

IN THE SUPREME COURT OF OHIO

Bradley Walker,	:	Supreme Court Case No. 13-1277
	:	
Plaintiff-Appellee,	:	On Appeal from the Lucas
	:	County Court of Appeals,
v.	:	Sixth Appellate District
	:	(Case No. L-12-1056)
City of Toledo, <i>et al.</i> ,	:	
	:	
Defendants-Appellants.	:	

REPLY BRIEF OF APPELLANT REDFLEX TRAFFIC SYSTEMS, INC.

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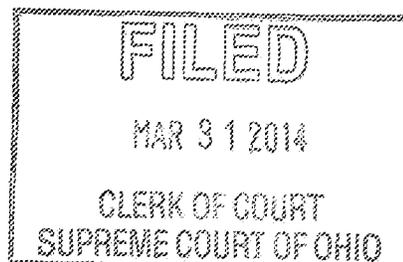
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TABLE OF CONTENTS

	<u>Page</u>
TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES.....	ii
ARGUMENT.....	1
I. Ohio municipalities have home-rule authority to maintain pre-suit administrative proceedings as part of their civil traffic enforcement ordinances.....	1
A. This Court’s prior decisions in <i>Mendenhall</i> and <i>Scott</i> hold that cities have home-rule authority to conduct administrative proceedings as part of their civil traffic enforcement ordinances.	1
B. Ohio R.C. 1901.20(A)(1) does not confer exclusive jurisdiction on municipal courts.....	2
C. Walker’s interpretation of R.C. 1901.20(A)(1) is inconsistent with the interpretation given to other similar federal and state jurisdictional statutes.....	4
D. The reference to parking violations bureaus in R.C. 1901.20(A)(1) has no bearing on Toledo’s home-rule authority to conduct administrative hearings.....	7
E. Complaints about unelected hearing officers substituting their judgment for elected judges lack any basis in fact or law.	9
1. Hearing officers routinely conduct administrative appeals pursuant to city ordinances.	9
2. Hearing officers do not exercise unbridled discretion because individuals have a right to an administrative appeal under Ohio law.....	11
II. Toledo’s civil traffic enforcement ordinance provides due process.....	14
A. Effectuating service of a notice of liability by regular mail is constitutional.....	14
B. The fact that a notice of liability is imposed against the owner of the automobile does not make the ordinance unconstitutional.....	15
C. An administrative hearing is by its nature informal; the informality of the hearing does not make it unconstitutional.	17
CONCLUSION.....	20
CERTIFICATE OF SERVICE.....	21

TABLE OF AUTHORITIES

	<u>Page</u>
<u>CASES</u>	
<i>Agomo v. Fenty</i> , 916 A.2d 181 (D.C. App. 2007)	16
<i>Balaban v. City of Cleveland</i> , N.D. Ohio No. 1:07-cv-1366, 2010 U.S. Dist. LEXIS 10227 (Feb. 5, 2010).....	17
<i>City of Cleveland v. Cord</i> , 8th Dist. Cuyahoga No. 96312, 2011-Ohio-4262	12
<i>City of Knoxville v. Brown</i> , 284 S.W. 3d 330 (Tenn App. 2008)	16
<i>Gardner v. City of Cleveland</i> , 656 F. Supp.2d 751 (N.D. Ohio 2009)	13
<i>Gardner v. City of Columbus</i> , 841 F.2d 1272 (6th Cir. 1988).....	9, 15
<i>Hausman v. Dayton</i> , 73 Ohio St.3d 671, 653 N.E.2d 1190 (1995)	4
<i>Idris v. City of Chicago</i> , 552 F.3d 564 (7th Cir. 2009).....	15, 16
<i>Jennings v. Xenia Twp. Bd. of Zoning Appeals</i> , 2nd Dist. Greene No. 07CA-16, 2007-Ohio-2355	17
<i>Kutschbach v. Davies</i> 885 F.Supp. 1079, 1093 (S.D. Ohio 1995).....	20
<i>Mathews v. Eldridge</i> , 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976).....	19
<i>Mendenhall v. City Akron</i> , 117 Ohio St. 3d 33, 2008-Ohio-270, 881 N.E.2d 633.....	passim
<i>Mims v. Arrow Fin. Serv., LLC</i> , ___ U.S. ___, 132 S.Ct. 740, 181 L.Ed.2d 881 (2012)	4, 5
<i>Plain Local Schools v. Franklin Cty. Bd. of Revision</i> , 130 Ohio St.3d 230, 2011-Ohio-3362, 950 N.E.2d 268	17
<i>Posner v. City of Cleveland</i> , 8th Dist. Cuyahoga No. 95997, 2011-Ohio-3071	12
<i>Snider Int'l Corp. v. Town of Forest Heights</i> , 739 F.3d 140 (4th Cir. 2014)	14
<i>Sommervold v. Wal-Mart, Inc.</i> , Dist. S.D. No. 1:11-cv-1028, 2012 U.S. Dist. LEXIS 88429 (Jun. 20, 2012)	7
<i>Spoofforth v. Athens</i> , 4th Dist. Athens No. 1487, 1992 Ohio App. LEXIS 1216 (Mar. 9, 1992)	9
<i>State ex rel. Banc One Corp. v. Walker</i> , 86 Ohio St.3d 169, 712 N.E.2d 742 (1999).....	3
<i>State ex rel. Dickman v. Defenbacher</i> , 164 Ohio St. 142, 128 N.E.2d 59, 64 (1955)	4

<i>State ex rel. Ohio Democratic Party v. Blackwell</i> , 111 Ohio St.3d 246, 2006-Ohio-5202, 855 N.E.2d 1188	3
<i>State ex rel. Sanquily v. Lucas Cty. Court of Common Pleas</i> , 60 Ohio St.3d 78, 573 N.E.2d 606 (1991).....	3
<i>State ex rel. Scott v. City of Cleveland</i> , 112 Ohio St.3d 324, 2006-Ohio-6573, 859 N.E.2d 923	1, 4, 12
<i>State ex rel. Taft-O'Connor '98</i> , 83 Ohio St.3d 487, 700 N.E.2d 1232 (1998).....	2, 7
<i>State of Oregon v. Dahl</i> , 336 Ore. 481, 87 P.3d 650 (2004)	17
<i>State v. Bodyke</i> , 126 Ohio St.3d 266, 2010-Ohio-2424, 933 N.E.2d 753.....	4
<i>State v. Hochhausler</i> , 76 Ohio St.3d 455, 465-466, 668 N.E.2d 457 (1996)	18, 19, 20
<i>State v. Lyons</i> , 1st Dist. Hamilton No. C-060448, 2007-Ohio-652	10
<i>State v. Moaning</i> , 76 Ohio St.3d 126, 1996-Ohio-413, 666 N.E.2d 1115	5
<i>State v. Tooley</i> , 114 Ohio St.3d 366, 2007-Ohio-3698, 872 N.E.2d 894.....	2
<i>Summerville v. City of Forest Park</i> , 128 Ohio St.3d 221, 2010-Ohio-6280, 943 N.E.2d 522	5
<i>Titus v. City of Albuquerque</i> , 149 N.M. 556, 252 P.2d 780 (2011).....	16
<i>United States v. Bank of New York & Trust Co.</i> , 296 U.S. 463, 56 S.Ct. 343, 80 L.Ed. 331 (1936).....	4
<i>United States v. O'Grady</i> , 89 U.S. 641, 22 L.Ed. 772 (1874)	4
<i>Voyath v. Beckert</i> , 2nd Dist. Montgomery No. 17745, 2000 Ohio App. LEXIS 316 (Feb. 4, 2000).....	17
<i>Ware v. Lafayette City-Parish Consolidated Government</i> , W.D.La. No. 08-0218, 2009 U.S. Dist. LEXIS 97836 (Jan 6, 2009)	16

STATUTES

28 U.S.C. § 1333.....	6
28 U.S.C. § 1350.....	7
28 U.S.C. § 1355.....	7
28 U.S.C. § 1581(b) and (c).....	6

Akron Code of Ordinances § 70.50, <i>et seq.</i>	10
Cleveland Code of Ordinances § 209.01, <i>et seq.</i>	10
Columbus Code of Ordinances § 597.01, <i>et seq.</i>	11
Dayton Code of Ordinances § 93.101, <i>et seq.</i>	10
Toledo Municipal Code 313.12 (d)(3) and (4).....	18
R.C. 1901.181	5
R.C. 1901.20	7
R.C. 1901.20(A).....	3
R.C. 1901.20(A)(1).....	passim
R.C. 2151.23(A).....	6
R.C. 2151.23(A)(1), (3), (8).....	6
R.C. 2151.31	6
R.C. 2151.87	6
R.C. 2506.01	12
R.C. 2506.03	12
R.C. 2743.02(F)	3
R.C. 2953.73(E)(1)	3
R.C. 3517.151	2, 3
R.C. 3745.04(B).....	5, 6
R.C. 4511.19(A).....	18
R.C. 4511.195(C)(2)(a).....	18
R.C. 4905.26	3
R.C. Chapter 1901.....	1
<u>CONSTITUTIONAL PROVISIONS</u>	
Article IV, Section 2, Ohio Constitution	1

RULES

Civ.R. 4.6(C), (D) 14

Civ.R. 54(D)..... 13

Civ.R. 55, 56, 57, or 58..... 18

Evid.R. 101(A)..... 17

ARGUMENT

I. **Ohio municipalities have home-rule authority to maintain pre-suit administrative proceedings as part of their civil traffic enforcement ordinances.**

Walker contends that municipalities cannot “impair,” “restrict,” “nullify,” or “divest” a municipal court’s jurisdiction. (Appellee’s Brief at 1-6.) To make his point, Walker repeatedly cites to Article IV, § 2 of the Ohio Constitution, which imbues the General Assembly with the power to establish the jurisdiction of Ohio’s lower courts. But no one disputes the General Assembly has this power or that the General Assembly has exercised it by establishing municipal courts in R.C. Chapter 1901. The real issue is the scope of the grant of jurisdiction. And that question is answered by interpreting R.C. 1901.20(A)(1). Where R.C. 1901.20(A)(1) plainly does not provide for exclusive jurisdiction, the Home-Rule Amendment to the Ohio Constitution permits Toledo to have an administrative scheme for civil traffic enforcement.

A. **This Court’s prior decisions in *Mendenhall* and *Scott* hold that cities have home-rule authority to conduct administrative proceedings as part of their civil traffic enforcement ordinances.**

As discussed in Redflex’s Merit Brief, Toledo’s authority to operate an administrative scheme for civil traffic enforcement is established. This Court held in *Mendenhall v. City Akron*, 117 Ohio St. 3d 33, 2008-Ohio-270, 881 N.E.2d 633, that home rule allows Akron to “exercise” “police power” via an ordinance providing “for a complementary system of civil enforcement that . . . allows for the administrative citation of vehicle owners under specific circumstances.” *Id.* at ¶ 42.

And in *State ex rel. Scott v. City of Cleveland*, 112 Ohio St.3d 324, 2006-Ohio-6573, 859 N.E.2d 923, this Court rejected a challenge to Cleveland’s jurisdiction to conduct administrative proceedings in furtherance of its civil traffic enforcement ordinance, holding that Cleveland did not “patently and unambiguously lack jurisdiction to impose these penalties.”

Walker buries what little response he has to *Mendenhall* on page 26 of his Brief, claiming *Mendenhall* is inapposite because it only concerned whether municipalities have home-rule power to enact civil penalties for offenses that are criminal under the Revised Code. But the holding in *Mendenhall* was broader than that. *Mendenhall* recognized the home-rule right of cities to maintain an administrative process for civil 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*, 117 Ohio St.3d 33, ¶ 42 (emphasis added).

Walker also attempts to distance himself from *Scott* by claiming that case was a writ action that required a higher burden of proof. (Appellee’s Brief at 27.) But it was not. Walker’s burden is just as high as the burden was on *Scott* because an ordinance can only be found unconstitutional if the plaintiff proves it beyond a reasonable doubt. *State v. Tooley*, 114 Ohio St.3d 366, 2007-Ohio-3698, 872 N.E.2d 894, ¶ 29. Ultimately, this Court refused to grant the writ because Cleveland did not lack jurisdiction to administer a civil traffic program. This Court would have been correct to grant the writ in *Scott* if the only possible interpretation of R.C. 1901.20(A)(1) is that municipalities cannot hold administrative hearings to enforce their own ordinances, as was the result in *State ex rel. Taft-O’Connor ’98*, 83 Ohio St.3d 487, 488, 700 N.E.2d 1232, 1233 (1998) (granting writ where R.C. 3517.151 clearly gave exclusive jurisdiction to Ohio Elections Commission).

B. Ohio R.C. 1901.20(A)(1) does not confer exclusive jurisdiction on municipal courts.

Toledo’s civil traffic enforcement ordinance, T.M.C. 313.12 (“Ordinance”) does not impair or restrict the jurisdiction of the Toledo Municipal Court. While the General Assembly

has given jurisdiction to municipal courts over municipal ordinance violations in 1901.20(A)(1), that fact does not end the inquiry. The issue is whether that jurisdiction is exclusive. That is, whether it excludes municipalities from maintaining an administrative process to enforce its local traffic laws that supplements state law.

The most reasonable interpretation of R.C. 1901.20(A)(1) is that municipal courts have been granted jurisdiction, but not *exclusive* jurisdiction. There is a presumption that the legislature did not intend for a court or agency to “occupy the field” in a particular area when it does not use the term “exclusive” or other similar language. *State ex rel. Banc One Corp. v. Walker*, 86 Ohio St.3d 169, 171, 712 N.E.2d 742 (1999) (“When the General Assembly intends to vest exclusive jurisdiction in a court or agency, it provides it by appropriate statutory language”); *State ex rel. Ohio Democratic Party v. Blackwell*, 111 Ohio St.3d 246, 2006-Ohio-5202, 855 N.E.2d 1188. The legislature uses the terms “exclusive,” “original,” or both, or certain forms of absolutist language indicating exclusivity, such as “shall.” *See, e.g., State ex rel. Sanquily v. Lucas Cty. Court of Common Pleas*, 60 Ohio St.3d 78, 80, 573 N.E.2d 606 (1991).

If the General Assembly had wanted to vest the municipal courts with *exclusive* jurisdiction under 1901.20(A), it would have done so expressly. It certainly knew how to do that. *See* R.C. 2743.02(F) (court of claims has exclusive jurisdiction over state employee immunity); R.C. 4905.26 (PUCO has exclusive jurisdiction to determine whether public utility service is unreasonable or unjust); R.C. 2953.73(E)(1) (Supreme Court of Ohio has exclusive jurisdiction to review rejection of applications for DNA testing in death penalty cases); R.C. 3517.151 (Ohio Elections Commission has exclusive jurisdiction over certain election code violations). R.C. 1901.20(A)(1) is unlike these statutes. It does not use the term “exclusive,” “original,” or any other term indicative of legislative intent to grant exclusive jurisdiction.

C. Walker's interpretation of R.C. 1901.20(A)(1) is inconsistent with the interpretation given to similar federal and state jurisdictional statutes.

Walker's entire case rises and falls on the word "any" used in the first clause of R.C. 1901.20(A)(1). Walker rationalizes that the word "any" can mean only one thing: that municipal courts have jurisdiction over *every* municipal ordinance violation to the exclusion of any type of municipal administrative proceedings.¹

There are two problems with this reasoning. First, "any" does not mean "every" in all instances; "any" can be read more narrowly if the rules of interpretation deem it appropriate. Moreover, even if "any" meant "every," it still does not mean the court is granted exclusive jurisdiction. It just continues to mean that the court is not excluded from "every" matter involving an ordinance violation. This is because jurisdiction is merely the power to hear and decide a matter. *State v. Bodyke*, 126 Ohio St.3d 266, 2010-Ohio-2424, 933 N.E.2d 753, ¶ 55, quoting *United States v. O'Grady*, 89 U.S. 641, 647-48, 22 L.Ed. 772 (1874).

In a recent case concerning the scope of jurisdiction under the TCPA, the United States Supreme Court in a 9-0 decision rejected Walker's reasoning and stated "it is a general rule that the grant of jurisdiction to one court does not, of itself, imply that the jurisdiction is to be exclusive." *Mims v. Arrow Fin. Serv., LLC*, ___ U.S. ___, 132 S.Ct. 740, 181 L.Ed.2d 881 (2012), quoting *United States v. Bank of New York & Trust Co.*, 296 U.S. 463, 479, 56 S.Ct. 343, 80 L.Ed. 331 (1936). In other words, a bare grant of jurisdiction is only permissive. *Mims*, 132 S.Ct. 749 ("nothing in the permissive language of § 227(b)(3) makes state-court jurisdiction

¹ He must argue this because if there are two possible alternative meanings, one rendering the statute unconstitutional and the other rendering it constitutional, the court must adopt the constitutional interpretation. *State ex rel. Dickman v. Defenbacher*, 164 Ohio St. 142, 149, 128 N.E.2d 59, 64 (1955); *Hausman v. Dayton*, 73 Ohio St.3d 671, 678, 653 N.E.2d 1190 (1995); *Scott*, 112 Ohio St.3d 324, ¶ 18.

exclusive, or otherwise purports to oust federal courts . . .”). It authorizes the court to act, but does not exclude other appropriate bodies from acting concurrently.

To underscore the fallacy of Walker’s interpretation of the word “any,” this Court can look at how the Ohio General Assembly and other legislatures have used the term “any” in other jurisdiction-granting statutes, such as “any ordinance” or “any cause of action.” “It is a well-settled rule of statutory interpretation that statutory provision 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, quoting *State v. Moaning*, 76 Ohio St.3d 126, 128, 1996-Ohio-413, 666 N.E.2d 1115.

Legislatures do not believe the term “any” connotes an exclusive grant of jurisdiction because when they give a court or agency jurisdiction over “any” subject, they join with it the term “exclusive” or similar language if they intend for there to be exclusive jurisdiction. Adding the word “exclusive” is necessary because use of the word “any” is merely a grant of jurisdiction over that subject matter. It does not “imply that the jurisdiction is to be exclusive.” *Mims*, 132 S.Ct. 749.

Examples abound. In its Merit Brief, Redflex directed this Court to R.C. 1901.181—another section on the jurisdiction of municipal courts—where the legislature provided that “if a municipal court has a housing or environmental division, the division has *exclusive* jurisdiction within the territory of the court in *any* civil action to enforce” a series of environmentally-related subjects. This is just one example where the Ohio legislature coupled the term “exclusive” with the term “any” when they intended to imbue a court with exclusive jurisdiction.

Another example is R.C. 3745.04(B), which provides that “[t]he environmental review appeals commission [ERAC] has *exclusive* original jurisdiction over *any* matter that may, under

this section, be brought before it.” (Emphasis added.) Like R.C. 1901.20(A)(1) that provides municipal courts with jurisdiction over the violation of “*any* municipal ordinance,” R.C. 3745.04(B) provides the ERAC with jurisdiction over “*any* matter” that is permitted to be brought before it. Yet in R.C. 3745.04(B), the General Assembly added the words “exclusive” and “original”—ERAC has *exclusive* and *original* jurisdiction. The legislature correctly concluded that merely saying that ERAC had jurisdiction over “any matter” did not mean ERAC had *exclusive* jurisdiction over “any matter.”

Another example is found in R.C. 2151.23(A). There, the legislature gives juvenile courts “*exclusive original jurisdiction*” (1) “concerning *any* child who . . . is alleged to have violated section 2151.87 of the Revised Code”; and (2) “*any* application for a writ of habeas corpus involving the custody of a child”; and (3) “concerning *any* child who is to be taken into custody pursuant to section 2151.31 of the Revised Code.” R.C. 2151.23(A)(1), (3), (8). Again, the legislature did not presume that juvenile courts would have exclusive or original jurisdiction merely because it used the term “any child” or “any application.” It used the terms “exclusive” and “original” because otherwise it was merely granting power to the juvenile courts to act without making that power exclusive.

Similar examples are found in federal law. For instance, in 28 U.S.C. § 1333, Congress provided that “the district courts shall have *original* jurisdiction, *exclusive* of the courts of the States, of (1) *any* civil case of admiralty and maritime jurisdiction . . . [and] (2) *any* prize brought into the United States . . .” Similarly, in 28 U.S.C. § 1581(b) and (c), Congress provided that “[t]he Court of International Trade shall have *exclusive* jurisdiction of *any* civil action commenced under sections 516 and 516A of the Tariff Act of 1930.” *See also* 28 U.S.C. 1337(a) (granting district courts with “*original*” jurisdiction over “*any* civil action or

proceeding” involving antitrust violations); 28 U.S.C. § 1350 (granting district courts “*original*” jurisdiction over “*any* civil action” by an alien for violation of a treaty); 28 U.S.C. § 1355 (“The district courts shall have *original* jurisdiction, exclusive of the courts of the States, of any action or proceeding for the recovery or enforcement of any fine, penalty, or forfeiture, pecuniary or otherwise, incurred under any Act of Congress, . . .”).²

When legislatures intend for a court or agency to be the only body to deal with a subject, they say so by using the term “exclusive” or other similar language, such as “shall.” *See State ex rel. Taft-O'Connor '98*, 83 Ohio St.3d at 488 (R.C. 3517.151 uses word “shall” to indicate exclusive jurisdiction of the Ohio Elections Commission). R.C. 1901.20(A)(1) has no such language.

D. The reference to parking violations bureaus in R.C. 1901.20(A)(1) has no bearing on Toledo’s home-rule authority to conduct administrative hearings.

Walker contends also that the legislature’s adoption of an exception for jurisdiction over parking violations bureaus in R.C. 1901.20 is evidence that the legislature did not intend to carve out an exception for anything else, including civil traffic enforcement. (Appellee’s Brief at 7-8, 14.) But this exception has no bearing on civil traffic enforcement or a city’s right to conduct administrative hearings in furtherance of their own ordinances.

² Walker cites *Sommervold v. Wal-Mart, Inc.*, Dist. S.D. No. 1:11-cv-1028, 2012 U.S. Dist. LEXIS 88429, *7 (Jun. 20, 2012) for the proposition that almost all cases in federal and state courts support a broad reading of the word “any” to mean “all.” (Appellee’s Brief at 15-16.) But there are several problems with this argument. First, the *Sommervold* case cites nothing to support the conclusion that federal courts always interpret “any” to mean “all.” Second, a broader interpretation of the term “any” fit with the circumstances in which the word was used in that case—an issue of interpreting a state statute on service of process. Here it is used in a different context—granting jurisdiction. And third, even if one were to agree “any” always means “all,” that would still not support Walker’s position because having jurisdiction over “all” municipal ordinances is not the same as having *exclusive* jurisdiction over “all” ordinances, as is demonstrated here.

The first sentence of R.C. 1901.20(A)(1) begins by providing that the municipal court has power to adjudicate municipal ordinance violations. That power is not exclusive or original. *See* R.C. 1901.20(A)(1) (“The municipal court has jurisdiction of the violation of any ordinance of any municipal corporation within its territory . . .”). The second clause of the first sentence of R.C. 1901.20(A)(1) then provides that a municipal court does *not* have power to handle violations of a specific type of municipal violation—parking ordinances where the municipality has adopted a parking violations bureau. *Id.* (“ . . . unless the violation is required to be handled by a parking violations bureau . . . pursuant to Chapter 4521 of the Revised Code, . . .”).

The only thing the language after the word “unless” does is carve to out an exception for *parking violations* in cities that have parking violations bureaus. It does not change or expand the scope of the first part of the sentence and does not make the non-exclusive grant of authority somehow exclusive. In fact, this exception only makes the point. By using the term “any,” the General Assembly was confirming that a municipal court cannot be excluded from adjudicating an ordinance violation—except where a city had adopted a parking violations bureau. But this has nothing to do with the question of whether the court has exclusive jurisdiction over “any” ordinance violation. The exception provides only what matters it is excluded from, not that all other matters are exclusive.

That is, this provision says that a municipal court *may* handle ordinance violations, but *must not* handle parking violations if they are required by state law to be handled by a parking violations bureau. The parking violations exception in the first sentence of R.C. 1901.20(A)(1) has no relevance to a city’s home-rule power to administer its own photo enforcement ordinance. *Mendenhall*, 117 Ohio St.3d 33, ¶ 37 (civil traffic enforcement ordinance “complements rather than conflicts with state law”).

E. Complaints about unelected hearing officers substituting their judgment for elected judges lack any basis in fact or law.

1. Hearing officers routinely conduct administrative appeals pursuant to city ordinances.

A common theme throughout Walker's Merit Brief is Walker's complaint that hearing officers who preside over administrative hearings are unelected and do not answer to anyone, while usurping the power of elected municipal judges. (Appellee's Brief at 2, 4-5, 27, 32.) This is untrue. A hearing officer presiding over an administrative hearing is not impeding the municipal court's jurisdiction. It is acting in an administrative function to apply a local traffic law that supplements state law. This is the precise procedure this Court approved in *Mendenhall*, 117 Ohio St.3d 33, ¶ 19, 37.

In *Gardner v. City of Columbus*, 841 F.2d 1272 (6th Cir. 1988), the Sixth Circuit recognized the important function administrative proceedings serve in our government:

In *Atlas Roofing Co. v. Occupational Safety Commission*, 430 U.S. 442, 51 L. Ed. 2d 464, 97 S. Ct. 1261 (1977), the Court reiterated the proposition that when a legislature "creates new statutory 'public rights,' it may assign their adjudication to an administrative agency. . . ." *Id.* at 455 (deciding that right to jury trial was not violated by Occupational Safety and Health Act of 1920, which assigned adjudication of contested citations to the Occupational Safety and Health Review Commission). In reaching its holding in *Atlas Roofing*, the Court relied in part on *Oceanic Steam Navigation Company v. Stranahan*, 214 U.S. 320, 53 L. Ed. 1013, 29 S. Ct. 671 (1909) for the proposition that in certain areas "Congress could 'impose appropriate obligations and sanction their enforcement by reasonable money penalties, giving to executive officers the power to enforce such penalties without the necessity of invoking the judicial power.'" *Atlas Roofing*, 430 U.S. at 457 (quoting *Oceanic Navigation*, 214 U.S. at 339).

Gardner, 841 F.2d at 1278-79.

In fact, an administrative proceeding involving civil traffic enforcement is no different than hundreds of other administrative proceedings that take place around Ohio every week. *See, e.g., Spofforth v. Athens*, 4th Dist. Athens No. 1487, 1992 Ohio App. LEXIS 1216 (Mar. 9, 1992) (Athens established a city water and sewage code, which provided for a right to a hearing before

a hearing officer for fee disputes); *State v. Lyons*, 1st Dist. Hamilton No. C-060448, 2007-Ohio-652 (Cincinnati city ordinance that made it unlawful to use a motor vehicle to facilitate the commission of a drug or sex offense, provided for a hearing before an administrative hearing officer, with possible civil fine of \$500).

Indeed, there are an endless array of ordinances in cities all over Ohio that provide for administrative hearings, usually before a city employee or hearing officer appointed by the city, to enforce city laws involving police and sanitary regulations—regulations the cities have a right to adopt under their home-rule authority. Here are a few such examples.

Dayton. Dayton has a “Vacant Foreclosed Residential Property” Code. Dayton Code of Ordinances § 93.101, *et seq.* Like civil photo enforcement ordinances, that ordinance provides for civil violations for persons in control of vacant, foreclosed property who fail to register and maintain their property. It provides for a civil penalty, a right to a hearing, and an administrative hearing officer to consider any challenge to the notice of liability. *Id.* § 93.105.

Cleveland. Cleveland has a Property Nuisance Code. Cleveland Code of Ordinances § 209.01, *et seq.* That ordinance prohibits owners from having certain nuisances on their property, including overgrown grass and weeds, garbage, and stagnant surface water. A citation issued by the City under this ordinance may be appealed to the City’s Commissioner of Environment or Director of Parks and Recreation—employees of the city. And a further appeal may be taken to the Board of Zoning Appeals. *Id.* at 209.01, 209.06.

Akron. Akron has a Police Towing Review Board as part of its traffic code. Akron Code of Ordinances § 70.50, *et seq.* That board is empowered by the City of Akron to review performance of authorized police towing companies and impose fines for violating any of several prohibitions in the ordinance. The Police Towing Review Board is authorized by the ordinance

to issue a \$100 fine for a first offense and a \$500 fine for a second offense, and hears appeals from citations issued under the ordinance.

Columbus. Columbus has an “Alarm Systems, Dealers, and Users” Code. Columbus Code of Ordinances § 597.01, *et seq.* Among other provisions, it prohibits excessive false alarms by alarm users. Much like civil photo enforcement ordinances, a police officer (or firefighter if appropriate) determines whether an alarm signal was a false alarm. If it was, the officer is to report it as such and a false alarm report is issued to the alarm user. *Id.* § 597.16. More than two false alarms in any license period results in a civil penalty to the alarm user of up to \$800 per violation for ten or more false alarms. *Id.* § 597.97. An alarm user can appeal a false alarm report within 14 days of the false alarm. If the appeal is denied, the alarm user then has another 14 days to request a hearing. A hearing officer appointed by the director of public safety hears and decides the appeals. *Id.* § 597.17.

All of these hearing officers are unelected. None are municipal court judges. They are all city employees or appointed by the city. Yet, under Walker’s theory, all of these hearing officers are acting unlawfully and usurping the duties of municipal court judges. If this Court were to accept Walker’s legal theory, then administrative hearings like these would cease.

Ohio has a long history of administrative proceedings at the municipal level—proceedings that cities have a right to conduct pursuant to their home-rule authority. These proceedings do not impinge on municipal court jurisdiction. Neither does Toledo’s civil photo enforcement ordinance.

2. **Hearing officers do not exercise unbridled discretion because individuals have a right to an administrative appeal under Ohio law.**

Walker’s Merit Brief also repeatedly suggests that abuses abound because administrative hearing officers have the final word, allowing the municipal court to be nothing more than a

“debt-collection agency after the hearing officer decides an alleged violation.” (Appellee’s Brief at 10.) But a hearing officer is never the last word. A respondent who has been found liable under Toledo’s Ordinance always has an avenue for appeal, either to the common pleas court under R.C. 2506.01 or even perhaps to the municipal court under R.C. 1901.20(A)(1).

In *City of Cleveland v. Cord*, 8th Dist. Cuyahoga No. 96312, 2011-Ohio-4262, the Eighth District rejected an argument that any concerns with the process of the hearing were remedied by R.C. 2506.03, which “bestow[ed] a right” to call or cross-examine witnesses, present additional evidence. *Id.* at ¶¶ 18-19; *see also Posner v. City of Cleveland*, 8th Dist. Cuyahoga No. 95997, 2011-Ohio-3071, ¶ 15 (rejecting challenge to administrative hearing process because R.C. 2506.03 allowed, and even mandates, that owner be allowed to subpoena witnesses and supplement the record).

This Court even identified a vehicle owner’s ability to pursue an administrative appeal to the common pleas court as an “adequate remedy in the ordinary course of law” in refusing to find Cleveland’s civil traffic enforcement program unconstitutional. *Scott*, 112 Ohio St.3d 324, ¶ 24.

But more importantly, an adverse finding by a hearing officer *is not a final judgment*. It only becomes a debt that is no different than a merchant debt. If the city wants to secure statutory power to execute, it has to file a civil action—in *the municipal court!* There, Walker would find all the due process he has claimed is missing, i.e. an elected judge, an official not employed by the city, the rules of evidence, the rule of civil procedure, etc. The municipal court is “divested” of nothing. The hearing officer is not an “exclusive arbiter” whose decision is final.

That is, if the respondent to a notice of liability believes the hearing officer is wrong, the respondent has access to the court by way of an administrative appeal. And if the city wants to enforce the finding of a hearing officer, it *must* go to the municipal court to obtain a judgment.

Yet, Walker complains that this right to an administrative appeal to a court is no remedy at all because respondents must pay the court's filing fee in order to have their administrative appeal heard. (Appellee's Brief at 25.) But courts have applications to waive filing fees for those who are unable to pay them. And payment of a filing fee is the same minimal burden imposed on anyone seeking to file an administrative appeal, regardless of the ordinance at issue. *See Gardner v. City of Cleveland*, 656 F. Supp.2d 751, 760 (N.D. Ohio 2009) (rejecting a claim in an automated photo traffic enforcement case that the amount of the filing fee to pursue an administrative appeal in common pleas court was onerous).

And the result would be the same even if civil traffic violations were to be heard originally and exclusively in municipal court, as Walker advocates. While cities may have to pay a fee to file the notice of violation, those costs will be shifted to the defendant vehicle owner if the court determines that a violation occurred. *See Civ.R. 54(D)* (costs awarded to prevailing party). In Toledo Municipal Court, the filing fee to file a civil action is \$107.50. In Franklin County Municipal Court, the filing fee is \$130. As it currently stands, a significant number of individuals who receive notices of liability can avoid these court costs by appearing before a hearing officer without the need to undertake a full-blown lawsuit. But if the administrative hearing is eliminated—as Walker would like—all notices of violation will be heard in municipal court. And the burden and cost to respondents to contest their notices of liability will escalate in every instance. This is not a “threat,” as Walker claims. (Appellee's Brief at 25.) Just the reality of the situation.

II. Toledo's civil traffic enforcement Ordinance provides due process.

Walker and his Amici argue that if this Court were to conclude that civil traffic violations *must* be heard originally and exclusively in municipal court, it would cure the “due process infirmities” in Toledo’s Ordinance. But Toledo’s Ordinance comports with due process already. In fact, it is largely the same ordinance with the same protections that numerous other courts around the country have found far surpasses requisite due process for a civil violation that results in a small, monetary fine. (Redflex’s Merit Brief at 17-18, collecting cases.)

Appellants and their Amici identify a few, specific parts of Toledo’s civil traffic ordinance that they believe violate due process. But in each such instance, Walker and Amici lack legal support for their position.

A. Effectuating service of a notice of liability by regular mail is constitutional.

Walker and the Amicus Curiae contend that the Ordinance is unconstitutional because it only provides for notice by regular mail. Notice by regular mail, however, has been deemed constitutionally sound. Even Ohio’s Rules of Civil Procedure allow for service of process in civil suits by ordinary mail service. *See* Civ.R. 4.6(C), (D).

In fact, this argument has been litigated before. In *Snider Int’l Corp. v. Town of Forest Heights*, 739 F.3d 140 (4th Cir. 2014), a group of plaintiffs filed suit to declare unconstitutional the automated speed cameras ordinance of a Maryland town. The ordinance provided for service of the notice of liability by regular, first-class mail. The plaintiffs contended this was insufficient; that certified mail was constitutionally required. The United States District Court for the District of Maryland rejected this argument and granted summary judgment to the city.

The Fourth Circuit Court of Appeals affirmed. It noted that the Supreme Court has routinely recognized that the use of regular mail satisfies the notice element of due process. And under circumstances similar to this case, the Court noted “[i]t is difficult to imagine a more

reasonable attempt at effectuating actual notice of a driving infraction than the use of registration information collected by the state's transportation agency." *Id.* at 146-47; *see also Gardner*, 841 F.2d at 1279 (parking tickets that imposed civil liability did not violate due process where tickets were placed on windshield of car or sent by ordinary mail).

Just as in *Snider Int'l*, Toledo's civil traffic enforcement Ordinance provides for a notice of liability to be served by regular mail or personal service "to the vehicle's registered owner's address as given on the state's motor vehicle registration." T.M.C. 313.12(a)(3)(B). Regular mail service of a notice of liability to the address the vehicle owner places on file with the State of Ohio does not offend due process.

B. The fact that a notice of liability is imposed against the owner of the automobile does not make the ordinance unconstitutional.

Walker and Amici also contend that Toledo's Ordinance violates due process because it cites the vehicle owner rather than the driver. But numerous courts have rejected this exact claim. In *Idris v. City of Chicago*, 552 F.3d 564 (7th Cir. 2009), Judge Easterbrook dismissed a due process challenge on this basis because there is no fundamental right to run a red light or avoid being seen by a camera on a public street, and such a law is rationally related to traffic safety:

Is it rational to fine the owner rather than the driver? Certainly so. A camera can show reliably which cars and trucks go through red lights but is less likely to show who was driving. That would make it easy for owners to point the finger at friends or children—and essentially impossible for the City to prove otherwise. A system of photographic evidence reduces the costs of law enforcement and increases the proportion of all traffic offenses that are detected; these benefits can be achieved only if the owner is held responsible.

This need not mean that the owner bears the economic loss; an owner can insist that the driver reimburse the outlay if he wants to use the car again (or maintain the friendship). *Legal systems often achieve deterrence by imposing fines or penalties without fault.* Consider, for example, a system that subjects to forfeiture any car used in committing a crime, even though the owner may have had nothing to do with the offense. *Bennis v. Michigan*, 516 U.S. 442,

116 S. Ct. 994, 134 L. Ed. 2d 68 (1996), holds that such a system is constitutional, because it increases owners' vigilance. Similarly, *Department of Housing & Urban Development v. Rucker*, 535 U.S. 125, 122 S. Ct. 1230, 152 L. Ed. 2d 258 (2002), holds that it is constitutional to evict a tenant from public housing because of a guest's misbehavior; the threat of eviction induces owners to exercise control over their guests (and not to invite people whose conduct they will be unable to influence). *United States v. Boyle*, 469 U.S. 241, 105 S. Ct. 687, 83 L. Ed. 2d 622 (1985), offers yet another example. The Court held it proper to impose penalties on a taxpayer whose return is false, even when an attorney or accountant is responsible for the error; the Court concluded that the threat of a penalty will cause taxpayers to choose their advisers more carefully--and, when the taxpayer is the victim of an expert's blunder, a malpractice suit will shift the expense to the person whose errors led to the exaction. ***Fining a car's owner is rational for the same reasons: Owners will take more care when lending their cars, and often they can pass the expense on to the real wrongdoer.*** (Emphasis added.)

Idris, 552 F.3d at 566.

Numerous other courts have held likewise. See *Mendenhall v. City of Akron*, 374 Fed. Appx. 598, 600 (6th Cir. 2010) ("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"); *Ware v. Lafayette City-Parish Consolidated Government*, W.D.La. No. 08-0218, 2009 U.S. Dist. LEXIS 97836 (Jan. 6, 2009) (approving presumption that owner of vehicle was the driver); *Titus v. City of Albuquerque*, 149 N.M. 556, 252 P.2d 780 (2011) (rejecting challenge to ordinance where it held owner liable instead of driver); *City of Knoxville v. Brown*, 284 S.W. 3d 330 (Tenn App. 2008) (rejecting due process claim based on ordinance that created rebuttable presumption that owner was liable); *Agomo v. Fenty*, 916 A.2d 181, (D.C. App. 2007) (finding that ordinance that created a rebuttable presumption that owner was liable did not violate due process); *State of Oregon v. Dahl*, 336 Ore. 481, 87 P.3d 650 (2004) (rejecting challenge to presumption that registered owner is driver).

A civil traffic enforcement ordinance that holds the owner of a vehicle liable when the vehicle violates local traffic laws is not unconstitutional.

C. An administrative hearing is by its nature informal; the informality of the hearing does not make it unconstitutional.

Walker and his Amici also contend photo enforcement hearings are unconstitutional because they lack formal rules, do not follow the rules of civil procedure, and allow hearsay. But administrative hearings are necessarily informal, and this fact does not, in itself, violate a participant's due process right. *See Voyath v. Beckert*, 2nd Dist. Montgomery No. 17745, 2000 Ohio App. LEXIS 316, *8-9 (Feb. 4, 2000); *Jennings v. Xenia Twp. Bd. of Zoning Appeals*, 2nd Dist. Greene No. 07CA-16, 2007-Ohio-2355, ¶ 36.

Moreover, the fact that an administrative hearing is conducted without reference to the rules of evidence, including the hearsay rule, does not make the hearing constitutionally infirm. *See Evid.R. 101(A)*; *Plain Local Schools v. Franklin Cty. Bd. of Revision*, 130 Ohio St.3d 230, 2011-Ohio-3362, 950 N.E.2d 268, ¶ 20; *Balaban v. City of Cleveland*, N.D. Ohio No. 1:07-cv-1366, 2010 U.S. Dist. LEXIS 10227 (Feb. 5, 2010).

And, as discussed above, an administrative appeal is afforded to anyone who is dissatisfied with the result of their administrative hearing. Toledo's civil traffic enforcement Ordinance affords minimum levels of due process.

D. Response to arguments of Amicus Curiae 1851 Center for Constitutional Law, et al. and American Civil Liberties Union of Ohio Foundation

The briefs of Amicus Curiae 1851 Center for Constitutional Law, et al., ("1851") and the American Civil Liberties Union of Ohio Foundation ("ACLU") offer little substantive new argument. They mostly recite the law governing due process rights and an irrelevant history of amendments to the Ohio Constitution. Both operate from a false premise.

That false premise is most starkly shown in 1851's brief, which asserts that "Toledo has unlawfully authorized governmental officials who are not elected judges to *adjudicate rights and liabilities* of citizens through the exercise of judicial power." (1851 Amicus Brief at 4, emphasis added.) But neither Toledo nor the hearing officer have any power whatsoever to enter a judgment; nothing in the ordinance remotely authorizes a hearing officer to enter judgment pursuant to Civil Rules 55, 56, 57, or 58. The hearing officer only can issue a finding of liability. But that finding of liability is not a judgment. If the city wants to secure a judgment and then be able to execute on that judgment by garnishing wages or bank accounts, it must file a civil suit in the municipal court. *See* T.M.C. 313.12 (d)(3) and (4) ("A decision in favor of the City of Toledo may be enforced by means of a civil action ...").

In their respective due process arguments, the Amicus Curiae assert that the City's ability to place a "boot" on a respondent's motor vehicle is a deprivation of due process, even though such cannot occur until the respondent has waived the right to a hearing by paying the penalty or is unsuccessful before the hearing officer and chooses not to appeal. In support of this argument, 1851 relies upon *State v. Hochhausler*, 76 Ohio St.3d 455, 465-466, 668 N.E.2d 457 (1996). In fact, *Hochhausler* is a helpful case to consider.

There, an individual had been arrested for drunk driving and charged with a second offense within five years in violation of R.C. 4511.19(A). With no hearing at all, he immediately received an administrative license suspension ("ALS") and the vehicle he was driving was immediately seized pursuant to R.C. 4511.195(C)(2)(a). Hochhausler challenged both summary actions.

As to the ALS, this Court reviewed the three-pronged balancing test set forth in *Mathews v. Eldridge*, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976). It found that a person's interest

in “the continued possession and use of his driver’s license” “is substantial.” Yet, the Court went on to hold that a *summary ALS without any hearing or evidence whatsoever* does not run afoul of due process. The Court held that such summary suspensions “are not so burdensome that a pre-suspension hearing is required.” *Hochhausler*, 76 Ohio St.3d at 461. The Court came to this conclusion because the defendant was entitled to a “post-suspension review” that allowed the defendant to appeal the administrative license suspension. In fact, the Court held that it was this very ability to appeal shortly after the suspension that “significantly reduced” the “burden on the private interest implicated by the ALS.” *Id.*

That is, in *Hochhausler*, the Court found that a private interest much more substantial than a \$120 penalty could be suspended without any hearing at all, without notice, without any testimony, and with no ruling by any judicial officer. Such facts are not remotely before this Court in this case. Nothing happens to an individual when the camera flashes while he speeds through a red light (even if he almost causes a colossal crash). Nothing happens when the respondent receives a notice of liability. The respondent has twenty-one days to request a hearing and post a bond for that hearing. If successful at the hearing, the respondent gets the bond back and pays nothing. If unsuccessful at the hearing, the respondent can appeal to the common pleas court or municipal court.

1851 purports to quote this Court’s holding in *Hochhausler* that “[t]he procedures set forth in the statute virtually ensure erroneous deprivation of . . . property.” (1851 Amicus Brief at 18.) But this Court was quoting a ruling from the United States District Court for the Southern District of Ohio, which held that an Ohio statute which requires an arresting officer to “seize and immobilize any vehicle operated by an individual driving without a valid driver’s license” violates due process. *Hochhausler*, 76 Ohio St. 3d at 468, citing *Kutschbach v. Davies* 885

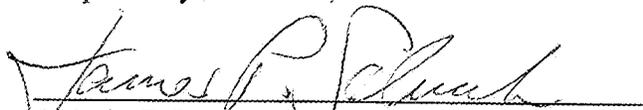
F.Supp. 1079, 1093 (S.D. Ohio 1995). Again, there is nothing in the Toledo ordinance that allows any officer or city official to seize anything on the spot.

The cases cited by the ACLU and 1851 are present true due process issues. Neither of those Amicus Curiae address the immense amount of case law that establishes that notice by regular mail does not violate due process, that a bond requirement does not violate due process, that a 21-day appeal period does not violate due process, that a hearing before a hearing officer in which the photograph and video of the offense are presented before the respondent who has an opportunity to reply does not violate due process, and that the right of an unsuccessful respondent to pursue appeal to the courts virtually eliminates any due process concern.

CONCLUSION

This Court should reverse the decision of the Sixth District Court of appeals and reinstate the Lucas County Common Pleas Court's entry of judgment in favor of Appellants.

Respectfully submitted,



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