

ORIGINAL

IN THE SUPREME COURT OF OHIO

BRADLEY WALKER,	*	Supreme Court Case No. 2013-1277
Plaintiff-Appellee,	*	On Appeal from the Lucas
vs.	*	County Court of Appeals,
CITY OF TOLEDO, et al.,	*	Sixth Appellate District
Defendants-Appellants.	*	(Case No. L-12-1056)

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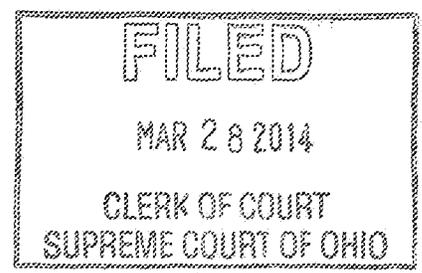
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INTRODUCTION

There is much in Appellee's brief with which defendant agrees. It is, therefore, unfortunate that Appellee attempts to cloud the issues before this court by using such verbiage and phrases as "unelected hearing officer, politically-connected *amici*, lobbyist's policy statement, obfuscates the truth, unwittingly, perceived expediency, bureaucratic hearing officer, unscrupulous, scheme, deliberate manipulation, bogus, activist jurist blush, defy common sense, whim of the majority, bungled, flimsy, betray, lobbying campaign, feigned consternation, far-fetched assertion, strong-arm payment, concocted, and red herring." While such language might seem colorful, the use of these terms and others like them add nothing to the civil discourse that the important issue before this Honorable Court deserves.

Having set the stage through the use of inflammatory language, Appellee then proceeds to set up various false premises in order to attack positions that, for the most part, do not exist in this case. Thus, when Appellee states that "[a]ppellants insist that Toledo City Council has the power to impair the municipal courts jurisdiction by conferring exclusive jurisdiction upon an unelected 'Hearing Officer'," nothing could be further from the truth. Toledo has never taken, and does not now take, the position that the City can invade or impair the "jurisdiction" of the municipal court or, for that matter, any court. Toledo knows that is the law and Appellee knows that Toledo knows the law. Appellee's sole purpose in stating this false predicate is to facilitate five or more pages of argument to defeat a position that the City of Toledo does not contest. The power to set the "jurisdiction" of the municipal court lies exclusively within the prerogatives of the General Assembly.

There are other areas of Agreement as well. Toledo, of course, recognizes the doctrine of "separation of powers." For Appellee to argue that Toledo has violated this well-established doctrine and for Toledo to respond, is an exercise in futility. Toledo understands that "voters

elect judges” and that “politicians may not appoint whoever they want” although this blanket statement by Appellee ignores the power of the Governor (a politician) to fill judicial vacancies or even the common use of unelected magistrates and visiting judges in judicial proceedings throughout the state.

Further, Toledo agrees that its “home-rule authority” does not extend to impairing or restricting a court’s jurisdiction and that such authority does not and cannot supersede Article IV, Section 1 of the Ohio Constitution. Just to state the obvious seems to be a waste of time and, certainly, ten or more pages of Appellee’s thirty-nine pages of writings serves no purpose but to confuse the real issue in this case and to set up a “strawman” issue so that Appellee can spend an inordinate amount of time defeating his own created “issue.”

Toledo agrees that the regulation of “standing or parking of vehicles” exception found in R.C. 1901.20(A)(1) is not applicable to this case. Toledo also agrees with Appellee, as we all must, that where a statute is plain and unambiguous, there is no need to apply the rules of statutory interpretation. Appellee did not need half a dozen or more pages to “educate” this Court or Toledo on a proposition that is so well known and universally accepted. The same is true with regard to Appellee’s English lesson to the Court and Toledo as to “any, every” and “all.”

Finally, one of the main issues in this case, and an issue that can be dispositive, is the applicability of R.C. 1901.20. Once again, Toledo and Appellee are in agreement, in part, as to the scope of that statute. This proposition will be developed more fully below.

As can be seen, Toledo and Appellee agree on many of the matters discussed in Appellee’s brief. The difficulty is that, for the most part, none of these matters set forth by Appellee even apply to the issues now before the Court.

A. Home Rule

In *Mendenhall v. Akron*, 117 Ohio St. 3d 33, 2008-Ohio-270, this Court, in a unanimous decision said 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.”

Thus, the debate whether Toledo had the right and power to enact Toledo Municipal Code, Section 313.12 is over. This Court has spoken with a clear voice.

Appellee suggests that this case is not about home rule. This is because, as Appellee concedes, this Court has already held in *Mendenhall* that a city may permissibly establish a civil photo enforcement program provided the program does not impermissibly conflict with state law. Appellee therefore claims that the City is essentially “beating a dead horse” by suggesting that home rule has any further relevance to this case. Appellee is wrong.

While *Mendenhall* is significant and arguably dispositive to this case, the home rule issue in this matter is more profound than simply the question of whether a city can have red light or speed cameras. At issue is whether, consistent with the grant of home rule given in the Ohio Constitution, a city can establish administrative review processes at all. If Appellees arguments are accepted then the answer would be “no” - or, more accurately, “no, unless the state legislature says you can.” The effect of such a ruling by this Court would significantly undermine the principals behind home rule.

Implicit in the holding of *Mendenhall* is the recognition that a city can, in fact, have such an administrative process in a civil photo enforcement program. “The [Akron] ordinance provides for a complementary system of civil enforcement that, rather than decriminalizing behavior, *allows for the administrative citation of vehicle owners under specific circumstances. Akron has acted within its home rule authority granted by the Constitution of Ohio.*”

Mendenhall v. Akron, 117 Ohio St.3d 33, 2008-Ohio-270, ¶ 42, 881 N.E.2d 255 [Emphasis added.]

Ohio cities often legislatively provide for quasi-judicial administrative processes to address non-criminal matters. The creation of these processes is an integral component of the exercise of home rule.

In his brief Appellee dismisses as spurious the hypothetical the City raised in its merit brief involving a tall grass complaint.¹ Appellee misses the point. While it is true, as Appellee claims, that a person violating Toledo's nuisance ordinances *could* in some instances be cited in municipal court criminally for violating the City's nuisance ordinance (TMC 1725.99) it is also true that alternatively many times the city could issue a notice of [ordinance] violation that would allow a violating property owner an opportunity to remedy the problem or appeal to the Nuisance Abatement Housing Appeals Board ("NAHAB") as provided in the Toledo Municipal Code. TMC 1726.01.² The same action that is addressed through a quasi-judicial administrative process, could have also been pursued as a criminal violation. The fact that the City has both civil and criminal remedies available does not render the administrative process infirm.

¹ The Appellee also convolutes the point made in the City's hypothetical involving collection of unpaid taxes. If a person/entity fails to pay income tax in violation of Toledo's tax ordinances, that person may be civilly sued in common pleas court. Moreover, a person may appeal tax determinations administratively to the Toledo Tax Review Board (TMC § 1905.13) and then, if unsuccessful, on to the court with proper jurisdiction. In other words, not every violation of the City's tax code has to be pursued in municipal court.

² As this Court noted in *Mendenhall*, the same is true with the photo enforcement process. The fact that the city pursued civilly that which could have been charged as a traffic violation, did not make the civil process improper. Moreover, home rule allows a city to determine which ordinances will be criminally sanctioned if violated. The Revised Code acknowledges this fact at R.C. 715.67 which provides that "[a]ny municipal corporation **may** make the violation of any of its ordinances a misdemeanor, and provide for the punishment thereof by fine or imprisonment, or both. The fine, imposed under authority of this section, shall not exceed five hundred dollars and imprisonment shall not exceed six months." [Emphasis added.] Since the Revised Code gives the City the discretion to make violation of any ordinance a misdemeanor, necessarily included in that discretion is the right not to make a violation criminal in nature.

Nevertheless, if Appellee's arguments on "divesture" are accepted, statewide long standing administrative boards like Toledo's NAHAB would be a thing of the past and the Ohio Constitution's grant of home rule will be permanently diminished.³

Even the revised Code recognizes a city's ability to establish administrative process. Revised Code Chapter 2506 establishes a vehicle to appeal "[e]very final order, adjudication, or decision of any officer, tribunal, authority, board, bureau, commission, department, or other division of any political subdivision of this state..." R.C. 2506.01. Clearly, contrary to both the Appellee and the appeals court's belief, Chapter 2506 offers judicial review of municipal administrative decisions without regard to whether the municipal process is referenced elsewhere in the Revised Code.

Appellee simply doesn't get the underlying basis of home rule which is that citizens through the democratic process should have a role in local governmental decision making.

³ Quasi-judicial administrative hearing processes at a municipal level are not unusual nor are they unique to Toledo. Violations of municipal housing and property maintenance codes, for instance, often are matters heard in municipal appeals boards. See, for instance, *Kramer v Niles Housing Maintenance Board*, 2008-Ohio-4978, involving a R.C. Chapter 2506 appeal of a decision of a local administrative hearing; *McMaster v Akron*, 2010-Ohio-3851, 937 NE 2d 1094, involving a R.C. Chapter 2506 appeal of an administrative hearing involving violations of a city ordinance.

B. The Ordinance does not “divest” any court of jurisdiction.

Relying almost exclusively on a case that is not on point, Appellee persists in arguing that the creation of an administrative proceeding divests the municipal court of jurisdiction. Toledo’s Ordinance does no such thing.

Appellee claims that Toledo’s Ordinance runs afoul of Article IV, § 1 which states “[t]he judicial power of the state is vested in a Supreme Court, courts of appeals, courts of common pleas, courts of probate, and such other courts inferior to the courts of appeals as may from time to time be established by law.” The constitutional provision does not specifically enumerate what, exactly, constitutes an act that would “divest” a court of jurisdiction. The case law does not shed much light but it is clear that until now no court has held that the creation of an administrative process by a city offends Article IV, § 1.

Appellee relies almost exclusively upon this Court’s holding in *Cupps v Toledo*, 170 Ohio St.144, 163 N.E.2d 384 (1959). In *Cupps*, this Court held that the City could not permissibly deprive a participant in a municipal administrative hearing of the right of judicial review to the common pleas court. This Court found that a provision in Toledo’s Charter that attempted to make decisions of the city’s civil service commission final impermissibly divested the common pleas court of jurisdiction conferred by statute. Toledo does not quarrel with the *Cupps* decision and, in fact, wholly agrees with the holding. However, the issue decided in *Cupps* is not the question presented in this case.

The facts in *Cupps* are radically different than the situation presented in this case. On its face the Ordinance here (TMC 313.12) does not attempt to prevent *any* court with jurisdiction from judicially reviewing matters arising from the Ordinance or any effects flowing therefrom. Indeed, nothing on the face of the Ordinance prevents any affected person from taking a notice

of violation directly to court. Moreover, the *Cupps* court did not question the ability of Toledo to have an underlying administrative process in place.

In *State ex rel. Cherrington v Hutsinpillar*, 112 Ohio St. 468, 147 N.E. 647 (1925) this Court determined that a city had no power to create a municipal court. Obviously, Toledo agrees. Nothing in this case suggests that Toledo improperly created a “court.” Rather, consistent with its home rule authority, Toledo provided for an administrative process with quasi-judicial functions. This Court has “consistently defined quasi-judicial authority as ‘the power to hear and determine controversies between the public and individuals that require a hearing *resembling* a judicial trial.’” *State ex rel. LetOhioVote.Org v. Brunner*, 125 Ohio St.3d 420, 2010-Ohio-1895, 928 N.E.2d 1066. [Emphasis added.] Nothing in the precedent cited by Appellee suggests that creation of quasi-judicial administrative processes improperly “divest” courts of jurisdiction.

C. Jurisdiction

Appellee contends that the administrative hearing process set up in T.M.C. 313.12 somehow invades the “jurisdiction” of the Toledo Municipal Court. Appellee is just wrong. His error apparently emanates from a lack of understanding of the important word “jurisdiction” found and used in R.C. 1901.20. In fact, it is notable that in his thirty-nine page brief, Appellee fails to discuss the “concept” of “jurisdiction” when used in conjunction with the authority of a court such as is found in R.C. 1901.20 even though Toledo made the point in its brief. It is the omission that is determinative of this case.

The word “jurisdiction” is a term of large and comprehensive impact, and embraces every kind of judicial action. It is the authority by which courts and juridical officers take cognizance of and decide cases. It is the legal right by which judges exercise their authority. It is the power and authority of a court to hear and determine a judicial proceeding. It is the right and power of

a court to adjudicate concerning the subject matter in a given case. See, generally, Black's Law Dictionary (5th Ed. 1979) 766. Accordingly, "jurisdiction", if you will, is a contest between "courts," not between a court and an administrative hearing procedure or body. Thus, in *Johns v. University of Cincinnati Medical Center*, 101 Ohio St. 3d 234, a unanimous decision of this court held that: "[E]xclusive jurisdiction is a *court's power* to adjudicate an action or a class of actions *to the exclusion of all other courts.*" [Emphasis added.] T.M.C. 313.12 sets up an administrative hearing procedure, which in no way clothes a Hearing Officer with judicial "jurisdiction." Obviously, that was not and could not have been done by this ordinance or any other ordinance.

Certainly, Appellee, after receiving his notice of violation that he had exceeded the posted speed, was in full and complete control of his next course of action. He could pay the civil violation fee, as he did, he could attend a hearing to determine if he was the party in control of the automobile or, and this is the real issue in this case, he could proceed to the Municipal Court of Toledo, pursuant to his right to challenge any ordinance of the City, and obtain a judicial determination by the Court as to his liability for the recorded offense. In fact, Appellee could have done nothing at all and required Toledo to seek a judgment in court. There is nothing in the plain language of the Ordinance to mandate or even suggest that an alleged aggrieved person was precluded from going to court to invoke the "jurisdiction" of the Court. See, R.C. 1901.20 or R.C. 2506.01. Thus, when Mr. Walker contends that he had no recourse in court to contest his violation, such contention should not be well-taken because there is nothing in the Ordinance that does or could prevent him from having his "day in court" by contesting his liability, challenging the validity of the Ordinance or seeking judicial review of an adverse administrative decision.

D. There is no conflict between R.C. 1901.20 and the Ordinance.

“The presumption in favor of the constitutionality of statutes leads to the conclusion that where the validity of an act is assailed, and there are two possible interpretations, one of which would render it valid, and the other invalid, the court should adopt the former, so as to bring the act into harmony with the Constitution.” *State ex rel. Dickman v. Defenbacher*, 164 Ohio St. 142, 149, 128 N.E.2d 59, 64 (1955).

In this case Appellee invited the court below to interpret the Ordinance in a manner that precluded municipal court jurisdiction. Appellee even asked the court of appeals to “imagine” that the Ordinance said something other than what it clearly says. Unfortunately the majority in the court below accepted that invitation. In so doing the court below got it wrong. Toledo submits that no reasonable reading of the plain language of the Ordinance could lead one to believe that it precluded judicial review or original review by any court with jurisdiction. However, assuming for argument’s sake, that the Ordinance could reasonably be read in such a manner, so too could it have been read (as it is written) as not affecting any Court’s jurisdiction at all. In other words, the court below ignored the Ordinance’s presumptive constitutionality by interpreting the Ordinance in the manner it did.⁴

To the extent that a court has jurisdiction, that jurisdiction exists as a matter of law. Ordinances need not expressly state that which already exists by virtue of the revised code. The fact that the Toledo Ordinance does not expressly state that a court has jurisdiction is not the same as “divesting” a court of jurisdiction. Here, unlike the *Cupps* case where the Charter

⁴ The little deference given to the presumptively valid ordinance is evident in the procedural history of this case. As noted in Toledo’s merit brief, the court of appeals was reviewing a grant of a Civ. R. 12(B)(6) motion to dismiss in an appeal filed by Walker. Aside from the *ad damnum* of his complaint there was nothing before the court of appeals that invited the court’s ruling. In this procedural context, the majority in the court below unexpectedly attacked the validity of the presumptively valid ordinance based solely on the yet unanswered allegations of Walker’s complaint.

attempted to preclude judicial review at the expense of a court's statutory jurisdiction, Toledo has not attempted to limit a court from the exercise of jurisdiction.

To put an end to the never-ending debate in this case as to what R.C. 1901.20 says, Toledo agrees that the statute is clear and unambiguous.⁵ On that basis then it needs to be applied – not interpreted. Accordingly, when the statute, R.C. 1901.20(A) says, in pertinent part, that:

“The municipal court has jurisdiction of the violation of any ordinance of any municipal corporation,…” (Emphasis added)

the language is unmistakably clear. Therefore, Toledo accepts that R.C. 1901.20 applies and was intended to apply to civil as well as criminal ordinances.⁶ Any extended discussions about what

⁵ Nevertheless, even natural language does not prevent a court from interpreting a statute to comport with the intention of the legislature. “However, the natural meaning of words is not always conclusive as to the construction of statutes. *State ex rel. Myers v. Spencer Twp. Rural School Dist. Bd. of Edn.* (1917), 95 Ohio St. 367, 373, 116 N.E. 516. While it is a long-recognized canon of statutory construction that the words and phrases used by the General Assembly will be construed in their usual, ordinary meaning, that is not so when a contrary intention of the legislature clearly appears. *S. Sur. Co. v. Std. Slag Co.* (1927), 117 Ohio St. 512, 519, 159 N.E. 559.” *D.A.B.E., Inc. v. Toledo-Lucas Cty. Bd. of Health*, 96 Ohio St.3d 250, 2002-Ohio-4172, 773 N.E.2d 536.

⁶ Toledo believes that this Court could properly find that R.C. § 1901.20 was never intended to apply to non criminal offenses. After all the civil jurisdiction of a municipal court is already clearly set out in R.C. 1901.18 which provides, inter alia, that a municipal court has subject matter jurisdiction “[i]n any civil action, of whatever nature or remedy, of which judges of county courts have jurisdiction.” Accordingly, it is obvious that a municipal court has jurisdiction over civil actions regardless of R.C. 1901.20. Moreover, while it is true that the title of R.C. 1901.20 is not part of the text and that a title should never supplant the plain textual language of a statute, even where the title does not control, it may still be useful in determining legislative intent. For instance, Chief Justice Marshall noted as far back as 1805 that “On the influence which the title ought to have in construing the enacting clauses, much has been said; and yet it is not easy to discern the point of difference between the opposing counsel in this respect. Neither party contends that the title of an act can controul [sic] plain words in the body of the statute; and neither denies that, taken with other parts, it may assist in removing ambiguities. Where the intent is plain, nothing is left to construction. Where the mind labours [sic] to discover the design of the legislature, it seizes every thing from which aid can be derived; and in such case the title claims a degree of notice, and will have its due share of consideration.”

“any” means is simply a waste of time and space. Thus Toledo agrees that the Toledo Ordinance when and if questioned falls under the jurisdiction of the municipal court and, just incidentally, pursuant to the clear language of R.C. 2506.01, the Common Pleas Court as well.

Toledo, then, will agree with Appellee’s assertion, on page 19 of his brief, where he states that “the Toledo Municipal Court” has jurisdiction of the violation of any ordinance of any act within its territory – including jurisdiction of T.M.C. 313.12.”

Having established this agreement, all of the other issues (other than “home rule”) both pro and con are of no consequence. Appellee puts his finger on the pulse of this case, when, on page 6 of his brief, he succinctly sets forth that:

“So at its core, the appeal addresses two narrow questions: (1) does the Toledo Municipal Court have jurisdiction of alleged violations of T.M.C. 313.12, and if so, (2) does the ordinance impair or restrict the municipal court’s jurisdiction?”

Appellee answers his own first question with a “yes.” Toledo agrees. Appellee then answers his second question with a “yes” and this is where the parties part company.

Nothing in the Ordinance purports to “divest” any court of jurisdiction granted in the Revised Code which exists as a matter of law. The fact that a municipal court can hear cases arising from either criminal or civil violations of an ordinance does not mean that both violations have to come to the court in the same manner.

It is axiomatic that civil cases and criminal cases are different creatures. Even the manner in which a court’s jurisdiction is evoked is different. In a criminal case, if there is probable cause to believe a crime has been committed, the municipal court’s jurisdiction is

United States v. Fisher, 6 U.S. 358, 386, 2 L. Ed. 304, 2 Cranch 358 (U.S. 1805). However, whether a municipal court has jurisdiction to hear civil cases is not really at issue in this case, accordingly, Toledo is willing to concede that R.C. 1901.20 is applicable to violations of ordinances civil or criminal.

typically evoked by the filing of a sworn affidavit with the clerk. Thus, if a person is charged with the offense of speeding or running a red light, the charging officer would typically file an all purpose citation with the clerk of courts and the municipal courts jurisdiction would be evoked.

However, a civil violation need not go through the same process. Unlike a criminal case, judicial economy, costs and other factors may suggest that going to court is an option of last resort rather than the beginning of the process. Accordingly, notice to offender that it is believed that a civil violation has occurred for which the offender is liable is not an infringement of a court's jurisdiction. After all, if the demand is paid, there is no need to bother a court with the issue. Having a process in place for a person that is alleged to be civilly liable to contest an allegation of liability does not affect the ultimate jurisdiction of the court. Thus, if there is a civil violation for speeding or running a red light a civil complaint does not have to be immediately filed in court like a criminal citation. There is nothing in R.C. 1901.20 that requires civil violations of ordinances to go straight to court. In fact, there is nothing in R.C. 1901.20 that requires City's to pursue civil actions for ordinance violations at all- a city would not, for instance, "divest" a court of jurisdiction because it decides not to sue when it could sue.

Accordingly, as pointed out in Toledo's merit brief, if a person/entity *violates* Toledo tax ordinance (TMC Chapter 1905) by failing to remit income tax, nothing in R.C. 1901.20 prevents the City from notifying the person/entity of a tax liability. Moreover, nothing prevents the City from having a process for a taxpayer to contest liability before an administrative process. See, TMC Chapter 1905. Only if matters are not resolved does Toledo need to evoke a court's civil jurisdiction if it so chooses. Of course, Toledo could simply file suit immediately upon determining a delinquency, but it is not required to do so and misreading 1901.20 as creating a requirement that a city must file suit in municipal court if it believes one of its ordinances has been violated makes no sense.

Here, Toledo can only get a judgment from a court if the Ordinance is violated. Toledo cannot, for instance, garnish wages to collect on an alleged liability or even place a judgment lien on property unless it reduces the claimed liability to judgment. In order to get the judgment, the City would still have to prove its allegations. Nothing in the Ordinance purports to require a court to take notice or honor a hearing officer's determination. If Toledo wanted a judgment it would have to commence a civil action and evoke the jurisdiction of the court only after the hearing officer first agreed that a violation occurred.⁷

E. Due Process

Walker's underlying suit made a facial challenge to Toledo's ordinance, yet the majority below reversed the trial court's dismissal of Walker's claim on an "as applied" basis.⁸ Appellee could not argue that the Ordinance was unconstitutional as applied to him as he never attempted to test it.

Facially, Toledo's presumptively valid ordinance was sufficient to overcome a procedural due process challenge. "Although the concept is flexible, at its core, procedural due process under both the Ohio and United States Constitutions requires, at a minimum, an opportunity to be heard when the state seeks to infringe a protected liberty or property right [cites omitted]"

⁷ As the court below acknowledged, "A decision [by the administrative hearing officer] in favor of the City of Toledo *may be enforced by means of a civil action or any other means provided by the Ohio Revised Code*" Walker v Toledo 2013-Ohio-2809 at ¶ 10. [Emphasis added.]

⁸ Toledo submits that the trial court's dismissal was proper whether Walker's complaint alleged a facial or an "as applied" challenge.

Youngstown v. T aylor, 123 Ohio St.3d 132, 2009-Ohio-4184, 914 N.E.2d 1026 at ¶8⁹. On its face it is clear that the Ordinance provided for both notice and an opportunity to be heard.¹⁰

In this case Mr. Walker, pursuant to law, had two courts to seek his “day in court.” Without question, these were available to him to contest the validity of the Ordinance and/or the appropriateness of his notice of liability. There he would have been afforded “some legal procedure” and would have had the opportunity “to defend himself” as well as to bring into question the constitutionality of the Ordinance. He chose to do neither. That was not the fault of T.M.C. 313.12. That was Mr. Walker’s choice.

F. Appellee is not entitled to seek damages on the theory of unjust enrichment.

Toledo concurs with the well-reasoned argument of *Amici* Ohio Municipal League in regards to Walker’s unjust enrichment claim. This Court should not depart from established precedent that protects Ohio municipalities from claims based on theories of quasi-contract.

It is remarkable that Appellee made no reference in his brief to the case of *Jodka v. Cleveland*, 8th Dist. No. 99951, 2014-Ohio-208, which was decided on January 23 of this year. In *Jodka* the Court of Appeals in Cleveland, relying on the court of appeals ruling in this case,

⁹ Similar photo-enforcement programs have survived federal due process challenges. In *Idris v City of Chicago*, 552 F.3d 564, the United States Court of Appeals for the Seventh Circuit found that Chicago’s program, which is similar to Toledo’s, was not offensive to substantive or procedural due process protections.

¹⁰ “Administrative agencies are not held to the same standard of procedural due process as are courts of law (see 2 Ohio Jurisprudence 3d 267, Administrative Law, Section 97). There are, however, two basic requirements for proper administrative process by a board, to wit: ‘The constitutional guaranty of due process of law or due course of law is no absolute bar to the vesting of adjudicating powers in administrative agencies although it imposes certain minimal procedural requirements, and in certain situations provides a right to judicial review of the administrative action. The federal requirement of due process in no way undertakes to control the power of a state to determine by what process legal rights may be asserted, or legal obligations be enforced, provided the method of procedure adopted for these purposes gives reasonable notice and affords fair opportunity to be heard before the issues are decided.’” (Emphasis added.) 2 Ohio Jurisprudence 3d 184, Administrative Law, Section 34.” *City of Toledo, Ex Rel. Pinkley v. City of Toledo*, 6th Dist. No. L-83-377, 1984 WL 7945 (July 20, 1984)

found Cleveland's photo-enforcement process invalid. While Toledo submits that the *Jodka* court erred in relying on the holding below, in at least one important sense, the Eighth District was correct. In *Jodka* the court of appeals found that a plaintiff who, like Walker here, simply paid the civil liability without contest had no standing to seek damages based on a theory of unjust enrichment:

"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.

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." *Jodka v. Cleveland*, 8th Dist. No. 99951, 2014-Ohio-208

Appellee should not be able to seek damages based upon a theory of unjust enrichment.

G. If municipal photo-enforcement programs are eliminated it should be through legislative action rather than through court ruling.

Appellee is partly right to the extent that he raises the doctrine of Separation of Powers. However, he got it backwards. Separation of powers principles suggest that, there being nothing constitutionally infirm about the Toledo Ordinance, this Court should defer to the legislative branch to determine whether any action should be taken in regards to photo-enforcement

programs. It is a political and policy matter best left with the legislatures on the state and local level.¹¹

It is both telling and ironic that a group of state representatives and senators have involved themselves in this matter as “*amici*.” It is apparent that they are attempting to do through this Court that which they, as yet, have been unable to accomplish in the democratic processes of the General Assembly. This Court should decline to play the role of super legislator and, instead leave the matter to the legislature.

CONCLUSION

There is an old saw that advises trial attorneys that “when the facts are on your side, pound the facts. When the law is on your side, pound the law. When neither is on your side, pound the table.” Certainly, the facts offer Appellee little to “pound” as the facts show a person who never tried to contest the underlying notice of violation in front of a hearing officer, in the Toledo Municipal Court or in the Court of Common Pleas. Rather Appellee simply paid the civil violation and proceeded, at a later date, to facially attack the constitutionality of a presumptively valid ordinance.

Nor does the law offer Appellee much of a hammer to pound. The little authority offered by the Appellee on his key claim that Toledo has somehow “divested” a court of jurisdiction does little to support his claim. The few cases that address municipal attempts to divest a court of jurisdiction are inapposite to the situation presented in this case. Established precedent on home rule likewise is against the Appellee. Case law discussing jurisdiction is against the Appellee and the presumptions that favor the Ordinance are well established.

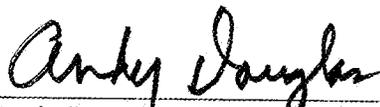
¹¹ Implicit in the briefs of Appellee and supporting *amici* is the suggestion that local legislatures are less democratic, less accountable or less competent to legislate on matters within their purview than the General Assembly. Obviously, there is no legal support for such an outrageous proposition. Councilmembers are elected representatives that are every bit as accountable to the voters as their contemporaries in the General Assembly.

Out of necessity, Appellee has opted to “pound the table.” No matter how vigorously the table is pounded, however, this Court should not be misled by the ruckus.

Despite the cacophony of the incessant pounding, there is much in this case that Toledo and Appellee agree on. What is not agreed upon is the answer to two questions that are at the heart of this case. First, did Toledo exceed its home rule authority by promulgating T.M.C. 313.12 and to include an administrative hearing procedure as part of the Ordinance? Second, did (or could) the Ordinance improperly invade, impact or restrict the jurisdiction of the Toledo Municipal Court to hear, pursuant to R.C. 1901.20, any challenge to any Ordinance passed by the City of Toledo. The answer to both of these questions being “no”, Toledo respectfully asks this Honorable Court to so find and to reverse the Sixth District Court of Appeals and enter final judgment for Appellant Toledo.

Respectfully submitted,

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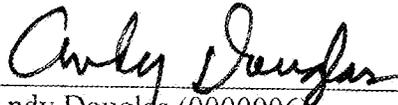
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