meaningful ability to present a defense.

{¶23} Article IV, Section 1 of the Ohio Constitution vests the "judicial power" of the state in the Supreme Court and the other inferior courts that are "established by law." Thus, the General Assembly has the exclusive power to create courts, and "[t]he power to create a court carries with it the power to define its jurisdiction." *Cupps v. Toledo*, 170 Ohio St. 144, 150, 163 N.E.2d 384 (1959); see also *State ex rel. Whitehead v. Sandusky Cty. Bd. of Commrs.*, 133 Ohio St.3d 561, 2012-Ohio-4837, 979 N.E.2d 1193, ¶ 34. Municipal ordinances, therefore, cannot constitutionally impair or restrict jurisdiction granted to a

court by the legislature. *Cupps*.⁴

{¶24} R.C. 1901.20 states in pertinent part:

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

(Emphasis added.)

{¶25} The statute thus provides that a municipal court's jurisdiction extends to violations of "any" ordinance. The statute's sole exception grants a municipality's "parking violations bureau" jurisdiction "pursuant to Chapter 4521" over vehicle "parking" violations.

{¶26} R.C. 4521.01(A) defines "parking infractions" as "violations of any ordinance * * * enacted by a local authority that regulates the *standing or parking* of vehicles." (Emphasis added.) Such ordinances also must be "authorized pursuant to section 505.17 or 4511.07 of the Revised Code," or

⁴Similarly, municipal courts cannot interfere with jurisdiction granted by the legislature to mayor's courts. *State ex rel. Coyne v. Todia*, 45 Ohio St.3d 232, 543 N.E.2d 1271 (1989).

“authorized by this chapter * * * . *Id.* R.C. 505.17 permits a municipality to regulate vehicles to prevent excessive noise and to prevent parking so as to allow access for emergency services. R.C. 4511.07 permits municipalities to regulate “stopping, standing or parking of vehicles.” The single word “parking” is not statutorily defined.

{¶27} It is a general rule of statutory construction that words and phrases that neither have been legislatively defined or nor acquired a technical meaning “shall be read in context and construed according to the rules of grammar and common usage.” R.C. 1.43. Common usage may be ascertained by reference to a dictionary. *See Cincinnati City School Dist. Bd. of Edn. v. State Bd. of Edn.*, 122 Ohio St.3d 557, 2009-Ohio-3628, 913 N.E.2d 421, ¶ 15-16. With respect to motor vehicles, *Webster's New Collegiate Dictionary* (G & C Merriam Co.1977) defines the word “park” as to “bring to a stop and keep standing at the edge of a public way,” or “to leave temporarily on a public way or in a parking lot or garage.”

{¶28} In *Columbus v. Webster*, 170 Ohio St. 327, 164 N.E.2d 734 (1960), the Ohio Supreme Court intimated, too, that the word “parking” implies a lack of action, rather than movement. Quoting *People v. Hildebrandt*, 308 N. Y. 397, 126 N.E.2d 377 (1955), the *Webster* court noted that “parking violations are of a special sort,” because “[t]he car is left unattended, there is usually no one present to be arrested and it is not unreasonable to charge to the owner an

illegal storage of his vehicle in a public street." *See also Gardner v. Columbus*, 841 F.2d 1272 (6th Cir.1988). Simply put, the fact of a vehicle's stationary presence in a prohibited place cannot generally be reasonably disputed.

{¶29} CCO 413.031, however, makes it a violation of the municipal code for a vehicle operator to *fail* to stop for a red light and to *travel* in excess of the posted speed limit. Perhaps logically, therefore, "violation of CCO 413.031" is not included in CCO 459.01(a)'s definition of what offenses constitute "parking violations." The automated camera system captures this fleeting moment in time. Because the vehicle operator is unaware of the camera's action, he or she cannot adequately mount a challenge to the accuracy of the device.⁶

{¶30} The exhaustive, well-reasoned opinion in *Mendenhall v. Akron*, 117 Ohio St.3d 33, 2008-Ohio-270, 881 N.E.2d 255, justified a city's authority as a concurrent police power to impose civil violations for traffic offenses only under

⁶The accuracy of mechanical devices is often decided in municipal court. *See Beachwood v. Joyner*, 8th Dist. Cuyahoga No. 98089, 2012-Ohio-5884, 984 N.E.2d 388. It would seem to be a simple matter for the municipal court to assign a magistrate to contested automated camera cases to determine whether the automated system is scientifically valid, accurate, and reliable enough to legitimately allege a moving violation. *Compare Davis v. Cleveland*, 8th Dist. Cuyahoga No. 99187, 2013-Ohio-2914 (appellant failed to raise issues of system's accuracy before the administrative hearing officer, and facial constitutionality of CCO 413.031 could not be considered in an administrative appeal.) *But see Carroll v. Cleveland*, 522 Fed.Appx. 299, 2013 U.S. App. LEXIS 7178 (6th Cir.2013) (appellants "would have received ample opportunity * * * to present their arguments about * * * constitutionality, first in an administrative proceeding, then in the Ohio court system," but they simply paid their fine). As a practical matter, as Jodka did in this case, many persons who are cited for moving violations simply pay the fine and do not proceed to court.

“home rule.” The court did not thereby give its imprimatur to the quasi-judicial procedure that CCO 413.031(k) and (l) establishes for those persons charged with civil violations who wish to contest their liability. Although the evidence in the record demonstrates the Cleveland Municipal Court expressly relinquished jurisdiction over “parking infractions” in favor of the city in 1985 pursuant to R.C. 4521.04(B), nothing in R.C. 1901.20(A) permits the city to assume jurisdiction to adjudicate matters involving moving traffic violations. The “city has attempted to divest the municipal court of some * * * of its jurisdiction by establishing an administrative alternative without the express approval of the legislature.” *Walker v. Toledo*, 6th Dist. Lucas No. L-12-1066, 2013-Ohio-2809, ¶ 36. The city’s assumption of that authority violated Art. IV, Sec. 1 of the Ohio Constitution. *Id.* If the Ohio General Assembly had intended to authorize municipalities, rather than municipal courts, to adjudicate violations relating to moving traffic, it would have expressly done so. *See, e.g.*, R.C. 1905.01(A), which defines the jurisdiction of mayor’s courts. *State ex rel. Brady v. Howell*, 49 Ohio St.2d 195, 360 N.E.2d 704 (1977).

{¶31} The General Assembly has permitted municipalities to establish by ordinance administrative tribunals that preside over contests of purely internal matters of local self-government. For example, R.C. 713.11 allows municipalities to create boards with the power to “hear and determine appeals from refusal” of building and zoning permits, R.C. 718.11 requires a

municipality to create a board of tax appeals to hear issues concerning municipal income tax obligations, R.C. 737.12 provides for a city's director of public safety to conduct hearings with respect to a police or fire chief's decision to suspend an officers or firefighter, and R.C. 1901.20(A)(1) permits a municipality to acquire jurisdiction over "parking" violations "pursuant to Chapter 4521." In stark contrast, the tribunal created by CCO 413.031(k) for the adjudication of contests of automated traffic camera citations deals with the general and external matter of *moving traffic*.

{¶32} The creation of such a tribunal, an issue not addressed in *Mendenhall*, 117 Ohio St.3d 33, 2008-Ohio-270, 881 N.E.2d 255, does not constitute a proper exercise of "concurrent police power" pursuant to R.C. 1901.20(A)(1). Nor is it otherwise a power of "local self-government." This court agrees with *Walker*, 6th Dist. Lucas No. L-12-1066, 2013-Ohio-2809, ¶ 35-36, that the power to adjudicate civil violations of moving traffic laws lies solely in municipal court.

{¶33} Based upon the plain meaning of the words used in R.C. 1901.20(A)(1), in purporting to label moving violations as "parking infractions" so as to deprive the municipal court of jurisdiction over violations of "any ordinance," the procedure set forth in CCO 413.031(k) and (l) violates the Ohio Constitution's Art. IV, Sec.1. The trial court, therefore, improperly granted appellees' motion to dismiss Count 1 of Jodka's complaint. Jodka's first

assignment of error is sustained.

{¶34} Jodka's complaint also presented a claim of unjust enrichment. In his second assignment of error, he argues that the trial court improperly dismissed this claim. Although the *Walker* court held to the contrary, this court does not agree with *Walker* on the question of whether Jodka has standing to pursue such a claim. It is well settled that standing does not depend on the merits of the plaintiff's contention that particular conduct is illegal or unconstitutional. Rather, standing turns on the nature and source of the claim he asserts. *Moore v. Middletown*, 133 Ohio St.3d 55, 2012-Ohio-3897, 975 N.E.2d 977, ¶ 34, citing *Warth v. Seldin*, 422 U.S. 490, 501, 95 S.Ct. 2197, 45 L.Ed.2d 343 (1975). Jodka never availed himself of the unconstitutional quasi-judicial process created by CCO 413.031(k) and (l); consequently, he lacks standing to present his claim of unjust enrichment.

{¶35} As this court noted in *Tate v. Garfield Hts.*, 8th Dist. Cuyahoga No. 99099, 2013-Ohio-2204, ¶11-12:

Standing is a *jurisdictional prerequisite* that must be resolved before reaching the merits of a suit. *Fed. Home Loan Mtge. Corp. v. Schwartwald*, 134 Ohio St.3d 13, 2012-Ohio-5017, 979 N.E.2d 1214, ¶ 23. To establish standing, the party invoking the court's jurisdiction must establish that he suffered (1) an injury that is (2) fairly *traceable to the defendant's allegedly unlawful conduct*, and (3) is *likely to be redressed* by the requested relief. *Moore v. Middletown*, 133 Ohio St.3d 55, 2012-Ohio-3897, 975 N.E.2d 977, ¶ 22, citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-561, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992).

To have standing [to pursue a claim], a plaintiff must have a personal stake in the outcome of the controversy and have suffered some concrete injury that is capable of resolution by the court. *Middletown v. Ferguson*, 25 Ohio St.3d 71, 75, 25 Ohio B. 125, 495 N.E.2d 380 (1986). It is not sufficient for the individual to have a general interest in the subject matter of the action. The plaintiff must be the party who will be directly benefitted or injured by the outcome of the action. *Shealy v. Campbell*, 20 Ohio St.3d 23, 24, 20 Ohio B. 210, 485 N.E.2d 701 (1985). The purpose behind this "real party in interest rule" is ""* * * to enable the defendant to avail himself of evidence and defenses that the defendant has against the real party in interest, and to assure him finality of the judgment, and that he will be protected against another suit brought by the real party at interest on the same matter." *Id.*, quoting *In re Highland Holiday Subdivision*, 27 Ohio App.2d 237, 240, 273 N.E.2d 903 (4th Dist.1971).

(Emphasis added.)

{¶36} In *Carroll v. Cleveland*, 522 Fed.Appx. 299, 2013 U.S. App. LEXIS

7178 (6th Cir.2013), the court made the following pertinent observation:

* * * The citations that Appellants received clearly indicated that paying the fine, rather than contesting the citation, was an admission of liability. Thus, by paying, each Appellant admitted that he or she committed the alleged traffic violation, *without asserting any defenses.* * * *

{¶37} Jodka admitted in his complaint that he simply paid the citation the city issued to him. Thus, Jodka neither placed himself under the purported authority of the quasi-judicial process the city instituted in CCO 413.031 nor contested the ordinance's constitutionality during such process. *Carroll*. This fact made Jodka an inappropriate person to assert a claim that provisions of CCO 413.031 unconstitutionally stripped the municipal court of jurisdiction

over his offense.

{¶38} Jodka's second assignment of error is overruled.

{¶39} Jodka argues in his third assignment of error that the trial court should not have granted ACS's motion for summary judgment after the court had "severed" that motion from appellees' motions to dismiss his complaint. This court declines to address this assignment of error for two reasons.

{¶40} First, Jodka supplies no authority to support his argument as required by App.R. 16(A)(7). App.R. 12(A)(2). Second, in light of this court's disposition of his first and second assignments of error, this assignment of error is moot. App.R. 12(A)(1)(c).

{¶41} The trial court's judgment is affirmed in part and reversed in part. The provisions in CCO 413.031 that purport to create a quasi-judicial tribunal to handle contested automated camera traffic citations violate Art. IV, Sec. 1 of the Ohio Constitution. Therefore, that portion of the trial court's order is reversed, and this case is remanded for further proceedings.

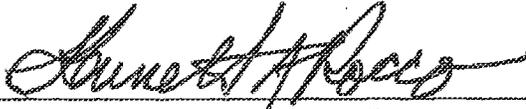
It is ordered that appellant and appellees share the costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to

Rule 27 of the Rules of Appellate Procedure.



KENNETH A. ROCCO, JUDGE

MARY EILEEN KILBANE, J., CONCURS;
SEAN C. GALLAGHER, P.J., CONCURS
IN PART AND DISSENTS IN PART
(SEE ATTACHED OPINION)

SEAN C. GALLAGHER, P.J., CONCURRING IN PART AND DISSENTING IN
PART:

{¶42} This case presents issues that I believe defy resolution at the intermediate appellate level. This is yet another case that reflects a need for legislative policy-making and oversight over modern technological advancements implemented by municipalities in law enforcement. As we are seeing with automated traffic camera ordinances, such measures often result in protracted litigation within the legal system. It is not the function of the courts to engage in policy matters, yet the issues that are appearing involve matters that should have been reviewed by the legislature before implementation.

{¶43} This case is among the increasing number of lawsuits challenging municipal ordinances that authorize the use of automated traffic cameras to impose civil penalties for red light and speeding violations. In the case of the Cleveland ordinance, the city, without any legislative oversight, decided to implement an automated traffic enforcement system and established an

administrative review process under the parking violations bureau.

{¶44} While the General Assembly has provided jurisdiction to municipal courts over criminal traffic-code violations, R.C. 1901.20(A)(1), and has allowed for the establishment of a parking violations bureau in a municipality for handling local, noncriminal "parking infractions," R.C. 4521.04, there are no provisions concerning the implementation of automated traffic enforcement systems. Moreover, there is nothing within R.C. Chapters 1901, 4511, or 4521, or elsewhere in the Ohio Revised Code, that specifically allows a municipality to establish a civil automated traffic enforcement system with administrative procedures that are handled by a parking violations bureau. As the Ohio Supreme Court has recognized, "although the General Assembly has enacted a detailed statute governing criminal enforcement of speeding regulations, it has not acted in the realm of civil enforcement." *Mendenhall v. Akron*, 117 Ohio St.3d 33, 2008-Ohio-270, 881 N.E.2d 255, ¶ 32. The court in *Mendenhall* determined that the creation of a civil automated traffic enforcement system does not exceed a municipality's home rule authority, provided that the municipality does not alter statewide traffic regulations. *Id.* at syllabus.

{¶45} The Ohio Supreme Court recently granted discretionary review in *Walker v. Toledo*, 6th Dist. Lucas No. L-12-1056, 2013-Ohio-2809, 994 N.E.2d 467, *discretionary appeal allowed*, ___ Ohio St.3d ___, 2013-Ohio-5285, wherein the Sixth District determined that a Toledo municipal ordinance was

unconstitutional under the Ohio Constitution, Article IV, Section 1 because it "attempted to divest the municipal court of some, or all, of its jurisdiction by establishing an administrative alternative without the express approval of the legislature." The lead opinion in this case follows that view.

{¶46} However, unlike *Walker*, the lead opinion finds the plaintiff lacked standing to present his claim of unjust enrichment because he did not avail himself of the unconstitutional quasi-judicial process created by the ordinance. In *Walker*, the court determined that an unjust enrichment claim could be pursued by a defendant who had paid the penalty for a red-light camera violation. I agree with *Walker* in that regard.

{¶47} There are no provisions providing for a reduction to judgment when a citation is paid, or when a citation is unchallenged but remains unpaid. Additionally, with minimal fines involved, there is little incentive for a person to challenge the citation, let alone to engage in protracted litigation. More significantly, even accepting that the parking violations bureau has quasi-judicial authority to review whether a violation occurred, there is no authority for the parking violations bureau to hear unjust enrichment claims or constitutional challenges against the ordinances. Therefore, it is my view that the unjust enrichment claim cannot be barred for lack of standing or by res judicata.

The State of Ohio, }
Cuyahoga County. } ss.

I, ANDREA F. ROCCO, Clerk of the Court of

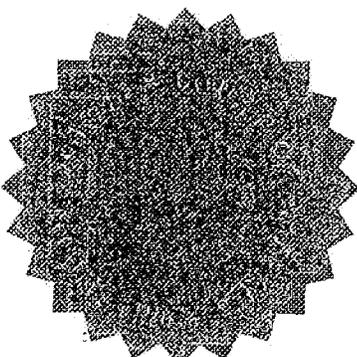
Appeals within and for said County, and in whose custody the files, Journals and records of said Court are required by the laws of the State of Ohio, to be kept, hereby certify that the foregoing is taken and copied from the Journal entry dated on 1/23/14 CA 99951

of the proceedings of the Court of Appeals within and for said Cuyahoga County, and that the said foregoing copy has been compared by me with the original entry on said Journal entry dated on 1/23/14 CA 99951 and that the same is correct transcript thereof.

In Testimony Whereof, I do hereunto subscribe my name officially, and affix the seal of said court, at the Court House in the City of Cleveland, in said County, this 23 day of January A.D. 20 14

ANDREA F. ROCCO, Clerk of Courts

By [Signature] Deputy Clerk



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Court of Appeals of Ohio, Eighth District

County of Cuyahoga
Andrea Rocco, Clerk of Courts

SAM JODKA

Appellant

COA NO.
99951

LOWER COURT NO.
CP CV-784372

COMMON PLEAS COURT

-vs-

CITY OF CLEVELAND, OHIO ET AL.

Appellee

MOTION NO. 472650

FEB 27 2014

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Date 02/27/14

CUYAHOGA COUNTY CLERK
OF THE COURT OF APPEALS
By [Signature] Deputy

Journal Entry

Sua sponte, this court certifies that its decision in *Jodka v. City of Cleveland*, 8th Dist. Cuyahoga No. 99951, 2014-Ohio-208 is in conflict with the decision of the Sixth District Court of Appeals in *Walker v. City of Toledo*, 6th Dist. Lucas No. L-12-1056, 2013-Ohio-2809. The following issues are certified to the Supreme Court of Ohio:

(1) Whether a person who has challenged the constitutionality of a city ordinance that establishes an automated civil traffic enforcement system on the basis that the ordinance deprives the municipal court of jurisdiction over violations of "any ordinance," but who, himself, never availed himself of the quasi-judicial process created to contest his liability, has standing to present a claim of unjust enrichment against the city.

(2) Whether, when an appellate court has determined that a person's challenge to the constitutionality of a portion of a city's ordinance has merit, and has determined further that a city's quasi-judicial process established by an ordinance is unconstitutional, the appellate court's determinations are purely "advisory," so as to permit the city to continue the quasi-judicial process established by the ordinance.

The parties are advised that in order to institute a certified-conflict case in the Supreme Court of Ohio, a party must file a notice of certified conflict in the Supreme Court within 30 days of this court's order certifying the conflict. S.Ct.Prac.R. 8.01.

CA13099951
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Presiding Judge SEAN C. GALLAGHER,
Concurs

Judge MARY EILEEN KILBANE, Concurs

[Signature]
KENNETH A. ROCCO
Judge

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